

Chapter 5A

INDUSTRIAL GAS PIPELINE LICENSE*

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ARTICLE I. ADMINISTRATIVE

Sec. 5A-1. Short title.

This chapter shall be known and may be cited as the "Industrial Gas Pipeline Ordinance."

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-2. Purpose.

The purpose of this chapter is to provide for the regulations and control of the industrial gas pipeline by the City of Phoenix in the public interest; to authorize the City of Phoenix to grant one or more licenses to operate an industrial gas pipeline to one or more licensees and to require that the provisions of this chapter shall be applicable to all licenses granted by the City of Phoenix.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

ARTICLE II. DEFINITIONS

Sec. 5A-3. Definitions.

For the purposes of this chapter, the following words, terms, phrases, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

City means the City of Phoenix, a municipal corporation of the State of Arizona, and all of the territory within its present and future corporate boundaries.

City Council means the Council of the City of Phoenix.

Gross annual revenues means all the licensee's gross revenues per year from industrial users of the pipeline within the City of Phoenix.

Industrial gas pipeline or *pipeline*, sometimes referred to as "industrial gas pipeline system," means any pipeline or system of pipelines and all necessary appurtenances to the pipeline or system used to transport inert, nontoxic, nonflammable gas for industrial purposes to industrial users who pay for the service but does not include any pipeline or system of pipelines that transports gas for power, light or fuel.

State law reference—Similar provisions, A.R.S. § 9-551(1).

Industrial user means a user who receives gas from a licensee by means of a pipeline for industrial purposes.

License means the non-exclusive authorization granted by the City to construct, operate and maintain an industrial gas pipeline within all or part of the City and to occupy or use the streets within the City. The license shall be evidenced by a separate granting ordinance and license document and subject to the terms of this chapter.

License document means the written authorization granted by the City to the licensee for operation of an industrial gas pipeline system as evidenced by a license signed by the City Manager, including referenced exhibits and specifications, license applications, and other related material.

Licensee means the person or entity to which license henceforth is granted for the construction, operation, maintenance, and reconstruction of an industrial gas pipeline.

Licensor means the City of Phoenix as represented by the City Council, City Manager, or their designee acting within the scope of their authority.

Section means any section, subsection, or provision of this ordinance.

Street maintenance easement means the right of the City to go upon private streets for street maintenance purposes.

Streets and public ways means the surface of and the space above and below any public street, sidewalk, rights-of-way, alley, right-of-way easements, or other public way of any type whatsoever, now or hereafter existing as such within the City.

Year means a full calendar year. Fiscal years may include any twelve-month period. (Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Cross reference—Definitions and rules of construction generally, § 1-2.

ARTICLE III. LICENSE DURATION, TERMINATION, RENEWAL AND TRANSFER

Sec. 5A-4. License.

In the event that City grants to a licensee a non-exclusive license (as provided herein) to construct, operate, maintain, and reconstruct an industrial gas pipeline within the City, said license shall require that the licensee comply with the provisions of this chapter. The license may include in the license document such additional provisions as the licensor shall require to protect the public welfare, safety and health and comply with the standards established by this chapter.

Any license granted shall be subject to the terms and conditions contained in this chapter which terms and conditions are incorporated by this reference as if fully set forth therein. In the event of conflict between the terms and conditions of the license and the terms and conditions on which the City can grant a license as

set forth in applicable Arizona law or the City Charter, the applicable Arizona law and Charter shall, without exception, control.

Nothing in the license shall be deemed to waive the requirement of the various codes and ordinances of the City regarding permits, fees to be paid or manner of construction.

The license may be issued conditional upon the meeting of requirements set out in this chapter and contained in the license document. (Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

State law reference—License required and authorized, A.R.S. §§ 9-552, 9-554.

Sec. 5A-5. Use of public streets and ways.

A. Any license granted pursuant to the provisions of this chapter shall authorize the licensee to engage in the business of operating and maintaining an industrial gas pipeline in the City, and for that purpose the licensee may erect, install, construct, repair, replace, and reconstruct, under the streets and public ways within the City such pipelines, manholes, appliances, attachments and other property and equipment as are necessary and appurtenant to the operation of the industrial gas pipeline system.

B. Prior to construction or alteration, however, the licensee shall in each case file plans with the street transportation and any other department as may be designated by the licensor and, where required, receive written approval in the form of a permit before proceeding. In the case of emergency repairs, licensee may obtain verbal approval for the repair from the appropriate Street Transportation Department personnel, however, in all cases the licensee must later file plans and obtain a permit. Wherever the facilities or related construction activity of the licensee create a serious hazard to public safety or welfare, the licensee shall

take all necessary actions to immediately abate the hazard. If the licensee cannot contact the City immediately, the licensor shall proceed to abate the hazard immediately and shall notify the City, file plans, obtain a permit and make any required changes as soon as possible.

