

**CODE OF ORDINANCES
OF THE
CITY OF
BELMOND, IOWA**

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CHAPTER 110

NATURAL GAS FRANCHISE

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110.01 FRANCHISE GRANTED. 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 25 years from and after the passage, adoption, approval and acceptance of the ordinance codified by this chapter,[†] 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 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.

110.02 MAINS AND PIPES; INDEMNIFICATION. 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.

110.03 EXCAVATIONS. 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.

110.04 SERVICE REQUIREMENTS. 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.

[†] **EDITOR’S NOTE:** Ordinance No. 368, adopting a natural gas franchise for the City, was passed and adopted on February 21, 2005.

110.05 NONEXCLUSIVE. The franchise granted by this chapter shall not be exclusive.

110.06 TERM OF FRANCHISE. The term of the franchise granted by this chapter and the rights thereunder shall continue for the period of 25 years from the after its acceptance by the Company.

110.07 ENTIRE AGREEMENT. This chapter sets forth and constitutes the entire agreement between the Company and the City with respect to the rights contained herein, and may not be superseded, modified or otherwise amended without the approval and acceptance of the Company. Notwithstanding the foregoing, in no event shall the City enact any ordinance or place any limitations, either operationally or through the assessment of fees that create additional burdens upon the Company or which delay utility operations.

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CHAPTER 111

ELECTRIC FRANCHISE

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111.01 FRANCHISE GRANTED There is hereby granted to INTERSTATE POWER & LIGHT COMPANY, hereinafter referred to as the “Company,” its successors and assigns, the right and franchise to acquire, construct, erect, maintain and operate in the City works and plants for the manufacture and generation of electricity and a distribution system for electric light, heat and power and the right to erect and maintain the necessary poles, lines, wires, conduits and other appliances for the transmission of electric current along, under and upon the streets, avenues, alleys and public places in the said City; also the right to erect and maintain upon the streets, avenues, alleys and public places, electric lines through the City to supply individuals, corporations, communities and municipalities both inside and outside of the City with electric light, heat and power for the period of 25 years; † also the right of eminent domain as provided in Section 364.2 of the *Code of Iowa*.

111.02 POLES AND WIRES; INDEMNIFICATION. The poles, wires and appliances shall be placed and maintained so as not to unnecessarily interfere with the travel on said streets, alleys and public places in the City or 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 erection or maintenance of said system.

111.03 EXCAVATIONS. 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.

111.04 CONSTRUCTION AND MAINTENANCE. 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 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

† **EDITOR’S NOTE:** Ordinance No. 375, adopting an electric franchise for the City, was passed and adopted on November 21, 2005.

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.

111.05 METERS. The Company, its successors and assigns shall furnish and install all meters at its own expense, and shall provide the service wire to buildings as set forth in the Company's tariff filed with the Iowa Utilities Board.

111.06 SYSTEM REQUIREMENTS. The system authorized by this chapter shall be modern and up-to-date and shall be of sufficient capacity to supply all reasonable demands of the City and the inhabitants thereof and shall be kept in a modern and up-to-date condition.

111.07 NONEXCLUSIVE. The franchise granted by this chapter shall not be exclusive.

111.08 CONTINUOUS SERVICE. Service to be rendered by the Company under this chapter shall be continuous unless prevented from so doing by fire, acts of God, unavoidable accidents or casualties, or reasonable interruptions necessary to properly service the Company's equipment, and in such event service shall be resumed as quickly as is reasonably possible.

111.09 TERM OF FRANCHISE. The term of the franchise granted by this chapter and the rights thereunder shall continue for the period of 25 years from the after its acceptance by the Company, as herein provided.

111.10 ENTIRE AGREEMENT. This chapter sets forth and constitutes the entire agreement between the Company and the City with respect to the rights contained herein, and may not be superseded, modified or otherwise amended without the approval and acceptance of the Company. Notwithstanding the foregoing, in no event shall the City enact any ordinance or place any limitations, either operationally or through the assessment of fees that create additional burdens upon the Company or which delay utility operations.

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CHAPTER 113

CABLE TELEVISION FRANCHISE

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113.01 DEFINITIONS. The following words and phrases, when used herein, shall, for the purposes of this chapter, have the meanings ascribed to them in this section:

1. "Basic cable" is the lowest priced tier of cable service that includes the retransmission of local broadcast television signals.
2. "Cable Act" means Title VI of the Communications Act of 1934, as amended.
3. "Cable services" means (i) the one-way transmission to subscribers of a) video programming or b) other programming service and (ii) subscriber interaction, if any, which is required for the selection or use of such video programming or any other programming service.
4. "Cable system" means the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple customers within the service area.
5. "FCC" means Federal Communications Commission or successor governmental entity thereto.
6. "Franchising Authority" means the City of Belmond, Iowa.
7. "Grantee" means Mediacom Iowa LLC, or the lawful successor, transferee or assignee thereof.
8. "Gross revenue" means any revenues received from the operation of the cable system to provide cable services in the service area, provided, however, that gross revenues shall not include franchise fees, the FCC user fee, any tax, fee or assessment of general applicability collected by the Grantee from subscribers for pass-through to a government agency.
9. "Person" means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.

