

Charter Township of Orion

Ordinance No. 125

Electric and Gas Supply Franchise Ordinance

Adopted May 15, 2000

AN ORDINANCE TO ESTABLISH THE PROCESS, REQUIREMENTS, TERMS AND CONDITIONS FOR THE GRANTING OF FRANCHISES TO SUPPLIERS OF ELECTRICITY AND NATURAL GAS.

ARTICLE I - GENERAL

Section 1.1 - Short Title

This Ordinance shall be known and may be cited as the "Charter Township of Orion Electric and Gas Supply Franchise Ordinance."

Section 1.2 - Purpose and Findings

- A. Pursuant to Section 29 of Article 7 of the Michigan Constitution of 1963, use of the highways, streets, alleys and other public places for operation of a public utility requires the consent of the Township and the transaction of local business in the Township by a public utility requires that a franchise first be obtained. This Ordinance is adopted for the purpose of confirming and providing the process, terms and conditions for suppliers of electricity and natural gas to obtain the required consents and franchises and to fully exercise the Township's constitutional authority which includes the reasonable control of its highways, streets, alleys and public places.
- B. As a result of regulatory changes that have or may occur, and interpretations of existing laws, at the State and Federal levels, specifically including the Michigan Public Service Commission (Deregulation), the persons that may be authorized to supply electricity and natural gas to customers in the Township are no longer limited to the public utility that owns and operates the facilities used to deliver electricity and natural gas to customers. This Ordinance is adopted in recognition of the Deregulation which has and may continue to occur, with the intent and purpose of confirming that all persons supplying electricity or natural gas to customers in the Township are required to have a franchise as provided in this Ordinance, regardless of whether it is required as a condition of State or Federal regulatory permits, approvals or certificates.
- C. The Township will incur costs and expenses in reviewing and acting on franchise requests, and upon granting a franchise, monitoring and enforcing its terms and conditions. Such costs and expenses should be paid by franchise applicants and holders as provided in this Ordinance.

Section 1.3 - Definitions

When used in this Ordinance, the following words, terms and phrases shall have the meanings indicated:

Clerk means the Township Clerk.

Customer means a residential, commercial or industrial end-user of electricity or natural gas in the Township.

Disruption means a physical change, modification, alteration, disturbance, injury and/or damage to or in a right-of-way, including but not limited to, construction, installation, location, maintenance, modification, alteration, replacement or repair of facilities, and the removal or alteration of a right-of-way surface grade or material, tree, sign, marker, hydrant or other material or object.

Facility or **Facilities** means any overhead or underground cable, wire, line, main, pipe, pole, building, structure, equipment and all other man-made or placed materials or objects or combinations thereof, for the transmission or distribution of electricity or natural gas to customers.

Franchise means a non-exclusive limited authorization to transact a local business and the right to incidental use of right-of-way under this Ordinance.

Grantee means the holder of a valid and effective franchise granted by the Township.

MPSC means the Michigan Public Service Commission.

Person means a natural person, company, corporation, partnership, joint venture, voluntary association, organization or other form of legal entity.

Right-of-Way means any and all public rights-of-way, streets, highways, roads, sidewalks, alleys, thoroughfares, public easements and public places located within the Township.

Supplier means a person that supplies electricity (electric generation) or natural gas to customers in the Township through facilities in the Township in which it has no ownership, operation, leasehold, repair or maintenance rights or responsibilities.

Township means the Charter Township of Orion.

Utility means a person that owns, operates, and maintains facilities used to provide electricity or natural gas to customers in the Township.

Section 1.4 - Franchise Requirement

Being a supplier of electricity or natural gas to customers in the Township is the transaction of local business of a public utility, which shall not be done without a franchise.

Section 1.5 - Right-of-Way Limitations

A franchise granted under this Ordinance constitutes the Township's consent to Grantee's limited and incidental use of right-of-way to the extent that facilities are located within it.

