

## Chapter 5.56

### FRANCHISES GENERALLY

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#### **5.56.010 Franchises not codified or affected.**

The various franchises and similar rights granted by the city by ordinance have not been codified in this code. Their validity and force and effect shall not be affected by this code. (Prior code § 26-1)

#### **5.56.020 Franchise exclusiveness--Compliance with chapter.**

The grant, extension or renewal of any franchise may be exclusive and no such grant shall be made by the council in violation of any limitations contained in this chapter. (Prior code § 26-16)

#### **5.56.030 Franchise resolution required--Authorization of agreement.**

No franchise shall be granted, renewed or extended except by resolution. Such resolution shall include the authorization of an agreement with the franchise holder incorporating the terms and conditions of the franchise award. (Prior code § 26-17)

#### **5.56.040 Determination of convenience and necessity.**

Prior to advertising notice of intention to grant a franchise, the council may upon its own motion, hear recommendations from the city staff or from the general public as to the need for granting a franchise for a particular service. Upon review of such presentations, the council shall make a determination whether or not public convenience and necessity would be best served by the awarding of such a franchise and whether such franchise shall be exclusive or not. (Prior code § 26-18)

#### **5.56.050 Notice of intention to grant franchise.**

Upon making a finding that public convenience and necessity require the awarding of a franchise, the council shall advertise their intention to grant such a franchise in one or more newspapers published and circulated in the city once a day for three successive days and the full publication must be completed not less than ten nor more than twenty days before the date set for receiving proposals for the franchise. Such advertisement must state the character of such franchise or privilege and that copies of the full terms and conditions to be met for award of such franchise may be obtained from the office of the city clerk, and shall further set forth that sealed proposals will be opened at a time and place stated and that the franchise shall be at a time and place stated and that the franchise shall be awarded on the basis of the best proposal as determined by the council. (Prior code § 26-19)

**5.56.060 Conditions of franchise grant to be determined before notice.**

The council shall, prior to advertising intention to grant a franchise, consider and adopt a statement of the character of such franchise and the terms, restrictions, reservations, conditions, provisions and requirements to be met by the franchise holder and shall direct the city clerk to prepare and make available at his/her office sufficient copies of such statement for interested parties. Such conditions, etc., shall include all of those set forth in this chapter which are applicable to the nature of the franchise to be awarded. (Prior code § 26-20)

**5.56.070 Rights of city reserved.**

A. The grant of every franchise, permit or privilege shall be subject to the right of the city, whether reserved in such grant or not, to make all regulations which shall be necessary to secure, in the best manner, the safety, welfare and accommodation of the public, including, among other things, the right to pass and enforce ordinances to protect the public from danger or inconvenience in the operation of any work or business authorized by the grant to the franchise, permit or privilege and the right to make and enforce all such regulations as shall be reasonably necessary to secure adequate, sufficient and proper public service and accommodations.

B. Every franchise granted shall be subject to the right of the city, whether reserved therein or not, to prescribe and regulate the rates, fares, rentals or charges made for the service rendered under such franchise; to require such reports, accounts or special information about its affairs to be furnished, as the council may prescribe or deem necessary or convenient, for the purpose of fixing such rates, fares, rental or charges, or for any other lawful purpose, to be made in such form and verified by such persons as the council shall prescribe, to have full and free access, at any and all reasonable times, to all books, records and papers of such franchise holder with the right of examining the same and privilege of taking copies of the same or any part thereof.

C. Every franchise granted shall reserve to the city the right to purchase or lease all of the property of the franchise holder used in or useful for the operation of the franchise service at a price either fixed in the franchise agreement or to be fixed in the manner provided in such agreement, but in no case shall the value of the franchise of the grantee be considered or taken into account in fixing such valuation. Nothing in the franchise agreement shall prevent the city from acquiring such property by condemnation proceedings or in any other lawful mode. Upon the acquisition of such property by purchase, condemnation or otherwise, such franchise shall at once terminate. (Prior code § 26-21)

**5.56.080 Other conditions may be imposed.**

Nothing in this chapter, except as herein specifically provided, shall operate to limit the council in the exercise of any of its lawful powers respecting public utilities or to prohibit the council from including in any franchise agreement such further restrictions and provisions as it may deem to be in the public interest; provided only that the same are not inconsistent with the provisions of the charter or the state Constitution. (Prior code § 26-22)

**5.56.090 Lease or assignment of franchises.**

No franchise granted by the city shall be leased, assigned or otherwise alienated without the express consent of the council, and no dealing with the lessee or assignee, on the part of the city, to require the performance of any act or payment of any compensation by the lessee or assignee shall be deemed to operate as such consent. (Prior code § 26-23)

**5.56.100 Council to receive, act on proposals.**

At the time and place set forth in the notice of intention, the sealed proposals shall be publicly opened and such compilation as may be necessary shall be made for presentation to the council. Upon the evaluation of the proposals as they relate to the terms and conditions authorized by the council, the determination of the best proposal shall be made by the council and the franchise awarded accordingly by resolution; provided, if no proposal meets the terms and conditions in a manner deemed to be in the public interest, the council may reject all proposals. (Prior code § 26-24)

**5.56.110 Free competition required.**

No clause or condition shall be inserted in any statement of terms and conditions for franchise proposals which shall directly or indirectly restrict free and open competition in comparison of proposals, and no clause or provisions shall be inserted in any statement of terms and conditions for proposals which shall in anywise favor one person as against another in submitting such proposals. (Prior code § 26-25)

**5.56.120 Bond required.**

A. The successful franchise holder shall file a bond running to the city with at least two good and sufficient sureties, or other bond provided by law, to be approved by the council, in a penal sum to be prescribed by it and set forth in the statement of terms and conditions, conditioned that such franchise holder shall well and truly observe, fulfill and perform each and every term and condition of such franchise and that in case of any breach of condition of such bond, the whole amount of the penal sum therein named shall be taken and deemed to be liquidated damages and shall be recoverable from the principal and sureties upon such bond.

B. Said bond shall be filed with the city clerk within five days after such franchise is awarded and upon the filing and approval of such bond, the said franchise shall be granted by the council by resolution to the person to whom it has been awarded, and in case such bond shall not be so filed, the award of such franchise shall be set aside and said franchise may, in the discretion of the council, be re-advertised for proposals on the same terms and conditions previously authorized by the council. (Prior code § 26-26)

**5.56.130 Forfeiture for noncompliance.**

Every resolution granting a franchise or privilege shall provide for the termination or forfeiture thereof for any breach or failure to comply with any of the terms, limitations or conditions thereof, and in all such cases, the council shall have the power to declare the termination and forfeiture of any such franchise or privilege the same as though in each instance such power was expressly reserved. (Prior code § 26-27)