

CHAPTER 52
CITY OF MAPLE LAKE

ORDINANCE ESTABLISHING FRANCHISE FOR NATURAL GAS

52.00 AN ORDINANCE GRANTING UNTO MIDWEST GAS, A DIVISION OF IOWA PUBLIC SERVICE COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, FRANCHISE, AND AUTHORITY TO ERECT, MAINTAIN AND OPERATE GAS PLANTS, TRANSMISSION AND DISTRIBUTION SYSTEMS AND TO FURNISH GAS SERVICE FOR PUBLIC AND PRIVATE USE WITHIN THE CITY OF MAPLE LAKE, MINNESOTA, (HEREIN "THE CITY") FOR A TERM OF TWENTY FIVE (25) YEARS, AND TO ESTABLISH THE CONDITIONS REQUIRED AND MANNER OF USE OF STREETS AND PUBLIC GROUNDS OF THE CITY IN WHICH SAID GAS WORKS MAY BE LOCATED, AND TO PROVIDE FOR NOTICE OF DAMAGED PIPELINES, AND TO CONFER THE POWER OF CONDEMNATION OF PRIVATE PROPERTY, AND PROVIDING FOR THE REPEAL OF THE PREVIOUS ORDINANCE.

52.01 **NON-EXCLUSIVE FRANCHISE**

A non-exclusive franchise is hereby granted unto Midwest Gas, a Division of Iowa Public Service Company, a corporation, its successors and assigns, (hereinafter "grantee"), for a term of twenty five (25) years commencing with the date this ordinance becomes effective, to acquire, erect, maintain and operate a gas plant or plants, gas transmission, storage, and distribution systems and related equipment and appurtenances, used or to be used in the production, storage, transmission or distribution of natural gas, manufactured gas, liquefied petroleum gas, or other hydrocarbon gases, or any mixture of gases, (herein "gas utilities") within the present and subsequent corporate limits of The city, and grantee is hereby granted the right, franchise and authority to construct, install and maintain such Gas Utilities over, across and under the streets, alleys, and public grounds of the city, and any private lands therein, and to furnish, supply, and distribute gas to the city and its inhabitants and others within and without the corporate limits for any and all lawful purposes, including public and private use, and upon such terms, conditions, restrictions and regulations as are adopted in the ordinance.

52.02 **REPLACEMENT AND RESTORATION**

If grantee, in the installation, erection, maintenance or operation of its gas utilities, shall cut into or take up any pavement or sidewalk or make any excavation in any street, alley, or public grounds within the corporate limits of the city, and same shall be done as near as may be in a manner resulting in minimum interference with the public use of such street, alley, or public grounds. Upon completion of such work, grantee shall replace any pavement or sidewalk removed and shall restore the premises to as good condition as at commencement of the work.

52.03 **SUCCESSORS AND ASSIGNS**

This ordinance shall apply to grantee, and its successors and assigns. Grantee shall be subject to all legal right, power and authority now or hereafter possessed by the city, to control and direct by ordinance or resolution the franchise herein granted and the manner in which the grantee shall use and enjoy it.

52.04 **PRIVATE PROPERTY ACQUISITION**

If grantee reasonably believes that it is necessary to acquire private property for the purpose of providing gas service to the extent necessary to serve a public use and bearing a reasonable relationship to an overall plan of transmitting or distributing gas service, grantee shall first attempt to acquire the private property through private means. If grantee's efforts are unsuccessful, grantee may petition the city council to exercise the city's power of eminent domain and condemnation. If the city council decides to exercise said power, all costs, expenses, and fees including reasonable attorney's fees incurred by the city in the acquisition of the property requested by grantee shall be borne by the grantee.

52.05 **CITY IMPROVEMENTS**

If the city shall propose to improve or make a public improvement in any street, alley, or public way, (herein "public improvement") in a manner that may conflict with existing gas utilities, the contractor awarded the public improvement contract shall ascertain the exact number, location and depth of gas utilities and at all times protect gas utilities from damage during the performance of the contract. The grantee shall, upon resolution of the city council, temporarily relay or relocate gas utilities that are deemed in conflict with the public improvement, at its own expense, at a time that will not cause unreasonable inconvenience to the grantee or its customers.

