

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

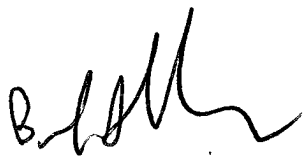
LISA KRAGNES, et al Plaintiff, vs. CITY OF DES MOINES, IOWA, Defendant.	Equity No. 49273 PLAINTIFF'S FIRST SUPPLEMENTAL APPENDIX IN SUPPORT OF PLAINTIFFS' RESISTANCE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
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Respectfully Submitted,

By: 

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ATTORNEY FOR PLAINTIFF

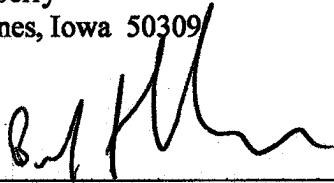
**ORIGINAL FILED.
CERTIFICATE OF SERVICE:**

A COPY of the foregoing has
been mailed this 7th day
of November, 2005, to the following:

**Mark Godwin
Deputy City Attorney
City Hall
400 East First Street
Des Moines, Iowa 50309-1891
ATTORNEY FOR DEFENDANT**

**Judge Michael D. Huppert
Polk County Courthouse
500 Mulberry
Des Moines, Iowa 50309**

By: _____

A handwritten signature in black ink, appearing to read "Mark Godwin", is written over a horizontal line. The signature is cursive and somewhat stylized.

§§396.29, CITIES AND TOWNS—BONDS AND CERTIFICATES

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out of which the said bonds are payable and hold the same special and apart in trust for the payment of said refunding bonds, but it shall be in no way liable except for the proper application of said assessment. [C27, 31, 35, §6126-a; C39, §6126-b; C46, 50, 54, §396.29]

396.30 Primary road extension. Whenever the state highway commission constructs or

aids in the construction of bridges, viaducts and grade separations on extensions of primary roads in any city or town, such city or town is hereby authorized to contract indebtedness and issue bonds in the manner provided in this chapter for the payment of its portion of the cost of such construction including damages to abutting property owners. [C50, 54, §396.30]

1301

the same entity or to other shall have necessary within or with the same extend the same power to est pally owned §720; C24, 27, Referred to in

CHAPTER 397

HEATING PLANTS, WATER OR GAS WORKS, AND ELECTRIC PLANTS

Referred to in §§397.34, 398.2, 399.2, 400.297, 400.303
Applicable to all cities and towns

GENERAL PROVISIONS

- 397.1 Cities and towns may purchase.
- 397.2 Franchise may be granted.
- 397.3 Utilization of waste.
- 397.4 Purchase of utility products.
- 397.5 Election required—exception.
- 397.6 Question submitted.
- 397.7 Notice—time of election—costs.
- 397.8 General powers granted.

PAYMENT FROM EARNINGS

- 397.9 Contract authorized.
- 397.10 Bonds.
- 397.11 Refunding bonds.
- 397.12 Form of bonds.
- 397.13 Sale of bonds—interest.
- 397.14 Nature and requirements of contract.
- 397.15 Interpretative clause—election requirement.
- 397.16 Notice of proposed contract—publication.
- 397.17 Contents of notice.
- 397.18 Execution of contract.
- 397.19 Record of proceedings.

CONDEMNATION OF EXISTING PLANTS

- 397.20 Special condemnation proceedings—limitation.
- 397.21 Court of condemnation.
- 397.22 Procedure.

GENERAL PROVISIONS

397.1 Cities and towns may purchase. Cities and towns shall have the power to purchase, establish, erect, maintain, and operate within or without their corporate limits, heating plants, waterworks, gasworks, or electric light or power plants, with all the necessary reservoirs, mains, filters, streams, trenches, pipes, drains, poles, wires, burners, machinery, apparatus, and other requisites of said works or plants, and lease or sell the same. [C73, §471-473; C97, §720; §13, §720; C24, 27, 31, 35, 39, §6127; C46, 50, 54, §397.1]

400-2A, HF 172.31, editorially divided
Referred to in §397.3
Similar power, §460.2

397.2 Franchise may be granted. They may grant to individuals or private corporations the authority to erect and maintain such works or plants for a term of not more than twenty-

- 397.23 Notice—service.
- 397.24 Powers of court—duty of clerk—vacancy.
- 397.25 Costs—expenses.

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- 397.26 Jurisdiction of city.
- 397.27 Sale of products—rates—taxes—equipment.
- 397.28 Regulation of rates and service.

MANAGEMENT BY TRUSTEES

- 397.29 Management by board of trustees.
- 397.30 Notice of election.
- 397.31 Form of submission.
- 397.32 Trustees—terms—compensation—vacancies.
- 397.33 Compensation in certain cities.
- 397.34 Powers of trustees.
- 397.35 Bonds.

