

ORDINANCE NUMBER 47 REVISION I

**CONSUMERS ENERGY COMPANY ELECTRIC
FRANCHISE ORDINANCE REVISION**

CITY OF CARSON CITY, MICHIGAN

A REVISED ORDINANCE granting to CONSUMERS ENERGY COMPANY, its successors and assigns, the nonexclusive 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, waterways, and other public places, and to do a local electric business in the CITY OF CARSON CITY, MONTCALM COUNTY, MICHIGAN, for a period of thirty years.

THE CITY OF CARSON CITY ORDAINS:

CHAPTER 47.1

ESTABLISHMENT OF REVISED ORDINANCE

47.101 **TITLE.** This Revised Ordinance shall be known as the Consumers Energy Company Electric Franchise Ordinance. [Original enacted on July 24, 1979, then an exclusive franchise approved in a special city election on September 12, 1979]

47.102 **AUTHORITY.** The authority for this Revised Ordinance is set forth in the Michigan Constitution of 1963, Article 7, Sections 25 and 29; MCL 460.501 et seq; MCL 247.183; and Chapter 2 Section 2.3 (e) (f) (l); Chapter 7; and Chapter 14 of the Charter of the City of Carson City.

47.103 **NECESSITY OF REVISION.** This Ordinance is revised to preserve and protect the health, safety and general welfare of the residents of the City of Carson City by regulating and granting an electrical franchise within the city limits of Carson City.

CHAPTER 47.2

PURPOSE AND INTENT

It is the intent of the City Council and this Chapter to be liberally construed for the purpose of providing for the right, power, and authority to Consumers Energy Company to construct, maintain, and commercially use electrical 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, within the jurisdiction of the City of Carson City.

CHAPTER 47.3
GRANT

47.301 **GRANT.** The City of Carson City, in Montcalm County, Michigan, hereby grants the right, power and authority to the Consumers Energy Company, a Michigan corporation, its successors and assigns, 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 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 OF CARSON CITY, MONTCALM COUNTY, MICHIGAN.

47.302 **TERM.** This franchise shall be for a term of thirty years subject to revocation upon sixty (60) days written notice by the party desiring such revocation.

47.303 **CONSIDERATION.** In consideration of the rights, powers and authority granted, Consumers Energy Company shall faithfully perform all things required by this franchise.

47.304 **CONDITIONS.** No highway, street, alley, bridge, waterway or other public place used by Consumers Energy Company 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 Consumers Energy Company'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. All of Consumers Energy Company's wires carrying electricity shall be securely fastened so as not to endanger or injure persons or property in said highways. Consumers Energy Company shall have the right to trim trees if necessary in the conducting of such business, subject, however, to the supervision of the highway authorities.

47.305 **HOLD HARMLESS.** The Consumers Energy Company shall at all times keep and save the City of Carson 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 of Carson City on account of the permission granted, the Consumers Energy Company shall, upon notice, defend the City of Carson City and save it free and harmless from all loss, cost and damage arising out of such negligent construction and maintenance.

47.306 EXTENSIONS. Consumers Energy Company shall construct and extend its electric distribution system within the City of Carson City, and shall furnish electric service to applicants residing therein in accordance with applicable laws, rules and regulations.

47.307 FRANCHISE NOT EXCLUSIVE. The rights, power and authority granted by this Franchise are not exclusive.

47.308 RATES. The Consumers Energy Company shall be entitled to charge the inhabitants of the City of Carson City for electricity furnished therein, the rates as approved by the Michigan Public Service Commission, to which Commission or its successor's authority and jurisdiction to fix and regulate electric rates and rules regulating such service in the City of Carson 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 the City of Carson City, acting by its council or by Consumers Energy Company.

47.309 RIGHTS OF THE CITY OF CARSON CITY. The franchise shall be subject to the rights of the City of Carson City:

- 47.3091 To require proper and adequate extension of plant and service maintenance at the highest practical standard of efficiency;
- 47.3092 To require service in accordance with the terms of the franchise throughout the entire period;
- 47.3093 Consistent with Section 47.402, no provision of this Revised Ordinance shall be exercised or construed in a manner which conflicts with the express terms and conditions of this franchise, nor with the rules and regulations set forth by the Michigan Public Service Commission governing the provision of electric service by Consumers Energy Company.