10. "Public way" means the surface of, and the space above and below any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the service area which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system.

11. "Service area" means the present boundaries of the Franchising Authority and includes any additions thereto by annexation or other legal means, subject to the exceptions in Section 113.13.

12. "Standard installation" is defined as 125 feet from the nearest tap to the subscriber's terminal.

13. "Subscriber" means a person who lawfully receives cable service of the cable system with the Grantee's express permission.

113.02 GRANT. The Franchising Authority hereby grants to the Grantee a nonexclusive franchise which authorizes the Grantee to construct and operate a cable system in, along, among, upon, across, above, over, under or in any manner connected with public ways within the service area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon, across or along any public way such facilities and equipment as may be necessary or appurtenant to the cable system for the transmission and distribution of cable services, data services, information and other communications services or for any other lawful purposes.

113.03 OTHER ORDINANCES. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this franchise. Neither party may unilaterally alter the materials rights and obligations set forth in this franchise. In the event of a conflict between any ordinance and this franchise, the franchise shall control.

113.04 OTHER AUTHORIZATIONS. The Franchising Authority shall not permit any person to provide services similar to those provided by the Grantee in the service area without first having secured a non-exclusive franchise from the Franchising Authority. The Franchising Authority agrees that any grant of additional franchises or other authorizations including OVS authorizations by the Franchising Authority to provide services similar to those provided by the Grantee pursuant to this agreement to any other entity shall cover the entire service area and shall not be on terms and conditions more favorable or less burdensome to the grantee of any such additional franchise or other authorization than those which are set forth herein. In any renewal of the franchise, the Franchising Authority, should it seek to impose increased obligations upon the Grantee, must take into account any additional franchise(s) or authorizations previously granted and find that the proposed increased obligations in the renewal are not more burdensome and/or less favorable than those contained in any such additional franchise(s) or authorizations.

113.05 CONDITIONS OF OCCUPANCY. The cable system installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any such public ways.

113.06 RESTORATION OF PUBLIC WAYS. If during the course of Grantee's construction, operation or maintenance of the cable system there occurs a disturbance of any public way by the Grantee, the Grantee shall replace and restore such public way to a condition reasonably comparable to the condition of the public way existing immediately prior to such disturbance.

113.07 RELOCATION FOR THE FRANCHISING AUTHORITY. Upon its receipt of reasonable advance written notice, to be not less than 10 business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the public way any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.

113.08 RELOCATION FOR A THIRD PARTY. The Grantee shall, on the request of any person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the public way as necessary any property of the Grantee, provided: (i) the expense of such is paid by the person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (ii) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than 10 business days in the event of a temporary relocation, and no less than 120 days for a permanent relocation.

113.09 TRIMMING OF TREES AND SHRUBBERY. The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the cable system.

113.10 SAFETY REQUIREMENTS. Construction, operation and maintenance of the cable system shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable Federal, State and local regulations and the *National Electric Safety Code*.

113.11 UNDERGROUND CONSTRUCTION. In those areas of the service area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate and maintain all of its cable system underground. Nothing contained in this section shall require the Grantee to construct, operate and maintain underground any ground-mounted appurtenances.

113.12 ACCESS TO OPEN TRENCHES. The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that the utility or developer give the Grantee at least 10 days advance written notice of the availability of the open trench. Notwithstanding the foregoing, the Grantee shall not be required to utilize any open trench.

113.13 REQUIRED EXTENSIONS OF THE CABLE SYSTEM. Grantee agrees to provide cable service to all residences in the service area subject to the density requirements specified in this section. Whenever the Grantee receives a request for cable service from a potential subscriber in a unserved area contiguous to Grantee's existing distribution facilities where there

are at least 10 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its cable system to such subscribers at no cost to said subscribers for cable system extension, other than the published standard/non-standard installation fees charged to all subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the cable system into any portion of the service area where another operator is providing cable service, into any annexed area which is not contiguous to the present service area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

113.14 SUBSCRIBER CHARGES FOR EXTENSIONS OF THE CABLE SYSTEM. No subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 113.13, the Grantee shall only be required to extend the cable system to subscriber(s) in that area if the subscriber(s) are willing to share the capital costs of extending the cable system. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 10. Subscribers who request service hereunder will bear the remaining cost to extend the cable system on a *pro rata* basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance. Subscribers shall also be responsible for any standard/non-standard installation charges to extend the cable system from the tap to the residence.

113.15 CABLE SERVICE TO PUBLIC BUILDINGS. The Grantee, upon request, shall provide without charge a standard installation and one outlet of basic cable service to those administrative buildings owned or occupied by the Franchising Authority, fire station(s), police station(s), public library and K-12 public school(s) that are passed by its cable system. The cable service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The cable service provided shall not be used for commercial purposes and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any inappropriate use of the Grantee's cable system or any loss or damage to Grantee's cable system. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of cable service required by this section. The Grantee shall not be required to provide an outlet to such buildings where a non-standard installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary cable system extension and/or non-standard installation. If additional outlets of basic cable are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

113.16 REIMBURSEMENT OF COSTS. If funds are available to any person using the public way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall reimburse the Grantee in the same manner in which other persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Franchising Authority shall make application for such funds on behalf of the Grantee.

