



Eugene City Council

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EUGENE CITY COUNCIL AGENDA

April 8, 2020

12:00 p.m. CITY COUNCIL WORK SESSION
Eugene, Oregon 97401

Meeting of April 8, 2020;
Her Honor Mayor Lucy Vinis Presiding

Councilors

Emily Semple, President
Mike Clark
Chris Pryor
Betty Taylor

Jennifer Yeh, Vice President
Greg Evans
Claire Syrett
Alan Zelenka

12:00 p.m. CITY COUNCIL WORK SESSION

- 1. WORK SESSION: COVID-19 Update**
- 2. ACTION: An Ordinance Extending the Term of Ordinance No. 20170 Granting to Northwest Natural Gas Company, a Corporation, a Twenty-Year Non-Exclusive Right and Franchise to Lay, Maintain and Operate Facilities in the Public Way Within the City of Eugene, Oregon; and Providing For the Payment of Compensation to the City**

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El consejo de la Ciudad de Eugene agradece su interés en estos asuntos de la agenda. El lugar de la reunión tiene acceso para sillas de ruedas. Se puede proveer a un intérprete para las personas con discapacidad auditiva si avisa con 48 horas de anticipación. También se puede proveer interpretación para español si avisa con 48 horas de anticipación. Para reservar estos servicios llame al 541-682-5010. Las reuniones del consejo de la ciudad se transmiten en vivo por Metro Television, Canal 21 de Comcast y son retransmitidas durante la semana.

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EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Action: An Ordinance Extending the Term of Ordinance No. 20170 Granting to Northwest Natural Gas Company, a Corporation, a Twenty-Year Non-Exclusive Right and Franchise to Lay, Maintain and Operate Facilities in the Public Way Within the City of Eugene, Oregon; and Providing For the Payment of Compensation to the City

Meeting Date: April 8, 2020
Department: Central Services
www.eugene-or.gov

Agenda Item Number: 2
Staff Contact: Ethan Nelson
Contact Telephone Number: 541-682-5245

ISSUE STATEMENT

The City Council is scheduled to take action on an ordinance extending the Northwest Natural Gas Right of Way Franchise Agreement until November 11, 2020. Without the extension, the franchise agreement will expire on May 11, 2020. This ordinance would only extend the term of the franchise; all other current franchise terms and conditions would remain the same. A public hearing on the proposed ordinance was held on March 9, 2019.

BACKGROUND

Franchise agreements between local governments and utilities govern the use of the public right-of-way to ensure safety, coordinated access, and the stability of public infrastructure. Typical franchise agreements outline the terms and fees under which utility companies can utilize the public right-of-way for their business. Fees are typically calculated on a percentage of the revenues derived from sales of the utility company to customers within the service area.

In October 1999, the City Council approved Ordinance 20170 (Attachment A) that:

- Increased the compensation rate from four percent to five percent of gross revenues;
- Granted a franchise term of 20 years with possible renegotiation every five years;
- Provided updated audit language and facility relocation and abandonment provisions;
- Added “favored cities” language, which requires NWNG to notify the City should they agree to pay any other city in Oregon a franchise fee that exceeds five percent of gross revenues.

Currently, the City receives \$1.4 million in General Fund revenues from this franchise annually. Revenue from NWNG franchise fees have been trending at this level over the past few years based on flat/declining NWNG rates in the area.

Franchise Negotiation Update

The City Council adopted Ordinance 20620 on July 22, 2019, granting a six-month extension of the Right of Way Franchise Agreement to Northwest Natural Gas. The Ordinance went into effect on August 24, 2019. In previous work sessions related to the Franchise Agreement and the Climate Action Plan, City Council discussed the concept of including a carbon reduction element into the

April 8, 2020, Meeting- Item 2

Franchise Agreement as a means to implement the 2016 Climate Recovery Ordinance. Including a carbon reduction element into a utility franchise agreement is a fairly novel concept, adding new issues to the negotiations discussions and requiring more time for due diligence on both sides of the issue.

