

FRANCHISES AND OTHER SERVICES

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CHAPTER 110

NATURAL GAS FRANCHISE FEE

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110.01 FRANCHISE FEE ESTABLISHED. The City hereby establishes a franchise fee on every natural gas company and every other person, firm, or corporation, their successors and assigns, owning, operating, controlling, leasing, or managing a natural gas plant or system and/or generating, manufacturing, selling, distributing, or transporting natural gas (hereinafter referred to, collectively, as "Energy Providers," and individually as "Energy Provider"). Energy Providers shall collect from their customers located within the corporate limits of the City as depicted on the Map (as defined below) including the City of Tabor and pay to the City an amount equal to two percent of gross receipts Energy Providers derived from the sale, distribution, or transportation of natural gas delivered within the present limits of the City. Gross receipts as used herein are revenues received from the sale, distribution, or transportation of natural gas, after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered.†

110.02 EXEMPTION FROM OTHER FEES. The amount paid by Energy Providers shall be in lieu of—and Energy Providers shall be exempt from—all other fees, charges, taxes, or assessments which the City may impose for the privilege of doing business within the City, including, without limitation, excise taxes [occupation taxes], licensing fees, or right-of-way permit fees, and in the event the City imposes any such fee, charge, tax or assessment, the payment to be made by Energy Providers in accordance with this chapter shall be reduced by an amount equal to any such fee, charge, tax or assessment imposed upon the Energy Providers. Ad valorem property taxes imposed generally upon all real and personal property within the City shall not be deemed to affect Energy Providers' obligations under this chapter.

110.03 FEE PAYABLE QUARTERLY. Energy Providers shall report and pay any amount payable under this chapter on a quarterly basis. Such payment shall be made no more than 30 days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of any franchise granted by the City to an Energy Provider.

110.04 FEE ITEMIZED ON CUSTOMERS' BILLS. Energy Providers shall list the franchise fee collected from customers as a separate item on bills for utility service issued to their customers. If at any time the Iowa Utilities Board or other authority having proper jurisdiction prohibits such recovery, Energy Providers will no longer be obligated to collect and pay the franchise fee until an alternate lawful franchise fee can be negotiated and implemented. In addition, with prior approval of City, Energy Providers may reduce the franchise fee payable for natural gas delivered to a specific customer when such reduction is required to attract or retain the business of that customer.

† **EDITOR'S NOTE:** Ordinance No. 181 adopting an electric franchise fee for the City, was passed and adopted on April 9, 2014.

110.05 MAP. The City shall provide the Energy Providers with a map of its corporate limits. The Map shall be of sufficient detail to assist Energy Providers in determining whether their customers reside within the City's corporate limits. The Map, along with Energy Provider's Geographic Information System ("GIS") mapping information shall serve as the sole basis for determining Energy Provider's obligation hereunder to collect and pay the franchise fee from customers; provided, however, if the City's corporate limits are changed by annexation or otherwise, it shall be the City's sole responsibility to: (i) update the Map so that such changes are included therein; and (ii) provide the updated Map to the Energy Providers. An Energy Provider's obligation to collect and pay the franchise fee from customers within an annexed area shall not commence until the later of: (a) 60 days after such Energy Provider's receipt from the City of an updated Map including such annexed area; or (b) such time after such Energy Provider's receipt from the City of an updated Map including such annexed area as is reasonably necessary for such Energy Provider to identify the customers in the annexed who are obligated to pay the franchise fee. The City shall provide copies of annexation ordinances to Energy Providers on a timely basis to ensure appropriate franchise fee collection from customers within the corporate limits of the City.

110.06 ACCESS TO RECORDS. The City shall have access to and the right to examine, during normal business hours, Energy Provider's books, receipts, files, records, and documents as is reasonably necessary to verify the accuracy of payments due hereunder; provided, the City shall not exercise such right more than twice per calendar year. If it is determined that a mistake was made on the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery such that any underpayment by an Energy Provider shall be paid within 30 days of recalculation of the amount due, and any overpayment by an Energy Provider shall be deducted from the next payment of such franchise fee due by such Energy Provider to the City; provided, neither party shall have the obligation to correct a mistake that is discovered more than one year after the occurrence thereof.

110.07 ADJUSTMENT OF FEES. The City shall be able to increase, decrease, or eliminate the franchise fee percentage by providing Energy Provider with not less than 90 days' written notice of the same. The City shall not increase or decrease the franchise fee more than once in any 24-month period.

