

**City Code, Chapter 18: REGULATION OF UTILITIES**

**CHAPTER 18**  
**REGULATION OF UTILITIES**

**TABLE OF CONTENTS**

**CHAPTER 18**                    **REGULATION OF UTILITIES .....18-1 TO 18-18**

**ARTICLE I**                    **FINDINGS AND PURPOSE. ....18-1 TO 18-2**

    Section 18-101            Findings ..... 18-1

    Section 18-102            Purpose. .... 18-2

**ARTICLE II**                    **DEFINITIONS.....18-2**

    Section 18-200            Application and Interpretation..... 18-2

    Section 18-201            Words and Phrases Defined..... 18-2

**ARTICLE III**                    **CONSTRUCTION OF FACILITIES. ....18-3 TO 18-7**

    Section 18-301            All Utilities Subject to this Chapter. .... 18-3

    Section 18-302            Utility Construction in Road Cross-Section ..... 18-3

    Section 18-303            Construction Permits ..... 18-4

    Section 18-304            Crossing Charged Pipelines..... 18-5

    Section 18-305            Restriction on Multiple Gas Lines..... 18-5

    Section 18-306            Restoration Work..... 18-5

    Section 18-307            Relocation of Utilities..... 18-5

    Section 18-308            Relocation When Public Ground Vacated..... 18-6

    Section 18-309            Street Improvements, Paving or Resurfacing ..... 18-6

    Section 18-310            Location of Above-Ground Facilities..... 18-7

**ARTICLE IV**                    **GENERAL CONDITIONS APPLICABLE TO ALL SERVICE**

**AREA LICENSES FOR NATURAL GAS UTILITIES.....18-7 TO 18-9**

    Section 18-401            Indemnification..... 18-7

    Section 18-402            Adequate Supply..... 18-8

    Section 18-403            Public Safety..... 18-8

    Section 18-404            Assignment of Service Area Licenses ..... 18-8

    Section 18-405            Licensee’s Annual Report ..... 18-8

    Section 18-406            Nonexclusive Service Areas ..... 18-8

    Section 18-407            Review or Revocation of a Service Area License ..... 18-8

    Section 18-408            Application for Service Area License. .... 18-9

    Section 18-409            Expansion of Service Areas..... 18-9

    Section 18-410            Initial Service Area License Fees. .... 18-9

    Section 18-411            Open Areas Not Described Within Any Licensed Service Area..... 18-9

---

**City Code, Chapter 18: REGULATION OF UTILITIES**

---

**ARTICLE V**

**CONDITIONAL NONEXCLUSIVE LICENSES FOR SERVICE**

**AREAS FOR GAS UTILITIES.....18-10 TO 18-17**

Section 18-500	Service Area Licenses. ....	18-10
Section 18-510	Centerpoint Energy Gas Franchise Ordinance 09-07 .....	18-10
Section 18-520	Conditional Service Area License For Northern States Power Company .....	18-15
Section 18-521	Conditional Service Area License For Northern States Power Company .....	18-17

**ARTICLE VI**

**MISCELLANEOUS PROVISIONS .....18-18**

Section 18-601	Change in Form of Government .....	18-18
Section 18-602	Severability .....	18-18
Section 18-603	Penalty .....	18-18

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**City Code, Chapter 18: REGULATION OF UTILITIES**

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**CHAPTER 18**  
**REGULATION OF UTILITIES**

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**ARTICLE I**  
**FINDINGS AND PURPOSE**

**SECTION 18-101. FINDINGS.** After notice and public hearings before the Columbus City Council, the City Council makes the following findings:

A. Development in the City of Columbus has progressed to the stage where the construction and location of the various utilities, Pipelines and wiring systems within public rights-of-way needs to be regulated.

B. The City Council has the authority to impose reasonable regulations upon the construction and location of various facilities from public utilities.

*[§ 18-101, Paragraph B, amended by Ord. No. 89-17, effective December 8, 198, amended by Ord. No. 92-2, effective April 17, 1992, amended by Ord. No. 09-02, effective March 5, 2009.]*

C. The City Council has the authority to regulate the construction and location of Utility systems in furtherance of the protection of public health, public safety and public welfare pursuant to Minn. Stat. §462.358, Subd. 5, as amended.

*[§ 18-101, Paragraph C, amended by Ord. No. 89-17, effective December 8, 1989, amended by Ord. No. 09-02, effective March 9, 2009.]*

D. The City Council has the authority to exercise municipal powers to further regulate the location and construction of utilities within the City.

*[§ 18-101, Paragraph D, amended by Ord. No. 09-02, effective March 9, 2009.]*

E. The City has been presented with proposals from competing suppliers of natural gas to construct Pipeline Distribution Systems within the same roads to service the same territories within the City and, further, this conflict in proposals needs to be regulated to protect the public safety, public health and public welfare. The prospect of two (2) or more Natural Gas Pipelines being constructed in close proximity to each other within the same right-of-way presents the following public safety hazards:

1. The inability to identify the source of a leak or explosion and the inability to conduct immediate repairs;
2. The danger of multiple fires or multiple explosions in the event of a break or rupture of one of the multiple gas lines;
3. Increased reaction time to emergency situations;
4. The increased probability that an excavator who fails to call for the location of a Pipeline facility will strike one of the multiple gas Pipelines;
5. Undue congestion and confusion at emergency sites because of the need to have more than one gas Utility present at the site;
6. The potential of one gas Utility operating the other gas Utility's appliances or valves; and
7. The presence of multiple Natural Gas Distribution Systems within the same easement road or right-of-way owned by unrelated companies would increase the risk of explosion and fire.

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**City Code, Chapter 18: REGULATION OF UTILITIES**

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The prospect of two (2) or more Natural Gas Pipelines being constructed within the same rights-of-way to serve the same neighborhoods presents the following public welfare problems:

1. An increased cost to the customers in the overlapping Service Areas;
2. The unneeded additional expense in operating costs which the other customers of the competing utilities would need to bear; and
3. It would be uneconomical, inconvenient and disruptive for property owners and the public to have the same easement, road or right-of-way excavated twice for the installation of gas Pipeline Distribution System.