Over the past six months, a City Council Sounding Board was established to inform and guide staff negotiations and several joint negotiation meetings have been held with NWN. Additionally, the City has been able to retain the consulting services of a utility regulatory expert to assist in the negotiation process; this expert joined the team in January 2020. Due to the complexity of negotiations, both sides have requested an additional six-month extension of the existing franchise agreement to continue negotiations, with the goal of finalizing the agreement by late summer/early fall of 2020. A public hearing on the ordinance that will grant this extension is scheduled for March 9, 2020.

All the work on the franchise agreement and carbon reduction efforts are being guided by adopted City Council policy, primarily the Climate Recovery Ordinance, and include actions related to energy efficiency, renewable energy, carbon offsets, and addressing potential impacts to low-income community members.

Public Hearing Summary

At the March 9 public hearing, City Council heard from five people. A representative of the Eugene Chamber of Commerce testified in support of the extension. Four individuals representing 350 Eugene provided testimony requesting carbon reductions within the franchise agreement and provided recommendations to council on policy elements to include within the franchise agreement.

PREVIOUS COUNCIL DIRECTION

[November 14, 2018, Work Session](#)

This work session provided the City Council with information regarding the review process for the right of way franchise agreement with Northwest Natural Gas and discuss options for including CAP2.0 in the negotiations.

[January 30, 2019, Work Session](#)

Staff reviewed questions submitted by the Eugene Sustainability Commission to the City Council regarding the regulation of natural gas in Eugene.

[May 22, 2019, Work Session](#)

Council held a work session with Northwest Natural ([Northwest Natural presentation](#)) as a follow-up to a previous work session about NWN's franchise agreement with the City and Climate Action Plan 2.0 discussions.

[May 29, 2019, Work Session](#)

Move to direct the City Manager to schedule a public hearing on a possible one-year extension of the franchise with Northwest Natural Gas. (*Motion passed*)

July 22, 2019, Work Session

Move to adopt an Ordinance Extending the Term of Ordinance No. 20170 for six months. (*Motion passed*)

March 9, 2020 Public Hearing

Public hearing followed by council discussion on proposed ordinance to extend the franchise with Northwest Natural Gas.

COUNCIL OPTIONS

1. Adopt the Ordinance as proposed.
2. Adopt the Ordinance with modifications as determined by the City Council.
3. Deny the adoption of the Ordinance.
4. Take no action.

CITY MANAGER'S RECOMMENDATION

The City Manager recommends the City Council adopt the Ordinance.

SUGGESTED MOTION

Move to adopt an Ordinance Extending the Term of Ordinance No. 20170, Granting to Northwest Natural Gas Company, a Corporation, a Twenty-Year Non-Exclusive Right and Franchise to Lay, Maintain and Operate Facilities in the Public Way within the City of Eugene, Oregon; and Providing for the Payment of Compensation to the City.

ATTACHMENTS

- A. Ordinance 20170
- B. Proposed Ordinance - Council Bill 5221

FOR MORE INFORMATION

Staff Contact: Ethan Nelson

Telephone: 541-682-5245

Staff E-Mail: Enelson@eugene-or.gov

1999-2019

ORDINANCE NO. 20120

AN ORDINANCE GRANTING TO NORTHWEST NATURAL GAS COMPANY, A CORPORATION, A **TWENTY (20) YEAR NON-EXCLUSIVE** RIGHT AND FRANCHISE TO LAY, MAINTAIN AND OPERATE FACILITIES IN THE PUBLIC WAY WITHIN THE CITY OF EUGENE, OREGON; PROVIDING FOR THE PAYMENT OF COMPENSATION TO THE CITY; AND REPEALING ORDINANCE NO. 18489, PASSED BY THE CITY COUNCIL AUGUST 27, 1979, AND APPROVED BY THE MAYOR SEPTEMBER 3, 1979.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. This Ordinance shall be known and may be cited as The Northwest Natural Gas Company Franchise Ordinance.

Section 2. Definitions.

