

ORDINANCE NO. 5895 AS AMENDED

**AN ORDINANCE APPROVING THE CONDITIONAL TRANSFER OF
NATURAL GAS UTILITY POWER TO THE FAIRBANKS NORTH STAR
BOROUGH**

WHEREAS, the need for energy cost relief is paramount for all residents of Interior Alaska, and past efforts to solve the problem have been unsuccessful; and

WHEREAS, the construction of a natural gas pipeline from the North Slope to utilize the stranded gas is a fundamental infrastructure need for the State of Alaska that is long overdue; and

WHEREAS, constructing liquefied natural gas (“LNG”) processing facilities on the North Slope and trucking gas to Fairbanks is the most promising short term solution since a gas pipeline is still years away; and

WHEREAS, Flint Hills Resources and Golden Valley Electric Association are jointly working on the construction of an LNG facility that will produce 9 billion cubic feet (“BCF”) per year leaving only approximately 2 BCF/year potentially available for space heating; and

WHEREAS, Fairbanks Natural Gas is also planning a North Slope LNG facility that will produce up to 7 BCF/year for space heating needs through an expansion of its existing natural gas distribution system; and

WHEREAS, the Fairbanks North Star Borough is proposing the creation of an Interior Alaska Natural Gas Utility (“IANGU”) to explore available public-private partnership options; creation of this utility would require the City of North Pole and the City of Fairbanks to transfer powers to the Borough; and

WHEREAS, the Borough does not currently have the legal authority to create such a utility, but it may acquire that power on an areawide basis if the cities of Fairbanks and North Pole transfer their utility powers to the Borough by ordinance; and

WHEREAS, the City of Fairbanks has made several requests that have been incorporated into the Borough’s draft implementing ordinance, including retention of all earnings by the utility financially separating it from the Borough, a change in board member makeup which gives each municipality an appointment to the utility board, and expansion of the “purpose” definition; and

WHEREAS, the City of Fairbanks has concerns about the creation of a public utility that could potentially compete with a private sector provider and views IANGU first as a facilitator, second as an implementing corporation that contracts, partners or joint ventures with private

companies, and third as a provider/competitor if services are not currently being provided or if the private entity is unwilling to provide them or will not do so in a timely manner; and

WHEREAS, the City of Fairbanks has a long history of running utilities and is very much aware of the difficulties associated with them and the challenges a board faces in controlling costs over a period of time, costs which could be greatly mitigated if the utility, rather than being an operating company, accomplishes its goals by contracting, partnering, and/or joint venturing with private industry, and

WHEREAS, the IANGU could be of utmost help by providing a conduit for low interest financing and grants available to public entities,

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

Section 1. The City of Fairbanks transfers to the Fairbanks North Star Borough its power to own and operate a natural gas utility.

Section 2. Transfer of this power is conditioned upon the adoption by the Borough Assembly of an ordinance containing the provisions regarding the management organization as set out in the attached proposed Borough Ordinance No. 2012 - 52, including:

a. The City of Fairbanks and the City of North Pole shall each have the right to appoint one board member of the seven member board of directors.

b. Direct competition in an area covered by a Certificate of Public Convenience & Necessity by the Regulatory Commission of Alaska will not be initiated without approval of the City of Fairbanks by resolution. In the event such authority is given, IANGU is only authorized to operate via a contract with a non-governmental entity unless this option is not available.

c. Compensation of the IANGU Board of Directors shall not exceed compensation paid to the Assembly Members of the Fairbanks North Star Borough.

d. IANGU shall report its activities to the public on at least a quarterly basis.

e. To the extent the power is not exercised within three years from the date of this ordinance, the City of Fairbanks revokes the unexercised portion of this transfer of power. Any extension must be authorized by a new ordinance.

f. Should any grant funds awarded to the IANGU or awarded for gas utility projects be administered by the Borough, the fee for administering such grants (by either the IANGU or the Borough) may not exceed 0.25%.

g. During the term for which elected and for one year thereafter, no local elected municipal official may be directly or indirectly employed by the Utility in any paid position or nominated, elected or appointed to the Board if the Board was created or the salary, compensation, or emoluments of the Board were increased during the elected official's term of office. For the purposes of this subsection, the term "employment by the Utility" includes payment from any business entity that contracts with the Utility and any contractual or consulting arrangement between the Utility and with any business entity partially or wholly owned by the elected municipal official or in which the elected municipal official has an interest.