*[§ 18-101 amended by Ord. No. 07-02, effective March 1, 2007, amended by Ord. No. 09-02, effective March 5, 2009.]*

**SECTION 18-102. PURPOSE.** The purpose of this Chapter is to provide minimal reasonable regulations as to the location and construction of public utilities facilities within any public easement road or right-of-way within the City of Columbus. A further purpose of this Chapter is to provide reasonable minimal regulations in the public interest to prevent overlapping Distribution Systems and overlapping service territories by providers of Natural Gas.

*[§ 18-102 amended by Ord. No. 07-02, effective March 1, 2007.]*

## **ARTICLE II** **DEFINITIONS**

### **SECTION 18-200. APPLICATION AND INTERPRETATION.**

- A. For the purpose of this Chapter, certain numbers, abbreviations, terms, words, and phrases used herein shall be used, interpreted and defined as set forth in this Article.
- B. Whenever any words and phrases used herein are not defined herein but are defined elsewhere in the City Code and in the State laws regulating the creation and function of various agencies, any such definition therein shall be deemed to apply to such words and phrases used herein, except when the context otherwise requires.
- C. For the purpose of these regulations, certain words and phrases used herein shall be interpreted as follows:
  1. The word “person” includes an individual, firm, association, organization, partnership, trust, company, corporation, or any other legal entity.
  2. The masculine includes the feminine.
  3. The present tense includes the past and future tense, the singular number includes the plural.
  4. The word “shall” is a mandatory requirement, the word “may” is a permissive requirement, and the word “should” is a preferred requirement.
  5. The words “used” or “occupied” include the words “intended, arranged, or designed to be used or occupied.”

*[§ 18-200 amended by Ord. No. 07-02, effective March 1, 2007.]*

**SECTION 18-201. WORDS AND PHRASES DEFINED.** The definitions contained in this Section shall apply to this Chapter.

- A. **“Charged Pipeline.”** Any Pipeline which is filled with Natural Gas.

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**City Code, Chapter 18: REGULATION OF UTILITIES**

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- B. **“Distribution System.”** All of the facilities, lines, pipes, equipment, and fixtures of a Utility which are designed for distribution of the Utility’s services to more than one customer.
- C. **“Electric Facilities.”** Electric transmission and distribution towers, poles, lines, guys, anchors, ducts, fixtures, and necessary appurtenances owned or operated by an electric Utility for the purpose of providing electric energy for public use.
- D. **“Natural Gas.”** A product in gaseous form designed and used for the purpose of combustion in furnaces and appliances, to supply energy for public or private consumption, and which is sold by Utility companies subject to the regulatory authority of the Minnesota Public Utilities Commission, including Natural Gas, manufactured gas, mixture of Natural Gas and manufactured gas or other forms of gas energy.
- E. **“Pipeline.”** Any Pipeline, above-ground or underground, which has been installed by any party for the purpose of transmitting Natural Gas, including mains and lines connecting mains to individual buildings.
- F. **“Public Land.”** Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.
- G. **“Public Way.”** All roads, streets, alleys, public right-of-ways, Utility easements and public grounds of the City as to which it has the right to grant the use to a Utility.
- H. **“Service Area.”** That portion of the City where gas Utility receives a conditional Service Area license to install and operate a Distribution System.
- I. **“Service Area Licensee”.** A Service Area Licensee includes a utility operating under a franchise.
- J. **“Service Connection/Service Line.”** The connection and line from a Utility’s Distribution System to a single customer’s dwelling or building.
- K. **“City”.** In this Ordinance, “City” means the City of Columbus, County of Anoka, State of Minnesota.
- L. **“City Utility System”.** The facilities used for providing sewer, water, or any other public Utility service owned or operated by City or agency thereof.
- M. **“Utility”.** Any publicly or privately owned or operated system which publicly provides energy services (electric, Natural Gas, liquid petroleum, and others), communication services (telephone, cable TV, and other), or water and sewer services (potable water, sanitary sewer, storm sewer and others).

*[§ 18-201 amended by Ord. No. 07-02, effective March 1, 2007, amended by Ord. No. 09/07, effective September 3, 2009, amended by Ord. No. 10-05, effective April 1, 2010.]*

### **ARTICLE III**

#### **CONSTRUCTION OF FACILITIES**

**SECTION 18-301. ALL UTILITIES SUBJECT TO THIS CHAPTER.** All Utilities operating or maintaining lines, facilities or equipment within a city road right-of-way or upon Public Land are subject to the regulations of this Chapter.

**SECTION 18-302. UTILITY CONSTRUCTION IN ROAD CROSS-SECTION.** All Utilities shall construct their lines in accordance with the cross-section specifications contained in Chapter 8 of

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**City Code, Chapter 18: REGULATION OF UTILITIES**

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this City Code, Appendix A, “Standard Specifications for New Roadway Construction,” incorporated herein by reference.

*[§ 18-302 amended by Ord. No. 07-02, effective March 1, 2007.]*

**SECTION 18-303. CONSTRUCTION PERMITS.** No Utility company shall open, excavate, or disturb the surface of any public ground or right-of-way for any purpose without first having obtained a construction permit from the City Administrator. No land disturbing activities in furtherance of construction of utilities shall be commenced until the Zoning Administrator has made a determination as to the applicability of Chapter 7D on the proposed construction. The City Administrator shall require proof of workers’ compensation insurance coverage from either the Utility or its subcontractor prior to issuance of any construction permit.

A. Distribution System Permits.

1. Prior to construction of any lines, equipment, facilities, or other parts of a Distribution System, a Utility shall first obtain a construction permit from the City Administrator and/or City Engineer. The application for a permit shall be submitted in duplicate to the City Administrator at the City Hall. The application shall include: a scaled area map showing the proposed location of the lines or equipment to be constructed; depictions and specifications for lines, cables, equipment or facilities to be installed; and a road cross-sectional schematic showing the proposed location of any buried lines or cables. The application shall be accompanied by a \$200.00 permit fee.

