

## **TABLE OF SPECIAL ORDINANCES**

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**TABLE I: FRANCHISES**

<b>Ord. No</b>	<b>Date Passed</b>	<b>Description</b>
26-A	10-28-86	Granting a franchise to Cass Cable TV, Inc., its successors and assigns, to own, operate and maintain a community television systems.
26-B	11-9-88	Transferring a nonexclusive franchise previously granted to Cass Cable TV, Inc., to Centel Cable Television Company of Michigan.
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26-D	2- -93	Providing for the licensing of the installation and operation of community antenna television systems within the city (Am. Ord. 26).
27	2-11-93	Granting of franchises for the installation and operation of community antenna television systems within the city.
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11-02	2-13-11	Granting to Consumers Power Company, its successors and assigns, the right, power and authority to construct, maintain and Commercially use electric lines.

## ORDINANCE NO. 26

AN ORDINANCE PROVIDING FOR THE LICENSING OF THE INSTALLATION AND OPERATION OF COMMUNITY ANTENNA TELEVISION SYSTEMS WITHIN THE CITY OF WHITEHALL SETTING FORTH CONDITIONS AND PRESCRIBING PENALTIES FOR VIOLATION OF IT PROVISIONS.

- SECTION 1. Definitions. For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future. Words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory. The word "may" is merely directory.
- (1) "Clerk" is the City Clerk and "Council" is the City Council of the City of Whitehall.
  - (2) The symbol "CATV" refers to community antenna television systems.
  - (3) "Licensee" is a person to whom a license has been issued pursuant to provisions of this Ordinance.
- SECTION 2. Application for License. Every person desiring to install, erect, construct, operate, and maintain a community television antenna plant within the City of Whitehall shall make application in writing, signed by the applicant or his duly authorized agent, to the City Clerk. Said application shall be accompanied by a general plan of the system and a financial statement of the applicant. Each applicant shall in his application accept the terms of this Ordinance and agree to perform all the conditions thereof.
- SECTION 3. Compliance with the Applicable Laws. Any person duly licensed to operate a CATV system shall at all times be subject to all lawful exercise of the police power by the City and to such reasonable regulation as the City shall hereafter by resolution or ordinance provide, which rules may include a rule prohibiting the use of the City streets and alleys for the installation of an entirely new system of cable to be used exclusively for the transmission of television programs.
- SECTION 4. Licensee Liability-Indemnification. Each applicant shall in his application agree to save the City harmless from loss sustained by the City on account of any suit, judgment, execution, claim, or demand, whatsoever, resulting from negligence on the part of the company in the construction, operation, or maintenance of his CATV system in the City. The City shall notify any licensee within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence as aforesaid on the part of such licensee.
- SECTION 5. Insurance. Each applicant shall in his application demonstrate by certificate of insurance that he is protected by liability insurance issued by an insurance company authorized to do business in the State of Michigan against claims for property damage in the amount of \$25,000 for any one accident and for personal injuries in the amount of \$100,000 for a personal injury to any one person, and \$300,000 for all personal injuries resulting from any one accident.
- SECTION 6. Licensee Rules. The licensee shall have the authority to promulgate such rules, regulations, terms, and conditions governing the conduct of his business as shall be reasonably necessary

to enable the licensee to exercise his rights and perform his obligations under this ordinance and to assure an uninterrupted service to each and all of his customers, provided, however, that such rules, regulations, terms, and conditions shall not be in conflict with the provisions hereof, or the rules of any state or federal regulatory agency, or the laws of the State of Michigan.