113.17 FRANCHISE FEE.

1. The Grantee shall pay to the Franchising Authority a franchise fee of 5% of quarterly gross revenues (as defined in Section 113.01 of this chapter). In accordance with the Cable Act, the 12 month period applicable under the franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment

shall be due quarterly and payable within 30 days after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

2. Limitation on Franchise Fee Actions. The period of limitation for recovery by the Franchising Authority of any franchise fee payable hereunder shall be three years from the date on which payment by the Grantee is due to the Franchising Authority.

113.18 RATES AND CHARGES. The Franchising Authority may regulate rates for the provision of basic cable service and equipment as expressly permitted by Federal law.

113.19 RENEWAL OF FRANCHISE.

1. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's franchise shall be governed by and comply with the provisions of Federal law.

2. In addition to the procedures set forth in the Cable Act, the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal pursuant to the Cable Act and complete renewal of the franchise prior to expiration of its term.

3. Notwithstanding anything to the contrary set forth in this section, the Grantee and the Franchising Authority agree that at any time during the term of the then current franchise, while affording the public appropriate notice and opportunity to comment in accordance with the provisions of Federal law, the Franchising Authority and Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current franchise and the Franchising Authority may grant a renewal thereof.

4. The Grantee and the Franchising Authority consider the terms set forth in this section to be consistent with the express renewal provisions of the Cable Act.

113.20 CONDITIONS OF SALE. If a renewal or extension of Grantee's franchise is denied or the franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the cable system or by its actions lawfully effects a transfer of ownership of the cable system to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act. The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the franchise, the Grantee shall be given at least 12 months to effectuate a transfer of its cable system to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its cable system which is reasonably acceptable to the Franchising Authority, the Grantee and Franchising Authority may avail themselves of any rights they may have pursuant to Federal or State law. It is further agreed that the Grantee's continued operation of its cable system during the twelve-month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

113.21 TRANSFER OF FRANCHISE. The Grantee's right, title or interest in the franchise shall not be sold, transferred, assigned or otherwise encumbered, other than to an entity controlling, controlled by or under common control with the Grantee, without prior written notice to the Franchising Authority. No such notice shall be required, however, for a transfer in trust, by

mortgage, by other hypothecation, or by assignment of any rights, title or interest of the Grantee in the franchise or cable system in order to secure indebtedness.

113.22 PEG ACCESS. Grantee shall activate and assign one channel on the cable system to the full-time non-commercial transmission of public, education and governmental (PEG) programming to be determined and carried out at the sole discretion of the City. The City may request and the Grantee shall provide a second channel for the use of PEG programming but not until the City can demonstrate that the first channel assigned to PEG programming is used on an average of eight hours per day with not less than five hours each week being new programming. Upon reasonable request by the Grantee, the City shall provide a written report describing the use and programming of said PEG access channel or channels.

113.23 BOOKS AND RECORDS. The Grantee agrees that the Franchising Authority, upon 30 days written notice to the Grantee and no more than once annually, may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this franchise. Such notice shall specifically reference the section of the franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for franchise compliance purposes longer than three years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing cable service in the service area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide subscriber information in violation of Section 631 of the Cable Act.

113.24 INSURANCE REQUIREMENTS. The Grantee shall maintain insurance in full force and effect, at its own cost and expense, during the term of the franchise, with liability coverage of \$2,000,000. The Franchising Authority shall be designated as an additional insured and such insurance shall be noncancellable except upon 30 days' prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this section.

113.25 INDEMNIFICATION. The Grantee agrees to indemnify, save and hold harmless and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death) which arise out of the Grantee's construction, operation or maintenance of its cable system in the service area, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within 10 days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

113.26 NOTICE OF VIOLATION. In the event that the Franchising Authority believes that the Grantee has not complied with any material term of the franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution

of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

113.27 GRANTEE'S RIGHT TO CURE OR RESPOND. The Grantee shall have 30 days from receipt of the notice described in Section 113.26 to: (i) respond to the Franchising Authority contesting the assertion of noncompliance; or (ii) to cure such default; or (iii) in the event that, by the nature of the default, such default cannot be cured within the thirty-day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

113.28 PUBLIC HEARING. In the event that the Grantee fails to respond to the notice as described in Section 113.26 pursuant to the procedures set forth in Section 113.27, or in the event that the alleged default is not remedied within 30 days or the date projected pursuant to Section 113.27(iii) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days' prior written notice of such hearing, which specifies the time, place and purpose of such hearing and provide the Grantee the opportunity to be heard.

113.29 ENFORCEMENT. Subject to applicable federal and State law, in the event the Franchising Authority, after the hearing set forth in 113.28, determines that the Grantee is in material default of any provision of the franchise, the Franchising Authority may:

1. Commence an action at law for monetary damages or seek other equitable relief; or
2. In the case of repeated or ongoing substantial noncompliance with a material term or terms of the franchise, seek to revoke the franchise in accordance with Section 113.30.