2. The completed application shall be forwarded to the City Engineer for review. The City Administrator shall not issue the permit until the City Engineer has approved the application in writing and until the City has been reimbursed by the applicant for its actual expense incurred in reviewing the application, including all professional consulting fees.

B. Service Connection Permits. Prior to any construction or relocation and reconstruction of any Service Connection, a Utility shall first obtain a construction permit from the City Administrator. The application shall be accompanied by a map showing the address and location of the Service Line to be installed or reconstructed. The City Administrator may issue the permit upon receipt of the completed application. The purpose of the permit is to provide the City with information regarding the location, time and extent of the construction or excavation activity.

C. Repair or Maintenance Permits. Prior to any excavation or construction to repair or maintain any portion of a Distribution System, a Utility shall first obtain a construction permit from the City Administrator. The application shall be accompanied by a map showing the location of the equipment or line to be repaired or excavated. The City Administrator may issue the permit upon receipt of the completed application. The purpose of the permit is to provide the City with information regarding the location, time and extent of the construction or excavation activity.

D. Emergencies. A Utility may excavate or perform other work without a permit where an emergency exists requiring the immediate repair of its lines or facilities. Within three (3) working days after effecting emergency repairs, the Utility shall make application for the appropriate permit. For emergency repairs to a Distribution System, the permit:

1. Shall include the Utility’s certification that the repaired line has not been relocated; or

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**City Code, Chapter 18: REGULATION OF UTILITIES**

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2. Shall include map(s) and schematic(s) to show the relocation of the repaired line or equipment.

*[Section 18-303, amended by Ord. No. 93-3, effective March 12, 1993, amended by Ord. No. 94-5, effective January 12, 1996, amended by Ord. No. 07-02, effective March 1, 2007, amended by Ord. No. 09-04, effective March 19, 2009.]*

**SECTION 18-304. CROSSING CHARGED PIPELINES.**

A. Crossing Charged Pipeline. No person, corporation or other entity shall cause or permit a Pipeline to become a Charged Pipeline where the Pipeline to be charged crosses over or beneath a Charged Pipeline which exists as of August 18, 1989.

B. Exception. A Charged Pipeline may cross over or under another Charged Pipeline where both Charged Pipelines are part of a Distribution System and neither is a Service Connection, and only where the existence of the second Pipeline to be charged is necessary to extend the delivery of Natural Gas to customers located in a new Service Area or in areas outside of the City. Exceptions granted under this section shall be extremely limited, and economic considerations alone shall not justify the issuance of a permit where another practical means of delivering Natural Gas is available without creating a situation in which two Charged Pipelines cross each other.

*[§ 18-304 amended by Ord. No. 07-02, effective March 1, 2007.]*

**SECTION 18-305. RESTRICTION ON MULTIPLE GAS LINES.** Multiple parallel gas Pipelines owned by two (2) or more gas Utilities shall not be constructed within the same City right-of-way, except that one gas Utility may construct its Pipeline on one side of the right-of-way to provide a Distribution System for its Service Area within which the right-of-way is included, and a second gas Utility may construct a transmission Pipeline on the opposite side of the right-of-way to connect to new Service Areas or to connect to areas outside of the City.

*[§ 18-305 amended by Ord. No. 07-02, effective March 1, 2007.]*

**SECTION 18-306. RESTORATION WORK.** After undertaking any work requiring the opening of any Public Way or Public Ground, the Utility shall restore the same, including paving and its foundation, to as good condition as formerly existed, and shall maintain the same in good condition for two (2) years thereafter. The work shall be completed as promptly as weather permits, and if the Utility shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Way or Public Ground in the said condition, the City shall have, after demand to the Utility to cure and the passage of a reasonable period of time following the demand, but not to exceed five (5) days, the right to make the restoration at the expense of the Utility. The Utility shall pay to the City the cost of such work done for or performed by the City, including its administrative expense and overhead, plus ten percent (10%) additional as liquidated damages. This remedy shall be in addition to any other remedy available to the City.

*[§ 18-306 amended by Ord. No. 07-02, effective March 1, 2007.]*

**SECTION 18-307. RELOCATION OF UTILITIES.**

A. Relocation of Utilities in Public Ways. If the City determines to vacate for a City improvement project, or to grade, regrade, or change the right-of-way lines of any Public Way, or construct or reconstruct any Utility System in any Public Way, it may order the Utility to relocate its Facilities located therein. The Utility shall relocate its Facilities at its own expense. The City shall give the Utility reasonable notice of plans to vacate for a City improvement project, or to

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**City Code, Chapter 18: REGULATION OF UTILITIES**

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grade, regrade, or change the line of any right-of-way or to construct or reconstruct any City Utility System. If a relocation is ordered within five (5) years of a prior relocation of the same Facilities, which was made at Utility expense, the City shall reimburse for non-betterment expenses 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, may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Utility to relocate, remove, replace or reconnect at its own expense its 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. In no case shall the City be liable to the Utility for failure to specifically preserve a right-of-way under Minn. Stat. § 160.29, as amended.

*[§ 18-307, Paragraph A, amended by Ord. No. 89-17, effective December 8, 1989, amended by Ord. No. 09-02, effective March 5, 2009.]*

B. Relocation of Utility in Public Ground. The City may require the Utility to relocate or remove its Facilities from Public Ground upon a finding by City that the facilities have become or will become a substantial impairment of the public use to which the Public Ground is or will be put. The relocation or removal shall be at the Utility's expense. The provisions of this Paragraph B apply only to facilities constructed upon Public Ground in reliance on a Service Area license and a Utility does not, by this provision, waive its rights under a recorded easement document or prescriptive right in favor of the Utility.

