

Adopted: FEBRUARY 28, 2000
Effective; March 9, 2000

CHARTER TOWNSHIP OF HAMPTON, MICHIGAN
ORDINANCE NO. 56

REVOCABLE FRANCHISE FOR RETAIL WHEEL
ELECTRIC PROVIDERS ORDINANCE

An ordinance to establish the basis for the granting of franchises for retail wheel electric providers; to establish the basis for the determination of the charging of franchise fees; to establish applicable terms and conditions for the operation of retail wheel electric franchises; and to create and authorize the basis for the enforcement of such a franchise agreement.

THE CHARTER TOWNSHIP OF HAMPTON ORDAINS:

Section 1 Definitions.

"Electrical System" shall include electric lines, towers, masts, poles, cross-arms, guides, braces, feeders, transmission and distribution wires, transformers and other electrical appliances used in the transmission of electricity which exist on, along, across or under the highways, streets, alleys, bridges (hereinafter "rights-of-way") within the Charter Township of Hampton.

"Franchise" means a revocable franchise which allows a person to be a retail wheel electric provider.

"Person" means an individual, corporation, company, association, firm, partnership or limited liability company, including their lessors, trustees and receivers.

"Retail Wheel Electrical Provider" or "Provider" means a person which supplies or desires to supply electricity, generated by another, through an electrical system which is entirely or substantially owned by another.

"Supervisor" means the Township Supervisor of the Charter Township of Hampton, and shall include his or her designee.

Section 2 Franchise Required.

No person shall become a Retail Wheel Electrical Provider within the Township without first obtaining a revocable franchise.

Section 3 Application Process.

a. A Provider, or one who desires to be a Provider, shall apply for a revocable franchise by providing to the Township the following information:

1. The name and address of the applicant; if the applicant is not a natural person, the name and address of each of its officers, general partners, limited partner, and member holding an equity interest of more than 20%;
2. Evidence of all required regulatory approvals, permits and licenses for the offering or providing of electricity by way of retail wheeling; to the extent such an approval, permit or license can not be obtained prior to the issue of a franchise, the Provider shall satisfy the Township that it has been obtained prior to the Provider's actual use of an electrical system;
3. A statement that the applicant is not in any way indebted to the Township for taxes, fees, costs or any other sums; and
4. A list of all persons to whom the Provider intends to provide electricity.

b. The Township may request that an applicant submit additional information which the Township reasonably deems necessary to respond to the application.

c. To reimburse the Township for its fixed and variable costs incurred by the Township for granting and monitoring revocable franchises, each applicant shall pay a non-refundable application fee to the Township in such amounts as its Board of Trustees shall determine from time to time by resolution, to be paid as follows:

1. One half (1/2) upon the submission of the application, which shall be non-refundable; and

2. The balance upon the return to the Township by the Applicant of the signed revocable franchise.

d. Within sixty (60) days of receiving a Provider's application and all required information, the Supervisor shall present the Provider's request for a revocable franchise to the Township Board of Trustees, which shall grant or deny the request or, if reasonably necessary, request more information before granting or denying said request.

e. A revocable franchise shall not be granted unless the applicant establishes that it is capable of complying with the legal, technical and financial requirements of this Ordinance.

f. If the Township Board of Trustees grants the Provider's request for a revocable franchise, the Supervisor shall prepare and execute a revocable franchise agreement consistent with this Ordinance and submit it to the Provider for its signature; said signature shall indicate that the Provider acknowledges and agrees to abide by the terms and conditions set forth therein and within this Ordinance.

g. A revocable franchise shall become effective when the Township receives an original franchise bearing the signature of the Applicant along with the payment of the balance of the application fee.

h. A revocable franchise granted by the Township Board of Trustees, executed by the Supervisor and sent to the Applicant but not signed and returned (with the required fee) by the Applicant within nine (9) months of its being mailed to the Applicant shall be null and void and any fee paid shall be forfeited to the Township.

i. Prior to the expiration of a revocable franchise, a Provider may apply for a renewed revocable franchise, subject to such terms and fees as may then exist. A Provider may not apply for a renewed revocable franchise earlier than one (1) year before the expiration of its existing franchise.

Section 4 Terms and Conditions.

a. A revocable franchise shall remain in effect for a term of five (5) years commencing upon the date it is executed by the Township.

b. All such revocable franchises shall be nonexclusive and non-assignable; by issuing a revocable franchise, the Township does not

agree to restrict the number of revocable franchises in all or part of the Township.

c. The revocable franchise shall not limit or modify any other revocable franchise, license or revocable franchise previously granted by the Township to any other occupant of the right-of-way.

d. A revocable franchise shall be revocable, upon sixty (60) days written notice to the Provider, by the Township, in the event of Provider's misuse or failure to comply with the provisions of this franchise.

e. The Provider's use of any rights-of-way shall not exceed that authorized by this Ordinance and the revocable franchise.

f. The Provider shall use the electrical systems of others and shall not itself construct or cause to be constructed any electrical system for its own purposes other than when such system is located upon a customer's property or is necessary to connect a customer to another utility's electrical system (and then, only if such construction would not amount to an unreasonable duplication of existing facilities owned by local utilities). In the event such construction is necessary, the Provider shall first give the Township ten (10) days written notice of its intent to so construct.

g. Any unlawful use of private property over the objection of the property owner shall constitute a violation of this Ordinance.

h. In the event a Provider, during the term of its revocable franchise, desires to provide electricity to persons not previously disclosed to the Township in the Provider's application, the Provider shall notify the Township in writing prior to so providing electricity.

i. In the event of a conflict between this Ordinance and a revocable franchise, this Ordinance shall prevail.

j. Unless required to do so by state or federal law, a person, including a public utility, which owns an electrical system, shall not lease or sublease any portion of its electrical system, or allow another to use its electrical system, unless said person has first obtained from the Township a revocable franchise allowing it to do so.

k. If a franchise forfeits or otherwise loses its rights under a pole-conduit license agreement with the owner of an electrical

system, the franchise shall notify the Supervisor in writing within fourteen (14) days.