For the purpose of this Ordinance the following terms, phrases, words and their derivation shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (1) "City" is the City of Eugene, Oregon.
- (2) "Company" is Northwest Natural Gas Company, the grantee of rights under this Franchise.
- (3) "Council" is the City Council of the City of Eugene.
- (4) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
- (5) "Code" is the Eugene Code, 1971, including all amendments thereto.
- (6) "Public way" is any street, road, alley, right-of-way, pedestrian or bicycle easement or utility easement for public use that is controlled by City.
- (7) "GIS format" is the format of electronic information, as established by the City Engineer for incorporation into City's Geographic Information System (GIS).
- (8) "Facilities" includes gas mains, pipes, boxes, reducing and regulation stations, laterals, conduits and connections, including service connections, together with all of the necessary or useful appurtenances for the transmission and distribution of gas to City and its inhabitants and to other customers and territory beyond the limits of City.
- (9) "Gross revenues" means revenues earned by Company from operations within City, including but not limited to revenues from the sale and/or transportation of natural gas consumed within City and revenues earned from the use, rental or lease of operating facilities of Company other than residential-type space and water heating equipment, less the net writeoff of uncollectible accounts directly related to such revenues. Gross revenues shall not include:

- (a) Revenues paid directly by the United States of America or any of its agencies;
- (b) Proceeds from the sale of bonds, mortgages or other evidence of indebtedness, securities or stocks; or
- (c) Sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer.

Section 3. Grant of Authority.

City hereby grants to Company the right and privilege to lay, maintain, and operate facilities in and under the public ways of City, subject to the terms of this Ordinance for a period of twenty years. This grant of authority shall not be exclusive, and City reserves the right to grant similar use of such public ways to any person or corporation at any time during the period of this Franchise.

Section 4. Compliance with Applicable Laws and Ordinances.

Company shall at all times during the period of this Franchise, be subject to all lawful exercise of the police power of City, and to such reasonable regulation as City shall hereinafter by resolution or ordinance provide.

Section 5. Conditions - Occupancy of Public Ways.

Company, subject to the prior approval of the City Manager or designee, and requirements of all applicable ordinances, regulations and adopted City policies, may make necessary excavations in public ways for the purpose of laying, operating and maintaining its mains, pipes and appurtenances. Company shall furnish and file with the City Engineer of City, which shall, to the extent technologically feasible, be in a data format prescribed by the City Engineer to allow integration into City's Geographic Information System (GIS), maps showing the location of all such mains, pipes, and appurtenances within City, both for its existing system and future plans for the system. The City Engineer may require such information, including (GIS) format, or other drawings, surveys and plans, as deemed necessary to conform to the requirements of the Code and related administrative rules. Company shall bring maps up to date annually or upon such shorter notice as the City Engineer may reasonably require.

City reserves the right to stop any work on a public way if the City Manager or designee determines that the work has a serious adverse effect on traffic flow or endangers public safety. The right to stop work is absolute and cannot be challenged by Company even if Company's work hours and/or traffic control plans have been previously approved by City.

Section 6. Removal and Restoration.

Whenever any of Company's facilities shall unnecessarily inconvenience the public or private property owners, City may require the removal or change of location of any such

facility. Any removal or relocation of facilities made for the convenience of the public shall be at Company's expense. Whenever Company excavates or in any manner disturbs or interferes with any public way within City, Company shall restore the same as required by the Code.

Section 7. City Free to Use Public Ways.

Nothing in this Ordinance shall be construed to prevent City from sewerage, grading, paving, repairing, altering, or doing any work that it finds necessary or desirable in or on any public way. Should City find it in the public interest to permanently or temporarily remove or change the location of any of Company's facilities, Company shall, upon request and reasonable notice from the Director of Public Works, do all necessary work at Company's sole cost and expense as promptly as the circumstances will reasonably permit. If Company fails so to do, City may cause such work to be done and Company shall pay all costs incurred by City in performing such work within thirty (30) days of the date City notifies Company of the cost thereof.

Section 8. Company to Defend and Hold City Harmless.