113.30 REVOCATION. Should the Franchising Authority seek to revoke the franchise after following the procedures set forth in Sections 113.26 – 113.29, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the repeated or ongoing substantial noncompliance with a material term or terms of the franchise. The Grantee shall have 90 days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the franchise at a public meeting. The Franchising Authority shall cause to be served upon the Grantee, at least 30 days prior to such public meeting, a written notice specifying the time and place of such hearing and stating its intent to revoke the franchise. At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Franchising Authority, to compel the testimony of other persons as permitted by law, and to question witnesses. A complete verbatim record and transcript shall be made of such hearing. Following the hearing, the Franchising Authority shall determine whether or not the franchise shall be revoked. If the Franchising Authority determines that the franchise shall be revoked, the Franchising Authority shall promptly provide Grantee with its decision in writing. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority *de novo*. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within 60 days of the Grantee's receipt of the determination of the Franchising Authority. The Franchising Authority may, at its sole

discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the franchise in lieu of revocation of the franchise.

113.31 FORCE MAJEURE. The Grantee shall not be held in default under or in noncompliance with the provisions of the franchise or suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's cable system is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary. Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the franchise for violations of the franchise where the violation was a good faith error that resulted in no or minimal negative impact on the subscribers within the service area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or subscribers.

113.32 ACTIONS OF PARTIES. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

113.33 ENTIRE AGREEMENT. This franchise constitutes the entire agreement between the Grantee and the Franchising Authority and supersedes all other prior understandings and agreements oral or written. Any amendments to this franchise shall be mutually agreed to in writing by the parties.

113.34 RESERVATION OF RIGHTS. Acceptance of the terms and conditions of this franchise will not constitute, or be deemed to constitute, a waiver, either expressly or impliedly, by Grantee of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions. The Franchising Authority acknowledges that Grantee reserves all of its rights under applicable Federal and State Constitutions and laws.

113.35 NOTICE. Unless expressly otherwise agreed between the parties, every notice or response required by this franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, c) within five business days after having been posted in the regular mail, or d) the next business day if sent by express mail or overnight air courier.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Belmond
PO Box 192
Belmond, IA 50421

The notice of responses to the Grantee shall be addressed as follows:

MEDIACOM IOWA LLC
Attn: Government Relations
2195 Ingersoll Avenue
Des Moines, IA 50312

With a copy to:

Vice President of Legal & Regulatory Affairs
Mediacom
100 Crystal Run Road
Middletown, NY 10940

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this section.

113.36 TERM AND EFFECTIVE DATE. The effective date of this franchise is the date of final adoption by the Franchising Authority, [†] subject to Grantee's acceptance by countersigning where indicated on the ordinance. This franchise shall be for a term of 15 years from such effective date and shall expire on December 5, 2020.

[†] **EDITOR'S NOTE:** Ordinance No. 376 adopting a cable television franchise for the City was passed and adopted on December 5, 2005.

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CHAPTER 114

CABLE TELEVISION REGULATIONS

114.01 Definitions	114.18 Line Extensions
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114.01 DEFINITIONS. The following words and phrases, when used herein, shall, for the purposes of this chapter, have the meanings ascribed to them in this section:

1. “Cable Television System” means any facility that, in whole or in part, receives directly, or indirectly over the air, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals, by wire or cable, to subscribing members of the public who pay for such services.
2. “Channel” means the segment of the electromagnetic spectrum to which a source of television transmission is assigned.
3. “FCC” means the Federal Communications Commission.
4. “Franchise” means the rights, privileges, and authority granted by the City to the Grantee hereunder and includes all of the terms and conditions of this chapter.
5. “Private property” means all property, real, personal or mixed, owned or used by a private person, including property owned by a public utility not owned or operated by the City.
6. “Public property” means all property, real or personal or mixed, owned or used by the City, including property owned or used by a public utility owned or operated by the City.

114.02 USE OF PROPERTY. The Grantee may use public property within the City and, with the written consent of the owner thereof, private property within the City, in furtherance of such activities within the City as may now or hereafter be consistent with generally accepted principles applicable to the operation of a cable television system subject, however, to the following restrictions:

1. Laws and Regulations. The Grantee shall comply with all governmental laws, ordinances, rules or regulations as may now or hereafter be applicable thereto.

2. Restrictions. The Grantee shall not use or occupy or permit public property or private property to be used or occupied or do or permit anything to be done on or about public property or private property which will, in any manner:
 - A. Impair the owner's interest in or title thereto;
 - B. Impair any mortgage or lease as may now or hereinafter be applicable thereto;
 - C. Adversely affect the then value or character thereof;
 - D. Cause or be likely to cause structural damage thereto, or any part thereof;
 - E. Cause or be likely to cause any damage or injury to any utility service available thereto;
 - F. Create a public or private nuisance, cause any offensive or obnoxious vibrations, noise, odor or undesirable effect or interfere with the safety, comfort or convenience of the owner thereof, and persons lawfully on or about the same;
 - G. Violate the rules, regulations and requirements of any person furnishing utilities or services thereto; or
 - H. Make void or voidable any insurance then in force affecting the same or cause an increase in the rates applicable thereto.

