

CHAPTER 115

UTILITY FRANCHISES

115.01 Utility Defined	115.11 Relocation of Facilities
115.02 Franchise Required	115.12 Facility Maintenance
115.03 Election	115.13 Service to Public Building
115.04 Duration	115.14 Non-Transferability
115.05 Purpose and Amendment	115.15 Hold Harmless From Damages
115.06 Compensation	115.16 Provisions Severable
115.07 Franchise Not Exclusive	115.17 Indemnification
115.08 Compliance with Franchise Terms	115.18 Insurance
115.09 Privileged Use of Utility Facilities	115.19 Other Terms and Conditions
115.10 Location of Facilities	115.20 Operating Without a Franchise

115.01 UTILITY DEFINED. “Utility,” as used in this chapter, refers to every utility which shall erect, maintain and operate plants and systems for electric light and power, heating, telephone, telegraph, cable television, district telegraph and alarm, motor bus, trolley bus, street railway or other public transit or gasworks, within the City.

115.02 FRANCHISE REQUIRED. An ordinance granting unto said utility, its successors and assigns, the right, franchise and privilege to erect, operate and maintain in the City the necessary facilities for the production, distribution, transmission and sale of said utilities services for public and private use, and to use and occupy the public streets, highways, avenues, alleys, bridges and public places, is required of each Utility using City property.

115.03 ELECTION. The franchise ordinance shall be adopted pursuant to the provisions of Section 364.4 of the Code of Iowa, including the requirement of an election, and the requirement that the costs incurred in holding the election, including the costs of the notice, shall be paid by the person asking for the granting, amending, extension or renewal of a franchise.

115.04 DURATION. Each franchise granted shall be for a term of not more than five years or shall include a section explaining the reason a longer term is being granted. In accordance with Section 364.2(4) of the Code of Iowa, no franchise shall be granted for a term of more than twenty-five (25) years.

115.05 PURPOSE AND AMENDMENT. The franchise ordinance shall specify that all facilities which are not necessary for the purposes stated in the franchise are not authorized by the franchise and will require amendment as a significant alteration. Significant alterations requiring amendment include, but are not limited to:

1. Installation in, and use of, facilities for communications unless exclusively for Utility maintenance and safety functions or for City purposes.
2. Utility use of facilities for the transmission of energy not owned by the Utility shall require an amendment only to the extent the compensation provisions to the City impair the measure of consideration originally agreed to be paid by the Utility for the valuable use of the public ways.

115.06 COMPENSATION. In consideration of the right to erect and maintain such facilities and equipment along, upon, across and under the streets, highways, avenues, alleys, bridges and public places of the City, the franchise ordinance shall impose on the Utility and, by its acceptance of the franchise, during the terms of the franchise it shall be the Utility's obligation to pay to the City a franchise fee from funds collected from its customers, in an amount equal to an agreed upon percentage of the gross receipts derived by the Utility from the sale of services to customers within the corporate City limits of the City, excluding the sale of services to the City. Any franchise ordinance which provides for compensation other than payment of a franchise fee, such as use of Utility facilities, shall state the reasons for not requiring a franchise fee. The franchise ordinance should also address any other fees, charges and rents which may be charged to the Utility in addition to the franchise fee.

115.07 FRANCHISE NOT EXCLUSIVE. The franchise ordinance shall specify that pursuant to Section 364.2(4) of the Code of Iowa, the franchise shall not be exclusive and shall not restrict in any manner the right of the City in the exercise of any regulatory power which it may now have, or hereafter be authorized or permitted, by the laws of the State of Iowa.

115.08 COMPLIANCE WITH FRANCHISE TERMS. The franchise ordinance shall require the Utility to at all times during the term of the franchise to comply with, submit to and carry out any and all valid ordinances relating to any person now in force or that hereafter may be lawfully enacted and not inconsistent herewith. In the event of a breach of franchise terms by the Utility, the City may seek relief, including voidance of the franchise, injunctive relief and damages. Any Utility operating or seeking to operate on City property without a valid franchise shall be subject to individual permits and fees for all activities on City property.

115.09 PRIVILEGED USE OF UTILITY FACILITIES. In order to avoid unnecessary duplication of facilities as well as to efficiently use the space provided in the public ways, the franchise ordinance shall require the Utility to cooperate with the City in the installation of City cable or equipment necessary

to the efficient performance of City operations. The City shall bear the reasonable cost of installation which shall be customarily performed by City personnel (or City agents) upon due notice to the Utility.

115.10 LOCATION OF FACILITIES. The franchise ordinance shall specify the standards for erecting or otherwise installing poles, cable and other facilities, including restoration of City property, and payment by the Utility of any expense incurred by the City by reason of neglect of the Utility to do such work.

115.11 RELOCATION OF FACILITIES. The franchise ordinance shall specify the requirements for relocation of existing facilities, including the circumstances requiring placement of existing above-ground systems in underground locations.

115.12 FACILITY MAINTENANCE. The franchise ordinance shall specify the authority of the Utility to trim trees and otherwise prevent contact of objects with the wires and cables of the Utility, in a manner approved by and acceptable to the City.

115.13 SERVICE TO PUBLIC BUILDING. The franchise ordinance shall specify any special conditions and requirements for providing service to City facilities.

115.14 NONTRANSFERABILITY. The franchise ordinance shall specify the conditions, if any, allowing the Utility to transfer the franchise to another utility or a merged utility. Consideration should be given to the need for a new election and any changes in terms and conditions of the franchise. The franchise ordinance may prohibit the transfer of the franchise.

115.15 HOLD HARMLESS FROM DAMAGES. The franchise ordinance shall specify that the Utility shall hold the City free and harmless from all damages or claims for damage of any kind whatsoever caused by the negligent construction or maintenance of its lines and shall be liable for injuries to public or private property of every kind.

115.16 PROVISIONS SEVERABLE. The franchise ordinance shall provide for severability of the provisions if some provisions are declared void.

115.17 INDEMNIFICATION. The franchise ordinance shall provide that the Utility shall indemnify, defend and hold the City, its officers, agents and employees harmless from any liability, claims, damages, judgments, costs or expenses, including reasonable attorney's fees caused by any conduct

undertaken by the Utility, its officers, agents or employees, pursuant to or by reason of the franchise.

115.18 INSURANCE. The franchise ordinance shall require proof of insurance by the Utility, including worker’s compensation insurance, comprehensive general liability insurance, and business auto insurance, within a specified period after the effective date of the franchise, and prior to any operations under the franchise.

115.19 OTHER TERMS AND CONDITIONS. The franchise ordinance may include other terms and conditions agreed to by the City and the Utility which are not specified in this chapter.

115.20 OPERATING WITHOUT A FRANCHISE. A Utility operating within the City without a valid franchise agreement with the City shall be subject to other fees, charges and rents for its activities within the City, as established by the Council.

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