

Title 5  
BUSINESS LICENSES AND REGULATIONS

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Chapter 5.16  
BEER AND LIQUOR REGULATIONS\*

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5.16.010 Purpose. The purpose of this chapter is to provide administration of licenses and permits and for local regulations and procedures for the conduct of the sale and consumption of beer and liquor, and for the protection of the safety, morals and general welfare of this community. (Ord. 2-72 §1, 1972)

5.16.020 Definitions. Where words and phrases used in this chapter are defined by state law, such definitions shall apply to their use in this chapter and are adopted by reference. Those definitions so adopted that need further definition or are reiterated, and other words and phrases used herein, shall have the following meanings:

(1) "Club" means any nonprofit corporation or association of individuals, which is the owner, lessee, or occupant of a permanent building or part thereof, membership in which entails the prepayment of regular dues and is not operated for a profit other than such profits as would accrue to the entire membership;

(2) "Commercial establishment" means a place of business which is at all times equipped with sufficient tables and seats to accommodate twenty-five persons at one time, and the licensed premises of which conform to the ordinances of this City;

(3) "Grocery store" means any retail establishment, the principal business of which consists of the sale of food or food products for consumption off the premises. The volume of sales of all other items, commodities and materials shall be included with the volume of sales of beer, and sales of beer shall not equal or exceed fifty percent of the dollar volume of all sales made by the establishment to meet the test that food sales must be the principal business thereof;

(4) "Hotel" or "motel" means a premises licensed by the State Department of Agriculture and regularly or seasonally kept open in a bona fide manner for the lodging of transient guests, and with twenty or more sleeping rooms;

(5) "Legal age" means twenty-one years of age or more;

(6) "Person of good moral character" means any person who meets all of the following requirements:

A. He has such financial standing and good reputation as will satisfy the City Council and the director that he will comply with the Iowa Beer and Liquor Control Act and all other laws, ordinances, and regulations applicable to his operations under state law,

B. He does not possess a federal gambling stamp,

C. He is not prohibited by the provisions of Section 5.16.210 from obtaining a liquor license or beer permit,

D. Is a citizen of the United States and a resident of Iowa, or licensed to do business in Iowa in the case of a corporation,

E. He has not been convicted of a felony; however, if his conviction of a felony occurred more than five years before the application for a license or permit, and if his rights of citizenship have been restored by the Governor, the director may determine that he is a person of good moral character notwithstanding such conviction,

F. If such person is a corporation, partnership, association, club, or hotel or motel the requirements of this subsection shall apply to each of the officers, directors, and partners of such person, and to any person who directly or indirectly owns or controls ten percent or more of any class of stock of such person or has an interest of ten percent or more in the ownership of profits of such person. For the purpose of this provision, an individual and his spouse shall be regarded as one person;

(7) "Pharmacy" means a drugstore in which drugs and medicines are exposed for sale and sold at retail, or in which prescriptions of licensed physicians and surgeons, dentists or veterinarians are compounded and sold by a registered pharmacist. (Ord. 2-72 §2, 1972)

5.16.030 Eligibility for Liquor Control License or Beer Permit. Upon meeting the requirements imposed by state law and the ordinances of this City, a person who is of good moral character

as defined by state law and this chapter, may apply for a liquor control license or a beer permit. In the case of a club, corporation, or partnership, the officers of the club or corporation and the partners of a partnership shall be persons of good moral character as defined by state law and this chapter. (Ord. 2-72 §3, 1972)

5.16.040 Conditions for an Approval of License or Permit-Premises. An applicant for a liquor control license or beer permit, as a further condition for approval by the City Council, must give consent in writing on the application that members of the fire, police, and health departments and the building inspector may enter upon the premises without warrant to inspect for violations of the provisions of state law and of this chapter.

- (1) No liquor control license or beer permit shall be approved for premises which do not conform to all applicable laws, ordinances, resolutions, and health and fire regulations;
- (2) No licensee shall have or maintain any interior access to residential or sleeping quarters unless permission is granted by the State Beer and Liquor Control Director in the form of a living quarters permit;
- (3) The premises for which a class B beer permit is sought must be located within a business district or an area not or hereafter zoned as a business district and conform to the zoning requirements of this City;
- (4) The premises of a class B beer permit shall, at the time of the application, continue to be equipped with sufficient tables and seats to accommodate twenty-five persons at one time;
- (5) No state liquor store shall be located within three hundred feet of a public or private educational institution unless a lesser distance is specifically authorized by ordinance. (Ord. 2-72 §4, 1972)

5.16.050 Beer Permits--Classes. Beer permits shall be classed as follows:

- (1) Class B. A class B beer permit shall allow the holder to sell beer at retail for consumption on or off the premises;
- (2) Class C. A class C beer permit shall allow the holder to sell beer at retail for consumption off the premises only. Such sales shall be in original containers only. No class C permit shall be issued to any person except the owner or proprietor of a grocery store or pharmacy. (Ord. 2-72 §5, 1972)

5.16.060 Liquor License--Classes. Liquor control licenses shall be classed as follows:

- (1) Class A. A class A liquor control license issued to a club shall authorize the holder to purchase alcoholic liquors from the department only, and to sell such liquors, and beer, to bona fide members and their guests by the individual drink for consumption on the premises only;
- (2) Class B. A class B liquor control license issued to a hotel or motel shall authorize the holder to purchase alcoholic liquors from the department only, and to sell such liquors, and beer, to patrons by the individual drink for consumption on the premises only, however, beer may also be sold for consumption off the premises. Each such license shall be effective throughout the premises described in the application;
- (3) Class C. A class C liquor control license issued to a commercial establishment must be issued in the name of the individual or individuals who actually own the entire business and shall authorize the holder or holders to purchase alcoholic liquors from the department only, and to sell such liquors, and beer to patrons by the individual drink for consumption on the premises only; however, beer may also be sold for consumption off the premises. (Ord. 2-72 §6, 1972)

5.16.070 Prohibited Interest. It is unlawful for any person or persons to be either directly or indirectly interested in more than one class of beer permit. (Ord. 2-72 §7, 1972)

5.16.080 Separate Locations--Class B or C. Every person holding a class B or class C permit having more than one place of business where such beer is sold shall be required to have a separate license for each separate place of business, except as otherwise prohibited by state law. (Ord. 2-72 §8, 1972)

5.16.090 Application--Contents--Bond. A verified application for the original issuance or the renewal of a liquor control license or a beer permit shall be filed at such time, in such number of copies, and in such form as the State Director of Beer and Liquor Control prescribes, on forms prescribed by him. The application shall be accompanied by the required fee and bond and be filed with the City Council for approval or disapproval. The bond to be submitted shall be in a form prescribed by the State Director and in the following amounts:

- (1) With any liquor control license, five thousand dollars and conditioned upon the payment of all taxes payable to the state under the provisions of the Iowa Beer and Liquor Control Act and compliance with all provisions of the act;
- (2) With any beer permit, five hundred dollars and conditioned upon the faithful observance of the Iowa Beer and Liquor Control Act. (Ord. 2-72 §9, 1972)

5.16.100 Investigation of Applicant. Upon receipt of an original application for a liquor license or beer permit by the City clerk, it shall be forwarded to the City Administrator, who shall conduct an investigation and shall submit a written report on the applicant as to the truth of the facts averred in the application and a recommendation to the City Council as to the approval of the license or permit. It shall be the duty of the health inspector, the building inspector, and the fire chief to inspect the premises to determine if they conform to the requirements of the City, and no license or permit shall be approved until or unless an approving report has been filed with the City Council by such officers. (Ord. 2-72 §10, 1972)

5.16.110 Simplified Application for Renewal. Upon receipt of an application for the renewal of a liquor license or beer permit, it shall be forwarded to the City Administrator only, who shall conduct an investigation and shall submit a written report on the applicant as to the truth of the facts answered in the application and a recommendation to the City Council as to the approval of the license or permit. (Ord. 2-72 §11, 1972)

5.16.120 Civil Liability. Every liquor control licensee and class B beer permittee shall furnish proof of financial responsibility either by the existence of a liability insurance policy or by posting bond in such amount as determined by the department. (Ord. 2-72 §12, 1972)

5.16.130 License and Permit Fees. The following fees shall be submitted with the respective application:

5.16.160 Expiration of License or Permit. All liquor control licenses and beer permits, unless sooner suspended or revoked, shall expire one year from date of issuance. Six or eight month seasonal licenses or beer permits may be issued for a proportionate part of the license or permit

fee. No seasonal license or permit shall be renewed except after a period of two months. Seasonal licensing shall be only as permitted by state regulation. (Ord. 2-72 §16, 1972)

5.16.170 Refunds. Any such licensee or permittee, or his executor, a administrator, or any person duly appointed by the court to take charge of and administer the property or assets of the licensee or permittee for the benefit of his creditors, may voluntarily surrender such license or permit to the department and when so surrendered the department shall notify the City, and the department and the City, or the City by itself in the case of a retail beer permit, shall refund to the person so surrendering the license or permit a proportionate amount of the fee paid for such license or permit as follows: If surrendered during the first three months of the period for which the license or permit was issued the refund shall be three-fourths of the amount of the fee; if surrendered more than three months but not more than six months after issuance the refund shall be one-half the amount of the fee; if surrendered more than six months but not more than nine months after issuance the refund shall be one-fourth of the amount of the fee. No refund shall be made, however, for a liquor control license or beer permit surrendered more than nine months after issuance. No refund shall be made to any licensee or permittee, upon the surrender of his license or permit, if there is at the time of the surrender a complaint filed with the department or the City, charging him with a violation of this chapter or provisions of the Iowa Beer and Liquor Control Act. If upon hearing on any such complaint the license or permit is not revoked or suspended, then the licensee or permittee shall be eligible for the refund of any portion of his license or permit fee. No refund shall be made for seasonal licenses or permits. (Ord. 2-72 §17, 1972)