ARTICLE II - FRANCHISE APPLICATION REQUIREMENTS AND PROCESS

Section 2.1 - Application Information

Applications for franchises shall be made to the Clerk by providing the following written information and documents:

- A. A non-refundable franchise application fee of Three Thousand Five Hundred Dollars (\$3,500).
- B. The name, age, if an individual, and address of the applicant, and if the applicant is not a natural person, the date, State, and form of business organization.
- C. A description of the local business which the applicant proposes to transact.
- D. Copies or certificates, articles, permits, approvals, licenses, last annual report and other written documentation of applicant's lawful incorporation, organization, existence, authorization and good standing to conduct its proposed business in the State of Michigan. If any of the listed items have not been received, documentation that they have been applied for must be provided.
- E. If applicable, applicant's minimum quantity requirements of existing and potential customers.
- F. The length of the franchise term being requested, which shall have a duration of not longer than ten (10) years.
- G. An acknowledgment and agreement to accept and comply with a franchise in the form of an ordinance that contains and incorporates by reference all of the terms and conditions contained in Article III of this Ordinance.

Section 2.2 - Application Processing

- A. Upon receipt of a franchise application, the Clerk shall schedule the application, and a proposed ordinance that would grant the franchise requested, for introduction at the first available Township Board of Trustees meeting.
- B. The applicant or its representative shall receive notice and may appear at the meeting when its franchise request is introduced. If the application meets the requirements of this Ordinance, the proposed ordinance will be accepted for

introduction and scheduled for possible adoption at the first meeting thereafter that allows time to satisfy any publication and legal requirements for adoption of a valid franchise ordinance.

- C. After all publication and other legal requirements for adoption of a valid franchise ordinance have been satisfied, at a regular or special meeting, the Township Board of Trustees may adopt, reject or postpone adoption of a proposed franchise ordinance.

Section 2.3 - Franchise Approvals

After a franchise ordinance is adopted and all publication and other legal requirements for it to become effective are satisfied, a certified copy of the ordinance shall be delivered or mailed to the approved Grantee together with a written acceptance for the approved Grantee to sign under oath, confirming its acknowledgement, agreement and acceptance of the franchise and all of its terms and conditions. If the required signed and notarized acceptance is not delivered to the Clerk within thirty (30) days of the delivery or mailing of the franchise ordinance and agreement to Grantee, the effectiveness of the ordinance will be automatically terminated. Upon the approved Grantee's timely acceptance of the franchise ordinance, it shall constitute a contract between the Township and Grantee.

Section 2.4 - Franchise Terms and Conditions

Unless amended by the individual franchise ordinance, all of the definitions in Article II, terms and conditions in Articles III and IV, and penalties and relief in Article VI of this Ordinance shall apply and be incorporated by reference as part of every supplier's individual franchise ordinance. Any amendments to this Ordinance shall be automatically included in every franchise.

ARTICLE III - GENERAL FRANCHISE TERMS AND CONDITIONS

Section 3.1 - Franchise Rights

Subject to all terms and conditions in this Article III and the individual franchise ordinance, a franchise grants the Grantee the right to transact a local business of supplying electricity or gas, as designated in the individual franchise ordinance, to customers in the Township using facilities of an identified utility to the extent that it is lawful under applicable legislation, administrative rules, including those of the MPSC, and express or implied contract or agreement with the utility. A franchise does not grant the right to own, construct, operate, maintain or repair facilities in the Township.

Section 3.2 - Term, Revocation, and Termination

The term of a franchise, which shall be stated in the individual franchise ordinance, is subject to revocation at the will of the Township and may be surrendered and terminated by the Grantee on thirty (30) days notice to the Township. Any unsatisfied obligations of Grantee to the Township shall survive revocation or termination and be enforceable by the Township as provided in the franchise, as amended.

Section 3.3 - Non-Exclusive

A franchise is non-exclusive and does not restrict the Township from approving additional franchises or establish any priority between Grantees to transact local business and the incidental use of right-of-way.