(Ord. No. G-2199, § 1; Ord. No. G-3313, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996; Ord. No. G-5487, § 2, adopted 3-3-2010, eff. 4-2-2010)

Sec. 5A-6. Term.

(a) The license shall be effective upon execution by the City Manager of the license document authorized by the City Council and the compliance by licensee with the provisions of section 5A-39. The effective date of the license shall be the first day of the calendar month in which execution by the City and compliance by licensee with the provisions of 5A-39 has occurred. The term of the license shall be for a term specified in the license document. In no event, however, will a license be issued for a term longer than fifteen years. (Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-7. License non-exclusive.

Any and all licenses granted are non-exclusive. The licensor specifically reserves the right to grant, at any time, such additional licenses for an industrial gas pipeline as it deems appropriate.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-8. License nontransferable.

The license shall not be sublet or assigned, nor shall any of the rights or privileges therein granted or authorized be leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or

any right, interest or property therein, pass to or vest in any person, except the licensee, either by act of the licensee or by operation of law, without the consent of the City expressed by ordinance. The granting of such consent shall not render unnecessary any subsequent consent.

The licensee, upon transfer as heretofore described, and having, prior to such transfer, obtained the consent of the City, shall within sixty days thereafter file with the City a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, transfer or lease, certified and sworn to as correct by the licensee.

Every such transfer as heretofore described, whether voluntary or involuntary, shall be deemed void and of no effect unless licensee shall within sixty days of the transfer, file such certified copy as is required.

Nothing in this section shall be deemed to prohibit a pledge or hypothecation or mortgage or similar instrument transferring conditional ownership of all or part of the system's assets to a lender or creditor in the ordinary course of business. In the event a lender assumes control of the assets and operation of the licensee through a default of the licensee in loan obligations, the lender may assume the rights and obligations of the licensee. The lender may not transfer or change control of the license without submitting the change to the City for approval. If the lender does continue operation on any basis at any time, he shall be subject to all provisions of the license. No later than three years after assumption of control by the lender, the lender shall apply to the City for the right to continue assumption of control or to transfer the license. Application by the lender for approval of such assumption of control or transfer shall be subject to all provisions set forth herein on consent by the City Council and shall not be

unreasonably denied or upheld. A "lender" as discussed herein shall not include a company, person or corporation or other entities who operate industrial gas pipeline systems as a principal or important business. This paragraph is intended to prohibit the intentional use of lending and/or foreclosure as a method for effecting change of control or transfer of the license without City Council review and approval.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-9. Revocation of license.

Any license issued hereunder may, after public hearing, be revoked, altered, or suspended by the licensor as it deems necessary on any of the following grounds:

- (a) For willful false or misleading statements in, or material omissions from, any application;
- (b) For failure to file and maintain the faithful performance bond, security fund or insurance coverage or pay license fees as required under this chapter;
- (c) For repeated failure, as determined by the licensor, to maintain a safe industrial gas pipeline under the standards prescribed by this chapter and the license document;
- (d) For any sale, lease, assignment, or transfer of control of its license without prior consent of the City;
- (e) For violation of material terms of this chapter or material terms of a license issued pursuant to this chapter;
- (f) Any instance in which all or part of licensee's facilities are sold under an

instrument to secure a debt and are not redeemed by licensee within thirty days from said sale;

- (g) Any fraud or deceit by the licensee in its conduct or relations under the license;
- (h) Failure to meet any conditions established in a license or if the licensee fails to perform as required in areas designated as grounds for revocation in the license;
- (i) Willful or grossly negligent repeated violations of this chapter, the license or representations made in the application process, or any rule, order or regulation of the licensor.

Upon determination by the City Manager that one or more of the above grounds or other grounds for revocation, alteration or suspension of the license exists, the City shall notify the licensee of that determination and shall state the major causes and reasons supporting the determination. The licensee shall be granted ten days to respond to the notification statement. The City shall consider the response of the licensee, if any, and may terminate, postpone for a period, or proceed with the revocation, alteration or suspension process. If the City proceeds with the revocation, alteration or suspension process, or reactivates a postponed proceeding, a statement of revocation, alteration or suspension shall be written stating the principal reasons for such action and a copy of the statement shall be sent by registered mail to the licensee at his principal place of business within the City. This statement and a notice of public hearing shall be published in a newspaper of general circulation and a public hearing shall be scheduled thirty days after publication. The City Council shall take final action on the revocation, alteration or suspension of the license after completion of the public hearing.

