

EXETER TOWNSHIP  
ORDINANCE NO. 49

An ordinance prohibiting public and private utilities from using public rights of way within the Township without the consent of the Township and prohibiting utilities from transacting local business without a franchise from the Township.

THE TOWNSHIP OF EXETER ORDAINS:

Section 1. TITLE.

This Ordinance shall be known and cited as the Exeter Township Utility Ordinance.

Section 2. AUTHORITY.

This Ordinance is adopted pursuant to the Michigan Constitution of 1963, Article 7, Sections 19, 25, 29, 30 and 34, and MCLA sections 41.181 and 247.183 (MSA 5.45(1) and 9.263), as amended, which prohibit any person, partnership, association or corporation, public or private, operating a public utility from using the highways, streets, alleys or other public places of the Township for wire, poles, pipes, tracts, conduits or other utility facilities, without the consent of the Township and from transacting local business in the Township without first obtaining a franchise, and authorize the Township to enact ordinances to protect the health, safety and general welfare of persons and property of the inhabitants of the Township.

Section 3. PURPOSES.

The purposes of this ordinance are:

1) to require consent for the use of public highways, streets, roads, alleys and right-of-ways within the Township for the location of line, poles, mains, towers, buildings, structures, appurtenances and other utility facilities in order to protect the public health, safety and general welfare;

2) to regulate the transaction of local business by public and private utilities within Exeter Township to protect and promote the public health, safety and general welfare; and

3) to protect and promote the orderly use of scarce Township resources.

The Township has the power and authority to exercise reasonable control over the public rights of way within the Township and has determined that it is reasonably necessary to preserve and protect the health, safety and general welfare of the Township by enacting this Ordinance.

Section 4. CONSENT TO USE PUBLIC RIGHTS OF WAY.

(A) Consent Required. No person, partnership, association or corporation, public or private, operating a public utility (the "utility"), shall have the right to the use of the highways, streets, alleys, or other public places of the Township (collectively "public rights of way") for wires, poles, pipes, tracks, conduits, buildings, structures, appurtenances or any other utility facilities without the prior consent of the Township. For purposes of this Ordinance, a public utility is defined as a person, partnership, association or corporation, public or private, municipal department, board or commission duly authorized to furnish and furnishing under federal, state or municipal regulations services to the public, including, but not limited to: water, gas, steam, electricity, waste disposal or transportation.

(B) Form and Timing of Consent. Consent to use the public rights of way may be granted by ordinance, resolution, or contract as determined by the Township. Consent shall be required before the utility begins any use of any public right of way. The Township may withhold its consent until the utility has filed with the Township Clerk its written unconditional acceptance of all of the conditions to be required by the Township in exchange for the consent.

(C) Conditions to Consent. The Township may grant consent, grant consent subject to conditions, or deny an application for use of the public rights of way as permitted by law. The Township may grant consent subject to any conditions permitted by law, including but not limited to any of the following:

1) No Obstructions. The utility shall not unreasonably obstruct the passage of any public right of way within the Township and shall, within a reasonable time after making an opening, excavation or construction, repair the same and leave it in as good condition as before the opening, construction or excavation was made.

2) Indemnification. The utility shall indemnify and hold the Township and its boards, commissions, officers, trustees, employees, agents and successors harmless from and against all claims, liabilities, and expenses of any kind, including but not limited to all reasonable attorney fees, related to or arising out of the utility's use of the public

rights of way or any other activity of the utility related to its operations within the Township.

3) Due Care. The utility shall use reasonable care in using the public rights of way and in conducting its operations within the Township.

4) Construction. All construction or installation of facilities within the Township shall be approved in advance by the Township and shall be accomplished in a proper and workmanlike manner. The utility shall be responsible for any and all injuries or damages resulting from the same during construction and thereafter. Upon completion of any construction or installation, the utility shall certify in writing that the construction and installation did comply with such approved plans. The Township shall have the right to require the correction of any noncompliance. In the event such construction or installation causes damage to any other facilities, any portion of the Township, or any public right of way, the same shall be immediately restored to a condition equal to that existing before the damage.

5) Licenses. The utility shall demonstrate that all licenses, permits, and other approvals necessary to operate have been obtained.

6) Fees. The utility shall pay reasonable fees to the Township to reimburse the Township for its costs and expenses reasonably related to the utility's request for consent, the utility's use of public rights of way, Township maintenance of public rights of way containing utility facilities, and the utility's operations within the Township.

7) Joint Use. The utility shall permit joint use of its facilities located in the public right of way by the Township and by other uses to a reasonable extent.

8) Arbitration. The utility shall agree that any dispute between the Township and the utility be decided by binding arbitration.

9) Relocation. The utility shall agree to relocate, at the utility's sole expense, any facilities upon the reasonable request of the Township.

10) Service Access. The utility shall permit residents and property owners within the Township to use the utility services upon reasonable terms not less favorable than those available to other users of the utility.

11) Service Standards. The utility shall demonstrate that it has sufficient capacity to service

reasonably anticipated future demand for utility services provide for uninterrupted service to users, shall establish reasonable standards of service and shall prevent unjust discrimination in service or rates.

12) Financial Security. The utility shall provide to the Township financial security to protect the Township and its citizens and resources in the event of the utility's insolvency, inability to deliver service, destruction or damage to Township resources or property of any of its citizens, or other failure to perform as required by the Township. The financial security shall take the form of a cash bond, irrevocable letter of credit, or other form of security in an amount and under terms that are reasonably acceptable to the Township.

13) Remedies. The Township shall have adequate remedies for breach of any condition by the utility, including but not limited to the right to seek damages, specific performance, termination of consent, and other available remedies.

