

ORDINANCE NO. 400

AN ORDINANCE GRANTING A NON-EXCLUSIVE GAS UTILITY FRANCHISE TO NORTHWEST NATURAL GAS COMPANY; FIXING TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE, REPEALING ORDINANCE NO. 2 AND ORDINANCE NO. 348.

THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

Section 1: Definitions and Explanations.

(1) As used in this ordinance.

(a) "Bridge" includes a structure erected within the City to facilitate the crossing of a river, stream, ditch, ravine or other place, but does not include a culvert.

(b) "City" means the City of Wilsonville and the area within its boundaries, including its boundaries as extended in the future.

(c) "Council" means the legislative body of the City.

(d) "Grantee" means Northwest Natural Gas Company.

(e) "Gas mains" includes all gas transmission and distribution facilities located on or under any street, bridge or public place within the city.

(f) "Person" includes an individual, corporation, association, firm, partnership and joint stock company.

(g) "Public place" includes any city-owned park, place or grounds within the City that is open to the public but does not include a street or bridge.

(h) "Street" includes a street, alley, avenue, road boulevard, thoroughfare or public highway within the City, but does not include a bridge.

(2) As used in this ordinance, the singular number may include the plural and the plural number may include the singular.

(3) Unless otherwise specified in this ordinance, any action authorized or required to be taken by the City may be taken by the City Council or by an official or agent designated by the City Council.

Section 2: Rights Granted.

Subject to the conditions and reservations contained in this ordinance, the City hereby grants to NORTHWEST NATURAL GAS COMPANY, a corporation, the right,

privilege and franchise to:

- (1) Construct, maintain and operate a gas utility system within the City.
- (2) Install, maintain and operate on and under the streets and bridges and public places of the City, facilities for the transmission and distribution of gas to the City and its inhabitants and to other customers and territory beyond the limits of the City; and
- (3) Transmit, distribute and sell gas.

Section 3: Use of Bridges and Public Places by Grantee

(1) Before the Grantee may use or occupy any bridge or public place, the Grantee shall first obtain permission from the City so to do and shall comply with any special conditions the City desires to impose on such use or occupation.

(2) The compensation paid by the Grantee for this franchise includes compensation for the use of the bridges and public places located within the City as authorized.

Section 4: Duration.

This franchise is granted for a period of twenty (20) years from and after the effective date of this ordinance.

Section 5: Franchise Not Exclusive.

This franchise is not exclusive, and shall not be construed as a limitation on the City in:

- (1) Granting rights, privileges and authority to other persons similar to or different from those granted by this ordinance.
- (2) Constructing, installing, maintaining or operating any City-owned public utility.

Section 6: Public Works and Improvements Not Affected by Franchise.

The City reserves the right to:

- (1) Construct, install, maintain and operate any public improvement, work or facility;
- (2) Do any work that the City may find desirable on, over or under any street, bridge or public place.
- (3) Vacate, alter or close any street, bridge or public place.
- (4) Whenever the City shall excavate or perform any work in any of the present and future streets, alleys and public places of the City, or shall contract, or issue permits, for such excavation or work where such excavation or work may disturb Grantee's gas mains, pipes and appurtenances, the City shall, in writing, notify Grantee sufficiently in advance of such contemplated excavation or work to enable Grantee to take such measures

as may be deemed necessary to protect such gas mains, pipes and appurtenances from damage and possible inconvenience or injury to the public. In any such case, the Grantee, upon request, shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed excavation or other work.

(5) Whenever the City shall vacate any street or public place for the convenience or benefit of any person or governmental agency and instrumentality other than the City, Grantee's rights shall be preserved as to any of its facilities then existing in such street or public place.

Section 7: Continuous Service.

Under no circumstances shall the Grantee be liable for an interruption or failure of service caused by an act of God, unavoidable accident, or other circumstances beyond the control of the Grantee through no fault of its own.

Section 8: Safety Standards and Work Specifications.

(1) The facilities of the Grantee shall at all times be maintained in a safe, substantial and workmanlike manner.

