

**BOARD OF COMMISSIONERS  
FOR THE  
THE TOWN OF UPPER MARLBORO**

ORDINANCE: 2017-05  
SESSION: Regular Town Meeting  
INTRODUCED: September 12, 2017

**AN ORDINANCE OF THE TOWN OF UPPER MARLBORO GRANTING AN EXTENSION OF A NON-EXCLUSIVE UTILITY FRANCHISE TO WASHINGTON GAS LIGHT COMPANY**

WHEREAS, Maryland Code, Local Government Article, Section 5-202, as amended, grants to the legislative body of every incorporated municipality in Maryland, including the Town of Upper Marlboro (the "Town"), general power to pass such ordinances not contrary to the Constitution of Maryland, or the public general law, as deemed necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality; and

WHEREAS, Section 82-16(1) of the Charter of the Town of Upper Marlboro (the "Charter") authorizes the Town Board of Commissioners to pass all such ordinances not contrary to the Constitution and laws of the State of Maryland or the Charter as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights, and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of the Town and visitors thereto and sojourners therein; and

WHEREAS, Section 82-16(2)(y) of the Charter further authorizes the Board to grant and regulate franchises to water companies, electric light companies, gas companies, telegraph and telephone companies, transit companies, taxicab companies, and any others which may be deemed advantageous and beneficial to the Town provided that no such franchise shall be granted for a longer period than fifty years; and

WHEREAS, Maryland Code, Public Utilities Article, Section 7-102 and Local Government Article, Section 5-205(d)(1)(i) authorize the legislative body of each municipal corporation in the State of Maryland to grant a franchise to a gas company, and impose reasonable fees, charges, and regulations in connection therewith; and

WHEREAS, Washington Gas Light Company (hereinafter called the "Company") has presented to the municipal authorities of the Town of Upper Marlboro for approval, a proposal to extend its franchise for the continued operation of the Company's gas system in and through the Town of Upper Marlboro; and

WHEREAS, the Company desires extension of the franchise from the Town Board of Commissioners for the Town of Upper Marlboro, dated December 12, 1967, which franchise shall expire on December 13, 2017 and in the judgment of the proper authorities of the Town of Upper Marlboro such proposal is satisfactory and should be approved; and

WHEREAS, the Town Board of Commissioners has introduced and read this Ordinance in public session assembled pursuant to the Town Charter; and

WHEREAS, the Town Council finds that the ordinance as hereinafter set forth is necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the Town, and otherwise advantageous and beneficial to the Town.

NOW, THEREFORE, BE IT ORDAINED AND ORDERED, by the Board of Commissioners of the Town of Upper Marlboro, acting under and by virtue of the authority delegated to it pursuant to the Maryland Code and the Charter of the Town of Upper Marlboro, the following uncodified ordinance be and is hereby adopted:

Section 1. A non-exclusive franchise be and the same is hereby granted to Washington Gas Light Company, its successors and assigns, to lay, install, operate and maintain its pipes or conduits and accessory equipment for the distribution and sale of gas and, in connection therewith, to make the necessary cuts and excavations in the sidewalks, streets, alleys, roads, highways, and other public places within the present or future limits of the Town of Upper Marlboro, upon the following terms and conditions.

Section 2. Before the Company shall begin any such underground construction, it shall make application to and obtain from the Town a permit for such construction under such terms and conditions as the Board of Commissioners shall designate or ordain. The said pipes, conduits and accessory equipment shall be so laid and constructed as not to interfere with the safety or convenience of persons traveling on or over the said sidewalks, streets, alleys, roads, highways, and other public places or with the drainage thereof. This franchise grants no authority for the Company to use public rights-of-way for any other purpose, unless expressly provided herein. The Town makes no representation or guarantee that the Town's interest in or right to control any public right-of-way is sufficient to permit Company's use, and the Company shall hereby gain only those rights to use public rights-of-way that are within the Town's power to grant. No privilege or power of eminent domain or condemnation is bestowed by this franchise.

