

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 2019 - 14

**AN ORDINANCE OF THE VILLAGE COUNCIL OF THE
VILLAGE OF ESTERO, FLORIDA, AMENDING GAS
FRANCHISE PROVISIONS OF THE LEE COUNTY
CODE PREVIOUSLY ADOPTED BY REFERENCE; AND
PROVINDING AN EFFECTIVE DATE.**

WHEREAS, the Village of Estero was incorporated by referendum held on November 4, 2014; and

WHEREAS, the Charter of the Village of Estero (“Charter”) at Section 11, “General Provisions,” paragraph (5) “Transitional Ordinances and Resolutions,” provides that all applicable lawful Lee County ordinances currently in place at the time of passage of the referendum, unless specifically referenced in the Charter, shall remain in place unless rescinded by the Village Council or unless they are in conflict with an ordinance, rule or regulation of the Village; and

WHEREAS, the Village Council has determined that it is in the best interests and welfare of the Village and its residents to revise certain provisions of the Lee County Code to specifically apply to the village.

NOW, THEREFORE, IT IS HEREBY ORDAINED by the Village Council of the Village of Estero, Florida:

Section 1. Lee County Code Sections amended.

The following sections were included in the Code of Laws and Ordinances, of the Village of Estero, Florida by virtue of their inclusion in the Lee County Code and are hereby amended as ordinances of the Village of Estero. These amendments are not intended to affect the validity of these provisions as laws of Lee County.

Lee County Code Chapter 16 1/2 Franchises, article II Gas, previously adopted by reference is amended to read as follows:

ARTICLE II. GAS

Sec. 16¹/₂-11. Definitions.

The following definitions shall apply to the following terms used throughout this article: *Company*. The applicant for a nonexclusive gas franchise pursuant to this article.

Words underlined are additions; Words ~~struck through~~ are deletions.

43 ~~County. Lee County, Florida.~~

44 *Franchise.* A nonexclusive franchise; a nonexclusive grant of rights and privileges to sell
45 gas to consumers within the geographical jurisdiction of ~~Lee County~~ the village of Estero.

46 *Gas.* Natural gas, manufactured gas, mixture of natural gas and manufactured or other
47 forms of gas energy as delivered from the company's central distribution point(s) via gas mains,
48 pipes, and distributing lines and measured by meter upon entry into the customer's premises.
49 It does not include propane or other gases which are delivered by truck and stored in tanks on
50 the property of customers for future use.

51 *Public ground.* All streets, alleys, public ways, utility easements, bridges, viaducts, parks
52 and public grounds as to which the ~~county~~ village has the right to grant the use to the company.

53 Village. The village of Estero.

54

55 **Sec. 16½-12. Grant of nonexclusive franchise.**

56 (a) The ~~county~~ village is hereby given the authority to grant unto the company, for thirty (30)
57 years from the effective date of the franchise, the nonexclusive right to import, transport,
58 distribute and sell gas for public and private use in the ~~county~~ village as now laid out and
59 as hereafter extended and for these purposes to construct, operate, repair and maintain in,
60 on, over, under and across the public ground of the ~~county~~ village, all facilities and
61 equipment used in connection therewith, and to do all things which are necessary or
62 customary in the accomplishment of these objectives, subject to zoning ordinances, other
63 applicable ordinances, permit procedures, customary practices, and the provisions of this
64 franchise; provided, however, that the ~~county~~ village reserves the right to allow public
65 places to be used for any and all other lawful purposes and subject always to the paramount
66 right of the public in and to such public places for a period of thirty (30) years.

67 (b) The ~~county~~ village reserves the right to add to or change its rules, regulations, its fees
68 and/or make other changes as it deems necessary which do not conflict with the rights
69 granted to the company herein.

70 (c) Complaints by ~~Lee County~~ Estero citizens about construction and/or service provided by
71 the company shall be corrected within ten (10) working days of the complaint, to the full
72 satisfaction of the ~~county~~ village.

73

74 **Sec. 16½-13. Duties of company.**

75 (a) The rights and privileges granted to the company under section 16½-12 are conditioned
76 upon the company using due care in the exercise of such rights and privileges.