SUPPLYING MILITARY RESERVATIONS

- 397.36 Water for military reservations.
- 397.37 Mains in highways.

SURPLUS EARNINGS

- 397.38 Transfer of surplus earnings.
- 397.39 General transfer.
- 397.40 Exceptions.
- 397.41 Applicability of statute.
- 397.42 Acquiring property and building thereon.

five years, and may renew, amend, or extend the terms of the grant; but no exclusive franchise shall be granted, amended, extended, or renewed. [C73, §473; C97, §720; §13, §720; C24, 27, 31, 35, 39, §6128; C46, 50, 54, §397.2]

Referred to in §397.6

397.3 Utilization of waste. Cities with a population of less than ten thousand may utilize the steam and excess power of such works or plants in the manufacture of artificial ice, and may install machinery and equipment therefor. [C24, 27, 31, 35, 39, §6128; C46, 50, 54, §397.3]

Referred to in §397.6

397.4 Purchase of utility products. They may enter into contracts with persons, corporations, or municipalities for the purchase of heat, gas, water, or electric current for either light or power purposes, for the purpose of selling

397.5 Elec such works established, or franchise amended, or for in section a majority o vote in favor that any city obtaining the electors voti not to exceed the exchange between the those of any or for the p city or town become inad gency or an those perso [C73, §471; C 59, §6131; C46

Referred to in

397.6 Qu order any o tions 397.1 vote at a g one special mayor shal vote upon t owners of e fifty prop town. [C97 §6132; C46,

400-2A, HF

397.7 Ne of the elec once each some news of general election sh five nor m publication the grant chise shall the election 39, §6133; C

Referred to

397.8 G have powe 1. Conde priate so necessary

Ch. 397, Waterworks, gasworks, electric plants, heating plants, and electric plants in certain cities—1958-59 I.C.A. Ch. 397, Air Pollution Control Commission, Board of Health, 1959 I.C.A. Ch. 215, 1959 I.C.A.

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CITIES AND TOWNS—PUBLIC UTILITY PLANTS, §397.11

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the same either to residents of the municipal-
ity or to others, including corporations, and
shall have power to erect and maintain the
necessary transmission lines therefor, either
within or without their corporate limits, to
the same extent, in the same manner, and un-
der the same regulations, and with the same
power to establish rates and collect rents, as
is provided by law for cities having municipi-
ally owned plants. [C73, §471; C97, §720; S13,
§720; C24, 27, 31, 35, 39, §6130; C48, 50, 54, §397.4]

Referred to in §§397.5, 397.8

of said works or plants, and for the purpose
of constructing and maintaining dams across
the nonnavigable waters and watercourses of
the state in forming reservoirs and sources
of water to supply such waterworks and
plants, as provided for the condemnation of
land for city purposes.

2. *Bonds.* To issue bonds for the payment of
the cost of establishing the same, including
the cost of land condemned on which to locate
them.

3. *Delegated power.* To confer by ordinance
the power to appropriate and condemn private
property for such purpose upon any individual
or corporation authorized to construct and
operate such works or plants. [C73, §474; C97,
§722; S13, §722; C24, 27, 31, 35, 39, §6134; C48, 50,
54, §397.8]

Condemnation procedure, ch 472

PAYMENT FROM EARNINGS

397.9 *Contract authorized.* They shall have
power to pay for any such plant, improvement
or extension thereof out of the past earnings
of the plant and/or out of the future earnings
and/or may contract for the payment of all or
part of the cost of such plant, improvement, or
extension out of the future earnings from such
plant, and may secure such contract by the
pledge of the property purchased and the net
earnings of the plant. [C31, 35, §6134-d1; C39,
§6134-d1; C48, 50, 54, §397.9]

44GA, ch 128, §1, editorially divided
Referred to in §§397.15, 397.16

397.10 *Bonds.* For the purpose of defraying
the cost of any such plant, improvement or
extension thereof, any such city or town is
hereby authorized to issue negotiable, interest-
bearing revenue bonds payable from and se-
cured by the net earnings of the plant, and
may also be secured by the pledge of the prop-
erty purchased, which bonds shall not consti-
tute a general obligation of such city or town
or be enforceable in any manner by taxation.
Such revenue bonds may be delivered to the
contractor or contractors in payment for such
improvement or they may be sold by the mu-
nicipality and the proceeds used to pay for
such improvement; and/or such bonds may be
used as collateral security for money borrowed
to pay the cost of such improvement, such loan
to be repaid only out of the net earnings of the
plant. [C35, §6134-f1; C39, §6134-f2; C48, 50, 54,
§397.10]