- SECTION 7. Notice of Interruption for Repairs. Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the licensee shall do so at such time as will cause the least amount of inconvenience to its customers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its customers.
- SECTION 8. Payment to the City. The licensee shall pay to the City, for the privilege of operating on a CATV system under this ordinance, a sum equivalent to three per cent (3%) of the annual gross operating revenues taken in and received by it on all retail sales of television signals within the City and for all service installations and reconnects in excess of the amount that may be paid to a utility company for such service installation and reconnects.
- SECTION 9. Rates. Rates to be charged for service hereunder shall be fair and reasonable and designed to meet all necessary costs of the service including a fair rate of return on the net valuation of the properties devoted thereto under efficient and economical management. The licensee agrees that he shall be subject to all authority now or hereafter possessed by the City or any other regulatory body having competent jurisdiction to fix just, reasonable, and compensatory television signal distribution rates. When his license shall take effect, the licensee shall have authority to charge and collect not to exceed the scheduled rates attached to and made a part of the licensee's application.
- SECTION 10. Savings to Customers. If during the term of this license, the licensee receives refunds, or if the costs to the licensee of receiving the television signals which it relays is reduced by order of any regulatory body having competent jurisdiction the licensee shall pass on to his customers such refunds or any savings resulting from such reduced costs.
- SECTION 11. Preferential or Discriminatory Practices Prohibited. The licensee shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided, however, that nothing in this ordinance shall be deemed to prohibit the establishment of free of charge service to public buildings as fire stations, police stations, or the City Hall.
- SECTION 12. Change of Rates. The City shall have the right to approve the rates charged subscribers. There shall be no change to the rate structure as to installation or monthly service charge without the expressed consent to the City Council. The licensee, should he desire to adjust said rates, must make a proposal in writing to the Council through the Clerk at least sixty (60) days prior to the effective date of a suggested adjustment.
- SECTION 13. Records and Annual Reports. The city shall have access at all reasonable hours to all of the licensee's plans, contracts, and engineering, accounting, financial, statistical, customer and service records relating to the property and the operation of the licensee in the City and to all other records required to be kept hereunder. The following records and reports shall be filed with the City Clerk and in the local office of the licensee.

- (1) Licensee's Rules and Regulations. Copies of such rules, regulations, terms and conditions as are adopted by the licensee for the conduct of his business.
- (2) Gross Revenue. An annual summary report showing gross revenues received by the licensee from his operations within the City during the preceding year and such other information as the City shall request with respect to properties and expenses related to the licensee's service within the City.

SECTION 14. Semiannual Payment of License Fee. The licensee shall pay to the City Treasurer the license fee mentioned in section 8 within thirty (30) days after each half of his fiscal year, following his inception of service to subscribers located in the City of Whitehall. At the same time he shall file with the City Clerk a summary report of gross revenues received by the licensee during such period from his subscribers located with the City.

SECTION 15. Transfer of License. No sale or transfer of the Whitehall system shall be effective unless the vendee, assignees, or lessee has filed in the office of the City Clerk an instrument, duly executed, reciting the fact of such sale, assignment, or lease, accepting the terms of this ordinance and agreeing to perform all the conditions thereof.

SECTION 16. Programming Standards. The Licensee shall carry on coaxial cable all local television stations, present and future, without degradation to signal and without duplicating regularly scheduled local broadcasting programs in a period of fifteen (15) days prior to or fifteen (15) days after said local broadcast. The CATV system shall not originate any program other than time, weather, and music on any cable channel unless such program shall be of a civic nature. The CATV system shall not interrupt or interfere with the regular programming of any originating station carried on the cable except to eliminate duplication as stated above.

SECTION 17. Indemnification-Programming Disputes. Each applicant shall in his application agree to save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim, or demand whatsoever resulting from a dispute over programming. The City shall notify any licensee within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any improper or illegal program origination or duplication as aforesaid on the part of said licensee.

SECTION 18. Master Antenna Construction Standards. The licensee shall agree to construct that portion of the master antenna network erected in the City in accordance with the building and electrical codes of this City, and shall exclusively use underground cable for transmission of all programs.

SECTION 19 Availability of Facilities. The licensee shall supply its facilities to all residents of the City who may request this service where there is a population density of fifty homes per mile of system or more, and shall maintain a centrally located business office open at all reasonable business hours to all persons in the City who desire the services of the licensee. No installation of service shall disturb existing TV lead-in services, other than to disconnect from the T.V. sets being serviced.

SECTION 20. Color Television. Should it be necessary to make special provision for the transmission of color television, the licensee shall at his own expense make any changes required.

