

ORDINANCE NUMBER 1099

AN ORDINANCE OF THE CITY OF PERRIS GRANTING TO SOUTHERN CALIFORNIA GAS COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO LAY AND USE PIPES AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING GAS FOR ANY AND ALL PURPOSES UNDER, ALONG, ACROSS OR UPON THE PUBLIC STREETS, WAYS, ALLEYS AND PLACES, AS THE SAME NOW OR MAY HEREAFTER EXIST, WITHIN SAID MUNICIPALITY

THE CITY COUNCIL OF THE CITY OF PERRIS DOES ORDAIN AS FOLLOWS:

SECTION ONE

Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions (unless, in the given instance, the context wherein they are used shall clearly import a different meaning):

(a) The word "Grantee" shall mean Southern California Gas Company, and its lawful successors or assigns;

(b) The word "City" shall mean the City of Perris, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated or reincorporated form;

(c) The word "streets" shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within said City;

(d) The word "Engineer" shall mean the City Engineer of the City;

(e) The word "franchise" shall mean and include any authorization granted hereunder in terms of a franchise, privilege, permit, license or otherwise to lay and use pipes and appurtenances for transmitting and distributing gas for any and all purposes under, along, across or upon the public streets, ways, alleys and places in the City, and shall include and be in lieu of any existing or future City requirement to obtain a license or permit for the privilege of transacting and carrying on a business within the City;

(f) The word "gas" shall mean natural or manufactured gas, or a mixture of natural and manufactured gas;

(g) The phrase "pipes and appurtenances" shall mean pipe, pipeline, cable, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, appliance, attachment, appurtenance and any other property located or to be located in, upon, along, across, under or over the streets of the City, and used or useful in, or in carrying on the business of, transmitting and distributing gas; and

(h) The phrase "lay and use" shall mean to lay construct, erect, install, operate, maintain, use, repair, replace, or remove.

SECTION TWO

(a) That the right, privilege and franchise, subject to each and all of the terms and conditions contained in this ordinance, and pursuant to the provisions of Division 3, Chapter 2 of the Public Utilities Code of the State of California, known as the Franchise Act of 1937, be and the same is hereby granted to Grantee to lay and use pipes and appurtenances for transmitting and distributing gas for any and all purposes, under, along, across or upon the streets of the City.

(b) The term or period of this franchise shall be forty (40) years from and after the effective date hereof; that is to say, this franchise shall endure in full force and effect until the same shall, with the consent of the Public Utilities Commission of the State of California, be voluntarily surrendered or abandoned by its possessor, or until the State of California or some municipal or public corporation thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of this franchise, and situated within the territorial limits of the State, municipal or public corporation purchasing or condemning such property, or until this franchise shall be forfeited for noncompliance with its terms by the possessor thereof.

(c) In the event the Franchise Act of 1937 ("Franchise Act") is amended by the Legislature or interpreted by a final decision of the Supreme Court of the State of California in a manner that materially affects or materially changes the rights or obligations of the parties (both of which events are hereafter referred to as "Change in Law"), City or Grantee shall have the option of requesting that the parties meet to negotiate changes to this franchise which may be appropriate in view of such Change in Law. Such option shall be exercised by written notice ("Negotiation Notice") given by the party desiring the change to the other at least six months (and not more than nine months) before the end of a ten-year anniversary of the date the ordinance was adopted. Such Negotiation Notice shall be given to the City Clerk, if to City, and to the Vice President, Local Distribution Services, if to the Grantee. The Notice shall require the parties to meet and to negotiate in a commercially reasonable manner; if the parties are unable to agree upon new terms within 180 days after the Notice was given ("Negotiation Period"), the term of this franchise shall become determinate and shall expire at the end of the calendar year first occurring after the end of the Negotiation Period. Provided, however, that if the party requesting the negotiation sends notice to the other before the end of the calendar year that the party desires the franchise to continue, the franchise will continue in effect subject to all the terms and conditions that were applicable immediately before the Negotiation Notice was given.

This option may only be exercised once every ten years (as provided above) and the terms to be negotiated shall be limited to those affected by the Change in Law.

SECTION THREE

(a) The Grantee shall pay to the City at the times hereinafter specified, in lawful money of the United States, a sum annually which shall be equivalent to two percent (2%) of the gross annual receipts of Grantee arising from the use, operation or possession of said franchise; provided, however, that such payment shall in no event be less than one percent (1%) of the gross annual receipts of the Grantee derived from the sale of gas within the limits of the City under this franchise.

(b) The Grantee of this franchise shall file with the Clerk of the City within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the grant of this franchise, and within three (3) months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross receipts of the Grantee, its successors or assigns, during the preceding calendar year, or such fractional calendar year, from the sale of the utility service within the City for which this franchise is granted. It shall be the duty of the Grantee to pay to the City within fifteen (15) days after the time for filing such statement in lawful money of the United States, the specified percentage of its gross receipts for the calendar year, or such fractional calendar year, covered by such statement. Any neglect, omission or refusal by said Grantee to file such verified statement, or to pay said percentage, at the times or in the manner hereinbefore provided, shall be grounds for the declaration of a forfeiture of this franchise and of all rights thereunder.

SECTION FOUR

This grant is made in lieu of all other franchises owned by the Grantee, or by any successor of the Grantee to any rights under this franchise, for transmitting and distributing gas within the limits of the City, as said limits now or may hereafter exist, and the acceptance of the franchise hereby granted shall operate as an abandonment of all such franchises within the limits of this City, as such limits now or may hereafter exist, in lieu of which this franchise is granted.

