

CHAPTER 110

NATURAL GAS FRANCHISE

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110.01 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 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 this 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 be effective for a 25-year period beginning on 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 LOCATION. The Company shall have the right to excavate 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 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. 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 said 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 cost of relocation, the City shall select the route that requires the other franchisees or users to relocate.

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

[†] **EDITOR’S NOTE:** Ordinance No. 04-02C, adopting a natural gas franchise for the City, was passed and adopted on February 9, 2004.

110.06 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, or allegedly caused or occasioned, in whole or in part, by the exercise by the Company of the privileges, rights, and franchise granted hereby, or caused by construction, reconstruction, excavation, operation, or maintenance of the gas utilities authorized by this chapter; provided, however, 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.

110.07 EXTENSION OF SYSTEM. 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.

110.08 STANDARDS OF OPERATION. During the term of the franchise, the Company shall furnish natural gas in the quantity and quality consistent with applicable Iowa laws and regulations.

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CHAPTER 111

CABLE TELEVISION REGULATIONS

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111.01 DEFINITIONS. The following words and phrases, when used herein, shall, for the purposes of this chapter, have the meanings ascribed to them in this section:

1. “Cable television system” means any facility that, in whole or in part, receives directly, or indirectly over the air, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals, by wire or cable, to subscribing members of the public who pay for such services.
2. “Channel” means the segment of the electromagnetic spectrum to which a source of television transmission is assigned.
3. “FCC” means the Federal Communications Commission.
4. “Franchise” means the rights, privileges, and authority granted by the City to the Grantee hereunder and includes all of the terms and conditions of this chapter.
5. “Grantee” means the operator of the cable television system, its successors, and assigns. When the context so requires, the term “Grantee” means and includes the Grantee, its officers, agents, employees, servants and independent contractors.
6. “Property of the Grantee” means all property, real, personal, or mixed, owned or used by the Grantee however arising from or related to or connected with the franchise.
7. “Public property” means all property, real, or personal or mixed, owned or used by the City, including property owned or used by a public utility owned or operated by the City.

111.02 USE OF PROPERTY. The Grantee may use public property within the City and, with the written consent of the owner thereof, private property within the City, in furtherance

of such activities within the City as may now or hereafter be consistent with generally accepted principles applicable to the operation of a cable television system, subject, however, to the following restrictions:

1. **Laws and Regulations.** The Grantee shall comply with all governmental laws, ordinances, rules, or regulations as may now or hereafter be applicable thereto.
2. **Restrictions.** The Grantee shall not use or occupy or permit public property or private property to be used or occupied or do or permit anything to be done on or about public property or private property which will, in any manner:
 - A. Impair the owner's interest in or title thereto;
 - B. Impair any mortgage or lease as may now or hereinafter be applicable thereto;
 - C. Adversely affect the then value or character thereof;
 - D. Cause or be likely to cause structural damage thereto, or any part thereof;
 - E. Cause or be likely to cause any damage or injury to any utility service available thereto;
 - F. Create a public or private nuisance, cause any offensive or obnoxious vibrations, noise, odor or undesirable effect or interfere with the safety, comfort or convenience of the owner thereof, and persons lawfully on or about the same;
 - G. Violate the rules, regulations and requirements of any person furnishing utilities or services thereto; or
 - H. Make void or voidable any insurance then in force affecting the same or cause an increase in the rates applicable thereto;

111.03 TAXES. The Grantee shall pay all real estate taxes, special assessments, personal property taxes, license fees, permit fees, and other charges of a like nature which may be taxed, charged, assessed, levied, or imposed upon the property of the Grantee and upon any services rendered by the Grantee.

