

# **FRANCHISES AND OTHER SERVICES**

## **TABLE OF CONTENTS**

<b>CHAPTER 110 - NATURAL GAS FRANCHISE .....</b>	<b>501</b>
<b>CHAPTER 111 - ELECTRIC FRANCHISE .....</b>	<b>507</b>
<b>CHAPTER 112 - CABLE TELEVISION FRANCHISE.....</b>	<b>509</b>

## CHAPTER 110

### NATURAL GAS FRANCHISE

**110.01 Grant of Franchise**

**110.02 State Code Restrictions and Limitations**

**110.03 Use of Public Ways**

**110.04 Relocation of Installations**

**110.05 Excavations**

**110.06 Indemnification**

**110.07 Maintain Facilities**

**110.08 Quantity and Quality**

**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 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 the ordinance codified in this chapter.<sup>†</sup>

**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 USE OF PUBLIC WAYS.** 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 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 INSTALLATIONS.** 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 consider selecting 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 consider selecting the route that 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.

**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

---

<sup>†</sup> **EDITOR’S NOTE:** Ordinance No. 130, adopting a natural gas franchise for the City, was passed and adopted on December 1, 2003.

obstruct the use of the streets and shall replace the surface, restoring the original condition as nearly as practicable.

**110.06 INDEMNIFICATION.** Company shall indemnify and save harmless 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 Company's negligence in construction, reconstruction, excavation, operation or maintenance of the gas utilities 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 arising from the negligence of the City, its officers, employees, or agents.

**110.07 MAINTAIN FACILITIES.** 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 QUANTITY AND QUALITY.** During the term of this franchise, the Company shall furnish natural gas in the quantity and quality consistent with applicable Iowa laws and regulations.

[The next page is 507]

## CHAPTER 111

# ELECTRIC FRANCHISE

111.01 Grant of Franchise

111.02 State Code Restrictions and Limitations

111.03 Use of Public Ways

111.04 Relocation of Installations

111.05 Excavations

111.06 Indemnification

111.07 Maintain Facilities

111.08 Electric Energy

111.09 City Powers

**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 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 be effective for a 25-year period from and after the effective date of the ordinance codified in this chapter.<sup>†</sup>

**111.02 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*.

**111.03 USE OF PUBLIC WAYS.** 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 and communications signals 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 RELOCATION OF INSTALLATIONS.** 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. 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.

---

<sup>†</sup> **EDITOR’S NOTE:** Ordinance No. 114, adopting an electric franchise for the City, was passed and adopted on July 7, 1997.

**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 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 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 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 MAINTAIN FACILITIES.** The Company shall construct, operate and maintain its facilities in accordance with the applicable regulations of the State Utilities Board or its successor.

**111.08 ELECTRIC ENERGY.** During the term of the franchise, the Company shall furnish electric energy in the quantity and quality consistent with applicable Iowa laws and regulations.

**111.09 CITY POWERS.** All reasonable and proper police regulations shall be adopted and enforced by the City for the protection of the facilities of the Company.

## CHAPTER 112

# CABLE TELEVISION FRANCHISE

<p>112.01 Short Title</p> <p>112.02 Definitions</p> <p>112.03 Qualifications of Grantee and Grant of Nonexclusive Authority</p> <p>112.04 Duration and Acceptance of Franchise</p> <p>112.05 Compliance with Applicable Laws, Regulations, Ordinances and Codes</p> <p>112.06 Territorial Area Involved</p> <p>112.07 Liability and Indemnification</p> <p>112.08 Operation and Maintenance of System</p> <p>112.09 Service to School and City</p> <p>112.10 Emergency Use of Facilities</p> <p>112.11 Safety Requirements</p> <p>112.12 Other Business Activities</p> <p>112.13 New Developments</p>	<p>112.14 Limitations of Rights Granted</p> <p>112.15 Removal of Facilities Upon Request</p> <p>112.16 Transfer of Franchise</p> <p>112.17 Erection, Removal and Common Use of Poles</p> <p>112.18 Rates</p> <p>112.19 Complaint Procedures</p> <p>112.20 Compliance with FCC Franchise Standards</p> <p>112.21 Construction Schedules and Standards</p> <p>112.22 Grantee Rules</p> <p>112.23 Termination of Franchise</p> <p>112.24 Unauthorized Cable Tapping</p> <p>112.25 Severability</p> <p>112.26 Franchise Fee</p> <p>112.27 Disposition of Facilities</p>
---	---

