

**CALIFORNIA LAW
PUBLIC UTILITIES CODE - PUC**

DIVISION 3. PUBLIC UTILITY FRANCHISES BY LOCAL GOVERNMENTS [6001 - 6467]

**CHAPTER 2. Gas, Oil, Electric, and Water Franchises by Municipalities
6201-6302**

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PUBLIC UTILITIES CODE - PUC
(Division 3 enacted by Stats. 1951, Ch. 764.)

CHAPTER 2. Gas, Oil, Electric, and Water Franchises by Municipalities [6201 - 6302]
(Heading of Chapter 2 amended by Stats. 1965, Ch. 626.)

ARTICLE 1. General Provisions [6201 - 6205.1]
(Article 1 enacted by Stats. 1951, Ch. 674.)

6201.

This chapter may be cited as the Franchise Act of 1937.
(Enacted by Stats. 1951, Ch. 674.)

6201.3.

As used in this chapter, "industrial gas" means any substance which is in a gaseous state at ambient conditions of temperature and pressure used for commercial, industrial, or scientific purposes, but does not include any gaseous hydrocarbon used for light, heat, power, or feedstock.
(Added by Stats. 1984, Ch. 197, Sec. 1.)

6201.5.

As used in this chapter, municipality includes counties, but no county shall grant a franchise pursuant to this chapter in any incorporated area.
(Added by Stats. 1971, Ch. 422.)

6202.

The legislative body of any municipality may grant a franchise to any person, firm, or corporation, whether operating under an existing franchise or not, to use, or to construct and use, poles, wires, conduits, and appurtenances for transmitting and distributing electricity for all purposes, or to use, or to lay and use, pipes and appurtenances for transmitting and distributing gas or industrial gas for all purposes, or to use, or to lay and use, pipes and appurtenances for transmitting and distributing oil or products thereof for all purposes, or to lay and use pipes, ditches, flumes, conduits, and appurtenances for transmitting and distributing water for all purposes, under, along, across, or upon the public streets, ways, alleys, and places within the municipality, upon the terms and conditions provided in this chapter.
(Amended by Stats. 1984, Ch. 197, Sec. 2.)

6203.

The legislative body may in such a franchise impose such other and additional terms and conditions not in conflict with this chapter, whether governmental or contractual in character, as in the judgment of the legislative body are to the public interest.
(Enacted by Stats. 1951, Ch. 764.)

6204.

This chapter provides a procedure, alternative to the procedure provided in Article 1 of Chapter 1 of this division, for the granting of franchises by municipalities. When any proceeding is initiated under this chapter for the granting of a franchise, the provisions of this chapter exclusively govern the granting of such franchise.
(Enacted by Stats. 1951, Ch. 764.)

6205.

This chapter does not apply to any municipality having a freeholders' charter adopted and ratified under the Constitution and having in such charter provisions for the issuance of franchises by the municipality, but nothing contained in this chapter shall restrict the right of any such chartered municipality to avail itself of the provisions of this chapter wherever it may lawfully do so. The provisions of this chapter relating to the payment of a percentage of gross receipts shall not be construed as a declaration of legislative judgment as to the proper compensation to be paid a chartered municipality for the right to exercise franchise privileges therein.
(Enacted by Stats. 1951, Ch. 764.)

6205.1.

(a) Notwithstanding Section 6205, all franchises, licenses, permits, or other privileges granted to a public utility by any city, county, or city and county holding a freeholder's charter containing provisions for the issuance of franchises, to use, or to construct or lay and use, under, along, across, or upon the public streets, ways, alleys, and places within the municipality, facilities which are part of a pipeline system transmitting oil or products thereof, shall be granted upon the terms and conditions provided in, and in accordance with, either this chapter or Chapter 1 (commencing with Section 6001).

(b) On and after January 1, 1990, the compensation to be paid for the franchises, licenses, permits, or other privileges granted by any city, county, or city and county, including those holding a freeholder's charter, shall be as provided in Section 6231.5.