111.04 INSURANCE. The Grantee shall, at all times during the term of the franchise, carry, and require their contractors to carry:

1. **General Liability.** Insurance in such forms and in such companies as shall be approved by the City to protect the City and Grantee from and against any and all claims, injury or damage to persons or property, both real and personal, caused by the construction, erection, operation and maintenance of any structure, equipment or appliance in connection with the cable television system. The amount of such insurance shall be not less than \$100,000.00 as to any one person, \$300,000.00 as to any one occurrence for injury or death to persons, and \$100,000.00 for damages to property, with, as to Grantee, so-called umbrella coverage of at least \$5,000,000.00.
2. **Worker's Compensation.** Worker's Compensation Insurance as provided by the laws of the State of Iowa, as amended.
3. **Automobile.** Automobile Insurance with limits of not less than \$100,000.00/\$300,000.00 of public liability coverage and automobile property

damage insurance with a limit of not less than \$100,000.00 covering all automotive equipment, with, as to Grantee, so-called umbrella coverage of at least \$5,000,000.00.

4. Notice of Cancellation. All of said insurance coverage shall provide a ten-day notice to the City in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective.

5. Copies Filed. Copies of all insurance policies required hereunder shall be furnished to and filed with the City prior to the commencement of operations or the expiration of prior policies, as the case may be.

6. Defense Costs. The Grantee shall pay all reasonable expenses incurred by the City in defending itself with regard to all damages, penalties, or other claims resulting from the acts of the Grantee, its assigns, employees, agents, invitees, or other persons. Said expenses shall include all out-of-pocket expenses such as attorney's fees, and shall include the value of any service rendered by the City Attorney or any other officers or employees of the City.

111.05 REPAIRS. During the term of the franchise, the Grantee shall, at its own expense, make all necessary repairs and replacements to the property of the Grantee. Such repairs and replacements, interior and exterior, ordinary as well as extraordinary, and structural as well as nonstructural, shall be made promptly, as and when needed.

111.06 HOLD HARMLESS. During the term of the franchise, the Grantee absolutely assumes and agrees to pay the City for, and the Grantee forever agrees to indemnify the City against, and agrees to hold and save the City harmless from, any and all damage, injury, costs, expenses, liability, claims, settlements, judgments, decrees and awards of every kind and nature whatsoever, including attorney's fees, costs and disbursements, that may ever be claimed against the City by any person whatsoever, or an account of any actual or alleged loss, damage or injury to any property or person whatsoever, however arising from or related to or connected with, directly or indirectly:

1. Injury to or death of any person, or loss, damage or injury to any property of the Grantee, and/or
2. The nonobservance by the Grantee of the provisions of any laws, statutes, ordinances, resolutions, regulations or rules duly promulgated by any governmental entity which may be applicable directly or indirectly, to rights, privileges, and authority, and the obligations and liabilities, assumed by the Grantee under the franchise, and/or
3. The nonobservance by the Grantee of any of the terms and conditions of the franchise, and/or
4. The granting of the franchise.

111.07 ASSIGNMENT. The Grantee shall not assign or transfer any right granted under this chapter to any other person without prior consent of the Council, which consent shall not be unreasonably withheld, provided that the Grantee shall have the right to assign the provisions of this chapter to a corporation wholly owned by the Grantee or to a limited partnership of which the Grantee or other wholly owned subsidiary is a general partner without the prior consent of the City.

111.08 INSOLVENCY OF GRANTEE. In the event that the Grantee shall become insolvent, or be declared a bankrupt, or the property of the Grantee shall come into the possession of any receiver, assignee or other officer acting under an order of court, and any such receiver, assignee or other such officer shall not be discharged within 60 days after taking possession of such property, the City may, at its option, terminate the franchise by giving written notice thereof to the Grantee.

111.09 DEFAULT OF GRANTEE. In the event the Grantee shall fail to comply with any of the terms and conditions of the franchise within 30 days after receipt of notice in writing from the City specifying the failure or default, the City may, at its option, terminate the franchise by giving written notice thereof to the Grantee. This section shall not apply to failures or defaults beyond the reasonable control of the Grantee.

111.10 TERMINATION. Upon termination of the franchise for any cause, the Grantee shall remove the property of the Grantee from all public property and private property within the City and shall return such public property and private property to the owner thereof in the same condition as when the property of the Grantee was placed thereon, ordinary wear and tear excepted.

