

CHAPTER 388
CITY UTILITIES

Referred to in §12C.1, 26.2, 357A.2, 358.20, 362.1, 362.9, 376.1, 384.80, 384.81, 384.84, 392.1, 392.3, 437A.4, 437A.5, 573.28, 716.6B

Legislative intent regarding cable communications or television, telephone, and telecommunications systems or services; 99 Acts, ch 63, §1

Table listing sections 388.1 through 388.11 with their respective titles: Definitions, Submission to voters, Procedure for disposal of city utility by sale, Procedure upon approval, Utility board, Control of tax revenues, Discrimination in rates, Prior utility board, Easement continuance, Competitive information, Customer records, Municipal utility providing telecommunications services, Liability within two miles.

388.1 Definitions.

As used in this chapter:

- 1. "Combined utility system" means the same as defined in section 384.80.
2. "Utility board" or "board" means a board of trustees established to operate a city utility, city utilities, or a combined utility system. A single utility board may operate more than one city utility even though such city utilities are not a combined utility system.

[C75, 77, 79, 81, §388.1]

388.2 Submission to voters.

1. a. The proposal of a city to establish, acquire, lease, or dispose of a city utility, except a sanitary sewage or storm water drainage system, in order to undertake or to discontinue the operation of the city utility, or the proposal to establish or dissolve a combined utility system, or the proposal to establish or discontinue a utility board, is subject to the approval of the voters of the city, except that a board may be discontinued by resolution of the council when the city utility, city utilities, or combined utility system it administers is disposed of or leased for a period of over five years.

b. Upon the council's own motion, the proposal may be submitted to the voters at the general election, the regular city election, or at a special election called for that purpose. 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.

c. If the special election is to establish a gas or electric utility pursuant to this section, or if such a proposal is to be included on the ballot at the regular city or general election, the mayor or council shall give notice as required by section 376.1 to the county commissioner of elections and to any utility whose property would be affected by such election not less than sixty days before the proposed date of the special, regular city, or general election.

d. A proposal for the establishment of a utility board must specify a board of either three or five members.

2. a. If a majority of those voting for and against the proposal approves the proposal, the city may proceed as proposed.

b. If a majority of those voting for and against the proposal does not approve the proposal, the same or a similar proposal may not be submitted to the voters of the city for at least four years from the date of the election at which the proposal was defeated.

[C73, §471; C97, §720, 721; S13, §720, 721; C24, 27, 31, 35, 39, §6131 - 6133, 6144; C46, 50, 54, 58, §397.5 - 397.7, 397.29; C62, 66, 71, 73, §397.5 - 397.7, 397.29, 397.43; C75, 77, 79, 81, §388.2]

90 Acts, ch 1206, §4; 2007 Acts, ch 215, §109, 110

Referred to in §388.2A, 476.55

388.2A Procedure for disposal of city utility by sale.

1. A proposal to discontinue a city utility and dispose of such utility by sale, whether upon the council's own motion or upon the receipt of a valid petition pursuant to section 388.2,

subsection 1, paragraph “b”, shall not be submitted to the voters of the city pursuant to section 388.2 at any election unless the governing body of the city utility meets the requirements of this section.

2. a. (1) The governing body of the city utility shall determine the fair market value of the utility system after obtaining two appraisals of the system’s fair market value. One appraisal shall be obtained from an independent appraiser selected by the governing body, and the other appraisal shall be obtained from an independent appraiser approved by the Iowa utilities board. Both appraisals shall be conducted in conformance with the uniform standards of professional appraisal practice or substantially similar standards.

(2) Any appraisal obtained pursuant to this paragraph shall consider the depreciated value of the capital assets to be sold, the loss of future revenues to the city utility, including the right to generate surpluses, and the cost of any capital improvements reasonably necessary to provide adequate service and facilities to the city utility’s customers.

(3) Notwithstanding subparagraph (1), the governing body of a city which has a population between two thousand and three thousand, according to the 2010 federal decennial census, shall not be required to obtain appraisals pursuant to this paragraph for the disposal by sale of a city utility providing telecommunications services. This subparagraph is repealed July 1, 2022.

b. After considering the appraisals obtained pursuant to paragraph “a”, the governing body shall establish the city utility’s fair market value. The fair market value shall be the greater of any of the following:

(1) The average of the two appraisals obtained pursuant to paragraph “a”.

(2) The depreciated value of the capital assets to be sold.

