

## Local Public Utilities, Enterprises

### CHAPTER 451

### UTILITY FRANCHISES, PERMITS, RIGHTS

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	<b>DISTRICT HEATING SYSTEMS</b>		

**451.01** [Repealed, 1949 c 300 s 1]

**451.02** [Unnecessary]

**451.03** [Repealed, 1949 c 119 s 110]

#### CHARTER CITIES OF THE FOURTH CLASS

##### **451.04 FRANCHISE FOR CITY HEATING SYSTEM.**

Subdivision 1. **Right to build, run.** A home rule charter city of the fourth class may give a person, company, or corporation the right to use the streets, alleys, and other public grounds of the city to construct, operate, and maintain a system to furnish heat to city residents.

Subd. 2. **Council sets terms, condition.** The city council must decide what terms and conditions apply to the use of the right given under subdivision 1.

Subd. 3. **City sale of steam, hot water.** If the city owns and operates a plant that heats water or generates steam, the city may sell the steam or hot water to the user of the right given under subdivision 1 at a profit to the city.

Subd. 4. **Arrangements for heat, control of system.** The city may make contracts and arrangements for furnishing heat, using the city's steam or hot water, to city residents. The city may also make arrangements for the regulation and control of the heating system.

Subd. 5. **May install system equipment.** The city may give a person, company, or corporation the right to use the streets, alleys, and other public grounds of the city to install, at no expense to the city, necessary and incidental equipment to construct, operate, and maintain the heating system. The city council must decide what terms and conditions apply to the use of the plant.

Subd. 6. **Heat from city steam, hot water.** If the city owns and operates a plant that heats water or generates steam, the city may make the necessary and incidental contracts and arrangements to furnish, at a profit to the city, heat from the steam or hot water, to the city's residents.

Subd. 7. **City may buy system.** The city may acquire, own, operate, and enlarge the heating system after it is installed.

Subd. 8. **City debt payable in future heat.** The city may issue its certificates of indebtedness payable in heat to be sold by the city.

Subd. 9. **City's steam, hot water to service company.** If the city operates a municipal electric light or water plant, the city may agree with a service company that furnishes steam or hot water heat to its residents to supply from the municipal plant to the service company, the necessary steam or hot water for the company's customers.

Subd. 10. **Terms of agreement.** The supply agreement between the city and the service company may include terms on the subjects in this subdivision.

(a) The agreement may provide for joint approval of the plans and joint supervision of the construction and the definite determination at the time of completion, of the cost of the company's plant.

(b) The agreement may:

(1) fix the rates to be charged to the company's customers for the heat supplied;

(2) fix the charges to be billed to and collected from the customer either by the city or the service company; and

(3) divide the revenue received from the collections between the city and the service company.

(c) The agreement may provide for the purchase of the company's plant by the city at cost, plus reasonable interest on the cost, and for payment for the plant from the money saved by the city from its share of the collections.

Subd. 11. **City may buy private system.** If there is a heating system in the city that is not owned by the city, the city may buy the heating system for not more than its fair value. The city and the owner of the system must agree on the terms of the sale.

Subd. 12. **Pay with bonds.** The city council may issue and sell as many bonds of the city as it judges are necessary to buy the heating system from its owners.

Subd. 13. **Bond formalities.** (a) The city council must decide:

(1) the bonds' form and denomination;

(2) the rate of interest on the bonds, not more than six percent per year, payable semiannually; and

(3) the time, not more than 20 years from their date, when the bonds are due and payable.

(b) If the city issues the bonds, the bonds must be signed by the mayor and countersigned by the clerk.

(c) The bonds must be sold for not less than par and accrued interest.

Subd. 14. **Add to other powers.** The powers granted in this section are to be added to other powers granted by law.

**History:** (1768) 1917 c 122 s 1; Ex1919 c 25 s 1; 1921 c 108 s 1; 1949 c 119 s 111; 1988 c 469 art 6 s 1

**451.05 BONDS, OBLIGATIONS FOR HEAT NOT PART OF CITY DEBT.**

Subdivision 1. **Obligations.** An obligation incurred by a home rule charter city of the fourth class in making arrangements to furnish heat to the city's residents under section 451.04 is not part of the city's debt under its charter or under state law limiting the city's debt.

Subd. 2. **Bonds.** The amount of bonds issued under section 451.04 and at any time outstanding are not part of the city's net debt under its charter or under other law.

**History:** (1769) 1917 c 122 s 2; Ex1919 c 25 s 2; 1921 c 108 s 2; 1949 c 119 s 111; 1988 c 469 art 6 s 1

**451.06** [Repealed, 1988 c 469 art 6 s 2]

**CITIES OF THE FIRST CLASS****451.07 UTILITY PERMIT AFTER FRANCHISE, LICENSE EXPIRE.**

Subdivision 1. **To continue existing service.** A city of the first class may by ordinance give a permit to a public service corporation to use the streets and other public property in the city to continue to supply gas, electric energy, or steam for light, heat, or power.

