



**AN ORDINANCE AMENDING THE TOWN CODE OF THE
TOWN OF NAGS HEAD, NORTH CAROLINA AS IT PERTAINS TO CHAPTER 44, UTILITIES**

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that Chapter 44 of the Town Code shall be amended as follows:

PART I. That **Article III, Sewage**, be amended as follows:

Sec. 44-251. - Sewage tie-ons.

There shall be no sewer tie-on between any package treatment facility, infiltration wastewater treatment and non discharge facility, or other similar sewage treatment facility to any lot or subdivision that was not included within the town approved parcel, lot, subdivision, or special planned community district (SPD-C) containing such facility.
(Code 1990, § 21-279)

Sec. 44-252. - Waivers.

Where the board of commissioners finds that due to the special circumstances of a particular lot or subdivision, the connection between the lot or subdivision and a package treatment facility, infiltration wastewater treatment and non discharge facility, or other similar sewage treatment facility located outside the lot or subdivision is in the interest of public health, safety and general welfare, the board of commissioners may allow such connection subject to appropriate conditions upon finding that such waiver will not result in an increase in the density or intensity of use of the lot or subdivision beyond what could be provided by an on-site system on the lot or subdivision seeking such connection. The board of commissioners may require conditions as will, in its judgment, secure substantially the adequate treatment and disposal of sewage and wastewater.

Operators of the waste water treatment system in the town and the association served by such system shall be notified of any request for a waiver from section 44-252, Waivers, and section 44-251, Sewage tie-ones, at least 15 days prior to consideration by the board of commissioners.
(Code 1990, § 21-280; Ord. No. 05-09-036, § I, 9-7-2005)

Secs. 44-253-270. - Reserved

PART II. That **Article IV, Natural Gas Franchise**, be added as follows:

**AN ORDINANCE GRANTING FRANCHISE TO
EASTERN NORTH CAROLINA NATURAL GAS COMPANY**

BE IT ORDAINED BY THE TOWN BOARD OF COMMISSIONERS OF THE TOWN OF NAGS HEAD, as follows:

I. DEFINITIONS

1.01 As used in this Ordinance, the following terms, words and phrases shall have the meanings respectively ascribed to them in this section:

"Company" shall mean Eastern North Carolina Natural Gas Company, a corporation organized under the laws of the State of North Carolina and authorized to do business in the State of North Carolina and any successor in interest to Eastern North Carolina Natural Gas Company under this franchise Ordinance.

"Town" or "Town of Nags Head" shall mean:

The Town of Nags Head, a municipal corporation located in Dare County, North Carolina,

The area now or hereafter within the territorial Town limits of the Town of Nags Head, or

The Town Board of Commissioners or any officer or agent duly authorized and acting on behalf of the Town as a municipal corporation, as indicated by the context by which the term is used;

"Town Board of Commissioners" shall mean the governing body of the Town of Nags Head;

"Gas" when used as an unqualified term shall mean either natural or artificial gas, by whatever process or processes derived or manufactured, or both such gases either separately or a mixture of them;

II. FRANCHISE GRANTED

2.01 The Company is hereby granted a nonexclusive right to construct, operate and maintain a gas utilities system within the Town for the production, transmission, distribution and sale for gas to consumers and users within the Town and to the Town and any and all agencies and departments thereof.

2.02 To the extent that the Town may legally do so, the Company is hereby granted the right, authority and privilege, after written notice delivered to the Town, to construct and install, operate, maintain, lay or relay, renew, replace and repair, (except no advance notice shall be required for emergency repairs) gas pipes, mains, pipelines, conduits, regulators, connections and services thereto (hereinafter "Facilities"), in, through, across, along and under streets, avenues, roads, public alleys, lanes, and such other Town properties and facilities as may be approved by the Town Manager (hereinafter "Public Properties") in the Town for the production, pumping, handling, transmission, distribution and sale of gas for any and all purposes, subject to the terms and conditions hereinafter set forth in this Ordinance. Such activities shall be conducted so as to minimize to the greatest extent practicable (within reasonable economic costs) inconvenience to the public, and damage to the area disturbed. All work shall be done with full consideration of the facilities and rights of others. All Company activities shall be accomplished in accordance with the rules, regulations and standards of the North Carolina Utilities Commission and the rules, regulations, and ordinances of the Town of Nags Head.