Company shall defend, indemnify and save harmless City, its employees, officers and agents, from any and all claims, damages, costs, liabilities, and expenses to which it or they may be subjected by reason of any act or neglect of Company, its agents or employees, or which may in any manner arise out of the construction, maintenance, operation or use of any property of Company in any public way.

Section 9. Default and Termination.

If Company fails to comply with or perform any of the requirements imposed on it by this Ordinance and City gives written notice specifying the nature of Company's default and demanding that such default be remedied within a reasonable time to be fixed in such notice, the rights and privileges granted by this Ordinance may be terminated and annulled by City if Company fails to remedy its default within the time specified.

Section 10. Franchise Fee.

As compensation to City for the franchise hereby granted, Company shall pay to City an amount equivalent to five percent (5%) of Company's gross revenues. If the Code in effect at the time the revenue is earned does not allow payment of a franchise fee or business privilege tax or combined franchise fee and business privilege tax in an amount of five percent of gross revenues or some greater amount, then the franchise fee shall be the maximum amount allowed by the Code; provided that, if the Code is amended thereafter to increase the allowable franchise fee, business privilege tax or combined franchise fee and business privilege tax, the increased rate, not to exceed five percent, shall be paid on all gross revenues earned after the effective date of the amendment. If Company agrees to pay any other city in Oregon a franchise fee that exceeds five percent of gross revenue, City may require Company to pay the same percentage of its gross

revenue to City, so long as the Code allows payment of the higher percentage. Payment shall be made within forty-five (45) days following the end of each quarter of each calendar year. Within forty-five (45) days after the termination of this franchise, compensation shall be paid for the period elapsing since the close of the last quarter for which compensation has been paid. Upon thirty days' written notice by either party to the other, the basis for calculation of the franchise fee, the definition of gross revenues and other terms of this franchise shall be subject to renegotiation and redetermination at the end of the first three-year period of the franchise term and again at the end of each five-year period thereafter during the franchise term. The principles governing the renegotiation shall include, but not necessarily be limited to, making the franchise consistent with federal, state and local law in effect at the time of the renegotiation.

Section 11. Reports by Company.

Company shall furnish to City with each quarterly payment of compensation a statement by an officer of Company showing the amount of gross revenues of Company for the quarter covered by the payment, computed on the basis set forth in Section 10, and the calculation of the payment for the quarter, including a description of and the amount for each exclusion from gross revenue, as allowed under Section 10. The books and records showing Company's gross revenues from the gas sales referred to in Section 10 shall always be open to inspection by City's Finance Officer, or by any other authorized representative of City for the purpose of ascertaining the amount payable to City under Section 10, or to verify any statement or report submitted by Company pursuant to the provisions of this Section. City, or its authorized representative, shall have the right to audit Company's books and records to verify that the franchise fee has been correctly calculated and paid by Company. Company shall reimburse City for the reasonable costs of such audit if the audit discloses that Company has paid 95% or less of the fee owing for the period of the audit.

Company shall, upon request, furnish to City a list of all customers within the corporate limits of City who have contracted with Company for transportation and delivery of natural gas separate from the purchase of natural gas. This report shall include the names of all such customers and the volume of gas which was transported by Company on behalf of each customer for the period covered by the report.

Section 12. Company to Pay All City Taxes and Fees.

Nothing contained in this franchise shall give Company any credit against any non-discriminatory business tax or ad valorem property tax now or hereafter levied against real or personal property within City, or against any local improvement assessment imposed on Company, or against any permit fees or inspection fees required by the construction codes or other ordinances of City which are or may hereafter be adopted.

Section 13. Valuation for Eminent Domain.

In the event City should desire to acquire the property of Company in City and

adjacent territory by purchase, condemnation, or otherwise, the price to be paid by City shall exclude the value of the franchise or other prerogatives of sovereignty granted by City and connected with property of Company in the City.

Section 14. Abandonment.

