

CHAPTER 9 Franchises

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ARTICLE A – General Principles

Pursuant to the provisions of LSA-R.S. 33:4401, LSA-RS. 45:1361 et seq, this municipality's police powers, and in order to protect the health, safety, and welfare of the public, the Town of Brusly (herein referred to as "the Town") recognizes its right, duty, and obligation to regulate and maintain the integrity and safety of the Town's property and rights-of-way.

There are persons or entities which utilize and desire to utilize the Town's property and rights-of-way to conduct business operations, including but not limited to the provision of telecommunication, internet, electrical, cable, water, gas or other services or products (hereinafter referred to as "Business Operations").

The Town makes and adopts the following findings and purposes:

- (1) The Town recognizes that it holds its property and the rights-of-way within its geographical boundaries as an asset in trust for its citizens. The Town and other public entities have invested millions of dollars in public funds to acquire, build, and maintain the rights-of-way. It also recognizes that some persons, by placing their equipment in the rights-of-way and charging the citizens of the Town for goods and services delivered thereby, are profiting from their use of this property held by the Town for the public good;
- (2) The Town's rights-of-way are owned or held by the Town primarily for the purpose of pedestrian and vehicular passage and for the Town's provision of essential public safety services, including police, fire, and emergency medical response services; and public health services, including sanitary sewer, water, and storm drainage services (together, "Public Uses");
- (3) Public Uses should in all cases be considered and treated as the dominant and preeminent uses of public property and rights-of-way;
- (4) All other uses of public rights-of-way, including use for the provision of Business Operations, must be subordinate to Public Uses;
- (5) In order to provide for the health, safety and well-being of its citizens, as well as to ensure the structural integrity of its rights-of-way and the Town owned facilities located therein, the Town strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances;
- (6) Right-of-way obstructions and deterioration disrupt the flow of vehicular and pedestrian traffic and are a source of frustration for merchants, business owners and the general population;
- (7) The Louisiana legislature enacted Act 433 of 2008, codified as LSA - R.S. 45:1361-1378 as the "Consumer Choice for Television Act," which provides for a state-issued certificate of franchise authority for cable and video services. In LSA - R.S.45:1374, the legislature reserved to local government certain authority to regulate the holder of a state-issued certificate of franchise authority including the Town's lawful exercise of its police powers;
- (8) In order for the Town to properly protect the health, safety and welfare of its citizens, to enhance the Public Uses, and manage and maintain its property, it is appropriate and necessary that the Town obtain and maintain current, accurate information concerning the location, construction, installation and maintenance of structures, facilities, and equipment occupying Town Property for Business Operations ("System"); and
- (9) Some entities conduct Business Operations utilizing Town property and rights of way authorized by a fully executed, valid franchise agreement or ordinance with the Town which addresses, among other matters, maintenance and use of Town property and rights of way. The Town has

determined that it is in the public's best interest to honor said franchise agreements or ordinances and exempt from the application of this Ordinance the Business Operations specifically authorized by such agreements or ordinances.

ARTICLE B - Telephone and Telegraph

Section 9.1 Franchise granted to BellSouth Corporation

In order to recognize various corporate mergers and purchases that have occurred since 1978, by operation of law, BellSouth Corporation has become the franchisee under the telephone and telegraph franchise issued by the Town of Brusly; and it (and its legal successors) is authorized to use the public streets and public rights of way of this municipality for the purpose of building, constructing, operating, and maintaining telephone and telegraph systems for an indefinite period. (Section 8, Ordinance adopted November 13, 1978, Amended by Ordinance No. 2 of 2004)

ARTICLE C - Gas

Section 9.11 Franchise granted to West Baton Rouge Parish Natural Gas and Water

In order to recognize various governmental changes that have occurred since 1984, by operation of law, West Baton Rouge Parish Natural Gas and Water System has become the franchisee under the natural gas franchise issued by the Town of Brusly; and it (and its legal successors) is authorized to construct and maintain, extend, and operate a system of gas pipelines, equipment, and appurtenances under, along, across, and over certain roadways, streets, public lands, and waters in this municipality to transfer natural gas to and through said Town, and to the public generally, for an indefinite period. (Amended by Ordinance No. 4 of 2004)