Referred to in §397.15

397.11 *Refunding bonds.* Cities and towns
shall have power to refund bonds or obliga-
tions issued for the cost of any heating plants,
waterworks, gasworks, or electric light or pow-
er plants, or for any improvement or extension
of any such plants, when such bonds or obliga-
tions are payable from and secured by the net
earnings of any such plant and which bonds
or obligations do not constitute a general ob-
ligation of such city or town, and shall have
the power so to refund any such bonds or obli-
gations when the same become due and pay-
able, or prior thereto in any case where such

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§6129; C48, 50,

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397.5 *Election required—exception.* No
such works or plants shall be authorized, es-
tablished, erected, purchased, leased, or sold;
or franchise granted, extended, renewed, or
amended, or contract of purchase provided
for in section 397.4 shall be entered into unless
a majority of the legal electors voting thereon
vote in favor of the same; provided, however,
that any city or town may, without asking or
obtaining the approval of a majority of its legal
electors voting thereon, contract for periods of
not to exceed five years at any one time for
the exchange or interchange of electric energy
between the facilities of said city or town and
those of any other person, firm or corporation;
or for the purchase of electric energy by said
city or town when the facilities thereof have
become inadequate by reason of accident, emer-
gency or any other cause to serve properly all
those persons entitled to be served thereby.
[C73, §471; C97, §720; S13, §720; C24, 27, 31, 35,
39, §6131; C48, 50, 54, §397.5; 56GA, ch 199, §1]

Referred to in §§397.5, 397.15
Vote required to issue bonds, §76.1

397.6 *Question submitted.* The council may
order any of the questions provided for in sec-
tions 397.1 to 397.5, inclusive, submitted to a
vote at a general or municipal election or at
one specially called for that purpose, or the
mayor shall submit said question to such a
vote upon the petition of twenty-five property
owners of each voting precinct in a city, or of
any property owners of any incorporated
town. [C97, §721; S13, §721; C24, 27, 31, 35,
39, §6132; C48, 50, 54, §397.6]

502xGA, HF 172, §4, editorially divided

397.7 *Notice—time of election—costs.* Notice
of the election shall be given by publication
once each week for four consecutive weeks in
the newspaper published in the county and
of general circulation in the city or town. The
election shall be held on a day not less than
thirty nor more than twenty days after the last
publication of notice. The person asking for
the granting, renewal, or extension of a fran-
chise shall pay the costs incurred in holding
the election. [C97, §721; S13, §721; C24, 27, 31, 35,
39, §6133; C48, 50, 54, §397.7]

Referred to in §397.10

397.8 *General powers granted.* They shall
have power:

1. *Condemnation.* To condemn and appro-
priate so much private property as may be
necessary for the construction and operation

§397.24, CITIES AND TOWNS—PUBLIC UTILITY PLANTS

require the production of any books or papers, and may appoint a shorthand reporter. It shall perform all the duties of commissioners in the condemnation of property. Such duties and the method of procedure and condemnation, including provisions for appeal, shall, except as herein otherwise specifically provided, be, as nearly as may be, as provided for the taking of private property for works of internal improvement. The clerk of the district court of the county where the city or town is located shall perform all of the duties required of the sheriff in such condemnation; and in case of a vacancy in the court, such vacancy shall be filled in the manner in which the original appointment was made. When necessary by reason of such vacancy, the court may review any evidence in its records. [§§15, §722-a; C24, 27, 31, 35, 39, §6139; C46, 50, 54, §397.24]

Referred to in §397.2 Procedure in general, ch 472

§397.25 Costs—expenses. The costs of said proceedings shall be the same and paid in the same manner as in proceedings in the district court, and the said district court judges of said court of condemnation shall receive, while engaged in such service, their actual expenses, which expenses shall be taxed as costs in the case. [§13, §722-b; C24, 27, 31, 35, 39, §6140; C46, 50, 54, §397.25]

Referred to in §397.2 Costs generally, ch 525

JURISDICTION, SALE OF PRODUCTS, AND RATES

§397.26 Jurisdiction of city. For the purpose of maintaining and protecting such works or plants from injury, and protecting the water of such waterworks from pollution, the jurisdiction of such city or town shall extend over the territory occupied by such works, and all reservoirs, mains, filters, streams, trenches, pipes, drains, poles, wires, burners, machinery, apparatus, and other requisites of said works or plants used in or necessary for the construction, maintenance, and operation of the same, and over the stream or source from which the water is taken for five miles above the point from which it is taken. [C73, §472; C97, §723; C24, 27, 31, 35, 39, §6141; C46, 50, 54, §397.26]