Company shall at all times maintain all of its facilities in a good state of repair, and shall subscribe to a utility notification and locate service. If Company ceases to make use of its facilities in the public way for the purposes authorized by this franchise ordinance for a continuous period of six months or more, with no intention of using those facilities in that location in the future, the facilities shall be deemed abandoned; no facilities shall be considered abandoned if they are reserved for future use. If facilities have been in the public way for more than one year without being used, they shall be presumed to be abandoned unless Company provides to City objective evidence of Company's intent to use the facilities within the next year. Company shall maintain records of all abandoned facilities and, upon receipt of a locate request, shall locate those facilities, labelling them as abandoned. Upon 60 days written notice to Company at the address indicated in its acceptance of this ordinance, City may require Company to remove abandoned facilities and restore the public way, at Company's sole cost and expense. If Company fails to remove the facilities and restore the public way within the 60-day period, City may, at its option and in its sole discretion, remove the facilities from the public way and require Company to pay for the full cost of removal and restoration of the public way. If Company removes the facilities from the public way but fails to restore the public way to its prior condition, City may complete the repairs and bill Company for the full cost thereof.

Section 15. Acceptance by Company.

This Ordinance shall take effect thirty days after its adoption by the Council and approval by the Mayor, provided that prior to the expiration of those thirty days, Company files with City's Finance Officer its written acceptance of this Ordinance and the obligations it imposes. If no such acceptance is filed, this Ordinance shall become null and void.

Section 16. Repeal of Ordinance 18489.

From and after the effective date of this Ordinance, Ordinance 18489 of the City of Eugene, passed by the Council on August 27, 1979, and approved by the Mayor September 3, 1979, shall be, and the same is hereby repealed.

Passed by the City Council this

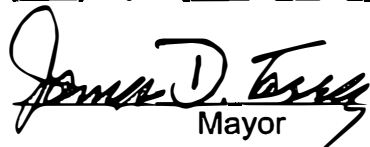
11th day of October, 1999



City Recorder

Approved by the Mayor this

11th day of October, 1999



Mayor

ORDINANCE NO. _____

AN ORDINANCE EXTENDING THE TERM OF ORDINANCE NO. 20170 AND ORDINANCE NO. 20620 GRANTING TO NORTHWEST NATURAL GAS COMPANY, A CORPORATION, A NON-EXCLUSIVE RIGHT AND FRANCHISE TO LAY, MAINTAIN AND OPERATE FACILITIES IN THE PUBLIC WAY WITHIN THE CITY OF EUGENE, OREGON; AND PROVIDING FOR THE PAYMENT OF COMPENSATION TO THE CITY.

The City Council of the City of Eugene finds that:

A. On October 11, 1999, Ordinance No. 20170 was adopted granting to Northwest Natural Gas Company ("NWNG") a twenty-year non-exclusive right and franchise to lay, maintain and operate facilities in and under the public ways within the City of Eugene, Oregon. NWNG accepted Ordinance No. 20170 on October 15, 1999. The Franchise was set to expire on November 11, 2019.

B. On July 22, 2019, Ordinance No. 20620 was adopted granting to NWNG a franchise extension up to and through May 11, 2020. NWNG accepted Ordinance No. 20620 on January 22, 2020.

C. The City of Eugene and NWNG have been negotiating in good faith since Fall 2019 regarding franchise renewal and potential franchise terms. Despite the parties' diligence, due to the number of relevant issues and potential franchise terms, the parties have not yet concluded their franchise negotiations.

D. Extending the term of the Franchise for six months would allow time for the City of Eugene and NWNG to complete franchise renewal negotiations.

E. The City of Eugene has determined that it serves the public welfare to extend the term of the current franchise from May 11, 2020 up to and through November 11, 2020.

NOW, THEREFORE,

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. The franchise granted to NWNG in Ordinance No. 20170 and Ordinance No. 20620 shall be extended up to and through November 11, 2020. This extension shall be effective upon NWNG's written acceptance.

Section 2. Other than the duration of the franchise set forth in this Ordinance, Ordinance No. 20170 and Ordinance No. 20620 shall continue in full force and effect.

Passed by the City Council this

_____ day of April, 2020

Approved by the Mayor this

_____ day of April, 2020

City Recorder

Mayor