114.03 TAXES. The Grantee shall pay all real estate taxes, special assessments, personal property taxes, license fees, permit fees and other charges of a like nature which may be taxed, charged, assessed, levied, or imposed upon the property of the Grantee and upon any services rendered by the Grantee.

114.04 REPAIRS. During the term of the franchise, the Grantee shall, at its own expense, make all necessary repairs and replacements to the property of the Grantee. Such repairs and replacements, interior and exterior, ordinary as well as extraordinary, and structural as well as nonstructural, shall be made promptly, as and when needed.

114.05 HOLD HARMLESS. During the term of the franchise, the Grantee absolutely assumes and agrees to pay the City for, and the Grantee forever agrees to indemnify the City against, and agrees to hold and save the City harmless from, any and all damage, injury, costs, expenses, liability, claims, settlements, judgments, decrees and awards of every kind and nature whatsoever, including attorney's fees, costs and disbursements, that may ever be claimed against the City by any person whatsoever, or an account of any actual or alleged loss, damage or injury to any property or person whatsoever, however arising from or related to or connected with, directly or indirectly, (a) injury to or death of any person, or loss, damage or injury to any property of the Grantee, and/or (b) the nonobservance by the Grantee of the provisions of any laws, statutes, ordinances, resolutions, regulations or rules duly promulgated by any governmental entity which may be applicable directly or indirectly, to rights, privileges, and authority, and the obligations and liabilities, assumed by the Grantee under the franchise, (c) the nonobservance by the Grantee of any of the terms and conditions of the franchise, and/or (d) the granting of the franchise.

114.06 ASSIGNMENT. The Grantee shall not assign or transfer any right granted under this chapter to any other person without prior consent of the Council, which consent shall not be unreasonably withheld, provided that the Grantee shall have the right to assign the provisions

of this chapter to a corporation wholly owned by the Grantee or to a limited partnership of which the Grantee is a general partner without the prior consent of the City.

114.07 INSOLVENCY OF GRANTEE. In the event that the Grantee shall become insolvent, or be declared a bankrupt, or the property of the Grantee shall come into the possession of any receiver, assignee or other officer acting under an order of court, and any such receiver, assignee or other such officer shall not be discharged within 60 days after taking possession of such property, the City may, at its option, terminate the franchise by giving written notice thereof to the Grantee.

114.08 DEFAULT OF GRANTEE. In the event the Grantee shall fail to comply with any of the terms and conditions of the franchise within 30 days after receipt of notice in writing from the City specifying the failure or default, the City may, at its option, terminate the franchise by giving written notice thereof to the Grantee. This section shall not apply to failures or defaults beyond the reasonable control of the Grantee.

114.09 TERMINATION. In the event of termination of the franchise for any cause, the Grantee shall remove the property of the Grantee from all public property and private property within the City and shall return such public property and private property to the owner thereof in the same condition as when the property of the Grantee was placed thereon, ordinary wear and tear excepted.

114.10 COMPLIANCE WITH APPLICABLE LAWS. During the term of the franchise, the Grantee shall comply with all governmental laws, ordinances, rules or regulations as may be applicable to the construction, operation, maintenance, repair, replacement, renewal, reconstruction, and removal of a cable television system, the sale and supply of audio and video communications services, the use of public property and private property and the engagement in such further activities as may now or hereafter be consistent with generally accepted principles applicable to the operation of a cable television system.

114.11 INSTALLATION AND MAINTENANCE. During the term of the franchise, the property of the Grantee shall be constructed, operated, maintained, repaired, replaced, renewed, reconstructed, and removed in accordance with generally accepted engineering principles so as not to endanger or interfere with the lives of persons or to interfere with improvements which the City may deem proper to make or to unnecessarily hinder or obstruct pedestrian or vehicular traffic or use of public property or private property.

114.12 INTERFERENCE. The Grantee's cable television system shall be so designed, engineered and maintained so as not to interfere with radio and television reception of persons who are not subscribers of the Grantee.

114.13 INSTALLATION OF CABLES. The Grantee shall have the right, privilege, and authority to lease, rent or in any other manner obtain the use of wooden poles with overhead lines, conduits, trenches, ducts, lines, cables, and other equipment and facilities from any and all holders of public licenses and franchises with the City, and to use such poles, conduits, trenches, ducts, lines, and cables in the course of its business. The Grantee shall install its cable on the existing poles owned by other holders of public licenses and franchises with the City whenever possible for the installation of its cable. When installation of cable on poles is insufficient, or when holders of other public licenses or franchises have installed underground cable, then in that event, the cable used by the Grantee shall be installed underground.

114.14 RESTORATION OF GROUND SURFACE. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, or surface of any street or alley disturbed, in as good a condition as before said work was commenced.

114.15 ALTERATION OF GRADE. In the event that during the term of the franchise, the City shall elect to alter or change the grade of any street, alley, or public way, the Grantee, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

114.16 TEMPORARY REMOVAL OF CABLES. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its cables to permit the moving of buildings. The expense of such temporary removal, raising, or lowering of cables shall be paid by the person requesting the same and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than five days' advance notice to arrange for such temporary cable changes.