§397.27 Sale of products—rates—taxes—equipment. They may sell the products of municipal heating plants, waterworks, gasworks, or electric light or power plants to any municipality, individual, or corporation outside the city or town limits, as well as to individuals or corporations within its limits, and may with the consent of the board having jurisdiction thereof erect in the public highway the necessary poles upon which to construct transmission lines; and shall, from time to time in such manner as they deem equitable, assess upon each tenement or other place supplied with heat, water, gas, light, or power, reasonable rents or rates fixed by ordinance, and shall levy a tax as provided by law to pay or aid in paying the expenses of running, operating, renewing, and extending such works, and the interest on any bonds issued to pay all or any part of

their construction. [C73, §475; C97, §724; §13, §724; C24, 27, 31, 35, 39, §6142; C46, 50, 54, §397.27]

Referred to in §397.22, 397.22

§397.28 Regulation of rates and service. They shall have power to require every individual or private corporation operating such works or plant, subject to reasonable rules and regulations, to furnish any person applying therefor, along the line of its pipes, mains, wires, or other conduits, with gas, heat, water, light, or power, and to supply said city or town with water for fire protection, and with gas, heat, water, light, or power for other necessary public purposes and to regulate and fix the rent or rate for water, gas, heat, light, or power; to regulate and fix the rents or rates of water, gas, heat, and electric light or power; to regulate and fix the charges for water meters, gas meters, electric light or power meters, or other device or means necessary for determining the consumption of water, gas, heat, electric light or power, and these powers shall not be abridged by ordinance, resolution, or contract. [C73, §475; C97, §725; §13, §725; C24, 27, 31, 35, 39, §6143; C46, 50, 54, §397.28]

Referred to in §397.22, 397.22

MANAGEMENT BY TRUSTEES

§397.29 Management by board of trustees. The council of any city or town which owns or may hereafter acquire waterworks, sewage disposal plant, heating plant, gasworks, or electric light or electric power plant, may, and upon petition of ten percent of the qualified electors of such city or town shall, at any general election, or at a special election called for that purpose, submit the question as to whether the management and control of such waterworks, sewage disposal plant, heating plant, gasworks, or electric light or electric power plant shall be placed in the hands of a board of trustees. [C24, 27, 31, 35, 39, §6144; C46, 50, 54, §397.29]

Referred to in §397.7(9, 10), 397.26

§397.30 Notice of election. Notice of such election shall be given by publication in one newspaper published in said city or town once each week for not less than three consecutive weeks, and the election shall be held not less than seven nor more than twenty days after the completion of such publication. If no newspaper is published in such city or town, notice may be given by posting notices for three weeks in five public places in such city or town. [C24, 27, 31, 35, 39, §6145; C46, 50, 54, §397.30]

§397A, ch 55, §2, editorially divided Referred to in §397.7(9, 10), 397.26

§397.31 Form of submission. The question to be submitted shall be in the following form:

"Shall the city (or town) of place the management and control of its waterworks (or heating plant, or gasworks, or electric light or electric power plant) in the hands of a board of trustees?" [C24, 27, 31, 35, 39, §6146; C46, 50, 54, §397.31]

Referred to in §397.7(9, 10), 397.26

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§397.32 Trustees—vacancies. If a major election are in management and control utilities in the hands shall, within ten days appoint a board of trustees. The board shall be appointed by the council. The first office, one for two years and one for six years shall be appointed for vacancies occurring in the manner made. Each trustee to the city an office twenty-five hundred the mayor and filed 27, 31, 35, 39, §6147; C 195, §1]

Referred to in §397.22

§397.33 Compensation. Each trustee shall not more than one in cities each trustee of not more than per year. [C24, 27, 39, §733; 57GA, ch 1]

Referred to in §397.22

§397.34 Powers of trustees shall have in the management mentioned in the voters at such election waterworks trustee chapter 398. [C24, 54, §397.34]

Referred to in §397.22

§397.35 Bonds. In excess of twenty seventy-five thousand standing general purpose of purchase plants, water or gas or which have a such general bond having a board of chapter, such bond lution, issue bond exceed five percent of extending or water or gas works issued under this bonds against the bonds of the city; this manner in the book value books of the city principal of such bond earnings of the issued. Bonds is not be for a lot and shall be re beginning not issuance. [C91, 50, 54, §397.35]

Referred to in §397.22

§397.36 Bonds. In excess of twenty seventy-five thousand standing general purpose of purchase plants, water or gas or which have a such general bond having a board of chapter, such bond lution, issue bond exceed five percent of extending or water or gas works issued under this bonds against the bonds of the city; this manner in the book value books of the city principal of such bond earnings of the issued. Bonds is not be for a lot and shall be re beginning not issuance. [C91, 50, 54, §397.35]