77 (b) The company shall not dig into or excavate the surface of public grounds for any purpose
78 without first obtaining a permit from the ~~county~~ village, for which the ~~county~~ village may
79 impose a reasonable fee. The permit conditions imposed on the company shall not be more
80 burdensome than those imposed on other utilities for similar facilities or work within the
81 ~~county~~ village. The ~~county~~ village shall have the right to determine the time during which
82 construction on public grounds shall take place.

83 (c) In emergencies which require the immediate repair of its facilities, the company may dig
84 into or excavate the surface of public grounds prior to obtaining a permit. But, the

Words underlined are additions; Words ~~struck through~~ are deletions.

- 85 company shall request the required permit no later than the first working day after such
86 work is begun.
- 87 (d) Damages to public grounds shall be repaired by replacement and/or restoration, so that the
88 public ground shall be in the same condition after such replacement and/or restoration as
89 before work was begun. Public grounds so affected shall be maintained in the properly
90 restored condition for a period of one year from the date of completion of restoration. Such
91 maintenance shall be performed by the company or its designee at no cost to the ~~county~~
92 village.
- 93 (e) If the company creates a condition which adversely affects the public safety, materially
94 affects the structural stability of public roadways, structures, or other facilities, the ~~county~~
95 village may give written notice to the company specifying the required corrective action,
96 together with the pertinent facts. The company shall have a period of twenty-four (24)
97 hours from the date of notice to correct the deficiency. After that time, the ~~county~~ village
98 may take corrective action and charge the cost of correcting the deficiency to the company.
- 99 (f) The ~~county~~ village hereby recognizes that the company has the authority to adopt policies
100 and procedures which it deems necessary to conduct its business to enable it to exercise
101 its rights, perform its duties and meet its obligations as set forth in this franchise and to
102 issue uninterrupted service to each and all of its customers; provided, however, that such
103 policies and procedures do not conflict with the provisions of this article, or with any law
104 of the State of Florida or ~~Lee County~~ Estero.
- 105 (g) All pipes, mains, valves, blowoffs, and other fixtures installed by the company shall be
106 located within designated easements in the ~~county~~ village after securing the approval of
107 the ~~Lee County Department of Transportation and Engineering, in accordance with~~
108 ~~Administrative Policy #010, Utility Placement in County Rights of Way and Easements~~
109 village. These installations shall not obstruct nor interfere with existing uses of such
110 easements. The company shall, whenever practicable, avoid disrupting the use of any
111 street, alley or other highway when it is necessary to perform work in such locations. In
112 case of damage to pavement, sidewalk, driveway or other surfacing caused by such work,
113 the company shall, at its own cost and expense and in a manner approved by ~~Lee County~~
114 ~~Department of Transportation and Engineering, in accordance with Administrative Policy~~
115 ~~#010, Utility Placement in County Rights of Way and Easements~~ village, replace or
116 restore all damaged surfaces to the same condition as before work began. Restored
117 surfaces shall be maintained in the properly restored condition for a period of one year
118 from the restoration date at no cost to the ~~county~~ village. If the ~~county~~ village decides to
119 alter or change the grade or to relocate or widen or otherwise change any such public use
120 and upon being given reasonable notice by the ~~county~~ village, the company shall remove,
121 relay, and/or relocate its fixtures at its own expense. If the company locates its facilities
122 and/or performs any construction in such a manner which creates obstructions or
123 conditions which are or will be dangerous to the traveling public, the ~~county~~ village may
124 terminate such easement or license of the company.
- 125 (h) The company shall supply the ~~county~~ village with copies of its federal and state regulatory
126 operating reports and trouble reports.

Words underlined are additions; Words ~~struck through~~ are deletions.

127 **Sec. 16½-14. Street improvements, paving or resurfacing.**

128 The ~~county~~ village shall give the company thirty (30) days prior written notice of street
129 improvements, paving or resurfacing of a permanent nature. The notice shall contain a
130 description of the improvements, the streets upon which the improvements are to be made, the
131 extent of the improvements and the approximate time when work will begin and end. This
132 prior notice is being given to allow the company to make those additions, alterations or repairs
133 to its facilities which it deems necessary before the scheduled improvements, paving or
134 resurfacing takes place.

135 In the event that ~~Lee County~~ Estero should adopt an ordinance or administrative policy
136 which provides such notice for utilities in general, then the company shall be notified in
137 accordance with the provisions therein.