Upon revocation of a license, the City may declare a forfeiture, whereupon all rights of the holders of the license shall immediately be divested without a further act upon the part of the licensor, and the licensee shall forthwith remove its structures or property from the streets and public ways and restore them to such condition as the licensor may require and upon failure to do so, the licensor may perform the work and collect the cost thereof from the licensee. At the option of City, licensee may abandon structures or property in place pursuant to section 5A-18(b) and (c) herein.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

State law reference—Termination of license authorized, A.R.S. § 9-553(B).

Sec. 5A-10. Expiration.

Upon expiration of the initial term of the license, the licensor shall have the right to, as further provided herein:

- (a) Renew or extend the license;
- (b) Invite additional license applications or proposals;
- (c) Terminate the license without further action; or
- (d) Purchase the system.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-11. Renewal or extension.

The license may be renewed or extended by the licensor, upon application of the licensee, in accordance with the then existing rules of the State and City law. Nothing in this provision shall be construed to require such renewal or extension.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-12. Right to purchase the system.

There is hereby reserved to the City the right to acquire the property of the licensee utilized in the performance of its license by purchase or through the exercise of the right of eminent domain in accordance with the conditions set forth in the Arizona Revised Statutes. However, under no circumstances shall any valuation be made for any right or privilege granted by a license issued under authority of this chapter should the City acquire the property of the licensee.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-13. Right of inspection of records.

(a) There shall be kept in designated licensor offices a separate record for the license, which record shall show the things hereafter set forth. The licensee shall provide such information in such form as may be required by the licensor for said records. The licensee shall provide the City an annual report on the following:

- (1) The gross annual revenues and the character and extent of the service rendered therefor to them.

The books of records kept by the licensee shall be open to examination by the licensor at any time during the business hours of the licensee's office. The information shall be furnished by the licensee to the licensor upon request, and at the licensee's own cost and expense.

The licensor shall have the right to inspect all books, records, maps, plans, data from income tax returns which is limited to and relates to the license, financial statements, and other like material of the licensee which is pertinent to the license at any time during normal business hours.

Any records provided the licensor by the licensee relating to specific charges for services rendered to specific customers shall be deemed privileged and confidential and shall not be available for public release, unless such information is required to be released by statute or judicial order.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-14. Right of inspection of construction.

The licensor shall have the right to inspect all construction or installation work performed subject to the provisions of the license and to make such tests as it shall find necessary to ensure compliance with the terms of this license and other pertinent provisions of law.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-15. Right of intervention.

The licensor shall have the right of intervention in any suit or proceeding involving the license to which the licensee is party, and the licensee shall not oppose such intervention by the licensor.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-16. Indemnification.

(a) *Indemnification.*

- (1) Licensee shall fully indemnify, defend and hold harmless the City, its officers, boards, commissions, elected officials, agents, attorneys, representatives, and employees against any and all costs, damages, expenses, claims, suits, actions, liabilities and judgments for damages, including but not limited to, reasonable expenses for legal fees, whether

suit be brought or not, and disbursements and liabilities incurred or assumed by City in connection with:

- a. Damage to persons or property, in any way arising out of or through the acts or omissions of licensee, its officials, agents, attorneys, representatives or employees;
 - b. Requests for relief arising out of any licensee action or inaction which results in a claim for invasion of the right of privacy; for defamation of any person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark or patent; or of any other right of any person, firm or corporation;
 - c. Any and all claims arising out of licensee's failure to comply with the provisions of this chapter or a license or any federal, State or local law, or regulation applicable to licensee;
 - d. Any and all disputes arising out of a claim by any party other than City or licensee wherein damages or other relief is sought:
 - (i) As a result of the City's licensing of licensee; or
 - (ii) As a result of the renewal or nonrenewal of licensee's license.
- (2) If a lawsuit covered by the provisions of subsection (a)(1) be brought against City, either independently or jointly with licensee, or with any other person or municipality, licensee, upon notice given by City, shall defend City at the cost of licensee. If final judgment is obtained against City, either independently or

