

**RESOLUTION NO. 48-11**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND IMPLEMENTING CHAPTER 47 TO ARTICLE XIII OF THE RICHMOND MUNICIPAL CODE RELATING TO THE GRANT OF DETERMINATE PIPELINE FRANCHISES TO CONSTRUCT, MAINTAIN AND USE PIPES AND APPURTENANCES, NECESSARY OR PROPER FOR TRANSMITTING SUBSTANCES UNDER, ALONG, ACROSS OR UPON ANY PUBLIC PLACE WITHIN THE CITY AND ESTABLISHING PAYMENTS FOR PIPELINE FRANCHISES**

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**Section 1.**    Findings

The Council of the City of Richmond finds and declares:

1.        On September 21, 2010, the City Council of the City of Richmond adopted Ordinance No. 27-10 N.S., entitled “An Ordinance of the City Council of the City of Richmond Relating to the Grant of Determinate Pipeline Franchises to Construct, Maintain and Use Pipes and Appurtenances, Necessary or Proper for Transmitting Substances Under, Along, Across or Upon Any Public Place Within the City and Adding Chapter 47 To Article XIII of the Richmond Municipal Code” (the “Ordinance”); and new Chapter 13.47 of the Richmond Municipal Code added specific provisions relating to the grant of franchises to maintain, operate, renew, repair, change the size of, remove or abandon in place pipes and pipelines for the collection, transportation or distribution of oil, gasoline, petroleum, gas of any type or nature, hydrocarbon substances, hydrogen, water, waste water, mud, steam, and other approved liquid or gaseous substances, together with all manholes, valves, appurtenances and service connections necessary or convenient for the operation of said pipes or pipelines including conduits, cathodic protection devices, wires, cables and other appurtenances necessary or convenient for the exercise of the Grantee’s business, in, under, along or across any and all Public Places within the City of Richmond, and to provide rules, regulations, restrictions and terms and conditions for granting such franchises; and

2.        Section 13.47.050(b)(1) of Chapter 47 provides that the Applicant shall deposit with the City an estimate of costs in an amount established by resolution with the City as a condition to the City processing an application for a franchise.

3.        Section 13.47.080(a) of Chapter 47 provides that the Grantee of a franchise shall pay the annual franchise payments as established by resolution of the City or such other payments negotiated with the Grantee.

4.        Section 13.47.080(b) of Chapter 47 provides that, in the case of an initial grant of franchise, or franchises which extend, renew, or continue previously granted franchises, a base granting payment shall be set by resolution of the City.

5.        Section 13.47.120(e) of Chapter 47 provides that, if the Grantee of a franchise applies for authority to abandon all or a portion of its facilities in place, and the City Engineer determines that abandonment in place of all or part of the facilities may be effected without detriment to the public interest, the Grantee shall pay to the City a payment established by resolution of the City.

6.        The City Council, by this resolution, intends to establish the following franchise related payments under Chapter 47.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RICHMOND DOES HEREBY RESOLVE, AS FOLLOWS:**

**Section 1.**    Pursuant to Section 13.47.050 and Section 13.47.080 of the Richmond Municipal Code (“Code”), the following franchise payments and charges shall be paid by an Applicant, as defined by Section 13.47.020 of the Code, applying for a franchise under Chapter 13.47 from the City of Richmond (“City”):

**1.        Application Deposit.**

A.        Pursuant to Section 13.47.050(b)(1), at the time at which an Applicant submits any application for a franchise from the City or the renewal of an existing franchise, the

Applicant shall deposit with the City the amount of Two Thousand Five Hundred Dollars (\$2,500) to reimburse the City for the estimated costs of the City in processing an application for a franchise (“Application Deposit”).

B. Pursuant to Section 13.47.050(b)(2), in the event that the City Manager or the City Engineer determines that the City’s oversight and administrative costs may exceed the initial Application Deposit, the Applicant shall deposit additional funds with the City within ten (10) calendar days of the City’s request so as to fully reimburse the City as contemplated by Section 13.47.050(b)(2).

C. Any amount of the Application Deposit which has not been expended by the City in connection with the processing of an Applicant’s application shall be credited toward the Applicant’s granting payment.

**2. Granting Payment.**

A. The Applicant for a franchise shall pay to the City on or before the date the franchise is granted to an Applicant in lawful money of the United States a granting payment as consideration to the City for the grant of a franchise, as follows:

1. Seven Thousand Five Hundred Dollars (\$7,500) for pipelines with a total length of 1/4 mile or more, minus any credit accrued from the nonrefundable Application Deposit of Two Thousand Five Hundred Dollars (\$2,500.00) which has not been expended by the City in connection with the application.