138
139 **Sec. 16½-15. Rates.**

140 Gas rates and standards of service may be fixed from time to time by the company and the
141 Florida Public Service Commission, or other rate-making bodies under the laws of the State of
142 Florida. The ~~county~~ village reserves the right to join in the rate-making process if such
143 authority is given to it through the laws of the State of Florida.

144
145 **Sec. 16½-16. Agreement not to compete.**

146 As consideration for the franchise fee to be paid to the ~~county~~ village under section 16½-
147 29, the ~~county~~ village agrees not to engage in the business of distributing and selling gas during
148 the life of any franchise granted pursuant to this ordinance or any extension thereof, in
149 competition with the company. The ~~county~~ village reserves the right to grant similar rights,
150 privileges, permits, and or franchises to other entities as, in its sole judgment, it decides to
151 grant.

152
153 **Sec. 16½-17. Hold harmless clause.**

154 It is expressly understood and agreed by and between the company and the ~~county~~ village,
155 that the company shall hold the ~~county~~ village, the officers and employees of the ~~county~~ village
156 and members of the ~~county commission~~ village council harmless from any loss, cost or expense
157 sustained on account of any suit, judgment, execution, claim or demand resulting from
158 negligence, or intentional, wanton, willful or reckless acts on the part of the company in the
159 construction, operation or maintenance of the natural gas system under the terms of this
160 franchise. The ~~county~~ village shall notify the company promptly after presentation of any claim
161 or demand. The company also agrees to hold the ~~county~~ village harmless from any costs and
162 expenses resulting from section 16½-16.

163
164 **Sec. 16½-18. Insurance.**

- 165 (a) The company shall at all times maintain public liability and property damage insurance of
166 at least ten million dollars (\$10,000,000.00).
167 (b) The company shall be responsible for notifying the ~~county~~ village at once by its insurer,
168 of any deletions or modifications to its insurance coverage. The amount of coverage shall
169 be adjusted by the company from time to time as required by the ~~board of county~~

Words underlined are additions; Words ~~struck through~~ are deletions.

170 ~~commissioners~~ village council for the protection of the ~~county~~ village and the general
171 public, to insure against any liability which may result from any action of the company.
172 All proposed deletions or modifications in insurance coverage shall be submitted to the
173 ~~county~~ village by the company at least thirty (30) days prior to the effective date of the
174 change.

- 175 (c) The company's insurance policy shall co-name the ~~county~~ village as an additional insured.
176 (d) Certificates of insurance shall be filed with the ~~county~~ village annually. Certificates of
177 renewal shall be submitted at least thirty (30) days prior to the expiration date of any
178 insurance.

179

180 **Sec. 16½-19. Rights of landowners.**

181 Nothing in this franchise shall prevent landowners from exercising their vested rights or
182 privileges.

183

184 **Sec. 16½-20. Inclusion of section 125.42, F.S.**

185 Section 125.42, Florida Statutes is hereby included in this agreement in its entirety and
186 shall govern both parties notwithstanding any other provisions of this agreement. If section
187 125.42, F.S., is subsequently changed and/or if it is renumbered, the exact language most
188 proximate to the date of interpretation shall govern.

189

190 **Sec. 16½-21. Automatic termination.**

191 If the company does not commence construction on its gas distribution system authorized
192 herein, within one year from the date the gate station is set on the pipeline, the company's rights
193 and privileges granted hereunder shall automatically terminate one year and one day after the
194 date the gate station is set.

195

196 **Sec. 16½-22. Assignment.**

197 The company may assign all rights conferred upon it by this franchise, if, and only if, it
198 secures the prior approval of the ~~board of county commissioners~~ village council by resolution.
199 Any assignee, upon accepting such assignment shall execute an acknowledgment to the ~~county~~
200 village that it is subject to the provisions of the franchise.

201

202 **Sec. 16½-23. Change in form of government.**

203 A change in the form of ~~county~~ village government shall not affect the validity of this
204 franchise and a successor governmental unit shall automatically assume all of the rights and
205 obligations of the ~~county~~ village which are contained herein.