CHAPTER 111

ELECTRIC FRANCHISE

111.01 Franchise Granted
111.02 Restrictions and Limitations
111.03 Placement of Facilities
111.04 Removal of Trees
111.05 Relocation of Facilities
111.06 Excavations

111.07 Vacated Property
111.08 Provisions Regarding Relocation of Facilities
111.09 Indemnification
111.10 Information Provided
111.11 Standards of Operation
111.12 Franchise Fees

111.01 FRANCHISE GRANTED. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called the “Company,” and its successors and assigns, the right and nonexclusive franchise to acquire, construct, erect, maintain, and operate in the City a system for the transmission and distribution of electric energy and communications signals along, under, over and upon the streets, avenues, alleys and public places to serve customers within and without the City, and to furnish and sell electric energy to the City and its inhabitants. This franchise shall remain in effect for a period of 15 years from the effective date of the ordinance codified by this chapter[†] and for an additional 10 years thereafter unless the City provides written notice to the Company at least 180 days prior to the expiration of the initial term. For the term of the franchise, the Company is granted the right of eminent domain, the exercise of which is subject to City Council approval upon application by the Company.

111.02 RESTRICTIONS AND LIMITATIONS. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the *Code of Iowa* or as subsequently amended or changed.

111.03 PLACEMENT OF FACILITIES. The Company shall have the right to erect all necessary poles and to place thereon the necessary wires, fixtures and accessories as well as excavate and bury conductors for the distribution of electric energy and communications signals in and through the City, but all said conduits and poles shall be placed as not to unreasonably interfere with the construction of any water pipes, drain or sewer, which have been or may hereafter be located by authority of the City.

111.04 REMOVAL OF TREES. The Company is authorized and empowered to prune or remove at Company expense any tree extending into any street, alley, or public grounds to maintain electric reliability and safety, to restore utility service, and to prevent limbs, branches or trunks from interfering with the wires and facilities of the Company. The pruning and removal of trees shall be done in accordance with current nationally accepted safety and utility industry standards and federal and State laws, rules and regulations.

111.05 RELOCATION OF FACILITIES. The Company shall, excluding facilities located in private easements (whether titled in Company exclusively or in Company and other entities), and in accordance with Iowa law, including Company’s tariff on file with and made effective by the Iowa Utilities Board, as may subsequently be amended (“Tariff”), 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 a manner as the City may reasonably require for the purposes of

[†] **EDITOR’S NOTE:** Ordinance No. 181A adopting an electric franchise for the City, was passed and adopted on April 9, 2014.

facilitating the construction, reconstruction, maintenance or repair of the street or alley of such street or alley. Relocation expenses for other hard surfaces, including pedestrian and non-motorized vehicle pathways, will be paid by the City. The City and the Company shall work together to develop a suitable alternative route or construction method so as to eliminate or minimize the cost and expense to the Company of relocation of Company installations. 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 the 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 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 the Company must remove trees that are included in the City's portion of the project, the City shall either remove the trees 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 attempt to secure said funds and provide them to the Company to compensate the Company for the costs of relocation.

111.06 EXCAVATIONS. In making excavations in any streets, avenues, alleys and public places for the installation, maintenance or repair of conductor, conduits or the erection of poles and wires or other appliances, the Company shall not unreasonably obstruct the use of the streets, and shall replace the surface, restoring the condition as existed prior to the Company 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 immediate previously existing condition or to a condition required for the City to comply with City, State or federal rules, regulations or law. Company agrees any replacement of road surface shall conform this Code of Ordinances regarding its depth and composition.

111.07 VACATED PROPERTY. 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, below, above, or beneath the vacated property. Prior to the City abandoning or vacating any street, avenue, alley, or public ground where the Company has electric facilities in the vicinity, the City shall provide Company with not less than 60 days' advance notice of the City's proposed action and, upon request grant the Company a utility easement covering existing and future facilities and activities. 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.

111.08 PROVISIONS REGARDING RELOCATION OF FACILITIES. 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 10 years. Pursuant to relocation of Company facilities as may be required by Sections 111.03, 111.05, 111.06 and 111.07, 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 other 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.

111.09 INDEMNIFICATION. The 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, to the extent caused or occasioned by the Company's

negligence in construction, reconstruction, excavation, operation or maintenance of the electric facilities authorized by this franchise; provided, however, the Company shall not be obligated to defend, indemnify, and save harmless the City for any costs or damages to the extent arising from the negligence of the City, its officers, employees or agents.

111.10 INFORMATION PROVIDED. 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 which it owns or over which it has control that 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 which the Company owns or controls in the right of way 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, or Chapter 22 of the *Code of Iowa*, as such statutes and regulations may be amended from time to time.

111.11 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 and Iowa law. During the term of the franchise, the Company shall furnish electric energy in the quantity and quality consistent with and in accordance with the applicable regulations of the Iowa Utilities Board, the Company's tariff and made effective by the Iowa Utilities Board or its successors and Iowa law.