- SECTION 21. Limitation on Service to System. The services performed pursuant to licenses issued hereunder shall not include the performance of repairing, servicing, or selling television sets or television antennas, nor shall the licensee recommend service by others except as directly related to cable installation and/or connection.
- SECTION 22. Necessity for License. No person shall own or operate a community antenna television system in the City except by license issued pursuant to this Ordinance. The Clerk shall issue a CATV license only upon receipt of an application which complies with all of the requirements of this Ordinance.
- SECTION 23. Suspension, Revocation of Licenses. Licenses shall be subject to suspension and revocation in the manner prescribed. Any failure by the licensee to properly perform any of the condition or terms of this ordinance shall be cause for the revocation of his license and all rights thereunder. The Clerk shall report any noncompliance in writing to the City Council, which, upon due notice to the licensee and after reasonable opportunity to place himself in compliance and to be heard on the charge of noncompliance, may revoke such license. After notice to the licensee, each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as prescribed in Section 4.6 of the Charter of the City of Whitehall.
- SECTION 24. This Ordinance shall take effect 10 days following publication according to Charter.

Adopted: May 11, 1971  
Published: May 18, 1971

Richard L. Cogswell  
Mayor

William E. Beauvais, Jr.  
City Clerk

## ORDINANCE NO. 26-A

AN ORDINANCE, GRANTING A FRANCHISE TO CASS CABLE TV, INC., ITS SUCCESSORS AND ASSIGNS, TO OWN, OPERATE AND MAINTAIN A COMMUNITY TELEVISION SYSTEM IN THE CITY OF WHITEHALL, MICHIGAN, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE: AND PROVIDING FOR REGULATIONS AND USE OF THE SAID SYSTEM BY SAID CITY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHITEHALL, MICHIGAN.

SECTION 1. **Short Title:** This Ordinance shall be known and may be cited as the “Cable Television Ordinance.”

SECTION 2. **Definitions.** For the purpose of this Ordinance, the following terms, phrases, words and the derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number, include the plural number. The word “shall” is always mandatory and not merely directory.

- 1) “City” is the City of Whitehall in the State of Michigan.
- 2) “Company” is the grantee of the rights under this Ordinance awarding a franchise and known as Cass Cable TV, Inc.
- 3) “Person” is any person, firm, partnership, association, corporation, company or organization of any kind.
- 4) “System” shall mean the entire installation located in the City of Whitehall.

SECTION 3. **Grant of Authority.** The City after due consideration in a public proceeding in which interested persons were given the opportunity to participate, being satisfied as to the Company’s legal, technical, character, financial and other qualifications and the adequacy feasibility of the Company a non-exclusive franchise, right and privilege to construct, erect, operate and maintain, in upon, along, across, above, over and under the streets, alleys, public places now laid out or dedicated and all extension thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the City of a Cable Televisions Systems for the purpose of the distributing television and radio programs and various communications and other electronic services to the public. The right so granted includes the right to use and occupy said streets, alleys, public ways and public places and all manner of easements for the purposes herein set forth, provided location of equipment, poles, etc., shall be agreed upon by said City. The Company by its acceptance of this franchise expressly agrees to replace, repair, and otherwise reinstate, after construction or maintenance thereon, all public right of ways utilized by Company. All remedial work shall be performed to the satisfaction of the City. The Company hereby further agrees to indemnify the City of all damages incurred by the City due to construction or maintenance upon public property accomplished by the Company.

SECTION 4. **Police Powers.** The company shall at all times during the term of this franchise be subject to all lawful exercise of the police power of the City. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and any other existing

applicable ordinances, such additional applicable ordinances as it shall find necessary in the exercise of its police power; provided, however, that such additional ordinances shall be reasonable, shall not conflict with or alter in any manner the rights granted herein, and shall not conflict with the laws of the State of Michigan, the laws of the United States of America, or the rules, regulations and policies of the FCC.

**SECTION 5. Liability of Indemnification.** The Company shall save the City, its officers, agents and employees harmless from all costs or losses sustained by the City on accounts if any suit, judgment, execution, claim or demand whatsoever against the City resulting from negligence on the part of the company in the installation, operation or maintenance of the cable television system authorized herein.