**112.01 SHORT TITLE.** This chapter shall be known and may be cited as the “Cable Television System Franchise Ordinance.”

**112.02 DEFINITIONS.** For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein.

1. “Affiliated” or “affiliated company” means a corporation, partnership or other business entity which is wholly owned by the same person or persons who own Tele-Services, Ltd. or its parent company.
2. “Cable television reception service” means the simultaneous delivery by the Grantee to television receivers or any other suitable type of audio-video communications receivers.
3. “Cable television system,” “cable system” or “CATV” means a system utilizing coaxial cable and certain electronic and other components which deliver to subscribing members of the public various communications services.
4. “Consumer price index” or “CPI-U” means all the items in unadjusted expenditure category as published monthly by the U.S. Department of Labor.
5. “FCC” means Federal Communications Commission.
6. “Grantee” means Tele-Services, Ltd., an affiliate or successor in accordance with the provisions of this franchise by Grantee.
7. “Gross subscriber revenues” means only those revenues derived from the monthly service charges paid by subscribers located within the City for regular cable television reception service, which service includes only the transmission of broadcast signals and the programming presented on the required access and origination channels, if any. Gross subscriber revenues shall not include any revenues received: (i) as reimbursement of expenses in the operation of any access channels; (ii) as advertising payments; (iii) from the leasing of cable channels; (iv) from programs for which a per channel or per program charge is made; and (v) from furnishing other communications and non-broadcast services either directly or as a carrier for another party or any other income derived from the system. Gross Subscriber Revenues shall also not include revenues received as installation charges and fees for re-connection, inspection, repairs or modifications of any installation.

8. "Person" means any person, firm, partnership, association, corporation or organization of any kind and any other legally recognized entity.
9. "Subscribers" means those persons contracting to receive cable television reception services furnished under this franchise by Grantee.

**112.03 QUALIFICATIONS OF GRANTEE AND GRANT OF NON-EXCLUSIVE AUTHORITY.**

Whereas the City has approved of the legal, character, financial, technical and other qualifications of the Grantee and the adequacy and feasibility of the Grantee's construction arrangements as part of a full public proceeding affording due process, including notice to all interested persons and members of the public, there is hereby granted by the City to the Grantee a nonexclusive franchise, right and privilege to construct, erect, operate, modify and maintain in, upon, along, across, above and over and under the highways, streets, alleys, sidewalks, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes and other televisions conductors and fixtures necessary for the maintenance and operation in the City of a Cable Television System for the purpose of distributing television and radio signals, and other electronic impulses in order to furnish television and radio programs, and various communications and other electronic services to the public. The right so granted includes the right to use and occupy said streets, alleys, public ways, and public places and all manner of easements for the purposes here set forth.

**112.04 DURATION AND ACCEPTANCE OF FRANCHISE.** The Franchise granted to the Grantee shall terminate 20 years from the date of grant<sup>†</sup>, subject to renewal for periods of reasonable duration on the same terms and conditions as contained herein, or on such different or additional terms and conditions as may be lawfully specified by the City and as are consistent with the requirements of Rule 73.31 or other applicable rules of the Federal Communications Commission. No renewal hereof shall be granted unless authorized by the City following a public hearing. Grantee shall be awarded a franchise renewal provided its applications shows that its CATV service during the preceding franchise period has reflected material compliance with the terms of this franchise chapter and a good-faith effort to serve the needs and interests of the service area.