5.16.180 Transfers. The Council will, in its discretion, authorize a licensee or permittee to transfer the license or permit from one location to another within the City; provided that the premises to which the transfer is to be made would have been eligible for a license or permit in the first instance and such transfer will not result in the violation of any law or ordinance. (Ord. 2-72 §18, 1972)

5.16.190 Prohibited Sales and Acts. No person or club holding a liquor license or beer permit nor his agents or employees shall do any of the following:

- (1) Sell, dispense, or give to any intoxicated person, or one simulating intoxication, any alcoholic liquor or beer;
- (2) Sell or dispense any alcoholic liquor or beer on the premises covered by the license or permit, or permit the consumption thereon between the hours of two a.m. and six a.m. on any week day, and between the hours of one a.m. on Sunday and six a.m. on the following Monday;
- (3) Sell alcoholic liquor or beer to any person on credit, except with a bona fide credit card. This provision shall not apply to sales by a club to its members nor to sales by a hotel or motel to bona fide registered guests;
- (4) Employ any person under the age of eighteen years old in the sale or serving of alcoholic liquor or beer for consumption on the premises where sold. Persons between the ages of eighteen and twenty-one shall be allowed to serve or clear alcoholic liquor or beer as an incident to a meal if the business of selling food or other services constitutes more than fifty percent of the gross business of the licensee or permittee;
- (5) Sell, give, or otherwise supply any alcoholic beverage or beer to any person knowing or having reasonable cause to believe him to be under legal age, or permit any person knowing or

having reasonable cause to believe him to be under legal age, to consume any alcoholic beverage or beer;

(6) In the case of a retail beer permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to beer or any other beverage in or about his place of business;

(7) Keep, or allow to be kept, gambling devices of any kind or description on the premises or place of business of the license or permit holder. (Ord. 2-72 §19, 1972)

5.16.200 Suspension and Revocation. A liquor license or beer permit may be suspended for a period up to one year, or revoked, for violations of law including City ordinances, following notice and hearing, and shall be revoked in accordance with the provisions of state law for any of the following causes:

(1) Misrepresentation of any material fact in the application for such license or permit;

(2) Violation of any of the provisions of the Iowa Beer and Liquor Control Act;

(3) Any change in the ownership or interest in the business operated under a class A, class B, or class C liquor control license, or any beer permit which change was not previously reported to and approved by the City and the department;

(4) An event which would have resulted in disqualification from receiving such license or permit when originally issued;

(5) Any sale, hypothecation, or transfer of such license or permit;

(6) The failure or refusal on the part of any licensee or permittee to render any report or remit any taxes to the department under the state act. (Ord. 2-72 §21, 1972)

5.16.210 Effect of Revocation. Any liquor control licensee or beer permittee whose license or permit is revoked under the Iowa Beer and Liquor Control Act shall not thereafter be permitted to hold a liquor control license or beer permit in the state of Iowa for a period of two years from the date of such revocation. The spouse and business associated holding ten percent or more of the capital stock or ownership interest in the business of a person whose license or permit has been revoked shall not be issued a liquor control license or beer permit, and no liquor control license or beer permit shall be issued which covers any business in which such person has a financial interest for a period of two years from the date of such revocation. In the event a license or permit is revoked the premises which had been covered by such license or permit shall not be re-licensed for one year. (Ord. 2-72 §22, 1972)

5.16.220 Appeal and Hearing. The right of appeal to the hearing board shall be afforded a liquor control licensee or beer permittee whose license or permit has been suspended or revoked. Any applicant who feels aggrieved by a decision of the director or City disapproving, suspending, or revoking issuance of a liquor control license or beer permit may, provided he has exercised his right of appeal to the hearing board as provided by state law, appeal from the decision within ten days to the district court of the county wherein the premises covered by the application are situated. The City may appeal a decision of the hearing board within ten days to the district court of the county wherein the premises covered by the application are situated. (Ord. 2-72 §23, 1972)

5.16.230 Consumption in Public Places--Intoxication. It is unlawful for any person to use or consume alcoholic liquors or beer upon the public streets or highways, or alcoholic liquors in any public place, except premises covered by a liquor control license, and no person shall be intoxicated nor simulate intoxication in a public place. Any person violating any provisions of

this section shall be fined not to exceed one hundred dollars or sentenced not to exceed thirty days imprisonment. (Ord. 2-72 §24, 1972)

5.16.240 Persons Under Legal Age. No person shall sell, give, or otherwise supply alcoholic liquor or beer to any person knowing or having reasonable cause to believe him to be under legal age, and no person or persons under legal age shall individually or jointly have alcoholic liquor or beer in his or their possession or control; except in the case of liquor or beer given or dispensed to a person under legal age within a private home and with the knowledge and consent of the parent or guardian for beverage or medicinal purposes or as administered to him by either a physician or dentist for medicinal purposes and except to the extent that a person under legal age may handle alcoholic beverages and beer during the regular course of his or her employment by a liquor control licensee or beer permittee under state law. (Ord. 2-72 §25, 1972)

5.16.245 Minors Prohibited on Certain Premises.

1. It shall be unlawful for the holder of a license or permit issued pursuant to the "Iowa Alcoholic Beverage Control Act" for the premises where more than fifty percent (50%) of the business conducted is the sale or dispensing of alcoholic beverages for consumption on the premises, and for any person employed with respect to such premises to knowingly permit or fail to take reasonable measures to prevent the entry onto such premises of any and all persons who have not yet attained the age of twenty-one. It shall be the duty of the licensee, person or persons managing such premises to cause to be posted and maintained at all times an easily readable notice in English language stating that persons less than 21 years of age are prohibited from entering the premises between the hours of 8:00 p.m. – closing.

2. However, the provisions of subsection (1) above shall not apply when:

(a) The underage person is an employee of the license holder, or performing a contracted service with respect to said premises, is on the premises during their scheduled work hours.

(b) The underage person is accompanied by a parent, guardian or spouse who is of legal age for the purchase of alcoholic beverages.

(c) The underage person is on the premises during a time that the licensee has, in accordance with written notice and a plan given in advance to the Chief of Police, suspended the dispensing of alcoholic beverages on the licensed premises or on a clearly delineated part of the licensed premises operated under a differentiating trade name. It shall be the strict duty of a licensee permitting such underage person or permittee who authorizes such underage minor to be onto the licensed premises pursuant to such a plan, and of all person employed with respect to said premises, to prevent underage minor from consuming and/or possessing alcoholic beverages on said premises.

(d) The underage person is on the premises in a special event for a non-profit organization, or in a banquet or ceremonial dinner for an organization, in accordance with a plan approved in advance by the Chief of Police. It shall be the strict duty of a licensee permitting such underage persons onto the licensed premises, and of all persons employed with respect to said premises, to prevent underage persons from consuming or possessing alcoholic beverages on said premises. Failure in that duty whether knowingly or otherwise, shall be punishable as a violation of this section.

(e) The underage person is on the premises during specified posted hours that the licensee does its business primarily in food sales, in accordance with a plan approved in advance by the

Chief of Police. To receive plan approval, a licensee shall be required to demonstrate that there is clearly definable pattern of daytime house during which more than 50% of the business' sales are food. It shall be the strict duty of the licensee and of all persons employed with respect to said premises, to remove all underage persons from the premises before the start of restricted admission hours of each day, and it shall be the strict duty of the licensee permitting underage persons onto the premises, and of all persons employed with respect to said premises, to prevent underage persons from consuming or possessing alcoholic beverages on said premises.

(f) Police officers shall be admitted to the premises at any time to monitor compliance with all applicable laws. Failure in that duty whether knowingly or otherwise, shall be punishable as a violation of this section.

3. It shall be unlawful for any person who has not yet attained the age for lawful purchase and possession of alcoholic beverages to go onto such premises as are described in subsection (1) except as is provided for by subsection (2).

4. Violation of the provisions of 5.16.245 subsection 1, through, 5.16.245 subsection 3, pertaining to underage persons on the licensed premises may be cited for municipal infraction punishable by a penalty of up to \$750 for a person's first violation and up to \$1,000.00 for each repeat violation. City of Denver Municipal Code Chapter 1.12 "Municipal Infractions."

5. Minors Curfew requirements under Code of Ordinances, Chapter 9.88, City of Denver, Iowa also applies.

(Ord. 9-2018)

#### 5.16.250 Penalties.

(a) Any person who violates any of the provisions of this chapter shall be subject to a fine of not to exceed one hundred dollars or to imprisonment for not more than thirty days.

(b) The conviction of any liquor control licensee or beer permittee for a violation of any of the provisions of subsections (1) to (6), inclusive, of Section 5.16.190 shall, subject to subsection (3) of this section, be grounds for the suspension or revocation of the license or permit by the department or the City; however, if any liquor control licensee is convicted of any violation of subsection two, paragraphs "a," "d," or "e," or section forty-nine, or any beer permittee is convicted of a violation of subsection two, paragraph "a" of said section of the Iowa Beer and Liquor Control Act, the liquor control license or beer permit shall be revoked and shall immediately be surrendered by the holder, and the bond of the license or permit holder shall be forfeited to the Department of Beer and Liquor Control.