The City shall notify the Company's representative in the City within fifteen (15) days after the presentation on any claim or demand to the City, either by suit or otherwise, made against the City on account of any negligence or contract as aforesaid on the part of the Company. The Company shall carry and pay the cost of the following liability insurance in support of its undertaking to hold the City harmless from loss sustained by either on account of the negligence of the Company in at least the amount indicated below, for inquiry to or death of persons and injury to or destruction of property:

- 1) \$100,000 for property damage to any one person.
- 2) \$200,000 for property damage to any one accident.
- 3) \$100,000 for personal injury to any one person.
- 4) \$500,000 for personal injury to any one accident.

The Company shall comply with all the provisions of the Workman's Compensation Law of Michigan.

**SECTION 6: Provide Toll Free Telephone Numbers.** The Company shall have a toll free telephone number to receive inquiries or complaints from subscribers during normal business hours. Any complaints from subscribers shall be acted upon as soon as possible, but at least within three (3) days of receipt.

**SECTION 7. Condition of Road Occupancy.**

- 1) The Company may enter into one or more contracts with the distributor of light, gas and water utilities in the City of Whitehall and the Telephone Company or the owner or lessee of any poles or posts located within the City to whatever extent such contract or contracts may be expedient and of advantage to Company in furnishing the service covered by this franchise to its customers.
- 2) The Company's system poles, wires and appurtenances shall be located, erected and maintained so that none of it shall endanger or interfere with the lives of persons, or interfere with any improvements, present or future, the City may deem proper to make, or hinder unnecessarily or obstruct the free use of the streets, alleys, bridges, easement, or public property. Should the Company erect poles on City rights-of-ways, the Company agrees to allow the City to utilize such poles for utility purposes so long as such use does not interfere with the efficient operation of the Company's system.
- 3) In case of any disturbance by the Company of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway or surface so disturbed in as good condition as before said work was commence.

SECTION 8: **Transfer of Franchise.** No sale or transfer of the system shall be effective unless the vendee, assignee, or lessee has filed in the office of the City Clerk and instrument, duly executed, reciting the fact of such sale, assignment, lease, accepting the terms of this chapter and agreeing to perform all the condition thereof.

SECTION 9: **FCC Rules Applicable.** This franchise is governed by and subject to all applicable rules and regulations of the Federal Communication Commission, specifically including part 76, and by the laws of the State of Michigan. Should there be any modifications of the provisions of Section 76.31 for the Rules and Regulations of the Federal Communications Commission which must be incorporated into this franchise, the City and Grantee agree that such incorporation shall be accomplished within one (1) year after the effective date of the FCC's adoption of the modification or upon renewal of this franchise, whichever occurs first.

SECTION 10: **Franchise Term.** The franchise granted the company herein shall terminate twenty-five (25) years from date of grant, and may be renewed for successive twenty-five (25) year terms on the same terms or conditions as contained herein, or on such different or additional terms and conditions as may be lawfully specified by the City Council and as are consistent with the requirements of Rule 76.31 (a) (6) of the Federal Communications Commission.

During the six (6) month period which begins with the thirty-sixth (36<sup>th</sup>) month before the franchise expiration, the City may on its own initiative, or at the request of the Company, commence proceedings which afford the public appropriate notice and participation for the purpose of---

- (1) identifying the future cable-related community needs and interests: and
- (2) reviewing the performance of the cable operator under the franchise during the then current franchise term.

SECTION 11. **Surrender Right.** The Company may surrender this franchise at any time upon filing with the City a written notice of its intention to do so at least three months before the surrender date. On the surrender date specified in the notice, all of the rights and privileges and all of the obligations, duties and liabilities of the Company in connection with this franchise shall terminate.

These provisions shall apply in like instances of default, bankruptcy or termination of business to the extent of the forfeiture of all rights and privileges under this franchise.

SECTION 12. **Transfer.** All of the rights and privileges and all of the obligations, duties and liabilities created by this franchise shall pass to and be binding upon the successors and assigns of the Company; and the same shall not be assigned or transferred without the written approval of the City Council.