111.12 FRANCHISE FEES. There is hereby imposed a franchise fee of two percent upon the gross revenues generated from sales of electricity to customers of the Company receiving service, pursuant to the Tariff, located within the corporate limits of the City and remitted by the Company to the City.

1. The City may, as allowed by Iowa law, exempt customer classes of sales from imposition of the franchise fee, or modify, decrease or eliminate the franchise fee. The City reserves the right to cancel any or all the franchise fee exemptions and also reserves the right to grant exemptions to customer classes in compliance with Iowa law and Subsection 2 of this section. The City does therefore exempt the following customer classes or customer groups: City accounts.

2. The City agrees to modify the level of franchise fees imposed only once in any 24-month period. Any such ordinance exempting 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 City Council.

3. The City recognizes the administrative burden collecting franchise fees imposes upon the Company and the Company requires lead time to commence collecting said franchise fees. The Company will commence collecting franchise fees

on or before the first Company billing cycle of the first calendar month following 90 days of receipt of information required of the City to implement the franchise fee, including the City's documentation of customer classes subject to or exempted from City-imposed franchise fee. The City shall provide the information and data required in a form and format acceptable to the Company. The Company will, if requested by the City, provide the City with a list of premises considered by the Company to be within the corporate limits of the City.

4. The City shall be solely responsible for identifying customer classes subject to or exempt from paying the City imposed franchise fee. The City shall be solely responsible for notifying Company of its corporate limits, including, over time, annexations or other alterations thereto, and customer classes 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.

5. 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.

6. 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 quarter as follows.

January, February and March

April, May and June

July, August and September, and

October, November and December

MidAmerican shall provide City with notice at least 30 days in advance of any changes made in this collection schedule, including any alterations in the calendar quarters or any other changes in the remittance periods.

7. 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.

8. 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.

9. The obligation to collect and remit the fee imposed by this ordinance is modified or repealed if:
- A. Any other person is authorized to sell electricity at retail to City consumers 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 electricity at retail to consumers 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 electricity 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 ordinance 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.
10. The other provisions of this chapter 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 of the date specified below with no liability therefor under each of 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.
11. The City shall not, pursuant to Chapter 480A.6 of the *Code of Iowa*, impose or charge right-of-way management fees upon the Company or fees for permits for Company construction, maintenance, repairs, excavation, pavement cutting or inspections of Company work sites and projects or related matters.

12. Either City or Company (“party”) 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 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 this franchise if the alleged breach is the result of the actions of a third party or the other party.

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CHAPTER 115

CEMETERY

115.01 Definition
115.02 Records
115.03 Sale of Lots

115.04 Fees, Charges and Payments
115.05 Rules and Regulations
115.06 Trespassing or Vandalism in Cemetery

115.01 DEFINITION. The term “cemetery” means the Tabor Cemetery, which is a municipal cemetery under the provisions of Chapter 523I of the *Code of Iowa* and which shall be operated under the provisions of Chapter 523I of the *Code of Iowa* and this chapter.

(Code of Iowa, Sec. 523I.501)

115.02 RECORDS. It shall be the duty of the Clerk to make and keep a permanent record of all interments made in the cemetery, which record shall at all times be open to public inspection. The record shall, among other things, include:

1. Plat. An accurate plat of the cemetery;
2. Lot Owners. The names of the owners of all lots that have been sold;
3. Lot Descriptions. The correct description of all lots for sale and the price thereof, as shall be fixed by the City Council; and
4. Grave Locations. The exact location of each grave upon each cemetery lot.

115.03 SALE OF LOTS. The sale of lots in the cemetery shall be evidenced by a deed signed and executed by the Mayor and the Clerk for and on behalf of the City, and it shall be the duty of the Clerk to collect the purchase price for any lot sold before delivering the deed of conveyance for the same.

115.04 FEES, CHARGES AND PAYMENTS. The payment of all fees and charges shall be made at the office of the Clerk where receipts will be issued for all amounts paid. Said fees and charges shall be based upon the charges as set out in the rules and regulations then in effect as adopted by the Council.

115.05 RULES AND REGULATIONS. The rules and regulations for the cemetery shall be adopted, and may be amended from time to time, by resolution of the Council and shall cover the hours of opening and closing, the use of roads within the cemetery, the hours for burials, the decorating of graves, the fees for services rendered in connection with interments or the placing of markers and the cost of lots or payments for perpetual care as deemed necessary.

115.06 TRESPASSING OR VANDALISM IN CEMETERY. Any person who shall trespass upon any cemetery under the jurisdiction of the City by destroying, injuring or defacing any grave, vault, tombstone, or monument, or any building, fence, tree, shrub, flower, or anything belonging to the cemetery shall be guilty of a misdemeanor and shall be liable for any and all damage.

(Code of Iowa, Sec. 716.1)

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