

CHAPTER XIV

UTILITIES, FRANCHISES AND PERMITS

Section 14.1 General Powers.

The city shall possess and hereby reserves to itself all the powers granted to cities by law to acquire, construct, own, operate, improve, enlarge, extend, repair, maintain, encumber, convey, dispose of or sell, either within or without its corporate limits, public utilities, including, but not by the way of limitation, aeronautical facilities, cemeteries, hospitals and public utilities for treating and supplying water and for supplying light, heat, power, gas, sewage treatment, garbage disposal, public transportation and facilities for the storage and parking of vehicles; and also to sell and deliver the products or services thereof, both within and without its corporate limits, subject to the limitations herein contained. The power to supply said utilities services, as herein possessed, and reserved, shall include the power to extract, process, manufacture, and transport or purchase the same from others.

Section 14.2 Administration Of Municipally Owned And Operated Utilities.

- (a) All municipally owned and operated utilities shall be administered as a regular department of the city government under the management and supervision of the city manager. The city may exercise its powers under 14.1 intergovernmental contracts.
- (b) The council may enact such ordinances and adopt such resolutions as may be necessary for the care, protection preservation, control and operation of any public utilities which the city may, in any manner acquire, own, or operate and all fixtures, appurtenances, apparatus, building, and machinery connected therewith or belonging thereto, and to carry into effect the powers conferred upon the city by the provision of this charter and by law.

Section 14.3 Rates.

- (a) The council shall fix just and reasonable rates and such other charges as may be deemed advisable for supplying municipal utility services. Discrimination in rates by the council, within any classification of users, shall not be permitted, nor shall free service be permitted other than to the city, but higher rates may be charged for utility services delivered or furnished beyond the corporate limits of the city.
- (b) The rates and charges for any municipal utility shall be fixed on a basis at least adequate to compensate the city for the cost of such service and to make reasonable provision for the extension thereof according to the needs

of the city. Transactions pertaining to the ownership and operation of each municipal utility shall be recorded in a separate group of accounts, which shall be classified in accordance with generally accepted accounting practices. Charges for all service furnished to, or rendered by, other city departments or administrative units shall be recorded, whether collected or not. An annual report shall be prepared to show the financial position of each utility and the results of its operation. A copy of such reports shall be available for inspection at the office of the clerk.

Section 14.4 Collection Of Municipal Utility Rates And Charges.

- (a) The council shall provide by ordinance for the collection of rates and charges for public utility services furnished by the city. When any person fails or refuses to pay to the city any sums due on utility bills, the service upon which such delinquency exists may be discontinued and suit may be brought for the collection thereof.
- (b) Except as otherwise provided by law, the city shall have a lien upon the premises to which utility services are supplied and, for such purposes, shall have all the powers granted to cities by law. The lien shall become effective immediately on the distribution or supplying of utility services to such premises. In each case where a lien to secure the payment of utility charges is not available to the city by operation of law or otherwise, the council shall require that an adequate deposit be made by the person to whom city utility services are furnished, for the purpose of guaranteeing the collection of charges for such utility services.
- (c) All unpaid charges for utility services to any such premises, which, on the thirty-first (31st) day of March of each year, have remained unpaid for a period of six (6) months or more, shall be reported to the council by the city manager and the council at the first meeting thereof in the month of April. The council thereupon shall order the publication in a newspaper of general circulation in the city of notice that all such unpaid utility charges not paid by the thirtieth (30th) day of April will be spread upon the city's tax roll against the premises to which such utility services were supplied or furnished, and such charges shall to the extent authorized by law then be spread upon the city's tax roll and shall be collected in the same manner as the city taxes.

Section 14.5 Accounts And Finances Of Public Utilities.

Separate accounts termed Enterprise Funds shall be kept for each public utility owned and operated by the city. Such accounts shall be classified and made in accordance with generally accepted municipal utility accounting practice. Charges for all

services furnished to, or rendered by, other city departments or agencies shall be recorded. An annual report shall be prepared to show more accurately the financial position of the utility and the results of its operations which report shall be on file in the office of the clerk for inspection.

Section 14.6 Disposal Of Municipal Utility Plants And Property.

The city shall not sell, exchange, lease, or in any way dispose of any property, easement, equipment, privilege, or asset needed to continue the operation of any municipal public utility, unless the proposition to do so is approved by at least three-fifths of the electors of the city voting on the question at a regular or special city election. All contracts, grants, leases, or other forms of transfer in violation of this section shall be void and of no effect as against the city. The restrictions of this section shall not apply to the sale or exchange of articles of machinery or equipment of any municipally owned public utility, which are no longer useful or which are replaced by new machinery or equipment, or to the leasing of property not necessary for the operation of the utility, or to the exchange of property or easements for other needed property or interests in property.

Section 14.7 Public Utility Franchises.