(3) The amount necessary to retire all of the city’s outstanding revenue and general obligations issued for purposes of the city utility.

c. The governing body’s determination of a city utility’s fair market value pursuant to this subsection shall not be dispositive of the city utility’s system price, which shall be subject to negotiation by the governing body.

d. The governing body shall prepare an inventory of the city utility’s real and personal property, and a statement of net position or balance sheet of the city utility, including all assets, liabilities, outstanding revenue and general obligations used to finance the city utility system.

e. The governing body shall prepare a financial information statement of the city utility that includes current and projected rate schedules for the next five fiscal years, as well as the five most recent fiscal year revenue statements, if such statements exist, and a projection of the city utility’s revenue statements for the next five fiscal years.

f. The governing body shall consider alternatives to disposing of the city utility system by sale, including entering into an agreement pursuant to chapter 28E, or into a finance agreement, purchase agreement, or lease agreement with another entity described in section 476.1, subsection 4.

g. (1) The governing body shall make available on its internet site, at least sixty days prior to submitting a proposal for election pursuant to section 388.2, a copy of each item listed in paragraphs “a” through “f” of this subsection.

(2) If, at the time of posting information pursuant to subparagraph (1), the governing body has received any offers or appraisals of fair market value from any prospective purchasers of the city utility system in connection with a proposal to discontinue the city utility and dispose of such utility by sale, then the governing body shall make available on its internet site each offer and appraisal then in existence. Proprietary information of a rate-regulated public utility under chapter 476 that is exempt from disclosure pursuant to section 22.7 may be withheld from disclosure on the governing body’s internet site. The governing body may continue to receive new or revised offers or appraisals thereafter.

(3) The governing body shall make a good-faith effort to provide, by regular mail to each property owner of the city and each ratepayer of the city utility, a notice of the proposal to dispose of the city utility by sale, a summary of the proposal, a summary of the information described in subparagraphs (1) and (2), and instructions for locating the information described in subparagraphs (1) and (2) on the governing body’s internet site.

3. Upon the governing body meeting the requirements of [subsection 2](#), a city council may submit a proposal to discontinue and dispose of a city utility pursuant to [section 388.2](#).

4. If a proposal to discontinue and dispose of a city utility is to be submitted to voters following the receipt of a valid petition pursuant to [section 388.2, subsection 1](#), paragraph “b”, the council shall submit the proposal at the next general election, regular city election, or a special election called for that purpose, within one hundred twenty days after the governing body of the city utility meets the requirements of [subsection 2](#).

5. A proposal to discontinue and dispose of a city utility by sale that is approved by the voters pursuant to [section 388.2, subsection 2](#), paragraph “a”, shall not require the governing body or any purchasing entity to finalize a sale of the city utility.

6. No action may be brought which questions the legality of the election or the city and governing body’s compliance with [this section](#), except as provided in [section 57.1](#), within twenty days of the canvass of votes for the election by the county board of supervisors.

[2018 Acts, ch 1024, §1](#); [2020 Acts, ch 1068, §1](#)

Referred to in [§455B.199D, 476.84](#)

### **388.3 Procedure upon approval.**

1. If a proposal to establish a utility board receives a favorable majority vote, the mayor shall appoint the board members, as provided in the proposal, subject to the approval of the council. The council shall by resolution provide for staggered six-year terms for, and shall set the compensation of, board members.

2. A board member appointed to fill a vacancy occurring by reason other than the expiration of a term is appointed for the balance of the unexpired term.

3. A public officer or a salaried employee of the city shall not serve on a utility board.  
[C97, §747; S13, §747-a, -b; C24, 27, §6147, 6148, 6157; C31, 35, §6147, 6148, 6157, 6943-c1, -c2, -c3; C39, **§6147, 6148, 6157, 6943.001 – 6943.003**; C46, 50, 54, 58, 62, 66, 71, 73, §397.32, 397.33, 398.8, 420.297 – 420.299; C75, 77, 79, 81, §388.3]

[2019 Acts, ch 24, §104](#); [2020 Acts, ch 1063, §205](#)

### **388.4 Utility board.**

The title of a utility board must be appropriate to the city utility, city utilities, or combined utility system administered by the board. A utility board may be a party to legal action. A utility board may exercise all powers of a city in relation to the city utility, city utilities, or combined utility system it administers, with the following exceptions:

1. A board may not certify taxes to be levied, pass ordinances or amendments, or issue general obligation or special assessment bonds.

2. The title to all property of a city utility or combined utility system must be held in the name of the city, but the utility board has all the powers and authorities of the city with respect to the acquisition by purchase, condemnation, or otherwise, lease, sale, or other disposition of such property, and the management, control, and operation of the same, subject to the requirements, terms, covenants, conditions, and provisions of any resolutions authorizing the issuance of revenue bonds, pledge orders, or other obligations which are payable from the revenues of the city utility or combined utility system, and which are then outstanding.