111.11 COMPLIANCE WITH APPLICABLE LAWS. During the term of the franchise, the Grantee shall comply with all governmental laws, ordinances, rules or regulations as may now or hereafter be applicable to the construction, operation, maintenance, repair, replacement, renewal, reconstruction, and removal of a cable television system, the sale and supply of audio and video communications services, the use of public property and private property and the engagement in such further activities as may now or hereafter be consistent with generally accepted principles applicable to the operation of a cable television system.

111.12 INSTALLATION AND MAINTENANCE OF PROPERTY OF THE GRANTEE. During the term of the franchise, the property of the Grantee shall be constructed, operated, maintained, repaired, replaced, renewed, reconstructed, and removed in accordance with generally accepted engineering principles so as not to endanger or interfere with the lives of persons or to interfere with improvements which the City may deem proper to make or to unnecessarily hinder or obstruct pedestrian or vehicular traffic or use of public property or private property.

111.13 INTERFERENCE. The Grantee's cable television system shall be so designed, engineered, and maintained so as not to interfere with the radio and television reception of persons who are not subscribers of the Grantee.

111.14 INSTALLATION OF CABLES. The Grantee shall have the right, privilege, and authority to lease, rent or in any other manner obtain the use of wooden poles with overhead lines, conduits, trenches, ducts, lines, cables, and other equipment and facilities from any and all holders of public licenses and franchises with the City, and to use such poles, conduits, trenches, ducts, lines, and cables in the course of its business. The Grantee shall install its cable on the existing poles owned by other holders of public licenses and franchises within the City whenever possible for the installation of its cable. When installation of cable on poles is insufficient, or when holders of other public licenses or franchises have both installed underground cable, then in that event, the cable used by the Grantee shall be installed underground.

111.15 RESTORATION OF GROUND SURFACE. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, or surface of any street or alley disturbed, in as good a condition as before said work was commenced.

111.16 ALTERATION OF GRADE. In the event that during the term of the franchise, the City shall elect to alter or change the grade of any street, alley, or public way, the Grantee, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

111.17 TEMPORARY REMOVAL OF CABLES. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its cables to permit the moving of buildings. The expense of such temporary removal, raising, or lowering of cables shall be paid by the person requesting the same and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than five days' advance notice to arrange for such temporary cable changes.

111.18 TREE TRIMMING. The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the cables of the Grantee. All trimming shall be done at the expense of the Grantee.

111.19 LINE EXTENSIONS. It shall be the obligation of the Grantee to serve all residents of the City except to the extent that density of homes, adverse terrain or other factors render providing service impracticable, technically infeasible or economically noncompensatory. For purposes of determining compliance with the provisions of this section, and to provide for a reasonable and nondiscriminatory policy governing extensions of cable service within the City, Grantee shall extend service to new subscribers at the normal installation charge and monthly rate for customers of that classification where there is an average of 35 homes per each linear mile of new cable construction. In the event the requirements of this section are not met, extensions of service shall be required only on a basis which is reasonable and compensatory.

111.20 SERVICE REQUIREMENTS. During the term of the franchise, the Grantee shall furnish reasonable, adequate, and efficient cable television service to subscriber terminals. This requirement may be temporarily suspended due to circumstances beyond the reasonable control of the Grantee.

111.21 PERFORMANCE STANDARDS. The Grantee shall produce a picture in black and white or in color that is of high quality accompanied by proper sound on typical standard television sets in good repair. The Grantee shall also transmit signals of adequate strength to produce good pictures with good sound at all subscriber terminals throughout the City without causing cross modulation in the cables or interfering with other electrical or electronic systems.

111.22 CHANNEL CAPACITY AND PERFORMANCE. During the term of the franchise, the cable television system of the Grantee shall conform to the channel capacity and performance requirements contained in the then current regulations of the FCC.

111.23 INSTALLATION AND MAINTENANCE OF SUBSCRIBER TERMINALS IN CITY BUILDINGS AND SCHOOLS. During the franchise, the Grantee shall at its sole cost, install and maintain a subscriber terminal in such buildings owned or used by the City, and in such buildings owned or used by recognized educational authorities within the City, both public and private, as may be designated by the governing body having jurisdiction thereof. Such subscriber terminals shall be placed in such locations within such buildings as may be designated by the governing body having jurisdiction thereof. This provision is meant to apply only to those buildings accessible to Grantee's system.