114.17 TREE TRIMMING. The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the cables of the Grantee. All trimming shall be done at the expense of the Grantee.

114.18 LINE EXTENSIONS. It shall be the obligation of the Grantee to serve all residents of the City except to the extent that density of homes, adverse terrain or other factors render providing service impracticable, technically infeasible or economically noncompensatory. For purposes of determining compliance with the provisions of this section, and to provide for a reasonable and nondiscriminatory policy governing extensions of cable service within the City, Grantee shall extend service to new subscribers at the normal installation charge and monthly rate for customers of that classification where there is an average of 50 homes per each linear mile of new cable construction. In the event the requirements of this section are not met, extensions of service shall be required only on a basis which is reasonable and compensatory.

114.19 SERVICE REQUIREMENTS. During the term of the franchise, the Grantee shall furnish reasonable, adequate and efficient cable television service to subscriber terminals. This requirement may be temporarily suspended due to circumstances beyond the control of the Grantee.

114.20 PERFORMANCE STANDARDS. The Grantee shall produce a picture in black and white or in color that is of high quality accompanied by proper sound on typical standard television sets in good repair. The Grantee shall also transmit signals of adequate strength to produce good pictures with good sound at all subscriber terminals throughout the City without causing cross modulation in the cables or interfering with other electrical or electronic systems.

114.21 CHANNEL CAPACITY AND PERFORMANCE. During the term of the franchise, the cable television system of the Grantee shall conform to the channel capacity and performance requirements contained in the then current regulations of the FCC.

114.22 CITY BUILDINGS AND SCHOOLS. During the franchise, the Grantee shall at its sole cost, install and maintain a subscriber terminal in such buildings owned or used by the City, and in such buildings owned or used by recognized educational authorities within the City, both public and private, as may be designated by the governing body having jurisdiction thereof.

Such subscriber terminals shall be placed in such location within such buildings as may be designated by the governing body having jurisdiction thereof. This provision is meant to apply only to those buildings accessible to Grantee's system.

114.23 TELECAST OF EDUCATIONAL ACTIVITIES. The Grantee shall not cablecast, tape, reproduce or otherwise convey to its subscribers the activities of any recognized educational authority, public or private, without the written consent of the governing body of such authority.

114.24 PROGRAM ALTERATION. Any signal received by the Grantee from a television broadcast station shall be cablecast by the Grantee in its entirety, as received, without alteration.

114.25 RATES AND CHARGES. All rates for service shall be reasonable, compensatory and nondiscriminatory. Except as otherwise provided in the franchise, the Grantee shall have the right, privilege and authority to change the rates and charges.

114.26 SERVICE RULES. The Grantee shall have the right to prescribe reasonable service rules and regulations and operating rules for the conduct of its business. Such rules and regulations shall be consistent with the terms and conditions of the franchise. The Grantee shall file such rules and regulations, and all amendments thereto, with the City.

114.27 SERVICE AGREEMENTS. The Grantee shall have the right to prescribe a reasonable form of service agreement for use between the Grantee and its subscribers. Such service agreement shall be consistent with the terms and conditions of the franchise.

114.28 INJURY TO PROPERTY. No person shall wrongfully or unlawfully injure the property of the Grantee nor shall any person wrongfully or unlawfully intercept the signals of the Grantee.

114.29 FILING OF REPORTS. On or before April 1 of each year, the Grantee shall file with the City copies of FCC Form 326 for the preceding calendar year. On or before April 1 of each year, the Grantee shall file with the City maps and plats showing the location and nature of all new property of the Grantee within the City as of the end of the preceding calendar year. The Grantee shall file with the City copies of all petitions, applications and communications submitted by the Grantee to any regulatory agency having jurisdiction over the Grantee.

114.30 ACCESS. The Grantee shall and does hereby grant to the City the right to enter upon the property of the Grantee, upon reasonable notice, at any and all reasonable times to inspect the same for purposes pertaining to the rights of the City.

114.31 DISCRIMINATION PROHIBITED. The Grantee shall not grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage with respect to rates, charges, services, service facilities, rules, regulations, or in any other respect.

114.32 OTHER ACTIVITIES PROHIBITED. During the initial term of the franchise or any extension thereof the Grantee shall not engage in the business of selling, leasing, renting or servicing television or radio receivers or their parts and accessories, and the Grantee shall not require or attempt to direct its subscribers to deal with any particular person or firm with respect to said activities.

114.33 ARBITRATION. Any controversy between the City and the Grantee regarding the rights, duties and liabilities of either party under the franchise shall be settled by arbitration. This section shall not apply to termination proceedings under Section 114.09. Such arbitration shall be before three disinterested arbitrators, one named by the City, one named by the Grantee, and one named by the two thus chosen. The decision of the arbitrators shall be conclusive and shall be enforced in accordance with the laws of the State.

