

**ELECTRIC FRANCHISE
OF THE
CITY OF PETOSKEY**

**Township of Bear Creek
Emmet County, Michigan**

FRANCHISE

At a regular meeting of the Township Board of the Township of Bear Creek, Emmet County, Michigan, duly called and held on the 7th day of September, 2011, there were present:

Dennis Keiser, Supervisor

Judy Mays, Township Clerk

Connie Golding, Township Treasurer

Bert Notestine, Township Trustee

Joe Hoffman, Township Trustee

The following ordinance was offered by Trustee Hoffman and supported by Clerk Mays.

BEAR CREEK TOWNSHIP ORDINANCE NO. 30-11

CITY OF PETOSKEY ELECTRIC FRANCHISE ORDINANCE

Adopted: September 7, 2011

Effective: upon publication

A revocable, nonexclusive franchise to grant to the City of Petoskey the right to use the Township highways, streets, alleys, bridges and other public places of the Township to construct, maintain and use electric lines and other electric appliances and to transact a local electric business in the Township for a period of thirty (30) years.

THE TOWNSHIP OF BEAR CREEK

EMMET COUNTY, MICHIGAN

ORDAINS:

Section 1. GRANT AND TERM – The Township of Bear Creek, Emmet County, Michigan, hereby grants to the City of Petoskey (Grantee or City), its successors and assigns, the right, power and authority to construct, maintain and use electric lines consisting of poles, crossarms, guys, braces, feeders, underground cables, transmission and distribution wires, transformers and other electrical equipment and appliances on, under along and across the highways, streets, alleys, bridges and other public places, and to transact a local electric business in the TOWNSHIP OF BEAR CREEK, EMMET COUNTY, MICHIGAN, for a period of thirty (30) years from the date of adoption of this Ordinance. This grant is in addition to and not in limitation of other rights which the City may have in the Township.

Section 2. CONDITIONS – The public utility franchise hereby granted is subject to the following conditions:

(a) All of Grantee's structures and equipment shall be so placed on either side of the highways (except where they cross highways) as not to unnecessarily interfere with the use thereof for highway purposes. All of the Grantee's wires carrying electricity shall be securely fastened so as not to endanger or injure persons or property in said highways, shall be done so as not to interfere with the use thereof, and when completed, the area shall be left in as good condition as when work was commenced.

(b) The City shall not unduly interfere with or unduly burden any street, highway, alley or other public place, nor shall it unduly disturb or unduly interfere with any water, sewer or gas pipes or other utility lines in the service area, and shall cooperate in the location of any new water, sewer or gas pipes or other utility lines to be constructed in the service area. The City shall use due care in tree trimming in the Township, and its tree trimming standards and procedures and practices in the Township shall be uniform with those utilized within the City.

(c) Before entering any street, highway, alley or other public place for erecting and constructing any poles, wire or conduit, to the extent required by law the City shall notify the Board of County Road Commissioners or other proper authority of the proposed construction and obtain approval thereof.

(d) No street, highway, alley or public place shall be allowed to remain encumbered by the construction work for a longer period than shall be reasonably necessary to perform such work.

(e) As part of the consideration for the granting of this Franchise, the City (indemnitor) shall to the extent allowed by law, at its sole cost and expense, fully indemnify and hold the Township (indemnitee), its officers, boards, commissions, agents and employees, harmless against any and all claims, demands, lawsuits, actions, liability and judgments for damages arising out of the operation of this Franchise.

(f) All new electric lines hereafter installed shall be located underground and not suspended by poles or other structures unless specifically consented to by the Township. Unless otherwise prohibited by state law or local ordinance, new customer service along existing overhead lines may continue to be installed overhead. This provision shall not apply to routine maintenance or the upgrading of existing electrical lines.

Section 3. RATES – Rates charged to customers in the Grantor Township shall be equal to rates charged to customers in the Grantee city. However, in the event, for some unusual circumstances not common to service within the city, the capital cost to serve customers in the township is greater than the capital cost of serving city customers, the township and city shall negotiate for the recovery of such additional costs from customers in the Grantor Township.

