

CHAPTER 114: FRANCHISES

Section

114.01 Electric franchises

114.02 Natural gas franchises

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§ 114.01 ELECTRIC FRANCHISES.

(A) (1) Grant; term. The city hereby grants to the right, power, and authority to the Consumers Energy Company, a Michigan corporation, its successors, and assigns, hereinafter called the "grantee," to construct, maintain, and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers, and other electrical appliances for the purpose of transmitting, transforming, and distributing electricity on, under, along, and across the highways, streets, alleys, bridges, waterways, and other public places, and to do a local electric business in the city for a period of thirty years.

(2) Consideration. In consideration of the rights, power, and authority hereby granted, said grantee shall faithfully perform all things required by the terms hereof.

(3) Conditions. No highway, street, alley, bridge, waterway, 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 structures and equipment shall be so placed on either side of the highways as not to unnecessarily interfere with the use thereof for highway purposes and pedestrian and non-motorized traffic on sidewalks, bicycle paths, and bicycle lanes. All of grantee's wires carrying electricity shall be securely fastened so as not to endanger or injure persons or property in said highways. The grantee shall have the right to trim trees if necessary in the conducting of such business, subject, however, to the supervision of the highway authorities.

(4) Repair and restoration. Following the completion of work by the grantee, the grantee shall repair all damage to sidewalks, streets, bicycle paths, bicycle lanes, and other public and private property that arose from the work of the grantee and shall restore such property to its condition preceding work.

(5) Hold harmless. Said grantee shall at all times keep and save the city 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 city on account of the permission herein given, said grantee shall, upon notice,

defend the city and save it free and harmless from all loss, cost, and damage arising out of such negligent construction and maintenance.

(6) Extensions. Said grantee shall construct and extend its electric distribution system within said city and shall furnish electric service to applicants residing therein in accordance with applicable laws, rules, and regulations.

(7) Franchise not exclusive. The rights, power, and authority herein granted, are not exclusive.

(8) Rates. Said grantee shall be entitled to charge the inhabitants of said city, for electric furnished therein, the rates as approved by the state Public Service Commission, to which Commission or its successors authority and jurisdiction to fix and regulate electric rates and rules regulating such service in said city, 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 city, acting by its City Council, or by said grantee.

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

(10) State 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 state Public Service Commission or its successors, applicable to electric service in said City.

(11) Repealer. This section, when accepted and published as herein provided, shall repeal and supersede the provisions of an electric ordinance adopted by the city on February 13, 1980 entitled:

“An ordinance, granting to Consumers Power Company, its successors and assigns, the right, power, and authority to construct, maintain, and commercially use electric lines consisting of towers, masts, poles, cross arms, guys, braces, feeders, transmission and distribution wires, transformers, and other electrical appliances on, under, along, and across the highways, streets, alleys, bridges, and other public places, and to do a local electric business in the city for a period of thirty years.”

and amendments, if any, to such ordinance whereby an electric franchise was granted to Consumers Energy Company.

(Ord. 67, passed 2-13-80; Am. Ord. 274, passed 6-9-12)

(B) Granting to the City of Grand Haven, acting by and through its Board of Light and Power, its successors and assigns, the right, power and authority to construct, maintain, and commercially use electric lines on, under, along and across the highways, streets, alleys, bridges and other public places, and to do a local electric business in the city.

The City of Ferrysburg ordains:

(1) Definition. The word GRANTEE when used in this section, shall designate and refer to the City of Grand Haven, acting by and through its Board of Light and Power, and its successors and assigns.

(2) Grant of franchise. The right, power and authority is hereby granted and vested in the grantee to construct, maintain and commercially use electric lines, consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances on, under, along and across the highways, streets, alleys, bridges and other public places, and to do a local electric business in the City of Ferrysburg.

(3) Duty of grantee. In consideration of the rights, power and authority hereby granted, the grantee shall faithfully perform all things required by the terms hereof.

(4) Streets and highways. No highway, street, alley, bridge or other public place used by the grantee shall be obstructed longer than necessary during the work of construction or repair and shall be restored to the same good order and condition as when such work was commenced. All towers, masts, poles and other supports shall be set and all wires shall be suspended or buried in a careful and proper manner so as not to injure persons or property. The grantee shall have the right to trim trees if necessary in the conducting of such business, subject, however, to the supervision of the City Council.