**112.05 COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, ORDINANCES AND CODES.**

1. The Grantee shall at all times operate and maintain the Cable Television System in full compliance with the rules, regulations and standards of the FCC and any applicable rules, regulations and standards of the State of Iowa.
2. The Grantee shall at all times during the life of this Franchise be subject to all lawful exercise of the police power by the City and to any such reasonable regulations as the City shall hereafter provide.

**112.06 TERRITORIAL AREA INVOLVED.** This chapter relates to the present territorial limits of the City and to any area henceforth added thereto during the term of this franchise. During the term of this Franchise, Grantee shall offer CATV service upon request at its then established normal installation and monthly rates to any permanent dwelling or other building within the then territorial limits of the City, subject to application of established credit and other business policies of Grantee.

**112.07 LIABILITY AND INDEMNIFICATION.** Grantee shall at all times keep in effect the following types of insurance coverage:

---

<sup>†</sup> **EDITOR'S NOTE:** Ordinance No. 126, adopting a cable television franchise for the City, was passed and adopted in October 2002.

1. Workers' Compensation upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City.
2. Property Damage Liability insurance to the extent of \$300,000.00 as to any person and \$300,000.00 as to any one accident, and personal liability insurance to the extent of \$500,000.00 as to any one person and \$500,000.00 as to any one accident.
3. Broad form automobile insurance with \$100,000 - \$300,000 - \$100,000 coverage limits.

All insurance shall be issued by a company or companies authorized to do business in the State of Iowa and shall name the City as an additional insured as its interest may appear. Grantee shall, at all times, maintain on file with the City Clerk a current certificate of insurance. All insurance policies shall, if possible, provide for not less than 30 days notice of cancellation. Grantee shall indemnify, protect and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any Workers' Compensation law which may be caused by the erection, maintenance, use or removal of any of their attachments, poles or other undertakings, within the City, or by any action of Grantee, its agents or employees. Grantee shall carry insurance in the above described amounts to protect the parties hereto from and against all claims, demands, actions, suits, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Grantee shall also carry such insurance as it deems necessary to protect it from all claims under the Workers' Compensation laws in effect that may be applicable to Grantee. The City shall give the Grantee prompt written notice of any such claims, demands, actions, suits, judgments, costs, expenses or liabilities. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder.

#### **112.08 OPERATION AND MAINTENANCE OF SYSTEM.**

1. The Grantee shall provide for regular billing of accounts, and be so operated that complaints and requests for repairs or adjustments may be received at any time.
2. The Grantee shall render safe and efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest possible time. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.
3. The Grantee shall provide for safe, adequate and prompt service for its facilities.
4. The Grantee shall at all times maintain on file with the City Clerk a current listing of the names of all of its employees, contractors, subcontractors, and agents engaged in any manner in the installation, maintenance, repair, sales or service of the cable system within the City.

**112.09 SERVICE TO SCHOOL AND CITY.** The Grantee shall provide service to any school location within the City (one terminal junction each) for educational purposes upon request by the City or the school system at no cost to the City or to the school system. This shall mean only an energized cable to such buildings. The cost of any internal wiring shall be borne by the institution. The Grantee shall also provide the City, for connections to a building to be selected by the City Council of the City, without charge, and one junction terminal to said building at a location therein to be selected by the City.

**112.10 EMERGENCY USE OF FACILITIES.** In case of any emergency or disaster, the Grantee shall, upon request of the City Council, make available its facilities to the City for emergency use during the emergency or disaster.

**112.11 SAFETY REQUIREMENTS.** The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries or nuisances to the public.



**112.12 OTHER BUSINESS ACTIVITIES.** The Grantee hereunder shall not engage in the business of selling, repairing or installing extension services, radio receivers or accessories for such receiver within the City during the term of the Franchise.

