

ORDINANCE NO. 32

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, GRANTING TO SOUTHERN CALIFORNIA GAS COMPANY, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE TO CONSTRUCT, MAINTAIN AND USE PIPES AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING GAS FOR ANY AND ALL PURPOSES IN, ALONG, ACROSS, UPON, AND UNDER THE PUBLIC STREETS AND PLACES WITHIN THE CITY OF WILDOMAR

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

**SECTION 1 DEFINITIONS.**

Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meaning 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 Wildomar, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged 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, including state highways, now or hereafter established within said city, and freeways hereafter established within said city;

(d) The word "franchise" shall mean and include any authorization granted hereunder in terms of a franchise, privilege, permit, license or otherwise to construct, maintain and use pipes and appurtenances for the business of transmitting and distributing gas for 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;

(e) The phrase "pipes and appurtenances" shall mean pipes, pipelines, mains, services, traps, vents, cables, conduits, vaults, manholes, meters, appliances, associated communications infrastructure, attachments, appurtenances, and any other property located or to be located in, upon, along, across, or under the streets of the city,

and used or useful in the transmitting and/or distributing of gas;

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

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

(h) The phrase "gross annual receipts" shall mean gross operating receipts received by Grantee from the sale of gas to Grantee's customers less uncollectible amounts and less any refunds or rebates made by Grantee to such customers pursuant to California Public Utilities Commission orders or decisions.

**SECTION 2 PURPOSE.**

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 construct, maintain 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.

**SECTION 3 TERM.**

Said franchise shall be indeterminate from and after the effective date hereof; that is to say, said 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 the Grantee, or until the state 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 said franchise and situated in the territorial limits of the state, municipal, or public corporation purchasing or condemning such property, or until said franchise shall be forfeited for non-compliance with its terms by the Grantee pursuant to Section 9 of this Ordinance.

**SECTION 4 CONSIDERATION.**

(a) The Grantee of said franchise shall, during the term thereof, pay to the City at the times hereinafter specified, in lawful money of the United States, 1) a sum annually which shall be equivalent to two percent (2%) of the gross annual receipts of said 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 Grantee derived from the sale of gas within the limits of said City under this franchise and 2) all applicable surcharge payments due pursuant to the Municipal Public Lands Use Surcharge at California Public Utilities Code Section 6350 et seq.

(b) The Grantee shall file with the Clerk of said city, within three (3)

months after the expiration of the calendar year, or fractional calendar year, following the date of the granting hereof, 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 annual receipts of such Grantee during the preceding calendar year, or such fractional calendar year, from the sale of gas within said City. Such Grantee shall pay to said city within fifteen (15) days after the time for filing such statement, in lawful money of the United States, the aforesaid percentage of its gross annual receipts for such calendar year, or such fractional calendar year, covered by such statement.

## **SECTION 5 OTHER FRANCHISES.**

This grant is made in lieu of all other gas utility 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 gas utility franchises within the limits of this City, as such limits now or may hereafter exist, in lieu of which this franchise is granted.

## **SECTION 6 OBLIGATIONS OF GRANTEE.**

(a) All facilities or equipment of Grantee shall be constructed, installed and maintained 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 the general laws relating to the location and maintenance of such facilities.

(b) 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.

(c) The Grantee shall 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.

(d) Notwithstanding any other provision of this ordinance, Grantee hereby expressly agrees to be subject to any ordinance, rule or regulation adopted heretofore or hereafter by the City in the exercise of its police powers and not in conflict with the paramount authority of the State of California requiring Grantee to obtain a permit from the City prior to excavating any paved street within the City, or to pay a fee to the City in association with such permit or approval consistent with California Government Code Section 66014 et seq.

(e) Except for such losses or damages caused by the negligence or

willful misconduct of City and any officers and employees, Grantee shall indemnify, save, and hold harmless, City and any officers and employees thereof against and from all damages, judgments, decrees, costs and expenditures which city, or such officer or employee, may suffer, or which may be recovered from, or obtainable against City, or such officer or employee, for, or by reason of, or growing out of or resulting from the exercising by Grantee of any or all of the rights or privileges granted hereby, or by reason of any act or acts of Grantee or its servants or agents in exercising the franchise granted hereby, and Grantee shall defend any suit that may be instituted against City, or any officer or employee thereof, by reason of or growing out of or resulting from the exercise by Grantee of any or all of the rights or privileges granted hereby, or by reason of any act or acts of Grantee, or its servants or agents, in exercising the franchise granted hereby.