*[§ 18-307 amended by Ord. No. 07-02, effective March 1, 2007, amended by Ord. No. 09-02, effective March 5, 2009.]*

**SECTION 18-308. RELOCATION WHEN PUBLIC GROUND VACATED.** The vacation of any Public Ground shall not operate to deprive the Utility of the right to operate and maintain its facilities therein. Unless ordered under Section 18-307, the Utility need not relocate until the reasonable cost of relocating and the loss and expense resulting from such relocation are first paid to the Company. When the vacation is for the benefit of the City in the furtherance of a public purpose, the Utility shall relocate at its own expense.

*[§ 18-308 amended by Ord. No. 07-02, effective March 1, 2007.]*

**SECTION 18-309. STREET IMPROVEMENTS, PAVING OR RESURFACING.**

A. The City shall give the Utility reasonable written notice of plans for street improvements where paving or resurfacing of a permanent nature is involved. The notice shall contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the time when the City will start the work, and, if more than one street is involved, the order in which this work is to proceed. The notice shall be given to the Utility a sufficient length of time, considering seasonable working conditions, in advance of the actual commencement of the work, to permit the Utility to make any additions, alterations or repairs to its facilities the Utility deems necessary.

B. In cases where streets are at final width and grade, and the City has installed underground sewer and water mains and Service Connections to the property line abutting the streets prior to a permanent paving or resurfacing of such streets, and the Utility's main is located under such street, the Utility may be required to install gas Service Connections prior to such paving or resurfacing, whenever it is apparent that gas service will be required during the five (5) years following the paving or resurfacing.

*[§ 18-309 amended by Ord. No. 07-02, effective March 1, 2007.]*

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**City Code, Chapter 18: REGULATION OF UTILITIES**

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**SECTION 18-310. LOCATION OF ABOVE-GROUND FACILITIES**

A. Location of Above-Ground Facilities. Above-ground Utilities shall be located and constructed so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways. A permit to construct facilities on Public Grounds or Public Ways may be disallowed by the City Council upon finding that the proposed facility constitutes a hazard in the right-of-way. A "hazard in the right-of-way" is any construction at any location within the full width of the right-of-way, which because of position, siting and proximity to the traveled portion of the right-of-way and because of strength, density and mass of construction would be the kind of impediment to a motor vehicle traveling at the posted speed limit sufficient to cause bodily harm to vehicle passengers when impacted by said vehicle after it has left the travelled portion of the right-of-way. Upon such a finding, the Utility shall be required to construct its facility outside of the right-of-way. The Utility's construction, reconstruction, operation, repair, maintenance and location of above-ground facilities shall be subject to other reasonable regulations of the City.

B. Field Locations. The Company shall provide field locations for any of its underground facilities within a reasonable period of time on request by the City. The period of time will be considered reasonable if it compares favorably with the average time required by the cities in the same county to locate municipal underground facilities for the Utility.

*[§ 18-310 amended by Ord. No. 07-02, effective March 1, 2007.]*

**ARTICLE IV****GENERAL CONDITIONS APPLICABLE TO ALL SERVICE AREA LICENSES FOR  
NATURAL GAS UTILITIES****SECTION 18-401. INDEMNIFICATION.**

A. Each Service Area licensee 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 licenses, or the operation of the Utility's facilities located in the City. 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 licenses or permits for, or inspection of, the Utility'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 Utility, and such performance is nevertheless ordered or directed by the City after notice of Utility's determination.

B. In the event a suit is brought against the City under circumstances where this license condition applies, the Utility, at its sole cost and expense, shall defend the City in such suit if written notice thereof is promptly given to the Utility within a period wherein the Utility is not prejudiced by lack of such notice. If the Utility is required to indemnify and defend, it will thereafter have control of such litigation, but the Utility 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 the Utility,

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**City Code, Chapter 18: REGULATION OF UTILITIES**

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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 on its own behalf.

*[§ 18-401 amended by Ord. No. 07-02, effective March 1, 2007.]*

**SECTION 18-402. ADEQUATE SUPPLY.** Each Service Area licensee shall furnish and supply to the Service Area inhabitants an adequate supply of gas, as long as available under such pressure and conditions as may be reasonably required under such rules and regulations as may be established by this Chapter, and the Minnesota Public Utilities Commission or other such regulatory body as may hereinafter be established under the laws of the State of Minnesota, and given jurisdiction thereof.

**SECTION 18-403. PUBLIC SAFETY.** By acceptance of its Service Area license, each licensee acknowledges that the City may enact ordinances which affect the licensee's rights and duties with respect to Pipeline safety and construction, and acknowledges that where such public safety is a bona fide municipal concern, such ordinances shall effectively serve to amend this Chapter and the rights and duties contained herein. Each licensee specifically consents to such amendments, even though they be unilateral in nature.

*[§ 18-403 amended by Ord. No. 07-02, effective March 1, 2007.]*

**SECTION 18-404. ASSIGNMENT OF SERVICE AREA LICENSES.** A licensee, upon notice to the City, shall have the right and authority to assign all rights conferred upon it by this Chapter to any person. The assignee of such rights, by accepting such assignment, shall become subject to the regulations and conditions of this Chapter.

*[§ 18-404 amended by Ord. No. 07-02, effective March 1, 2007.]*

**SECTION 18-405. LICENSEE'S ANNUAL REPORT.** The Utility company shall provide an annual revised City map showing location of its Distribution System in the City.

*[§ 18-405 amended by Ord. No. 07-02, effective March 1, 2007.]*

**SECTION 18-406. NONEXCLUSIVE SERVICE AREAS.**

A. Each Service Area license is nonexclusive and conditional. If it is in the public interest to do so, the City Council may grant intermingled Service Areas to competing gas utilities. It is the intent of these provisions to provide a reasonable measure of regulation to avoid intermingled or overlapping Service Areas. In this sense, each Service Area license is nonexclusive.

B. A Service Area license is subject to the general conditions of this Article and to the specific conditions recited in each license.