114.34 RESERVATIONS. The right is reserved to the Council to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power.

CHAPTER 115

REGULATION OF CABLE TELEVISION RATES

115.01 Authority

115.02 Rate Regulation Proceedings

115.03 Certification

115.04 Notice of Rate Change

115.05 Delegation of Power

115.01 AUTHORITY. The City has the legal authority to administer and shall enforce against any non-municipally owned cable television system operator, as permitted therein, the provisions of Part 76, Subpart N of the Rules and Regulations of the Federal Communications Commission (FCC), concerning Cable Rate Regulation, 47 C.F.R. §§76.900 *et. seq.*, as they currently read and hereafter may be amended, which are herewith incorporated by reference.

115.02 RATE REGULATION PROCEEDINGS. Any rate regulation proceedings conducted hereunder shall provide a reasonable opportunity for consideration of the views of any interested party, including but not limited to, the City or its designee, the Cable Operator, subscribers, and residents of the franchise area. In addition to all other provisions required by the laws of the State of Iowa and by the City, and in order to provide for such opportunity for consideration of the views of any interested party, the City shall take the following actions:

1. The City shall publish notice as provided in Section 362.3 of the *Code of Iowa* and shall mail, by certified mail, to the Cable Operator a notice of the intent to conduct a public proceeding on basic service tier rates and/or charges for equipment to receive such basic service tier, as defined by the FCC.
2. The public notice shall state, among other things, that cable television rates are subject to municipal review and explain the nature of the rate review in question; that any interested party has a right to participate in the proceeding; that public views may be submitted in the proceeding, explaining how they are to be submitted and the deadline for submitting any such views; that a decision concerning the reasonableness of the cable television rates in question will be governed by the Rules and Regulations of the FCC; and that the decision of the City is subject to review by the FCC.
3. The City shall conduct a public proceeding to determine whether or not the rates or proposed rate increases are reasonable. The City may delegate the responsibility to conduct the proceeding to any duly qualified and eligible individual(s) or entity. If the City or its designee cannot determine the reasonableness of a proposed rate increase within the time period permitted by the FCC Rules and Regulations, it may announce the effective date of the proposed rates for an additional period of time as permitted by the FCC Rules and Regulations, and issue any other necessary or appropriate order and give public notice accordingly.
4. In the course of the rate regulation proceeding, the City may request additional information from the Cable Operator that is reasonably necessary to determine the reasonableness of the basic service tier rates and equipment charges. Any such additional information submitted to the City shall be verified by an appropriate official of the cable television system supervising the preparation of the response on behalf of the entity, and submitted by way of affidavit or under penalty of perjury, stating that the response is true and accurate to the best of that person's knowledge, information and belief formed after reasonable inquiry.

5. The City may request proprietary information, provided that the City shall consider a timely request from the Cable Operator that said proprietary information shall not be made available for public information, consistent with the procedures set forth in Section 0.459 of the FCC Rules and Regulations. Furthermore, said proprietary information may be used only for the purpose of determining the reasonableness of the rates and charges or the appropriate rate level based on a cost-of-service showing submitted by the Cable Operator.
6. The City may exercise all powers under the laws of evidence applicable to administrative proceedings under the laws of the State of Iowa and by the City to discover any information relevant to the rate regulation proceeding, including, but not limited to, subpoena, interrogatories, production of documents, and deposition.
7. Upon termination of the rate regulation proceeding, the City shall adopt and release a written decision as to whether or not the rate or proposed rate increase is reasonable or unreasonable, and, if unreasonable, its remedy, including prospective rate reduction, rate prescription, and refunds.
8. The City may not impose any fines, penalties, forfeitures or other sanctions, other than permitted by the FCC Rules and Regulations, for charging an unreasonable rate or proposing an unreasonable rate increase.
9. Consistent with FCC Rules and Regulations, the City's decision may be reviewed only by the FCC.
10. The City shall be authorized, at any time, whether or not in the course of a rate regulation proceeding, to gather information as necessary to exercise its jurisdiction as authorized by the Communications Act of 1934, as amended, and the FCC Rules and Regulations. Any information submitted to the City shall be verified by an appropriate official of the cable television system supervising the preparation of the response on behalf of the entity, and submitted by way of affidavit or under penalty of perjury, stating that the response is true and accurate to the best of that person's knowledge, information and belief formed after reasonable inquiry.

115.03 CERTIFICATION. The City shall file with the FCC the required certification form (FCC Form 328) on September 1, 1993, or as soon thereafter as appropriate. Thirty days later, or as soon thereafter as appropriate, the City shall notify the Cable Operator that the City has been certified by the FCC and that it has adopted all necessary regulations so as to begin regulating basic service tier cable television rates and equipment charges.

115.04 NOTICE OF RATE CHANGE. With regard to the cable programming service tier, as defined by the Communications Act of 1934, as amended, and the FCC Rules and Regulations, and over which the City is not empowered to exercise rate regulation, the Cable Operator shall give notice to the City of any change in rates for the cable programming service tier or tiers, any change in the charge for equipment required to receive the tier or tiers, and any changes in the nature of the services provided, including the program services included in the tier or tiers. Said notice shall be provided within five (5) business days after the change becomes effective.