The city may grant a franchise to any person for the use of the streets, alleys, bridges, and other public places of the city for the furnishing of any public utility service to the city and its inhabitants. Franchises and renewals, amendments, and extensions thereof shall be granted only by ordinance. Public utility franchises shall include provisions for fixing rates and charges and may provide for readjustments thereof at periodic intervals. The city may, with respect to any public utility franchise granted after the effective date of this charter, whether or not so provided in the granting ordinance:

- (a) Terminate the same for the violation of any of its provisions, for the misuse or nonuse thereof, for failure to comply with any provision thereof, or any regulation imposed under authority of this section;
- (b) Require proper and adequate extension of plant and the maintenance thereof at the highest practicable standard of efficiency;
- (c) Establish reasonable standards of service and quality of products, and prevent unjust discrimination in service or rates;
- (d) Impose other regulations determined by the council to be conducive to the health, safety, welfare and convenience of the public;
- (e) Require the public utility to permit joint use of its property and appurtenances located in the streets, alleys, bridges, and public places, by the city and other utilities, insofar as such joint use may be reasonably practicable and upon payment of reasonable rental therefore, and, in the

absence of agreement, upon application by the public utility, provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefore;

- (f) Require the public utility to pay any part of the cost of improvement or maintenance of streets, alleys, bridges and public places, that arises from its use thereof, and to protect and save the city harmless from all damages arising from such use;
- (g) Require the public utility to file with the city manager such drawings and maps of the location and nature of its facilities, as the council may request.

Section 14.8 Public Utility Franchises – Granting.

- (a) Public utility franchises and all renewals, and extensions thereof and amendments thereto shall be granted only by ordinance. No franchise shall be granted for a longer period than thirty (30) years.
- (b) No franchise ordinance, which is not subject to revocation at the will of the council, shall be enacted nor become operative until the same shall have first been referred to the people at a regular or special election and received the affirmative vote of three-fifths of the electors voting thereon. No such franchise ordinance shall be approved by the council for referral to the electorate before thirty (30) days after application therefore has been filed with the council nor until a public hearing has been held thereon, nor until the grantee named therein has filed with the clerk his or her unconditional acceptance of all the terms of such franchise. No special election for such purpose shall be ordered unless the expense of holding such election, as determined by the council, shall have been first paid to the treasurer by the grantee.
- (c) A franchise ordinance, or renewal or extension thereof, or amendment thereto, which is subject to revocation at the will of the council may be enacted by the council without referral to the voters, but shall not be enacted unless it shall have been complete in the form in which it is finally enacted and shall have so been on file in the office of the clerk for public inspection for at least four weeks after publication of a notice that such ordinance is on file.

Section 14.9 Public Utility Franchises – Conditions.

All public utility franchises granted after the adoption of this charter, whether it be so provided in the granting ordinance or not, shall be subject to the following rights of the

city, but this enumeration shall not be exclusive or impair the right of the council to insert in such franchise any provision within the power of the city to impose or require:

- (a) To repeal the same for misuse, non-use, or failure to comply with the provisions thereof;
- (b) To require adequate extension of plant and service and maintenance thereof at the highest practicable standard of efficiency;
- (c) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates;
- (d) To require continuous and uninterrupted service to the public in accordance with the terms of the franchise throughout the entire length thereof;
- (e) To use, control, and regulate the use of its streets, alleys, bridges and other public places and the space above and beneath them;
- (f) To impose such other regulations as may be determined by the council to be conducive to the safety, welfare and accommodation to the public.

Section 14.10 Filing Of Franchises.

Every ordinance granting a franchise, license or right to occupy or use streets, alleys, bridges or public places for more than sixty (60) days shall remain on file with the clerk for public inspection in its final form for at least fourteen (14) days before the final adoption thereof, or the approval thereof for referral to the electorate.

Section 14.11 Plans Of Facilities In Streets And Public Places.

- (a) The council may, by ordinance, require as a condition to the placing or installment thereof, that each public utility conducting a business in the city, file with the city manager a duplicate copy of layout plans of pipes, conduits, and other facilities which are to be placed on, under, or above the surface of the city's streets, alleys, bridges and public places.
- (b) Every public utility shall pay such part of the cost of improvement or maintenance of streets, alleys, bridges and other public places as shall arise from its use thereof and shall protect and save the city harmless from all damages arising from said use. Every such public utility may be required by the city to permit joint use of its property and appurtenances located in the streets, alleys, and other public places of the city, by the city and other utilities insofar as such joint use may be reasonably practicable, and upon payment of reasonable rental therefore. In the absence of agreement and upon application by any public utility, the council shall provide for

arbitration of the terms and conditions as such joint use and the compensation to be paid therefore.

Section 14.12 Temporary Permits.

Temporary permits for public utilities, revocable at any time at the will of the council, may be granted by the council by resolution on such terms and conditions as it shall determine, provided that such permits shall in no event be construed to be franchises or amendments to franchises. A temporary permit shall be subject to the rights of the city to make independent audit and examination of accounts at any time and to require reports annually or at more frequent intervals as prescribed by resolution of the council. When the council deems it in the public interest, such permits may be exclusive.

Section 14.13 Existing Franchises And Permits.

All franchises and permits to which the Village of Douglas is a party when this charter becomes effective shall remain in full force and effect according to each agreement.

Section 14.14 Purchase – Condemnation.

The city shall have the right to acquire by condemnation, or otherwise, the property of any public utility in accordance with general law, provided that the price to be paid shall in no event include any value predicated upon the franchise, goodwill or prospective profits.

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