(c) If any licensee, beer permittee, or employee of such licensee or permittee shall be convicted of a violation of Section 5.16.190(5), or a retail beer permittee shall be convicted of a violation of subsection (6) of Section 5.16.190, the City shall, in addition to the other penalties fixed for such violations by this section, assess a penalty as follows:

1. Upon a first conviction, the violator's liquor control license or beer permit shall be suspended for a period of fourteen days;
2. Upon a second conviction within a period of two years, the violator's liquor control license or beer permit shall be suspended for a period of thirty days;



3. Upon a third conviction within a period of five years, the violator's liquor control license or beer permit shall be suspended for a period of sixty days;
4. Upon a fourth conviction within a period of five years, the violator's liquor control license or beer permit shall be revoked. (Ord. 2-72 §26, 1972)

\* For statutory provisions generally pertaining to the regulation of beer and malt liquors, See I.C.A. 124.

### Chapter 5.17

## SOCIAL HOST REGULATIONS

### Sections:

- 5.17.01 Definitions
- 5.17.02 Prohibited Acts
- 5.17.03 Exceptions
- 5.17.04 Violations

### 5.17.01 Definitions.

1. "Alcoholic beverage" means any beverage as defined in Subsection 123.3(4), Code of Iowa
2. "Controlled substance" means a drug, substance or immediate precursor as specified in Chapter 124, Division IV, Code of Iowa.
3. "Event, gathering, or party" means any group of three (3) or more persons who have assembled or gathered together for a social occasion or other activity.
4. "Juvenile" means a person under the age of eighteen (18).
5. "Parent" means any person who is natural parent or a legal guardian as defined in Subsection 123.47 (2), Code of Iowa.
6. "Premises" means any home, yard, farm, field, land, apartment, condominium, hotel or motel room or other dwelling unit or meeting, park or other place of assembly, including vehicles as defined in definition number seven. "Premises" does not include property that is licensed to sell or serve alcoholic beverages.
7. Vehicle as defined as any machine capable of transporting or towing one or more persons, whether in the main body of the machine or in a non-motorized machine towed by a machine. Examples include, Recreational Vehicles as defined by Iowa Code, passenger transports such as vans, pickups, buses, cars, limousines, tractors with wagons attached and pedal power "beer wagons" or "pedal pubs."
8. "Social Host" means any person, partnership, corporation or association of one or more individuals who aids, allows, entertains, organizes, supervises, controls, or permits an event, gathering or party. This includes but is not limited to the person(s) who owns, rents, leases or otherwise has control of the premises or vehicle, where the event, gathering or party takes place; the person in charge of the premises or vehicle; or the person(s) who organized the event, gathering or party takes place; the person in charge of premises; or person(s) who organized the event, gathering or party. If the social host is a juvenile, and the parent(s) are present on the premises or vehicle or know of the event, gathering or party and knows that the consumption of alcohol and/ or controlled substances is occurring, the parent(s) are also liable for the violations of this chapter.

9. "Underage person" means any individual under the age of twenty-one (21).

5.17.02 Prohibited Acts. It is unlawful for any social host of an event, gathering or party on the social host's premises to knowingly permit or allow underage persons to consume controlled substances and / or alcoholic beverages, or knowingly permit or allow underage persons to possess controlled substances and / or alcoholic beverages on the premises. A social host that is present on the premises or vehicle of the event, gathering, or party where consumption of controlled substances and / or alcoholic beverages is actually occurring is presumed to know the prohibited acts are occurring. This presumption is rebuttal. A social host has an affirmative defense if the social host took reasonable steps to prevent the possession or consumption of controlled substances and / or alcoholic beverages, or notified law enforcement and allowed law enforcement to enter the premises under the dominion and control of the social host for which the social host has authority to give consent to enter for the purpose of stopping the illegal activities.

5.17.03 Exceptions. This chapter does not apply to actions permitted under Section 123.47(2), Iowa Code (2017), or to legally protected religious observances, or to situations where underage persons are lawfully in possession of alcoholic beverages during the course and scope of employment.

5.17.04 Violations. . Violations of this chapter are a municipal infraction under the Denver City Code Chapter 1.12 "MUNICIPAL INFRACTIONS," and are subject to civil penalty First Offense – Not to exceed \$750.00. Each Repeat Offense – Not to exceed \$1000.00. Violations of this chapter may also be considered by the City for purposes of approving licenses applied for by the social host.

(Ord. 8-18, 2018)

## Chapter 5.20 PEDDLERS

### Sections:

- 5.20.010 Definitions
- 5.20.020 Permit and License--Required
- 5.20.030 Exceptions
- 5.20.040 Permit and License--Application
- 5.20.050 Permit and License--Applicant Investigation-Issuance
- 5.20.060 License Fee
- 5.20.070 Permit and License--Revocation--Grounds
- 5.20.080 Permit and License--Appeal
- 5.20.090 License Expiration
- 5.20.100 Bond
- 5.20.110 Enforcement

5.20.010 Definitions. For the purpose of this chapter, the following words and terms shall be defined as set forth in this section:

(a) "Canvasser or solicitor" is defined as any individual, whether resident of the City or not, traveling either by foot, wagon, automobile, motor truck or any other type of conveyance, from

place to place, from house to house or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale samples of the subject of such sales or not; provided, that such definition includes any person who, for himself or for another person, firm or corporation, hires, leases, uses or occupies any building, structure, tent, railroad boxcar, hotel room, lodging house, apartment, shop or any other place within the City for the sole purpose of exhibiting samples and taking orders for future delivery. This definition also includes any person or persons whom, for himself or for another person, takes or attempts to take orders for subscriptions to magazines. "Canvasser or solicitor" shall not mean or include a salesman selling goods, wares and merchandise, or farm produce, to retail dealers for the purpose of resale.

(b) "Peddler" includes any person, whether a resident of the City or not, traveling by foot, wagon, automotive vehicle or any other type of conveyance, from place to place, from house to house or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, person firm or corporation, whether as owner, agent, or employee, whether a resident of the City or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within the City, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, or any other place within the City for the exhibition and sale of such good, wares and merchandise either privately or at public auction. The person, firm or corporation so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, a Part of or in the harm of any local dealer, trader, merchant or auctioneer. (Ord. 3-75 §2, 1975)

5.20.020 Permit and License--Required. It is unlawful for any peddler, solicitor, canvasser, transient merchant or vendor as defined by Section 5.20.010, to engage in such business within the City without first obtaining a permit and license therefor in compliance with the provisions of this chapter. (Ord. 3-75 §1, 1975)

5.20.030 Exceptions. (a) The provisions of this chapter shall not apply to the producers of farm products or to the sale of articles raised upon farms in Iowa.

(h) Nothing in this chapter shall be construed to effect interstate commerce. (Ord. 3-75 §3, 1975).

5.20.040 Permit and License--Application. Applicants permit under this chapter shall file a written sworn application, signed by the applicant, showing:

(a) The name of the applicant; The permanent home address full local address, Company Name, Company Address, Federal Employee ID Number, State ID Number, Vehicle Type, License Plate Number, and Number and Names of Sales Persons.

(c) A brief description of the nature of the business and the goods to be sold;

(d) If employed, the name and address of the employer, together with credentials establishing the exact relationship;

(e) The length of time for which the right to do business is desired;

(f) The place where the goods or property proposed to be sold or orders taken for the sale thereof are manufactured or produced, where such goods or products are located at the time the application is filed, and the proposed method of delivery;

(g) The fingerprints of the applicant;

(h) A statement as to whether or not the applicant has been convicted of any crime or violation of any criminal ordinance, the nature of the offense and the punishment or penalty assessed therefor;

(i) License number and description of vehicles.

At the time of filing the application, a fee of ten dollars shall be paid to the Mayor to cover the cost of investigation of the facts stated therein. (Ord. 3-75 §4, 1975)

5.20.050 Permit and License--Applicant Investigation-Issuance.

(a) Upon receipt of such application, the chief of police shall cause such investigation of the applicant's business and moral character to be made as he deems necessary for the protection of the public good. A period of three days shall be allowed to the chief of police for making such investigation.

(b) If as a result of such investigation the applicant's character, business responsibility or health is found to be unsatisfactory, the chief of police shall endorse on such application his disapproval and his reasons for the same, and return the application to the City clerk, who shall notify the applicant that his application is disapproved and that no permit and license will be issued.

(c) If as a result of such investigation the character, business responsibility and health of the applicant are found to be satisfactory, the chief of police shall endorse on the application his approval, execute a permit addressed to the applicant for the carrying on of the business applied for, and return the permit, along with the application, to the Mayor, who shall, upon payment of the prescribed license fee, deliver to the applicant his permit and issue a license. Such license shall contain the signature of the Mayor and shall show the name and address of the licensee and the kind of goods to be sold thereunder, the amount of the fee paid, the date of issuance and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in such soliciting or canvassing. The Mayor shall keep a permanent record of all licenses issued. (Ord. 3-75 §5, 1975)

5.20.060 License Fee. The license fee which shall be charged by the Mayor shall be two dollars per day or ten dollars per year, whichever is the lesser, for each person seeking to do business within the City as a peddler, solicitor, canvasser or transient merchant and vendor, and ten dollars for each vehicle used in the delivery or display of merchandise in connection therewith. (Ord. 3-75 §6, 1975)

5.20.070 Permit and License--Revocation--Grounds.

(a) Permits and licenses issued under the provisions of this chapter may be revoked by the City after notice and hearing for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application for license;
- (2) Fraud, misrepresentation or false statement made in the course of carrying on his business as solicitor or as canvasser;
- (3) Any violation of this chapter; or
- (4) Conducting the business of soliciting, or of canvassing, or doing business as an itinerant merchant or vendor, in an unlawful manner or in such manner as to constitute

a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

(b) Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five days prior to the date set for hearing. (Ord. 3-75 §9, 1975)