*[§ 18-406 amended by Ord. No. 07-02, effective March 1, 2007.]*

**SECTION 18-407. REVIEW OR REVOCATION OF A SERVICE AREA LICENSE.**

A. The City Council may review a Service Area license upon the request of any person or upon its own initiative.

B. A Service Area license may be revoked or reduced in its area upon the City Council making any one or more of the following findings:

1. The licensee has failed to meet the general conditions of this Article or the specific conditions of its license;

2. The licensee has failed to operate the Utility within the City in accord with this Chapter; or

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**City Code, Chapter 18: REGULATION OF UTILITIES**

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## 3. Any just cause.

Revocation proceedings will be conducted in accord with Chapter 10 of the City Code.

*[§ 18-407 amended by Ord. No. 07-02, effective March 1, 2007.]*

**SECTION 18-408. APPLICATION FOR SERVICE AREA LICENSE.** Application for a Service Area license shall be made in writing to the City Administrator and shall include such maps, schematics, diagrams and narrative descriptions as are necessary to describe or depict:

- A. The existing Distribution System;
- B. Existing Service Connections;
- C. The proposal for extension of the Distribution System; and
- D. A well-defined schedule and calendar for construction of the extension to the Distribution System.

The application shall be accompanied by a nonrefundable \$250.00 fee to defray a portion of the City's costs for conducting a public hearing.

*[Section 18-408, amended by Ord. No. 92-2, effective April 17, 1992, amended by Ord. No. 07-02, effective March 1, 2007, amended by Ord. No. 09-04, effective March 19, 2009.]*

**SECTION 18-409. EXPANSION OF SERVICE AREAS.** A Service Area licensee may make application to expand its Service Area in the same manner as an original license application.

**SECTION 18-410. INITIAL SERVICE AREA LICENSE FEES.**

A. License fees shall be paid by the first licensee(s) to defray the City's cost in granting a license and in administering the regulations of this Chapter. The Utilities which obtain the first Service Area Licenses in the City shall each be charged a license fee based upon the formula: \$1,000.00, plus \$2.10 for each improved parcel within the described service area. The number of improved parcels shall be determined by the City Administrator by reference to the most recent listing by the Anoka County Assessor. License fees charged for expansion of an existing Service Area shall be based upon the following formula: the City's actual costs (after credit for § 18-408 hearing fee) for consideration of the expansion request plus \$2.10 for each improved parcel within the described expansion area. No other license fees or percentage-of-gross-revenues fees shall be charged. The present waiver of these other license fees is made in the public interest. This waiver does not apply to construction permit fees. (See § 18-303 above.) The City Council reserves the right to establish additional license fees in the future.

B. The license fee for licenses awarded under § 18-510 and § 18-520 are due and payable at the City Hall by the licensees on August 28, 1989. (Clerk's note: Ordinance No. 89-1 was published on August 17, 1989, making the Ordinance and this Chapter effective on August 18, 1989. The Ordinance, as passed, called for payment of the license fees "... within ten (10) days following the effective date of this Ordinance." The text of this sentence, as printed here, has been revised accordingly. /s/Barbara A. Masteller.)

*[§ 18-410 amended by Ord. No. 07-02, effective March 1, 2007, amended by Ord. No. 09-04, effective March 19, 2009.]*

**SECTION 18-411. OPEN AREAS NOT DESCRIBED WITHIN ANY LICENSED SERVICE AREA.** The areas of the City not described in any Service Area license are deemed open areas. Any Utility which is able to provide service to an open area may make application for a Service Area license or for expansion of an existing Service Area license.

*[§ 18-411 amended by Ord. No. 07-02, effective March 1, 2007.]*

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**City Code, Chapter 18: REGULATION OF UTILITIES**

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**ARTICLE V****CONDITIONAL NONEXCLUSIVE LICENSES FOR SERVICE AREAS FOR GAS UTILITIES**

**SECTION 18-500. SERVICE AREA LICENSES.** This Article contains the Service Area Licenses awarded to providers of Natural Gas within the City. Except for construction of transmission lines (see Article III), a gas Utility shall not construct a Distribution System or Service Connections within a Service Area licensed to another gas Utility by this Chapter.

*[§ 18-500 amended by Ord. No. 07-02, effective March 1, 2007.]*

**SECTION 18-510. CENTERPOINT ENERGY GAS FRANCHISE ORDINANCE**

A. **DEFINITIONS** For purposes of Section 81-510, the CenterPoint Energy Gas Franchise Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

1. **“City.”** “City” means the City of Columbus, County of Anoka, State of Minnesota.
2. **“City Utility System.”** The facilities used for providing sewer, water, or any other public Utility service owned or operated by City or agency thereof.
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 gas retail rates now vested in the Minnesota Public Utilities Commission.
4. **“Company.”** CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Minnesota Gas (“CenterPoint Energy”) its successors and assigns including all successors or assigns that own or operate any part or parts of the Gas Facilities subject to this Franchise.
5. **“Gas Energy.”** Gas Energy includes both retail and wholesale natural, manufactured or mixed gas.
6. **“Gas Facilities.”** Gas transmission and distribution pipes, lines, ducts, fixtures, and all necessary equipment and appurtenances owned or operated by the Company for the purpose of providing Gas Energy for retail or wholesale use.
7. **“Notice.”** A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to CenterPoint Energy, Minnesota Division Vice President, 800 LaSalle Avenue, Minneapolis, MN 55402. Notice to the City shall be mailed to City Administrator, City of Columbus, 16319 Kettle River Blvd., Columbus, Minnesota 55025-8419. Any party may change its respective address for the purpose of this Ordinance by written Notice to the other parties.
8. **“Ordinance.”** This gas franchise ordinance, also referred to as the Franchise.
9. **“Public Way.”** Any highway, street, alley or other public right-of-way within the City.
10. **“Public Ground.”** Land owned or otherwise controlled by the City for utility easements, park, trail, walkway, open space or other public property, which is held for use in common by the public or for public benefit.

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**City Code, Chapter 18: REGULATION OF UTILITIES**

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**B. ADOPTION OF FRANCHISE**

1. **Grant of Franchise.** City hereby grants Company, for a period of 20 years from the date of this Ordinance is passed and approved by the City, the right to import, manufacture, distribute and sell Gas Energy 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 and also the right to transport Gas Energy through the limits of the city for use outside of the City limits. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Ways and Public Grounds, 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 a public right-of-way ordinance or permit requirements adopted consistent with state law.