Referred to in §397.22

§397.37 Bonds. In excess of twenty seventy-five thousand standing general purpose of purchase plants, water or gas or which have a such general bond having a board of chapter, such bond lution, issue bond exceed five percent of extending or water or gas works issued under this bonds against the bonds of the city; this manner in the book value books of the city principal of such bond earnings of the issued. Bonds is not be for a lot and shall be re beginning not issuance. [C91, 50, 54, §397.35]

Referred to in §397.22

§397.38 Bonds. In excess of twenty seventy-five thousand standing general purpose of purchase plants, water or gas or which have a such general bond having a board of chapter, such bond lution, issue bond exceed five percent of extending or water or gas works issued under this bonds against the bonds of the city; this manner in the book value books of the city principal of such bond earnings of the issued. Bonds is not be for a lot and shall be re beginning not issuance. [C91, 50, 54, §397.35]

Referred to in §397.22

§397.39 Bonds. In excess of twenty seventy-five thousand standing general purpose of purchase plants, water or gas or which have a such general bond having a board of chapter, such bond lution, issue bond exceed five percent of extending or water or gas works issued under this bonds against the bonds of the city; this manner in the book value books of the city principal of such bond earnings of the issued. Bonds is not be for a lot and shall be re beginning not issuance. [C91, 50, 54, §397.35]

Referred to in §397.22

§397.40 Bonds. In excess of twenty seventy-five thousand standing general purpose of purchase plants, water or gas or which have a such general bond having a board of chapter, such bond lution, issue bond exceed five percent of extending or water or gas works issued under this bonds against the bonds of the city; this manner in the book value books of the city principal of such bond earnings of the issued. Bonds is not be for a lot and shall be re beginning not issuance. [C91, 50, 54, §397.35]

Referred to in §397.22

§397.41 Bonds. In excess of twenty seventy-five thousand standing general purpose of purchase plants, water or gas or which have a such general bond having a board of chapter, such bond lution, issue bond exceed five percent of extending or water or gas works issued under this bonds against the bonds of the city; this manner in the book value books of the city principal of such bond earnings of the issued. Bonds is not be for a lot and shall be re beginning not issuance. [C91, 50, 54, §397.35]

Referred to in §397.22

§397.42 Bonds. In excess of twenty seventy-five thousand standing general purpose of purchase plants, water or gas or which have a such general bond having a board of chapter, such bond lution, issue bond exceed five percent of extending or water or gas works issued under this bonds against the bonds of the city; this manner in the book value books of the city principal of such bond earnings of the issued. Bonds is not be for a lot and shall be re beginning not issuance. [C91, 50, 54, §397.35]

Referred to in §397.22

Roll Call No. 111 cont'd,
RESOLVED by the City Council of the City of Des Moines, Iowa

WHEREAS, under the laws of the State of Iowa, any gas franchise and electric franchise granted by the City of Des Moines, to be effective, must first be submitted to and approved by a majority of the legal electors voting thereon at a general or special election; and

WHEREAS, the Iowa Power and Light Company has filed with the City Clerk of the City of Des Moines its written acceptance of the electric franchise Ordinance No. 6280 and the gas franchise Ordinance No. 6281, and the conditions and limitations therein contained, together with its agreement to carry out and perform all the covenants and undertakings of the said ordinances, and has agreed to pay all expenses incident to the holding of a special election to be held for the purpose of submitting said ordinances and franchises contained therein and granted thereby to the legal electors of the City of Des Moines for approval; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa

Section 1. That there is hereby called a special election to be held in and for the City of Des Moines, Iowa, on Monday, the 26th day of September 1960, for the purpose of submitting to the legal electors of said city of Des Moines for their approval or rejection electric franchise Ordinance No. 6280, and gas franchise Ordinance No. 6281, passed by the City Council of the City of Des Moines, Iowa, on August 22 1960, said electric franchise Ordinance No. 6280, being in the words and figures, as follows:

ORDINANCE No. 6280

"AN ORDINANCE granting unto Iowa Power and Light Company, its successors and assigns, the right, franchise and privilege for a period of twenty-five (25) years from and after the adoption and approval hereof, to acquire, construct or maintain in the city of Des Moines, Iowa, the necessary facilities for the production, distribution,

IOWA STATE LAW LIBRARY

Roll Call No. cont'd,

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Des Moines, Iowa,

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~~BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa~~

transmission or sale of electric energy for public and private use, and to use and occupy the public streets, highways, avenues, alleys, bridges, and public places for such purposes, and prescribing the terms and conditions thereof; and providing for the imposition and collection of a franchise, occupation or privilege tax.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That Iowa Power and Light Company, a corporation, its successors and assigns, be and it is hereby granted and vested with the right, franchise and privilege for a period of twenty-five (25) years from and after the adoption and approval hereof, as provided by law, to acquire, construct, maintain or operate in the city of Des Moines, Iowa, the necessary facilities for the production, distribution, transmission or sale of electric energy for public and private use and to construct and maintain along, upon, across, or under the streets, highways, avenues, alleys, bridges and public places the necessary fixtures and equipment for such purposes.

