

Charter Township of Orion

Ordinance No. 94

Consumers Power Gas Franchise

Adopted November 20, 1989

AMENDED
August 15, 1994

AN ORDINANCE, GRANTING TO CONSUMERS POWER COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, POWER AND AUTHORITY TO LAY, MAINTAIN AND OPERATE GAS MAINS, PIPES AND SERVICES ON, ALONG, ACROSS AND UNDER THE HIGHWAYS, STREETS, ALLEYS, BRIDGES AND OTHER PUBLIC PLACES, TO DO A LOCAL GAS BUSINESS IN THE CHARTER TOWNSHIP OF ORION, OAKLAND COUNTY, MICHIGAN FOR A PERIOD OF THIRTY YEARS, AND TO REPEAL ORDINANCE NO. 8 ADOPTED BY THE TOWNSHIP BOARD ON NOVEMBER 10, 1959, WHEREBY A GAS FRANCHISE WAS GRANTED TO CONSUMERS POWER COMPANY, ITS SUCCESSOR AND ASSIGNS.

Section 1 - Title

This Ordinance shall be known and cited as the Orion Charter Township Gas Franchise Ordinance.

Section 2 - Purpose and Term

The Charter Township of Orion, Oakland County, Michigan, hereby grants to the Consumers Power Company, a Michigan corporation, its successors and assigns, hereinafter called the "Grantee", the right, power and authority to lay, maintain and operate gas mains, pipes and services on, along, across and under the highways, streets, alleys, bridges and any other public places, and to do a local gas business in the Charter Township of Orion, Oakland County Michigan for a period of thirty (30) years.

Section 3 - Considerations

In consideration of all the rights, power and authority hereby granted, said Grantee shall faithfully perform all things required by the terms hereof.

Section 4 - Conditions

No highway, street, alley, bridge or other public place used by said Grantee shall be obstructed longer than necessary during the work of construction or repair, and shall be restored to the same order and condition as when said work was commenced. All of Grantee's pipes and mains shall be so placed in the highways and other public places as not to unnecessarily interfere with the use thereof for highway purposes. Prior to commencing construction within the public right-of-way, Grantee shall secure all permits as required by Charter Township of Orion ordinances.

Section 5 - Hold Harmless

Said Grantee shall at all times keep and save the Charter Township free and harmless from all loss, costs and expense to which it may be subject by reason of the negligent construction and maintenance of the structures and equipment hereby authorized. In case any action is commenced against the Township on account of the permission herein given, said Grantee shall, upon notice, defend the Township and save it free and harmless from all loss, costs and damage arising out of such negligent construction and maintenance.

Section 6 - Extensions

Said Grantee shall construct and extend its gas distribution system within said Charter Township, and shall furnish gas to applicants residing therein in accordance with applicable laws, rules and regulations.

Section 7 - Franchise Not Exclusive

The rights, power and authority herein granted, are not exclusive. Either manufactured or natural gas may be furnished hereunder.

Section 8 - Rates

Said Grantee shall be entitled to charge the inhabitants of said Charter Township for gas furnished therein, the rates as approved by the Michigan Public Service Commission, to which Commission or its successors authority and jurisdiction to fix and regulate gas rates and rules regulating such service in said Charter Township, are hereby granted for the term of this franchise. Such rates and rules shall be subject to review and change at any time upon petition therefor being made by either said Charter Township, acting by its Township Board, or by said Grantee.

Section 9 - Revocation

The franchise granted by this Ordinance is subject to revocation upon sixty (60) days written notice by the party desiring such revocation.

Section 10 - Michigan Public Service Commission Jurisdiction

Said Grantee shall, as to all other conditions and elements of service not herein fixed, be and remain subject to the reasonable rules and regulations of the Michigan Public Service Commission or its successors, applicable to gas service in said Charter Township.

Section 11 - Violation and Penalties *(amended 08.15.94)***A. Municipal Civil Infraction / Payment of Fine.**

Any person, firm, or corporation violating a provision of this Ordinance, upon an admission or a finding of responsibility for such violation, shall be deemed responsible for a municipal civil infraction as that term is defined and used in MCL 600.101, *et seq.*; MSA 27A.101, *et seq.*, as amended, and shall pay a civil fine as prescribed by ordinance or as determined by the district court, district court judge, or district court magistrate.

