

ORDINANCE NO. 2601

AN ORDINANCE OF THE CITY OF KIRKLAND, WASHINGTON, GRANTING TO WASHINGTON NATURAL GAS COMPANY, A WASHINGTON CORPORATION, AND A PUBLIC UTILITY SELLING AND DISTRIBUTING GAS WITHIN THE STATE OF WASHINGTON, THE RIGHT AND FRANCHISE TO USE AND OCCUPY THE STREETS, AVENUES, ROADS, ALLEYS, LANES, AND OTHER PUBLIC PLACES AND WAYS OF THE CITY OF KIRKLAND, WASHINGTON, FOR CONSTRUCTING, MAINTAINING, REPAIRING, RENEWING AND OPERATING A GAS DISTRIBUTION SYSTEM AND ACCESSORIES WITHIN AND THROUGH THE CITY OF KIRKLAND, WASHINGTON.

The City Council of the City of Kirkland do ordain as follows:

Section 1. The right is hereby granted to Washington Natural Gas Company, hereinafter referred to as the Grantee, to lay, construct, extend, maintain, repair, new and replace gas pipes and gas mains and accessories under, along, and/or across any and all streets, avenues, roads, alleys, lanes and other public places and ways in the City of Kirkland, Washington, and all territory hereafter lawfully annexed to said City, and to use and occupy said streets, avenues, roads, alleys, lanes and other public places and ways for the purpose of therein laying, constructing, and extending, maintaining, renewing, replacing and repairing the mains and pipes and all appurtenances thereto and accessories used and/or useful for the manufacture, transmission and sale and distribution of gas within and through the present or future territorial limits of the City of Kirkland, Washington, for the term of twenty-five (25) years from and after the effective date of this ordinance except as hereinafter provided.

Section 2. Rights herein granted shall be subject to and governed by this ordinance; provided, however, the City Council expressly reserves unto itself all its police power to adopt general ordinances necessary to protect the safety and welfare of the general public in relation to the rights hereby granted not inconsistent herewith.

Section 3. The location of all mains, laterals, and appurtenances, within such streets, avenues, alleys, lanes and other public places and ways shall be determined and fixed by the city engineer, or such engineer or engineers as the City manager shall appoint; and before any work is done by the Grantee under this franchise, except in case of emergency, it shall first file with the City an application for a permit to do such work, accompanied by an accurate drawing showing the position of location of all such mains and/or laterals and meter boxes, plugs, etc., sought to be constructed, laid, installed or erected at that time and their relative

positions to existing streets, avenues, roads, alleys, lanes and other public places or ways, and showing the location of local improvements such as sidewalks, curbs, gutters and property lines, turn-outs, parking strips, poles, water and sewer lines, telephone and power lines, etc., as may exist in or on ground sought to be occupied.

Section 4. The Grantee in such application shall specify the class and type of material to be used and the equipment to be used and the mode of safeguarding and facilitating public traffic during construction. All such material and equipment shall be first class and shall meet with the approval and pass all requirements of the engineer for the City, and the Grantee shall pay to the City of Kirkland all costs of and expenses incurred in the examination of, inspection and supervision of such work on account of the granting of said permit.

Section 5. The Grantee shall leave all streets, avenues, roads, alleys, lanes, public places and ways after laying and installing mains and doing construction work, making repairs to equipment, etc., in as good and safe condition in all respects as they were before the commencement of such work by the Grantee, its agents or contractors. In case of any damage to said streets, avenues, roads, alleys, lanes, public places and ways, by the Grantee, said Grantee shall immediately repair any damage and its sole cost and expense. The City, after giving written notice to Grantee, may order and have done any and all work considered necessary to restore to a good and safe condition any such streets, avenues, roads, alleys, lanes, public places and ways, left by the Grantee or its agents in a poorer condition than existed prior to the commencement of such work, or in a condition dangerous to life or property, and the grantee, upon demand, shall pay to the City of Kirkland all costs of such construction or repair and of doing such work.

Section 6. The Grantee, by the acceptance of this franchise, hereby agrees, for itself, its successors and assigns, to protect and save harmless the City of Kirkland from all claims, actions or damages of every kind and description which may accrue to or be suffered by any person or persons, corporation or property by reason of any faulty construction, defective material or equipment or maintenance, or by the improper occupation of said streets, avenues, roads, alleys, lanes, public places and ways, by the Grantee, or by reason of the negligent, improper or faulty manner of safeguarding any excavation, or temporary turn-out; and in case suit or action is brought against said City of Kirkland for damages arising out of or by reason of any of the above-mentioned causes, the Grantee, its successors and assigns, will, upon notice to it or them of the commencement of said action, defend the same at its or their sole cost and expense; and in case judgment shall

be rendered against the City of Kirkland in such suit or action, the Grantee will fully satisfy said judgment within 90 days after said suit or action shall have finally been determined, if determined adversely to the City of Kirkland, provided, the Grantee herein, its successors and assigns, shall have the right to employ its or their own counsel in any cause of action or be given the management of the defense thereof.