Section 2. This franchise shall not be exclusive and shall not restrict in any manner the right of the City Council or any other governing body of the city in the exercise of any regulatory power which it now has or which may hereafter be authorized or permitted by the laws of the State of Iowa.

Section 3. That the Iowa Power and Light Company, its successors and assigns, shall at all times during the term of this franchise, conform with, submit to, and carry out any and all ordinances relating to any person, firm, or corporation furnishing electric light and power now in force or that may hereafter be enacted and not inconsistent herewith.

Section 4. There is hereby imposed upon the Iowa Power and Light Company and, by its acceptance of this franchise, it agrees that there shall be paid by the Iowa Power and Light Company and its successors and assigns to the City of Des Moines, an annual franchise, occupation

Roll Call No. 771 cont'd,page 4
Des Moines, Iowa.....195.....~~BEIT/RESOLVED/By the City Council of the City of Des Moines, Iowa~~

or privilege tax equal to one per cent (1%) of the gross receipts of the said company derived by it from the distribution and sale of electric energy to consumers within the corporate limits of the City of Des Moines during the term of this franchise, to be paid to the city treasurer semi-annually on the first day of February and the first day of August of each year for the six-month periods ending respectively on December 13 and June 30 next preceding.

Such franchise, occupation or privilege tax shall be terminated if there shall be enacted by the General Assembly of the State of Iowa, during the term of this franchise, a statute under the terms of which the aforesaid company, its successors and assigns, shall pay to the City of Des Moines a tax which, when added to taxes other than the aforesaid franchise, occupation or privilege tax payable by the aforesaid company to the aforesaid City, will produce revenue for the City in equal or greater annual amount than the sum of the aforesaid franchise, occupation or privilege tax and all other taxes paid by the aforesaid Company to the City of Des Moines for the calendar year next preceding the year in which such statute goes into effect.

Section 5. The provision for the franchise, occupation or privilege tax herein referred to shall not be construed as a repeal or modification of any previously enacted Ordinance providing for the franchise tax presently paid by said Company, but in no event, however, shall such tax exceed one per cent (1%) of the gross receipts for electric energy sold in the city annually; the same to be paid semi-annually and within thirty (30) days of the expiration of the preceding six (6) months.

Section 6. The provisions of this franchise shall not be deemed severable and if any part be held invalid the entire franchise shall be deemed invalid."

and said gas franchise Ordinance No. 6281, being in the words and figures, as follows:

Roll Call No. 111 cont'd, page 5

Des Moines, Iowa, 196

~~BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa~~ORDINANCE No. 6251

"AN ORDINANCE granting unto Iowa Power and Light Company, its successors and assigns, the right, franchise and privilege for a period of twenty-five (25) years from and after the adoption and approval hereof, to acquire, construct or maintain in the city of Des Moines, Iowa, the necessary facilities for the production, distribution, transmission or sale of gas for public and private use, and to use and occupy the public streets, highways, avenues, alleys, bridges, and public places for such purposes, and prescribing the terms and conditions thereof; and providing for the imposition and collection of a franchise, occupation or privilege tax.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That Iowa Power and Light Company, a corporation, its successors and assigns, be and it is hereby granted and vested with the right, franchise and privilege for a period of twenty-five (25) years from and after the adoption and approval hereof, as provided by law, to acquire, construct, maintain or operate in the city of Des Moines, Iowa, the necessary facilities for the production, distribution, transmission or sale of gas for public and private use and to construct and maintain along, upon, across or under the streets, highways, avenues, alleys, bridges and public places the necessary fixtures and equipment for such purposes.

Section 2. This franchise shall not be exclusive and shall not restrict in any manner the right of the City Council or any other governing body of the city, in the exercise of any regulatory power which it now has or which may hereafter be authorized or permitted by the laws of the State of Iowa.

Section 3. That the Iowa Power and Light Company, its successors and assigns, shall at all times during the term of this franchise, conform with, submit to, and carry out any and all ordinances relating to any person, firm or corporation supplying and distributing gas to the city or its inhabitants now in force or that may hereafter be enacted and not inconsistent herewith.

RESOLVED by the City Council of the City of Des Moines, 1901

Section 4. There is hereby imposed upon the Iowa Power and Light Company and, by its acceptance of this franchise, it agrees that there shall be paid by the Iowa Power and Light Company and its successors and assigns to the City of Des Moines, an annual franchise, occupation or privilege tax equal to two per cent (2%) of the gross receipts of the said company derived by it from the distribution and sale of gas to consumers within the corporate limits of the City of Des Moines during the term of this franchise, to be paid to the city treasurer semi-annually on the first day of February and the first day of August of each year for the six-month periods ending respectively on December 31 and June 30 next preceding.