5.20.080 Permit and License--Appeal. Any person aggrieved by the action of the chief of police or the Mayor in the denial of a permit or license as provided in Section 5.20.050, shall have the right of appeal to the Council of the City. Such appeal shall be taken by filing with the Council, within fourteen days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal. The Council shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant in the same manner as provided in Section 5.20.070 for notice of hearing on revocation. The decision and order of the Council on such appeal shall be final and conclusive. (Ord. 3-75 §10, 1975)

5.20.090 License Expiration. All annual licenses issued under the provisions of this chapter shall expire on the thirty-first day of December in the year when issued. Other than annual licenses shall expire on the date specified in the license. (Ord. 3-75 §11, 1975)

5.20.100 Bond. Every applicant not a resident of the City or who, being a resident of the City, represents a firm whose principal place of business is located outside the state, shall file with the City clerk a surety bond, running to the City, in the amount of five hundred dollars, with surety acceptable to and approved by the Mayor, conditioned that the applicant shall comply fully with the provisions of the ordinances of the City and the statutes of the state regulating and concerning the business of peddler, solicitor, canvasser, itinerant merchant or vendor, and guaranteeing to the citizens of the City that all money paid as a down payment will be accounted for and applied according to the representations of the solicitor, and further guaranteeing to any citizen of the City doing business with the person that the property purchased will be delivered according to the representations of the solicitor. Action on such bond may be brought in the name of the City to the use or benefit of the aggrieved person. (Ord. 3-75 §7, 1975)

5.20.110 Enforcement. It shall be the duty of any police officer of the City to require any person seen soliciting or canvassing or doing business as an itinerant merchant or vendor, and who is not known by such officer to be duly licensed, to produce his license and to enforce the provisions of this chapter against any person found to be violating the same. (Ord. 3-75 §8, 1975)

Chapter 5.34

CABLE TELEVISION

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5.34.010 Definitions.

- (1) "Access channels" means those channels set aside for specific access purposes, as described in Section 5.34.220.
- (2) "Additional service" means a subscriber service provided by the grantee for which a special charge is made based on program or service content, time or spectrum space usage.
- (3) "Application" includes all written proposals, in whatever form, made by the grantee to the City concerning construction, rendition of services, maintenance or any other matter pertaining to the cable television system contemplated in this chapter.
- (4) "Basic service" means the simultaneous delivery by the grantee to all subscribers within the confines of the City of Denver of:
  - (A) All signals of over-the-air television broadcasters required by the FCC to be carried by a community antenna television system as defined by the FCC, or if FCC requirements are revoked, at minimum, all local television stations normally received by individual home antenna; and
  - (B) Channels designated for special purposes by the City Council or its designate; and
  - (C) Public, educational, local government, local origination, and leased access channel signals; and
  - (D) Additional service as proposed by the grantee in its application, or as it may hereafter provide; provided, however, that pay or subscription television, as defined by the FCC, and radio service supplied by the grantee shall not be considered part of the basic service.

(5) "Cable television service" means the delivery by the grantee to television receivers, or any other suitable type of audio video communication receivers, to all subscribers within the confines of the City of Denver of all signals of over-the-air television broadcasters allowed by the FCC to be carried by the cable television system as defined by the FCC; all FM radio stations carried on the system; local origination channels, educational channels; public access channels; leased access channels; pay television channels; other services provided for in this chapter and grantee's application; and any other services offered by the grantee over the cable television system.

(6) "Cable television system" or "system" or "CTS" means a system of antennas, coaxial cables, wires, wave guides, or other conductors, electronic equipment or facilities designed, constructed or used for the production of television signals, interception and receipt of television or radio signals directly or indirectly off the air and the distribution or transmission of such signals and other communications services by means of cable or other similar devices to subscribers.

(7) "Channel" means a band of frequencies six megahertz wide in the electromagnetic spectrum which is capable of carrying either one audio-video television or a number of non-video signals.

(8) "City" means the City of Denver, Iowa, a municipal corporation in and of the state of Iowa, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form, and its duly authorized officials acting on its behalf.

(9) "City Council" means the City Council of the City of Denver or its designated representative.

(10) "Commenced operation." Operations will be considered to have commenced when sufficient distribution facilities

have been installed so as to permit the offering of full services to at least twenty-five percent of the dwelling units located within the designated service area.

(11) "Federal Communication Commission (FCC)" means the Federal Communication Commission and any legally appointed or elected successor.

(12) "Franchise" means the permission, license or authorization given hereunder to construct, operate and maintain a cable television system in the City.

(13) "Franchise payment" includes all charges imposed for a franchise whether the object be regulation, revenue, or one-time reimbursement of costs incurred by the City in the award of this franchise.

(14) "Good cause" represents that set of facts and circumstances which, in an individual case, a reasonable man would adjudge to be beyond the grantee's reasonable control and which would, therefore, represent a justifiable excuse of performance. Depending on the facts and circumstances, good cause may include, but shall not be limited to, delays or interruptions arising from necessary utility charges, rearrangements, power outages, the fulfillment of governmental or regulatory restrictions or requirements, national emergency, uncontrollable material shortages, fire, earthquake or the elements and acts of God.

(15) "Grantee" means any person, firm or corporation holding a franchise for cable television within the City.

(16) "Gross revenues" means any and all compensation, in whatever form, exchange or otherwise, derived from all City, and public held utility easements in the City, towers, antennas, poles, cables, electronic equipment and other network apparatus necessary for the operation of a cable television system in the City, subject to the requirements of this chapter.

(17) "Installation" means the extension and/or construction of the system from the main trunk and/or feeder cable to subscribers' terminals except where such a procedure is required by this chapter without charge when it will mean the extension and/or construction of the system to one point in a designated building.

(18) “Local Origination” means programming that has local (Denver) origination and is broadcasted from local points throughout the community.

(19) “May” is permissive.

(20) “Person” mean any individual, firm, partnership, association, corporation, company or organization of any kind.

(21) “Reasonable notice” mean the provision of notice of contemplated action delivered at least forty-eight hours prior to such action.

(22) “Sale” includes any sale, exchange, barter or offer for sale.

(23) “Service Area” means that geographical area within justify the incorporated limit of the City.

(24) “Shall” and “must” are mandatory.

(25) “State” mean the state of Iowa.

(26) “Street” includes all streets, roadways, highways, avenues, lanes, alleys, courts, places, curbs, sidewalks, easements, right-of ways, or other public ways in the City which have been or may hereafter be dedicated and open to public use, or such other public property so designated by law.

(27) “Studio” mean the land, electronic processing equipment, towers, buildings, cameras, lights and other appurtenances normally associated with and located at the grantee’s local origination and/or public access plants of a cable television system, excluding the head end.

(28) “Subscriber” mean any person, firm, company, corporation or association receiving either basic service or additional service from the grantee under the schedule charges field with and approved by the City. (Ord. 82-2(part), 1982)

5.34.020 Authority Under Franchise. Any franchise granted hereunder shall give the grantee the right and privilege to construct, erect, operate, modify and maintain, in, upon, along, above, over and under streets, which have been or may hereafter be dedicated and open to public use in the City, and public held utility easements in the City, towers, antennas, poles, cables, electronic equipment and other network apparatus necessary for the operation of a cable television system in the City, subject to the requirements of this chapter. (Ord. 82-2 (part), 1982)

5.34.030 Police Power. Grantee shall at all times during the term of its franchise be subject to all lawful exercise of the police power of the City. (Ord. 82-2(part), 1982)

5.34.040 Applications for Franchise. No franchise may be granted unless the applicant has successfully completed the application procedure in accordance with filing instructions promulgated by the City.

(1) Application Fee. Each applicant for a franchise hereunder shall submit, together with its application., its check payable to the order of the City, in the amount of twenty-five dollars. The application fee shall be used to defray expenses in processing and evaluating the franchise application and shall be nonrefundable.

(2) All applicants must submit a request for franchise which shall include but not be limited to the following:

(A) Name and Address of Applicant. The name and business address of applicant or appropriate corporate officer(s);

(B) Description of Proposed Operation. A general description of the applicant's proposed operation, including but not limited to: business hours, operating staff, maintenance



procedures beyond those required in this chapter, management and marketing staff complement and procedures, and, if available, the rules of operation for public access;

(C) Signal Carriage. A statement of the television and radio services to be provided, including both off-the-air and locally originated signals;

(D) System Capabilities. A complete statement setting forth the capabilities of the proposed system, including but not limited to the following: number of channels to be provided, two-way capabilities, capabilities for non-entertainment uses, adaptability of the system for future state of the art;

(E) Special Services. A statement setting forth a description of the automated services proposed as well as a description of the production facilities to be made available by the grantee for the public channels required to be made available by the provisions of this chapter.

(F) Schedule of Charges. A statement of the applicant's proposed schedule of charges as set forth by the provision of Section 5.34.130 of this chapter.

(G) Corporate Organization. A statement detailing the corporate organization of the applicant, if any, including the names and addresses of its officers and directors and the number of shares held by each officer and director.

(H) Stockholders. A statement identifying the number of authorized outstanding shares of applicant's stock including a current list of the names and current addresses of its shareholders holding five percent or more of applicant's outstanding stock.

(I) Intra-company Relationships. A statement describing all intra-company relationships of the applicant, including parent, subsidiary or affiliated companies.

(J) Agreements and Understandings. A statement setting forth all agreements and understandings, whether written or oral, existing between the applicant and any other person, firm, group or corporation with respect to any franchise awarded hereunder and the conduct of the operation thereof existing at the time of proposal submittal.

(K) Existing Franchises. A statement of existing franchises held by the applicant indicating when the franchises were issued and when the systems were constructed and the presented state(s) of the system(s) in each respective governmental unit, together with the name, address and phone number of a responsible governmental official knowledgeable of the applicant.

