

## CHAPTER 110

# NATURAL GAS FRANCHISE

110.01 Franchise Granted	110.15 Franchise Fee Collection
110.02 State Code Restrictions and Limitations	110.16 Franchise Fee Shown Separately
110.03 Excavations and Restorations	110.17 Franchise Fee Remittance
110.04 Existing Facilities	110.18 Refund of Franchise Fee
110.05 Easements	110.19 Use of Franchise Fee
110.06 Street Usage	110.20 Notice of Franchise Fee Modification
110.07 System Plans and Maps	110.21 Administration Cost
110.08 Annual Planning Meeting	110.22 Annexed Property
110.09 Extension of System	110.23 Real Estate
110.10 Service Provided	110.24 Term
110.11 Continuous Service	110.25 Severability
110.12 Non-Exclusive	110.26 Publication Expense
110.13 Franchise Fee Billing	110.27 Entire Agreement
110.14 Franchise Fee Exception	

**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 non-exclusive franchise to acquire, construct, erect, maintain and operate in the City of Marion, 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 twenty (20) years from and after written acceptance by the Company, subject to a right of renegotiation at the end of the 10<sup>th</sup> and 15<sup>th</sup> years.

**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 2019, or as subsequently amended or changed.

**110.03 EXCAVATIONS AND RESTORATIONS.** 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.

In making excavations in any streets, avenues, alleys and public places for the installation of gas pipes, conduits or apparatus, the Company shall protect the site while work is in progress by guards, barriers, or signals, 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 except to the extent any alterations are required for the City to comply with city, state or federal rules, regulations or laws. The Company shall make all such restorations in a reasonable amount of time following completion of the work, and shall not cause any undue delay that is not caused by weather, fire, natural disaster, unavoidable accidents or casualties. The City may at its discretion assign personnel for inspection of excavation and related work being performed by the company.

#### **110.04 EXISTING FACILITIES.**

1. Whenever the City shall pave or repave any street or shall change the grade line of any street or public place or shall construct or reconstruct any conduit, water main service or water connection, sewer or other Municipal public works or utility, it shall be the duty of the company, when so ordered by the City, to change its mains, services and other property in the streets or other public places at its own expense so as to conform to the established grade or line of such street or public place and so as not to interfere with the conduits, sewers, Municipal public works or utilities, and other mains so constructed or reconstructed. However, the company shall not be required to relocate pipes, mains and appurtenances when the street, alley or public grounds, in which they are located, is vacated for the convenience of abutting property owners and not as an incident to a public improvement, unless the reasonable cost of such relocation and the loss and expense resulting therefrom is first paid to the company by the abutting property owners. In the case of public improvements, including, but not limited to, urban renewal projects, the City may require the company to relocate pipes, mains, services and appurtenances in the streets at company's expense.
2. The City may at its discretion assign personnel for inspection of excavation and related work being performed by the company. Should the company fail or refuse to do and perform the things provided in this chapter, the City may, after reasonable notice, perform the work and charge the reasonable and necessary expense thereof to the company and the company shall promptly pay said charges.
3. In the event the company is required to move, remove or modify the placement of any of its facilities located within the City because of any public improvement or public purposes of the City, the company shall do so at its own expenses as directed by the City. In planning for the extension or modification of streets and roads, the City shall, to the extent practicable in the discretion of City Staff, design such changes to limit the need for the relocation of company facilities.
4. The City may require the company for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street, avenue, right-of-way or alley, public places or grounds in accord with the ordinances of the City at the company's cost and expense 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, to construct, replace, repair, locate and relocate

its existing facilities or equipment in, on, over or under any public street, avenue, right-of-way, alley, public places or grounds in the City in such a manner as the City may reasonably require, except the company shall not be required to construct, replace, repair, locate and relocate existing facilities where company facilities are located in private easements (whether titled in the company or other entities) unless said private easement is upon land owned by the City.

5. If the City orders or requests the company to relocate its existing facilities or equipment for any reason other than as specified above, or as the result of the initial request of a commercial or other nonpublic development, the company shall receive payment for the cost of such relocation as a precondition to relocating its existing facilities or equipment.

6. The City shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause the company unreasonable additional expense in exercising its authority under this section. The City shall also provide a reasonable alternative location for the company's facilities as part of its relocation request.

7. In the event of a relocation, all facilities and/or equipment shall be relocated or replaced in a manner and to locations consistent with in accordance with all chapters of the Marion City Code of Ordinances, all applicable state and local codes and ordinances, and any policies or standards adopted by the City of Marion.

**110.05 EASEMENTS.** The City shall give the Company reasonable advance written notice to vacate a public right-of-way. Vacating a public right-of-way shall not deprive the Company of its right to operate and maintain existing facilities, until the reasonable cost of relocating the same are paid to the Company, and the City shall utilize reasonable efforts to assist Company in securing an easement or other continued rights of record to continue to operate and maintain its facilities upon such relocation.

**110.06 STREET USAGE.**

1. The City reserves to itself the power to impose reasonable regulations on the company's use of streets. The Company Will notify the City and obtain a permit before performing work in the right of way.

2. In the use of right-of-way under this franchise, the company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power. In addition, the company shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, screening, and other requirements on the use of the right-of-way; provided, however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the company to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulation, policy, resolution, and ordinance proposed, adopted, or promulgated by the City. Further, the company shall

comply with all Federal, State, and local laws, ordinances and policies relating to the location of gas service lines, facilities, and other improvements.

3. The Company understands that for aspects of above ground facilities that are not related directly to the generation and distribution of natural gas, there may be zoning or other ordinances and standards which apply to all developers within an area of the City, including requirements related to design or other aesthetics, public safety, or coordination with public improvements. The Company agrees to abide by these ordinances and standards to the extent they do not unreasonably interfere with the Company's ability to carry out its ordinary and necessary business functions or place undue burdens on the Company. The City and the Company agree to work with one another to ensure that the interests of both entities are protected.

