

FRIDLEY CITY CODE
CHAPTER 408. ELECTRIC FRANCHISES
(Ref. Ord. 1125)

408.01. DEFINITIONS.

The following terms shall mean:

1. City. The City of Fridley, County of Anoka, State of Minnesota.
2. City Utility System. Facilities used for providing non-energy related public utility service owned or operated by city or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.
3. Commission. The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government which preempts all or part of the authority to regulate electric retail rates now vested in the Minnesota Public Utilities Commission.
4. Company. Northern states Power Company, a Minnesota corporation, its successors and assigns.
5. Electric Facilities. Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public use.
6. Non-Betterment Costs. Costs incurred by Company from relocation, removal or rearrangement of Electric Facilities that do not result in an improvement to the Electric Facilities.
7. Notice. A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to the General Counsel, Law Department, 414 Nicollet Mall, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Clerk, 6431 University Avenue N.E., Fridley, MN 55432-4383. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.
8. Public Ground. Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.
9. Public Way. Any street, alley, walkway or other public right-of-way within the City.

408.02. ADOPTION OF FRANCHISE.

1. Grant of Franchise. City hereby grants Company, for a period of 20years, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate repair and maintain Electric Facilities in, on, over, under and across the Public Ways and Public Grounds of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this franchise agreement.

2. Effective Date; Written Acceptance. This franchise shall be in force and effect from and after its passage and its acceptance by Company, and its publication as required by law. An acceptance by Company must be filed with the City Clerk within 90 days after publication.

3. Service, Rates and Area. The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.40.

4. Publication Expense. The expense of publication of this Ordinance shall be paid b Company.

5. Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

408.03. LOCATION, OTHER REGULATIONS.

1. Location of Facilities. Electric Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Electric Facilities may be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Electric Facilities shall be subject to other reasonable regulations of the city to the extent not inconsistent with the terms of this franchise agreement.

2. **Field Locations.** Company shall provide field locations for its underground Electric Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.
3. **Permits Required.** Company shall not open or disturb the surface of any Public Way or Public Ground for any purpose without first having obtained a permit from the city, if required by a separate ordinance, for which the city may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb the surface of any Public Way or Public Ground without permission from the City where an emergency exists requiring the immediate repair of Electric Facilities. In such event Company shall notify the City by telephone to the office designed by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.
4. **Restoration.** After undertaking any work requiring the opening of any Public Way or Public Ground, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good conditions for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and materials, and put the Public way or Public ground in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this section 408.03.4, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.
5. **Shared Use of Poles.** Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities whenever such use will not interfere with the use of such poles or towers by Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, the City shall pay for any added cost incurred by Company because of such use by City.
6. **Avoid Damage to Electric Facilities.** Nothing in this Section relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric facilities while performing any activity.
7. **Notice of Improvements.** The city must give Company reasonable notice of plans for improvements to Public ways or Public Ground where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Ways and Public Grounds upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City

will start the work, and (v) if more than one Public Way or Public Ground is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Electric Facilities.

408.04. RELOCATION.

1. Relocation of Electric Facilities in Public Ways. Except as provided in section 4.3, if the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public way, or construct or reconstruct any City Utility system in any Public Way, it may order Company to relocate its Electric Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Company shall relocate its Electric Facilities as its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Electric facilities, which was made at Company expense, the City shall reimburse Company for Non-Betterment Costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own expense its Electric Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the city and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

2. Relocation of Electric Facilities in Public Ground. Except as may be provided in Chapter 408.4.3, City may require Company at Company's expense to relocate or remove its Electric Facilities from Public ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

3. Projects with Federal Funding. Relocated, removal, or rearrangement of any Company Electric facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes Section 161.46 as supplemented or amended. It is understood that the right herein granted to Company is a valuable right. City shall not order Company to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable Non-Betterment Costs of such relocation and the loss and expense resulting therefrom are first paid to Company, but the City need not pay those portions of such for which reimbursement to it is not available.

4. No Waiver. The provisions of Section 4 apply only to Electric Facilities constructed in reliance on a franchise and Company does not waive its rights under an easement or prescriptive right, or State or County permit.

408.05. TREE TRIMMING.

Company may trim all trees and shrubs in the Public Ways and Public Grounds of City interfering with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that Company shall save the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.

408.06. INDEMNIFICATION.

1. Indemnity of City. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Electric facilities located in the Public ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The city shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

2. Defense of City. In the event a suit is brought against the City under circumstances where this Agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City; and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

408.07. VACATION OF PUBLIC WAYS.

The city shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Electric Facilities, shall not operate to deprive Company of its rights to operate and maintain such Electric Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

408.08. CHANGE IN FORM OF GOVERNMENT.

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Section.