2.03 Whenever the Company shall cause any opening, excavation or alteration to be made in any Public Properties within the Town in the construction, operation or maintenance of any of its Facilities owned or used by it, the Company shall repair and restore expeditiously such portions of such Public Properties to the same condition in which it found them as nearly as practicable. Additionally, if the Company shall fail following completion of repairs to restore the area to its approximate former condition within a reasonable time, and a written notice is provided by the Town to the Company, the Town may proceed after five (5) calendar days notice by mail or personally delivered to Company to restore such Public Properties as nearly as practicable to their original condition, and the Town shall submit a statement of the costs for this restoration to the Company. The Company agrees to pay the Town for these costs within thirty (30) days. Interest at nine percent (9%) per annum shall accrue on these costs beginning on the 31st day following the date that the Town mails notice of such costs or the date that the Town hand delivers such notice to Company. Conflicts in elevations of Company piping with Town or other utilities that require adjustment of Town or other utilities shall be at Company's expense, and any damage to all such utilities while Company is readjusting Company facilities shall be the responsibility of Company.

In the case of temporary repairs, any opening, excavation or alteration in any Public Properties shall be backfilled immediately after the temporary repairs are finished and the excavated area shall be kept in a safe condition by the Company until the permanent repair is made. The permanent repair shall be made as expeditiously as possible.

Except in emergency situations, the Company shall not excavate in any Public Properties of the Town until it shall obtain written approval from the Town, which shall state in particular the location of proposed excavation and the approximate time to be required to complete the work at the excavated area. The Town will act upon such requests within a reasonable time and shall not be unreasonable in refusing to grant approval of a Company request. In no event though shall the Town fail to cooperate with the Company to reach agreement as to a commercially feasible method for the Company to comply with its legal obligations in the provision of natural gas service. All excavations, back-filling and paving shall be subject to inspection by the Town and shall be done according to the standard practice of the Town in the installment of its water and sewer installations.

In all cases where any Public Properties shall be excavated, disturbed or altered by the Company, it shall take all precautions necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals and other devices necessary or proper to give adequate notice or warning to the public of the existence of all actual conditions and hazards present. Company shall undertake every reasonable option available to prevent creating a hardship to adjoining properties, including, without limitation, businesses and residences. Company agrees to abide by all present and future laws, regulations and ordinances regulating utility cuts in Public Properties, but Town shall not adopt any ordinance, rule or regulation which shall have the effect of modifying, amending, altering, or voiding all or any part of this Franchise.

Whenever the Town shall grade or re-grade any Public Properties in, along, under or across which the Company shall have installed any of its Facilities, and such grading or re-grading necessitates removal or relocation of such Facilities for Company to remain in compliance with federal or state law or regulation applicable to such Facilities, it shall be the duty of the Company, at the request of the Town, at its own cost and expense, to promptly change said Facilities so as to conform to the new grade which is then being or has been established.

If the Town decides to pave or repave a Public Property, it shall give sixty (60) days prior notice to the Company of the intention to pave or repave such street. When such notice is given, the Company shall perform such work as the Company deems necessary for the extension of new Facilities or the repair or relocation of existing Facilities within Public Property prior to the time the Town begins paving or repaving of the Public Property. With prior written approval by the Town, the Company may perform such work as the Company deems necessary for the extension of new Facilities or the relocation of existing Facilities within Public Property after one year from the date that specific portion of the Public Property has been paved or repaved or if required to serve a customer that requests natural gas service and the Company can economically provide such service.

2.04 This franchise is granted for a term of thirty (30) years beginning _____ and ending at midnight _____. This franchise supersedes any and all former rights or franchises of the Company to operate a gas utilities system in the Town with respect to all acts and things done or admitted to be done, on or after _____.

2.05 The Company agrees to pay an annual franchise tax equal to the amount as required by North Carolina law and which sum shall be payable in accordance with such law. The grant of this franchise shall not cause the Company to be liable for any other taxes, licenses or fees that it would not otherwise be chargeable with under State or Town law or ordinance.