(L) Convictions. A statement as to whether the applicant or any of its officers or directors or holders of five percent or more of its voting stock has in the past ten years been convicted of or has charges pending for any crime other than a routine traffic offense and the disposition of each such case.

(M) Operating Experience. A statement detailing the prior cable television experience of the applicant, including that the applicant officers, management and staff to be associated, where known, with the proposed ordinance. (Ord. 82-2 (part), 1982)

#### 5.34.050 Termination of Franchise.

(a) Grounds for Revocation. The City reserves the right to revoke any franchise and rescind all rights and privileges associated with the franchise in the following circumstances:

- (1) If the grantee should default in the performance of any of its obligations under this chapter or the franchise and fails to cure the default within thirty days after receipt of written notice of the default from the City;
  - (2) If the grantee should fail to provide or maintain in full force and effect, the performance bond and liability and indemnification coverages as required in Sections 5.34.080 and 5.34.140;
  - (3) If a receiver, trustee or liquidator of the grantee is appointed for all or part of its assets under the Bankruptcy Act or any other creditor's rights law, state or federal;
  - (4) If the grantee should violate any orders or ruling of any regulatory body having jurisdiction over the grantee unless the grantee is lawfully contesting the legality or applicability of such order or ruling;
  - (5) If the grantee fails to receive the necessary FCC or state certification unless such cause is directly attributable to an action or condition imposed by the City.
- (b) Procedure Prior to Revocation. Upon the occurrences of any of the events enumerated in subsection (a) of this section, the City Council may, after hearing, upon thirty 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 thirty day period, the cause is cured to the satisfaction of the City, the City may declare the notice to be null and void. If the grantee fails to remedy the cause within the time specified, the City Council may revoke the franchise. In any event, before a franchise may be terminated, the grantee must be provided with an opportunity to be heard before the City Council.
- (c) Grantees Duty to Remove Its Property From Public Streets. On revocation, expiration or abandonment of the franchise to operate the cable television system, the grantee shall, as directed by the City, remove from the public streets where its properties are located all its facilities as set forth in subsection (e) of this section.
- (d)
- (1) Purchase of System by City. If this franchise is not renewed or is revoked under the provisions of subsection (a) of this section, the grantee shall first offer the cable television system for sale to the City at a fair and just market value, which value shall include the fair market value of the system as a going concern, including the franchise itself and the rights and privileges granted by the City.
  - (2) In the event the determination of fair market value cannot be negotiated or determined, said value shall be determined by an impartial arbitration procedure pursuant to state law, wherein the grantee and the City shall each choose an arbitrator and the arbitrators chosen shall choose the third and the valuation determined by the arbitrators shall be considered the fair market value at which the system will be offered to the City. The determination of the value of the system shall be decreased by the amount of any damages sustained by the City in connection with revocation or expiration, including without limitation, payment made by the City to another person or entity to operate the cable television system for a temporary period after revocation. The cost of the arbitration procedures shall be shared equally by the City and grantee.
  - (3) The City shall have ninety days to exercise the right of first refusal to purchase the system, said ninety days commencing on the day the fair market value of the system is determined either through negotiation or the arbitration procedure. If the City does not exercise its option to purchase, and the system is not sold to another operator who has obtained a franchise from the City in a reasonable period of time, the grantee, upon request by the City, shall promptly remove all its plant, structures and equipment;

provided, however that in the event the City determines not to exercise its right to first refusal it shall not unreasonably refuse to renew or grant a cable television franchise during a reasonable interim period.

While transfer of the system and franchise is being negotiated, arranged or ordered, the grantee may be required to continue service to the public unless for reasons beyond the control of the grantee the operation will be economically unfeasible to the grantee.

(e) Restoration of Property. In removing its plant, structures and equipment, the grantee shall refill all excavation that is made by it and shall leave all public ways and places in as good condition as that prevailing prior to the company's removal of its equipment and appliances, without affecting the electric or telephone cables, wires or attachments. All cost associated with the removal and restoration shall be borne by the grantee. The City shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. Liability insurance and indemnity provided in Section 5.34.140 shall continue in full force and effect during the period of removal and shall be used by the City to guarantee the removal and restoration. The City shall draw upon the performance bond to pay the cost of any removal or restoration not completed by the grantee. (Ord. 82-2 (part), 1982)

5.34.060 Surrender Right. Grantee may surrender this franchise at any time upon filing with the City clerk a written notice of its intention to do so at least three months before the surrender date. On the surrender date specified in the notice, all of the rights and privileges of grantee shall terminate. All of the future obligations, duties and liabilities of grantee in connection with this franchise shall terminate. Nothing in this section is intended to release grantee from obligations and duties in effect prior to surrender, such as outstanding liabilities or liability claims, whether covered by insurance or not, or other obligations outstanding as of date of surrender. (Ord. 82-2(part), 1982)

5.34.070 Transfer.

(a) Consent Prior to Transfer of Franchise. Any franchise granted hereunder shall be a privilege to be held for the benefit of the public by the grantee. The franchise cannot in any event be sold, transferred, leased, assigned, or disposed of in whole or in part, either by forced or voluntary sale, without the prior consent of the City expressed by a Council resolution, and then only under such conditions as the Council may establish. Such consent shall not be required for a pledge or mortgage of the franchise as security for bona fide loans.

(b) Consent Prior to Change of Control. Prior approval of the City Council shall be required where ownership or control of more than five percent of the voting stock of grantee is acquired by a person or group of persons acting in concert, none of whom already owns or controls five percent or more of such right of control, singly or collectively. Transfer from a subsidiary to a parent corporation, or vice versa, shall not be considered as a change of control. Prior approval of the City Council shall also be required for all changes in ownership or control by a person or group of persons acting in concert, who already own or control five percent or more of such right of control, singly or collectively. (Ord. 82-2(part), 1982)

5.34.080 Bonds.

(a) Performance Bond. The grantee of any franchise granted hereunder, by its acceptance of the franchise, agrees that it will maintain throughout the term of the franchise or any renewal or extension thereof, or as required in Section 5.34.050(e) a faithful performance bond running to the City, with good and sufficient sureties or other financial guarantees approved by the City

clerk, in the penal sum total of thirty thousand dollars conditioned upon the faithful performance of the grantee, and upon the further condition that in the event the grantee fails to comply with any law, ordinance or regulation governing the franchise, there shall be recoverable jointly and severally from the principal and the surety of the bond, or from the other financial guarantees herein provided, a sum equal to:

- (1) Any damage or loss suffered by the City as the result of the grantee's failure to comply including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the grantee, plus a reasonable allowance for attorney fees and costs up to the full amount of the bond;
  - (2) Two hundred dollars per day as liquidated damages for each day that grantee fails to meet the construction deadlines as specified in Section 5.34.100(a), except for reasons enumerated in Section 5.34.100(a)(1) through (8) inclusive.
- (b) Upon completion of the construction of the initial system as provided for in Section 5.34.100, the foregoing performance bond may be reduced by the sum of twenty thousand dollars to guarantee the foregoing faithful performance of the grantee, in compliance with any law, ordinance or regulation governing the franchise, and to further guarantee the maintenance or removal of the system.
- (c) The performance bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be cancelled without the written concurrence of the City Council of the City of Denver, Iowa."
- (d) Evidence of annual renewal or payment on the bonds shall be filed with the City administrator on or before the expiration date of the bond.
- (e) The City reserves the right to the adjust the amount of the performance bond during the term of the franchise for good cause, including consideration for inflationary trends in the general economy. Action by the City Council to adjust the performance bond may be taken only after thirty days' notice of the proposed action is given to the grantee by certified mail. The grantee shall have the opportunity to respond to this proposal in writing or at a hearing before the Council. (Ord. 82-2(part), 1982)

5.34.090 Complaint Procedure. Grantee shall maintain a published telephone listing in the City for the purpose of receiving inquiries and complaints from its customers and the general public. Grantee shall investigate all complaints and shall in good faith attempt to resolve them swiftly and equitably. In the event that the company fails to act upon a complaint from a customer, or the problem cannot be resolved, the customer may file a written complaint to the City clerk who shall immediately forward a copy of the complaint to the cable company. If after ten working days the complaint/problem is not resolved, the City clerk shall hold a joint meeting with the customer and the cable company and determine a fair and equitable solution. The customer or the grantee may appeal this administrative decision to the City Council for final determination. The grantee shall give notice of the procedures for reporting and resolving complaints to each subscriber at the time of initial subscription to the cable system. (Ord. 82-2 (part), 1982)

5.34.100 Construction and Maintenance.

- (a) Immediately upon acceptance of the franchise, a grantee shall proceed with due diligence to obtain all necessary permits which are required to conduct its business. Within four months of the effective date of the franchise the grantee shall initiate construction and installation of the

cable television system. The system shall be completed and operational no later than December 31, 1982. The City Council may in its discretion extend the time for grantee, acting in good faith, to perform any act required hereunder. The time for performance shall be extended or excused, as the case may be, for any period during which grantee demonstrates to the satisfaction of the City Council that grantee is being subjected to delay or interruption due to any of the following circumstances if reasonably beyond its control:

- (1) Necessary utility rearrangements, pole change-outs or obtainment of easement rights;
- (2) Governmental or regulatory restrictions;
- (3) Labor strikes;
- (4) Lock outs;
- (5) War;
- (6) National emergencies;
- (7) Fire;
- (8) Acts of God.

(b) All 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, easements and other public ways and places and to cause minimum interference with the rights and reasonable convenience of the property owners; and grantee shall comply with all reasonable, proper and lawful ordinances of the City now or hereafter in force and the National Electrical Safety Code and the Code of the National Board of Fire Underwriters.