206

207 **Sec. 16½-24. Default.**

208 If the company fails to substantially comply with any of its material obligations set forth
209 herein, the ~~county~~ village may give written notice to the company specifying the provision(s)
210 under which the default is claimed, together with the facts which constitute the default. The
211 company shall have a period of six (6) months from the date of notice to cure the default.

Words underlined are additions; Words ~~struck through~~ are deletions.

212 If default is not cured, to the satisfaction of the ~~county~~ village by the end of this six-month
213 period, this franchise shall automatically terminate and all of the rights and privileges granted
214 to the company shall revert to the ~~county~~ village. In the event of a disagreement over the
215 existence of a default, the burden of proving the existence of the default shall be upon the
216 ~~county~~ village. The company shall have the burden of proving that a default has been cured.

217
218 **Sec. 16½-25. Contractual agreement.**

219 It is specifically agreed by and between the parties hereto that this franchise shall be
220 considered a nonexclusive franchise agreement between the company and the ~~county~~ village
221 and as such, is a contractual instrument recognized under the statutes and laws of the State of
222 Florida. This nonexclusive franchise agreement is not intended to nor shall it create rights or
223 actions in favor of third parties except as herein specifically provided.

224
225 **Sec. 16½-26. Cost of removal of gas lines.**

226 If the company is in default under this franchise and if such default is not cured in
227 accordance with the provisions contained herein, and/or if this franchise is terminated for any
228 reason whatsoever, the gas lines and other associated equipment and/or facilities which have
229 been installed by the company shall be removed. The cost of such removal and the cost of
230 restoration of the right-of-way to its condition immediately prior to the franchise grant date,
231 shall be fully borne by the company.

232
233 **Sec. 16½-27. Surety bond.**

234 The company is required to post a surety bond in the amount of fifty thousand dollars
235 (\$50,000.00), amount to be in effect from the date of initial construction until all work is
236 complete.

237
238 **Sec. 16½-28. Franchise fee.**

239 In consideration ~~Lee County~~ Estero granting to the company a franchise pursuant hereto
240 (section 16½-12) and further agreeing not to compete (Section 16½-16), the company shall
241 pay to the ~~county~~ village a fee of four (4) percent of its gross sales generated under this
242 franchise. Payment of the fees is to be made quarterly.

243
244 **Sec. 16½-29. Severability.**

245 The provisions of this article are severable; and if any section, subsection, sentence, clause
246 or provision is held invalid by any court of competent jurisdiction, the remaining provisions of
247 this article shall not be affected thereby.

248
249 **Sec. 16½-30. Acceptance.**

250 Within thirty (30) days of written notice to the company that it has been granted the
251 franchise, the company shall deliver to the ~~county administrator~~ village manager its written
252 acceptance of the franchise authorized by this article. The written acceptance shall specifically
253 refer to and accept the terms of this article. If the company fails to submit such acceptance

Words underlined are additions; Words ~~struck through~~ are deletions.

254 within this period, then this franchise, together with all of the rights and privileges herein
255 granted, shall be null and void and of no force and effect.

256
257 **Section 2.** Effective Date. This Ordinance shall become effective immediately upon
258 adoption by the Village Council of the Village of Estero, Florida.

259
260 **PASSED** on first reading this 10th day of July, 2019.

261
262 **PASSED AND ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero,
263 Florida this 2nd day of October, 2019.

264
265 Attest: **VILLAGE OF ESTERO, FLORIDA**

266
267
268 By: _____ By: _____
269 Kathy Hall, MMC, Village Clerk Bill Ribble, Mayor

270
271 Reviewed for legal sufficiency:

272
273
274 By: _____
275 Burt Saunders, Esq., Village Attorney

| | | | |
|-----|-----------------------|-------|-------|
| 276 | | | |
| 277 | | | |
| 278 | Vote: | AYE | NAY |
| 279 | Mayor Ribble | _____ | _____ |
| 280 | Vice Mayor Errington | _____ | _____ |
| 281 | Councilmember Batos | _____ | _____ |
| 282 | Councilmember Boesch | _____ | _____ |
| 283 | Councilmember Levitan | _____ | _____ |
| 284 | Councilmember McLain | _____ | _____ |
| 285 | Councilmember Wilson | _____ | _____ |

Words underlined are additions; Words ~~struck through~~ are deletions.