

FRANCHISES AND OTHER SERVICES

TABLE OF CONTENTS

CHAPTER 110 - NATURAL GAS FRANCHISE.....	553
CHAPTER 111 - ELECTRIC FRANCHISE.....	569
CHAPTER 115 - CEMETERY	591

CHAPTER 110

NATURAL GAS FRANCHISE

110.01 Franchise Granted
110.02 Rights and Privileges
110.03 Pipes and Mains
110.04 Construction and Maintenance
110.05 Excavations
110.06 Utility Easements
110.07 Relocation not Required
110.08 Relocation Reimbursement

110.09 Indemnification
110.10 Information
110.11 Applicable Regulations
110.12 Quality and Quantity
110.13 Police Regulations
110.14 Franchise Fee
110.15 Management Fees
110.16 Termination

110.01 FRANCHISE GRANTED. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called "Company," and to its successors and assigns the right and franchise to acquire, construct, erect, maintain and operate in the City of Minburn, Iowa, hereinafter called the "City," a gas distribution system, to furnish natural gas along, under and upon the right-of-way, 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 this 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. This franchise shall be effective for a 25 year period from and after the effective date of this ordinance.[†]

110.02 RIGHTS AND PRIVILEGES. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the *Code of Iowa* 2015, or as subsequently amended or changed.

110.03 PIPES AND MAINS. Company shall have the right to excavate in any public street for the purpose of laying, relaying, repairing or extending gas pipes, mains, conduits, and other facilities provided that the same shall be so placed as not to unreasonably interfere with any above or below-ground utility services or facilities which have been or may hereafter be located by or under authority of the City.

110.04 CONSTRUCTION AND MAINTENANCE. The Company shall, excluding facilities located in private easements (whether titled in Company exclusively or in Company and other entities), 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 facilitating the construction reconstruction, maintenance or repair of the street or alley. Relocation expenses for other hard surfaces, including pedestrian and non-motorized vehicle pathways, will be paid by the City. 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

[†] **EDITOR'S NOTE:** Ordinance No. 2015-04, adopting a natural gas franchise for the City, was passed and adopted on November 9, 2015.

shall provide, at no cost to the Company, copies of its relocation plan and profile and cross section drawings. If vegetation or 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 vegetation or tree removals does not coincide with the Company facilities relocation schedule and Company must remove vegetation or 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 vegetation or 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.

110.05 EXCAVATIONS. In making excavations in any streets, avenues, alleys and public places for the installation of gas pipes, conduits or apparatus, Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring it to the condition as existed immediately prior to excavation. Company agrees any replacement of road surface shall conform to current City code regarding its depth and composition. 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 exceeding its previously existing condition to the extent any alterations are required for the City to comply with City, State or federal rules, regulations or laws.

110.06 UTILITY EASEMENTS. The City's 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 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 the existing Company facilities.

110.07 RELOCATION NOT REQUIRED. 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 at any time during the previous 10 years.

110.08 RELOCATION REIMBURSEMENT. Pursuant to relocation of Company facilities as may be required here under, if the City orders or requests the Company to relocate its existing facilities or equipment in order to directly or indirectly facilitate the project of a commercial or private developer or other non-public entity, 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. The Company shall not be required to relocate in order to facilitate such private project at its expense.

110.09 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 natural gas facilities authorized by this franchise; provided, however, that 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.

110.10 INFORMATION. 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 the public right-of-way, including documents, maps and other information in paper or electronic or other forms "Information". The Company and City recognize the information may in whole or part be considered a confidential record under State or federal law or both. Upon receipt of a request from a third party for information concerning information about the Company's facilities within the City, the City will promptly submit same to Company. If the Company believes any of the information requested constitutes a trade secret which may otherwise be protected from public disclosure by State or federal law, or otherwise exempt from disclosure under the provisions of the Freedom of Information Act, the Federal Energy Regulatory Commission Critical Energy Infrastructure requirements pursuant to 18 CFR388.112 and 388.113, or Chapter 22 of the *Code of Iowa*, as such statutes and regulations may be amended from time to time, then the Company shall provide the City with a written explanation of the basis for such assertion of confidentiality or exemption from disclosure within 10 days.

110.11 APPLICABLE REGULATIONS. The Company shall extend its mains and pipes and operate and maintain the system in accordance with the applicable regulations of the Iowa Utilities Board or its successors and Iowa law.

110.12 QUALITY AND QUANTITY. During the term of this franchise, the Company shall furnish natural gas in the quantity and quality consistent and, in accordance with the applicable regulations of the Iowa Utilities Board, the Company's tariff made effective by the Iowa Utilities Board or its successors and Iowa law.

110.13 POLICE REGULATIONS. All reasonable and proper police regulations shall be adopted and enforced by the City for the protection of the facilities of the Company.