CHAPTER 47.4 JURISDICTION

47.401 EXISTING CITY ORDINANCES, RULES AND REGULATIONS. Consumers Energy Company shall be and remain subject to all ordinances, rules and regulations of the City of Carson 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 nothing shall be construed as a waiver by Consumers Energy Company of any of its existing or future rights under state or federal law or a limitation upon the existing or future powers of the City of Carson City pursuant to its charter or state or federal law.

47.402 MICHIGAN PUBLIC SERVICE COMMISSION, JURISDICTION. Consumers Energy Company 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 electric service in the City of Carson City.

**CHAPTER 47.5
CONFLICTING ORDINANCES REPEALED**

On the effective date of the adoption of this Revised Ordinance, all other conflicting ordinances, resolutions or rules regarding this non-exclusive franchise are hereby repealed, rescinded and superseded by the provisions of this Revised Ordinance, including but not limited to that Ordinance and amendments, if any, adopted by the City of Carson City on July 24, 1997.

**CHAPTER 47.6
SEVERABILITY**

If any chapter, section, subsection, paragraph, sentence, clause, phrase or portion of this Revised Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion thereof.

**CHAPTER 47.7
EFFECTIVE DATE**


This Ordinance shall become effective 30 days after its publication; provided, however, it shall cease and be of no effect after thirty days from its adoption unless within said period the Consumers Energy Company shall accept the same in writing filed with the City Comptroller. Upon acceptance and publication hereof, this ordinance shall constitute a contract between said City and Consumers Energy Company.

**CHAPTER 47.8
PUBLICATION**

The Revised Ordinance was published in the Carson City Gazette on _____, 2012 pursuant to Section 7.4(b) of the Charter of the City of Carson City, with copies being available at the City Comptroller's Office at City Hall.

ADOPTION CERTIFICATION

We the undersigned, as Mayor and City Comptroller of the City of Carson City, Michigan, do hereby certify that this Ordinance Number 47 Revision I, of the City of Carson City, was introduced at a Special Public meeting of the City Council held on April, 2012, and was ^{May 15, 2012} thereafter adopted and passed at a regular meeting of the City Council held on ~~April 17, 2012~~ by a vote of Six (6) for; Zero (0) against; Zero (0) abstaining, and Zero (0) being absent, with that appropriate time having elapsed between introduction and enactment.



Bruce Tasker, Mayor



Staci Steere, City Comptroller
Cindy Schaefer

PROCEEDINGS OF THE CITY COUNCIL OF THE CITY OF CARSON CITY,
MONTCALM COUNTY, MICHIGAN:

Minutes of the regular meeting of the City Council of the City of Carson City, Montcalm County, Michigan, held in the Council Chambers of said City on the 24th day of July, 1979.

Present: Mayor Paul Geller, Councilpersons, Elmo Badder, Patrick Burns, Vern Hecht, Dan Herald and Charles Tabor, and also the City Clerk, Velma Tabor.

The City Clerk reported that with respect to the Ordinance introduced at the Council Meeting held on the 19th day of June, 1979 by the terms of which it was proposed to grant a franchise to Consumers Power Company, said ordinance had remained on the table for a period of at least thirty days, and that on the 24th day of July, 1979, a full public hearing with respect to the adoption of such franchise ordinance was held in the Council Chambers of said City, at 7:30 o'clock, P.M.

Councilperson Herald moved that the ordinance which was introduced at the Council meeting held on the 19th day of June, 1979, entitled as follows:

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, 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 Carson City, Montcalm County, Michigan, for a period of thirty years.

be adopted.

Said motion was supported by Councilperson Hecht. The following was the vote upon the adoption of such ordinance:

Yes: Councilpersons, Badder, Hecht, Herald & Tabor.
No: Councilperson Burns Abstained

The Mayor declared the motion carried.

The acceptance of said franchise ordinance, duly executed by the Consumers Power Company was then filed with the City Clerk.

Badder moved that the acceptance be received and ordered recorded in the minutes of this meeting.