(5) Hold harmless. The grantee shall at all times keep and save the city free and harmless from all loss, costs and damage to which it may be subject by reason of the negligent construction and maintenance of the towers, masts, poles, wires and other structures and appliances, the erection, burial and maintenance of which are hereby authorized.

(6) Rates.

(a) The grantee shall be entitled to charge the inhabitants of the city for electric energy for light and power at rates fixed by the Board of Light and Power of the City of Grand Haven and kept on files in its offices. These rates shall at no time exceed those rates charged by the grantee to its customers located within the corporate limits of the City of Grand Haven.

(b) All bills for electric energy shall be payable monthly. The grantee may collect any minimum charge specified in its rate schedule. It shall furnish and maintain commercially accurate meters to measure the energy furnished. The grantee shall at all reasonable times have access to the premises of its customers, for the purpose of reading, inspecting, removing and replacing such meters.

(7) Not exclusive. The rights, power and authority herein granted, are not exclusive.

(8) Payment in lieu of taxes. During the term of the franchise granted by this section, the grantee shall pay to the city an annual payment in lieu of taxes. This payment in lieu of taxes shall be billed by the city to the grantee July 1 of each year, beginning July 1, 1985, and shall be paid on or before the following August 31. The amount of the payment in lieu of taxes shall be computed by multiplying the hypothetical state equalized value of all of the grantee's real and personal property in the city, which would have been subject to taxation under state law if it was owned by a private electric utility, by the total city millage, including both millage authorized by Charter and special voted and/or debt millage, levied in the year in which the payment in lieu of taxes is billed. The city millage rate shall not include millage appearing on the city tax statement which is collected for the county, a school district, or any other taxing authority. The city shall determine the hypothetical state equalized value of grantee's personal property as of the tax determination day applicable to taxable property located in the city and shall do so in the same manner and with the same methodology as it utilizes to determine the state equalized value of property in the city owned by a private electric utility. The city shall notify the grantee in writing of its determination of the hypothetical state equalized value of grantee's property no later than April 1 of each year and shall give the grantee a reasonable opportunity to discuss with the city the valuation amount and how it was determined.

(9) Revocation. The franchise granted by this section is subject to revocation at the will of the City Council. In the event the City Council shall determine to revoke the franchise granted by this section, then grantee may, on written notice to the city within 60 days of being notified of such determination, request that the granting of a franchise for a period of 30 years, or such lesser period as grantee may request, be submitted to the electors of the city at the next general election or at a special election called for that purpose. Upon receipt of grantee's request for an election, the city shall submit to its electors the granting of a franchise to grantee pursuant to the terms and provisions of this section for a period of 30 years or such lesser period as shall be requested by grantee. Grantee shall pay all expenses related to any special election and its fair share of any expenses related to the inclusion of the franchise proposition as part of a general election. The grantee may choose at any time to relinquish the franchise granted by this section.

(10) Acceptance. The grantee shall, within 30 days after the adoption of this section, file with the City Clerk its written acceptance of this section. Upon filing of such acceptance, this section shall constitute a contract between the city and the grantee.

(11) Severability. This section and the various parts, sections, sentences, phrases and clauses hereof are hereby declared to be severable. If any part, section, sentence, phrase or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of this section shall not be affected thereby.

(12) Effective date. This section is ordered to take effect on July 8, 1985, the date being at least one day after publication in the Grand Haven Tribune, a newspaper circulating in the city, pursuant to the provisions of the City Charter as amended.

(Ord. 93, passed 6-26-85)

§ 114.02 NATURAL GAS FRANCHISES.

The City of Ferrysburg ordains:

(A) Statement of purpose. The purpose of this section is to grant to Michigan Gas Utilities, a division of UtiliCorp United Inc., a Delaware corporation, its successors and assigns, the right, power, authority and permission to use the public streets, alleys, and bridges of the city for the purpose of laying and maintaining gas pipes, mains, conduits, valves, drips and all necessary appurtenances in, under and along the public streets, alleys, and bridges of the city, and the right, power, authority and permission to conduct and operate a natural gas business and distribution system in the city, for a period of 30 years. This franchise for the installation, maintenance and operation of a natural gas business and distribution system in the city is granted in accordance with §§ 5.23, 5.24, and 5.26 of the City Charter. Pursuant to the City Charter, the franchise granted herein shall be nonexclusive, and shall be subject to revocation at the will of the City Council except as provided in division (L) of this section.