110.14 FRANCHISE FEE. A franchise fee of zero percent (0 %) is imposed upon, and shall be collected from, the natural gas customers of the Company receiving service, pursuant to the Tariff, and located within the corporate limits of the City. The franchise fee shall be imposed upon the gross receipts, minus uncollectible accounts, generated from sales of natural gas and distribution service:

1. The City agrees to modify the level of franchise fees imposed only once in any 24-month period.
2. 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.
3. The City shall be solely responsible for identifying customer classes subject to or exempt from paying the City imposed franchise fee. 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.
4. The Company shall not, under any circumstances be required to return or refund any franchise fees that have been collected from 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.

110.15 MANAGEMENT FEES. Upon implementation of a franchise fee 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.

110.16 TERMINATION. Either City or Company "party" may terminate this 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 this franchise. A party shall not be considered to be in breach of this 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.

[The next page is 569]

CHAPTER 111

ELECTRIC FRANCHISE

111.01 Grant of Franchise
111.02 Rights and Privileges
111.03 Poles and Wires
111.04 Construction and Maintenance

111.05 Excavations
111.06 Indemnification
111.07 Standards of Operation
111.08 Police Regulations

111.01 GRANT OF FRANCHISE. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called "Company," and to its successors and assigns the right and franchise to acquire, construct, erect, maintain and operate in the City a system for the transmission and distribution of electric energy 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 be effective for a 25 year period from and after the effective date of the ordinance codified in this chapter.[†]

111.02 RIGHTS AND PRIVILEGES. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the *Code of Iowa*.

111.03 POLES AND WIRES. The Company shall have the right to erect all necessary poles and to place thereon the necessary wires, fixtures and accessories as well as to excavate and bury conductors for the distribution of electric energy in and through the City, but all said conduits and poles shall be placed as not to 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. The Company is authorized and empowered to cut and trim at its expense any trees extending into any street, alley or public ground so as to prevent limbs or branches from interfering with the wires and facilities of the Company.

111.04 CONSTRUCTION AND MAINTENANCE. The Company shall, at its cost and expense, locate and relocate its installations in, on, over or under any public street or alley in the City in such manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley or any public improvement of, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement. If the City has a reasonable alternative route for the street, alley or public improvements, which alternative route would not cause the relocation of the Company installations, the City shall select such alternative route. If relocation of the Company facilities could be avoided by relocating other franchisee's or facility user's equipment and facilities, and said other franchisee's or user's cost of relocation is less than the Company's, the City shall select the route which requires the other franchisees or users to relocate. 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.

111.05 EXCAVATIONS. In making excavations in any streets, avenues, alleys and public places for the excavation of conduits or the erection of poles and wires or other appliances, the

[†] **EDITOR'S NOTE:** Ordinance No. 131-00 adopting an electric franchise for the City was passed and adopted on March 15, 2000.

Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring the original condition as nearly as practicable.

111.06 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, in whole or in part, by Company's negligence in construction, reconstruction, excavation, operation or maintenance of the electric facilities 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.

111.07 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 electric energy in the quantity and quality consistent with applicable Iowa laws and regulations.

111.08 POLICE REGULATIONS. All reasonable and proper police regulations shall be adopted and enforced by the City for the protection of the facilities of the Company.

[The next page is 591]

CHAPTER 115

CEMETERY

115.01 Definition
115.02 Trusteeship
115.03 Cemetery Superintendent
115.04 Records
115.05 Sale of Interment Rights
115.06 Interments
115.07 Plantings

115.08 Perpetual Care
115.09 Baby-Land
115.10 Price of Spaces and Lots
115.11 Cost of Grave Openings
115.12 Rules and Regulations
115.13 Removal of Decorations

115.01 DEFINITION. The term “cemetery” means the Elmwood 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 TRUSTEESHIP. Pursuant to Section 523I.502 of the *Code of Iowa*, the City Council hereby states its willingness and intention to act as the trustee for the perpetual maintenance of the cemetery property.

(Code of Iowa, Sec. 523I.502)

115.03 CEMETERY SUPERINTENDENT. The Public Works Director shall serve as the Cemetery Superintendent and shall have charge of the cemetery except as provided otherwise herein. It shall be the duty of the Superintendent to maintain the cemetery grounds in general, to open graves, to attend every interment and to see that the rules, regulations and strict proprieties of the place are observed; to aid in the collection of annual care fees, and all other charges that may become due to the City, and to aid in the sale of lots and to devote adequate time to the management, control and maintenance of the cemetery grounds and affairs.

115.04 RECORDS. It is the duty of the Clerk to make and keep complete records identifying the owners of all interment rights sold by the cemetery and historical information regarding any transfers of ownership. The records shall include all of the following:

1. Sales or Transfers of Interment Rights.
 - A. The name and last known address of each owner or previous owner of interment rights.
 - B. The date of each purchase or transfer of interment rights.
 - C. A unique numeric or alphanumeric identifier that identifies the location of each interment space sold by the cemetery.
2. Interments.
 - A. The date the remains are interred.
 - B. The name, date of birth, and date of death of the decedent interred, if those facts can be conveniently obtained.
 - C. A unique numeric or alphanumeric identifier that identifies the location of each interment space where the remains are interred.