Such franchise, occupation or privilege tax shall be terminated if there shall be enacted by the General Assembly of the State of Iowa, during the term of this franchise, a statute under the terms of which the aforesaid company, its successors and assigns, shall pay to the City of Des Moines a tax which, when added to taxes other than the aforesaid franchise, occupation or privilege tax payable by the aforesaid company to the aforesaid city, will produce revenue for the City in equal or greater annual amount than the sum of the aforesaid franchise, occupation or privilege tax and all other taxes paid by the aforesaid Company to the City of Des Moines for the calendar year next preceding the year in which such statute goes into effect.

Section 5. The provision for the franchise, occupation or privilege tax herein referred to shall not be construed as a repeal or modification of any previously enacted ordinance providing for the franchise tax presently paid by said Company, but in no event, however, shall such tax exceed two per cent (2%) of the gross receipts for gas sold in the city annually; the same to be paid semi-annually and within thirty (30) days of the expiration of the preceding six (6) months.

Section 6. The provisions of this franchise shall not be deemed severable and if any part be held invalid the entire franchise shall be deemed invalid.

AUG 22 1960

Roll Call No. 331

Des Moines, Iowa.....19

BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa

Supplemental Appendix 9

Statement by A. Paul Thompson, President of the Iowa Power and Light Company, concerning their request for new electric and gas franchises;

presented.

Moved by ILES to receive and file.

copy moved to A. Paul Thompson

moved by Iles to receive & file

Motion carried.	GROTHE <input checked="" type="checkbox"/>	ILES <input checked="" type="checkbox"/>	LEACHMAN <input checked="" type="checkbox"/>	WALLACE <input checked="" type="checkbox"/>	CARLSON <input checked="" type="checkbox"/>	TOTAL <input checked="" type="checkbox"/>
YEA'S:	GROTHE <input checked="" type="checkbox"/>	ILES <input checked="" type="checkbox"/>	LEACHMAN <input checked="" type="checkbox"/>	WALLACE <input checked="" type="checkbox"/>	CARLSON <input checked="" type="checkbox"/>	TOTAL <input checked="" type="checkbox"/>
NAYS:	GROTHE <input type="checkbox"/>	ILES <input type="checkbox"/>	LEACHMAN <input type="checkbox"/>	WALLACE <input type="checkbox"/>	CARLSON <input type="checkbox"/>	TOTAL <input type="checkbox"/>
ABSENT:	GROTHE <input type="checkbox"/>	ILES <input type="checkbox"/>	LEACHMAN <input type="checkbox"/>	WALLACE <input type="checkbox"/>	CARLSON <input type="checkbox"/>	TOTAL <input type="checkbox"/>

CORTEZ SOUTER, CITY CLERK of said City, hereby certify that a meeting of the City Council of said City of Des Moines, held on _____ date, among other proceedings the above was adopted. WHEREOF, I have hereunto set my hand and affixed my seal this _____ day of _____ 1960.

Cortez Souther

APPROVED AUG 22 1960

[Signature]

1975
I.C.A.

§364.1, CITIES—POWERS AND DUTIES

CHAPTER 364

POWERS AND DUTIES OF CITIES

Ch 244 A441
Fire protection
Ch 194, §§ 44-66 GA

Referred to in §§322.1, 322.3, 376.1
Chapter 364, Code 1978, repealed by 64GA, ch 1088, §189, effective July 1, 1978
See note under Title XV, p. 1788

- 364.1 Scope.
- 364.2 Vesting of power.
- 364.3 Limitation of powers.
- 364.4 Property right.
- 364.5 Joint action—league of municipalities.
- 364.6 Procedure.
- 364.7 Disposal of property.
- 364.8 Overpasses or underpasses.

- 364.9 Flood control—railway tracks.
- 364.10 Railway crossing.
- 364.11 Street construction by railways.
- 364.12 Responsibility for public places.
- 364.13 Installments.
- 364.14 Personal injuries.
- 364.15 Changing grade of streets.