**112.13 NEW DEVELOPMENTS.** It shall be the policy of the City liberally to amend this Franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity more effectively, efficiently or economically to serve its customers. Provided, however, that this section shall not be construed to require the City to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

**112.14 LIMITATIONS OF RIGHTS GRANTED.**

1. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of the property owners who join any of the said streets, alleys or other public ways and places, and said poles or fixtures shall be removed by Grantee whenever, in the opinion of the City Council the same restrict or obstruct the operation or location of any future streets or public places in the City.
2. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with any installations of the City or of a public utility serving the City or to interfere with new improvements the City may deem proper to make.
3. In the maintenance and operation of its television transmission and distribution system in the streets, alleys, and other public places, and in the course of any new construction or addition to its facilities, Grantee shall proceed so as to cause the least possible inconvenience to the general public. Any opening or obstruction in the streets or other public places made by Grantee in the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fences or boardings, the bounds of which during periods of dusk and darkness shall be clearly designated by warning lights.
4. In case of disturbance of any street, sidewalk, alley, public way or paved area, the Grantee shall at its own cost and expense and in a manner approved by the City Council, replace and restore such street, sidewalk, alley, public way or paved area in as good a condition as before the work involved in such disturbance was done.
5. If at any time during the period of this Franchise the City shall lawfully erect or alter or change the grade of any street, sidewalk, alley or other 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.
6. All installations of equipment shall be of permanent nature, durable and installed in accordance with good engineering practices, and of sufficient height to comply with all existing City regulations, ordinances and State laws so as not to interfere in any manner with the right of the public or individual property owner, and any equipment installed in a public way or place shall not interfere with the usual travel on such public way or usual use of such public place by the public and during the construction, repair or removal thereof, shall not obstruct or impede traffic.
7. The Grantee shall, on the request of any person, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires 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 48 hours advance notice to arrange for the temporary wire changes.

8. The Grantee shall have the authority to trim trees overhanging upon the streets, alleys, sidewalks and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that as an option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Grantee.

9. In all sections of the City where the cables, wires or other like facilities of public utilities are placed underground, the Grantee shall in the future place its wires, cables or other like facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so.

10. Grantee shall, at its expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, or remove from the street, alley or public place, any property of Grantee when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishments of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other types of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or other structure of public improvement; provided, however, the Grantee shall in all such cases have the privileges to abandon any property of Grantee in place as hereinafter provided.

11. In the event that the use of any part of the system is discontinued for any reason for a continuous period of 12 months, or in the event such systems or property have been installed in any street or public place without complying with the requirements of this chapter, or the rights granted hereunder have been terminated, canceled or have expired, Grantee shall promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.

12. Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City transferring to the City the ownership of such property.

**112.15 REMOVAL OF FACILITIES UPON REQUEST.** Upon termination of services to any subscriber, the Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

**112.16 TRANSFER OF FRANCHISE.** The Grantee shall not assign or transfer any rights granted under this chapter to any person, company or corporation without the prior approval of the City Council, which approval shall not be unreasonably withheld; provided the Grantee shall have the right to assign its rights under this chapter to an affiliated company without further approval of the City Council.

**112.17 ERECTION, REMOVAL AND COMMON USE OF POLES.**

1. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the City Engineer with regard to locations, height, type or any other pertinent aspect. However, no locations of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City Council determines that the public convenience would be enhanced thereby.

2. There is hereby granted to the extent that the City is authorized to so do, the right and authority to Grantee to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables, and other equipment and facilities from any and all holders of public licenses and franchises within the corporate limits of the City, including telephone and electric service franchises, to use such towers, poles, lines, cables and other equipment and facilities, subject to all existing and future ordinances and regulations of the City. It is the stated intention of the City that all other holders of public licenses and franchises within the corporate limits of the City shall cooperate with Grantee to allow Grantee joint usage of its poles and pole-line facilities whenever possible or whenever such usage does not interfere with the normal operation of said poles and pole lines so that the number of new additional poles constructed by Grantee within the City may be minimized.