2. **Effective Date; Written Acceptance.** This Franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and its acceptance by Company. If Company does not file a written acceptance with the City within 60 days after the date the City Council adopts this Ordinance, or otherwise inform the City, at any time, that the Company does not accept this Franchise, the City Council by resolution may revoke this Franchise.

3. **Service and Gas Rates.** The terms and conditions of service and the rates to be charged by Company for Gas Energy in City are subject to the exclusive jurisdiction of the Commission.

4. **Publication Expense.** Company shall pay the expense of publication of this Ordinance.

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 the 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.

6. **Continuation of Franchise.** If the City and the Company are unable to agree on the terms of a new franchise by the time this Franchise expires, this Franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or the Company serves written Notice to the other party of its intention to allow Franchise to expire. However, in no event shall this Franchise continue for more than one year after expiration of the 20-year term set forth in Section 2.1.

**C. LOCATION, OTHER REGULATIONS**

1. **Location of Facilities.** Gas 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. Gas Facilities may be located on Public Grounds in a location selected by the

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**City Code, Chapter 18: REGULATION OF UTILITIES**

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City. The location and relocation of Gas Facilities shall be subject to reasonable regulations of the City consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this Franchise.

2. **Street Openings.** 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, unless the City is receiving a franchise fee pursuant to this Ordinance, in which case all permit fees will be waived. 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 a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) Company gives telephone, email or similar Notice to the City before commencement of the emergency repair, if reasonably possible. Within two business days after commencing the repair, Company shall apply for any required permits and pay any required fees.

3. **Restoration.** After undertaking any work requiring the opening of any Public Way or Public Ground, the Company shall restore the Public Ways or Public Grounds in accordance with Minnesota Rules, 7819.1100. Company shall restore the Public Way or Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for two (2) years thereafter. All 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 material, 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 of the Public Ways or Public Grounds at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City.

4. **Avoid Damage to Gas Facilities.** The Company must take reasonable measures to prevent the Gas Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Gas Facilities from damage that could be inflicted on the Gas Facilities by persons, property, or the elements. The Company must take protective measures when the City performs work near the Gas Facilities, if given reasonable Notice by the City of such work prior to its commencement.

5. **Notice of Improvements to Streets.** The City will give Company reasonable written Notice of plans for improvements to Public Ways and Public Grounds where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The Notice will contain: (i) the nature and character of the improvements (ii) the Public Ways or 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 Grounds is involved, the order in which the work is to proceed. The Notice will be given to Company a sufficient length of time, considering seasonal working conditions, in advance of the actual

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**City Code, Chapter 18: REGULATION OF UTILITIES**

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commencement of the work to permit Company to make any additions, alterations or repairs to its Gas Facilities the Company deems necessary.

6. **Mapping Information.** The Company must promptly provide complete and accurate mapping information for any of its Gas Facilities in accordance with the requirements of Minnesota Rules 7819.4000 and 7819.4100.

**D. RELOCATIONS**

1. **Relocation in Public Ways and Public Grounds.** The Company and City shall comply with the provisions of Minnesota Rules 7819.3100, with respect to requests for the Company to relocate Gas Facilities located in Public Ways. The Company and City shall apply the same principles of Minnesota Rules 7819.3100 to Public Grounds.

2. **Projects with Federal Funding.** Relocation, removal, or rearrangement of any Company Gas 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 Sections 161.45 and 161.46.

**E. INDEMNIFICATION**

1. **Indemnity of City.** Company shall indemnify and hold the City 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 Gas Facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence or otherwise wrongful act or omission 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.

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. The 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. This Franchise agreement shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

**F. VACATION OF PUBLIC WAYS AND PUBLIC GROUNDS.** The City shall give Company at least two weeks prior written Notice of a proposed vacation of a Public Ways or Public Grounds. The City and the Company shall comply with Minnesota Rules 7819.3200 with respect to any request for vacation.

**G. 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 Ordinance.

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**City Code, Chapter 18: REGULATION OF UTILITIES**

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**H. FRANCHISE FEE**

1. **Form.** During the term of the franchise hereby granted, the City may charge the Company a franchise fee. If the City should enact a franchise fee through a franchise fee ordinance, the Company will administer the collection and payment of franchise fees to City in lieu of permit fees, or other fees that may otherwise be imposed on the Company in relation to its operations as a public utility in the City. The franchise fee will be collected on a flat per meter basis, or by some other method that is mutually acceptable to both City and Company for each customer within the corporate limits of the City. The amount of the fee collected may differ for each customer class. The City will use a formula that provides a stable and predictable amount of fees, without placing the Company at a competitive disadvantage. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City. If the Company claims that the City required fee formula is discriminatory or otherwise places the Company at a competitive disadvantage, the company will provide a formula that will produce a substantially similar fee amount to the City. The City will attempt to accommodate the Company but is under no franchise obligation to adopt the Company-proposed franchise fee formula and each review will not delay the implementation of the City-imposed fee. If the City and Company are unable to agree, the disagreement shall be subject to the Dispute Resolution provisions of this Ordinance.

2. **Separate Ordinance.** The franchise fee shall be imposed by separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least sixty (60) days after written Notice enclosing such proposed ordinance has been served upon the Company by certified mail. The Company is not required to collect a franchise fee if the terms of the fee agreement are inconsistent with this franchise or state law, provided the Company notifies the City Council of the same within the sixty (60) day period.

3. **Condition of Fee.** The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes a fee of the same or substantially similar amount on the sale of energy within the City by any other energy supplier, provided that, as to such supplier, the City has the authority or contractual right to require a franchise fee or similar fee through an agreed-upon franchise.