115.05 SALE OF INTERMENT RIGHTS. The sale or transfer of interment rights in the cemetery shall be evidenced by a certificate of interment rights or other instrument evidencing the conveyance of exclusive rights of interment upon payment in full of the purchase price. The agreement for interment rights shall disclose all information required by Chapter 523I of the *Code of Iowa*. 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 established by the Council.

(Code of Iowa, Sec. 523I.310)

115.06 INTERMENTS. All interments shall be regulated according to the following:

1. All interments must be restricted to members of the owner's family unless the owner or the owner's legal representative, without charge or remuneration, consents in writing that others be interred there.
2. All lots that have been sold shall be held for interment of human remains only and not held for other purposes.
3. All interments including the interments of cremains must be in a vault of concrete, stone or non-corrosive metal of good quality. The use of wooden boxes is prohibited.
4. Cremains may be interred without a vault provided sufficient measures are taken to assure no movement of the cremains to ground water sources and to assure no subsidence of the ground covering the remains.
5. There shall be a maximum of one coffin or two cremains interred in each space with the exception that in Lots 13 and 14 of Block 18 (Baby-Land), wherein half spaces are sold, there may be one infant-sized vault or one cremains interred per half space.

115.07 PLANTINGS. No tree, shrub, or plant of any kind, except grass, shall be planted on any cemetery lot, except by permission of the Council.

115.08 PERPETUAL CARE. The Council, by resolution, shall accept, receive, and expend all moneys and property donated or left to them by bequest for perpetual care, and that portion of interment space sales or permanent charges made against interment spaces which has been set aside in a perpetual care fund. The assets of the perpetual care fund shall be invested in accordance with State law. The Council, by resolution, shall provide for the payment of interest annually to the appropriate fund, or to the cemetery, or to the person in charge of the cemetery, to be used in caring for or maintaining the individual property of the donor in the cemetery or interment spaces that have been sold with provisions for perpetual care, all in accordance with the terms of the donation or bequest or the terms of the sale or purchase of an interment space and Chapter 523I of the *Code of Iowa*.

(Code of Iowa, Sec. 523I.503, 523I.507, and 523I.508)

115.09 BABY-LAND. Lots 13 and 14 in Block 18 are restricted to the burial of infants under one year of age. Half spaces will be sold in this area for \$75.00 per half space, \$37.50 of which is to be deposited in the perpetual care fund, and the balance to the cemetery fund.

115.10 PRICE OF SPACES AND LOTS. The sale price of lots or spaces is as follows:

1. \$350.00 per space or \$1,500.00 per lot (five spaces).

115.11 COST OF GRAVE OPENINGS.**Full Burial:**

	April 1 – October 30		November 1 – March 31
Weekdays 8 am – 3 pm	\$450	8 am – 1 pm	\$500
Weekdays after 3 pm and Saturdays	\$550	After 1 pm and Saturdays	\$600
Sundays and holidays	\$650		\$700
For caskets over 24"	Add \$150		Add \$200

Cremations:

	April 1 – October 30		November 1 – March 31
Weekdays 8 am – 3 pm	\$175	8 am – 1 pm	\$250
Weekdays after 3 pm and Saturdays	\$225	After 1 pm and Saturdays	\$300
Sundays and holidays	\$275		\$350
If cremains container is larger than 12"	Add \$25		Add \$50
If cremains are not put in separate space (put in space where there is already a casket)	Add \$50		Add \$75

115.12 RULES AND REGULATIONS. Rules and regulations for the cemetery may be adopted, and may be amended from time to time, by resolution of the Council and may cover such things as the use, care, control, management, restrictions and protection of the cemetery as necessary for the proper conduct of the business of the cemetery. The rules shall specify the cemetery's obligations in the event that interment spaces, memorials, or memorializations are damaged or defaced by acts of vandalism. Any veteran, as defined in Section 35.1 of the *Code of Iowa*, who is a landowner or who lives within the City shall be allowed to purchase an interment space and to be interred within the cemetery. In addition, any veteran who purchases an interment space within the cemetery shall be allowed to purchase an interment space for interment of the spouse of the veteran if such a space is available, and the surviving spouse of a veteran interred within the cemetery shall be allowed to purchase an interment space and be interred within the cemetery if such a space is available.

(Code of Iowa, Sec. 523I.304)

115.13 REMOVAL OF DECORATIONS. Any potted or cut flowers not in permanent containers will be removed two weeks after Memorial Day. Any items in urns permanently attached to the headstones will be removed after Labor Day. Any items put on graves during the winter will be removed the first day of spring.

[The next page is 615]