- jointly with licensee or any other defendants, licensee shall indemnify City and pay such judgment with all costs and satisfy and discharge the same.
- (3) City shall cooperate with the licensee and reserves the right to participate in the defense of any litigation.
 - (4) The provisions of this chapter shall not be read to impose any liabilities on the City not imposed by other law, or to waive any immunities the City may have under federal or State law.
 - (5) A licensee shall make no settlement in any matter identified above without the City's written consent, which shall not be unreasonably withheld. Failure to inform the City of settlement shall constitute a breach of the license and the City may seek any redress available to it against the licensee whether set forth in this chapter or under any other municipal, State or federal laws.
 - (6) All rights of City, pursuant to indemnification, insurance, security fund, or faithful performance bond(s), as provided for by this chapter, are in addition to all other rights the City may have under this chapter or any other chapter, rule, regulation or law.
 - (7) The City's exercise of or failure to exercise all rights pursuant to any section of this chapter shall not affect in any way the right of City subsequently to exercise any such rights or any other right of City under this chapter or any other chapter, rule, regulation or law.
 - (8) It is the purpose of this subsection to provide maximum indemnification to the City under the terms and conditions expressed and, in the event of a dispute, this section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the City by the licensee.
 - (9) The provisions of this subsection shall not be dependent or conditioned upon the validity of this chapter or the validity of any of the procedures or agreements involved in the award or renewal of a license, but shall be and remain a binding right and obligation of the City and licensee even if part or all of this chapter, or the grant or renewal of a license, is declared null and void in a legal or administrative proceeding. It shall be expressly stated in a license, that it is the intent of the licensee and City, upon the effective date of the license, that the provisions of this subsection survive any such declaration and shall be a binding obligation of and inure to the benefit of the licensee and City and their respective successors and assigns, if any.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-17. License fees.

(a) For any license granted pursuant to this ordinance, the licensee shall pay to the licensor an annual amount of two percent of the licensee's gross annual revenues. The licensee shall pay the license fee because, among other things, the streets and public ways which are used by the licensee in the operation of its industrial gas pipeline within the boundaries of the City are valuable public properties acquired and maintained by the City at great expense to its taxpayers, and that the grant to the licensee to use said streets and public ways is a valuable property right without which the licensee would be required to invest substantial capital in right-of-way costs and acquisitions.

(b) Payments due the licensor under this provision shall be computed annually, for the preceding year, as of December 31. Each annual payment shall be due and payable no later than thirty days after the date listed in the previous sentence. If such payment is not made by the date due, the City shall impose interest at a rate of one and one-half percent per month commencing from the date payment should have been made and continuing until the payment is made. Fractions of a month shall be considered to constitute a full month for the purpose of computing interest. Each payment shall be accompanied by a brief report showing the basis for the computation and such other relevant facts as may be required by the licensor. The amount due shall be reported and remitted to the City Treasurer on forms prescribed by the City Treasurer.

(c) No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the licensor may have for further or additional sums payable under the provisions of this permit. All amounts paid shall be subject to audit and recomputation by the licensor.

(d) In no event will the licensee pay the City pursuant to this section an amount less than two thousand dollars per calendar year, or portion thereof, for the term of this license and initial payment of said sum shall be paid to the City upon acceptance of its license for the first calendar year and a two thousand dollar payment shall be made each year in advance for each additional calendar year or portion thereof for the term of the license.

(e) If the license is terminated, revoked, or forfeited prior to the time specified in the license, the licensee shall immediately submit to the licensor a detailed financial statement

showing the gross annual revenues of the licensee for the time elapsed since the last period for which the licensee has paid to the licensor the required fee, and the licensee shall pay to the licensor, not later than thirty days following the termination, the appropriate percentage of the gross annual revenue due. The licensor's duly authorized agent is empowered to audit, examine, and verify all such financial statements and financial records of the licensee and to that end shall be entitled to a full inspection of the licensee's books, records and documents. (Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-18. Abandonment; right to require removal of property.

(a) In the event that the use of a substantial part of the industrial gas pipeline is discontinued for any reason for a continuous period of twelve months, or in the event such industrial gas pipeline or property has been installed in any street or public place without complying with the requirements of the license or this chapter, or the license has been terminated, canceled or has expired without renewal, the licensee shall promptly, upon being given ten days' notice from the City, commence with the removal from the streets or public places all such property of such industrial gas pipeline other than such underground property which the City may permit to be abandoned in place. In the event of such removal, the licensee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City subject to the licensor's customary practice to review upon request of licensee.

(b) Any property of the licensee remaining in place without the consent of the City one hundred eighty days after the termination or

expiration of the license shall be at the option of the City considered permanently abandoned. The City may extend such time.