(c) It is the intent of the Legislature, in enacting this section, to preempt the ordinance of any chartered municipality insofar as that ordinance governs the granting of franchises to construct facilities which are part of a pipeline system transmitting oil or products thereof.
(Added by Stats. 1989, Ch. 1444, Sec. 3.)

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(Heading of Chapter 2 amended by Stats. 1965, Ch. 626.)

ARTICLE 2. Manner of Granting [6231 - 6235]

(Article 2 enacted by Stats. 1951, Ch. 764.)

6231.

An applicant for a franchise shall file with the legislative body of the municipality in which the franchise is desired an application stating all of the following:

- (a) The name of the applicant.
- (b) The purpose and term, whether definite or indeterminate, for which the franchise is desired.
- (c) That the applicant if granted the franchise will pay to the municipality during the life of the franchise 2 percent of the applicant's gross annual receipts arising from the use, operation, or possession of the franchise, except that this payment shall be not less than 1 percent of the applicant's gross annual receipts derived from the sale within the limits of the municipality of the utility service for which the franchise is awarded. If the application is for a franchise complementary to a franchise derived under Section 19 of Article XI of the California Constitution as that section existed prior to its amendment on October 10, 1911, then the applicant shall pay annually, if the application is for an electric franchise, 2 percent of the applicant's gross annual receipts arising from the use, operation, or possession of the franchise, except that this payment shall be not less than one-half of 1 percent of the applicant's gross annual receipts from the sale of electricity within the limits of the municipality under both the electric franchises; or, if the application is for a gas, oil pipeline, or water franchise, 2 percent of the applicant's gross annual receipts arising from the use, operation, or possession of the franchise, except that this payment shall be not less than 1 percent of the gross annual receipts from the sale of gas or water within the limits of the municipality under both the gas franchises or both the water franchises.

Notwithstanding any other provision of this section, if the application is for a franchise for a nonpublic utility pipeline for industrial gas or oil or products thereof, the application shall state that the applicant, if granted the franchise, will pay to the municipality during the life of the franchise either a specified percentage agreed to by the applicant and the municipality of the gross annual receipts of the applicant arising from the use, operation, or possession of the franchise or an annual franchise fee in an amount agreed to by the applicant and the municipality or an annual franchise fee computed by multiplying the sum of one-half cent (\$0.005) times the nominal internal diameter of the pipe, expressed in inches, times the number of lineal feet of the pipe within the public streets, ways, alleys, or other public places within the municipality.

(Amended by Stats. 1984, Ch. 197, Sec. 3.)

6231.5.

(a) An applicant for a franchise to build and operate a pipeline system transmitting oil or products thereof shall file with the legislative body of the municipality in which the franchise is desired an application stating all of the following:

- (1) The name of the applicant.
- (2) The purpose and term, whether definite or indeterminate, for which the franchise is desired.
- (3) That the applicant, if granted the franchise, permit, license, or other privilege, will pay to the municipality an annual fee computed as follows:

The length of pipe expressed in feet located within the franchised area shall be multiplied by the applicable base rate, as adjusted pursuant to subdivision (d), in accordance with the following schedule:

Pipe size (internal diameter in inches) _____	Base rate per lineal foot
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

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

(b) The annual payment for each lineal foot of pipeline shall be computed and revised each calendar year as follows:

(1) The applicable base rate shall be multiplied by the Consumer Price Index for the area, as published by the United States Department of Labor, Office of Information for the month of September immediately preceding the month in which payment is due and payable, and divided by the Consumer Price Index for June 30, 1989, which is declared to be 100.0. Under no circumstances shall the multiplying factor be less than one.

(2) If the United States Department of Labor, Office of Information discontinues the preparation or publication of a Consumer Price Index for the area, and if no translation table prepared by the Department of Labor is available so as to make those statistics which are then available applicable to the index of June 30, 1989, the municipality shall prescribe a rate of payment which shall, in its judgment, vary from the rates specified in this section in approximate proportion as commodity consumer prices then current vary from commodity consumer prices current in December 1988. On this point, the determination by the municipality shall be final and conclusive.