2. Seven Hundred Fifty Dollars (\$750) for pipelines with a total length of less than 1/4 mile, minus any credit accrued from the nonrefundable Application Deposit of Two Thousand Five Hundred Dollars (\$2,500.00) which has not been expended by the City in connection with the application, provided, however, that if at any time during the first five (5) years following the grant of a franchise, additional pipeline is added which will result in a total length of pipeline of 1/4 mile or more, the Grantee shall pay the City the Six Thousand Seven Hundred and Fifty Dollars (\$6,750) at the same time the additional footage is added.

**Section 2.** In addition to the granting payment, a Grantee shall pay following annual franchise payments to the City in the manner and at the time set forth in Section 13.47.080 of the Code as the annual consideration for a pipeline franchise from the City:

**A. Public Utility Not Transmitting Oil or Products Thereof.**

1. The Grantee of any franchise awarded to a public utility *not* transmitting oil or products thereof, as consideration for such franchise, shall annually pay to the City in lawful money of the United States, within sixty (60) days after the end of each calendar year and during the life of the franchise for each and every year, including the year of granting the franchise, two percent (2%) of the gross annual receipts of the Grantee arising from the use, operation or possession of the franchise; provided, however, that such payment shall in no event be less than two percent (2%) of the gross annual receipts of the Grantee derived from the sale within the limits of the municipality of the utility service for which the franchise is awarded; or such other amounts as are provided in Section 6231 of the Public Utilities Code of the State of California.

2. The Grantee shall also collect and remit to the City, as applicable, any municipal surcharge as provided in Public Utilities Code §§ 6350-6354.1.

**B. Public Utility Transmitting Oil or Products Thereof.**

1. The Grantee of any franchise awarded to a public utility transmitting oil or products thereof, as consideration for such franchise, shall, within sixty (60) days after the end of each calendar year and during the life of the franchise for each and every year, including the year of granting the franchise, annually pay to the City in lawful money of the United States, a payment in the following amounts:

<b>Pipelines With An Internal Diameter of</b>	<b>Base Rate Per Lineal Foot</b>
0-4	\$0.088
6	0.132
8	0.176
10	0.220
12	0.264
14	0.308
16	0.352
18	0.396
20	0.440
22	0.484
24	0.528
26	0.572
28	0.616
30	0.660

2. For pipelines with an internal diameter not listed above, the payments shall be in the same proportion to the payments of a 12-inch-diameter pipe as the diameter of the unlisted pipe is to 12 inches.

3. The amount of the payment or charge provided for in this section shall be multiplied by the Consumer Price Index, All Urban Consumers for the San Francisco-Oakland-San Jose (CMSA) Area for the month of September immediately preceding the month in which payment is due and payable, and divided by the Consumer Price Index, All Urban Consumers for the San Francisco-Oakland-San Jose (CMSA) Area for June 30, 1989, which is declared to be 100.0.

4. Provided, however, the amount of the payment shall in no event be less than the amount of the payment provided in and as calculated under Public Utilities Code § 6231.5, as that section may be amended from time to time.

**C. Non-Public Utility Franchises Transmitting Oil Or Products Thereof Or Industrial Gas.**

The City will set on an individual basis in the ordinance granting the franchise the annual franchise payment for any pipeline franchise awarded to non-public utility transmitting either oil or products thereof or industrial gas, including the extension, renewal, or continuation of a previously granted franchise. In determining the amount of such annual payment, the City shall take into account relevant considerations including but not limited to (1) the internal diameter and lineal footage of the pipeline; (2) the material to be transmitted or transported; (3) the proposed location of the pipeline and related Facilities; (3) the location of the pipeline and related Facilities; (4) the potential administrative burden and costs of administering the franchise and supervising franchise operations; (5) the potential health, safety and environmental risks and impact associated with the pipeline and related Facilities; (6) the amount of revenue generated under the franchise in relation to the City's potential costs; and (7) such other factors that the City considers appropriate at the time of the application.

**D. Other Pipeline Franchises.**

The City will establish on an individual basis in the ordinance granting the franchise the annual franchise payment for any pipeline franchise awarded for any pipeline other than those specified in Sections A, B and C above, or for the extension, renewal, or continuation of a previously granted franchise. In determining the amount of such annual payment, the City shall take into account relevant considerations including but not limited to (1) the internal diameter and lineal footage of the pipeline; (2) the material to be transmitted or transported; (3) the proposed location of the pipeline and related Facilities; (3) the location of the pipeline and related Facilities; (4) the potential administrative burden and costs of administering the franchise and supervising franchise operations; (5) the potential health, safety and environmental risks and

impact associated with the pipeline and related Facilities; (6) the amount of revenue generated under the franchise in relation to the City's potential costs; and (7) such other factors that the City considers appropriate at the time of the application.