52.06 **DAMAGES**

If any party shall damage any part of the gas utilities, or shall cause any weakening of the structural or lateral support thereof, such party shall immediately notify grantee of the location, time of the occurrence, and nature of the damage. If the damage causes or contributes to uncontrolled venting of gas, such party shall give warnings and use safeguards as may be necessary to prevent injury to persons and property in the vicinity of such venting gas, including evacuation of buildings, shall immediately notify the city as well as grantee, and shall maintain reasonable warnings and safeguards until all damage has been repaired.

52.07 **DEFENSE**

Grantee shall defend at its own expense, in the name and on behalf of the city, and shall indemnify and save harmless the city, from any and all claims, suits, losses, damages, costs or expenses, whether caused or contributed to by the negligence of the grantee, or the city, on account of injury to persons or damage to any property, caused or occasioned in whole or in part by reason of or arising out of the construction, operation or maintenance of gas utilities, except the grantee shall not be obligated to defend, indemnify and save harmless the city for any costs, injuries to persons or damage to property, arising from the sole negligence of the city.

52.08 **FRANCHISE FEE**

The grantee may be required to pay to the city, in a manner and at a rate prescribed by separate ordinance, a franchise fee not to exceed 5 percent of the grantee's gross revenue from the sale of gas within the municipality. Such ordinance may be adopted, amended, repealed, or readopted at any time during the term of this franchise. The fee, if required, shall be effective 30 days after the effective date of the ordinance prescribing said fee.

52.09 **SALE, ASSIGNMENT, LEASE**

No sale, assignment, or lease of this franchise shall be effective until the city council of the City of Maple Lake shall have approved the same, and until the vendee, assignee, or lessee shall have filed in the office of the city clerk an instrument duly executed reciting the fact of such sale, assignment, or lease, accepting the terms of the franchise, and agreeing to perform all the conditions thereof.

52.10 **VIOLATIONS**

The violation by the Grantee, its vendee, assigns, lessee, or successor, of any of the provisions of this franchise, or any material portions thereof, or the failure promptly to perform any of the provisions thereof, or to pay fees, taxes, costs, or disbursements required under this or any other ordinance or law, after reasonable notice to the company and continuation of such violation, failure or default, shall be cause for the forfeiture of the franchise and all rights hereunder. Termination shall only be effective after at least 10 days written notice to the company and a public hearing on the termination. Notice of the public hearing shall be published no later than 10 days prior to the hearing, and shall be posted at city hall. If, at the conclusion of the hearing, the city decides to terminate the franchise, the city shall appropriately amend this ordinance and publish the same. Termination shall be effective upon the first date of publication of the amended ordinance.

52.11 **RELOCATION**

The company shall promptly, with due regard for seasonal working conditions, permanently relocate its facilities or equipment whenever the municipality orders such relocation. The vacation of any public ground shall not operate to deprive the company of their right to operate and maintain its facilities therein; provided, however, when the vacation is for the benefit of the city in the furtherance of a public purpose, the company shall relocate its facilities at its own expense. The city shall have no liability for failure to reserve any easements.

52.12 **CIVIL RELIEF**

The city shall have the power and authority to seek and obtain civil relief through the judicial system, including but not limited to injunctive relief, to enforce and facilitate the provisions of this ordinance.

52.13 **PREVIOUS ORDINANCE**

The previous ordinance is hereby repealed, such repeal to be effective as of the effective date of this ordinance.

52.14 **ORDINANCE EFFECTIVE DATE**

This ordinance shall take effect and be in full force and effect from and after its passage and approval by the city and thirty (30) days after its final publication as provided by law; provided, that the grantee, within thirty (30) days from the date of said approval granting said franchise, shall file with the city clerk its written acceptance thereof. The grantee shall bear the costs of publication of this ordinance.

52.15 **RATES**

In the event that the Minnesota Public Utilities Commission or other administrative agency of the State of Minnesota as successors to the Minnesota Public Utilities Commission ceases to regulate the rates, conditions of operation and gas service of the grantee; and jurisdiction of such regulation becomes vested in the city, nothing contained in this ordinance shall limit or restrict the city from imposing further regulations or ordinances regulating the grantee's rates, conditions of operation, and gas service, provided however, that the rates to be charged by the grantee hereunder are to be reasonable and shall at all times be such as will provide the opportunity to earn a just and reasonable return from its property used and useful in furnishing gas service to the city.

Passed and adopted by the city council of the City of Maple Lake, Minnesota this 21st day of August, AD. 1989