Section 7. If at any time the City of Kirkland deems it advisable or requires a private property owner or developer under the authority of Ordinance No. 2576 to improve any of the streets, avenues, roads, alleys, lanes, public places and ways, by grading or regrading such streets, avenues, roads, alleys, lanes, public places and ways, or paving, altering, changing, repairing and reimproving the same, the Grantee, upon written notice by the City of Kirkland, shall, at its own expense, immediately so raise, lower or move its line of pipes to conform to such new grades as may be established, or place said pipes in such location or position as shall cause the least interference with any such improvements, and the City of Kirkland shall in no way be held liable for any damages to said Grantee that may occur by reason of such improvements, repairs or maintenance or by the exercise of any rights reserved in this grant. If the City of Kirkland shall improve or require a private property owner or developer to improve under the authority of Ordinance 2576 such streets, avenues, roads, alleys, lanes, public places and ways, the Grantee shall, on written notice by the City of Kirkland, at its own expense, replace such pipe or pipes as may be in or through the improved grade of such improvement with pipe or pipes of such material as shall conform to the specifications for the improvement of such streets, avenues, roads, alleys, lanes, public places and ways.

Section 8. At all times during the term of this franchise Grantee shall promptly and without discrimination furnish an adequate supply of gas to the City of Kirkland and to persons and corporation inhabitants thereof who request the same and agree to abide by Grantee's reasonable rules and regulations, and shall acquire, construct, maintain and equip and operate all necessary facilities for the manufacture, generation, purchase, transmission, sale, supply and distribution of gas for the benefit and convenience of the City and its inhabitants, and shall make promptly such extensions to existing facilities as may be required by one or more customers, or prospective customers, provided that if the revenues to be derived from such extensions shall not afford a fair and reasonable return on the cost of providing and rendering required service, then Grantee shall be permitted to, and is hereby authorized to exact from such customer, or customers, such cash advances, minimum guarantees, service guarantees or other arrangements, as will enable Grantee to earn a fair and reasonable return on the cost of providing and rendering the required service.

Section 9. The City shall have the right under this franchise to require reasonable extensions of gas distributions and supply systems referred to herein. In addition, the City shall also have the right to make such rules and regulations as may be required to secure adequate and proper service under this franchise to itself and its inhabitants and to provide sufficient accommodations for the public generally.

Section 10. The City Council has determined not to impose a franchise fee for the privileges granted by this franchise to Washington Natural Gas Company. Should, however, Washington Natural Gas Company consent to a franchise fee by any other jurisdiction within its distribution area after December 31, 1981, the City Council may in that event, declare this franchise and all rights and privileges conferred hereunder to be null and void.

Section 11. This grant shall not be exclusive and shall in no manner prohibit the City of Kirkland from granting other franchises of a like nature or franchises for other public or private utilities over, along, across, under and upon any of such streets, avenues, roads, alleys, lanes, public and places and ways, and shall in no way prohibit or prevent the City of Kirkland from using any of said streets, avenues, roads, alleys, lanes, public places and ways, with full power to make all necessary changes, relocations, repairs, maintenance, etc., of same as said City of Kirkland may deem fit.

Section 12. All of the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors and assigns of the Grantee, and all privileges of the Grantee shall enure to its successors and assigns.

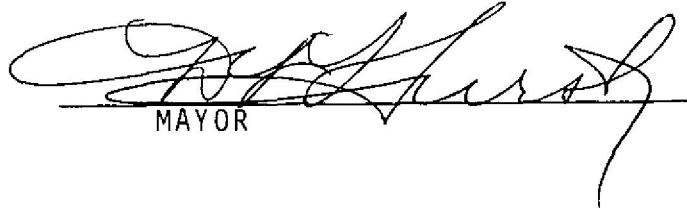
Section 13. If the Grantee, its successors or assigns, shall willfully violate or fail to comply with any of the provisions of this grant, or through willfull or unreasoning negligence fail to heed to any notice given to the Grantee under the provisions of this grant, then the said Grantee, its successors or assigns, shall, at the election of the Council of the City of Kirkland, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the City Council of Kirkland.

Section 14--Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a Court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.


This ordinance shall be in full force and effect from and after its passage and publication according to law and its acceptance by the Grantee.

PASSED by the Kirkland City Council in regular meeting on the 17th day of August, 1981.


SIGNED in authentication thereof on the 17th day of August, 1981.


MAYOR

ATTEST:


Director of Administration & Finance
(ex officio City Clerk)

APPROVED AS TO FORM:


City Attorney

The terms and conditions of the foregoing Franchise Ordinance No. _____ are hereby accepted this _____ day of _____, 1981.

WASHINGTON NATURAL GAS COMPANY

R. R. GOLLIVER, President

ATTEST:

R. J. TOMLINSON, Vice President Legal
and Secretary

ABOVE ACCEPTANCE RECEIVED BY:

City Clerk

Date: _____