(c) No fee paid to any municipality pursuant to a franchise, permit, license, or other privilege issued under an ordinance which is in effect on September 1, 1989, which exceeds the fee computed under this section shall be reduced. On or after January 1, 1990, a municipality may collect an additional amount which represents the percentage increase in the Consumer Price Index for the area during the preceding calendar year applied to that fee. The formula used in arriving at that fee shall be applicable to any replacement, modification, or extension of the pipeline. Upon expiration of a franchise, permit, license, or other privilege, the municipality may renew or extend the franchise, permit, license, or other privilege, using the local formula contained in an ordinance which is in effect on September 1, 1989. However, the fee shall not exceed the greater of the fee actually paid on September 1, 1989, or the fee computed pursuant to this section.

(d) Notwithstanding any other provision of law, until January 1, 1990, a municipality which is involved in eminent domain proceedings in which a court order for possession has been issued relating to an easement for a pipeline system transmitting oil or products thereof may adopt an ordinance setting its fee without following the provisions of this section. Upon expiration of the ordinance, the municipality may renew or extend the franchise, license, permit, or other privilege, utilizing the local formula in effect on January 1, 1990, or the fee computed pursuant to this section, whichever is greater.

(e) Notwithstanding any other provision of this section, if the application is for a franchise for a nonpublic utility pipeline for industrial gas or oil or products thereof, the application shall state that the applicant, if granted the franchise, will pay to the municipality during the life of the franchise either of the following:

(1) A specified percentage agreed to by the applicant and the municipality of the gross annual receipts of the applicant arising from the use, operation, or possession of the franchise.

(2) An annual franchise fee in an amount agreed to by the applicant and the municipality, or an annual franchise fee computed by multiplying the sum of one-half of the nominal internal diameter of the pipe, expressed in inches, by the number of lineal feet of the pipe within the public streets, ways, alleys, or other public places within the municipality.

(f) Any nonpublic utility pipeline system transmitting oil or products thereof covered by subdivision (e) on December 31, 1989, that converts to public utility status shall continue to pay the fee established pursuant to subdivision (e) for the remaining term of its franchise, license, permit, or other privilege. Upon expiration of its franchise, license, permit, or other privilege, a nonpublic utility pipeline system transmitting oil or products thereof that has converted or seeks to convert to public utility status shall establish to the satisfaction of the franchising authority all of the following:

(1) Its property is dedicated to the service of the public.

(2) Its rates for transportation are established pursuant to tariffs filed with the Public Utilities Commission.

(3) Its accounts and records are established pursuant to rules and regulations adopted by the commission.

(4) It has filed an appropriate annual report with the commission.

(5) Its rates for transportation are just, reasonable, and nondiscriminatory, as evidenced either by an order of the commission approving those rates, or an application for approval of its rates that is pending with the commission.

(Added by Stats. 1989, Ch. 1444, Sec. 4.)

6232.

Upon receipt of the application the legislative body of the municipality may pass its resolution declaring its intention to grant the franchise applied for, stating the character of the franchise, setting forth a notice of the day, hour, and place when and where all persons having any objection to the granting thereof may appear before the legislative body and be heard thereon, and directing the clerk of the legislative body to publish the notice at least once within fifteen (15) days after the passage of the resolution in a newspaper of general circulation within the municipality.

The time fixed for the hearing shall be not less than twenty (20) nor more than sixty (60) days after the date of the passage of the resolution.

(Enacted by Stats. 1951, Ch. 764.)

6233.

The notice of the time and place of hearing objections shall state that the grantee of the franchise and its successors and assigns will, during the life of its franchise, pay to the municipality the percentage specified in its application, that the percentage will be paid annually from the date of the granting of the franchise, and in the event such payment is not made the franchise will be forfeited. The notice shall also designate the term, whether definite or indeterminate, for which the franchise is proposed to be granted.

(Enacted by Stats. 1951, Ch. 764.)

6234.

At any time not later than the hour set for the hearing of objections, any person interested may make written protest stating objections against the granting of the franchise. The protest shall be signed by the protestant and be delivered to the clerk of the legislative body. At the time set for hearing objections the legislative body shall proceed to hear and pass upon all protests so made and its decision shall be final and conclusive, subject to the right of referendum of the people. The legislative body may adjourn the hearing from time to time.