Subd. 2. **Despite contrary charter.** The permit may be issued even if issuing it is contrary to the city's charter.

Subd. 3. **Conditions: franchise, licenses expired.** The permit is subject to the terms and conditions in this subdivision.

(a) The corporation must be supplying gas, electric energy, or steam for light, heat, or power, at the time the permit is issued.

(b) The corporation's franchise for supplying the utility service must have expired.

(c) The home rule charter of the city must allow for a limited number of licenses to use public property to supply utility service for not more than one year, and all the licenses must have been issued and must have expired.

Subd. 4. **City may set rates.** The city may set the rates the corporation may charge for its service in the city. The rates must not be set more often than once in a calendar year.

Subd. 5. **Charge for street use.** The city may decide how much the corporation must pay to use the city's streets and other public property in the city.

Subd. 6. **Minimum charge; exception.** The city must charge the corporation at least the minimum franchise fee, if any, required by the city charter when the corporation is not specifically relieved of the payment.

Subd. 7. **Bound by agreed rates, charges.** This section does not let the city change the rates or charges in this section if the city has fixed the rates or charges for a definite period in an agreement with the corporation.

**History:** (1491-5) 1935 c 286 s 1; 1988 c 469 art 6 s 1

**451.08** [Repealed, 1988 c 469 art 6 s 2]

## HOME RULE CHARTER CITIES

### 451.09 STEAM HEAT DISCONTINUED; NOTICE; COST TO CONVERT.

Subdivision 1. **By utility board, with council approval.** A public utilities board or commission that operates a steam heat system in a home rule charter city may discontinue the system in whole or part if the city council approves.

Subd. 2. **May pay to convert.** If the council approves, the board or commission may spend money to pay those whose service is discontinued to convert to another type of heat system.

Subd. 3. **Supersedes other law, charter.** This section applies notwithstanding a contrary city charter or other law.

Subd. 4. **Exceptions: Austin, Marshall, Virginia.** Subdivisions 1 to 3 do not apply to the cities of Austin, Marshall, and Virginia.

Subd. 5. **Two years' notice.** A public utilities board or commission that operates a steam heat system in a home rule charter city must give the commissioner of employment and economic development two years' notice of its intended date to discontinue the system.

**History:** 1969 c 796 s 1; 1976 c 44 s 46; Ex1979 c 2 s 41; 1981 c 356 s 221; 1983 c 289 s 115 subd 1; 1987 c 312 art 1 s 26 subd 2; 1988 c 469 art 6 s 1; 1Sp2003 c 4 s 1

## DISTRICT HEATING SYSTEMS

### 451.10 DISTRICT HEATING SYSTEM.

Subdivision 1. **Application.** Sections 451.10 to 451.17 apply to a city that:

(1) owns and operates a district heating system either directly by the city council or by a utility board or utility commission of the city; and

(2) has taken action under law or charter to discontinue the operation of the district heating system in whole or in part.

Subd. 2. **Supersedes other law.** Sections 451.10 to 451.17 apply to the cities described in subdivision 1 notwithstanding a contrary provision in a city charter or in any other law including section 451.09.

Subd. 3. **Supplemental to other law.** The powers granted by sections 451.10 to 451.17 are supplemental and additional to other powers granted by law or charter.

**History:** 2000 c 493 s 6

### 451.11 POLICY; PURPOSE.

Subdivision 1. **Findings.** The legislature finds that it is in the public interest that cities owning and operating a district heating system that have determined to discontinue the system in whole or in part be authorized to establish and conduct a program to provide replacement heating and related equipment to the owners of property whose district heating service is discontinued. The legislature also finds that the cities should be authorized to adopt and implement programs to provide for the installation of energy conservation equipment and measures to enhance the efficient and economical use of energy in buildings and structures served by a district heating system and in which replacement heating systems are installed under sections 451.10 to 451.17.

Subd. 2. **Public purpose.** The legislature further finds that expenditures made by cities for a purpose in sections 451.10 to 451.17 are expenditures for a public purpose.

**History:** 2000 c 493 s 7

#### 451.12 DEFINITIONS.

Subdivision 1. **Application.** In sections 451.10 to 451.17 the definitions in this section apply.

Subd. 2. **City.** "City" means a city, however organized, acting through its city council or through a public utilities commission duly created by law or charter.

Subd. 3. **Replacement heating system improvement.** "Replacement heating system improvement" means and includes furnaces, boilers, and similar heat generating and exchanging equipment together with related equipment, duct work, and control mechanisms that are installed to provide heating, ventilating, and air conditioning services in a building or structure whose district heating service has been discontinued by a city.

Subd. 4. **Energy conservation improvement.** (a) "Energy conservation improvement" means and includes, but is not limited to, the following devices, methods, and materials, if recommended by an energy audit approved in a program and having a maximum cost of \$20,000, that increase the efficiency of the use of energy in a building or structure:

- (1) insulation and ventilation;
- (2) storm windows, thermal windows, and storm doors;
- (3) caulking and weatherstripping;
- (4) heating system modifications; and
- (5) thermostats or lighting controls.