(c) Minimum interference with streets and alleys means when burying cable under existing hard surface streets (all P.C. concrete streets and those A.C. concrete streets with a two-inch or greater thickness), the grantee shall push the distribution cable under the hard surface streets, and not cut the street for the purpose of an open trench construction. In the case of any disturbance by the grantee of pavement, sidewalk, driveway or other artificial surfacing, the grantee shall at its own cost and expense in a manner approved by the City, replace and restore all paving, sidewalk, driveway or artificial surface so disturbed in as good condition as before the work was commenced.

(d) In the event that at any time during the period of this franchise the City shall lawfully elect to alter or change any location, street, alley, easement or other public way requiring the relocation of grantee's facilities, then in such event grantee, upon reasonable notice by the City, shall remove, relay and relocate the facilities at its own expense.

(e) Grantee shall, prior to commencement of construction, furnish the City a complete set of maps and plans of the cable television system.

(f) Prior to setting of any poles or cutting of any street or alley grantee shall notify the City, or such representative of the City as the City may designate in writing to grantee, and grantee shall locate poles or cut the streets or alleys only after obtaining the consent of the City or its authorized representative, such consent not to be unreasonably withheld.

(g) All excavations shall be coordinated with other utility excavations or construction so as to minimize disruption to the public.

(h) A grantee shall, at its expense, protect, support, temporarily disconnect, relocate in other public place, any property of the grantee when required by the City by reason of traffic conditions, public safety, street vacation, street construction, change or establishment of street grade, installation of sewers, drains, water pipes, City-owned power or signal lines, and tracts or any other type of structure or improvement by public agencies.

(i) Nothing in this chapter or any franchise granted hereunder, shall authorize the grantee to erect and maintain in the City, new poles, where existing poles are servicing the area. The grantee

shall require permission from the City before erecting any new poles, underground conduit or appurtenances where none exist at the time the grantee seeks to install its network. In areas where underground installation of wires is required, the cable company must place their wires underground. Also, where there are existing underground utility wiring, the cable company must run their wires in a similar and compatible fashion. The City shall have the option to require underground wiring of the cable system in areas where there are plans to relocate existing aboveground wires underground.

(j) Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its lines to permit the moving of the building. The expense of such removal shall be paid by the person requesting the same, and grantee shall have authority to require such payment in advance.

(k) Grantee shall have the authority to trim trees upon and overhanging all streets, alleys, easements, sidewalks and public places of the City so as to prevent the branches of such trees from coming into contact with grantee's facilities. Prior to trimming the trees, grantee will contact property owners immediately adjacent to the trees to be trimmed. The trimming will be as nearly as practicable in accordance with the adjacent property owner's wishes.

(l) All poles, lines, structures and other facilities of the grantee in, on, over and under the streets, sidewalks, alleys, easements and public grounds or places of the City shall be kept by grantee at all times in a safe and substantial condition.

(m) Emergency Removal of Plant. If, at any time, in case of fire or disaster in the City, it becomes necessary in the reasonable judgment of the City to cut or move any of the wires, cables, amplifiers, appliances or appurtenances thereto of the grantee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the grantee, at its sole expense; provided, that such repairs are not necessitated by negligent act of the City, in which case, cost for repairs shall be borne by the City.

(n) Alternate Routing of Plant. In the event continued use of a street is denied to the grantee by the City for any reason, the grantee will make every reasonable effort to provide service over alternate routes. (Ord. 82-2(part), 1982)

#### 5.34.110 Technical Standards.

(a) Grantee shall comply fully with the technical rules and standards for cable television operations as adopted by the Federal Communications Commission, 47 CFR Part 76, Subpart k.

(b) The cable system shall be capable of delivering all National Television Systems Committee color and monochrome standard signals (developed and presented to the FCC on July 21, 1953) to standard Electronic Industries Association approved television receivers without noticeable degradation.

(c) The cable system shall meet all performance criteria over the ambient temperature range prevailing in the franchise area from the normal daily minimum temperature in February to the normal daily maximum temperature in August.

(d) The installation and location of any satellite antenna (earth station) constructed by the grantee shall be licensed by the Federal Communication Commission. (Ord. 82-2 (part), 1982)

5.34.120 Emergency Use of the Facilities. The grantee shall incorporate into its cable television system the capacity which will permit the City, in times of emergency, to override, by remote control, the audio of all channels simultaneously. The grantee shall designate a channel which will be used for emergency broadcasts of both audio and video. The grantee shall cooperate with

the City in the use and operation of the emergency alert override system. The grantee shall be held harmless from any misuse of the emergency override by the City. (Ord. 82-2(part), 1982)

5.34.130 Charges for Services.

(a) Rates to be Reasonable. In consideration for services rendered to subscribers, the grantee shall have the right to charge and collect from subscribers fair and reasonable compensation calculated to offset all necessary costs for provision of the services, and including a fair rate of return on investment devoted thereto, under efficient and economical management.

(b) Initial Rates. The grantee shall provide services at the rate set forth in the subscriber rate schedule filed with the grantee's application for franchise, until twelve months have expired from the time the grantee was determined to have commenced operation.

(c) Rate Restrictions. The grantee shall not increase fees for services more than once in any calendar year.

(d)

(1) Rates Subject to Review. All charges imposed by the grantee upon its subscribers shall be subject to review and approval by the City Council in accordance with the procedure hereinafter set forth. The charges subject to Council approval shall include but not be limited to basic service charges, installation charges, connection and reconnection charges, deposits, advance payments, penalties, late payment charges and unusual connection charges.

(2) The grantee agrees by acceptance of the franchise to be subject to the authority of the City to fix reasonable compensatory rates.

(e)

(1) Rate Change Procedure. The grantee may initiate a change in subscriber rates and charges by filing written notification of the proposal to amend rates and charges with the City clerk, and by delivering written notice of the proposed change in rates and charges to each subscriber. The foregoing notice shall specifically set forth the current rate for each specific change in service, as well as the proposed new rate for each specific charge or service. The proposed rate change shall become automatically effective sixty days following delivery of the foregoing notice of proposed rate change, unless within the sixty-day period the City Council resolves to review the proposed rate and notifies the grantee in writing of its intent to review the same, in which event no change of rate shall be effective until approved by the Council.

(2) In the event the Council notifies the grantee of intent to review subscriber rates and charges, the grantee shall, within ten days, file with the City clerk documentation showing increased cost for providing services or other information supportive of grantee's proposed rate change. Council rate review shall be completed and written notice of the result of the review furnished to the grantee within sixty days of the grantee's providing the Council the above documentation.

(f) Rate Review Limitation. The City shall take no action in regulating rates that would deny the grantee's reasonable return on investment, as provided in subsection (a) of this section.

(g) Subscriber Refunds. If any subscriber of the grantee of less than thirty days, terminates service due to:

(1) Grantee's failure to render service to such subscriber of a type and quality provided for herein;

(2) If service to a subscriber is terminated by the grantee without good cause; or

(3) If the grantee ceases to operate the cable television system authorized herein for any reason except termination or expiration of a franchise granted hereunder; the grantee shall refund to such subscriber an amount equal to the monthly charge, installation and connection charge paid by such subscriber in accordance with the then-existing schedule of charges.

(h) Disconnection. There shall be no charge for disconnection of any installation or outlet. If any subscriber fails to pay a properly due monthly subscriber fee, or any other properly due fee or charge, the grantee may disconnect the subscriber's service outlet. Such disconnection shall not be effected until thirty days after the due date of the delinquent fee or charge, and until five days after adequate written notice of the intent to disconnect has been delivered to the subscriber in question. Upon payment of charges due and the payment of a reconnection charge, if any, the grantee shall promptly reinstate the subscriber's cable service after request by subscriber. (Ord. 82-2(part), 1982)

5.34.140 Indemnification and Insurance. Grantee shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever against the City resulting from negligence on the part of grantee in the construction, operation or maintenance of its cable television system in the City; and for this purpose, grantee shall carry property damage and personal injury insurance with insurance company or companies qualified to do business in the state. The amounts of insurance to be carried for liability due to property damage shall be five hundred thousand dollars as to any one occurrence and against liability due to injury or death of persons, five hundred thousand dollars as to any one person and one million dollars as to any one occurrence. The City shall be named an insured. The proof of the insurance shall be delivered to the City clerk in the form of copies of insurance premiums within thirty days of franchise approval. The City shall reserve the right during the term of the franchise to increase or decrease the amount of insurance coverage required, provided that notice in writing is made to the grantee of all increases or decreases in the insurance coverage requirements. The grantee shall within sixty days of receipt of that written notice obtain such insurance coverage as is specified in the notice. (Ord. 82-2(part), 1982)

5.34.150 Length of Franchise. The length of the cable television franchise for Denver, Iowa shall be twenty-five years. (Ord. 82-2(part), 1982)

5.34.160 Franchise Territory. The franchise is for present territorial limits of the City and for any area henceforth added thereto during the term of this franchise. (Ord. 82-2(part), 1982)

5.34.170 Regulatory Jurisdiction and Procedures.

(a) Continuing Regulatory Jurisdiction. The City shall have continuing regulatory jurisdiction and supervision over the operation of any franchise granted hereunder and may from time to time adopt such reasonable rules and regulations as they may deem necessary for the conduct of the business contemplated thereunder.

(b) Regulatory Procedures.

(1) The City Council shall consider any inquiry or proceedings requiring City Council action to be taken in regard to the cable television system or franchise, whether upon application or request by grantee or any other party or on its own motion. Any action by the City Council shall be taken only after thirty days' notice of the proposed action, inquiry or proceeding is published in the official newspaper having general circulation



and a copy of the notice is served upon the grantee. The grantee shall have an opportunity to respond at the hearing and/or in writing on the proposed action and appear at the proceeding or hearing, however, such hearing or proceeding shall be set no later than ninety days after notice to the grantee and the City Council shall act upon this proceeding within one hundred eighty days of the notice of hearing unless such time is extended by agreement between the City and the grantee. The decision of the City Council shall become a final determination.