Section 3. All cuts and excavation in the sidewalks, streets, and highways of the Town of Upper Marlboro made by the Company shall be repaired by the Company as soon as practicable according to this Ordinance and any other applicable ordinances, and this obligation shall include the restoration of any pavement, curbs and gutters, sidewalks, driveway returns, earth, sod, drainage structures, retaining walls or any other structure or facility which is in the right-of-way of such streets, roads, highways or alleys or which is maintained in connection therewith. In case the Company shall fail to make such restoration, the Town may cause such work to be done, and the cost thereof shall be paid by the Company. All cuts and excavations made by the Company in the streets, roads,

highways and alleys of the Town shall, until restored, be properly safeguarded for the prevention of accidents.

Section 4. The work to be done under this franchise shall be done in such a manner as to avoid damage to other underground installations or any construction performed by the Town.

Section 5. The Company shall maintain all pipes, conduits and accessory equipment laid or constructed under the provisions of this assent in good and safe order and condition ; shall be responsible for any damage to public or private property and shall at all times fully indemnify, protect and hold harmless the Town of Upper Marlboro, its servants, agents and employees, from and against any and all actions, claims, suits, damages or charges, and against any and all loss and necessary expenditures including reasonable attorneys' fees, arising from the laying, construction, operation, maintenance, removal, and repairing of the Company's gas system in said Town, or from its, or its contractors and subcontractors' negligent acts or omissions, or failure to maintain the said system in good and safe order and condition. To maintain said system in a good and safe order and condition, the Company shall monitor and inspect the system as necessary and as reasonably requested by the Town. The Company shall promptly address customer complaints and concerns.

Section 6. The Company shall construct and maintain a gas system in the Town for the distribution and sale of gas in accordance with the General Service Provisions of the Company on file, from time to time, with the Public Service Commission of Maryland. Any contractor or subcontractor used by the Company to meet its obligations under this franchise or State or Federal law must be properly licensed and each such contractor or subcontractor shall have the same obligations with respect to its work as the Company would have if the work were performed by the Company.

Section 7. Whenever any of the pipes, conduits, and accessory equipment of the Company shall prove to be in the way of public street improvements or sidewalks, actually being constructed in the Town, whether such improvements be new or in the nature of changing any location of or repairing existing streets, sidewalks, alleys, or public grounds, the Town may require the Company, at its cost, to move so much of its work on or under the streets, sidewalks, alleys, or other public grounds in the Town as may impeded the progress of such improvements. Upon the failure of the Company so to do the Town may, after thirty (30) days' notice in writing to the Company, charge the Company for reasonable actual costs incurred by the Town and attributable to the Company for the impediment of progress of the improvements.

Section 8. On or before November 15 of each year or as otherwise mutually agreed upon by the parties, the Company shall submit to the Town, copies of the Company's annual regular replacement plan for Maryland, the Company's annual Ahead of Pavement project list compiled in coordination with the Maryland Department of Transportation and the Company's annual STRIDE Project List filed with the Maryland Public Service Commission in Case No. 9335 or successor STRIDE cases.

Section 9. If any sidewalk, street, road, highway, alley, or other public place used by the Company for the transmission of gas shall be abandoned or closed pursuant to law, or the use thereof discontinued by the Company, the Town may require the Company to adequately seal all abandoned

pipes or conduits. If the Company shall fail to do so, the Town may cause such pipes or conduit to be adequately sealed and the area restored and the cost thereof shall be paid by the Company.

Section 10. The franchise hereby granted shall continue for a period of twenty (20) years from the effective date of this ordinance.

Section 11. The Town hereby expressly reserves the right and duty at all times to exercise full municipal control and regulation in respect to all matters connected with this franchise not inconsistent with the terms thereof. Nothing herein shall be construed to limit or prohibit the lawful exercise of the rights and police powers of the Town. The parties acknowledge that this franchise does not encompass or reflect the full extent of the Town's authority over the Company and, notwithstanding any provision hereof, the Town reserves all of its rights under State and Federal law regarding the scope of such authority. The Company acknowledges that the Town has the authority to reasonably regulate the placement, construction, repair, and maintenance of physical facilities located in the public rights-of-way, consistent with applicable United States Department of Transportation regulations (currently 49 C.F.R., Part 192). The Town of Upper Marlboro may, from time to time, impose reasonable regulations and conditions for the maintenance and operation of the gas system, including the laying of pipes, conduits, and accessory equipment. The failure of the Town on one or more occasions to exercise a right or to require strict compliance with the terms or conditions of this franchise, or any applicable law, shall neither be deemed to constitute a waiver of such right, nor excuse the Company from compliance.