SECTION FIVE

The franchise granted hereunder shall not become effective until written acceptance thereof shall have been filed by the Grantee thereof with the Clerk of the City. When so filed, such acceptance shall constitute a continuing agreement of the Grantee that if and when the City shall thereafter annex or consolidate with additional territory, any and all franchise rights and privileges owned by the Grantee therein shall likewise be deemed to be abandoned within the limits of the additional territory.

SECTION SIX

The franchise granted hereunder shall not in any way or to any extent impair or affect the right of the City to acquire the property of the Grantee hereof either by purchase of

through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or to abridge, either for a term or in perpetuity, the City's right of eminent domain in respect to the Grantee; nor shall this franchise ever be given any value before any court or other public authority in any proceeding of any character in excess of the cost to the Grantee of the necessary publication and any other sum paid by it to the City therefor at the time of the acquisition thereof.

SECTION SEVEN

The Grantee of this franchise shall:

(a) construct, install and maintain all pipes and appurtenances in accordance with and in conformity with all of the ordinances, rules and regulations heretofore, or hereafter adopted by the legislative body of this City in the exercise of its police powers and not in conflict with the paramount authority of the State of California, and, as to State highways, subject to the provisions of general laws relating to the location and maintenance of such facilities;

(b) pay to the City, on demand, the cost of all repairs to public property made necessary by any operations of the Grantee under this franchise;

(c) indemnify and hold harmless the City and its officers from any and all liability for damages proximately resulting from any operations under this franchise; and be liable to the City for all damages proximately resulting from the failure of said Grantee well and faithfully to observe and perform each and every provision of this franchise and each and every provision of Division 3, Chapter 2 of the Public Utilities Code of the State of California;

(d) remove or relocate, at the request of the City without expense to the City, any facilities installed, used and maintained under this franchise if and when made necessary by any lawful change of grade, alignment or width of any public street, way, alley or place, including the construction of any subway or viaduct by the City;

(e) file with the legislative body of the City within thirty (30) days after any sale, transfer, assignment or lease of this franchise, or any part thereof, or of any of the rights or privileges granted thereby, written evidence of the same, certified thereto by the Grantee or its duly authorized officers.

SECTION EIGHT

(a) The Engineer shall have the power to give the Grantee such directions for the location of any pipes and appurtenances as may be reasonably necessary to avoid sewers, water pipes, conduits or other structures lawfully in or under the streets; and before the work of constructing any pipes and appurtenances is commenced, the Grantee shall file with said Engineer plans showing the location thereof, which shall be subject to the approval of said Engineer (such approval not to be unreasonably withheld); and all such construction shall be subject to the inspection of said Engineer and done to his reasonable satisfaction. All street coverings or openings of traps, vaults and manholes shall at all times be kept flush with the

surface of the streets; provided, however, that vents for underground traps, vaults and manholes may extend above the surface of the streets when said vents are located in parkways, between the curb and the property line.

(b) Where it is necessary to lay any underground pipes through, under or across any portion of a paved or macadamized street, the same, where practicable and economically reasonable shall be done by a tunnel or bore, so as not to disturb the foundation of such paved or macadamized street; and in the event that the same cannot be so done, or in the event it is necessary to cut the street in order to access existing pipes and appurtenances, such work shall be done under a permit to be granted by the Engineer upon application therefor. Provided, however, that the fee to Grantee for such a permit shall be imposed on a nondiscriminatory basis only to the extent such fees are imposed generally on all non-governmental applicants for such permits within the City, and the amount of such fee shall not exceed the reasonable expense to the City of processing such permit and inspecting the work done thereunder.

SECTION NINE

If any portion of any street shall be damaged by reason of defects in any of the pipes and appurtenances maintained or constructed under this grant, or by reason of any other cause arising from the operation or existence of any pipes and appurtenances constructed or maintained under this grant, Grantee shall, at its own cost and expense, immediately repair any such damage and restore such portion of such damaged street to as good condition as existed before such defect or other cause of damage occurred, such work to be done under the direction of the Engineer, and to his reasonable satisfaction.

SECTION TEN

(a) If the Grantee of this franchise shall fail, neglect or refuse to comply with any of the provisions or conditions hereof, and shall not, within ten (10) days after written demand for compliance, begin the work of compliance, or after such beginning shall not prosecute the same with due diligence to completion, then the City, by its legislative body, may declare this franchise forfeited.

(b) The City may sue in its own name for the forfeiture of this franchise, in the event of noncompliance by the Grantee, its successors or assigns, with any of the conditions thereof.

SECTION ELEVEN

The Grantee of this franchise shall pay to the City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of this franchise; such payment to be made within thirty (30) days after the City shall furnish such Grantee with a written statement of such expenses.

SECTION TWELVE

After the publication of this ordinance, the Grantee shall file with the City Clerk a written acceptance of the franchise hereby granted, and an agreement to comply with the terms and conditions hereof.

SECTION THIRTEEN

The City Clerk shall certify to the adoption of this ordinance and, within 15 days after its adoption, shall cause the same (with a list of the Councilmembers voting for and against) to be published once in the Perris City News.

ADOPTED, SIGNED, and APPROVED this 14th day of May, 2002.

Mayor, Daryl R. Busch

ATTEST:

City Clerk, Margaret Rey

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) §
CITY OF PERRIS)

I, Margaret Rey, CITY CLERK OF THE CITY OF PERRIS, CALIFORNIA, DO HEREBY CERTIFY that the foregoing Ordinance Number 1099, introduced at a regular meeting of the City Council of the City of Perris held on the 30th day of April, 2002, was duly and regularly adopted by the City Council at a regular meeting thereof held on the 14th day of May, 2002, and that it was so adopted by the following called vote:

AYES: Busch, Yarbrough, Landers, Motte
NOES:
ABSENT: Rogers
ABSTAIN:

City Clerk, Margaret Rey