(2) For the purpose of carrying out the provisions of this section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

Section 9: Control of Construction.

The Grantee shall file with the City maps showing the location of any construction, extension or relocation of its gas mains in the streets of the City and shall obtain from the City approval of the location and plans prior to commencement of the work. The City may require the Grantee to obtain a permit before commencing the construction, extension or relocation of any of its gas mains.

Section 10: Street Excavations and Restorations.

(1) Subject to the provisions of this ordinance, the Grantee may make necessary excavations for the purpose of constructing, installing, maintaining and operating its facilities. Except in emergencies, and in the performance of routine service connections and ordinance maintenance, prior to making an excavation in the traveled portion of any street, bridge or public place, and, when required by the City, in any untraveled portion of any street, bridge, or any public place, the Grantee shall obtain from the City approval of the proposed excavation and of its location. Grantee shall give notice to the City by

telephone, electronic data transmittal or other appropriate means prior to the commencement of service or maintenance work and as soon as is practicable after the commencement of work performed under emergency conditions.

(2) Except as provided in subsection (3) of this section, when any excavation is made by the Grantee, the Grantee shall promptly restore the affected portion of the street, bridge or public place to the same condition in which it was prior to the excavation. The restoration shall be in compliance with specifications, requirements and regulations of the City in effect at the time of such restoration. If the Grantee fails to restore promptly the affected portion of a street, bridge or public place to the same conditions in which it was prior to the excavations, the City may make the restoration, and the cost thereof shall be paid by the Grantee.

(3) At its option, the City may restore or resurface the affected portion of any street, bridge or public place excavated by the Grantee.

Section 11: Location and Relocation of Facilities.

(1) All facilities of the Grantee shall be placed so that they do not interfere unreasonably with the use by the City and the public of the streets, bridges and public places and in accordance with any specifications adopted by the City governing the location of facilities.

(2) The City may require, in the public interest, the removal or relocation of facilities maintained by the Grantee in the streets of the City, and the Grantee shall remove and relocate such facilities within a reasonable time after receiving notice so to do from the City. The cost of such removal or relocation of its facilities shall be paid by the Grantee, but when such removal or relocation is required for the convenience or benefit of any person, governmental agency or instrumentality other than the City, Grantee shall be entitled to reimbursement for the reasonable cost thereof from such person, agency or instrumentality.

Section 12: Compensation.

(1) As compensation for the franchise granted by this ordinance, the Grantee shall pay to the City an amount equal to five percent (5%) of the gross revenue collected by the Grantee from its customers for gas consumed within the City. Gross revenue shall be computed by deducting from the total billings of the Grantee the total net write-off of uncollectible accounts, provided, if said uncollectible revenues are collected in the future, the regular five percent (5%) franchise fee will be paid to the City, and excluding sales of gas at wholesale by the Grantee to any public utility or public agency where the public

utility or public agency purchasing such gas is not the ultimate consumer, and by deducting revenues derived from the sale of such gas under a tariff supplied for industrial purposes. It is understood and agreed that the aforesaid percentage rate of compensation is the standard franchise fee paid by the Grantee to other cities it serves for the rights, privileges and franchises of the nature contemplated herein and, in the event that during the term hereof Grantee shall agree in a negotiated franchise to pay any City in Oregon a percentage rate of compensation exceeding that provided for herein, the Grantee shall inform the City in writing of the increase in negotiated franchise rate, and at the City's option, enter into negotiations with the City to amend the franchise as it relates to the franchise fee. Said increased rate of compensation shall thereafter be payable to the City of Wilsonville, and its ordinance and franchise amended accordingly.

(2) The compensation required by this section shall be due for each calendar year, or fraction thereof, within sixty (60) days after the close of such calendar year, or fraction thereof. Within sixty (60) days after the termination of this franchise, compensation shall be paid for the period elapsing since the close of that last calendar year for which compensation has been paid.