4. **Collection of Fee.** The franchise fee shall be payable not less than quarterly during complete billing months of the period for which payment is to be made. The franchise fee formula may be changed from time to time, however, the change shall meet the same Notice and acceptance requirements and the fee may not be changed more often than annually. Such fee shall not exceed any amount that the company may legally charge to its customers prior to payment to the City. Such fee is subject to subsequent reductions to account for uncollectibles and customer refunds incurred by the Company. The Company shall not be responsible to pay City fees that Company is unable to collect under Commission rules or order. The Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company's determination of the franchise fee payments.

5. **Continuation of Franchise Fee.** If this Franchise expires and the City and the Company are unable to agree upon terms of a new franchise, the franchise fee, if any

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**City Code, Chapter 18: REGULATION OF UTILITIES**

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being imposed by the City at the time this Franchise expires, will remain in effect until a new franchise is agreed upon. However, the franchise fee will not remain in effect for more than one year after the franchise expires as stated in Section 2.6 of this Franchise. If for any reason franchise terminates, the franchise fee will terminate at the same time.

**I. ABANDONED FACILITIES.** The Company shall comply with Minnesota Statutes, Section 216D.01 *et. seq.* and Minnesota Rules 7819.3300, as they may be amended from time to time with respect to abandoned facilities located in Public Ways and Public Grounds.

**J. PROVISIONS OF ORDINANCE.**

1. **Severability.** Every section, provision, or part of this Ordinance 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 ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

2. **Limitation on Applicability.** This Ordinance constitutes a franchise agreement between the City and Company as the only parties. No provisions herein shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of this Ordinance 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.

**K. AMENDMENT PROCEDURE.** Either party may propose at any time that this Franchise Ordinance be amended. Franchise Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 60 days after the effective date of the amendatory ordinance. If the Company does not consent to the amendment, the ordinance containing the amendment shall be revoked by City.

*[§ 18-510 amended by Ord. No. 07-02, effective March 1, 2007, amended by Ord. No. 09-04, effective March 19, 2009, and amended by Ord. No. 09-07, effective September 3, 2009.]*

**SECTION 18-520. CONDITIONAL SERVICE AREA LICENSE FOR NORTHERN STATES POWER COMPANY.**

A. License. The City hereby grants Northern States Power Company, its successors and assigns, a nonexclusive right and license for a period of twenty (20) years from and after August 18, 1989, to erect, construct, maintain and operate within the below-described Service Area a gas distributing system together with all appurtenances, pipes, machinery, tanks and appliances necessary or useful thereto, for the distribution of gas for the purpose of selling, distributing and supplying gas to the Service Area and the inhabitants thereof, and others, together with the right and franchise to use and occupy the roads, streets, avenues, alleys, bridges and other public places of said City, as now or hereafter laid out and hereafter extended with its gas mains, pipes, Pipelines, distributing lines, conduits and other appliances and appurtenances necessary or useful for the purpose of maintaining and operating such gas distributing system within the Service Area, and the right and franchise of selling, distributing and supplying the Service Area and its inhabitants thereof, with such gas for light, heat, fuel, power, cooking and other purposes, subject to the terms and conditions of this Ordinance, as herein set forth.

B. Service Area Described. The Service Area licensed hereunder is described as follows:

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**City Code, Chapter 18: REGULATION OF UTILITIES**

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All those portions of the City of Columbus, Anoka County, Minnesota, described as follows: All of Sections 30 and 31, Township 33 North, Range 22 West; and,

All those portions of the City of Columbus, Anoka County, Minnesota, lying within the following described boundary: Beginning at the Southeast corner of Section 33, Township 32 North, Range 22 West, thence North along the East line of said Section 33 to the Northeast corner of the Southeast Quarter of the Northeast Quarter; thence East along the North line of the South Half of the Northwest Quarter of Section 34, Township 32, Range 22, to the Northeast corner of said South Half; thence North to the Northeast corner of the Southeast Quarter of the Southwest Quarter of Section 27, Township 32, Range 22; thence East to the Southeast corner of the Northwest Quarter of the Southeast Quarter of Section 27; thence North to the Northeast corner of the Northwest Quarter of the Northeast Quarter of said Section 27; thence West to the Northwest corner of the Northwest Quarter of the Northeast Quarter of said Section 27; thence North to the Northeast corner of the Southeast Quarter of the Southwest Quarter of Section 22, Township 32, Range 22; thence West along the North line of the Southeast Quarter of the Southwest Quarter of said Section 22, a distance of 885 feet; thence Northeasterly and parallel with the Easterly right-of-way line of Anoka County Highway Right-of-Way Plat No. 3 to the centerline of Crossways Lake Drive; thence Northwesterly along the centerline of Crossways Lake Drive to intersect the centerline of Anoka County Highway Right-of-Way Plat No. 3; thence Northeasterly along the centerline of Anoka County Highway Right-of-Way Plat No. 3, to its intersection with the Northeast corner of the Northwest Quarter of the Northeast Quarter of Section 22, Township 32, Range 22; thence Westerly along said section line a distance of 660 feet; thence North to a point on the North line of the Southwest Quarter of the Southeast Quarter of Section 15, Township 32, Range 22, lying 660 feet Westerly, as measured along said North line, from the Northeast corner of said Southwest Quarter of the Southeast Quarter; thence Easterly along said quarter-quarter line to the Northwest corner of the South Half of the Southwest Quarter of Section 14, Township 32, Range 22; thence continuing Easterly along the North line of said South Half of said Southwest Quarter, continuing Easterly along the North line of the South Half of the Southeast Quarter of said Section 14; thence continuing Easterly along the North line of the South Half of the Southwest Quarter of Section 13, and continuing Easterly along the North line of the South Half of the Southeast Quarter of Section 13 to the Township line, being the East line of Section 13, Township 32, Range 22 West; thence South along the Columbus Town line to the Southeast corner of Section 36, Township 32, Range 22; thence West along the section line to the Southeast corner of Section 33, Township 32, Range 22, and there terminating.