(2) The public notice required by this section shall state clearly the action or proposed action to be taken, the time provided for response, including response by the public, the person or persons in authority to whom such responses shall be addressed and such other procedures as may be specified by the City Council. If a hearing is to be held, the public notice shall give the date, location and time of such hearing. The grantee is a necessary party to any hearing conducted in regard to its operation.

(c) Failure to Enforce Provisions. The grantee shall not to be excused from complying with any of the terms and conditions of the franchise by any failure to the City upon one or more occasions to insist upon or seek compliance with any such terms or conditions.

(d) Contravention of Provisions. The cost of any successful litigation incurred by the City to enforce provisions of this chapter or of the franchise ordinance, or in relation to a franchise shall be reimbursed to the City by the grantee. Such costs shall include filing fees, costs of depositions, discovery, and expert witnesses, and all other expenses of suit, and a reasonable attorney's fee.

(e) Tri-annual Franchise Review.

(1) On or about the 3rd, 6th, 9th, 12th, 15th, 18th, and 21st anniversaries of the effective date of the franchise, the City may schedule a public meeting or meetings with the grantee to review the franchise performance, plans and prospects. The City may require the grantee to make available specified records, documents and information for this purpose, and may inquire in particular whether the grantee is supplying a level and variety of services equivalent to those being generally offered at that time in the industry in comparable market situations.

(2) The City shall first confer with the grantee regarding modifications in the franchise which might impose additional obligations on the grantee, and the grantee may in turn seek to negotiate relaxations in any requirements previously imposed on it which are subsequently shown to be impractical.

(3) Within thirty days of the conclusion of such negotiations, the City may direct the grantee to show cause why specified terms and conditions should not be incorporated into the franchise and the grantee may similarly file with the City a written request that specified obligations of its franchise be removed or relaxed. Implementation of such requests shall correspond as nearly as possible with the procedures set forth herein. The City Council shall make changes in the franchised rights and obligations of the grantee only if it finds from all available evidence that such changes will not impair the economic viability of the system or degrade the attractiveness of the system's service to present and potential subscribers.

(f) Review of Franchise Prior to Expiration.

(1) Public Meeting to be Scheduled. At least six months prior to the expiration of the franchise, the City shall schedule a public meeting or meetings with the grantee to review the performance of the grantee, including the results of the previous franchise reviews.

The City may require the grantee to make available specified records, documents

and information for this purpose, and may require in particular whether the grantee is supplying a level and variety of services equivalent to those being generally offered at that time in the industry in comparable market situations.

(2) Determination on Reissue. The City shall, within thirty days of the conclusion of such meetings, provide a determination as to whether a cable television system franchise or franchises will be reissued. In making the decision the City shall consider the technical, financial, and programming performance of the franchise holder and specifically with relation to any and all applications, promises or agreements made or entered into by the franchise holder and its performance of the applications, promises and agreements. In the event the City determines not to reissue the franchise or franchises for reasons other than a material breach of the franchise or for causes unrelated to the performance thereunder, it shall be so stated for purposes of Section 5.34.040(C). The City shall establish public proceedings leading to a final decision and such public proceedings shall include but not be limited to a public hearing providing opportunity for the public and applicant(s) for the franchise to appear. (Ord. 82-2(part), 1982)

5.34.180 Reports and Records of the Grantee.

(a) Grantee shall keep complete records of accounts in accordance with good accounting practice and shall file with the City clerk an annual audit report by a certified public accountant within sixty days after the end of the grantee's fiscal year. The records and financial accounting shall be done solely on the Denver Cable Television operation and not commingled with other operations of the grantee.

(b) Such documents and reports as required under this chapter must be available to the public in the office of the City clerk, during normal business hours. Subscribers shall be notified of the availability of such reports.

(c) The City reserves the right during the life of any franchise granted hereunder to have access during all normal business hours and upon giving of reasonable notice, to the grantee's contracts, engineering plans, accounting, financial data, and service records relating to the property and the operations of the grantee and to all other records required to be kept hereunder. These records shall be made available to the City at the local office of the grantee. Nothing contained herein shall prevent the grantee from enjoining the City from reviewing documents relating to its operation under interests not related to its operation under this chapter in the City's regulatory program. (Ord. 82-2(part), 1982)

5.34.190 Receiver Sales and Services Prohibited. Grantee shall not engage in the business of selling, repairing, leasing or installing television receivers, radio receivers or accessories for such receivers during the term of the franchise. (Ord. 82-2(part), 1982)

5.34.200 Franchise Fee. The Grantee herein shall pay to the City for the use of the streets and other facilities of the City in the operation of the cable television system and for the municipal supervision thereof during the life of the franchise a sum equal to three percent of the annual gross revenues of the grantee. Such annual sum shall be payable in half thereof at the end of each semiannual period. The semiannual anniversary shall be the last day of June and the last day of December of each year and each semiannual payment shall be paid within thirty days thereafter. In the event that payment is not made as required, interest on the amount due, shall accrue from the date of the required submittal at an annual rate of fifteen percent. This payment is required in addition to any other payment in lieu of municipal property tax or other state, county or local

taxes. This franchise fee shall not be interpreted as a "franchise tax" nor charged to the cable customers as an additional charge to the basic service charge as stated in the application. (Ord. 82-2(part), 1982)

5.34.210 Keyed Lock-Out System. The grantee shall make available, to all first run movies (close circuit) subscribers keyed lock-out devices which allow the subscriber to control access to first run movies upon his property, in his domicile, or in his place of business. Upon request of the subscriber these devices shall be installed free of charge and in a convenient location by the grantee. (Ord. 82-2 (part), 1982)

5.34.220 Local Public Access.

(a) It shall be the policy of the City Council to encourage and promote maximum and meaningful local information on any cable television system established under the terms of this chapter so as to enhance the dissemination of public information and increase public information in the City.

(b) The grantee shall provide and make arrangements for appropriate space for a location within the City that can be used as a point of access to the cable television system for local information and public access purposes. The location shall have the necessary equipment available to provide written communication to all subscribers of public information pertinent to the citizens of the City.

(c) Education and Governmental Connection to Cable Television System. The grantee shall provide upon request within the City one connection and monthly service for basic service to each public school building, public library and City hall. Additional installation shall be without charge. Rates for monthly service to residential or living units within such entities may be negotiated with the entity. The City reserves the right for itself and the above entities at their individual expense, to extend service to as many areas within such schools, buildings and agencies as deemed desirable without payment of any additional installation fee or monthly fee to the grantee. All such extensions, however, shall be accomplished in such a way as not to interfere with the operation of the cable television system. The public facilities shall not resell the grantees product or service. (Ord. 82-2(part), 1982)

5.34.230 Unlawful Acts.

(a) It shall be unlawful for any person to make any unauthorized connection, whether physical, electrically, acoustically, inductively or otherwise, with any part of the grantee's cable system without payment to the grantee or its lessee.

(b) It shall be unlawful for any person without consent of the owner to willfully tamper with, remove or injure any cable, wires or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over the grantee's cable system.

(c) It shall be a misdemeanor punishable by fine of not more than one hundred dollars or by imprisonment for a term not to exceed thirty days or both, for any person who violates any of the provisions of this section.

(d) The grantee shall maintain equipment and audit systems to monitor for and detect such unlawful acts. It shall be the grantee's responsibility to gather evidence of violations of the provisions of this section. (Ord. 82-2 (part), 1982)

5.34.240 Grantee to Have No Recourse. Except as expressly provided in this franchise, the grantee shall have no recourse whatsoever against the City for any loss, cost or expense of

damage arising out of any of the provisions or requirements of this franchise or because of the enforcement thereof by the City, nor for the failure of the City to have the authority to grant all or any part of this franchise. The grantee expressly acknowledges that upon accepting this franchise it did so relying upon its own investigation and understanding of the power and authority of the City to grant this franchise. The grantee by acceptance of the franchise acknowledges that it has not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the City or by any other third person concerning any term or condition of this franchise not expressed herein. The grantee further acknowledges by the acceptance of this franchise that it has carefully read the terms and conditions and agrees that, in the event of any ambiguity therein or in the event of any other dispute over the meaning thereof, the same shall be construed strictly against the grantee and in favor of the City. (Ord. 82-2(part), 1982)

5.34.250 Failure of the City to Enforce This Franchise. The grantee shall not be excused from complying with any of the terms or conditions of this franchise by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions. (Ord. 82-2(part), 1982)

5.34.260 Time Essence of This Franchise. Whenever this franchise shall set forth any time for any action to be performed by or on behalf of the grantee, such time shall be deemed of the essence, and any failure of the grantee to perform within the time allotted shall always be sufficient grounds for the City to revoke this franchise. (Ord. 82-2 (part), 1982)

5.34.270 Grantee Will Not Contest Validity of Franchise. The grantee agrees by the acceptance of this franchise that it will not at any time set up against the City in any claim or proceeding any condition or term of this franchise as unreasonable, arbitrary or void or that the City had not power or authority to make such term or condition, but shall be required to accept the validity of terms and conditions of this franchise in their entirety. (Ord. 82-2(part), 1982)

5.34.280 Grantee's Application Incorporated. The grantee shall provide all service specifically set forth in its application to provide cable television service within the City, and by its acceptance of the franchise the grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the franchise and this chapter. In the event of a conflict between such proposals and the provisions of this chapter, that provision which provides the greatest benefit to the City, in the opinion of the City Council, shall prevail. Failure to provide services as promised in grantee's application as incorporated herein shall be deemed a material breach of this chapter to which the provisions of Sections 5.34.050 and 5.34.080 shall apply. (Ord. 82-2(part), 1982)

5.34.290 Acceptance. The foregoing franchise, rights and privileges are conditioned upon the grantee accepting and promising to abide by the provisions contained herein. Such acceptance and promise shall consist of a written agreement, duly executed and acknowledged by or on behalf of the grantee, entered into with the City, on terms in substantial uniformity with those contained herein, and filed with the clerk of the City within twenty days after passage. The Mayor is authorized to execute the agreement on behalf of the City. (Ord. 82-2(part), 1982)

## Chapter 5.38

## NATURAL GAS FRANCHISE

AN ORDINANCE GRANTING TO MIDAMERICAN ENERGY COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND NON-EXCLUSIVE FRANCHISE TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE IN THE CITY OF DENVER, IOWA, A NATURAL GAS SYSTEM AND TO FURNISH AND SELL NATURAL GAS TO THE CITY AND ITS INHABITANTS AND AUTHORIZING THE CITY TO COLLECT FRANCHISE FEES FOR A PERIOD OF 25 YEARS.