3. A board shall make to the council a detailed annual report, including a complete financial statement.

4. Immediately following a regular or special meeting of a utility board, the secretary shall prepare a condensed statement of the proceedings of the board and cause the statement to be published in a newspaper of general circulation in the city. The statement must include a list of all claims allowed, showing the name of the person or firm making the claim, the reason for the claim, and the amount of the claim. If the reason for the claims is the same, two or more claims made by the same vendor, supplier, or claimant may be consolidated if the number of claims consolidated and the total consolidated claim amount are listed in the statement. However, the utility board shall provide at its office upon request an unconsolidated list of all claims allowed. Salary claims must show the gross amount of the claim except that salaries paid to persons regularly employed by the utility, for services regularly performed by them, must be published once annually showing the gross amount of the salary. In cities having

more than one hundred fifty thousand population, the utility board shall each month prepare in pamphlet form the statement herein required for the preceding month and furnish copies to the city library, the daily newspapers of the city, the city clerk, and to persons who apply at the office of the secretary, and the pamphlet shall constitute publication as required. Failure by the secretary to make publication is a simple misdemeanor.

[S13, §1056-a7, -c24; C24, §5678, 6149; C27, 31, 35, §5676-a2, 6149, 6159-a1; C39, §5676.2, 6149, 6159.1; C46, 50, §363.52, 397.34, 398.11; C54, 58, 62, 66, 71, 73, §368A.7, 368A.24, 397.34, 398.11; C75, 77, 79, 81, §388.4]

[2006 Acts, ch 1018, §6](#)

### **388.5 Control of tax revenues.**

1. A utility board shall control tax revenues allocated to the city utility, city utilities, or combined utility system it administers and all moneys derived from the operation of the city utility, city utilities, or combined utility system, the sale of utility property, interest on investments, or from any other source related to the city utility, city utilities, or combined utility system.

2. All city utility moneys received must be held in a separate utility fund, with a separate account or accounts for each city utility or combined utility system. If a board administers a municipal utility or combined utility system, moneys may be paid out of that utility account only at the direction of the board.

[C97, §748; C13, §741-b, 748; C24, 27, 31, 35, 39, §5676, 6158; C46, 50, §363.50, 398.9; C54, 58, 62, 66, 71, 73, §368A.6, 398.9; C75, 77, 79, 81, §388.5]

[2019 Acts, ch 24, §104](#)

### **388.6 Discrimination in rates.**

A city utility or a combined utility system may not provide use or service at a discriminatory rate, except to the city or its agencies, as provided in [section 384.91](#).

[C75, 77, 79, 81, §388.6]

### **388.7 Prior utility board.**

1. A utility board functioning on July 1, 1975, shall continue to function until discontinued as provided in [this chapter](#), and has all the powers granted in [this chapter](#).

2. Nothing in the city code shall be construed to allow the abrogation of any franchise.

[C75, 77, 79, 81, §388.7]

[2019 Acts, ch 59, §114](#)

### **388.8 Easement continuance.**

If a city exercised a right to an easement on property before January 1, 1950, for the establishment of water, sewer, or gas or power lines, the city has acquired the right to exercise a continuing easement on that property to the extent necessary for repair and maintenance of those lines.

[[81 Acts, ch 129, §1](#)]

### **388.9 Competitive information.**

1. Notwithstanding [section 21.5, subsection 1](#), the governing body of a city utility or combined utility system, or a city enterprise or combined city enterprise as defined in [section 384.80](#), by a vote of two-thirds of the members of the body or all of the members present at the meeting, may hold a closed session to discuss marketing and pricing strategies or proprietary information if its competitive position would be harmed by public disclosure not required of potential or actual competitors, and if no public purpose would be served by such disclosure. The minutes and an audio or audiovisual recording of a session closed under [this subsection](#) shall be available for public examination at that point in time when the public disclosure would no longer harm the utility's competitive position.

2. a. Notwithstanding [section 22.2, subsection 1](#), public records of a city utility or combined utility system, or a city enterprise or combined city enterprise as defined in [section 384.80](#), which shall not be examined or copied as of right, include proprietary

information, records of customer names and accounts, records associated with marketing or pricing strategies, preliminary working papers, spreadsheet scenarios, and cost data, if the competitive position of the city utility, combined utility system, city enterprise, or combined city enterprise would be harmed by public disclosure not required of a potential or actual competitor, and if no public purpose would be served by such disclosure. A public record not subject to examination or copying under [this subsection](#) shall be available for public examination and copying at that point in time when public disclosure would no longer harm the competitive position of the city utility, combined utility system, city enterprise, or combined city enterprise.

b. For purposes of [this subsection](#), “*proprietary information*” includes customer records that if disclosed would harm the competitive position of a customer; or information required by a noncustomer contracting party to be kept confidential pursuant to a nondisclosure agreement which relates to electric transmission planning and construction, critical energy infrastructure, an ownership interest or acquisition of an ownership interest in an electric generating facility, or other information made confidential by law or rule.