If no protest in writing is delivered to the clerk up to the hour set for hearing, or such protests as are filed have been heard and determined by the legislative body to be insufficient, or have been overruled or denied, the legislative body may grant the franchise. The franchise shall be granted by ordinance adopted in the manner prescribed by law for the enactment of ordinances by the granting body.

(Enacted by Stats. 1951, Ch. 764.)

6235.

A franchise granted under this chapter does not become effective until the grantee files written acceptance thereof with the clerk of the granting municipality. When so filed the acceptance constitutes a continuing agreement by the grantee that if and when the granting municipality thereafter annexes, or consolidates with, additional territory, all franchises, rights and privileges owned by the grantee therein, except a franchise derived under Section 19 of Article XI of the Constitution as that section existed prior to the amendment thereof adopted October 10, 1911, shall be deemed abandoned within the limits of the additional territory.

(Enacted by Stats. 1951, Ch. 764.)

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(Heading of Chapter 2 amended by Stats. 1965, Ch. 626.)

ARTICLE 3. Scope of Franchise [6261 - 6265]

(Article 3 enacted by Stats. 1951, Ch. 764.)

6261.

Any franchise granted under this chapter with respect to a given utility service is in lieu of all other franchises, rights, or privileges owned by the grantee, or by any successor of the grantee to any rights under the franchise, for transmitting and distributing the utility service within the limits of the municipality as such limits exist at the time of the granting of the franchise or as they may thereafter exist except any franchise derived under Section 19 of Article XI of the Constitution as that section existed prior to the amendment thereof adopted October 10, 1911. The acceptance of any such franchise granted under this chapter shall operate as an abandonment of all such franchises, rights, and privileges within the limits of such municipality as such limits at any time exist, in lieu of which the franchise is granted under this chapter.

(Enacted by Stats. 1951, Ch. 764.)

6262.

No franchise granted under this chapter in any way impairs or affects the right of the granting municipality to acquire the property of the grantee by purchase or condemnation, and nothing contained in such a franchise shall be construed to contract away, modify or abridge either for a term or in perpetuity the municipality's right of eminent domain in respect to any public utility.

(Enacted by Stats. 1951, Ch. 764.)

6263.

No franchise granted under this chapter shall 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 municipality therefor at the time of acquisition.

(Enacted by Stats. 1951, Ch. 764.)

6264.

Every franchise granted pursuant to this chapter, except when a definite term therefor is specified in the ordinance granting it, is indeterminate, that is to say, every such franchise shall endure in full force and effect until, with the consent of the Public Utilities Commission, it is voluntarily surrendered or abandoned by its possessor, or until the State or some municipal or public corporation purchases by voluntary agreement or condemns and takes under the power of eminent domain, all property actually used and useful in the exercise of the franchise and situate within the territorial limits of the State, municipal, or public corporation purchasing or condemning such property, or until the franchise is forfeited for noncompliance with its terms by the possessor thereof.
(Amended by Stats. 1951, Ch. 817.)

6265.

Every gas franchise granted pursuant to this chapter confers upon the grantee the right to use, or to lay and use, gas pipes and appurtenances for the purpose of transmitting and distributing gas; every oil franchise so granted confers upon the grantee thereof the right to use, or lay and use, oil pipes and appurtenances for the purpose of transmitting and distributing oil or products thereof; every industrial gas franchise so granted confers upon the grantee the right to use, or lay and use, industrial gas pipelines and appurtenances for the purpose of transmitting and distributing industrial gas; every water franchise so granted confers upon the grantee thereof the right to use, or to lay and use, pipes, ditches, flumes, conduits, and appurtenances for the purpose of transmitting and distributing water; and every electric franchise so granted confers upon the grantee thereof the right to use, or to construct and use, poles, wires or conduits and appurtenances for the purpose of transmitting and distributing electricity for all purposes, under, along, across, or upon the public streets, ways, alleys, and places as they now or hereafter exist within the municipality.
(Amended by Stats. 1984, Ch. 197, Sec. 4.)