Said motion was supported by Councilperson Tabor and was adopted by the following vote:

Yes: Councilpersons Badder, Hecht, Herald & Tabor.
No: Councilperson Burns, abstained.

The Mayor declared the motion carried.

ACCEPTANCE

The Consumers Power Company does hereby accept the terms of the ordinance adopted on the 24th day of July, 1979, by the City Council of the City of Carson City, Montcalm County, Michigan, subject to the approval thereof by at least three-fifths of the electors voting thereon at a regular or special municipal election to be held in said City, which said ordinance is entitled as follows:

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, 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 Carson City, Montcalm County, Michigan, for a period of thirty years.

IN WITNESS WHEREOF, said Consumers Power Company has caused this acceptance to be executed by its duly authorized officer this 24th day of July, 1979.

CONSUMERS POWER COMPANY

By /s/ L.L. Shepard
Vic President

I hereby certify that the acceptance, of which the foregoing is a true copy, was filed with me as City Clerk, on the 24th day of July, 1979.

Dated: July 24, 1979


Velma Tabor, City Clerk.

ORDINANCE NUMBER 47

CONSUMERS POWER COMPANY ELECTRIC FRANCHISE ORDINANCE

AN ORDINANCE GRANTING TO CONSUMERS POWER COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, POWER AND AUTHORITY TO CONSTRUCT, MAINTAIN AND COMMERCIALY 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 CARSON CITY, MONTCALM COUNTY, MICHIGAN, FOR A PERIOD OF THIRTY YEARS.

THE CITY OF CARSON CITY ORDAINS:

SECTION I. That wherever the word "Grantee" appears in this ordinance, it is hereby intended to designate, and shall be held to refer to the Consumers Power Company, a Michigan corporation, its successors and assigns. The right, power and authority is hereby granted and vested in said 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 Carson City, Montcalm County, Michigan, for a period of thirty years.

SECTION II. In consideration of the rights, power and authority hereby granted, all of which shall vest in the Grantee for a period of thirty (30) years as aforesaid, said Grantee shall faithfully perform all things required by the terms hereof.

SECTION III. No highway, street, alley, bridge 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 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 Council of the City.

SECTION IV. 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.

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SECTION V. The Grantee shall be entitled to charge the inhabitants of said City for electric energy for light, heat and power, the rates as approved by the Michigan Public Service Commission. Said rates shall be subject to review and change at any time by the Michigan Public Service Commission or its successors, upon proper application by either said Grantee or the City, acting by the City Council, being made thereto, and the regularly filed rates as approved by said Michigan Public Service Commission or its successors as applicable to said City of Carson City, shall at all times be the lawful rates.

All bills for electric energy shall be payable monthly. The Grantee may collect the minimum charge as specified in said schedule. It shall also furnish and maintain commercially accurate meters to measure the energy furnished. Said 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.

SECTION VI. The rights, power and authority herein granted, are not exclusive.

SECTION VII. 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 Michigan Public Service Commission or its successors, applicable to electric service in said City.

SECTION VIII. The franchise granted by this ordinance is not subject to revocation, and shall be and become valid and binding only upon its ratification by the affirmative vote of at least three-fifths of the electors of said City voting thereon at a regular or special municipal election to be held in the manner provided by law. This ordinance shall not be submitted to the electors unless the Grantee shall, within thirty days after the adoption hereof, file with the City Clerk its written acceptance, subject to the ratification by the electors of the City. Upon the acceptance hereof and the ratification by the electors as aforesaid, this ordinance shall constitute a contract between the City and the Grantee for the full term of thirty (30) years from and after the date of such ratification by the electors.

Passed and approved by the City Council this 24th day of July A. D. 1979.


Paul Geller, Mayor

Attest:


Velma Tabor, City Comptroller

I hereby certify that a copy of the foregoing ordinance was published in the Carson City Gazette, a newspaper of general circulation at regular intervals for at least two years in said City of Carson City, Montcalm County, on the Second day of August, 1979.