(3) The Grantee shall furnish to the City with each payment of compensation required by this section a written statement, under oath, executed by an officer of Grantee showing the amount of gross revenue of the Grantee within the City for the period covered by the payment computed on the basis set out in subsection (1) of this section. The compensation for the period covered by the statement shall be computed on the basis of the gross revenue so reported. If the Grantee fails to pay the entire amount of compensation due the City through error or otherwise, the difference due the City shall be paid by the Grantee within fifteen (15) days from discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise, shall be offset against the next payment due from the Grantee.

(4) Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

Section 13: Books of Account and Reports.

The Grantee shall keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under Section 12 of this ordinance. The City may inspect the books of account at any time during business hours and may audit

the books from time to time. The City Council may require periodic reports from the Grantee relating to its operations and revenues within the City.

Section 14: Collection Facilities.

The Grantee may maintain facilities in the City where its customers may pay their bills for gas service during normal business hours.

Section 15: Supply Maps Upon Request.

The Grantee shall maintain on file, at an office in Oregon, maps and operational data pertaining to its operations in the City. The City may inspect the maps and data at any time during business hours. Upon request of the City, the Grantee shall furnish to the City, without charges and on a current basis, maps showing the location of the gas mains of the Grantee in the City.

Section 16: Indemnification.

The Grantee shall indemnify and save harmless the City and its officers, agents and employees from any and all loss, cost and expense arising from damage to property and/or injury to, or death of, persons due to any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and franchise hereby granted.

Section 17: Assignment of Franchise.

This franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Grantee.

Section 18: Termination of Franchise for Cause.

Upon the willful failure of the Grantee, after sixty (60) days' notice and demand in writing, to perform promptly and completely each and every term, condition or obligation imposed upon it under or pursuant to this ordinance, the City may terminate this franchise, subject to Grantee's right to a court review of the reasonableness of such action.

Section 19. Amendment(s).

This franchise may be amended from time to time by ordinance adopted by the City Council subject to the same acceptance procedure described in Section 21 for this franchise. Should the Grantee or Grantor desire to propose an amendment to the franchise, the party proposing the amendment shall notify the other party in writing, thirty (30) days in advance of the proposed amendment and the reason(s) the amendment is proposed.

Section 20: Remedies Not Exclusive. When Requirement Waived.

All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the

recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this ordinance, including termination of the franchise, are not exclusive and the City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver or a breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance. A specific waiver of a particular breach of any term, condition or obligation, or a waiver of the term, condition or obligation itself.

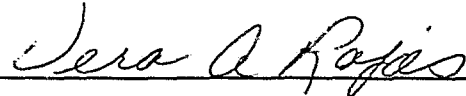
Section 21: Acceptance.

The Grantee shall, within thirty (30) days from the date this ordinance takes effect, file with the City its written unconditional acceptance of this franchise, and if the Grantee fails so to do, this ordinance shall be void.

Section 22: Ordinance No. 2 is hereby repealed.

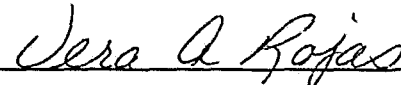
Section 23: The effective date of this ordinance shall be September 1, 1992.

SUBMITTED to the Wilsonville City Council and read for the first time at a special meeting on the 13th day of July, 1992 and scheduled for second reading at a regular meeting of the Council on the 20th day of July, 1992, commencing at the hour of 7:00 p.m. at the Community Development Hearings Room.



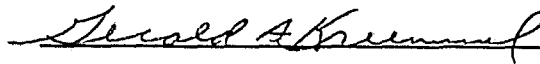
VERA A. ROJAS, CMC/AE, City Recorder

ENACTED by the City Council on the 20th day of July, 1992 by the following votes: YEAS: 4 NAYS: 0.



VERA A. ROJAS, CMC/AE, City Recorder

DATED and signed by the Mayor this 23rd day of July, 1992.



GERALD A. KRUMMEL, Mayor

SUMMARY of Votes:

Mayor Krummel	<u>AYE</u>
Councilor Chandler	<u>AYE</u>
Councilor Carter	<u>AYE</u>
Councilor Lehan	<u>AYE</u>
Councilor Van Eck	<u>ABSENT</u>