

CHAPTER 110

NATURAL GAS FRANCHISE

110.01 Grant of Franchise	110.08 Relocation for Private Developer
110.02 State Code Restrictions and Limitations	110.09 Indemnification
110.03 Excavations	110.10 Information Provided to City
110.04 Relocation of Property	110.11 Standards of Operation
110.05 Restoration of Property	110.12 Franchise Fee
110.06 Vacating Streets	110.13 Termination of Franchise
110.07 Subsequent Relocations	

110.01 GRANT OF FRANCHISE. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called the “Company,” and its successors and assigns the nonexclusive right and franchise to acquire, construct, erect, maintain, and operate in the City a gas distribution system, to furnish natural gas along, under, and upon the streets, avenues, alleys, and public places to serve customers within and without the City and to furnish and sell natural gas to the City and its inhabitants. For the term of the franchise, the Company is granted the right of eminent domain, the exercise of which is subject to Council approval, upon application by the Company. The franchise shall remain in effect for a period of 25 years, from and after the effective date of the ordinance codified in this chapter.[†]

110.02 STATE CODE RESTRICTIONS AND LIMITATIONS. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the *Code of Iowa*.

110.03 EXCAVATIONS. The Company shall have the right to excavate, subject to providing the City with prior notification, in any public street for the purpose of laying, re-laying, repairing or extending gas pipes, mains, conduits, and other facilities, provided that the same shall be so placed as not to unreasonably interfere with the construction of any water pipes, drain, or sewer or the flow of water therefrom, which have been or may hereafter be located by authority of the City.

110.04 RELOCATION OF PROPERTY. Excluding facilities located in private easements (whether titled in the Company exclusively or in the Company and other entities), in accordance with Iowa law, including the Company’s tariff on file with and made effective by the Iowa Utilities Board, as may subsequently be amended, the Company shall, at its cost and expense, locate and relocate its existing facilities or equipment in, on, over or under any public street or alley in the City in such manner as the City may reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley. If the City has a reasonable alternative route for the street, alley, or public improvements, or an alternative construction method, which would not cause the relocation of the Company installations, the City shall select said alternative route or construction method. The City shall be responsible for surveying and staking the right-of-way for City projects that require the Company to relocate Company facilities. If requested, the City shall provide, at no cost to the Company, copies of its relocation plan and profile and cross-section drawings. If tree removals must be completed by the City as part of the City’s project and are necessary,

[†] **EDITOR’S NOTE:** Ordinance No. 606, adopting a natural gas franchise for the City, was passed and adopted on January 11, 2010.

whether or not utility facilities must be relocated, the City, at its own cost, shall be responsible for said removals. If the timing of the tree removals does not coincide with the Company facilities relocation schedule and Company must remove trees that are included in the City's portion of the project, the City shall either remove the trees at its cost or reimburse the Company for the expenses incurred to remove said trees. If project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall use its best efforts to secure said funds and provide them to the Company to compensate the Company for the costs of relocation.

110.05 RESTORATION OF PROPERTY. In making excavations in any streets, avenues, alleys, and public places for the installation of gas pipes, conduits or apparatus, the Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring it to the condition that existed prior to excavation. The Company shall not be required to restore or modify public right-of-way, sidewalks, or other areas in or adjacent to the Company project to a condition superior to its immediately previous existing condition or to a condition required for the City to comply with City, State or Federal rules, regulations, or law.

110.06 VACATING STREETS. Vacating a street, avenue, alley, public ground, or public right-of-way shall not deprive the Company of its right to operate and maintain existing facilities on, above, or beneath the vacated property. Prior to abandoning or vacating any street, avenue, alley, or public ground where the Company has natural gas facilities, the City shall grant the Company a utility easement for said facilities. If the City fails to grant the Company a utility easement for said facilities prior to abandoning or vacating a street, avenue, alley, or public ground, the City shall, at its cost and expense, obtain easements for existing Company facilities.

110.07 SUBSEQUENT RELOCATIONS. The Company shall not be required to relocate, at its cost and expense, Company facilities in the public right-of-way that have been relocated at Company expense at the direction of the City in the previous five years.

