ORDINANCE NO. 94331-0618

AN ORDINANCE AMENDING ORDINANCE NO. 91191-0410 (AS PREVIOUSLY AMENDED BY ORDINANCE 94205-0318) GRANTING TO INTERSTATE POWER AND LIGHT COMPANY (ALLIANT ENERGY), ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE A NATURAL GAS DISTRIBUTION SYSTEM IN THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA FOR THE PURPOSE OF DISTRIBUTING, SUPPLYING AND SELLING NATURAL GAS TO THE CITY AND ITS INHABITANTS BY DECREASING THE FRANCHISE FEE TO TWO PERCENT (2%)

WHEREAS, pursuant to Ordinance No. 91191-0410, a franchise was granted to Interstate Power and Light Company (Alliant Energy) for the sale and distribution of natural gas within the city limits of the City of Muscatine;

WHEREAS, on March 15, 2018 the City of Muscatine by Ordinance 94205-0318 amended the franchise ordinance to provide that Interstate Power and Light Company (Alliant Energy) shall remit a franchise fee of five percent (5%) beginning July 1, 2018.

WHEREAS, the City of Muscatine now wishes to amend the franchise ordinance to provide that Interstate Power and Light Company (Alliant Energy) shall remit a franchise fee of two percent (2%) beginning September 1, 2018.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA, that Muscatine Ordinance No. 91191-0410 (as previously amended by Ordinance No. 94205-0318), is hereby amended as follows:

SECTION 1. Section 7(A) of Ordinance No. 91191-0410 (as previously amended by Ordinance 94205-0318) is hereby deleted in its entirety. Enacted in lieu thereof is a new Section 7(a) as follows:

14-9-7 Franchise Fee.

(A) In its monthly billing Company shall include a franchise fee of two percent (2%) on the gross receipts from the distribution, supply, or sale of natural gas for customers within the limits of the City of Muscatine, Muscatine County, Iowa. The Company shall make all reasonable effort to commence collecting the 2% franchise fee by the date of September 1, 2018, but no later than October 1, 2018. The franchise fee shall be limited to a maximum of 5%. The City shall give the Company a minimum 90-day notice prior to the request to implement an increase or decrease in the franchise fee. The City shall be solely responsible for the proper use of any amounts collected as franchise fees, and shall only use such fees as collected for a purpose as allowed by applicable law. Collection

of the franchise fee shall cease at the earlier of the City's repeal of the franchise fee or the end of the Ordinance term.

SECTION 2. Ordinance No. 91191-0410 (as previously amended by Ordinance No. 94205-0318), as further amended herein and set forth in Attachment A, attached hereto and by this reference made a part hereof, shall be inserted into the Municipal Code under Title 14, Chapter 1 and made a part of said Code as provided by law.

SECTION 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. If any section, provision, sentence, clause, phrase, or part of this Ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this Ordinance as a whole or any section, subsection, provision, sentence, clause, phrase, or part thereof not adjudged invalid or unconstitutional.

SECTION 5. This ordinance shall be effective from and after its final passage, approval and publication as provided by law.

PASSED AND ENACTED by the City Council of Muscatine, Iowa, the 19th day of July, 2018.

Diana Broderson, Mayor

ATTEST:

Gregg Mandsager, City Clerk

1st Reading: June 21, 2018
2nd Reading: July 5, 2018
3rd Reading: July 19, 2018
Publication: July , 2018

The Mayor declared Ordinance No.94331-0618 was passed on July19, 2018.

I certify that the foregoing was published as Ordinance No.94331-0618 on the __ day of July, 2018.