B. Costs.

A person, firm, or corporation ordered to pay a fine under Subsection A shall be ordered by the district court judge or magistrate to pay costs of not less than Nine Dollars (\$9) or more than Five Hundred Dollars (\$500), which costs may include all expenses, direct or indirect, to which the Township of Orion has been put in connection with the violation of the Ordinance up to the entry of the court's judgment or order to pay fines and costs.

C. Additional Writs and Orders.

A person who admits or is found responsible for violation of this Ordinance shall comply with any order, writ, or judgment issued by the district court to enforce this Ordinance pursuant to Chapter 83 and Chapter 87, of the Revised Judicature Act, MCL 600.101, *et seq.*; MSA 27A.101, *et seq.*, as amended.

D. Default on Payment of Fines and Costs.

A default in payment of a civil fine, costs, or damages, or expenses ordered under Subsection A or B or an installment of the fine, costs, or damages or expenses as allowed by the court, may be collected by the Township of Orion by a means authorized for the enforcement of a judgment under Chapters 40 or 60 of the Revised Judicature Act, MCL 600.101, *et seq.*; MSA 27A.101, *et seq.*, as amended.

E. Failure to Comply with Judgment or Order.

If a defendant fails to comply with an order or judgement issued pursuant to this section within the time prescribed by the court, the court may proceed under Subsection G.

F. Failure to Appear in Court.

A defendant who fails to answer a citation or notice to appear in court for a violation of this Ordinance is guilty of a misdemeanor, punishable by a fine of not more than Five Hundred Dollars (\$500) plus costs and/or imprisonment not to exceed ninety (90) days.

G. Civil Contempt.

1. If a defendant defaults in the payment of a civil fine, costs, or other damages or expenses, or installment as ordered by the district court, upon motion of the Township of Orion or upon its own motion, the court may require the defendant to show cause why the defendant should not be held in civil contempt and may issue a summons, order to show cause, or bench warrant of arrest for the defendant's appearance.

2. If a corporation or an association is ordered to pay a civil fine, costs, or damages or expenses, the individuals authorized to make disbursements shall pay the fine, costs, or damages or expenses, and their failure to do so shall be civil contempt unless they make the showing required in this subsection.
3. Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on his or her part to make a good faith effort to obtain the funds required for payment, the court shall find that the default constitutes a civil contempt and may order the defendant committed until all or a specified part of the amount due is paid.
4. If it appears that the default in the payment of a fine, costs, or damages or expenses does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of payment or of each installment or revoking the fine, costs, or damages or expenses.
5. The term of imprisonment on civil contempt for nonpayment of a civil fine, costs, or damages or expenses shall be specified in the order of commitment and shall not exceed one (1) day for each Thirty Dollars (\$30) due. A person committed for nonpayment of a civil fine, costs, or damages or expenses shall be given credit toward payment for each day of imprisonment and each day of detention in default of recognizance before judgment at the rate of Thirty Dollars (\$30) per day.
6. A defendant committed to imprisonment for civil contempt for nonpayment of a civil fine, costs, or damages or expenses shall not be discharged from custody until one of the following occurs:
 - a. Defendant is credited with an amount due pursuant to Subsection G(5).
 - b. The amount due is collected through execution of process or otherwise.
 - c. The amount due is satisfied pursuant to a combination of Subdivisions G(6)(a) and (b).
7. The civil contempt shall be purged upon discharge of the defendant pursuant to Subsection G(6).

Section 12 - Repealer

This Ordinance, when accepted and published as herein proved, shall repeal and supersede the provision or Ordinance No. 8 adopted on November 10, 1959, entitled:

AN ORDINANCE, granting to CONSUMERS POWER COMPANY, its successors and assigns, the right, power and authority to lay, maintain and operate gas mains, pipes and services on, along, across and under the highways, streets, alleys, bridges, and other public places, and to do a local gas business in the TOWNSHIP OF ORION, OAKLAND COUNTY, MICHIGAN for a period of thirty years.

and amendments, if any, to such Ordinance whereby a gas franchise was granted to Consumers Power Company.

Section 13 - Severability

If any portion of this Ordinance or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of this Ordinance which can be given effect without the invalid portion or application, provided such remaining portions are not determined by the court to be inoperable, and to this end this Ordinance is declared to be severable.

Section 14 - Effective Date

This Ordinance shall take effect upon the day after the date of publication thereof, as provided by Act 359 of the Public Acts of 1947, as amended; provided however, this franchise shall cease and be of no effect after thirty (30) days from its adoption unless within said period the Grantee shall accept the same in writing filed with the Township Clerk. Upon acceptance and publication hereof, this Ordinance shall constitute a contract between said Charter Township and said Grantee.

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