

# **The Role of Utility Franchises**

Franchise agreements are contracts in the form of an ordinance between a city and a utility company.

Franchise agreements provide the authority and legal basis for a company to use the streets, alleys and public places within the municipal corporations for the poles, wires, pipes and other facilities necessary to provide electricity and/or natural gas to customers.

Franchise agreements are the only method of granting a utility the right to occupy and utilize a city's public right of way recognized in the Code of Iowa.

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## ***Important for City:***

- Indemnification
- No cost relocations of company facilities
- Franchise fees
- Helps MEC develop plans to serve the city's energy requirements.
- Helps MEC determine where to locate facilities and manpower
- Helps MEC make business decisions concerning economic development projects
- Allows the company to better deploy its assets and to develop construction and maintenance plans to serve its customer base.

## ***The authority grants the company:***

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- Right to install, operate, maintain our facilities
- Right to trim trees in public right of way
- Right to serve customers sell and deliver electricity or gas
- Guarantees right of way restoration
- Acknowledges Iowa Utilities Board rules and regulations
- Agrees to meet the energy needs of the community

## Franchise Renewal Information

The average time to renew a utility franchise agreement is two to three months. MidAmerican staff initiates the renewal process with a city from three months to six months prior to the expiration of a utility franchise.

The renewal process proceeds as follows:

- Initial presentation of the franchise ordinance by the company to city staff.
- The proposed ordinance(s) are reviewed with the council, the process required to renew a franchise is explained and questions are answered.
- The board may set the date for a public hearing at this council meeting unless the council suggests modifications to the franchise language. This could result in additional negotiations or consideration before setting the public hearing.
- A public hearing is held.
- Council considers and approves the franchise ordinance. This may take three city council meetings.
- Ordinance is signed.
- MidAmerican sends its written acceptance of the franchise ordinance to the city.
- Ordinance is published. The date of publication is the effective date of the franchise ordinance(s).

### **Public Hearing Requirement**

Notice of Public Hearing must be published no more than 20 or less than four days prior to the public hearing notifying the public of the pending hearing. The council can adopt the franchise ordinance at the same meeting/public hearing.

### **Adopting an ordinance**

The law requires that an ordinance be read and approved at three separate meetings but contains language that allows a council to waive the statutory requirement that an ordinance be passed and adopted at two prior meetings.

### **Effective Date**

An ordinance becomes effective on the date it is published or if an effective date is stipulated in the ordinance; it becomes effective upon the date stipulated.

## **MidAmerican Requirements and Information for Cities Imposing Franchise Fees**

A city must have or enter into a franchise agreement with MidAmerican Energy Company that authorizes the collection of franchise fees.

Some cities have franchise agreement with the company authorizing franchise fees; the majority do not.

A city must document to the company's satisfaction that any ordinance imposing franchise fees was lawfully adopted. A city must publish a revenue purpose statement in accordance with Chapter 364.2 and Chapter 362.3 of the Code of Iowa. MidAmerican Energy requires a copy of the revenue purpose statement and an affidavit of publication or a Clerk's Certificate certifying that the revenue purpose statement was posted in accordance with Iowa law.

The adopting of a franchise ordinance requires the city council to conduct a public hearing.

MidAmerican Energy will begin imposing franchise fees on its customers no sooner than 90 days after receiving all documentation as required by the company. A city will be required to identify customers subject to and/or exempted by the city from paying franchise fees.

Steps required to renew an electric or natural gas franchise and / or impose franchise fees if a new franchise agreement is required.

- If a franchise is up for "normal" renewal, staff sets up a meeting with the city council to begin the renewal process – which generally takes two-to-three months to complete.
- Staff and city staff/city attorney work with utility to create a new franchise ordinance.
- Council sets date for public hearing.
- City prepares and publishes Revenue Purpose Statement.

### **REVENUE PURPOSE STATEMENT**

Pursuant to the provisions of Section 364.2, subsection (4)(f) of the Code of Iowa, the City of \_\_\_\_\_ hereby establishes the following purposes allowed under Iowa Code Section 384.3A, subsection (3)(e), (f) and (g) for which franchise fee revenues from its natural gas and electric franchises with MidAmerican Energy may be used or expended, said purposes which may be narrowed after public hearing: Public safety, including the equipping of fire, police, emergency services, sanitation, street, and civil defense departments; property tax relief; the establishment, construction, reconstruction, repair, equipping, remodeling, and extensions of public works, public utilities, and public transportation systems; and the construction, reconstruction, or repair of streets, highways, bridges, sidewalks, pedestrian underpasses and overpasses, street lighting fixtures, and public grounds, and the acquisition of real estate needed for such purposes.