Velma Tabor, City Clerk

Councilperson Herald, then introduced and moved the adoption of the following resolution, which was supported by Hecht:

WHEREAS, the City Council of the City of Carson City has this day adopted an ordinance 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, 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 Carson City, Montcalm County, Michigan, for a period of thirty years.

the same being a public utility franchise; and

WHEREAS, said Consumers Power Company has heretofore filed with the City Clerk its written acceptance as provided in said ordinance; and

WHEREAS, it is the desire of the City Council and of said Consumers Power Company that the enactment of said franchise ordinance be submitted to the vote of the electors of said City at a special election to be held therein on Wednesday, the 12th day of September, 1979, and said Grantee had indicated its willingness to pay in advance the expense of holding such special election, as determined by the City Council:

NOW, THEREFORE, BE IT RESOLVED, that the sum of \$424.07 be, and the same is hereby determined as the expense of holding such special election, which amount has been paid in advance by said Consumers Power Company to the City Treasurer.

The following was the vote upon the above resolution:

Yea: Badder, Hecht, Herald and Tabor
nay: Burns, abstained

The Mayor thereupon declared the same carried.

Councilperson Herald then introduced and moved the adoption of the following resolution, which was supported Councilperson Hecht:

RESOLVED, that a special City election be ordered to be held in the City of Carson, Montcalm County, Michigan, on Wednesday, the 12th day of September, 1979, for the purpose of submitting to the vote of the electors of said City voting at such election, the question of approving the franchise ordinance adopted by the City Council of said City at its meeting held on the 24th day of July, 1979, which said ordinance is entitled as follows:

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, 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 Carson City, Montcalm County, Michigan, for a period of thirty years.

The following was the vote upon the above resolution:

Yes: Councilpersons, Badder, Hecht, Herald & Tabor
No: Councilperson, Burns abstained

The Mayor thereupon declared the same carried.

Councilperson Herald then introduced and moved the adoption of the following resolution, which was supported by Hecht:

RESOLVED, the the City Clerk be directed to give notice of the submission of said question to the electors at said election in the manner required by law, and that on the thirtieth day, as determined by statute, prior to such election the Clerk shall receive applications and shall appear and apply therefor, notice of such registration to be given in the manner required by law;

RESOLVED, FURTHER, that the Board of City Election Commissioners for said election be and are hereby directed to prepare and supply necessary ballots for submitting such question, which said ballots shall be substantially in the following form, to wit:

FRANCHISE PROPOSITION

Do you favor confirming and approving the grant of the franchise ordinance to Consumers Power Company for authority to construct, maintain and commercially use electric lines, and to do a local electric business in the City of Carson City, Montcalm County, Michigan, which ordinance was adopted by the City Council on the 24th day of July, 1979?

Yes

No

OFFICIAL BALLOT

(Absentee Ballot)

INSTRUCTIONS

If you wish to vote for the grant of said franchise, make a cross in the square after the word "yes".

If you wish to vote against the grant of said franchise, make a cross in the square after the word "no".

Any other mark renders the ballot void.

Before leaving the booth, fold the ballot so that the face of the ballot is not exposed and so that the numbered corner is visible.

Shall the ordinance duly adopted by the City Council of the City of Carson City, upon the 24th day of July, 1979, entitled as follows:

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, 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 Carson City, Montcalm County, Michigan, for a period of thirty years.

be ratified and approved?

Yes

No

RESOLVED, FURTHER, that the inspectors of said election, immediately after the closing of the polls, and without adjournment, shall publicly canvass the vote cast upon said proposition, and declare the result, and shall then prepare duplicate statements in writing, setting forth in words at full length, the whole number of votes cast upon said proposition, which statements shall be certified under the hands of the inspectors to be correct, and they shall deposit such statements, together with the poll list and registry of electors, and the box or boxes containing the ballots, in the office of the City Clerk;

RESOLVED, FURTHER, that within 10 days from the date hereof, the City Clerk shall cause to be published in the Carson City Gazette, a newspaper of general circulation at regular intervals for at least two years in the City, a copy of said franchise ordinance, and that the Clerk shall also, immediately after such publishing, enter the said ordinance in the record of ordinances of said City, and shall certify thereto under his hand, stating the time and place of such publication.

The following was the vote upon the above resolution:

Yes: Badder, Hecht, Herald and Tabor

No: Burns Abstained

The Mayor thereupon declared the same carried.