2.06 The Company is hereby granted the right during the existence of this franchise to mortgage or hypothecate this franchise, together with all rights and privileges thereunder and any right or interest

therein, as security for indebtedness, subject to acceptance by any legal successor in interest of the obligations, duties, liabilities, limitations and prohibitions set out herein and subject to the approval by the North Carolina Utilities Commission or other governmental agency the approval of which is required by law. The Company shall not assign or transfer its rights under this agreement, provided, however, that this provision shall not prohibit the Company from assigning its rights hereunder to the surviving corporation in any corporate reorganization in which the Company is a party.

III. TOWN TO BE FURNISHED INDEMNITY AGAINST INJURIES, DAMAGE AND NUISANCES

The Company agrees that it will at all times indemnify and save harmless the Town, its officers, employees, and servants for each and all such nuisances, damage, injury (including death) loss, cost or expense (including reasonable attorney fees), caused or occasioned or contributed to by any act or failure to act, of the Company, its officers, agents, servants and employees, in the construction, installation, repairing, maintaining, or operation of said Facilities, equipment or devices of the Company for the sale, transportation and distribution of gas in said Town, including making cuts, disturbances and excavations in the Public Properties, except such indemnity shall not apply to any such loss, cost or expense caused by the negligence of the Town; and the Company shall secure and file, if requested, with the Town certificates for liability insurance in an amount of at least one million dollars.

IV. OBLIGATION OF COMPANY TO FURNISH NATURAL GAS

4.01 Subject to the Company's determination of economic feasibility in accordance with its criteria, the Company agrees to deliver to and distribute for the use of the inhabitants, offices, businesses, commercial enterprises, churches, charities and professional establishments within the Town, during the period of this franchise, and providing there is a demand for same, natural gas in sufficient quantity to supply the demand of customers within the Town who may be served under the provisions of this franchise.

4.02 Service interruptions or impairment for reasons beyond the control of the Company shall not be a breach of this Franchise, but such interruptions or impairments shall be corrected within a reasonable time with as little interruption as possible.

V. TOWN TO BE FURNISHED ACCESS TO MAPS ON REQUEST

5.01 The Company shall from time to time, at the request of the Town, allow Town officials and/or employees to review or inspect maps of its transmission and distribution system within the Town which the Company shall maintain up to date.

VI. CONDITIONS OF REVOCATION

This Franchise may be revoked only upon failure of the Company to remedy any breach of its terms within thirty (30) days after receiving notice in writing of such breach from the Town or, if the breach cannot reasonably be cured within thirty (30) days, the Company must begin the cure within the thirty (30) day period and thereafter proceed to complete the cure with due diligence.

VII. NOTICES

All notices shall be in writing and hand delivered or mailed by registered or certified mail, return receipt requested, postage prepaid to:

Town of Nags Head; Attention Town Manager
5401 South Croatan Highway
PO Box 99
Nags Head, NC 27959

Eastern North Carolina Natural Gas
c/o Piedmont Natural Gas Company, Inc.
Attention: Senior Vice President – Utility Operations
1915 Rexford Road
Charlotte, NC 28211

or to such other addresses as may be provided in writing from time to time. Mailed notices shall be deemed received three (3) days after posting.

VIII. BINDING EFFECT

This Franchise shall bind and inure to the benefit of Eastern North Carolina Natural Gas Company and its successors and assigns and the Town of Nags Head to the full extent allowed by applicable law.

IX. CHANGES OR AMENDMENTS

No agreement, promise, term or condition not contained herein shall have any efficacy or validity. No change or amendment shall be effective until lawfully adopted by the Town and agreed to by the Company.

X. ACCEPTANCE OF FRANCHISE

This Ordinance shall take effect from the day and date of its passage at two (2) regular meetings of the Town, but only after it has been accepted in all its terms and revisions by the Company, in writing, within sixty (60) days after its final passage. Otherwise, the same shall be null and void and of no effect.

Adopted by the Town Board of Commissioners of the Town of Nags Head at two (2) regular meetings held on **July 20, 2005**, and on **August 3, 2005**.

ARTICLE V. Effective Date.

This ordinance amendment shall be in full force and effect upon the date of adoption by the Board of Commissioners.

Benjamin Cahoon, Mayor

ATTEST:

Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

John Leidy, Town Attorney

Date adopted: Adopted June 3, 2005 (Second Reading) - Codified June 2, 2021

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS