

ORDINANCE NUMBER 1535

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, GRANTING A NON-EXCLUSIVE GAS UTILITY FRANCHISE TO NORTHWEST NATURAL GAS COMPANY, AND FIXING TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE.

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Definitions and explanations.

A. As used in this ordinance:

"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.

"City" means the City of Milwaukie and the area within its boundaries, including its boundaries as extended in the future.

"Council" means the legislative body of the City.

"Grantee" means the corporation referred to in Section 2 of this ordinance.

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

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

"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.

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

B. As used in this ordinance, the singular number may include the plural and the plural number may include the singular.

C. Unless otherwise specified in this ordinance, any action authorized or required to be taken by the City must be taken by the Council or by an official or agent designated by the 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:

A. Construct, maintain and operate a gas utility system within the City.

B. 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

C. Transmit, distribute and sell gas.

Section 3. Use of bridges and public places by Grantee.

A. 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.

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

Section 4. Duration. This franchise is granted for a period of ten (10) 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:

A. Granting rights, privileges and authority to other persons similar to or different from those granted by this ordinance.

B. 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:

A. Construct, install, maintain and operate any public improvement, work or facility.

B. Do any work that the City may find desirable on, over or under any street, bridge or public place.

C. Vacate, alter or close any street, bridge or public place.

D. Whenever the City shall excavate or perform any major construction 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. Whenever the City shall excavate or perform routine maintenance work within present and future streets, alleys and public places of the City, the City shall give 24-hour notice to enable the Grantee to locate their facility and protect as needed. 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.

E. 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. Service. The Grantee shall maintain and operate an adequate system for the distribution of gas in the City. The Grantee shall use due diligence to maintain continuous and uninterrupted 24-hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by state authorities and to standards of the City which are not in conflict with those adopted by the state authorities. Under no circumstances shall the Grantee be liable for an interruption or failure of service caused by 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.

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

B. 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. Grantee is required to secure copies of any applicable specifications and all installations and maintenances shall be in accordance with such specifications.

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 written 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, repair or relocation of any of its gas mains.

Section 10. Street excavations and restorations.

A. 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, prior to making an excavation in any street, bridge or public place, the Grantee shall obtain from the City approval of the proposed excavation and of its location.

B. Except as provided in subsection (C) 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. The Grantee guarantees to maintain all restoration work as herein described. If the Grantee fails to restore promptly the affected portion of a street, bridge or public place to the same condition in which it was prior to the excavation, the City may make the restoration, and the cost thereof shall be paid by the Grantee.

C. At its option, the City may restore or resurface the affected portion of any street, bridge or public place excavated by the Grantee, and the cost thereof shall be paid by Grantee.

Section 11. Location and relocation of facilities.

A. 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. Whenever possible, Grantee will coordinate location of its facilities with other utilities and any other grantees franchise by the City to use the public right-of-way.

B. 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 the City determines that such removal or relocation is required for the convenience or benefit of any person or governmental agency and 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.

A. As compensation for the franchise granted by this ordinance, the Grantee shall pay to the City an amount equal to three percent (3%) of the gross revenues 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 writeoff of uncollectable accounts, revenues derived from the sale of gas supplied for industrial purposes under an interruptible tariff schedule, and 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.

B. The compensation required by this section shall be paid semi-annually on a calendar year basis, within sixty (60) days after the close of the 6 month period.

C. 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 (A) of this section. This 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.

D. 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 payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

E. Upon 30 days prior written notice by either party to the other, the amount of such annual compensation shall be subject to renegotiation and redetermination at or before the expiration of the first five-year period, of the term of the franchise hereby granted, for the ensuing five-year period of said franchise term.

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 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. Supplying 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 charge 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 the ordinance, the City may terminate this franchise, subject to Grantee's right to a court review of the reasonableness of such action.

Section 19. Licenses, permits and inspection fees. Nothing in this ordinance shall be construed to limit the right of the City to require applicable licenses and permits and to require Grantee to pay reasonable costs incurred by the City in connection with the issuing of any permit or license, making of an inspection, or performing any other service for or in connection with the Grantee or its facilities, whether pursuant to this ordinance or any other ordinance or resolution now in effect or hereafter adopted by the City. Grantee is required to secure all necessary permits and licenses prior to beginning any work.

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 of 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 imposed upon the Grantee by or pursuant to this ordinance shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or as a waiver of the term, condition or obligation itself.

Section 21. Severability. The sections of this ordinance are severable. The invalidity of a section shall not affect the validity of the remaining section.

Section 22. Additional regulations. City reserves the right to adopt additional regulations not inconsistent with the terms of this ordinance. Any additional regulations adopted pursuant to this section shall become effective upon notice to Grantee.

Section 23. Repeal and savings clause. Ordinance No. 896, as amended, is repealed upon the effective date of this ordinance. Ordinance No. 896 shall remain in effect during the period from April 9, 1982 until this ordinance takes effect.

Section 24. Effective date and acceptance. This ordinance shall take effect 30 days after passage unless Grantee fails to file its written unconditional acceptance of the franchise granted herein, in which case this ordinance shall be void.

Read the first time on February 1, 1983, and moved to second reading by unanimous vote of the City Council.

Read the second time and adopted by the City Council on February 1, 1983.

Signed by the Mayor on February 2, 1983.

Joy Burgess  
Joy Burgess, Mayor

ATTEST:

Laurie Perkin  
Laurie Perkin, City Recorder

Approved as to form:

Greg Eades  
Greg Eades, City Attorney

ACCEPTANCE OF ORDINANCE NO 1535

TO THE HONORABLE MAYOR AND CITY COUNCIL  
OF THE CITY OF MILWAUKIE, OREGON:

Northwest Natural Gas Company, a corporation, hereby unconditionally  
accepts Ordinance No. 1535 of the City of Milwaukie and all of the terms,  
provisions, and conditions thereof, said Ordinance No. 1535 being entitled

AN ORDINANCE granting a non-exclusive gas utility  
franchise to Northwest Natural Gas Company, fixing  
terms, conditions and compensation of such franchise,  
and declaring an emergency.

which said Ordinance No. 1535 was duly passed by the Council and approved by  
the Mayor of Milwaukie on the 1st day of February, 1983.

IN WITNESS WHEREOF said Northwest Natural Gas Company has caused  
this acceptance of said Ordinance to be signed by its Vice President, and its  
corporate seal to be affixed hereto and attested by its Secretary, this 8th  
day of February, 1983,

ATTEST.

NORTHWEST NATURAL GAS COMPANY

C. J. Rue  
SECRETARY

Joseph R. Smith  
Vice President

STATE OF OREGON        )  
                                  ) ss.  
County Of Multnomah    )

On this 8<sup>th</sup> day of FEBRUARY, 1983, personally appeared  
JOSEPH R. SMITH, who, being duly sworn, did say that he is  
the Vice President of Northwest Natural Gas Company and that the seal affixed  
to the foregoing instrument is the corporate seal of said corporation and that  
said instrument was signed and sealed in behalf of said corporation by authority  
of its board of directors; and he acknowledged said instrument to be its voluntary  
act and deed. Before Me:

Above acceptance received by:  
City of Milwaukie

Randolph  
Notary Public of Oregon  
My Commission Expires: 10/9/84

Laurie Perkins City Recorder  
Title: \_\_\_\_\_ Date: \_\_\_\_\_

5-10-83