Gregg Mandsager, City Clerk

TITLE 14 -
BUSINESS REGULATIONS
CHAPTER 1 - GAS FRANCHISE

SECTIONS:

14-1-1 Granting of Franchise
14-1-2 Construction of Distribution System
14-1-3 Restoration of Public Places
14-1-4 Relocation of Facilities or Equipment
14-1-5 Furnishing of Service
14-1-6 Non-Exclusive
14-1-7 Franchise Fee
14-1-8 Term of Franchise
14-1-9 Publication
14-1-10 Acceptance
14-1-11 Repealer

14-1-1 Granting of Franchise. There is hereby granted to INTERSTATE POWER & LIGHT COMPANY, hereinafter referred to as the "Company," its successors and assigns, the right, franchise and privilege for the term of twenty-five (25) years from and after the passage, adoption, approval and acceptance of this Ordinance, to lay down, maintain and operate the necessary pipes, mains and other conductors and appliances in, along and under the streets, avenues, alleys and public places in the City of Muscatine, Muscatine County, Iowa as now or hereafter constituted, for the purpose of distributing, supplying and selling gas to said City and the residents thereof and to persons and corporations beyond the limits thereof; also the right of eminent domain as provided in Section 364.2 of the Code of Iowa. The term "gas" as used in this franchise shall be construed to mean natural gas only.

14-1-2 Construction of Distribution System. The mains and pipes of the Company must be so placed as not to interfere unnecessarily with water pipes, drains, sewers and fire plugs which have been or may hereafter be placed in any street, alley and public places in said City nor unnecessarily interfere with the proper use of the same, including ordinary drainage, or with the sewers, underground pipe and other property of the City, and the Company, its successors and assigns shall hold the City free and harmless from all damages arising from the negligent acts or omissions of the Company in the laying down, operation and maintenance of said natural gas distribution system.

14-1-3 Restoration of Public Places. In making any excavations in any street, alley, avenue or public place, Company, its successors and assigns, shall protect the site while work is in progress by guards, barriers or signals, shall not unnecessarily obstruct the use of the streets, shall back fill all openings in such manner as to prevent settling or depressions in surface, and shall replace the surface, pavement or sidewalk of such excavations with same materials, restoring the condition as nearly as practical and if defects are caused shall repair the same.

14-1-4 Relocation of Facilities or Equipment. The Company shall, at its cost and expense, locate and relocate its existing facilities or equipment in, on, over or under any public street or alley in the City in such a manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley or any public improvement of,

in or about any such street or alley or reasonably promoting the efficient operation of any such improvement. If the City orders or requests the Company to relocate its existing facilities or equipment for the primary benefit of a commercial or private project, or as the result of the initial request of a commercial or private developer or other non-public entity, the Company shall receive payment for the cost of such relocation as a precondition to relocating its existing facilities or equipment. The City shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause the Company unreasonable additional expense in exercising its authority under this section. The City shall also provide a reasonable alternative location for the Company's facilities. The City shall give the Company reasonable advance written notice to vacate a public right-of-way. Vacating a public right-of-way shall not deprive the Company of its right to operate and maintain existing facilities, until the reasonable cost of relocating the same are paid to the Company.

14-1-5 Furnishing of Service. Said Company, its successors and assigns, shall throughout the term of the franchise distribute to all consumers gas of good quality and shall furnish uninterrupted service, except as interruptible service may be specifically contracted for with consumers; provided, however, that any prevention of service caused by fire, act of God or unavoidable event or accident shall not be a breach of this condition if the Company resumes service as quickly as is reasonably practical after the happening of the act causing the interruption.

14-1-6 Non-exclusive. The franchise granted by this Ordinance shall not be exclusive.

14-1-7 Franchise Fee.

(A) In its monthly billing Company shall include a franchise fee of two percent (2%) on the gross receipts from the distribution, supply, or sale of natural gas for customers within the limits of the City of Muscatine, Muscatine county, Iowa. The Company shall make all reasonable effort to commence collecting the 2% franchise fee by the date of September 1, 2018, but no later than October 1, 2018. The franchise fee shall be limited to a maximum of 5%. The City shall give the Company a minimum 90-day notice prior to the request to implement an increase or decrease in the franchise fee. The City shall be solely responsible for the proper use of any amounts collected as franchise fees, and shall only use such fees as collected for a purpose as allowed by applicable law. Collection of the franchise fee shall cease at the earlier of the City's repeal of the franchise fee or the end of the Ordinance term.

