

ORDINANCE NO. 320

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

THE CITY OF STAYTON DOES ORDAIN 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 Stayton, 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 the corporation referred to in Section 2 of this ordinance.
- (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 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:

(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 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. 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.

(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, 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.

(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 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.

(3) 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 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 two per cent (2%) 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 writeoff of uncollectible accounts 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 schedule applying to gas supplied for industrial purposes.

(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 the 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 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 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 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.

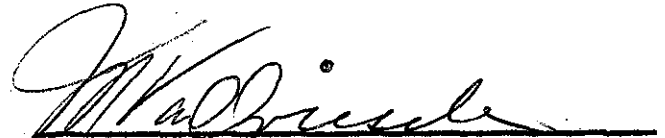
Section 19. Remedies Not Exclusive; When Requirement Waived. All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and 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 a waiver of the term, condition or obligation itself.

Section 20. 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.

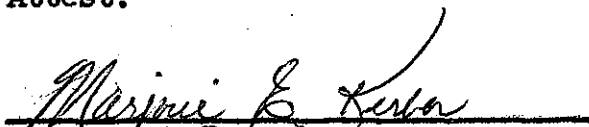
Inasmuch as it is necessary for the peace, health and safety of the citizens of Stayton, an emergency is hereby declared and this ordinance is put in full force and effect immediately upon its passage by the Council and approval by the Mayor.

Passed by the Common Council this 4<sup>th</sup> day of March, 1963.

Signed and approved by the Mayor this 13<sup>th</sup> day of March, 1963.

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
Recorder

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NORTHWEST

NATURAL GAS COMPANY

735 S. W. MORRISON STREET  
PORTLAND 5, OREGON

EXECUTIVE OFFICES

March 1, 1963

The Mayor and City Council  
City Hall  
Stayton, Oregon

Re: Proposed Gas Utility Franchise

Memorandum of Understanding

Gentlemen:

At an informal meeting held on Monday, February 25, 1963, representatives of Northwest Natural Gas Company discussed with the members of the City Councils, Mayors and City Attorneys of the Cities of Aumsville and Stayton an Ordinance which the Company proposes to request that the cities adopt, granting the Company the franchises necessary to enable it to make natural gas service available to consumers in these cities.

During the course of the meeting it was brought to the attention of the Company's representatives that the City of Stayton had recently entered into a contract for the construction of a sewer system, and the question arose as to whether the installation of the Company's planned gas distribution system might cause some interference with or delay in the construction of such sewer system, thereby resulting in additional expense to the city.

From the information available at the time of the meeting it did not appear to the Company's representatives that there would be any difficulty in this regard. Because of the concern expressed, however, following the meeting, the Company's engineering and operations departments were consulted and the sewer construction plans examined. In addition, in view of the necessity of making natural gas available to the cannery at Stayton on or about June 1, 1963, a meeting was held with the contractor who will build the sewer system in order to compare plans and determine his construction timetable.

At this meeting with the city's contractor it was agreed that the installation of the line necessary to bring natural gas service to the cannery would not interfere with or delay the sewer contractor's operations. The contractor also indicated that he would cooperate with the Company in any way he could to help expedite the installations necessary to enable the Company to bring natural gas service to the woolen mill, which is also located in the City of Stayton.



March 1, 1963

It was apparent, however, that it would be necessary for the Company to postpone the installation of its distribution system for service to residential, commercial and other customers pending completion of the various sections of the sewer system in order that any conflict be avoided.

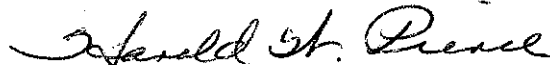
The Company believes that it would be in the best interest of the community and therefore requests that the Council grant the franchise to be presented at its next meeting, in order that natural gas service may be made available to the city's major industries at the time it is needed. I am also authorized to state on behalf of the Company that it is its understanding that it will be necessary, by reason of the construction of the city's sewer system, that the Company defer the construction of its distribution system to the extent necessary to avoid any conflict or interference with or delay in the construction of the sewer system. The Company is willing to do so.

I would call your attention to Section 9 of the requested franchise which, I believe you will agree, gives the city full power to require that the Company proceed in this manner, since before the commencement of any work it must obtain prior approval of the city.

I feel certain that this is the manner in which the city would prefer that the Company proceed, because it will avoid all of the problems which could result if the gas system were installed in advance of the sewer system, or if an attempt were made to coordinate the installation of both systems at the same time. This approach also makes it unnecessary to amend the proposed franchise.

Although we regret that the foregoing will delay to some extent the availability of natural gas service to consumers in the City of Stayton, the Company will cooperate in every way with the city and looks forward with enthusiasm to becoming a corporate citizen of the community.

Respectfully submitted,



Harold W. Pierce  
Attorney for  
Northwest Natural Gas Company

HWP:jv

cc: William M. Gehlen, Esquire  
City Attorney  
Stayton, Oregon

March 12, 1963

The Mayor and City Council  
City of Stayton  
City Hall  
Stayton, Oregon

Gentlemen:

This letter is to confirm my verbal approval of your action in granting Northwest Natural Gas Company a franchise to construct and operate a gas system in the City of Stayton.

I met with representatives of the Gas Company and discussed my plans and time schedule for construction of the city sewer system. It appeared that if the Gas Company went ahead with its entire system, there would undoubtedly be conflicts and delays. However, I have no objection to its installing a line on Shaff Road and on Gardiner Avenue and Washington Street to serve the cannery whenever it wishes to do so. I feel sure that the Gas Company and this contractor can coordinate activities so that the best interest of the City will be served and no delays or conflicts from that source will result in construction of the sewer system.

Sincerely,

*Richard Robertson*

Richard Robertson  
Contractor

cc: Northwest Natural Gas Company

*for*  
*James G. Robertson*

ACCEPTANCE OF ORDINANCE NO. 320

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

Northwest Natural Gas Company, a corporation, hereby unconditionally accepts Ordinance No. 320 of the City of Stayton and all of the terms, provisions, and conditions thereof, said Ordinance No. 320 being entitled:

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

which said Ordinance No. 320 was introduced and received its first reading in full and second and third readings by title only at a regular meeting of said Council duly held on the 4th day of March, 1963, and, without change or amendment, was duly passed and adopted by the Council of said City of Stayton on the 4 day of March, 1963, and was approved by the Mayor of said City on the 13 day of March, 1963.

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 13 day of MARCH, 1963.

NORTHWEST NATURAL GAS COMPANY

By C. V. Griffith  
Vice President

ATTEST:

H. B. Burman  
Secretary

STATE OF OREGON            )  
                                  ) ss.  
County of Multnomah    )

On this 13 day of MARCH, 1963, personally appeared C. V. Griffith, 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:

E. L. Bolin  
Notary Public for Oregon  
My Commission expires: January 22, 1964