C. Specific Conditions of This License.

1. The licensee shall construct its Distribution System in accord with the designs, specifications, and schedules contained within its application on file and of record in the office of the City Clerk.
2. The licensee shall operate its Utility in accord with the provisions of this Chapter and of the City Code.
3. The licensing fees to be paid under this license are:

**City Code, Chapter 18: REGULATION OF UTILITIES**

Public hearing fee (§ 18-408) .....	\$ 250.00
Basic license fee (§ 18-410) .....	1,000.00
Formula license fee (§ 18-410), based on 212 improved parcels within Service Area (at \$2.10 each).....	<u>445.20</u>
<b>TOTAL .....</b>	<b>\$1,695.20</b>

4. On or before September 1, 1990, the licensee shall submit plans and schedules to the Town Manager, depicting and describing the licensee’s plans and schedule for completion of a Distribution System within the licensed Service Area. Such plans and schedules are subject to regulation by the Public Utilities Commission.

*[§ 18-520 amended by Ord. No. 07-02, effective March 1, 2007.]*

**SECTION 18-521. CONDITIONAL SERVICE AREA LICENSE FOR NORTHERN STATES POWER COMPANY.**

A. License. The City hereby grants Northern States Power Company, its successors and assigns, a nonexclusive right and license for a period of twenty (20) years from and after April 23, 1993, to erect, construct, maintain and operate within the below-described Service Area a gas distributing system together with all appurtenances, pipes, machinery, tanks and appliances necessary or useful thereto, for the distribution of gas for the purpose of selling, distributing and supplying gas to the Service Area and the inhabitants thereof, and others, together with the right and franchise to use and occupy the roads, streets, avenues, alleys, bridges and other public places of said City, as now or hereafter laid out and hereafter extended with its gas mains, pipes, Pipelines, distributing lines, conduits and other appliances and appurtenances necessary or useful for the purpose of maintaining and operating such gas distributing system within the Service Area, and the right and franchise of selling, distributing and supplying the Service Area and its inhabitants thereof, with such gas for light, heat, fuel, power, cooking and other purposes, subject to the terms and conditions of this Ordinance, as herein set forth.

B. Service Area Described. The Service Area licensed hereunder is described as follows:

All those portions of the City of Columbus, Anoka County, Minnesota, described as follows:

All of Section 25, Township 33 North, Range 22 West; The Northeast Quarter of Section 26, Township 33 North, Range 22 West; The Southeast Quarter of Section 26, Township 33 North, Range 22 West; The South Half of the Southwest Quarter of Section 26, Township 33 North, Range 22 West; The North Half of the Northwest Quarter of Section 35, Township 33 North, Range 22 West; The North Half of the Northeast Quarter of Section 35, Township 33 North, Range 22 West; The North Half of the Northwest Quarter of Section 36, Township 33 North, Range 22 West; and, The North Half of the Northeast Quarter of Section 36, Township 33 North, Range 22 West.

**City Code, Chapter 18: REGULATION OF UTILITIES**

C. Specific Conditions of This License.

- 1. The licensee shall construct its Distribution System in accord with the designs, specifications, and schedules contained within its application on file and of record in the office of the City Clerk.
- 2. The licensee shall operate its Utility in accord with the provisions of this Chapter and of the City Code.
- 3. The licensing fees to be paid under this license are:

Public hearing fee (§ 18-408) .....	\$250.00
Basic license fee (§ 18-410) .....	0.00
Formula license fee (§ 18-410), based on 27 improved parcels within Service Area .....	
(at \$2.10 each) .....	<u>56.70</u>
 TOTAL .....	 \$306.70

- 4. On or before May 1, 1994, the licensee shall submit plans and schedules to the Town Manager, depicting and describing the licensee’s plans and schedule for completion of a Distribution System within the licensed Service Area. Such plans and schedules are subject to regulation by the Public Utilities Commission.

*[Section 18-501 added by Ord. No. 93-4, effective April 23, 1993, amended by Ord. No. 07-02, effective March 1, 2007.]*

**ARTICLE VI**  
**MISCELLANEOUS PROVISIONS**

**SECTION 18-601. CHANGE IN FORM OF GOVERNMENT.** Any change in the form of government of the City shall not affect the validity of this Chapter. Any governmental unit succeeding the City shall, without the consent of any Utility, automatically succeed to all of the rights of the City provided in this Chapter.

*[§ 18-601 amended by Ord. No. 07-02, effective March 1, 2007.]*

**SECTION 18-602. SEVERABILITY.** If any portion of this Chapter is found to be invalid for any reason whatsoever, the validity of the rest of this Chapter shall not be affected.

**SECTION 18-603. PENALTY.** Any person, firm, or corporation violating any provision of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine or imprisonment in accordance with the provisions of Chapter 1, Section 1-109 of this City Code.

*[Section 18-603 amended by Ord. No. 92-2, effective April 17, 1992, amended by Ord. No. 07-02, effective March 1, 2007.]*



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**City Code, Chapter 18: REGULATION OF UTILITIES**

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*CHAPTER 18 added to the Columbus Town Code by Ordinance No. 89-6, adopted August 9, 1989, effective August 18, 1989. Clerk's note: references in the text of Ordinance No. 89-6 to "the effective date of this Ordinance" have been revised in the printing of Chapter 18 to read "August 18, 1989." /s/Barbara A. Masteller, Town Clerk*

*History of ordinances affecting the text of Chapter 18 (since adoption of Ord. No. 89-6):*

*Ord. No. 89-17, effective December 8, 1989.*

*Ord. No. 92-2, effective April 17, 1992.*

*Ord. No. 93-3, effective March 12, 1993.*

*Ord. No. 93-4, effective April 23, 1993.*

*Ord. No. 94-5, effective January 12, 1996.*

*Ord. No. 07-02, effective March 1, 2007.*

*Ord. No. 09-02, effective March 1, 2007.*

*Ord. No. 09-04, effective March 19, 2009.*

*Ord. No. 09-07, effective September 3, 2009.*

*Ord. No. 10-05, effective April 1, 2010.*

*This Chapter has been updated through the date of the latest ordinance listed above.*

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