

364.2 Vesting of power franchises.

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 of the State of Iowa. 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, 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. When considering whether to grant, amend, extend, or renew a franchise, a city shall hold a public hearing on the question. Notice of the time and place of the hearing shall be published as provided in section 362.3. 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. Such an ordinance shall not become effective unless approved at an election. 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 362.4 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 before the next regular city election. However, the city council may dispense with such election as to the grant, amendment, extension, or renewal of an electric light and power, heating, or gasworks franchise unless there is a valid petition requesting submission of the proposal to the voters, or the party seeking such franchise, grant, amendment, extension, or renewal requests an election. If a majority of those voting approves the proposal, the city may proceed as proposed. The complete text of the ordinance shall be included on the ballot if paper ballots are used. If an electronic voting system or voting machine is used, the proposal shall be stated on the ballot and the full text of the ordinance posted for the voters pursuant to section 52.25. All absentee voters shall receive the full text of the ordinance.
c. Notice of the election shall be given by publication as prescribed in section 49.53 in a newspaper of general circulation in the city.
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.
f. If a city franchise fee is assessed to customers of a franchise, the fee shall not be assessed to the city as a customer.
g. If a city grants more than one cable television franchise, the material terms and conditions of any additional franchise shall not give undue preference or advantage to the new franchisee. A city shall not grant a new franchise that does not include the same territory as that of the existing franchise. A new franchisee shall be given a reasonable period of time to build the new system throughout the territory.

[C51, § 664; R60, § 1047, 1056, 1057, 1090, 1094, 1095; C73, § 454456, 471, 473, 474, 517, 523, 524; C97, § 695, 720722, 775, 776; S13, § 695, 720722, 776; C24, 27, 31, 35, § 5738, 5904, 5904-c1, 59055909, 6128, 61316134; C39, § **5738, 5904, 5904.1, 59055909, 6128, 61316134**; C46, 50, § 368.1, 386.1386.7, 397.2,

397.5397.8; C54, 58, 62, 66, § 368.2, 386.1386.7, 388.5388.9, 397.2, 397.5397.8; C71, 73, § 368.2, 386.1386.7, 397.2, 397.5397.8; C75, 77, 79, 81, § 364.2]

83 Acts, ch 127, § 5; 93 Acts, ch 143, § 49; 98 Acts, ch 1123, §15; 98 Acts, ch 1148, §1, 9; 2001 Acts, ch 82, §1; 2001 Acts, ch 98, §1; 2006 Acts, ch 1010, §96

For future amendments to this section effective July 1, 2007, see 2005 Acts, ch 54, § 11, 12