110.08 RELOCATION FOR PRIVATE DEVELOPER. Pursuant to relocation of the Company facilities, as may be required by Sections 110.03 through 110.07 of this chapter, if the City orders or requests the Company to relocate its existing facilities or equipment in order to facilitate the project of a commercial or private developer or non-public entity, the City shall reimburse or the City shall require the developer or non-public entity to reimburse the Company for the cost of such relocation as a precondition to relocation of its existing facilities or equipment. The Company shall not be required to relocate in order to facilitate such private project at its expense.

110.09 INDEMNIFICATION. Company shall indemnify and save harmless the City from any and all claims, suits, losses, damages, costs or expenses on account of injury or damage to any person or property, caused or occasioned, or allegedly caused or occasioned, in whole or in part, by Company's negligence in construction, reconstruction, excavation, operation or maintenance of the gas utilities authorized by the franchise, provided, however, that the Company shall not be obligated to defend, indemnify and save harmless the City for any costs or damages arising from the negligence of the City, its officers, employees or agents.

110.10 INFORMATION PROVIDED TO CITY. Upon reasonable request, the Company shall provide the City, on a project specific basis, information indicating the horizontal location, relative to boundaries of the right-of-way, of all equipment that it owns or

over which it has control and which is located in City right-of-way. The Company and City recognize the information provided will, under current Iowa law, constitute public records, but that nonetheless, some information provided will be confidential under State or Federal law or both. Therefore, the City shall not release any information with respect to the location or type of equipment that the Company owns or controls in the right-of-way and which may constitute a trade secret or which may otherwise be protected from public disclosure by State or Federal law. Furthermore, the City agrees that no documents, maps, or information provided to the City by the Company shall be made available to the public or other entities if such documents or information are exempt from disclosure under the provisions of the Freedom of Information Act, the Federal Energy Regulatory Commission Critical Energy Infrastructure requirements pursuant to 18 CFR 388.112 and 388.113, and Chapter 22 of the *Code of Iowa*, as such statutes and regulations may be amended from time to time.

110.11 STANDARDS OF OPERATION. The Company shall construct, operate and maintain its facilities in accordance with the applicable regulations of the Iowa Utilities Board or its successors. During the term of the franchise, the Company shall furnish natural gas in the quantity and quality consistent with applicable Iowa laws and regulations.

110.12 FRANCHISE FEE. The City reserves the right to impose a franchise fee pursuant to the *Code of Iowa*.

1. The City shall be solely responsible for identifying customers subject to or exempt from paying the City-imposed franchise fee. The City shall be solely responsible for notifying the Company of its corporate limits, including, over time, annexations or other alterations thereto, and customers that it wishes to subject to or – to the extent permitted by law – exempt from paying the franchise fee. The City shall provide to the Company, by certified mail, copies of annexation ordinances in a timely manner to ensure appropriate franchise fee collection from customers within the corporate limits of the City. The Company shall have no obligation to collect franchise fees from customers in annexed areas until and unless such ordinances have been provided to the Company by certified mail. The Company shall commence collecting franchise fees in the annexed areas no sooner than 60 days after receiving annexation ordinances from the City.
2. The City agrees to modify the level of franchise fees imposed only once in any 24-month period. Any such ordinance exempting certain types or classes of customers, increasing, decreasing, modifying or eliminating the franchise fee shall become effective, and billings reflecting the change shall commence on an agreed upon date which is not less than 60 days following written notice to the Company by certified mail. The Company shall not be required to implement such new ordinance unless and until it determines that it has received appropriate official documentation of final action by the Council.
3. The City shall indemnify the Company from claims of any nature arising out of or related to the imposition and collection of the franchise fee. In addition, the Company shall not be liable for collecting franchise fees from any customer originally or subsequently identified, or incorrectly identified, by the City as being subject to the franchise fee or being subject to a different level of franchise fees or being exempt from the imposition of franchise fees.
4. The Company shall remit franchise fee revenues to the City no more frequently than on or before the last business day of the month following each calendar quarter. The Company shall provide City with notice at least 30 days in

advance of any changes made in the collection schedule, including any alterations in the calendar quarters or any other changes in the remittance periods.