364.1 Scope. A city may, except as expressly limited by the Constitution, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents. This grant of home rule powers does not include the power to enact private or civil law governing civil relationships, except as incident to an exercise of an independent city power. [C51, §664; R60, §§1047, 1056, 1057, 1071-1073, 1095; C73, §§454-456, 482, 524; C97, §§630, 695, 947; C13, §696; C24, 27, 31, 35, 39, §§5714, 5732, 6720; C48, 50, §§366.1, 368.2, 420.31; C54, 58, 62, 66, 71, 78, §§368.1, 368.2, 420.31; 64GA, ch 1088, §10]

See 66GA, ch 1228, §6 for temporary provisions in no damage by dogs
Home Rule Amendment effective July 1, 1978

364.2 Vesting of power.

1. A power of a city is vested in the city council except as otherwise provided by a state law.

2. The enumeration of a specific power of a city does not limit or restrict the general grant of home rule power conferred by the Constitution. A city may exercise its general powers subject only to limitations expressly imposed by a state or city law.

3. An exercise of a city power is not inconsistent with a state law unless it is irreconcilable with the state law.

4. a. A city may grant to any person a franchise to erect, maintain, and operate plants and systems for electric light and power, heating, telephone, telegraph, cable television, district telegraph and alarm, motor bus, trolley bus, street railway or other public transit, waterworks, or gasworks, within the city for a term of not more than twenty-five years. The franchise may be granted, amended, extended, or renewed only by an ordinance, but no exclusive franchise shall be granted, amended, extended, or renewed.

b. No such ordinance shall become effective unless a majority of the persons voting thereon vote in favor thereof. The proposal may be submitted by the council on its own motion to

the voters at any city election. Upon receipt of a valid petition as defined in section 364.1 requesting that a proposal be submitted to the voters, the council shall submit the proposal at the next regular city election or at a special election called for that purpose prior to the next regular city election. If a majority of those voting approves the proposal the city may proceed as proposed.

c. Notice of the election shall be given by publication once each week for four consecutive weeks in a newspaper of general circulation in the city. The election shall be held on a day not less than five nor more than twenty days after the last publication of notice.

d. The person asking for the granting, amending, extension, or renewal of a franchise shall pay the costs incurred in holding the election, including the costs of the notice. A franchise shall not be finally effective until an acceptance in writing has been filed with the council and payment of the costs has been made.

e. The franchise ordinance may regulate the conditions required and the manner of use of the streets and public grounds of the city, and it may, for the purpose of providing electrical, gas, heating, or water service, confer the power to appropriate and condemn private property upon the person franchised. [C51, §§664; R60, §§1047, 1056, 1057, 1090, 1094; C97, §§630, §§454-456, 471, 473, 474, 517, 523, 524; C97, §§630, 720-722; 775, 776; S13, §§695, 720-722, 776; C24, 27, 31, 35, §§5733, 5904, 5904-cl, 5905-5909, 6124, 6131-6134; C39, §§5733, 5904, 5904.1, 5905-5909, 6128, 6131-6134; C48, 50, §§368.1, 368.2, 397.2, 397.5-397.8; C54, 58, 62, 66, §§368.2, 368.7, 368.8-368.9, 397.2, 397.5-397.8; C73, §§368.2, 368.1-368.7, 397.2, 397.5-397.8; 64GA, ch 1088, §11]

Home Rule Amendment effective July 1, 1978

364.3 Limitation of powers. The following are limitations upon the powers of a city:

1. A city council shall exercise a power only by the passage of a motion, a resolution, an amendment, or an ordinance.

2. A city may not provide a penalty in excess of a one hundred dollar fine or in excess of thirty days imprisonment for the

of an ordinance
percent of all fines
corporations shall be re
county treasurer of the
municipal corporation
the county general
hundred percent of al
pursuant to section
shall be retained by th
A city may not set
ments which are lower
those imposed by sta
standards and require
more stringent than
unless a state law
A city may not le
nally authorized by a
1073, 1095; C73, §§482, 5
13, §638; C24, 27, 31, 3
50, §§368.36, 368.1, 4
364.1(10), 420.31; C9
364.1(10), 420.31; 64GA
107, §32, ch 1258, §9]

See also constitutional Am
Home Rule Amendment effe

364.4 Property right
1. Acquire, hold, an
inside the city in the
2. By contract, exte
inside the city.

3. Enact and enforce
city property and city
the city. [S15, §§
39, §5773; C48, §§368.
368.5; C54, 58, 62, 66,
1088, §13]

Home Rule Amendment effe

364.5 Joint action—l
city or a board esta
city utility, in the e
powers, may act joint
private agency as pro
The financial cond
ions of the league of I
audited in the san
provided in section 11.
It is unlawful fo
municipalities to prov
political party or to t
ate for political or p
violating or being an
this section is gui
S13, §694-c; C24, 27, 3
368.62; C54, 58, 62, 6
1088, §14; 65GA, ch

This paragraph effective
repealed July 1, 1974, s
This paragraph effective
§11, §8
Home Rule Amendment eff

364.6 Procedure. A
comply with a proci
state law for exercisi
procedure is not esta
by may determine

pendix 10

Ch 197, §16-23 GA