Section 3.4 - Assignment

A franchise may not be sold, leased, assigned, transferred or used by any person other than the Grantee without the written approval of the Township, by ordinance amendment.

Section 3.5 - Compliance With Laws and Ordinances

A franchise requires Grantee compliance with all applicable current and future Township, State and Federal ordinances, laws, rules and regulations and any permit, approval, certificate or license requirements and conditions under such laws, and shall not be construed as a waiver by Grantee of any of its rights under State or Federal law.

Section 3.6 - No Right-of-Way Disruption

Disruption or obstruction of, and physical entry in or upon, a right-of-way by a Grantee, its personnel or equipment is prohibited.

Section 3.7 - Township Rights Paramount

A franchise and the rights granted by it shall at all times be subject to the paramount rights of the Township in its right-of-way, and shall be subject to immediate suspension or termination by the Township in the interest of the public health, safety and welfare.

Section 3.8 - Vacation

If a right-of-way is vacated, discontinued, abandoned, terminated or released, a Grantee's incidental right to use the right-of-way shall immediately terminate.

Section 3.9 - Public Emergencies

Without prior notice, the Township has the right to remove, damage, destroy or otherwise disrupt and/or order a cessation of use of facilities used by Grantee or its customers, when necessary due to a public emergency. Public emergency means any situation which, in the opinion of the Township official authorized to declare an emergency, presents an immediate threat to persons or property in the Township. The Township shall have no liability or responsibility for repairing or restoring facilities damaged by actions taken under this Section.

Section 3.10 - Interpretation

A franchise shall not be construed in any manner as a waiver or limitation of the Township's discretion and authority or rights to regulate and control the use of right-of-way.

Section 3.11 - Assumption of Risk

A Grantee assumes all risks of damages or injuries to its officers, employees, agents and contractors from dangerous right-of-way conditions, if any.

Section 3.12 - No Township Liability

The Township and its officials, employees, agents and contractors shall have no liability for damages or injuries to any person or property, including Grantee, that arise from the granting, enforcement or exercise of rights under a franchise.

Section 3.13 - Indemnity

A Grantee shall, at its sole cost and expense, defend, indemnify and hold harmless the Township and its officials, employees, agents, contractors, right-of-way and property from all claims and liability for damages or injury to persons or property caused by, or resulting from, the actions or omissions of Grantee and/or its officers, employees, agents and contractors. This obligation extends to all costs and expenses, including attorney fees that may be incurred by the beneficiaries of Grantee's obligation. The Township shall notify Grantee of any claim or liability that is covered by Grantee's obligation, and shall not be prevented from participating in the defense of any claim by its own attorney, the cost of which shall be Grantee's responsibility.

Section 3.14 - Insurance

The Township reserves the right to require the Grantee to have, maintain and provide specified liability insurance coverages.

Section 3.15 - Disclosures

Grantee shall provide and update written disclosure to the Township of its contact person(s), address, telephone numbers, fax numbers, Email addresses, if applicable, and procedures for service requests and complaints, together with a written disclosure of pricing, billing, warranty and contract rates, terms, policies and procedures.

Section 3.16 - Supply Requirements

Grantee shall supply electricity or natural gas in accordance with all applicable laws.

Section 3.17 - Franchise Fees

Every three (3) years commencing after December 31, 2001, the Township has the right, after providing prior notice and an opportunity to comment to Grantee, to require the payment by Grantee on a periodic basis, of a franchise fee, provided that any such fee is applied equally to all Grantees under this Ordinance that are supplying the same commodity (electricity or natural gas) as Grantee. Such a franchise fee would be an additional franchise term and condition, to be adopted and presented to the Grantee for acknowledgement, agreement and acceptance as an ordinance amendment as provided in Section 2.3. In any such fee review, the Grantee shall disclose, and the Township may consider, if Grantee pays a franchise fee, charge or other periodic payment for a franchise to any other Michigan municipalities and the manner in which such fees are computed. It is a condition of a franchise that the Grantee notify the Township of any such fees that are paid and the Township shall have the right to inspect Grantee's books and records to monitor, enforce and determine Grantee's compliance and the accuracy of amounts paid or to be paid by Grantee under this Section.