[99 Acts, ch 63, §3, 8; 2008 Acts, ch 1126, §16, 33; 2020 Acts, ch 1063, §206](#)

Referred to in [§388.10](#)

### **388.9A Customer records.**

Notwithstanding [section 22.2, subsection 1](#), public records of a city utility or combined utility system, or a city enterprise or combined city enterprise as defined in [section 384.80](#), which shall not be examined or copied as of right, include private customer information. Except as required pursuant to [chapter 476](#), “*private customer information*” includes information identifying a specific customer and any record of a customer account, including internet-based customer account information.

[2012 Acts, ch 1010, §2](#)

### **388.10 Municipal utility providing telecommunications services.**

1. a. A city that owns or operates a municipal utility providing telecommunications services or such a municipal utility shall not do, directly or indirectly, any of the following:

(1) Use general fund moneys for the ongoing support or subsidy of a telecommunications system.

(2) Provide any city facilities, equipment, or services to provide telecommunications systems or services at a cost for such facilities, equipment, or services which is less than the reasonable cost of providing such city facilities, equipment, or services.

(3) Provide any other city service, other than a communications service, to a telecommunications customer at a cost which is less than would be paid by the same person receiving such other city service if the person was not a telecommunications customer.

(4) Use funds or revenue generated from electric, gas, water, sewage, or garbage services provided by the city for the ongoing support of any city telecommunications system.

b. For purposes of [this section](#):

(1) “*Telecommunications system*” means a system that provides telecommunications services.

(2) “*Telecommunications services*” means the retail provision of any of the following services:

(a) Local exchange telephone services.

(b) Long distance telephone services.

(c) Internet access services.

(d) Cable television services.

2. A city that owns or operates a municipal utility providing telecommunications services or such a municipal utility shall do the following:

a. Prepare and maintain records which record the full cost accounting of providing telecommunications services. The records shall show the amount and source of capital for initial construction or acquisition of the telecommunications system or facilities. The records shall be public records subject to the requirements of [chapter 22](#). Information in the records that is not subject to examination or copying as provided in [section 388.9, subsection 2](#), may

be expunged from the records prior to public disclosure. [This section](#) shall not prohibit a municipal utility from utilizing capital from any lawful source, provided that the reasonable cost of such capital is accounted for as a cost of providing the service. In accounting for the cost of use of any city employees, facilities, equipment, or services, a city or municipal utility may make a reasonable allocation of the cost of use of any city employees, facilities, equipment, or services used by the municipal utility based upon reasonable criteria for the distribution of the cost of use in any manner which is not inconsistent with generally accepted accounting principles.

b. Adopt rates for the provision of telecommunications services that reflect the actual cost of providing the telecommunications services. However, this paragraph shall not prohibit the municipal utility from establishing market-based prices for competitive telecommunications services.

c. Be subject to all requirements of the city which would apply to any other provider of telecommunications services in the same manner as such requirements would apply to such other provider. For purposes of cable television services, a city that is in compliance with [section 364.3, subsection 7](#), shall be considered in compliance with this paragraph.

d. Make an annual certification of compliance with [this section](#). For any year in which the city or municipal utility is not audited in accordance with [section 11.6](#), the city or municipal utility shall contract with or employ the auditor of state or a certified public accountant certified in the state of Iowa to attest to the certification. The attestation report shall be a public record for purposes of [chapter 22](#).

3. [This section](#) shall not prohibit the marketing or bundling of other products or services, in addition to telecommunications services. However, a city shall include on a billing statement sent to a person receiving services from the city, a separate charge for each service provided to the person. [This subsection](#) does not prohibit the city from also including on the billing statement a total amount to be paid by the person.

4. [This section](#) shall not apply to telecommunications services provided directly by a municipal airport.

[99 Acts, ch 63, §4, 8; 2004 Acts, ch 1022, §2, 3; 2004 Acts, ch 1048, §2](#)

Referred to in [§11.6, 477A.1, 477A.7](#)

### **388.11 Liability within two miles.**

A city or city utility providing water service within two miles of the limits of the city shall not be liable for a claim for failure to provide or maintain hydrants, facilities, or an adequate supply of water or water pressure for fire protection purposes in the area receiving water service if such hydrants, facilities, or water are not intended to be used for fire protection purposes.

[2014 Acts, ch 1086, §5; 2015 Acts, ch 30, §112](#)