(c) Any property of the licensee permitted to be abandoned in place shall be abandoned in such a manner as the City shall prescribe. Upon permanent abandonment of the property of the licensee in place, the property shall become property of the City, and the licensee shall submit to the City an instrument in writing, to be approved by the City Attorney, indicating licensee's loss of any further ownership rights to such property.
(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-19. Costs of publication of license.

The licensee shall pay the costs of publication of the license, as such publication is required by law.
(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

ARTICLE IV. SYSTEM OPERATION AND MAINTENANCE

Sec. 5A-20. Liability insurance.

(a) Within five days after the effective date of a license granted under this chapter, the licensee shall file with the licensor and maintain on file throughout the term of this license for the mutual benefit of the City and the licensee a commercial general liability insurance, written on an occurrence basis, against claims for bodily injury, death or property damage occurring on or about the licensee's industrial gas pipeline system and appurtenances, which insurance shall cover such claims as may be occasioned by any act, omission or negligence of the licensee or its officers, agents, representatives, employees during all times that

the licensee will be using, maintaining and operating the industrial gas pipeline system and appurtenances granted under the terms of this license. The minimum types of coverage and limits of such liability coverage shall not be less than:

<i>Type of Insurance</i>	<i>Minimum Limits of Liability</i>
Commercial general liability	\$1,000,000.00 combined single limit
Premises/operations	
Products/completed operations	
Contractual	
Independent contractors (OCP)	
Personal injury with Exclusion "C" deleted	
Automobile liability	\$1,000,000.00 combined single limit
Owned	
Hired	
Non-owned	

(b) The City shall have no responsibility of liability for such insurance coverage. An enumeration of specific insurance coverage and amounts shall not limit or restrict the indemnity covenants contained in this license. The licensee shall furnish the City with a certificate of insurance. The certificate shall be issued by an insurance company authorized to transact business in the State of Arizona, or be named on the list of authorized insurers maintained by the Arizona Department of Insurance. Insurance coverage shall not lapse during the life of the license. The license shall provide a renewal certificate of the required insurance coverage to the City not less than ten days prior to the expiration date.

(c) The licensee shall also provide catastrophe umbrella insurance coverage in the minimum amount of four million dollars in excess of one million dollars underlying coverage; and

(d) The City, its officers, agents and employees shall be named as an additional insured on the licensee's policy except worker's compensation and employers liability and this shall be

indicated on the certificate of insurance issued to the City. The licensee's coverage shall be primary for any and all losses arising out of the performance of the license; and

(e) The licensee's policy shall specifically provide full coverage for explosion, collapse and underground incidents.

(f) Said liability insurance policy shall carry a thirty days notice of cancellation endorsement.

(g) All deductible amounts under liability insurance coverage shall be approved by the licensor.

(h) The licensor may, during the term of the license, no more frequently than every three years, modify the liability insurance provisions provided for in this section based on increases in the CPI, so as to ensure full protection of the City and the public. The licensee shall have six months from the date of notification from the City Manager to comply with any increase.

(i) A licensee may self-insure the above-described policy coverages if such licensee or its parent is of sufficient financial standing to reasonably provide such insurance. A licensee that elects to self-insure shall file with the City a certificate of insurance as specified by the City.

(j) The licensee shall provide a letter of certification, from the Industrial Commission of Arizona, that the licensee is insured by the State compensation fund or is an authorized self-insurer or a certificate of insurance issued by an insurance company authorized by the Arizona Department of Insurance to provide worker's compensation and employer's liability insurance in the State of Arizona.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-21. Faithful performance bond.

The licensee shall, within thirty days after the award of a license under this ordinance, file with the licensor a performance bond in the amount of fifty thousand dollars, payable to the City, on the condition that the licensee shall well and truly observe, fulfill and perform each term and condition of the license, including the full amount of any compensation, indemnifications, or cost of removal or abandonment of any property of the licensee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond.

Upon initiation of system construction or initiation of the system construction schedule, the amount of bond shall be increased to at least three hundred thousand dollars or more as determined by the Street Transportation Director based on the level of construction in the right-of-way.

Beginning one year after completion of the construction schedule as required in the license, the amount of bond shall be reduced one hundred thousand dollars per year until the bond amount is one hundred thousand dollars. This amount shall be maintained for the remaining period of the license.

(Ord. No. G-2199, § 1; Ord. No. G-3313, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

ARTICLE V. DESIGN AND CONSTRUCTION PROVISIONS

Sec. 5A-22. License area.

The City may issue a license for any portion of the City up to and including the present territorial limits of the City and any other area henceforth added during the term of the license.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-23. Undergrounding of pipeline.