ARTICLE D - Electricity

Section 9.21 Franchise granted to Entergy Gulf States, Incorporated

In order to recognize various corporate mergers and purchases that have occurred since 1972, by operation of law, Entergy Gulf States, Incorporated has become the franchisee under the electricity franchise issued by the Town of Brusly; and it (and its legal successors) is authorized to erect, maintain, extend, and operate a system of works, poles, wires, underground conduits, cables and all necessary apparatus on, below, and over all areas, ways, and servitudes of and within the limits of this municipality for the purpose of conducting an electric power business and the generation, transmission, and distribution of electricity to and through said Town, and to the public generally, for an indefinite period. (Amended by Ordinance No. 3 of 2004)

ARTICLE E - Water

Section 9.31 Franchise granted to Water Works District No. 2

The resolution adopted by the mayor and board of aldermen on July 13, 1959, which granted to Water Works District No. 2 of West Baton Rouge parish, Louisiana, a servitude for right-of-way to lay, maintain, inspect, operate, repair, alter, remove and relay a pipeline for the transportation of water and such drips, valves, fittings, meters, and other equipment and appurtenances which may be necessary or convenient for such operations over, through, upon, across and under the property of the municipality described in said resolution is continued and is hereby incorporated as though fully set forth herein.

ARTICLE F - Cable Television

Section 9.41 Franchise granted to Cox Communications Central II, Inc.

In order to recognize various corporate mergers and purchases that have occurred since December 13, 1982, with the final merger being effective July 31, 2001, by operation of law, Cox Communications Central II, Inc. has become the franchisee under the cable television franchise issued by the Town of Brusly; and it is authorized to use the public streets and public rights of way of this municipality for the purpose of building, constructing, operating, and maintaining a cable television system for an indefinite period. (Section 19, Ordinance No. 1 of 1981; Section 2, Ordinance No. 6 of 1983; Ordinance No. 1 of 2004)

Section 9.42 Cable Franchise Fee

(A) General Principles:

Pursuant to the provisions of the Consumer Choice for Television Act of 2008, codified at LSA-RS. 45:1361 et seq, any person or entity desiring to provide cable or video services within the Town of Brusly may do so by obtaining a state-issued certificate of franchise authority.

Pursuant to the provisions of LSA-R.S. 45:1366, the holder of a state-issued certificate of franchise authority for cable or video service is required to pay a franchise fee to a municipality in which it operates upon the passage of an ordinance by municipality setting such a fee; and there are persons or entities which operate or desire to operate cable or video services within the Town's municipal limits.

(B) Cable Franchise Fee:

All persons or entities providing cable or video services to the citizens of the Town of Brusly pursuant to a state-issued certificate of franchise authority as

provided in LSA-R.S. 45:1361 et seq shall, pursuant to the provisions of LSA-R.S. 45:1366, pay the Town of Brusly a franchise fee equal to 5% of the cable or video service provider's gross revenues, as that term is defined by the "Consumer Choice for Television Act of 2008," derived from operations within the Town's municipal limits.

ARTICLE G – ISSUANCE OF PERMITS

Section 9.51 Issuance of Permits

It is ordained by the Town Council of the Town of Brusly, State of Louisiana, that no person or entity may enter upon, traverse, either above ground or below, or otherwise utilize any property, servitude, or other property right, owned, leased, possessed, or controlled by the Town (herein referred to as "Town Property") for the conduct of Business Operations without first being issued a permit to enter Town Property for Business Operations as more fully set forth hereafter.

1. Location of any System for Business Operations within Town Property without a valid permit from the Town pursuant to this Ordinance presents a threat to the health, safety, and welfare of the Town's citizens and their property and is expressly forbidden.
2. The Town recognizes and reserves any and all rights available to it to regulate use of any Town Property.
3. The granting of any Town license, permit, or other requirement for doing business within the Town shall not be construed as authorizing any such person or entity the right to utilize Town Property for the conduct of Business Operations.
4. Any person or entity desiring to operate a System occupying Town Property "(Applicant)" shall make a written request to the Town for a permit, which shall include the following information:
 - a) Name, address, telephone number, and contact person of the person or entity making the request;
 - b) Necessary corporate information, if applicable;
 - c) Name, address, email address, and home, office and cell telephone numbers of a person with authority to act on behalf of the Applicant in case of emergency;
 - d) Description of the proposed activity;

