

CITY OF COOS BAY CITY COUNCIL
Agenda Staff Report

MEETING DATE November 1, 2016	AGENDA ITEM NUMBER
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TO: Mayor Shoji and City Councilors
FROM: Susanne Baker, Finance Director
THROUGH: Rodger Craddock, City Manager
ISSUE NW Natural Gas Franchise Ordinance

BACKGROUND

Earlier this year, NW Natural Gas notified the City of Coos Bay they negotiated a higher franchise rate with another entity which increased the franchise fee .94%. Pursuant to Section 3.5, Favorable Customer Provision, NW Natural Gas is to honor that same franchise fee for the City of Coos Bay. The change in franchise fee and exercise of Section 3.5 matter was brought before the Council for consideration at the June 21, 2016 meeting wherein the Council directed staff to amend the franchise with the new franchise fee.

The increase in franchise fee of .94% is anticipated to remit an additional \$10,000 per fiscal year. Franchise agreements and amendments are enacted through the ordinance process which requires public notice and a public hearing.

ADVANTAGES

Enacting the ordinance will set change to the existing franchise agreement and remit an additional \$10,000.

DISADVANTAGES

None.

BUDGET

The additional franchise fees will offset expenses in the General Fund to provide services to the citizenry.

RECOMMENDATION

At the Council's direction, hold a public hearing for public input and enact the amendment to the NW Natural Gas franchise agreement approving the 5.94% fee through the ordinance process.

ORDINANCE NO. ###

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COOS BAY, OREGON, AMENDING ORDINANCE NO. 334 TO INCREASE THE FRANCHISE FEE OF THE NON-EXCLUSIVE FRANCHISE WITH NORTHWEST NATURAL GAS COMPANY WITHIN THE CORPORATE LIMITS OF THE CITY OF COOS BAY COMPANY FOR THE REMAINDER OF THE TERM OF THE PARTIES' FRANCHISE AGREEMENT

The City of Coos Bay City Council ordains as follows:

1. Section 3. Section 1 is amended as follows:

Compensation: Amount. As compensation for the benefits and privileges granted under this Franchise, and for Grantee's entry upon and deployment within the Right-of-Way, Grantee shall pay to the City an amount equal to five point ninety-four percent (5.94%) of Grantee's Gross Revenues (the "Franchise Fee"). The Franchise Fee includes all compensation for the use of the Right-of-Way pursuant to this Franchise. The City may charge additional compensation for the use of any Public Place. The Grantee may offset against the Franchise Fee the amount of any license fee, permit fee or other fee or charge paid to the City in connection with Grantee's use of the Right-of-Way when the fee or charge would not be assessed against another franchised person or business entity which has installed a line, pipe or other devices or instrumentalities in the Right-of-Way, or who seeks to connect to such line, pipe, or instrumentality. The intent of this provision is to allow the City to impose non-discriminatory construction permit fees for work in the Right-of-Way, but to allow offset for charges for the use of the Right-of-Way granted by this Franchise. Grantee may also offset against the Franchise Fee the amount of any privilege tax particularly imposed upon energy utilities. The Franchise Fee shall not be deemed to be in lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or, or to participate in, or to levy upon the property of Grantee.

Section 14. Emergency Clause. Delete this section.

The foregoing ordinance was passed by the City Council of the City of Coos Bay this _____ day of November 2016 and shall become effective January 1, 2017 by the following vote:

Yes:

No:

Absent:

Crystal Shoji
Mayor of the City of Coos Bay
Coos County, Oregon

ATTEST:

Susanne Baker,
City Recorder of the City of Coos Bay
Coos County, Oregon

EXHIBIT A

AMENDMENT TO NW NATURAL FRANCHISE AGREEMENT

THIS AMENDMENT TO FRANCHISE AGREEMENT (this "Amendment") is made and effective on November 2, 2016, by and between NORTHWEST NATURAL GAS COMPANY, a corporation organized and existing under the laws of the State of Oregon ("NW Natural"), and CITY OF COOS BAY, a municipality organized under the laws of Oregon ("City"). NW Natural and City are sometimes referred to collectively as, the "Parties" and each individually, a "Party".

WHEREAS, the Parties entered into a Franchise Agreement, effective June 3, 2003 (the "Agreement"), which was approved and adopted by the City in Ordinance No. 334;

WHEREAS, the Parties wish to amend the Agreement to reflect the agreed-upon increase in the Franchise Fee in the Agreement to 5.94% from five percent (5%) effective January 1, 2017;

NOW, THEREFORE, for and in consideration of the mutual promises of the Parties as set forth herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Amendment to the Agreement relating to Franchise Fee. Section 3.1 of the Agreement is replaced with and amended to the text below, and NW Natural and City agree that the increased Franchise Fee reflected below will be effective as of January 1, 2017:

"3.1 **Amount.** As compensation for the benefits and privileges granted under this Franchise, and for Grantee's entry upon and deployment within the Right-of-Way, Grantee shall pay to the City an amount equal to five point ninety-four percent (5.94%) of Grantee's Gross Revenues (the "Franchise Fee"). The Franchise Fee includes all compensation for the use of the Right-of-Way pursuant to this Franchise. The City may charge additional compensation for the use of any Public Place. The Grantee may offset against the Franchise Fee the amount of any license fee, permit fee or other fee or charge paid to the City in connection with the Grantee's use of the Right-of-Way when the fee or charge would not be assessed against another franchised person or business entity which has installed a line, pipe or other devices or instrumentalities in the Right-of-Way, or who seeks to connect to such line, pipe, or instrumentality. The intent of this provision is to allow the City to impose non-discriminatory construction permit fees for work in the Right-of-Way, but to allow offset for charges for the use of the Right-of-Way granted by this Franchise. Grantee may also offset against the Franchise Fee the amount of any privilege tax particularly imposed upon energy utilities. The Franchise Fee shall not be deemed to be in lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or to participate in, or to levy upon the property of Grantee."

2. Continued Effectiveness of Agreement. All other provisions of the Agreement remain in full force and effect, except as otherwise amended in writing, by mutual consent of NW Natural and City.

3. Miscellaneous.

3.1 Captions. The captions contained in this Amendment are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Amendment or the intent of any provision contained herein.

3.2 Governing Law. This Amendment shall be governed and construed in accordance with the laws of the State of Oregon without reference to its conflicts of law principles. If suit is brought by a party to this Franchise, the parties agree that trial of such action shall be vested exclusively in the state courts of Oregon, County of Coos, or in the United States District Court for the District of Oregon.

3.3 Counterparts; Facsimile Signatures. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Amendment, and any telecopy or other facsimile transmission of any signature of a Party shall be deemed an original and shall bind such Party.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their respective authorized representatives as of the date first set forth above.

NW Natural Gas Company

By: _____
MardiLyn Saathoff, Senior Vice-President
Regulation & General Counsel

City of Coos Bay

By: _____
Rodger Craddock, City Manager