(B) The franchise fee shall be applied to all customers' bills in accordance with Iowa Code Chapter 364.2(f) and 423B.5. The Company shall not grant exemptions or refunds of the franchise fee beyond that granted by the Code of Iowa. If at any time the Iowa Utilities Board or another authority having proper jurisdiction, prohibits the collection or payment of a franchise fee, the Company shall be relieved of its obligation to collect and pay to the City the franchise fee.

(C) City agrees that Company's obligations related to the franchise fee are limited to those obligations set forth in Sections 7, 8 and 12 herein. City further agrees to bear all costs (including attorney fees), and to defend, indemnify and hold Company harmless from any and all liability, claims or causes of action associated with disputes related to the billing and/ or collection of the franchise fee, provided that the City shall not be obligated to bear such costs or to defend, indemnify and hold Company harmless if such disputes arise

from claims of inaccurate billing by the Company.

(D) Section 10. Upon receipt of a final and unappealable order or approval authorizing annexation, or changes in the limits of said City, the City Clerk shall provide written notification to an officer of Company of such annexation or change in the limits of said City, and the Company shall apply the franchise fee to its customers who are affected by the annexation or change in the limits of the City, commencing no more than six (6) months from receipt of the written notice and City's verification of addresses within the annexed area.

(E) Section 11. The amount of franchise fee shall be shown separately on the utility bill to each customer.

(F) The Company shall remit collected franchise fees to the City on a quarterly basis, within thirty (30) days after last day of the last revenue month of the quarter.

(G) That said franchise fee shall be in lieu of any other payments to the City for the Company's use of streets, avenues, alleys and public places in the said City and other administrative or regulatory costs with regard to said franchise; and said pipes, mains, and other conductor and appliances in, along and under the streets, avenues, alleys and public places in the said City for the purpose of distributing, supplying and selling gas to said City and the residents thereof and to persons and corporations beyond the limits thereof shall be exempt from any special tax, assessment, license or rental charge during the entire term of this ordinance.

14-1-8 Term of Franchise. The term of the franchise granted by this Ordinance and the rights granted thereunder shall continue for the period of twenty-five (25) years from and after its acceptance by the said Company, as herein provided.

14-1-9 Publication. The expense of the publication of this Ordinance shall be paid by the Company.

14-1-10 Acceptance. The franchise granted by this Ordinance shall be conditioned upon acceptance by the Company in writing. The acceptance shall be filed with the City Clerk within ninety (90) days from passage of this Ordinance.

14-1-11 Repealer. This Ordinance sets forth and constitutes the entire agreement between the Company and the City of Muscatine with respect to the rights contained herein, and may not be superseded, modified or otherwise amended without the approval and acceptance of the Company. Upon acceptance by the Company, this Ordinance shall supersede, abrogate and repeal the prior gas system ordinance between the Company and the City of Muscatine as of the date this Ordinance is accepted by the Company. Notwithstanding the foregoing, in no event shall the City of Muscatine enact any ordinance or place any limitations, either operationally or through the assessment of fees other than those approved and accepted by the Company within this Ordinance, that create additional burdens upon the Company, or which delay utility operations.

MUSCATINE

City Hall, 215 Sycamore St.
Muscatine, IA 52761-3899
(563) 264-1550
Fax (563) 264-0750

FINANCE & RECORDS

MEMO

To: Gregg Mandsager, City Administrator

From: Nancy A. Lueck, Finance Director

Date: June 18, 2018

Re: Ordinance Decreasing the Utility Franchise Fee

Introduction:

The fiscal year 2018/2019 budget was adopted based on factors known at the time the budget was developed and adopted. The most significant known factor at that time was a reduction of an estimated $300,000-$350,000 in Automated Traffic Enforcement (ATE) fine revenue in the General Fund since the IDOT had ordered the ATE camera at University and Highway 61 to be turned off. The budget included an increase in the Utility Franchise Fee from 1% to 5% which is expected to generate an additional $325,600 in revenues. The City adopted the ordinance increasing the franchise fee rate from the current 1% to 5% on March 15, 2018 to allow for the required 90 day notice to Alliant Energy to implement this rate change. This franchise fee increase allowed for the City to offset the impact from the expected continued loss of the ATE revenue, to maintain the same property tax rate for FY 2018/2019, and to maintain the current level of General Fund services to residents of the community.

