

*E. R. Baldwin*  
Auditor and Police Judge

ORDINANCE NO. 467 A

Introduced by Commissioner EARL JOHNSON

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 WARRENTON 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 Warrenton, and the area within its boundaries, including its boundaries as extended in the future.
- (c) "Commission" 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 Commission or by an official or agent designated by the Commission.

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, provided, if said uncollectible revenues are collected in the future, the regular two per cent (2%) 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 schedule applying to interruptible gas 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, said increased rate of compensation shall thereafter be payable to the City of Warrenton, and this 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 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 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 Commission 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. The license and franchise hereby granted shall not be sublet or assigned, nor shall any of the rights or privileges hereby granted or authorized be leased, assigned, sold or transferred without the consent of the City of Warrenton, expressed by Ordinance duly passed by the Commission and approved by the Mayor of the City; but the consent of the City is hereby expressly given to the transfer by any mortgage or deed of trust of such license and franchise, along with the operating physical property and facilities of the Grantee located within the City, as security for any existing or future bona fide bond or other indebtedness 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. Rates and Charges. All rates and charges made by Grantee are and shall remain subject to regulation as provided by the laws of the State of Oregon.

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 a waiver of the term, condition or obligation itself.

Section 21. Charter Provisions Incorporated. This franchise is subject to the conditions and restrictions provided by Chapter VII and to all other applicable provisions of the Charter of the City of Warrenton, including Chapter VII, effective January 2, 1923, as amended to date, which are by this reference incorporated herein and made a part hereof.

Section 22. Acceptance. The Grantee shall, within thirty (30) days from the date this ordinance takes effect, which shall be twenty (20) days after its passage by the Commission and approval by the Mayor, file with the City its written unconditional acceptance of this franchise and if the Grantee fails so to do, this ordinance shall be void.

PASSED by the Commission of the City of Warrenton this 12 day of July, 1965.

APPROVED BY THE MAYOR, this 12 day of July, 1965.

R. G. Garrison  
Mayor

Attest:

E. R. Baldwin  
Auditor and Police Judge

ACCEPTANCE OF ORDINANCE NO. 467A

TO THE HONORABLE MAYOR AND CITY COMMISSION  
OF THE CITY OF WARRENTON, OREGON:

Northwest Natural Gas Company, a corporation, hereby unconditionally  
accepts Ordinance No. 467A of the City of Warrenton and all of the terms, provisions,  
and conditions thereof, said Ordinance No. 467A being entitled:

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

which said Ordinance No. 467A was introduced at a regular meeting of said Commission  
duly held on the 17 day of May, 1965, and was duly passed and adopted  
by the Commission and approved by the Mayor of said City of Warrenton on the 12th  
day of July, 1965.

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 3rd day of August,  
1965.

NORTHWEST NATURAL GAS COMPANY

ATTEST:

By C. V. Griffith  
Vice President

[Signature]  
Secretary

STATE OF OREGON            )  
                                  ) ss.  
County of Multnomah    )

On this 3rd day of August, 1965, 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;

[Signature]  
Notary Public for Oregon  
My Commission expires January 22, 1968

INDEX

| <u>Section</u> | <u>Title</u>   | <u>Page No.</u> |
|----------------|--|-----------------|
| 1              | Definitions and Explanations                               | 1               |
| 2              | Rights Granted   | 1-2             |
| 3              | Use of Bridges and Public Places by Grantee                | 2               |
| 4              | Duration   | 2               |
| 5              | Franchise Not Exclusive                                    | 2               |
| 6              | Public Works and Improvements Not Affected<br>by Franchise | 2-3             |
| 7              | Continuous Service   | 3               |
| 8              | Safety Standards and Work Specifications                   | 3               |
| 9              | Control of Construction                                    | 3               |
| 10             | Street Excavations and Restorations                        | 3               |
| 11             | Location and Relocation of Facilities                      | 4               |
| 12             | Compensation   | 4-5             |
| 13             | Books of Account and Reports                               | 5               |
| 14             | Collection Facilities                                      | 5               |
| 15             | Supplying Maps upon Request                                | 5               |
| 16             | Indemnification  | 5               |
| 17             | Assignment of Franchise                                    | 5               |
| 18             | Termination of Franchise for Cause                         | 5               |
| 19             | Rates and Charges  | 5               |
| 20             | Remedies Not Exclusive; When Requirement Waived            | 5-6             |
| 21             | Charter Provisions Incorporated                            | 6               |
| 22             | Acceptance   | 6               |



**NORTHWEST**

**NATURAL GAS COMPANY**

123 N.W. FLANDERS STREET  
PORTLAND, OREGON 97209

April 30, 1969

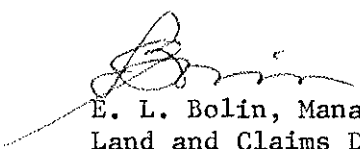
The Honorable Mayor and City Council  
City of Warrenton  
City Hall  
Warrenton, Oregon

Gentlemen:

Reference is made to Ordinance No. 467A granting a franchise to Northwest Natural Gas Company. This ordinance provides in part that if the Company should agree in a negotiated franchise to pay any city in Oregon a percentage rate of compensation in excess of that set forth in said Ordinance, the increased rate of compensation would thereafter be payable to the City of Warrenton.

You are advised that on April 26, 1969 the Company accepted a franchise wherein it agreed to pay compensation at the rate of 3%. Accordingly, pursuant to the provisions of Section 12 of Ordinance No. 467A, all payments made to the City of Warrenton subsequent to that date will be computed at the rate of 3% of gross revenues as therein defined.

Sincerely,

  
E. L. Bolin, Manager  
Land and Claims Department

ELB:fh