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ARTICLE 4. Duties and Liabilities of Grantee [6291 - 6302]

(Article 4 enacted by Stats. 1951, Ch. 764.)

6291.

If the grantee of any franchise granted under this chapter fails, neglects or refuses to comply with any of the provisions or conditions prescribed in this chapter, and does not within ten (10) days after written demand for compliance begin the work of compliance, or after such beginning does not prosecute the work with due diligence to completion, the municipality, by its legislative body, may declare the franchise forfeited.

(Enacted by Stats. 1951, Ch. 764.)

6292.

Any municipality may sue in its own name for the forfeiture of any franchise granted pursuant to this chapter, in the event of noncompliance with any of the conditions thereof by the grantee, its successors, or assigns.

(Enacted by Stats. 1951, Ch. 764.)

6293.

The grantee shall pay to the municipality a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of the franchise. Such payment shall be made within thirty (30) days after the municipality furnishes the grantee with a written statement of the expenses.

(Enacted by Stats. 1951, Ch. 764.)

6294.

The grantee of a franchise under this chapter shall construct, install, and maintain all pipes, conduits, poles, wires, and appurtenances in accordance and in conformity with all of the ordinances and rules adopted by the legislative body of the municipality in the exercise of its police powers and not in conflict with the paramount authority of the State, and, as to state highways, subject to the laws relating to the location and maintenance of such facilities therein.

(Enacted by Stats. 1951, Ch. 764.)

6295.

The grantee shall pay to the municipality on demand the cost of all repairs to public property made necessary by any of the operations of the grantee under the franchise.
(Enacted by Stats. 1951, Ch. 764.)

6296.

The grantee shall indemnify and hold harmless the municipality and its officers from all liability for damages proximately resulting from any operations under the franchise.
(Enacted by Stats. 1951, Ch. 764.)

6297.

The grantee shall remove or relocate without expense to the municipality any facilities installed, used, and maintained under the 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 municipality.
(Enacted by Stats. 1951, Ch. 764.)

6298.

The grantee shall file with the legislative body of the municipality within thirty (30) days after any sale, transfer, assignment, or lease of the franchise or any part thereof, or any of the rights or privileges granted thereby, written evidence of the transaction certified to by the grantee or its duly authorized officers.
(Enacted by Stats. 1951, Ch. 764.)

6299.

The grantee shall file with the clerk of the municipality, within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the granting of the franchise and within three (3) months after the expiration of each calendar year thereafter, a verified statement showing in detail the total gross receipts of the grantee, its successors, or assigns during the preceding calendar year or fractional calendar year from the sale of the utility service for which the franchise was granted.
(Enacted by Stats. 1951, Ch. 764.)

6300.

The grantee shall pay to the municipality within fifteen (15) days after the time for filing its statement of gross receipts, in lawful money of the United States, the specified percentage of its gross receipts for the calendar year or fractional calendar year covered by the statement. Any neglect, omission, or refusal by the grantee to file the verified statement, or to pay the percentage at the times or in the manner provided constitutes grounds for the declaration of a forfeiture of the franchise and of all rights thereunder.

(Enacted by Stats. 1951, Ch. 764.)

6301.

(a) The grantee of a franchise under this chapter may be required to file a bond running to the municipality approved by the legislative body, in a penal sum prescribed by the legislative body and set forth in the resolution of intention to grant the franchise, conditioned that the grantee shall well and truly observe, fulfill, and perform each term and condition of the franchise, and that in case of any breach of condition of the bond the amount of the penal sum therein named shall be recoverable.

(b) The bond, if required by the legislative body, shall be filed with the legislative body within five days after the date of the granting of the franchise. If the bond is not so filed, or does not receive the approval of the legislative body, the franchise may be refused or forfeited and any money paid to the municipality in connection therewith shall be retained by the municipality.

(Amended by Stats. 1982, Ch. 517, Sec. 359.)

6302.

The grantee of a franchise under this chapter shall be liable to the granting municipality for all damages proximately resulting from the failure of the grantee well and faithfully to observe and perform any provision of the franchise and any provision of this chapter.

(Enacted by Stats. 1951, Ch. 764.)