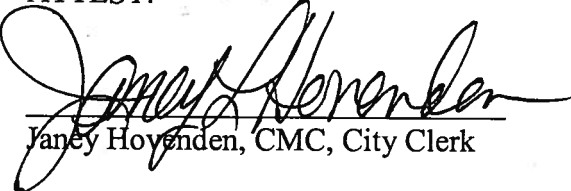
Section 3. That the effective date of transfer of power provided by this Ordinance shall be November 15, 2012.



Jerry Cleworth, City Mayor

AYES: Eberhart, Gatewood, Stiver, Matherly, Roberts
NAYS: Hilling
ABSENT: None
ADOPTED: October 08, 2012

ATTEST:



Janey Hoyenden, CMC, City Clerk

APPROVED AS TO FORM:



Paul Ewers, City Attorney

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By: Nadine Winters
Luke Hopkins
Diane Hutchison
John Davies
Karl Kassel
Mike Musick
Introduced: 09/13/12

FAIRBANKS NORTH STAR BOROUGH
ORDINANCE NO. 2012 - 52

AN ORDINANCE ACQUIRING AN AREAWIDE NATURAL GAS UTILITY POWER BY
TRANSFER FROM THE CITIES OF FAIRBANKS AND NORTH POLE,
ESTABLISHING THE INTERIOR ALASKA NATURAL GAS UTILITY AND PROVIDING
FOR ITS MANAGEMENT

WHEREAS, Article X § 13 of Alaska's Constitution authorizes a city
located in a borough to transfer to the borough any of its powers or functions unless
prohibited by law or charter; and

WHEREAS, both the City of North Pole and the City of Fairbanks are
home rule cities authorized to acquire, own and operate public utilities and to exercise
all powers and functions necessarily or fairly implied in or incident to that purpose; and

WHEREAS, Alaska statutes (AS 29.35.210(d), AS 29.35.300, and AS
29.35.310) expressly authorize a second class borough, like the Fairbanks North Star
Borough, to exercise on an areawide basis a power acquired by transfer from a city; and

WHEREAS, it is in the best interest of the citizens of the Fairbanks North
Star Borough to create an areawide natural gas utility empowered to ensure its citizens
affordable access to natural gas and/or propane; and

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35 WHEREAS, an areawide natural gas utility will allow for tax exempt
36 financing, access to governmental funding, and provide transparency of operations; and
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38 WHEREAS, the areawide natural gas utility, once established, can explore
39 available public-private partnership options in order to operate in a businesslike, cost-
40 effective manner.

41

42 NOW, THEREFORE, BE IT ORDAINED by the Assembly of the Fairbanks
43 North Star Borough:

44

45 Section 1. This ordinance is of a general and permanent nature and shall,
46 except for sections 2 and 3, be codified.

47

48 Section 2. Approval of Transfer by Cities. The Fairbanks North Star
49 Borough hereby accepts the transfer to the Borough by the City of Fairbanks and the
50 City of North Pole of the power to acquire, own, and operate a natural gas utility. The
51 Fairbanks North Star Borough agrees to the following two conditions on the transfer: (1)
52 Except as otherwise provided by city charter, the cities may revoke the unexercised
53 portion of the transferred power to the extent it is not exercised within three years from
54 the date of this ordinance and (2) Each city council shall have the right to confirm the
55 appointment by their mayor of at least one member of the Board of Directors of the
56 Utility. For purposes of this ordinance, the power to acquire, own, and operate a natural
57 gas utility includes, without limitation, the power to acquire, own and operate
58 distribution, transmission, and transportation-related facilities and pipelines and
59 conditioning facilities as well as all powers necessarily or fairly implied in or incident to
60 that purpose. Such powers are intended to be broadly construed.

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62 Section 3. Orderly Transition. The Fairbanks North Star Borough, in
63 consultation with the Cities of Fairbanks and North Pole, shall arrange for an orderly
64 and equitable transfer of rights and other matters related to acquisition of the areawide
65 powers.

66

67 Section 4. FNSB 1.02.050, acquired areawide powers, shall be amended
68 to add the following (the Clerk shall provide the appropriate date):

69 9. Natural Gas Utility by transfer _____, 2012.

70

71 Section 5. FNSB Code of Ordinances is hereby amended to add a new
72 Title as follows:

73 Title 11. Natural Gas Utility

74

75 Chapter 11.01 Establishment of Utility and Management

76 11.01.010 Establishment. There is established the Interior Alaska Natural
77 Gas Utility, the purpose of which is to facilitate if possible or provide, if necessary,
78 affordable natural and/or manufactured gas to the largest number of people in the
79 Fairbanks North Star Borough in the shortest amount of time. The Interior Alaska
80 Natural Gas Utility shall be a public corporation and an instrumentality of the Fairbanks
81 North Star Borough. It shall be wholly owned by the Fairbanks North Star Borough but
82 shall have a legal existence independent of and separate from the Borough.