**E. Favored Nations – Special Provisions for Regulated Franchises.**

In the event any Grantee of a Franchise agrees to or otherwise obtains a franchise, license or permit from another city, county or governmental agency in the State of California that provides terms and conditions for the payment of an annual payment in excess of that provided for in this Resolution, the Grantee shall notify the City and provide the City with a copy of such franchise, license or permit, within 30 days of the approval of such franchise or other agreement. The City shall then have the sole option to adopt and effect a unilateral amendment to the Franchise to increase the annual Franchise payment payable to the City under the Franchise, to no more than the greater annual franchise payment payable to such other city, county or governmental agency, to the extent permitted by Applicable Law. In exercising said discretion the City shall consider whether the franchisee has demonstrated to the satisfaction of the City that there is some characteristic, feature or circumstance of the pipeline in the other jurisdiction that would make it inequitable for the City to exercise its rights under this section. The Grantee shall be notified of the City's consideration of a proposed amendment of the franchise to increase the annual payment prior to the adoption of such an amendment.

**F. Adjustments.**

1. The amount of each base payment specified in Sections A, B, C, D, and E shall be adjusted at the time payment is due by the percentage change in the Consumer Price Index, all Urban Consumers for the San Francisco-Oakland-San Jose (CMSA) Area (1982-84 = 100), for the period January 1, 2010 to the date which is sixty (60) days prior to the due date of the payment.

2. In no event shall any payment be charged which is less than the base payment amount established herein.

3. The indices specified herein are calculated and published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau discontinues the calculation or publication of the Consumer Price Index, all Urban Consumers for the San Francisco-Oakland-San Jose (CMSA) Area, and no transposition table is available to convert to another index, then the amount of each annual adjustment in base payments shall be computed by using a comparable governmental index.

**Section 3.** In addition to the annual franchise payment, a Grantee shall pay the following base construction payments to the City in the manner and at the time set forth in Section 13.47.080 of the Code:

**A. Base Construction Payments.** The Grantee of a franchise shall pay at the time of installation, relocation, or replacement of any pipeline or other facility covered by the franchise, a base construction payment of two thousand three hundred and fifty dollars (\$2,350) for each 1/2 mile of pipeline or fractional part thereof installed, replaced or relocated on major streets and one thousand five hundred and fifty dollars (\$1,550) per 1/2 mile or fractional part thereof, on minor streets.

**B. Adjustments.** The amount of each base payment specified in Section A shall be adjusted at the time payment is due in the manner set forth in Section 2.F of this Resolution.

**Section 4.** In addition to the annual franchise payment and any base construction payments, a Grantee shall also pay the following payment to the City in the manner and at the time set forth in Section 13.47.120 of the Code to abandon in place all or part of its Facilities upon approval by the City Engineer:

**A. Abandonment Payments.** If the Grantee applies for authority to abandon all or a portion of its facilities in place, and the City Engineer determines that abandonment in place of

all or part of the Facilities may be effected without detriment to the public interest, the Grantee shall pay to the City an abandonment payment which shall be computed, as follows:

<b>Pipelines with an Internal Diameter of</b>	<b>Amount Per Lineal Foot</b>
0 – 12 inches	\$15.00
14 – 18 inches	22.00
20 – 30 inches	28.00

**B. Adjustments.** The amount of each base payment specified in Section A shall be adjusted at the time payment is due in the manner set forth in Section 2.F of this Resolution.

**Section 5.** The City Council finds and determines that the payments and charges established by this resolution are in an amount that is either the reasonable value of the use of public places or reasonably necessary to recover the costs and expenses to be incurred by the City in administering pipeline franchises within the City or are otherwise expressly permitted by Applicable Law.

**Section 6.** The definitions set forth in Chapter 47 of Article XIII of the Richmond Municipal Code, including but not limited to those definitions set forth in Section 13.47.020 and in Chapter 1 of Article I of the Richmond Municipal Code, are hereby unincorporated by reference into this resolution whether or not the specific term is capitalized herein or in Chapter 47, and this resolution shall be interpreted in accordance with the rules of construction set forth in Chapter 47, as well as Chapter 1 of Article I of the Richmond Municipal Code, and the Charter of the City.

**Section 7.** The City Clerk shall certify to the passage and adoption of this resolution and shall make a minute of the passage and adoption thereof in the records and proceedings of the City Council at which the same is passed and adopted.

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular joint meeting thereof held on **June 21, 2011**, by the following vote:

AYES: Councilmembers Beckles, Booze, Ritterman, Rogers, and Vice Mayor Butt, and Mayor McLaughlin.

NOES: Councilmember Bates.

ABSTENTIONS: None.

ABSENT: None.

DIANE HOLMES  
CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

GAYLE MCLAUGHLIN  
Mayor

Approved as to form:

RANDY RIDDLE  
City Attorney

State of California            }  
County of Contra Costa        } : ss.  
City of Richmond               }

I certify that the foregoing is a true copy of **Resolution No. 48-11**, finally passed and adopted by the City Council of the City of Richmond at a regular joint meeting held on June 21, 2011.