ORDINANCE NO. 6149

AN ORDINANCE AMENDING ORDINANCE NUMBER 5880 WHICH GRANTED MIDAMERICAN ENERGY COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE AND PRIVILEGE THROUGH FEBRUARY 2, 2028, TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE IN THE CITY OF COUNCIL BLUFFS, IOWA, AN ELECTRIC SYSTEM AND TO FURNISH AND SELL ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS, AND PRESCRIBING THE TERMS AND CONDITIONS THEREOF AND AUTHORIZING THE COLLECTION OF A FRANCHISE FEE, FOR THE PURPOSE OF ESTABLISHING A CAP TO THE FRANCHISE FEES TO BE COLLECTED FROM CUSTOMERS.

BE IT ENACTED by the City Council of the City of Council Bluffs, Iowa:

WHEREAS, With the passage of Ordinance Number 5880 the City Council implemented a two percent (2.00%) franchise fee to be collected by MidAmerican Energy Company from its customers; and

WHEREAS, it has been determined by the City Council for the City of Council Bluffs, that it would be in the best interest of the City of Council Bluffs, Iowa to establish the maximum amount of franchise fee to be collected from any one user, in a calendar year.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS, IOWA

That Section 7 of Ordinance Number 5880 is hereby amended by adding thereto the following provision:

Establishment of Annual Caps

Any user of electricity and/or an Affiliated Entity, which in a calendar has generated in excess of one hundred thousand US dollars ($100,000.00 USD) in franchise fees as documented by MidAmerican Energy Company shall be deemed to be a High Volume User (HVU) and for the franchise fee imposed on the consumption of electricity at one or more HVU locations ("Sites") within the City, the cumulative franchise fee in total for all Sites shall be capped at two percent (2.00%) of electricity gross receipts for the following calendar year (the "Franchise Fee Percentage Cap"). The term "Affiliated Entity" shall mean any corporation, limited liability company, partnership, joint venture or other business formation owned or controlled in whole or part by the HVU or its successors in interest, assigns, or grantees or any parent or sister entity which owns or controls in whole or in part the HVU or its successors in interest, grantees or assigns. In addition to the two percent (2.00%) Franchise Fee Percentage Cap, there shall be the following annual total dollar caps on the aggregate franchise fees charged to the HVU and its successors in interest, grantees and assigns as well as any Affiliated Entity within the City (the "Franchise Fee Dollar Caps"):

- Years 1-5 following the effective date of the ordinance amendment: four hundred thousand US dollars ($400,000.00 USD) cumulative total for all Sites.

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- Years 6-10 following the effective date of the ordinance amendment: four hundred fifty thousand US dollars ($450,000.00 USD) cumulative total for all Sites.

  Years 11-20 following the effective date of the ordinance amendment: five hundred thousand US dollars ($500,000.00 USD) cumulative total for all Sites.

- Years 21-25 following the effective date of the ordinance amendment and each five years thereafter: The five hundred thousand US dollar ($500,000.00 USD) cap on the dollar amount which can be charged by the City shall be increased in year 21 and each five (5) years thereafter by the percentage increase of the Consumer Price Index-U.S. City Average for All Items for All Urban Consumers (1982-84 = 100) published monthly by the United States Department of Labor ("CPI") which occurred in the prior five year period of time. In no event, however, shall the dollar cap ever be adjusted lower than the dollar cap for the most recent five year period of time.

For the sake of clarity, any additional Sites acquired by the HVU or any Affiliated Entity within the City, or included within the City in the future through annexation, shall be included under both the Franchise Fee Percentage Cap as well as the Franchise Fee Dollar Caps to be collected by MidAmerican Energy Company on behalf of the City and the electricity gross receipts from those additional Sites shall be aggregated with other pre-existing Sites and shall be included in the computation of the City's Franchise Fee and the implementation of the applicable Franchise Fee Percentage Cap and the Franchise Fee Dollar Caps.

PASSED
AND
APPROVED February 27, 2012

THOMAS P. HANAFAN, Mayor

MARCIA L. WORDEN, City Clerk

First Consideration: 2/13/2012
Second Consideration: 2/27/2012
Public Hearing: 2/27/2012
Third Consideration: Waived

PROOF OF PUBLICATION

Ord 6149

STATE OF IOWA
POTTAWATTAMIE COUNTY

I, Amy McKay, on my oath do solemnly swear that I am the Controller of the COUNCIL BLUFFS DAILY NONPAREIL, a newspaper issued DAILY and printed in said county, COUNCIL BLUFFS, IOWA.

The attached notice was published in said newspaper for 1 consecutive time(s) as follows:

The first publication thereof
began on the 19th day of February, 2012

Signed in my presence by the said Amy McKay and by her sworn to before me this 22nd day of February, A.D. 2012.

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT TO
ORDINANCE NUMBER 5880

TO WHOM IT MAY CONCERN:

You and each of you are hereby notified that the City Council for the City of Council Bluffs, Iowa, has scheduled a public hearing on a proposed ordinance to amend Section 7 of Ordinance Number 5880 (Franchise Grant to MidAmerican Energy Company, distribution of electric energy (Special)) of the 2010 Municipal Code of Council Bluffs by adding a provision entitled "Establishment of Annual Caps."

You are further notified that a public hearing on said matter will be held by the City Council of the City of Council Bluffs, Iowa, at its regular meeting to be held at **7:00 p.m. on the 27th day of February, 2012,** in the City Council Chambers in the City Hall building, 209 Pearl Street, Council Bluffs, Iowa, at which time and place all persons interested in said matter will be given an opportunity to be heard.

MARCIA L. WORDEN, City Clerk

2012 (2) 19 - 1 Sunday

Amy McKay
Daily Nonpareil Controller

Jeannett Johnson
Notary Public

JEANNETTE JOHNSON
Commission Number 144856
MY COMMISSION EXPIRES
OCTOBER 1, 2014

Filed this 22nd day of February, A.D. 2012.
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