Section 3.18 - Township Costs

Grantee shall reimburse the Township for any costs it incurs, including reasonable attorney fees, in enforcing franchise terms and conditions.

Section 3.19 - Reservation of Township Rights

A franchise shall at all times be subject to the rights of the Township, which are hereby reserved, to make all regulations, take all actions and do all things provided for in the Charter Township Act or by law.

ARTICLE IV - FRANCHISE TERMS AND RENEWALS**Section 4.1 - Franchise Term**

No franchise granted under this Ordinance shall be for longer than ten (10) years. The term of each franchise shall be stated in the individual franchise ordinance.

Section 4.2 - Renewals and Extensions

There is no right to a franchise renewal or extension. Franchise renewal or extension may be applied for and approved as provided in Article II.

ARTICLE V - VIOLATION AND PENALTIES**Section 5.1 - Transaction of Business Without Franchise**

Any person transacting business without a franchise required by this Ordinance shall be responsible for a municipal civil infraction, and shall pay a fine in the following amount:

- | | |
|---------------------------------|-------------|
| A. First offense | \$ 3,500.00 |
| B. Second or subsequent offense | \$ 5,000.00 |

Section 5.2 - Right-of-Way Restoration

Any person in violation of the franchise requirement of this Ordinance or a franchise issued under it who damages a right-of-way shall be responsible for restoration of the right-of-way to the condition that existed prior to the violation. If such person fails or refuses to restore the right-of-way after thirty (30) days notice from the Township, and if the Township determines that the civil infraction remedy is inadequate under the circumstances, the Township may initiate proceedings in the appropriate court to recover the cost estimated to accomplish the restoration, or recover such costs as have been actually expended by the Township in achieving the restoration, as the case may be. Such costs shall include finance and reasonable administrative costs, estimated or incurred.

Section 5.3 - Separate Offenses

Each occurrence of a violation, and each day a violation exists, shall constitute a separate offense.

Section 5.4 - Injunctive Relief

Violations of this Ordinance or a franchise issued under it, are considered to be a nuisance, per se, with such violations and correction of any conditions resulting from violations subject to abatement by injunctive or other appropriate order by a court of competent jurisdiction.

Section 5.5 - Election of Remedies

Violations of this Ordinance and franchises issued under it subject the violator to franchise revocation, if applicable, and Township enforcement through one or more of the remedies provided in this Article, and the election by the Township to pursue one form of remedy does not waive or restrict the Township's option to pursue other remedies at the same or later time.

ARTICLE VI - MISCELLANEOUS**Section 6.1 - No Waiver**

Nothing in this Ordinance shall be construed as a waiver of any of the rights, remedies and/or authority of the Township pursuant to any laws, ordinances, codes or regulations of the Township, and the Township reserves the right to exercise all authority and take any and all action granted to it by any constitution, law, Township Ordinance, Code and/or regulation. Nothing in this Article shall be construed to limit and/or preclude the Township from exercising its right of eminent domain.

Section 6.2 - Notices

Any notices required to be sent to the Grantee by this Ordinance may be delivered, or may be sent by first-class mail, to the Grantee at the address listed in the franchise application or such other address as Grantee has provided to the Clerk in writing.

Section 6.3 - Severability

If any section, clause or provision of this Ordinance shall be declared to be unconstitutional, void, illegal or ineffective by any Court of competent jurisdiction, such section, clause or provision declared to be unconstitutional, void or illegal shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

Section 6.4 - Repealer

All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 6.5 - Savings

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this Ordinance takes effect are saved and may be consummated according to the law when they were commenced.

Section 6.6 - Effective Date

This Ordinance shall be published in a newspaper of general circulation in the Township of Orion, and shall become effective upon publication, as provided by law.

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