

ORDINANCE NO. 80-721

CONSUMERS ENERGY COMPANY GAS FRANCHISE ORDINANCE

AN ORDINANCE, granting to CONSUMERS ENERGY 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, waterways, and other public places, and to do a local gas business in the CITY OF WARREN, MACOMB COUNTY, MICHIGAN, for a period of thirty years and to REPEAL ORDINANCE NO. 80-298.

THE CITY OF WARREN ORDAINS:

SECTION 1. **GRANT, TERM.** The CITY OF WARREN, MACOMB COUNTY, MICHIGAN, hereby grants to the Consumers Energy 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, waterways, and other public places, and to do a local gas business in the CITY OF WARREN, MACOMB COUNTY, MICHIGAN, for a period of thirty years.

SECTION 2. **CONSIDERATION.** In consideration of the rights, power and authority hereby granted, said Grantee, its officers, employees and agents shall faithfully perform all things required by the terms of this Ordinance.

SECTION 3. **CONDITIONS.**

(a) **Installation, Repair, Restoration.** No highway, street, alley, bridge, waterway or other public place used by Grantee shall be obstructed longer than necessary during the work of construction or repair, and shall be restored to the same or better order and condition as when the work was commenced within a reasonable time. Upon Grantee's failure to complete the required restoration, the City, after giving 10 business days notice (except in an emergency as determined by the City) to Grantee of its intention to do so, may perform or secure performance of the required restoration work, with the costs thereof to be paid by Grantee to the City within 30 days of the City's billing or invoice. 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. If in the performance of work pursuant to the permissions herein granted, Grantee negligently causes damage to any City utility facility, Grantee shall be responsible for the reasonable cost of repair to said facility.

(b) **Notice.** Before commencing any work which will require excavation in or the closing of any street, alley, bridge, waterway or other public place, the Grantee shall provide the City with notice, including a description of the work to be performed, at least five (5) business days in advance of such work. This notice requirement shall not apply to the installation of gas services on privately owned property as long as the work does not obstruct or interfere with any highways, streets, alleys, bridges, water ways, and other public places. Nothing herein shall preclude the Grantee from immediately commencing construction or repair work when deemed necessary to prevent danger to life or property, and in such case, the Grantee shall notify the City of such work as soon as reasonably practical.

(c) **Compliance with Laws.** Grantee shall comply with all applicable laws, statutes, ordinances, rules and regulations regarding the installation, construction or use of its gas system,

whether federal, state or local, now in force or which hereafter may be promulgated. Furthermore, Grantee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, commissions or boards of the City or other governmental entities as required by law before any installation is commenced. Nothing herein shall be construed as a waiver by Grantee of any of its existing or future rights under State or Federal law.

(d) **Relocation.** The Grantee and its contractors and subcontractors shall, at the Grantee's own cost and expense, relocate or remove the Grantee's lines and/or equipment from public rights-of-way whenever the use of such public rights-of-way by the public for installation of public improvements, such as but not limited to drains, sewers, water mains or pipes, road construction, grading or repair, makes such relocation or removal necessary. Nothing in this subsection (d) shall be construed as a waiver by the Grantee of any of its existing or future rights under state or Federal law. Furthermore, nothing in this subsection (d) shall restrict or impair the Grantee's rights under any applicable statutes or laws regarding the vacation or relocation of public streets.

SECTION 4. **INDEMNITY/HOLD HARMLESS.** Grantee shall at all times keep and save the City and its officials, officers, employees and agents free and harmless from all claims for damages, costs and expense arising from or related to Grantee's negligent or other legally actionable errors or omissions in the exercise of permission granted by this Ordinance. In case any action asserting such a claim and/or a claim against the City on account of the permission herein given is commenced, Grantee shall defend the action and save the City and its officials, officers, employees and agents free and harmless from all costs, expenses, losses and damages of or awarded or incurred in the action. Grantee shall reimburse the City for the costs incurred by it for any emergency response involving the Grantee's gas transmission or distribution facilities. Nothing in this section shall authorize the City to make or attempt to make alterations in or repairs to Grantee's gas transmission or distribution facilities, structures or equipment. Grantee recommends that its on-call emergency crews be requested and used in all such emergencies to handle its utility facilities.

SECTION 5. **INSURANCE.** Grantee shall maintain liability insurance coverage in a manner authorized by the laws of the State of Michigan, insuring against liability for loss or damages for bodily injury, death and property damages that are caused by, arise from or are the result of Grantee's actions or omissions in the exercise of rights under this Ordinance. Grantee shall provide written proof of the required liability insurance coverage to the City Clerk upon written request.

SECTION 6. **SALE, ASSIGNMENT, AND TRANSFER OF FRANCHISE.** Grantee shall not sell, assign, sublet or transfer this franchise or any rights under it without the written consent of the City.

SECTION 7. **EXTENSIONS.** Said Grantee shall construct and extend its gas distribution system within said City and shall furnish gas to applicants residing therein in accordance with applicable laws, rules and regulations.

SECTION 8. **FRANCHISE NOT EXCLUSIVE.** The rights, power and authority herein granted, are not exclusive. Either manufactured or natural gas may be furnished hereunder.

SECTION 9. **RATES.** Said Grantee shall be entitled to charge the inhabitants of said City 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 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 therefore being made by either said City, acting by its City Council, or by said Grantee.

SECTION 10. **REVOCATION.** The franchise granted by this ordinance is subject to revocation upon sixty (60) days written notice by the party desiring such revocation.

SECTION 11. **MICHIGAN PUBLIC SERVICE COMMISSION, JURISDICTION.** 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 City.

SECTION 12. **CITY JURISDICTION.** Said Grantee shall be and remain subject to all ordinances, rules and regulations of the City now in effect, or which might subsequently be adopted for the regulation of land uses or for the protection of the health, safety and general welfare of the public; provided however, that if there is a conflict between local, state or federal law, nothing herein shall be construed as a waiver by Grantee of any of its existing or future rights under state or Federal law.

SECTION 13. **ANNUAL PLANNING MEETING.** In an effort to promote efficiency, the appropriate representatives of the City may annually request from Grantee any known planned relevant projects arising within two (2) years from the date of the request. It is expressly understood that the disclosures made to the City by Grantee pursuant to this Section are preliminary plans subject to any and all changes, including by way of example and not limitation, changes in timing, scope, and the addition or deletion of projects.

SECTION 14. **REPEALER.** This ordinance, when accepted and published as herein provided, shall repeal and supersede the provisions of a gas ordinance adopted by the City Council on May 22, 1984 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 CITY OF WARREN, MACOMB COUNTY, MICHIGAN.

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

SECTION 15. **EFFECTIVE DATE.** This ordinance shall take effect on August 11, 2014; provided, however, it shall cease and be of no effect after thirty days from its adoption unless within said period the Grantee shall accept the same in writing filed with the City Clerk. Upon acceptance and publication hereof, this ordinance shall constitute a contract between said City and said Grantee.

I HEREBY CERTIFY that the foregoing Ordinance No. 80-721 was adopted by the Council of the City of Warren at its meeting held on July 22, 2014.

PAUL WOJNO
City Clerk

Published: July 29, 2014

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