There were also concerns at the time the budget was adopted as to whether the State legislature would reduce or eliminate the backfill funding for the commercial and industrial property rollback (estimated at a total of $643,700). While the legislature adjourned this year without reducing or eliminating the backfill funding, the uncertainty in this funding will continue in future years and it is likely that this funding will again be a discussion item in the next or future legislative sessions.

Recently the Iowa Supreme Court ruled in favor of cities appealing the IDOT ATE removal orders and the ATE at University and Highway 61 will again be operational on June 18, 2018. This is expected to result in an additional $300,000 in revenues to the General Fund for FY 2018/2019.

Background:

The expected additional revenue of $300,000 from the ATE camera at University Avenue and Highway 61is projected to add that amount to the General Fund revenues and General Fund balance based on known factors at this time and keeping the Utility Franchise Fee rate at 5%. At the June 14, 2018 In Depth meeting, City Council reviewed and discussed impacts of keeping the Utility Franchise Fee at the 5% level or reducing it to a lower rate.

It was noted at the meeting that with the expected additional ATE revenue and keeping the Franchise Fee at 5%, the General Fund balance would be projected to increase to 22.8% of General Fund expenditures (the same percentage as the FY 17 ending fund balance before the ATE revenue was reduced). It was also noted that the concerns discussed during the 2018/2019 budget for the State legislature phasing out or eliminating the commercial and industrial backfill funding and potential future legislative impacts which could restrict ATE revenue going forward, would continue to be concerns in developing the 2019/2020 and future year budgets.

Based on Council discussions at the In Depth meeting, there appeared to be a consensus of City Council to set the Franchise Fee at a lower rate and a 2% rate was discussed.

The attached ordinance was drafted based on reducing the franchise fee to 2%. The City Administrator and Finance Director spoke with Keith Sherman of Alliant Energy who provided the following information:

1. The reduced rate could likely be implemented September 1 (or at the latest October 1) if the City Council approves the ordinance on 2nd and final reading at the July 5 meeting. It should be noted that Alliant needs to forward the City's ordinance and request to the Iowa Utilities Board for their approval and this generally requires at least 30 days.
2. The first quarter of each fiscal year (July – September) is normally a low quarter for gas usage and correspondingly a low month for franchise fees. The franchise fee for July – September of 2017 was $9,588.90 and it was $7,708.90 for July – September of 2016.

Summary:

The attached draft ordinance is based on the In Depth meeting discussion for decreasing the franchise fee from 5% to 2% effective September 1, 2018. The City Council could also choose a later date or different rate.

It should be pointed out that in addition to the City's loss of ATE revenue due to the IDOT order to remove the traffic camera at the intersection of University Avenue and Highway 61, the City also incurred legal expenses to appeal the IDOT ruling through the court system. The cost of the legal services totaled $180,912. The University ATE camera was turned off from April 24, 2017 through June 17, 2018 and during this period speeds through this intersection increased. It is estimated that there would have been $400,000 in fines during this nearly 14 month period if the ATE was operational. It may be reasonable to consider recovering a portion of these costs through the franchise fee increase.

*** Proof of Publication ***

The undersigned, being first duly sworn, on oath does say that he/she is an authorized employee of THE MUSCATINE JOURNAL, morning edition, a daily newspaper printed and published by Lee Enterprises, Incorporated, in the City of Davenport, Scott County, Iowa, and that a notice, a printed copy of which is made a part of this affidavit, was published in said THE MUSCATINE JOURNAL, on the dates listed below.

