

ORDINANCE NO. 05-5338

AN ORDINANCE OF THE CITY OF BILLINGS, MONTANA, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 7-1504; PROVIDING THAT THE MDU FRANCHISE DOES NOT PRECLUDE MDU FROM CHALLENGING ANY FEE OR TAX

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS,
MONTANA:

Section 1. That Section 7-1504 of the Billings, Montana, City Code be amended so that such section shall read as follows:

“Sec. 7-1504. Fees or Taxes.

As a material term of this Franchise agreement, and in consideration of the right granted to Utility to occupy City rights-of-way for the purpose of operating a gas utility within the City, Utility agrees:

- (a) Subject to subsection (c) of this section, to timely pay all fees or taxes currently adopted, or as hereinafter may be adopted by the City pertaining to the Utility's operations within the City.
- (b) Proceeds of any fee or tax shall be distributed to the City in accordance with the terms of any adopting document or, if not specified in such document, no later than 30 days after the end of each calendar quarter (quarters ending at the end of March, June, September and December).
- (c) Neither this ordinance nor the Utility's acceptance of the franchise granted by this ordinance precludes the Utility from challenging the lawfulness of any fee or tax imposed by the City upon the Utility. If the Utility successfully challenges the legality of a fee or tax adopted by the City or the City is otherwise prevented by judicial or legislative action from collecting a fee or tax adopted by the City or any portions thereof, then the Utility shall be excused from the collection and distribution of that portion of the fee or tax.”

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. SEVERABILITY. If any Section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other Section, sentence, clause or phrase of this Franchise Ordinance. The Parties may amend, repeal, add, replace, or modify any provision of this Franchise to preserve the intent of the parties as

expressed herein prior to any finding of invalidity or unconstitutionality. To this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 8th day of August, 2005.

PASSED, ADOPTED and APPROVED on second reading this 22nd day of August, 2005.

CITY OF BILLINGS

By _____
Charles F. Tooley, Mayor

ATTEST:

By _____
Marita Herold, CMC/AAE City Clerk