(B) Definitions. As used in this section:

CITY. The City of Ferrysburg, County of Ottawa, State of Michigan.

CITY COUNCIL. The City Council for the City of Ferrysburg.

CITY MANAGER. The City Manager of the City of Ferrysburg.

MGU. Michigan Gas Utilities, a division of UtiliCorp United Inc., a Delaware corporation doing business in the State of Michigan, its successors and assigns.

PARKWAY. That portion of a public street or alley right of way which is open and not developed for vehicular and pedestrian travel.

PUBLIC STREET AND ALLEY. Right of way dedicated to the public for street and alley purposes, consisting of vehicular and pedestrian travel lanes and open and unpaved parkways either side of vehicular travel lanes.

(C) Granting of franchise to use public streets, alleys, and bridges. The city hereby grants to MGU a non-exclusive franchise with the right, power, authority and permission to construct, maintain, operate and extend in the present and future public streets, alleys, and bridges of the city, a natural gas distribution system, for the purposes of supplying and distributing natural gas for all purposes to the city and its inhabitants and consumers in the vicinity thereof, and for the distribution of natural gas from or through the city to points beyond the limits thereof. The city further grants MGU the right, power, authority and permission to enter upon and use the public streets, alleys, and bridges of the city to lay, install, maintain, operate, repair and extend therein, through and thereunder such mains, services, pipes, conduits, valves, drips, apparatus, appliances and other appurtenances as may be necessary and proper for the transmission, transportation, distribution and supply of natural gas for all purposes for which it may be used, throughout and beyond the city and for the purpose of conducting and operating a natural gas business in the city. subject to the terms and conditions hereinafter provided.

(D) Permit required for construction excavation, maintenance, and repair activities in public streets alleys, and bridges. Whenever it desires to construct, install, excavate, repair or maintain facilities in public street rights of way, including either a paved or unpaved portion of the street right of way or on bridges, MGU shall apply to the city for a permit, for same, on forms provided by the city. MGU shall submit to the city plans and specifications regarding the proposed operation in the street rights of way, in sufficient detail as determined by the City Manager or his designee. MGU shall submit with each permit application a reasonable fee as determined by the City Council. Within a reasonable time, not to exceed ten days, the City Manager or his designee may request additional information from MGU in order to determine whether or not a permit be issued. The City Manager or his designee shall either issue a permit as applied for, or shall deny the permit as applied for and shall state the reasons for the permit denial. Any permit issued under this section shall be revocable by the City Manager or his designee for failure to comply with the terms of the issued permit. A permit issued pursuant to this section shall constitute a binding contract between the city and MGU.

(E) Permit required for construction, maintenance and repair activities on bridges. Whenever it desires to construct, install, excavate, repair or maintain facilities on bridges, MGU shall apply to the city for a permit as provided in division (D). In addition to satisfying the requirements of division (D), MGU shall demonstrate that public convenience and necessity are served by the proposed activities.

(F) Emergency repairs. The permit described above shall not be required to be issued in advance in the case of emergency repair operations by MGU. As soon as reasonably possible, in the case of any such emergency operations, MGU shall provide notice of the repair operations and an estimate of time for completion. No later than three business days following the commencement of emergency operations, MGU shall apply for a permit in accordance with division (D) of this section.

(G) Standards for Construction, Repair and Maintenance Activities. Any and all construction, repair and maintenance activities by MGU in, on, over or under a public street or a public street right of way or on a bridge shall be in accordance with a permit issued by the city, in accordance with standard industry practices for public utilities and in accordance with reasonable requirements as approved by the City Council. Such requirements may not conflict with nor contradict safety or construction standards established by state or federal regulatory authorities. The requirements shall include the following:

- (1) Prior notification to the MISS Dig underground reporting system.
- (2) Provision and operation of barricades and traffic control measures necessary for public safety.
- (3) Notification to adjacent property owners who may be inconvenienced by an activity.
- (4) Identification of a contact person to handle complaints from property owners, when appropriate.

(5) Upon request, periodic reports to the city public services supervisor regarding the status of any activities permitted.

(6) A permit may specify additional reasonable requirements.

(H) Relocation of MGU's facilities.