14) Reporting. The utility shall comply with reasonable requirements relating to certification of compliance and periodic review, reporting, and inspection to insure compliance with any conditions imposed by the Township.

15) Compliance with Applicable Laws. The utility shall maintain compliance with all applicable local, state, and federal laws, regulations and other rules.

16) Easements and Access Rights. The utility shall demonstrate that all easements, rights of way, and other access rights for its facilities have been obtained.

17) No Annexation or Alteration of Boundaries. Any utility that is a municipal corporation shall agree not to annex or alter the boundaries of any portion of the Township used by the utility as long as the utility is using the public rights of way in the Township.

18) Additional Conditions. The utility shall comply with additional reasonable conditions and regulations as may be determined by the Township to protect and promote the public health, safety, and general welfare of the Township and its resources, citizens and residents.

(D) Procedure for Requesting Consent. Written request for consent shall be submitted by the utility to the Township Supervisor. The request shall include a description of the proposed use of public rights of way, a description of the nature and location of any proposed

installation or construction, and any other information reasonably requested by the Township. The Township may refer the application to the Township engineer or other professionals for review and recommendation. Any costs incurred by the Township in that review and recommendation shall be reimbursed on demand by the utility to the Township.

(E) Term and Revocation of Consent. No consent shall be granted for a period of longer than 30 years. Consent shall be subject to revocation at the will of the Township, unless otherwise specifically provided by the Township.

#### Section 5. FRANCHISE REQUIRED TO TRANSACT LOCAL BUSINESS.

(A) Franchise Required. No person, partnership, association or corporation, public or private, operating a public utility (the "utility") shall transact local business in the Township without a franchise from the Township.

(B) Form and Timing of Franchise. Franchises for transaction of local business by utilities may be granted by ordinance or contract as determined by the Township. A franchise shall be required before the utility transacts any local business. The Township may withhold its approval of a franchise until the utility has filed with the Township Clerk its written unconditional acceptance of all of the terms of the proposed franchise.

(C) Public Vote Required for Irrevocable Franchise. A utility franchise that is not subject to revocation at the will of the Township Board shall not be granted until the proposed franchise is approved by the affirmative vote of a majority of the electors of the Township voting thereon at a regular or special election. This kind of franchise may not be approved by the Township Board for referral to the electorate less than thirty (30) days after application for the franchise has been filed with the Township Board, and may be approved for referral only after a public hearing has been held and the proposed franchise has filed with the Township Clerk its unconditional acceptance of all the proposed terms of the franchise. No special election for this purpose shall be ordered unless and until the proposed franchise shall have paid to the Township Treasurer the estimated expense of holding that election, as determined by the Township Board.

(D) Procedure for Requesting Franchise. Written request for a franchise shall be submitted by the utility to the Township Supervisor. The request shall include a description of the proposed utility business, a description of the nature and location of any proposed installation of construction, and any other information reasonably requested by the Township. The Township may refer the application to

the Township engineer or other professionals for review and recommendation. Any costs incurred by the Township in that review and recommendation shall be reimbursed on demand by the utility to the Township.

(E) Filing Required for Franchises Revocable at Will. A utility franchise that is subject to revocation at the will of the Township Board may be granted by the Township Board without referral to the voters, but shall not be granted until after the final written form of the proposed franchise has been on file in the office of the Township Clerk for public inspection for at least four weeks after publication of a notice that the proposed franchise is on file and available for public inspection.

(F) Terms of the Franchise. The Township may grant a franchise upon any terms as permitted by law, or deny the granting of a franchise as permitted by law. The terms of a franchise may include but shall not be limited to any of the following:

1) Franchise Fees. A requirement that the utility pay franchise fees in amounts and at times determined by the Township.

2) Terms That Can Be Conditions to Consent. Any requirement that could be imposed as a condition to the granting of consent under Section 4 above.

3) Other. Any other provision permitted by law.

(G) Maximum Term. No franchise shall be granted for a term of greater than thirty (30) years.

#### Section 6. TOWNSHIP APPROVAL REQUIRED FOR ASSIGNMENT

A utility may not sell, assign, license, mortgage, create a security interest in, or otherwise transfer any rights to use public rights of way or to transact local business and shall not merge or consolidate with another entity without the prior written approval of the Township, which approval shall not unreasonably be withheld.

#### Section 7. PENALTIES.

Any person or entity that violates any of the provisions of this ordinance shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$500.00 or by imprisonment in the county jail for not to exceed 90 days, or by both. Each day that a violation continues to exist shall constitute a separate offense. Any violation shall also be deemed to be a nuisance per se and the Township shall have the right to specific performance in

the form of an injunction against any violation. The Township shall also have the right to recover damages and seek any other remedy available at law.

Section 8. MISCELLANEOUS.

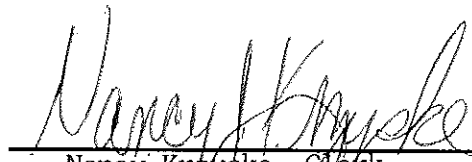
1) Other Laws. The granting of consent or a franchise shall not be deemed to exempt any utility from any other applicable local, state, or federal law, regulations, ordinances, or other applicable rules.

2) Severability. The provisions of this ordinance are severable. The invalidity of any term in this ordinance shall not affect the validity of any other term in this ordinance.

Section 9. EFFECTIVE DATE.

This ordinance shall take immediate effect on the the 30<sup>th</sup> day following publication.

  
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Cheryl Baltrip, Supervisor

  
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Nancy Krzyske, Clerk

Ayes: Sam Miles, Leonard Kernyo, Thomas Boggs, Cheryl Baltrip and  
Nancy Krzyske

Nays: none

Date passed: March 16, 1999