Section 12. The Company, as evidence of its acceptance of this franchise upon said terms and conditions and of its agreement to abide by and perform each and all of said terms and conditions, shall, within sixty (60) days from the date of adoption of this ordinance, but no later than December 1, 2017, cause to be indicated on a copy of this ordinance its acceptance thereof in its corporate name, signed by its President, or a Vice President, its corporate seal to be thereto affixed and attested by its Secretary or Assistant Secretary, and shall file said acceptance with the Clerk of the Town of Upper Marlboro, in default of which this franchise shall become null and void.

Section 13. The Company shall pay to the Town an annual franchise fee equal to \$3,000.00 (the "Franchise Fee") within thirty (30) days of executing the below certificate of acceptance, and shall pay the Franchise Fee at each 1-year anniversary of the franchise. The Franchise Fee shall be adjusted each year using the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, but in no event shall the Franchise Fee be less the initial amount stated herein. Such payment(s) shall not be in lieu of any taxes, fees or charges levied by the Town related to easements, franchises, rights-of-way, permits, utility lines and equipment installation, maintenance and removal during the term of the Company's franchise with the Town, which the Town may impose for the rights and privileges herein granted or for the privilege of doing business within the Town. Payment of a franchise fee does not exempt the Company from any lawful taxation or fee, including any fee for an excavation permit, street cut permit, or similar requirement imposed by lawful ordinance upon a permittee, or from any other tax or fee not related to the franchise or the occupation or use of a public street or way.

Section 14. This franchise shall be governed in all respects by the laws of the State of Maryland. In an enforcement action or proceeding to enforce the provisions, terms, or conditions, of

this franchise, in which the Town of Upper Marlboro substantially prevails, the Town shall be entitled to an award of its expenses, including reasonable attorneys' fees.

Section 15. The Company shall, in accordance with Federal, State, County and local laws, ordinances, and regulations, afford equal opportunity and nondiscrimination in employment to all individuals, regardless of race, color, religion, age, sex, national origin, sexual orientation, handicap, or other protected class. The Company shall comply will all applicable requirements of the Americans with Disabilities Act.

Section 16. The Company's right to use and occupy the public rights-of-way to provide gas services shall not be exclusive, and the Town reserves the right to grant other franchises for similar uses or for other uses of the public rights-of-way, or any portions thereof, or to make any such use itself, at any time during the term of this franchise.

Section 17. This Ordinance shall be effective, twenty days after passage, on the 30<sup>th</sup> day of October, 2017, and once countersigned by the Company, and shall upon such date take effect, as of expiration of the prior franchise, December 13, 2017. The franchise granted hereby shall expire on December 14, 2037, unless terminated earlier. The Town retains the absolute right to terminate this franchise for any material violation by the Company of the terms and conditions of this franchise or of applicable State or Federal law, after thirty (30) days' notice to the Company of such violation and Company's failure to cure. No later than 180 days prior to the expiration of this franchise, the Company shall notify the Town in writing of its intention to renew this franchise. Any renewal of this franchise is subject to the mutual consent of both the Town and the Company.

AND BE IT FURTHER ORDAINED AND ENACTED, by the Board of Commissioners of the Town of Upper Marlboro, Maryland that this Ordinance shall be posted in the Town Hall office, and it or a fair summary thereof, shall be published once in a newspaper of general circulation in the Town.

Adopted this 10<sup>th</sup> day of October, 2017.



THE TOWN OF UPPER MARLBORO,  
BOARD OF COMMISSIONERS

*Nancy C. Clagett*

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Nancy C. Clagett, Commissioner

*Linda Pennoyer*

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Linda Pennoyer, Commissioner

Attest:

*M. David Williams*

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M. David Williams, Clerk

*James Storey*

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James Storey, President