BE IT ENACTED by the City Council of the City of Denver, Iowa:

Section 1. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, (hereinafter called “Company,”) and to its successors and assigns the non-exclusive right and franchise to acquire, construct, erect, maintain and operate in the City of Denver, 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-five (25) year period from and after the effective date of this ordinance; provided, however, that either the City or the Company may, during the first ninety (90) days following the fifteenth (15<sup>th</sup>) anniversary of the effective date of the franchise, provide written notice to the other party of its desire to amend the franchise. The parties shall negotiate these amendments in good faith for a period of up to ninety (90) days following receipt of notice. If, at the conclusion of the negotiation period, the City determines that the franchise, if continued without amendment, will have a material or significant adverse impact on the City or the Company’s gas customers located within the corporate limits of the City, the City may terminate the franchise.

Section 2. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the Code of Iowa 2017, or as subsequently amended or changed.

Section 3. 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.

Section 4. The Company shall, excluding facilities located in private easements (whether titled in Company exclusively or in Company and other entities), in accordance with Iowa law including Company’s tariff on file with and made effective by the Iowa Utilities Board as may subsequently be amended (“Tariff,”) at its cost and expense, locate and relocate its existing facilities or equipment in, on, over or under any public street or alley in the City in such a manner as the City may reasonably require for the purposes of facilitating the construction reconstruction, maintenance or repair of the street or alley. Relocation expenses for other hard

surfaces, including pedestrian and non-motorized vehicle pathways, will be paid by the City. If the City has a reasonable alternative route for the street, alley or public improvements or an alternative construction method, which would not cause the relocation of the Company installations, the City shall select said alternative route, or construction method. The City shall be responsible for surveying and staking the right-of-way for City projects that require the Company to relocate Company facilities. If requested the City shall provide, at no cost to the Company, copies of its relocation plan and profile and cross section drawings. If tree and vegetation removal must be completed by the City as part of the City's project and are necessary whether or not utility facilities must be relocated, the City at its own cost shall be responsible for said removals. If the timing of the tree/vegetation removal does not coincide with the Company facilities relocation schedule and Company must remove trees/vegetation that are included in the City's portion of the project, the City shall either remove the material at its cost or reimburse the Company for the expenses incurred to remove said vegetation or trees. If project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall attempt to secure said funds and provide them to the Company to compensate the Company for the costs of relocation.

Section 5. In making excavations in any streets, avenues, alleys and public places for the installation of gas pipes, conduits or apparatus, Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring it to the condition as existed immediately prior to excavation. Company agrees any replacement of road surface shall conform to current City code regarding its depth and composition. The Company shall not be required to restore or modify public right of way, sidewalks or other areas in or adjacent to the Company project to a condition superior to its immediate previously existing condition or to a condition exceeding its previously existing condition to the extent any alterations are required for the City to comply with city, state or federal rules, regulations or laws.

Section 6. The City's vacating a street, avenue, alley, public ground or public right-of-way shall not deprive the Company of its right to operate and maintain existing facilities on, below, above, or beneath the vacated property. Prior to the City abandoning or vacating any street, avenue, alley or public ground where the Company has facilities in the vicinity, the City shall provide Company with not less than sixty (60) days advance notice of the city's proposed action and, upon request grant the Company a utility easement covering existing and future facilities and activities. If the City fails to grant the Company a utility easement for said facilities prior to abandoning or vacating a street, avenue, alley or public ground, the City shall at its cost and expense obtain easements for the existing Company facilities.

Section 7. The Company shall not be required to relocate, at its cost and expense, Company facilities in the public right of way that have been relocated at Company expense at the direction of the City at any time during the previous ten (10) years.

Section 8. Pursuant to relocation of Company facilities as may be required here under, if the City orders or requests the Company to relocate its existing facilities or equipment in order to directly or indirectly facilitate the project of a commercial or private developer or other non-public entity, City shall reimburse or the City shall require the developer or non-public entity to reimburse the Company for the cost of such relocation as a precondition to relocation. The Company shall not be required to relocate in order to facilitate such private project at its expense.

Section 9. The Company shall indemnify and save harmless the City from any and all claims, suits, losses, damages, costs or expenses, on account of injury or damage to any person or property, to the extent caused or occasioned by the Company's negligence in construction, reconstruction, excavation, operation or maintenance of the natural gas facilities authorized by this franchise; provided, however, that the Company shall not be obligated to defend, indemnify and save harmless the City for any costs or damages to the extent arising from the negligence of the City, its officers, employees or agents.

Section 10. Upon reasonable request, the Company shall provide the City, on a project specific basis, information indicating the horizontal location, relative to boundaries of the right of way, of all equipment which it owns or over which it has control that is located in the public right of way, including documents, maps and other information in paper or electronic or other forms ("Information"). The Company and City recognize the Information may in whole or part be considered a confidential record under state or federal law or both. Upon receipt of a request from a third party for information concerning information about the Company's facilities within the City, the City will promptly submit same to Company. If the Company believes any of the information requested constitutes a trade secret which may otherwise be protected from public disclosure by state or federal law, or otherwise exempt from disclosure under the provisions of the Freedom of Information Act, the Federal Energy Regulatory Commission Critical Energy Infrastructure requirements pursuant to 18 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.

Section 11. 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.

Section 12. During the term of this franchise, the Company shall furnish natural gas in the quantity and quality consistent and in accordance with the applicable regulations of the Iowa Utilities Board the Company's tariff made effective by the Iowa Utilities Board or its successors and Iowa law.

Section 13. Annually, the Company shall provide a roster of employees who can be contacted by the City for natural gas service issues covered in the franchise.

Section 14. A franchise fee of 1 percent is imposed upon, but deferred, and shall be collected from, the natural gas customers of the Company receiving service and located within the corporate limits of the City. The franchise fee shall be imposed upon the gross receipts, minus uncollectible accounts, generated from sales of natural gas and distribution service:

- A. The City agrees to modify the level of franchise fees imposed only once in any 12-month period.
- B. The Company will commence collecting franchise fees on or before the first Company billing cycle of the first calendar month following ninety (90) days of receipt of information required of the City to implement the franchise fee, including

the City's documentation of customer classes subject to or exempted from City-imposed franchise fee.

- C. The City shall be solely responsible for identifying customer classes subject to or exempt from paying the City imposed franchise fee. The Company shall have no obligation to collect franchise fees from customers in annexed areas until and unless such ordinances have been provided to the Company by certified mail. The Company shall commence collecting franchise fees in the annexed areas no sooner than sixty (60) days after receiving annexation ordinances from the City.
- D. 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.

Section 15. Upon implementation of a franchise fee the City shall not, pursuant to Chapter 480A.6 of the Code of Iowa, impose or charge Company right of way management fees for permits for Company construction, maintenance, repairs, excavation, pavement cutting or inspections of Company work sites and projects or related matters.

Section 16. Either City or Company ("party") may terminate this franchise if the other party shall be materially in breach of its provisions. Upon the occurrence of a material breach, the non-breaching party shall provide the breaching party with notification by certified mail specifying the alleged breach. The breaching party shall have sixty (60) days to cure the breach, unless it notifies the non-breaching party, and the parties agree upon a shorter or longer period for cure. If the breach is not cured within the cure period, the non-breaching party may terminate this franchise. A party shall not be considered to be in breach of this franchise if it has operated in compliance with state or federal law. A party shall not be considered to have breached this franchise if the alleged breach is the result of the actions of a third party or the other party.

Section 17. If any section, provision, or part of this ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

Section 18. This ordinance and the rights and privileges herein granted shall become effective and binding upon its approval and passage in accordance with Iowa law and the written acceptance by the Company. The City shall provide Company with an original signed and sealed copy of this ordinance within ten (10) days of its final passage. The Company shall, within thirty (30) days after the City Council approval of this ordinance, file in the office of the clerk of the City, its acceptance in writing of all the terms and provisions of this ordinance. Following City Council approval, this ordinance shall be published in accordance with the Code of Iowa. The effective date of this ordinance shall be the date of publication. In the event that the Company does not file its written acceptance of this ordinance within thirty (30) days after its approval by the City Council this ordinance shall be void and of no effect.



Section 19. Upon the effective date of this ordinance, all prior natural gas franchises granted to the Company to furnish natural gas to the City and its inhabitants are hereby repealed and all other ordinances or parts of ordinances in conflict herewith are also hereby repealed.

PASSED AND APPROVED this 18<sup>th</sup> day of April 2017.

(Ord. 1-17, 2017)

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The next page number is 133.