All industrial gas pipelines shall be installed underground, unless otherwise approved by the City.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-24. Construction standards.

In addition to meeting all applicable requirements of local plumbing and building codes, the licensee shall design and construct an industrial gas pipeline system of very high quality. The license may specifically establish standards and requirements for construction of the system commensurate with the goal of high quality.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-25. Installation of pipelines.

The licensee shall cause the pipeline design, construction, inspection, testing, operation and maintenance to be performed in accordance with Department of Transportation specification number 192 and all other standard applicable specifications and requirements of the City.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-26. Construction codes.

The licensee shall strictly adhere to all building and zoning codes and right-of-way permit conditions or regulations of the Street Transportation Director currently or hereafter in force and as may be specified in the license. The licensee shall arrange its pipelines, and other appurtenances, on public property, in such a manner as to cause no unreasonable interference with the use of said public property. In the event of such interference, the

licensor may require the removal of the licensee's pipelines and appurtenances from the property in question without cost to the City.

(Ord. No. G-2199, § 1; Ord. No. G-3313, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-27. Restoration of streets.

Whenever the licensee disturbs the surface or subsurface of any street or public way or adjoining public property or the public improvement located thereon, therein or thereunder for any purpose mentioned herein, the licensee shall promptly, at its own expense, restore, repair or replace the same to the satisfaction of the licensor (subject to the licensor's customary practice of review upon request of licensee). If such restoration, repair or replacement of the surface, subsurface or any structure thereon, therein or thereunder is not completed in a reasonable time or such restoration, repair or replacement does not meet the City's satisfaction, the licensor may perform the necessary restoration, repair or replacement, either through use of its own forces or through a hired contractor, and the cost thereof, including the cost of inspection and supervision, shall be paid by the licensee within thirty days after receipt of the City's invoice therefor. All excavations made by the licensee in the streets and public ways shall be properly safeguarded for the prevention of accidents. The work hereby required shall be done in strict compliance with the applicable rules, regulations and ordinances of the licensor as now or hereafter provided.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Cross reference—Excavations in streets, § 23-26.

Sec. 5A-28. Use of streets and public ways.

(a) The industrial gas pipeline system herein provided for, to be constructed, installed, operated and maintained hereunder, shall be so

located or relocated as to interfere as little as possible with traffic or other authorized uses over, under or through said streets and public ways. Those phases of construction relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of said industrial gas pipeline system herein provided for, shall be subject to regulation by the City. The licensee shall keep accurate installation records of the location of all facilities in the streets and public ways and furnish them to the City upon request. Licensee shall cooperate with the City to furnish such information in an electronic mapping format compatible with the current City electronic mapping format. Upon completion of new or relocation construction of underground facilities in the streets and public ways, the licensee shall provide the City with installation records in an electronic format compatible with the current City electronic mapping format showing the location of the underground and above-ground facilities.

(b) If, during the design process for public improvements the City discovers a potential conflict with proposed construction, the licensee shall either: (1) locate and, if necessary, expose its facilities in conflict or (2) use a pothole service under contract with the City to locate or expose its facilities. Licensee shall reimburse the City for the cost resulting from number (2) above. The City shall make every reasonable effort to design projects pursuant to this subsection so as to avoid relocation expense to the licensee. Licensee agrees to furnish the location information in a timely manner, but in no case longer than forty-five days.

(c) The City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any streets and public ways, aerial, surface, or subsurface improvement, including but not limited to water

mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the rights-of-way of the City limits.

(d) When the City uses its prior and superior right to the streets and public ways, the licensee shall move its property located in the streets and public ways, at its own cost, to such a location as the City directs. Notwithstanding the foregoing, in the event the public purpose project is paid for totally or in part by non-public funds, then the licensee's costs of moving its property shall be borne by the source of the non-public funds in the same ratio as the non-public funds bear to the total projects costs.

(e) If, during the course of a project, the City determines licensee's facilities are in conflict, the following shall apply:

- (1) Prior to City notice to proceed to contractor, the licensee shall, within a reasonable time, but in no event exceeding six months, remove or relocate the conflicting facility. This time period shall begin running upon receipt by the licensee of written notice from the City. However, if both the City and the licensee agree, the time frame may be extended based on the requirements of the project.
- (2) Subsequent to City notice to proceed to contractor, the City and the licensee will immediately begin the coordination necessary to remove or relocate the facility. Actual construction of such removal or relocation is to begin no later than seventy-two hours, if practicable, after written notification from the City of the conflict.