4. The City encourages the conservation of right-of-way by the sharing of space by all utilities. Notwithstanding provision of this franchise prohibiting third party use, to the extent required by Federal or State law, the company will permit any other franchised entity by appropriate contract or agreement negotiated by the parties to use any and all facilities constructed or erected by the company.

#### **110.07 SYSTEM PLANS AND MAPS.**

1. 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").

2. The company and City recognize that the information provided under subsections 1 above may in whole or part be considered a confidential record under State or Federal law or both. 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 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, then the Company shall provide the City with a written explanation of the basis for such assertion of confidentiality or exemption from disclosure within ten (10) days. In the event the company fails to take any such action within ten (10) business days after receipt of such notice, the City may disclose the documents or information without any liability of any kind to the company. (Ord. 17-18, 5-21-2018)

**110.08 ANNUAL PLANNING MEETING.** Company operations staff will, at the request of the City, attend an annual meeting with City staff, utility staff and other interested city entities to discuss utility reliability standards, including comparisons to regional and national reliability statistics, annual and long-term construction planning for the Company and City, tree trimming plans and other related items. This will not replace any periodic meetings needed on specific projects and issues.

**110.09 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 and Iowa law.

**110.10 SERVICE PROVIDED.** 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 and the Company's tariff made effective by the Iowa Utilities Board or its successors and Iowa law.

**110.11 CONTINUOUS SERVICE.** Service to be rendered by the Company under this franchise shall be continuous unless prevented from doing so by fire, acts of God, unavoidable accidents or casualties, or reasonable interruptions necessary to properly service the Company's equipment, and in such event service shall be resumed as quickly as is reasonably possible.

**110.12 NON-EXCLUSIVE.** The Franchise granted by this Ordinance shall not be exclusive.

**110.13 FRANCHISE FEE BILLING.** There is hereby imposed a franchise fee of four percent (4%) upon the gross revenue generated from sales of natural gas by the Company within the corporate limits of the City.

**110.14 FRANCHISE FEE EXCEPTION.** The franchise fee shall not be applied to any account for the City of Marion or the City of Marion Water Department.

**110.15 FRANCHISE FEE COLLECTION.** The Company shall begin collecting the franchise fee within 90 days of final approval of the city council of Marion and within statutory requirements.

**110.16 FRANCHISE FEE SHOWN SEPARATELY.** The amount of the franchise fee shall be shown separately on the utility bill to each customer.

**110.17 FRANCHISE FEE REMITTANCE.** The Company shall remit franchise fee receipts to the City no more frequently than on or before the last business day of the month following each calendar year quarter.

**110.18 REFUND OF FRANCHISE FEE.** 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.

**110.19 USE OF FRANCHISE FEE.** The City shall be solely responsible for the proper use of any amounts collected as franchise fees, and shall only use such fees as collected for a purpose as allowed by applicable law.

**110.20 NOTICE OF FRANCHISE FEE MODIFICATION.** The City shall give the Company reasonable, not less than 6 months, notice prior to the request to adjust the franchise fee percentage to be collected pursuant to this Ordinance. The City agrees not to modify the amount more than one time in a two-year period.

**110.21 ADMINISTRATION COST.** The costs of franchise fee administration are not charged directly to the City. The City and Company agree that the Company may charge an administration fee as in an amount not to exceed the limitation provided for in state statute.

**110.22 ANNEXED PROPERTY.** The City Clerk shall provide written notification by certified mail to any officer of the Company or designee of any final order authorizing annexation or other change in corporate limits of the City, and the Company shall apply the franchise fee to its customers affected by the annexation or change in corporate limits, commencing on an agreed date, which is not less than ninety (90) days from the receipt of the certified notice. The City shall include with the notice a list of any utility accounts exempt from the franchise fee within the annexed area.

**110.23 REAL ESTATE.** In the event that the Company has or acquires any interest in real estate within the city or within two (2) miles of the corporate boundaries at that time, for which the Company intends to sell or transfer to a third party, not to include any successors in interest, subsidiaries, or future entities of the Company, the Company shall provide the City with notice of said transaction. The City shall have the right for ninety (90) days to enter into a contract for the sale or transfer of said property under the same terms contained in the proposed contract with the third party. The failure of the City to respond within ninety (90) days shall be deemed as a refusal by the City, unless the parties otherwise agree.

**110.24 TERM.** The term of the franchise granted by this Ordinance and the rights granted thereunder shall continue for the period of twenty (20) years from and after written acceptance by the Company, subject to a right of renegotiation at the end of the 10<sup>th</sup> and 15<sup>th</sup> years. The acceptance shall be filed with the City Clerk within thirty (30) days from passage of this Ordinance.

**110.25 SEVERABILITY.** If any section or provision of this ordinance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of any other provisions of this ordinance which can be given effect without the invalid portion or portions and to this end each section and provision of this ordinance is severable.

**110.26 PUBLICATION EXPENSE.** The expense of the publication of this Ordinance shall be paid by the Company.

**110.27 ENTIRE AGREEMENT.** This Ordinance sets forth and constitutes the entire agreement between the Company and the City with respect to the rights contained herein, and may not be supplemented, superseded, modified or otherwise amended without the written approval and acceptance of the Company. Notwithstanding the foregoing, in no event shall the City enact or maintain any Ordinance or place any limitations, either operationally or through the assessment of fees other than those approved and accepted by the Company within this Ordinance, that create additional burdens upon the Company, or which delay utility operations.

*(Ch. 110 - Ord. 19-07 – May 19 Supp.)*