115.05 DELEGATION OF POWER. The City may delegate its powers to enforce this chapter to municipal employees or officers (the "cable official"). The cable official will have the authority to:

1. Administer oaths and affirmations;

2. Issue subpoenas;
3. Examine witnesses;
4. Rule upon questions of evidence;
5. Take or cause depositions to be taken;
6. Conduct proceedings in accordance with this chapter;
7. Exclude from the proceeding any person engaging in contemptuous conduct or otherwise disrupting the proceedings;
8. Hold conferences for the settlement or simplification of the issues by consent of the parties; and
9. Take actions and make decisions or recommend decisions in conformity with this chapter.

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CHAPTER 116

CEMETERY

116.01 Definition
116.02 Trusteeship
116.03 Records

116.04 Sale of Interment Rights
116.05 Perpetual Care
116.06 Rules and Regulations

116.01 DEFINITION. The term “cemetery” means the Belmond Municipal Cemetery, which is a municipal cemetery under the provisions of Chapter 523I of the *Code of Iowa* and which shall be operated under the provisions of Chapter 523I of the *Code of Iowa* and this chapter. The Council shall have overall control of the cemetery and the City Manager, subject to direction by the Council, shall have the day-to-day management and supervision responsibility of the cemetery.

(Code of Iowa, Sec. 523I.501)

116.02 TRUSTEESHIP. Pursuant to Section 523I.502 of the *Code of Iowa*, the City Council hereby states its willingness and intention to act as the trustee for the perpetual maintenance of the cemetery property.

(Code of Iowa, Sec. 523I.502)

116.03 RECORDS. It is the duty of the Clerk to make and keep complete records identifying the owners of all interment rights sold by the cemetery and historical information regarding any transfers of ownership. The records shall include all of the following:

(Code of Iowa, Sec. 523I.311)

1. Sales or Transfers of Interment Rights.
 - A. The name and last known address of each owner or previous owner of interment rights.
 - B. The date of each purchase or transfer of interment rights.
 - C. A unique numeric or alphanumeric identifier that identifies the location of each interment space sold by the cemetery.
2. Interments.
 - A. The date the remains are interred.
 - B. The name, date of birth, and date of death of the decedent interred, if those facts can be conveniently obtained.
 - C. A unique numeric or alphanumeric identifier that identifies the location of each interment space where the remains are interred.

116.04 SALE OF INTERMENT RIGHTS. The Council shall from time to time by resolution fix the charges, costs and fees for interment rights, care and maintenance, perpetual care, grave openings and other user services. The sale or transfer of interment rights in the cemetery shall be evidenced by a certificate of interment rights or other instrument evidencing the conveyance of exclusive rights of interment upon payment in full of the purchase price. The agreement for interment rights shall disclose all information required by Chapter 523I of the *Code of Iowa* including the amount or percentage of money to be placed in the perpetual care

cemetery fund. The payment of all fees and charges shall be made at the office of the Clerk where receipts will be issued for all amounts paid.

(Code of Iowa, Sec. 523I.310)

116.05 PERPETUAL CARE.

1. The Council, by resolution, shall accept, receive, and expend all moneys and property donated or left to them by bequest for perpetual care, and that portion of interment space sales or permanent charges made against interment spaces which has been set aside in a perpetual care fund. The assets of the perpetual care fund shall be invested in accordance with State law. The Council, by resolution, shall provide for the payment of interest annually to the appropriate fund, or to the cemetery, or to the person in charge of the cemetery, to be used in caring for or maintaining the individual property of the donor in the cemetery or interment spaces that have been sold with provisions for perpetual care, all in accordance with the terms of the donation or bequest or the terms of the sale or purchase of an interment space and Chapter 523I of the *Code of Iowa*.

(Code of Iowa, Sec. 523I.503, 523I.507 & 523I.508)

2. The perpetual care cemetery fund shall be maintained separate from all operating funds of the cemetery and the principal of the fund shall not be reduced voluntarily except as specifically permitted by the Iowa Cemetery Act and applicable administrative regulations.

3. The cemetery shall maintain a registry of individuals who have purchased interment rights in the cemetery subject to the care fund requirements of the Iowa Cemetery Act, including the amounts deposited in the perpetual care cemetery fund.

116.06 RULES AND REGULATIONS. Rules and regulations for the cemetery may be adopted, and may be amended from time to time, by resolution of the Council and may cover such things as the use, care, control, management, restrictions and protection of the cemetery as necessary for the proper conduct of the business of the cemetery. The rules shall specify the cemetery's obligations in the event that interment spaces, memorials, or memorializations are damaged or defaced by acts of vandalism. Any veteran, as defined in Section 35.1 of the *Code of Iowa*, who is a landowner or who lives within the City shall be allowed to purchase an interment space and to be interred within the cemetery. In addition, any veteran who purchases an interment space within the cemetery shall be allowed to purchase an interment space for interment of the spouse of the veteran if such a space is available, and the surviving spouse of a veteran interred within the cemetery shall be allowed to purchase an interment space and be interred within the cemetery if such a space is available.

(Code of Iowa, Sec. 523I.304)

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