(f) The licensee agrees to obtain a permit as required by the license prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its pipeline system. Notwithstanding the foregoing, the City understands and acknowledges there may be instances when the licensee is required to make repairs, in compliance with federal and/or State laws, that are of an emergency nature. The licensee will notify the City prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification.

(g) The City shall not bear any cost of relocation of existing facilities, irrespective of the function served, where the City facilities or other facilities occupying the streets or public ways under authority of a City permit or license which must be relocated, are already located in the streets or public ways and the conflict between the licensee's potential facilities and existing facilities can only be resolved expeditiously as determined by the City by the movement of the existing City or permittee facilities.

(h) If licensee's relocation effort so delays construction of a public project causing the City to be liable for delay damages, the licensee shall reimburse the City for those damages attributable to the delay created by the licensee. In the event the licensee should dispute the amount of damages attributable to the licensee, the matter shall be referred to the City Manager. If damages are assessed by the licensor after final decision by the City, the licensee shall pay the City within thirty days. Late charges of five percent and interest charges of one and one-half percent per month shall be added for late payment.

(i) The installation, use and maintenance of the licensee's industrial gas pipeline system within the streets and public ways authorized herein shall be in such a manner as not to

interfere with the City's placement, construction, use and maintenance of its streets and public ways, street lighting, water pipes, drains, sewers, traffic signal systems or other City systems that have been, or may be, installed, maintained, used or authorized by said City.

(j) The licensee agrees not to install, maintain or use any of its industrial gas pipeline system in such a manner as to damage or interfere with any existing facilities of another utility located within the streets and public ways of the City and agrees to relocate its facilities, if necessary, to accommodate another facility relocation, that has a prior rights interest in the streets and public ways.

(k) The licensee shall obtain permits from the City for all construction and relocation in the streets and public ways. Further, the licensee shall reimburse the City for pavement damage as specified in the license. Reimbursement for pothole services and pavement damage is separate, and in addition to, any license fees included in the license. The licensee, at the time of or prior to submitting construction plans, shall provide the City with a description of the type of service to be provided by the licensee in sufficient detail for the City to determine compliance with this license.

(l) The entire cost of relocation shall be borne by the City if the licensee is required by the City to relocate facilities which are located in private easements or rights-of-way obtained by the licensee prior to the dedication of the public street or easement from which the facilities must be relocated. These prior rights of the licensee would also be unaffected by any subsequent relocation. "Prior rights" as used in this paragraph means property rights obtained by the licensee prior to the dedication of the streets or public ways from which the facilities are requested by the City to be relocated.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

ARTICLE VI. LICENSE REGULATION

Sec. 5A-29. City Manager's responsibility.

The City Manager or his designee shall have responsibility for performing the following functions:

- (a) Initiating proceeding for revocation, alteration or suspension of the license as established in this chapter.
- (b) Administering the provisions of this chapter.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-30. License administration and enforcement.

In all matters of license administration, the City Manager shall have authority to determine the licensee's compliance with the terms and provisions of the license, and in the event of noncompliance to exercise any or all of the remedies included in this chapter, except that license revocation, alteration or suspension may be accomplished as indicated in section 5A-9.

Should the licensee become dissatisfied with any material decision or ruling of the City Manager, the licensee may appeal the decision of the City Manager on issues of significance, to the City Council, which may refuse to consider the question in which case the decision of the City Manager shall be final, or the City Council may accept, reject or modify the decision of the City Manager.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

ARTICLE VII. RIGHTS OF INDIVIDUALS PROTECTED

Sec. 5A-31. Discriminatory practices prohibited.

The licensee shall not deny service, deny access, discriminate in hiring, compensation, or

promotion, discriminate in purchasing or ownership, or otherwise discriminate against subscribers, programmers, employees, vendors, investors, the general public or any other person, on the basis of race, color, religion, national origin, sex or age. The licensee shall comply at all times with all other applicable federal, State and City laws, and all executive and administrative orders relating to nondiscrimination. (Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-32. Permission of property owner required.

A license granted hereunder shall not and this chapter does not convey the right to install any pipeline or other piece of equipment by the licensee on private property.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

ARTICLE VIII. VIOLATIONS

Sec. 5A-33. Necessity for license.

It shall be unlawful for any person to establish, operate, construct or expand an industrial gas pipeline, as defined herein unless a license has been obtained pursuant to the provisions of this chapter, and unless the license is in full force and effect.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

State law reference—License required, A.R.S. § 9-554.

ARTICLE IX. INTERPRETATION

Sec. 5A-34. Compliance with laws.