3. Grantee shall grant to the City, free of expense, joint use of any and all poles owned by it for any property municipal purpose acceptable to Grantee, insofar as it may be done without interfering with the free use and enjoyment of Grantee's own wires and fixtures, and the City shall hold Grantee harmless from any and all claims, actions, causes of action or damages caused by the placing of the City's wires or appurtenances upon the poles of Grantee. Proper regard shall be given to all existing safety rules covering construction and maintenance in effect at the time of construction. If, in accommodating the City's joint use of their poles, Grantee is required to change or replace poles or install new poles, the City shall compensate Grantee for such additional expense.

#### **112.18 RATES.**

1. Grantee shall at all times maintain on file with the Municipal Finance Officer or the City Clerk a schedule of identification and description of the channels of service which are available and all rates and charges to be made to subscribers for CATV service, including installation charges.

2. The rates and charges for services to subscribers shall be initially set by Grantee, subject to any applicable rules and regulations of federal and State agencies. Before putting into effect any changes in basic channels or the rates and charges to subscribers for basic CATV service, Grantee shall file in writing with the Municipal Finance Officer or City Clerk the new proposed channels or rate change at least 30 days in advance of the proposed effective date for such channel change or rate change. Said proposed rate charges which do not exceed increases of the Consumer Price Index (CPI-U) as computed since the last effective rates may become effective upon the expiration of the 30-day notice.

3. Should the proposed rate charge exceed the Consumer Price Index changes as defined and if the City Council takes no action to set the rate change for hearing said proposed rate charges may become effective upon the expiration of the 30-day notice.

4. If the City Council sets the rate change for hearing, said proposed rate changes or channel changes will not become effective until the City Council has taken action by means of a resolution.

5. This provision does not limit the right of Grantee to pass along to the subscribers State and local sales tax or any specific copyright fees.

**112.19 COMPLAINT PROCEDURES.** Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to the Grantee's office. Should Grantee fail to satisfy a complaint, it may then be directed to the Municipal Finance Officer or City Clerk for investigation. In response to a complaint, Grantee shall be afforded a reasonable opportunity to present written statements of its position. The Municipal Finance Officer or City Clerk shall attempt to resolve the complaints, but if this cannot be achieved, he or she shall submit a recommendation to the City Council recommending that: (i) the complaint be dismissed; or (ii) corrective action be taken by Grantee. Appeal from the City Council's action may be made to the appropriate judicial or administrative forum.

**112.20 COMPLIANCE WITH FCC FRANCHISE STANDARDS.** Pursuant to applicable FCC standards, the following recitations and provisions are set forth:

1. Grantee's legal, character, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements, have been approved by the City Council for the City after consideration in a full public proceeding, affording due process to all interested parties.
2. The franchise period shall be 20 years in duration.
3. The City Council has specified guidelines in charging rates. No changes in rates charged to subscribers shall be made except as they shall be deemed approved by the City Council as provided herein.

**112.21 CONSTRUCTION SCHEDULES AND STANDARDS.**

1. Within 60 days after the effective date of this Franchise Ordinance, the Grantee shall file with the appropriate governmental authorities all initial papers, applications, contracts and other documents necessary to obtain any and all necessary waivers, consents, and licenses and to permit the continued use and operation of the Cable Television System and shall thereafter make diligent efforts to obtain the proper execution, delivery of such documents and any amendments thereto. In the event that all necessary waivers, consents and licenses are not obtained within one year after the effective date of this Ordinance, this Franchise Ordinance may be repealed at the option of the City by the adoption of an appropriate repealer ordinance.
2. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and all amendments thereto as well as all applicable State and local codes. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with all applicable codes, including the provisions of the electrical code. All of the Grantee's plant and equipment shall be installed, constructed, repaired, maintained and operated in accordance with good engineering practices. The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