- e) Identification of the Town Property which Applicant's System will occupy. Said identification shall include the following:
 - i) Map drawn to scale of the location of all of Applicant's System presently occupying Town Property;
 - ii) Inventory of all equipment, structures, and facilities comprising Applicant's System occupying Town Property; and
 - iii) Description of all anticipated construction, major maintenance, and major installation activities which shall include the specific locations and the beginning and ending dates of all projects to be commenced during the next calendar year; and the tentative locations and beginning and ending dates for all projects contemplated for the two year period following the next calendar year.
 - f) Proof of comprehensive general liability insurance covering and affecting the Applicant's Business Operations occupying Town Property. Applicant shall notify the Town of cancellation of such policy(ies) at least 30 days in advance of such cancellation; and
 - g) Name of all contractors acting or working on behalf of Applicant within Town Property along with the name and home, office, and cell telephone numbers of a person with authority to act on behalf of the contractor in case of emergency.
5. Upon provision of all of the information required by Section (4), the Town shall issue a permit allowing the Applicant/Permittee to enter Town Property to conduct Business Operations in accordance with the specific information provided to the Town by the Applicant/Permittee.
6. Standard provisions of each permit granted pursuant to this Ordinance shall include the following:
- a) Conditions of Occupancy. The System shall be located so as to cause minimum interference with the Public Uses use of Town Property and with the rights and reasonable convenience of property owners who own property that adjoins Town Property.
 - b) Restoration of Public Ways. If, during the course of the Permittee's construction, installation, or maintenance of the System, there occurs a disturbance of any Town Property by the Permittee, the Permittee shall replace and restore such Town Property to a condition reasonably comparable to the condition of the Town Property existing immediately prior to such disturbance.

c) Relocation at Request of the Town. If the Town shall lawfully elect to vacate, relocate, abandon, alter, reconstruct or change any Town Property, the Permittee, upon thirty (30) days written notice by the Town via certified mail to the Permittee, shall remove, re-lay and relocate its structure, equipment, and facilities at its own expense. Should the Permittee refuse or fail to remove System within thirty (30) days after written notification, the Town shall have the right to remove the component parts of the System and charge the Permittee for the costs of removal.

d) Relocation at Request of Third Party. The Permittee shall, on the request of any person holding a lawful building moving permit, protect, support, raise, lower, temporarily disconnect, relocate in or remove from any Town Property, as necessary, any property of the Permittee provided: (i) the expense of such is paid by said person benefiting from the relocation, including, if required by the Permittee, making such payment in advance; and (ii) the Permittee is given reasonable advance written notice to prepare for such changes. For purposes of this Section, “reasonable advance written notice” shall be no less than thirty (30) days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

e) Interference with Use of right-of-way. When working within Town Property, Permittee shall not unreasonably interfere with Public Uses of said Town Property and the safety, health, and convenience of the public in the public’s use thereof for ordinary travel.

7. No less than three (3) business days prior to commencement of construction, installation or maintenance activities within Town Property, the Permittee shall notify the Town of the specific locations and beginning and ending dates of said construction, installation, or maintenance project and shall provide current, accurate contact information for both the Permittee and the contractor as outlined in Section (4). Upon receipt of this notification, the Town shall determine whether the proposed construction, installation, or maintenance activities shall pose an unreasonable inference with Public Uses. If the Town determines the proposed activity presents no such unreasonable interference, it shall issue the permittee a notice to proceed. If the permittee receives no written notification from the Town within twenty-four hours of the proposed commencement of activities, the proposed activities may be deemed approved. This Section shall not apply to emergency repair projects or utility service extension projects which the Permittee could not have anticipated.

8. The Permittee shall keep all of the information required by Section (4) current at all times by immediately providing the Town written notice of changes.
9. Any person or entity (1) whose System occupies Town Property for Business Operations without obtaining the permit required in this Ordinance; (2) who fails to provide the 72-hour notice prior to commencement of construction, installation, or maintenance activities as required in Section 6; or who fails to maintain current, accurate information required by Section (4) concerning any System occupying Town Property may have any permit granted pursuant to this Ordinance revoked and may be denied future authorization for construction, installation, or maintenance activities for a period of two years.
10. Any violation of this Ordinance shall afford the Town the full range of remedies available under any applicable law or regulation including the levying of fines. The election of one or more remedies shall not be construed as a waiver of any other legal and/or equitable remedy including, but not limited to the Town's right to seek injunctive relief, damages, and attorney's fees as the law might allow.
11. Business Operations specifically authorized by a fully executed, valid franchise agreement or ordinance with the City shall not be subject to the provisions of this Ordinance and the provisions of said franchise agreement or ordinance shall continue to govern.

ARTICLE H – Repeal of Conflicting Ordinances and Resolutions

Section 9.61 Repeal of Conflicting Ordinances and Resolutions

All ordinances and resolutions in conflict herewith are hereby repealed, except those approving any cable or video franchise agreement in force and effect between the Town and any cable or video service provider.