The licensee shall comply with all federal and State of Arizona laws, as well as all City

ordinances, resolutions, rules, and regulations heretofore or hereafter adopted or established during the entire term of the license.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-35. Captions.

The captions to articles and sections throughout this chapter are intended solely to facilitate reading and reference to the sections and provisions of this chapter. Such captions shall not affect the meaning or interpretation of this chapter.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-36. No recourse against the licensor.

The licensee shall have no recourse whatsoever against the licensor or its officials, boards, commissions, agents, or employees for any loss, costs, expense, or damage arising out of any provision or requirement of the license or because of the enforcement of the license or because of defects in this chapter or license issuance hereunder.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-37. Non-enforcement by the licensor.

The licensee shall not be relieved of its obligation to comply with any of the provisions of this chapter or license by reason of any failure of the licensor upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-38. Rights reserved to the City.

(a) There is hereby reserved to the City every right and power which is required to be herein reserved or provided by any ordinance or the Charter of the City, and the licensee, by its acceptance of any license, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or power, heretofore or hereafter enacted or established.

(b) Neither the granting of any license nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

(c) No privilege or exemption shall be granted under this ordinance except those specifically prescribed herein.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

ARTICLE X. THE LICENSE DOCUMENT

Sec. 5A-39. The license document—Issuance and acceptances.

(a) The license granted by the City shall be evidenced by a license document which the City Council by separate ordinance shall authorize the City Manager to execute and issue to the licensee subject to the conditions of this chapter and granting ordinance.

(b) No license granted pursuant to the provisions of this chapter shall become effective until all provisions required in this section are completed, all of such provisions being hereby declared to be conditions precedent to the effectiveness of any such license granted hereunder. In the event any of such provisions are not completed in the time and manner required, the license shall be null and void.

(c) Within twenty days after the effective date of the ordinance awarding any license, or within such extended period of time as the City Council in its discretion may authorize, the licensee shall submit to the City its written acceptance of the license, in form satisfactory to the City Attorney, together with the faithful performance bond and insurance policies or certificates required by this chapter and its license, and its acknowledgment that it will be bound by and comply with everything which is required of the licensee by the provisions of this chapter and the applicable license. Such acceptance shall be acknowledged by the licensee and shall, in form and content, be satisfactory to and approved by the City Attorney. (Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

ARTICLE XI. APPLICATION PROCESS*

Sec. 5A-40. Purpose of this article.

The purpose of this article is to provide for the control of the application for industrial gas pipeline licenses and to specify the form and requirements for submitting an application to the City.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-41. Application for license.

Prospective applicants will be expected to be aware of any restrictions on their eligibility that are or may be imposed by this chapter 5A of the Phoenix City Code entitled "Industrial Gas Pipeline." Upon compliance with these requirements, any person may file an application for a license upon payment of the prescribed fee.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

*State law reference—License application, A.R.S. § 9-553.

Sec. 5A-42. Form of application.

All applications for an industrial gas pipeline license shall be submitted on the form entitled "Industrial Gas Pipeline Application" on file in the office of the City Clerk, which form is incorporated herein by reference. The application form shall also contain a statement by the applicant that he will, upon request by the City, provide such other information as is necessary to allow the consideration of the materiality of the application, the quality, the character, and ability of the applicant, its affiliates, parents or subsidiaries. The City Manager is authorized to make such changes or revisions in the industrial gas pipeline application form as he may find necessary in order to make the form consistent with requirements of this chapter. The City Manager is authorized to waive such provisions of this article XI as he deems appropriate on requests to renew an existing license.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-43. Solicitation of applicants.

(a) The granting or denial of an industrial gas pipeline license is a legislative function invested exclusively in the discretion of City Council.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

Sec. 5A-44. Fees for application.

Each application shall be accompanied by a one thousand dollar returnable filing fee and three hundred fifty dollar nonreturnable initial review fee. All fees must be presented to the City Clerk in the form of a certified check payable to the City Treasurer, City of Phoenix. The one thousand dollar filing fee is returnable:

- (a) If the application is not accepted for consideration after initial review;

- (b) If the application is rejected after evaluation.

If the applicant is selected to receive a license, the one thousand dollar fee will be retained by the City to cover expenses of the licensing process. In all cases the initial review fee will be used by the City to cover review costs. If the one thousand dollar fee is returned pursuant to this paragraph, it shall be returned without interest and without an accounting for its use.

(Ord. No. G-2199, § 1; Ord. No. G-3961, § 1, passed 10-9-1996, eff. 10-9-1996)

State law reference—Fee authorized, A.R.S. § 9-552(B).