5. The City recognizes that the costs of franchise fee administration are not charged directly to the City and agrees it shall, if required by the Company, reimburse the Company for any initial or ongoing costs incurred by the Company in collecting franchise fees that Company in its sole opinion deems to be in excess of typical costs of franchise fee administration.

6. The Company shall not, under any circumstances, be required to return or refund any franchise fees that have been collected from City customers and remitted to the City. In the event the Company is required to provide data or information in defense of the City's imposition of franchise fees or the Company is required to assist the City in identifying customers or calculating any franchise fee refunds for groups of or individual customers, the City shall reimburse the Company for the expenses incurred by the Company to provide such data or information.

7. The obligation to collect and remit any fees imposed pursuant to this chapter is modified or repealed if:

A. Any other person is authorized to sell natural gas at retail to City customers and the City imposes a franchise fee or its lawful equivalent at zero or a lesser rate than provided in this ordinance, in which case the obligation of Company to collect and remit franchise fee shall be modified to zero or the lesser rate.

B. The City adds additional territory by annexation or consolidation and is unable or unwilling to impose the franchise fee upon all persons selling natural gas at retail to customers within the additional territory, in which case the franchise fee imposed on the revenue from sales by Company in the additional territory shall be zero or equal to that of the lowest fee being paid by any other retail seller of natural gas within the City.

C. Legislation is enacted by the Iowa General Assembly or the Supreme Court of Iowa issues a final ruling regarding franchise fees or the Iowa Utilities Board issues a final non-appealable order (collectively, "final franchise fee action") that modifies, but does not repeal, the ability of the City to impose a franchise fee or the ability of Company to collect from City customers and remit franchise fees to City. Within 60 days of final franchise fee action, the City shall notify Company and the parties shall meet to determine whether this chapter can be revised, and, if so, how to revise the franchise fee on a continuing basis to meet revised legal requirements. After final franchise fee action and until passage by the City of revisions to the franchise fee ordinance, Company may temporarily discontinue collection and remittance of the franchise fee if in its sole opinion it believes it is required to do so in order to comply with revised legal requirements.

8. The other provisions of this section to the contrary notwithstanding, the Company shall be completely relieved of its obligation to collect and remit to the City the franchise fee as, effective as the date specified below, with no liability therefor under any of the following circumstances as determined to exist, in the sole discretion of Company:

- A. Any of the imposition, collection, or remittance of a franchise fee is ruled to be unlawful by the Supreme Court of Iowa, effective as of the date of such ruling or as may be specified by that Court.
 - B. The Iowa General Assembly enacts legislation making imposition, collection, or remittance of a franchise fee unlawful, effective as of the date lawfully specified by the General Assembly.
 - C. The Iowa Utilities Board, or its successor agency, denies the Company the right to impose, collect, or remit a franchise fee, provided such denial is affirmed by the Supreme Court of Iowa, effective as of the date of the final agency order from which the appeal is taken.
9. The City shall not, pursuant to Chapter 480A.6 of the *Code of Iowa*, impose or charge Company right-of-way management fees for permits for Company construction, maintenance, repairs, excavation, pavement cutting, or inspections of Company work sites and projects or related matters.

110.13 TERMINATION OF FRANCHISE. Either the City or the Company may terminate the franchise if the other party shall be materially in breach of its provisions. Upon the occurrence of a material breach, the non-breaching party shall provide the breaching party with notification by certified mail specifying the alleged breach. The breaching party shall have 60 days to cure the breach, unless it notifies the non-breaching party, and the parties agree upon a shorter or longer period for cure. If the breach is not cured within the cure period, the non-breaching party may terminate the franchise. A party shall not be considered to be in breach of the franchise if it has operated in compliance with State or Federal law. A party shall not be considered to have breached the franchise if the alleged breach is the result of the actions of a third party or the other party.

[The next page is 617]