(b) The term does not include a device or method that creates, converts, or actively uses energy from renewable resources such as wind, solar, or biomass.

Subd. 5. **Program.** "Program" means a statement of goals, procedures, standards of eligibility, and methods of financing for the installation of heating replacement system improvements and energy conservation improvements.

Subd. 6. **Improvement.** "Improvement" includes replacement heating system improvements and energy conservation improvements.

**History:** 2000 c 493 s 8

#### 451.13 PROGRAM.

Subdivision 1. **After notice and hearing.** A program may be adopted by resolution of the city council of a city after reasonable notice and hearing provided for by the city council.

Subd. 2. **Elements.** The program must contain at least the following elements:

- (1) a description of the kinds of property eligible for assistance with heating replacement improvements and energy conservation improvements;
- (2) procedures for accomplishing the improvements by the city or private contractors;
- (3) methods of financing the installation of the heating replacement and energy conservation improvements; and
- (4) the administrative agency of the city responsible for conducting the program.

Subd. 3. **Delegation.** The city council may by resolution delegate the responsibility for the conduct of the program to a public utilities commission or public utilities board of the city.

**History:** 2000 c 493 s 9

#### 451.14 INSTALLING THE IMPROVEMENTS.

Subdivision 1. **Methods.** The program may provide for the methods of installing the improvements set out in this subdivision.

(a) The city may contract with one or more contractors to perform work and furnish materials for the improvements.

(b) The owner of a building or structure eligible for an improvement may contract for the installation of the improvement, subject to approval by the city as provided in the program.

(c) The city may contract with a property owner for the installation of an improvement by the property owner, but no payment under section 451.15 may be made for the property owner's labor.

Subd. 2. **Inspection and certification.** The program must provide a method by which a city official or employee may inspect and is to certify the completed installation of the improvement to ensure compliance with city codes and ordinances and other standards specified in the program.

Subd. 3. **Competitive bids.** Contracts entered into under subdivision 1, paragraph (a), are subject to competitive bidding requirements of law.

**History:** 2000 c 493 s 10

#### 451.15 PAYMENTS; FINANCING.

Subdivision 1. **Financing.** The program may include one or more of the methods described in this section for financing the cost of the installation of improvements.

Subd. 2. **Cash.** The city may contract with a property owner for the payment in cash of the cost of the installation of the improvements upon completion of the installation of the improvements. The payment must be secured by:

(1) a deposit with the city of 90 percent of the contract price; or

(2) a written commitment from a bank or other financial institution approved in the program to lend the property owner the full amount of the contract price for payment to the city.

Subd. 3. **Promissory note.** The city may accept payment of the contract price by a promissory note from the property owner delivered at the time of entering into the contract payable at such times, not exceeding ten years, and in the amounts and at the interest rate specified in the program.

Subd. 4. **Lien as security.** The balance of payments due under subdivision 2 and the entire principal of and interest on a promissory note delivered under subdivision 3 are secured by a lien created by this subdivision on the real property on which the improvements are made. If payment is not made according to the terms of the program, or the note, the chief financial officer of the city may certify the entire amount so due to the county auditor for collection as other taxes are collected.

Subd. 5. **Special assessments.** The program may provide that at the request of the property owner the unpaid cost of the installation of an improvement is to be specially assessed against

the real property on which the improvement is installed in the manner provided by section 429.101, except that:

- (1) the adoption of an ordinance is not required; and
- (2) obligations issued to finance the improvements must mature not later than ten years from the date of their issuance.

**History:** 2000 c 493 s 11

#### **451.16 FINANCING; OBLIGATIONS.**

Subdivision 1. **Bonds; other obligations.** In addition to the authority to issue obligations under section 429.101, a city may issue its bonds or other obligations to finance the cost of the installation of improvements as provided in this section.

Subd. 2. **Revenue obligations.** A city may issue and sell its revenue obligations payable solely from the revenues derived or to be derived from assessments and payments from property owners under section 451.15, which revenues must be pledged to the payment of the obligations. Obligations issued under this subdivision are considered to be payable wholly from the income of a revenue-producing convenience within the meaning of sections 475.51 and 475.58.

Subd. 3. **General obligations.** A city may issue and sell its general obligations under chapter 475, payable from the revenues and assessments derived or to be derived from property owners under section 451.15, which revenues must be pledged to the payment of the obligations. General obligations must not be issued unless the pledged revenues are estimated to equal at least 105 percent of the amount necessary to pay when due the principal of and interest on the obligations. Obligations issued under this subdivision are considered to be payable wholly from the income of a revenue-producing convenience within the meaning of sections 475.51 and 475.58.

**History:** 2000 c 493 s 12

#### **451.17 CITY OF VIRGINIA.**

The city of Virginia is considered to have complied with section 451.09, notwithstanding section 451.09, subdivision 4.

**History:** 2000 c 493 s 13