(1) If the city elects to alter or change the grade of or otherwise alter any street, alley, bridge, or public right of way, MGU upon reasonable notice from the city, shall remove and relocate its facilities or equipment situated in the public rights of way, if such removal is necessary to prevent interference and not merely for the convenience of the city, at the cost and expense of MGU and the city shall provide MGU with a reasonable alternative location for MGU's facilities. The city shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause MGU unreasonable additional expenses in exercising its authority under this section.

(2) If the city orders or requests MGU to relocate its facilities or equipment primarily for non-public purposes or the primary benefit of a commercial or private project, and such removal is necessary to prevent interference and not merely for the convenience of the city or other right-of-way user, MGU shall receive payment from the commercial or private developer or other non-public entity for the cost of such relocation as a precondition to relocating its facilities or equipment.

(I) Force Majeure. It shall not be a breach or default under this franchise if either party fails to perform its obligations hereunder due to a Force Majeure event which is not reasonably within the control of the affected party to control or overcome. Force Majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment, distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; 4) and any other physical events, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid Force Majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance; provided, however, that this provision shall not obligate a party to settle labor strikes. Nothing in this section shall modify or lessen any responsibility of the acting party to indemnify or hold harmless the other party pursuant to division (J) of this section.

(J) Hold harmless. MGU during the term of this franchise, agrees to save harmless the city from and against all claims, demands, losses and expenses arising from the actions of MGU, its employees or agents or from the use or presence of MGU mains, pipes, conduits, valves, drips and all other appurtenances, apparatus and appliances of MGU; provided, however, that MGU need not save harmless the city from claims, demands, losses and expenses to the extent that such claims, demands, losses or expenses are the proximate result of the acts of the city, its employees or agents, or third parties not within the direction or control of MGU.

(K) Rates established by Michigan Public Service Commission governing rules and regulations. This franchise is granted subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by the laws of the State of Michigan. The rates to be charged by MGU for service within; the present or future corporate limits of the city and the rules and regulations regarding the character, quality and standards of service to be furnished by MGU shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by MGU.

(L) Franchise revocable. The franchise herein granted shall be revocable by either party as authorized by the Michigan Constitution of 1963.

(M) Franchise violations. This section shall constitute a binding contract between the city and MGU. If either party believes that the other party has failed to perform any obligation under this section or has failed to perform in a timely manner, that party shall notify the other party in writing, stating with reasonable specificity the nature of the alleged default. Upon notification of default each party has a reasonable time to cure the default. The parties reserve their right to seek all remedies available at law or in equity, including, not by limitation, misdemeanor prosecution, mediation, non-binding arbitration, or litigation. The limitations on remedies contained in this section do not apply to enforcement of permits.

(N) Severability. This section and the various parts, sections, subsections, sentences, phrases and clauses thereof are hereby declared to be severable. If any part, section, subsection, sentence, phrase or clause is adjudged unconstitutional or invalid, it is hereby declared that the remainder of this section shall not be affected thereby.

(O) Non-waiver. Any waiver of any obligation or default under this franchise shall not be construed as a waiver of any future defaults, whether of like or different character.

(P) Term. The rights and privileges granted in this franchise shall continue in force and effect for a period of 30 years from the effective date hereof unless revoked by either party. The effective date of this franchise shall be the date of the acceptance of the franchise by MGU which acceptance shall be filed with the city by MGU, in writing, within 60 days after the enactment of this section

(Q) Effective date of section. This section was approved and adopted by the City Council on Sept. 4, 2001 and shall become effective upon its final passage and approval by the city, in accordance with applicable laws and regulations, upon publication in the Grand Haven Tribune, a newspaper of general circulation in the city.

(R) Notices. Any notices of revocation shall be sent to the following:

If to MGU: Vice President
Community Relations

Utilicorp United Inc.

20 W. 9th Street

Kansas City, Missouri 64105

If to the City: City Clerk, City of Ferrysburg

408 Fifth Street

PO Box 38

Ferrysburg, Michigan 49409

(Ord. 185, passed 9-4-01)

§ 114.99 PENALTY.

Any person violating the provisions of this chapter, the requirements of a permit issued pursuant to Chapter 50 of the City Code, or the requirements of a permit issued pursuant to this chapter, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in § 10.99. The city may also seek such injunctive relief as may be appropriate. Any activity in violation of this chapter shall constitute a nuisance per se.

(Ord. 184, passed 8-20-01)