**112.22 GRANTEE RULES.**

1. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions covering the conduct of this business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this chapter.
2. All such rules, regulations, terms and conditions promulgated under subsection 1 above shall not be in conflict with the provisions hereof, or applicable federal or State law or rules promulgated by the City in the exercise of its regulatory authority granted hereunder.
3. One copy of all such rules, regulations, terms and conditions promulgated under Subsection 1 above, together with any amendments, additions or deletion thereof, shall be kept current on file with the Municipal Finance Officer or City Clerk, and another copy thereof shall be maintained for public inspection during normal business hours at Grantee's office in the City. No such rules, regulations, terms, conditions, amendments, additions or deletions thereto shall take effect unless and until so filed and maintained.

**112.23 TERMINATION OF FRANCHISE.** The City reserves the right to terminate any franchise granted hereunder and rescind all rights and privileges associated therewith in the event of:

1. Noncompliance by the Grantee with any provision of this chapter, amendment hereto, or of any supplemental written agreement entered into by and between the City and the Grantee.

2. The Grantee becomes insolvent, enters into receivership or liquidation, files an application for bankruptcy or for composition of creditors, is unable to pay its debts as they mature or is in financial difficulty of sufficient consequence so as to jeopardize the continued operation of the network.
3. Violation by the Grantee of any FCC or applicable State order or ruling, or the order or ruling of any other governmental body having jurisdiction over the Grantee, unless the Grantee is lawfully contesting the legality or applicability of such rule or order.

Upon the occurrences of any of the above-listed events, the City Council may, after hearing, upon 30 days' written notice to the Grantee citing the reasons alleged to constitute cause for revocation, set a reasonable time in which the Grantee must remedy the cause. If, during the 30-day period, the cause shall be cured to the satisfaction of the City Council, the City Council may declare the notice to be null and void. If the Grantee fails to remedy the cause within the time specified after hearing, the City Council may revoke the franchise. In any event, before a franchise may be terminated, the Grantee shall be provided with an opportunity to be heard before the City Council.

**112.24 UNAUTHORIZED CABLE TAPPING.** It shall be unlawful for any person or persons to obtain any cable television services from any cable television company or any firm or private person by installing, rearranging or tampering with any facilities or equipment or said cable television company unless the same is done with the knowledge of and with the permission of the cable television company. Any person or persons found guilty of a violation of any of the provisions of this section shall be deemed guilty of a misdemeanor.

**112.25 SEVERABILITY.**

1. If any section, subsection, sentence, clause, phrase or portion of this chapter for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.
2. Should any provision of this chapter be inconsistent or at variance with any rule, regulation or policy, in whole or in part, of the Federal Communications Commission or any other agency having jurisdiction, such provision shall be invalid, but the remaining provisions hereof shall not be affected thereby.

**112.26 FRANCHISE FEE.** Grantee shall pay to the City an annual fee in the amount equal to three percent of the total annual gross subscriber charges or fees owed to the City by the franchisee and shall not be construed as payment in lieu of personal or real property taxes levied by the State, County or local authority. Sales taxes or other taxes levied directly on a per subscription basis and collected by the franchisee to be remitted by the franchisee to a governmental agency shall be deducted from the gross subscriber revenue prior to the computation of the annual franchise payment. The payment due the City under the provisions of this chapter shall be computed and due not later than 90 days after the end of the City's fiscal year and payable at the office of the City Clerk during its regular business hours.

**112.27 DISPOSITION OF FACILITIES.** Should the Grantee decide to dispose of the system as authorized under this chapter the City shall have first opportunity to purchase the system, its rights and privileges, at its then appraised value. Appraised values are to be arrived at by an Appraisal Board comprised of one outside knowledgeable representative appointed by the City, one outside knowledgeable representative appointed by the Grantee and one outside knowledgeable representative chosen by the two outside appointed representatives and mutually agreed to by both the City and the Grantee.

[The next page is 551]