In addition, if the Grantee is required to subsidize its electrical system from city funds not derived from the revenues of the electrical system, it may increase the rates to customers in the township proportionate to the city per capita subsidy during the period of such subsidy. Examples of such subsidy permitting such increases would be among others general obligation bond issue of the city, city taxation and/or general fund appropriations.

The Grantee City may establish customers in the township as a separate customer class to effect the foregoing.

Section 4. FRANCHISE REVOCABLE – This Franchise shall be revocable at the will of the Township.

Section 5. FRANCHISE NOT EXCLUSIVE – The rights, power and authority herein granted are not exclusive in the Grantee and nothing contained herein shall prevent the Township from granting other non-exclusive electric franchises.

Section 6. TOWNSHIP JURISDICTION – The Grantee's property and actions in the Township pursuant to this ordinance shall be and remain subject to all ordinances, rules and

regulations of the Township and City now in effect or which might subsequently be adopted to protect the health, safety and general welfare of the public, provided, however, that nothing herein shall be construed as a waiver by Grantee of any of its rights under state or federal law. Nothing in this public utility franchise shall be construed in any manner as a surrender by the Township or City of its legislative power nor shall it in any manner be interpreted as limiting the right of the Township, City or the County Road Commission to regulate the use of any street, highway, alley or public place within its jurisdiction.

Section 7. SEVERABILITY – This Ordinance 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 found by a court of competent jurisdiction to be invalid, the remainder of this Ordinance shall not be affected thereby.

Section 8. EFFECTIVE DATE – This Ordinance shall take effect immediately upon its publication, provided however, that 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 by filing with the Township Clerk its Acceptance in the form attached hereto.

BEAR CREEK TOWNSHIP

Township Clerk

ACCEPTANCE

TO THE TOWNSHIP BOARD OF THE TOWNSHIP OF BEAR CREEK, EMMET COUNTY,
MICHIGAN:

The City of Petoskey hereby accepts the franchise granted to it by your Board, on the 7th day of September, 2011, by Ordinance No. 30-11 which said franchise is entitled as follows:

A revocable, nonexclusive franchise to grant to the City of Petoskey the right to use the Township highways, streets, alleys, bridges and other public places of the Township to construct, maintain and use electric lines and other electric appliances and to transact a local electric business in the Township for a period of thirty (30) years.

Dated: _____, 2011

CITY OF PETOSKEY

By: _____

Dan Ralley

Its: City Manager

I hereby certify that the acceptance, of which the foregoing is a true copy, was filed with me as Township Clerk, on the _____ day of _____, 2011.

Dated: _____, 2011

Township Clerk

CLERK'S CERTIFICATION OF PUBLICATION

The foregoing ordinance was duly adopted and passed by the Township Board of Bear Creek Township, Emmet County, Michigan, on the 7th day of September 2011, by the following vote:

<u>Dennis Keiser</u> Supervisor	<u>Yes</u> (Yes/No)
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<u>Judy Mays</u> Township Clerk	<u>Yes</u>
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<u>Connie Golding</u> Township Treasurer	<u>Yes</u>
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<u>Bert Notestine</u> Township Trustee	<u>Yes</u>
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<u>Joe Hoffman</u> Township Trustee	<u>Yes</u>
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I further certify that the foregoing ordinance was published in the Petoskey News-Review, a newspaper of general circulation in the above Township, on the ___ day of _____, 2011.

Township Clerk

STATE OF MICHIGAN)
) ss
COUNTY OF EMMET)

I, Judy Mays, Township Clerk, of the Township of Bear Creek, Emmet County, Michigan do hereby certify that the attached is a true and correct copy of all of the proceedings of the Township Board of said Township, with references to the granting of a franchise to the City of Petoskey.

I further certify that the acceptance of said franchise is a true and correct copy of the acceptance duly filed in my office; that I have compared the within copies with the original records in my office, and that the same are true and correct transcripts.

I further certify that the franchise ordinance was duly published, as appears by proof thereof on file in my office and that all of said proceedings were regular and in accordance with all legal requirements.

Dated: _____, 2011

Bear Creek Township Clerk