## **SECTION 7 REMOVE OR RELOCATE FACILITIES.**

(a) City reserves the right for itself to lay, construct, erect, install, use, operate, repair, replace, remove, relocate or maintain below surface or above surface improvements of any type or description in, upon, along, across, under or over the streets of the City. City further reserves the right to lawfully change the grade, alignment or width of any street. If the necessary exercise of the aforementioned reserved rights conflicts with any pipes and appurtenances of Grantee constructed, maintained, and used pursuant to the provisions of the franchise granted hereby, Grantee shall, without cost or expense to City within ninety (90) days after written notice from the City Manager, or his designated representative, and request so to do, begin the physical design and field construction of changing the location of all facilities or equipment so conflicting. Grantee shall proceed promptly to complete such required work.

(b) Irrespective of any other provision of this ordinance, Grantee's right to construct, maintain, and use, or remove pipes and appurtenances thereto shall be subject at all times to the right of the City, in the exercise of its police power, to require the removal or relocation of said pipes and appurtenances thereto at the sole cost and expense of Grantee and such work shall be done to the reasonable satisfaction of the City, except (1) as the law may otherwise provide, or, (2) except where Grantee's right to possession is pursuant to instruments evidencing right-of-way, easements or other interest in real property, or (3) except where the removal or relocation is made at the request of the City on behalf of or for the benefit of any private developer, CalTrans, or other third party.

(c) In the event that the City is made aware of a project developed by a governmental agency, water company, private party or the City that would be located within five hundred feet of a regulator station or other major gas facilities, City shall notify Grantee and initiate discussions among the implicated parties in order to assess potential economic and community impacts and facilitate coordinated and economically reasonable outcomes.

**SECTION 8 TRANSFER OR SALE OF FRANCHISE.**

Grantee of the franchise granted hereby shall 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 9 FORFEITURE.**

This franchise is granted upon each and every condition herein contained. Nothing shall pass by the franchise granted hereby to Grantee unless it be granted in plain and unambiguous terms. Each of said conditions is a material and essential condition to the granting of the franchise. If Grantee shall fail, neglect or refuse to comply with any of the conditions of the franchise granted hereby, and if such failure, neglect or refusal shall continue for more than thirty (30) days after written demand by the City Manager for compliance therewith, then City, by the City Council, in addition to all rights and remedies allowed by law, thereupon may terminate the rights, privilege, and franchise granted in and by this ordinance, and all the rights, privileges and the franchise of Grantee granted hereby shall thereupon be at an end. Thereupon and immediately, Grantee shall surrender all rights and privileges in and to the franchise granted hereby. No provision herein made for the purpose of securing the enforcement of the terms and conditions of the franchise granted hereby shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies and procedure outlined herein or provided, including forfeiture, shall be deemed to be cumulative.

**SECTION 10 ACQUISITION AND VALUATION.**

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 or 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 11 PUBLICATION COSTS.**

The Grantee of said 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 thereof, such payment to be made within thirty (30) days after the City shall have furnished such Grantee with a written statement of such expenses.

**SECTION 12**      EFFECTIVE DATE.

The franchise granted hereby shall not become effective until written acceptance thereof shall have been filed by the Grantee with the City Clerk. 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 13**      WRITTEN ACCEPTANCE.

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 14**      PUBLICATION.

The City Clerk shall certify to the adoption of this ordinance, and within fifteen (15) days after its adoption, shall cause the same (with a list of the Council Members voting for and against) to be published in a newspaper of general circulation published and circulated in said City.

**PASSED APPROVED AND ADOPTED** this 22nd day of July, 2009.

  
\_\_\_\_\_  
Scott Farnam  
Mayor

**APPROVED AS TO FORM:**

**ATTEST:**

  
\_\_\_\_\_  
Julie Hayward Biggs  
City Attorney

  
\_\_\_\_\_  
Debbie A. Lee, CMC  
City Clerk

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE )  
CITY OF WILDOMAR )

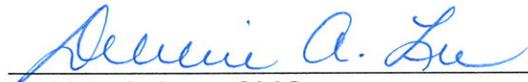
I, Debbie A. Lee, CMC, City Clerk of the City of Wildomar, California, do hereby certify that the foregoing Ordinance No. 32 was introduced at a regular meeting of the City Council of the City of Wildomar, California, on July 8, 2009, and was duly adopted at a regular meeting held on July 22, 2009, by the City Council of the City of Wildomar, California, by the following vote:

AYES: Mayor Farnam, Mayor Pro Tem Moore, Council Members Ade, Cashman

NOES: None

ABSTAIN: None

ABSENT: Council Member Swanson



Debbie A. Lee, CMC  
City Clerk  
City of Wildomar