408.09. FRANCHISE FEE

1. Fee Schedule. During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on Company, the City may impose on Company a franchise fee not to exceed an amount determined by collecting the amounts indicated in a Fee Schedule set forth in a separate Section, as a percentage of Gross Revenues from the Public Street & Highway Lighting Class, as a percentage of Gross Revenues or a monthly meter charge from the Residential Class, or as a monthly meter charge from any other Customer Classification, from each customer in the designated Company Customer Classification for electric service at each and every customer location within the City based on a Fee Schedule form similar to the following:

<u>Customer Classification</u>	<u>Amount Per Month</u>
Residential	_____
Small C & I and Municipal With No Demand Charge	_____
Small C & I and Municipal With Demand Charge	_____
Large C & I - Secondary Voltage	_____
Large C & I - Primary Voltage & Above	_____
Public Street & Highway Lighting	_____

The franchise fee amount collected from each and every customer location in a Customer Classification shall be determined so that the total franchise fee amount collected annually from all customers in such Customer Classification does not exceed what s estimated by Company to be four percent of the total annual Gross revenues from such Customer Classification. The franchise fee imposed on all customers within a non-residential Customer Classification shall not exceed an amount which is estimated by Company to be five percent of the average annual bill collected from customers in the Small Customer Group in such Customer Classification. The Small Customer Group for each non-residential Customer Classification with more than 50 customers shall constitute 25 percent of the actual customers within the City in such Customer Classification which are estimated by Company to be the customers from which Company collects its lowest annual revenues with the Customer Classification. The Small Customer Group for each non-residential Customer Classification with 50 or fewer customers shall constitute ten percent of the actual customers within the City in such Customer Classification which are estimated by Company to be the customers from which Company collects its lowest annual revenues within such Customer Classification. Company shall, within 60 days of the City’s request, provide City with revenue estimates setting forth the revenues from the Small Customer Group for planning a Fee Schedule.

2. Separate Ordinance. The franchise fee shall be imposed by a separate ordinance duly adopted by the City council, which ordinance shall not be adopted until at least 60 days after written notice enclosing such proposed ordinance has been served upon Company by certified mail. The fee shall not become effective until at least 60 days after written notice enclosing such adopted ordinance has been served upon Company by certified mail. Chapter 408.02.5 shall constitute the sole remedy for solving disputes between Company and the City in regard to the interpretation of, or enforcement of, the separate ordinance. No action by the City to implement

a separate ordinance will commence until this Ordinance is effective. A separate ordinance which imposes a lesser franchise fee on the Residential Class than the franchise fee imposed on any other Customer Classification, measured as a percentage of estimated total annual Gross Revenues from all customers in each class, shall not be effective against Company. The payment of a franchise fee as provided by this Section does not relieve Company from paying fees to City unrelated to the installation, ownership or operation of Electric Facilities, such as building permit fees.

3. Terms Defined. For the purpose of Chapter 408.09, the following definitions apply:

3.1. “Customer Classification” refers to the classes listed on the Fee Schedule and as defined or determined in Company’s electric tariffs on file with the Commission.

3.2. “Fee Schedule” refers to the schedule in Section 408.09.1 setting forth an amount per month for various customer classes.

3.3. “Gross Revenues” for each Customer Classification means all sums received from Company billings for the sale or delivery of electricity to its retail customers within the corporate limits of the City within a Customer Classification, excluding any surcharge, sales tax, miscellaneous tariff charges or any similar addition to Company’s charges to customers for the purpose of reimbursing Company for the franchise fee, sales tax, or similar charges.

4. Collection of the Fee. The franchise fee shall be payable quarterly and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable Customer Classification in all customer billings for electric service in each class. The payment shall be due the last business day of the month following the period for which the payment is made. The franchise fee may be changed by ordinance from time to time; however, each change shall meet the same notice requirements and not occur more often than annually and no change shall require a collection from any customer for electric service in excess of the amounts specifically permitted by this Chapter. The time and manner of collecting the franchise fee is subject to the approval of the Commission. No franchise fee shall be payable by Company if Company is legally unable to first collect an amount equal to the franchise fee from its customers in each applicable class of customers by imposing a surcharge in Company’s applicable rate for electric service. Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles, refunds and correction of erroneous billings. Company agrees to make its records available for inspection by the City at reasonable times provided that the City and its designated representative agree in writing not to disclose any information which would indicate the amount paid by any identifiable customer or customers or any other information regarding identified customers.

5. Conditions on the Fee. The separate ordinance imposing the fee shall not be effective against Company unless the separate ordinance lawfully imposes and the City quarterly or more often collects a fee or tax of the same or greater equivalent amount on the receipts from sales of energy within the City from every other energy supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or to impose a tax. The “same or greater equivalent amount” shall be measured, if practicable, by comparing amounts collected as a franchise fee from each similar customer, or by comparing, as to similar customers, the percentage of the annual bill represented by the amount collected for the franchise fee purposes. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling or lighting, as well as to the supply of energy needed to run machinery and appliances on premises located within or adjacent to the City, but shall not apply to energy sales for the purpose of providing fuel for vehicles.

6. Exclusive Electric Service. Company is currently the exclusive provider of retail electric service to its customers within the City in accordance with Minnesota Statutes, Section 216B.37 *et seq.* If Company is no longer the sole supplier of electric energy for any class of customers from which it is collecting a franchise fee based on a percentage of Gross Revenues, Company’s obligation to collect and pay a franchise fee on such retail electric service shall terminate upon 20 days Notice to City. Company will agree at City’s request to amend this franchise agreement to collect a monthly meter charge from such a class of customers which will result in the collection of approximately the same total franchise fee amount for the class as was being collected by applying the percentage fee.

408.10. PROVISIONS OF THE CODE.

1. Severability. Every section, provision, or part of this Code is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision or part. Where a provision of any other City code conflicts with the provisions of this code, the provision of this code shall prevail.

2. Limitation on Applicability. This Code constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

408.11. AMENDMENT PROCEDURE.

Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Code may be amended at any time by the city passing a subsequent ordinance declaring the provision of the amendment, which amendatory ordinance shall become effective upon the filing of Company’s written consent thereto with the City Clerk within 90 days after the effective date of the amendatory ordinance.