CITY OF MUSCATINE- Legals account

215 Sycamore Street
MUSCATINE, IA 52761

ORDER NUMBER 13335

The affiant further deposes and says that all of the facts set forth in the foregoing affidavit are true as he/she verily believes.

PUBLISHED ON: 07/26/2018

TOTAL AD COST:	59.57
FILED ON:	7/26/2018

Subscribed and sworn to before me by said affiant this 26 day of July 2018.

Notary Public in and for Scott County, Iowa

NOTARIAL SEAL IOWA
DAWN MUMEY
Commission Number 810363
My Commission Expires
May 09, 2021

*** Proof of Publication ***

ORDINANCE NO. 94331-0618

AN ORDINANCE AMENDING ORDINANCE NO. 91191-0410 (AS PREVIOUSLY AMENDED BY ORDINANCE 94205-0318) GRANTING TO INTERSTATE POWER AND LIGHT COMPANY (ALLIANT ENERGY), ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE A NATURAL GAS DISTRIBUTION SYSTEM IN THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA FOR THE PURPOSE OF DISTRIBUTING, SUPPLYING AND SELLING NATURAL GAS TO THE CITY AND ITS INHABITANTS BY DECREASING THE FRANCHISE FEE TO TWO PERCENT (2%)

WHEREAS, pursuant to Ordinance No. 91191-0410, a franchise was granted to Interstate Power and Light Company (Alliant Energy) for the sale and distribution of natural gas within the city limits of the City of Muscatine;

WHEREAS, on March 15, 2018 the City of Muscatine by Ordinance 94205-0318 amended the franchise ordinance to provice that Interstate Power and Light Company (Alliant Energy) shall remit a franchise fee of five percent (5%) beginning July 1, 2018.

WHEREAS, the City of Muscatine now wishes to amend the franchise ordinance to provide that Interstate Power and Light Company (Alliant Energy) shall remit a franchise fee of two percent (2%) beginning September 1, 2018.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA, that Muscatine Ordinance No. 91191-0410 (as previously amended by Ordinance No. 94205-0318), is hereby amended as follows:

SECTION 1. Section 7(A) of Ordinance No. 91191-0410 (as previously amended by Ordinance 94205-0318) is hereby deleted in its entirety. Enacted in lieu thereof is a new Section 7(a) as follows:

14-9-7 Franchise Fee.

(A)In its monthly billing Company shall include a franchise fee of two percent (2%) on the gross receipts from the distribution, supply, or sale of natural gas for customers within the limits of the City of Muscatine, Muscatine County, Iowa. The Company shall make all reasonable effort to commence collecting the 2% franchise fee by the date of September 1, 2018, but no later than October 1, 2018. The franchise fee shall be limited to a maximum of 5%. The City shall give the Company a minimum 90-day notice prior to the request to implement an increase or decrease in the franchise fee. The City shall be solely responsible for the proper use of any amounts collected as franchise fees, and shall only use such fees as collected for a purpose as allowed by applicable law. Collection of the franchise fee shall cease at the earlier of the City's repeal of the franchise fee or the end of the Ordinance term.

SECTION 2. Ordinance No. 91191-0410 (as previously amended by Ordinance No. 94205-0318), as further amended herein and set forth in Attachment A, attached hereto and by this reference made a part hereof, shall be inserted into the Municipal Code under Title 14, Chapter 1 and made a part of said Code as provided by law.

SECTION 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. If any section, provision, sentence, clause, phrase, or part of this Ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this Ordinance as a whole or any section, subsection, provision, sentence, clause, phrase, or part thereof not adjudged invalid or unconstitutional.

SECTION 5. This ordinance shall be effective from and after its final passage, approval and publication as provided by law.

PASSED AND ENACTED by the City Council of Muscatine, Iowa, the 19th day of July, 2018.

Diana Broderson, Mayor

ATTEST:
Gregg Mandeager, City Clerk
1st Reading: June 21, 2018
2nd Reading: July 5, 2018
3rd Reading: July 19, 2018