- Council approves new franchise ordinance, the ordinance is to be considered and voted on at three separate council meetings. A city council may waive some of the readings and considerations of the franchise ordinance.
- The city must publish the new ordinance in accordance with Iowa law.
- A utility company must accept the franchise ordinance in writing for it to be effective.
- MidAmerican Energy files IUB required revised tariff with the Iowa Utilities Board.

# *Franchise Summary*

## *Electric and Natural Gas Franchises*

*Expire August 2023*

### **Section 1**

- Grants right to use streets, avenues, alleys and public places
- Authorizes use of eminent domain subject to City Council approval
- Duration - 25 years

### **Section 2**

References the Code of Iowa Chapter 364

- City has power to grant franchises
- Renewal by City Council or election, states party requesting franchise pays all election costs
- Franchises are non-exclusive

### **Section 3**

- Grants the Company the right to erect the distribution system needed to provide service
- Construction will not interfere with water, sewer or storm water systems

### **Section 4**

- Shall relocate, at Company expense, facilities on public right of way to facilitate street projects. If the City has a reasonable alternative for their project that does not require the Company to relocate the City shall consider that plan or construction method.
- City agrees to stake right of way
- Provide copies of the City project plans
- City shall remove vegetation if it is an integral part of the City's portion of the project.

### **Section 5**

When the Company excavates, it will not unreasonably obstruct the streets and will replace the surface, restoring it as near as possible to the condition that existed prior to the Company work. The Company shall not be required restore or modify the right of way or private property in or adjacent to the work project to a superior condition to comply with city rules and regulations.

### **Section 6**

Prior to abandoning or vacating public right of way, in which the Company has facilities, the City shall grant the Company a utility easement for said facilities.

### **Section 7**

The Company shall not be required to relocate, at its cost and expense, any facilities that have been relocated at the direction of the City in the previous 10 years.

### **Section 8**

Pursuant to relocation of Company facilities as may be required, if a commercial or private developer or other non-public entity, or a construction project by a commercial or private developer or a non-public entity, causes the City to order or request the Company to relocate its existing facilities or equipment, the Company shall receive payment for the cost of such relocation as a precondition to relocating its existing facilities or equipment.

### **Section 9**

The Company shall indemnify the City from all claims that may result from Company negligence.

### **Section 10**

Grants the Company the right to prune vegetation and remove trees on public grounds or portions of trees extending into street, alleys or public grounds that may interfere with electric reliability, safety purposes or to restore service. Tree pruning and removal will be done in accordance with nationally accepted standards.

### **Section 11**

- The Company agrees to provide, on a project specific basis, mapping information.
- Requires the City to protect the confidentiality of any information provided to the City.
- No documents, maps or information provided to the City shall be made available to the public or other entities if said maps, documents or information is exempt from disclosure by federal and state restrictions related to the release of critical energy infrastructure.

### **Section 12**

Company shall construct and operate its facilities in accordance with the rules and regulations of the Iowa Utilities Board. Company shall, in accordance with Iowa law, meet the utility requirements of the customers for the duration of the franchise.

### **Section 13**

Authorizes the City to impose a franchise fee on customers within corporate limits pursuant to tariff. Requires Company to collect and remit the fee on gross revenues minus uncollectible. City to designate the fee level(s) to be imposed.

- A. City can only modify the franchise fees once in a 24-month period.*
- B. Company will begin collecting the fee on or before the first billing cycle 90 days after receiving information in an acceptable format and documentation required of the city to implement franchise fees.*
- C. City is solely responsible for identifying subject to or exempt from franchise fees.*
- D. City must provide Company, by certified mail, annexation ordinances. Company has no obligation to collect franchise fees in annexed areas until having received such ordinances from the City. Company will begin collecting fees no sooner than 60 days after receipt of the annexation ordinance.  
City indemnifies the Company from any claims relating to the imposition of franchise fees.  
Company is not required to return or refund any franchise fees once remitted to the City.*

### **Section 14**

Pursuant to Chapter 480A.6 of the Code, the City cannot charge the Company any fees for use of the right of way including permits, inspection fees, excavation fees etc.

### **Section 15**

The franchise binds the City and Company, and its successors and assigns.

### **Sections 16 and 17**

Termination for breach with a 60-day cure period. Severability provision.

### **Section 18, 19 and 20**

Waives jury trial.

Spells out when the ordinance goes into effect, and states the previous franchise ordinance is repealed and any ordinances or portion of ordinances that conflict with the new ordinance are repealed.