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84 11.01.020 Application of Laws. The Utility shall, as a public corporation,
85 comply with the Open Meetings Act and other applicable state laws. Borough
86 ordinances not of general public application shall apply only as specified herein or as
87 specifically made applicable in any adopted ordinance. Ordinances not of general
88 public application include the procurement code, the personnel ordinance and the
89 ordinance requiring a vote for revenue bonds.

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91 11.01.030 Management.

92 A. There is hereby created a seven member independent and non-partisan
93 Interior Alaska Natural Gas Utility Board of Directors who shall oversee the work
94 necessary to achieve the purpose of the Utility which specifically may include
95 management and operation of a natural gas utility. The Board shall annually elect a
96 chair and may elect other officers from among its members. The Board shall have the
97 authority to adopt and amend bylaws subject to assembly approval. The Board shall
98 report to the Assembly at least quarterly and shall provide an annual report which must
99 include financial statements audited by independent outside auditors.

100 B. The initial appointments to the Board shall be made as follows: three by
101 the Borough Mayor, one by the assembly presiding officer, one by the City of North Pole
102 and two by the City of Fairbanks, each confirmed by the respective governing body.
103 Appointments shall be made for staggered terms (as determined by lottery) with two
104 members serving for two years, two serving for three years and three serving for four
105 years with their terms ending when their successors are elected or appointed. Upon the
106 expiration of the first four initial appointed terms of office, their successors shall be
107 elected at large by the voters of the Fairbanks North Star Borough. Upon expiration of
108 the last three initial appointed terms, their successors shall be appointed, one by the
109 Borough Mayor, one by the City of North Pole Mayor and one by the City of Fairbanks
110 Mayor, each subject to confirmation by the respective governing body. After the
111 expiration of their initial terms all shall thereafter serve a term of three years.

112 C. The Utility shall be independently managed and operated by the Board of
113 Directors in accordance with prevailing industry practices and general standards
114 common to utilities providing the same utility service. The Board, not the Fairbanks
115 North Star Borough, shall oversee the management of the Utility and shall have the
116 powers necessary or convenient to the management and operation of the Utility. The
117 Borough intends that the Board shall have full authority respecting the Utility unless that

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118 authority is specifically withheld by law or ordinance. During its first year of operation
119 the Board may request and use, at the discretion of the Mayor, available Borough
120 resources such as staff and equipment. Thereafter, the Board may not utilize the
121 resources of the Borough except as authorized by the Assembly. The Board may
122 contract or act only on behalf of the Utility and not on behalf of the Fairbanks North Star
123 Borough. The Fairbanks North Star Borough shall not be liable for the debts or liabilities
124 of the Utility without specific authorization by the Fairbanks North Star Borough
125 Assembly. No general obligation bonds may be issued without voter approval. The
126 Board shall maintain a separate account for the Utility which shall be kept and classified
127 in accordance with uniform accounting standards generally prescribed for public utilities
128 providing the same utility service. The Board may acquire and dispose of capital
129 assets.

130 D. Manager. The Board of Directors may enter into contracts or other
131 agreements to provide for the management and operation or any aspect thereof of the
132 natural gas utility and shall have the authority to appoint a Manager which may be an
133 individual or a private entity.

134 E. The Board shall have a separate capital and operating budget. Provided
135 that total Utility annual budgeted revenues at least equal total annual budgeted
136 expenses, no further Borough Assembly approval is required. If required, the Borough
137 Assembly shall have approval only over the total budget amount and may not raise or
138 lower any other line item. Earnings shall be retained by the Utility to enable the Utility to
139 meet its purpose of providing affordable natural and/or manufactured gas to the largest
140 number of people in the borough in the shortest amount of time.

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142 Section 6. Effective Date. This ordinance shall be effective at 5:00 p.m.
143 of the first Borough business day following its adoption.

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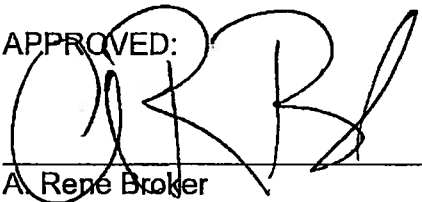
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PASSED AND APPROVED THIS _____ DAY OF _____, 2012.

Diane Hutchison
Presiding Officer

ATTEST:

APPROVED:



A. Rene Broker
Borough Attorney

Mona Lisa Drexler, MMC
Borough Municipal Clerk

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