1. Nothing in this Ordinance shall be construed as a waiver by Provider of any rights under state or federal law. Provider shall, as to all other conditions and elements of service not addressed or fixed by this Ordinance, remain subject to the rules and regulations applicable to electric service by the Michigan Public Service Commission, or its successor. If so requested by the Township, Provider shall provide the Township with copies of all documents which Provider sends to the Michigan Public Service Commission and copies of all orders, decisions, or correspondence Provider receives from the Michigan Public Service Commission that relate to this Franchise. Provider shall permit Township inspection and examination of all records that relate to this Franchise that Provider is required to maintain or file under Michigan Public Service Commission rules and regulations.

m. The Township may establish reasonable standards of service, prevent unjust discrimination in service, and impose any other regulations as may be determined by the Township to be conducive to the safety, welfare and accommodation of the public. Provider shall be and remain subject to all Ordinances, rules and regulations of the Township now in effect, of which might be adopted.

n. Provider shall reimburse the Township for the Township's cost associated with issuance of this Franchise, including reasonable and documented attorney fees.

Section 5 Liability, Indemnity.

a. A Provider shall have no recourse against the Township for any loss or damage arising out of failure of the Township to have the authority to grant all or any part of a revocable franchise or the authority to grant permission to use all or part of the rights-of-way. A Provider acknowledges that on accepting a revocable franchise:

1. it did so relying on its own investigation and understanding of the power and authority of the Township; and
2. that is has not been induced to obtain a revocable franchise by any understanding or promise by or on behalf of the Township concerning any term or condition of a revocable franchise not expressed in this Ordinance or in the revocable franchise.

b. Each Provider accepts at its own risk that the Township may make use of the rights-of-way in which a system used by a Provider is located in a manner inconsistent with the Provider's use and that in such event the Provider will not be entitled to compensation from the Township.

c. The Township shall not be liable for injury or damage to others arising out of a Provider's use of a system due to the act or omission of any person or entity other than the Township or those persons or entities for which the Township is legally liable as a matter of law.

d. A Provider shall, at its sole cost and expense, indemnify and hold harmless the Township and its respective employees, officers, boards, agents, and contractors (hereinafter referred to in this Ordinance as "indemnitees"), from and against any and all liability which maybe imposed upon or against the indemnitees by reason of any act or omission of a Provider, its employees, agents, contractors or subcontractors, resulting in personal injury or property damage to any person arising out of its use of an electrical system.

e. In the event any action shall be brought against the indemnitees by reason of any matter for which the indemnitees are indemnified hereunder, a Provider shall, at the Provider's sole cost and expense, defend same with legal counsel selected by the Provider and consented to by the Supervisor, which consent shall not to be unreasonably withheld.

f. A Provider shall immediately advise the Supervisor of any claim or litigation that may result in liability to the Township.

g. The issuance of a revocable franchise, or other action or transaction of the Township, shall not constitute any representation, guarantee or warranty by the Township of any kind to any person, customer or a Provider and shall not be a defense against a Provider's obligation to indemnify and hold the Township harmless.

h. Provider shall obtain and maintain in full force and effect the following insurance covering all insurable risks associated with its exercise of the rights granted by this Ordinance: Comprehensive General Liability, Contractual Liability coverage and coverage for X, C and U hazards in an amount no less than One Million Dollars (\$1,000,000.00). The Township shall be named as an additional insured in all applicable policies. All insurance policies shall provide that they shall not be canceled or modified unless thirty (30) days prior

written notice is given to the Township. If so requested by the Township, Provider shall provide the Township with a certificate of insurance evidencing such coverage and maintain a current certificate on file with the Township.

Section 6 Violation, Penalty.

a. A person who violates any provision of this Ordinance may be charged by the Township with a criminal misdemeanor.

b. In addition to any remedies under this Ordinance, the Township may:

1. bring an action for an injunction or other process against a person to restrain, prevent, or abate any violation of this Ordinance and/or,
2. revoke a person's revocable franchise.

c. Each day of which any violation of this Ordinance constitutes a separate infraction and shall be subject to penalties and other remedies as a separate infraction.

d. Any material, false or misleading statement or representation knowingly made by an applicant or Provider in an application, in any document submitted to the Township pursuant to this Ordinance shall be in violation of this Ordinance and, if made by a Provider, a material breach of its revocable franchise, and shall subject the applicant or Provider to all penalties and remedies which are available to the Township, including the denial of the application or revocation of the revocable franchise.

Section 7 Repealer

All former Ordinances or parts of Ordinances conflicting or inconsistent with the provisions of this Ordinance are hereby repealed.

Section 8 Severability

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, or other entity or public body having jurisdiction over the subject matter, said portion shall be deemed a separate, distinct and independent provision and such holding

shall not affect the validity of the remaining portions of this Ordinance.