111.24 TELECAST OF EDUCATIONAL ACTIVITIES. The Grantee shall not cablecast, tape, reproduce or otherwise convey to its subscribers the activities of any recognized educational authority, public or private, without the written consent of the governing body of such authority.

111.25 PROGRAM ALTERATION. Any signal received by the Grantee from a television broadcast station shall be cablecast by the Grantee in its entirety, as received, without alteration.

111.26 SUBSCRIBER RATES AND CHARGES. All rates for service shall be reasonable, compensatory, and nondiscriminatory. Except as otherwise provided in the franchise, the Grantee shall have the right, privilege, and authority to change the rates and charges.

111.27 SERVICE RULES AND REGULATIONS. The Grantee shall have the right to prescribe reasonable service rules and regulations and operating rules for the conduct of its business. Such rules and regulations shall be consistent with the terms and conditions of the franchise. The Grantee shall file such rules and regulations, and all amendments thereto, with the City.

111.28 SERVICE AGREEMENTS. The Grantee shall have the right to prescribe a reasonable form of service agreement for use between the Grantee and its subscribers. Such service agreement shall be consistent with the terms and conditions of the franchise.

111.29 PAYMENTS TO CITY. The Grantee shall pay to the City one percent of its annual "basic monthly cable television service" revenue for the service rendered to customers located within the City. All payments as required by the Grantee to the City shall be made annually and shall be due 45 days after the close of the year. For the purpose of this section, "basic monthly cable television service" is the provision of television broadcast signals and access and origination channels, if any, and does not include advertising services, rental of studios or equipment, provisions of program production services, per channel or per-program charges to subscribers ("pay cable"), rental of channels, sale of channel time, or provisions of commercial services such as security systems.

111.30 INJURY TO PROPERTY OF THE GRANTEE. No person shall wrongfully or unlawfully injure the property of the Grantee.

111.31 INTERCEPTING SIGNALS OF THE GRANTEE. No person shall wrongfully or unlawfully intercept the signals of the Grantee.

111.32 FILING OF REPORTS. On or before April 1 of each year, the Grantee shall file with the City copies of FCC Form 325 and FCC Form 326 for the preceding calendar year.

111.33 FILING OF MAPS AND PLATS. On or before April 1 of each year, the Grantee shall file with the City maps and plats showing the location and nature of all new property of the Grantee within the City as of the end of the preceding calendar year.

111.34 FILING OF COMMUNICATIONS WITH REGULATORY AGENCIES. The Grantee shall file with the City, copies of all petitions, applications, and communications submitted by the Grantee to any regulatory agency having jurisdiction over the Grantee.

111.35 ACCESS. The Grantee shall and does hereby grant to the City the right to enter upon the property of the Grantee, upon reasonable notice, at any and all reasonable times to inspect the same for purposes pertaining to the rights of the City.

111.36 DISCRIMINATION PROHIBITED. The Grantee shall not grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage with respect to rates, charges, services, service facilities, rules, regulations, or in any other respect.

111.37 OTHER BUSINESS ACTIVITIES PROHIBITED. During the initial term of the franchise, or any extension thereof, the Grantee shall not engage in the business of selling, leasing, renting, or servicing television or radio receivers, or their parts and accessories, and the Grantee shall not require or attempt to direct its subscribers to deal with any particular person or firm with respect to said activities.

111.38 ARBITRATION. Any controversy between the City and the Grantee regarding the rights, duties, and liabilities of either party under the franchise shall be settled by arbitration. This section shall not apply to termination proceedings under Section 111.10. Such arbitration shall be before three disinterested arbitrators, one named by the City, one named by the Grantee, and one named by the two thus chosen. The decision of the arbitrators shall be conclusive and shall be enforced in accordance with the laws of the State.

111.39 RESERVATIONS. The right is reserved to the Council to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations, as it shall find necessary in the exercise of the police power.

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