SECTION 13. **Procedures.**

- 1) Any inquiry, proceeding, investigation or other action to be taken or proposes to be taken by the City Council in regard to the operations of Company's cable television system, shall be taken only after thirty (30) days public notice of such action or proposed action is published in a local daily or weekly newspaper having general circulation in the City; a copy of such action or proposed action is served directly on Company, and, the Company has been given an opportunity to respond in writing and/or at a hearing as may be specified by the City Council and general members

of the public have been given an opportunity to respond or comment in writing on the action or proposed action.

- 2) The public notice required by this section shall state clearly the action or proposed action to be taken the time provided for response and the person or persons in authority to whom the responses should be addressed, and such other procedure as may be specified by the City Council. If a hearing is to be held, the public notice shall give the date and time of such hearing, whether public participation will be allowed and the procedures by which such participation may be obtained. The Company is a necessary part to any hearing conducted in regard to its operations.

SECTION 14: **Activities Prohibited.** The Company shall not allow its cable or other operations to interfere with television reception of persons not served by the Company, nor shall the system interfere with, obstruct or hinder in any manner the operations of the various utilities serving the residents of the City.

SECTION 15: **Limited Purpose.** This franchise is granted by the Council of the City of Whitehall, Michigan, to the Company purely for the purpose of using easements, streets and highways of the City to erect and construct the Company's system and is not intended to convey and copyright or patent privileges whatsoever.

SECTION 16: **Separability.** If any section, subsection, sentence, clause or portion of this 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 portions hereof.

SECTION 17: **Ordinances Repealed.** All Ordinances or parts thereof in conflict with the provisions of the Ordinance are hereby repealed.

SECTION 18: **Unlawful Acts.**

- 1) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of Company's cable television system for the purpose of enabling himself or others to receive any television signals, radio signals, pictures, programs, sounds, or any other information or intelligence transmitted over Company's cable system without payment to Company or its lessee.
- 2) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove, or injure any cable, wires, or other equipment used for the distribution of television signals, radio signals, pictures, programs, sound, or any other information or intelligence transmitted over Company's cable system.
- 3) It shall be a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00), for any person to violate any of the provisions of this Section.

SECTION 19: **BE IT FURTHER ORDAINED** that this Ordinance take effect from the date it shall have been passed by the Council, certified and delivered to the office of the Mayor in writing by the City Clerk and become effective as otherwise provided by law.

SECTION 20: **Payment to City.** The Company shall pay to the City for the privilege of operating a cable television service within the corporate limits of the City as now exists or hereinafter constituted an annual franchise tax equal to three (3) percent of the total annual gross customer revenues, from Basic Cable Service within the City, said payments to be made annually on or before January 31<sup>st</sup> for the preceding twelve (12) months period. Such payments shall be credited against any business and occupation tax or franchise tax except personal property taxes required to be paid by the Company.

The City shall have the right to inspect at all reasonable times, at offices of the Company, the records of the Company regarding its operations in the City for the purpose of ascertaining accurately what the actual gross receipts of the Company for Basic Cable television service has been the present or past years.

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Else M. Anderson  
Mayor

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W. David Boehm  
City Clerk

Adopted: October 28, 1986  
Published: November 4, 1986  
Effective: October 28, 1986

**ORDINANCE NO. 26-B**

**AN ORDINANCE TRANSFERRING A NON-EXCLUSIVE FRANCHISE  
PREVIOUSLY GRANTED TO CASS CABLE T.V., INC., TO CENTEL CABLE  
TELEVISION COMPANY OF MICHIGAN**

WHEREAS, Cass Cable T.V., Inc. operates a cable television system in the City of Whitehall, Michigan pursuant to a non-exclusive franchise granted by the City to Cass Cable T.V., Inc. in Ordinance No. 26 dated May 11, 1971, as supplemented and amended by Ordinance No. 26-A dated October 28, 1986 (the Franchise Agreement); and

WHEREAS, on October 26, 1988, Cass Cable T.V., Inc. notified the City that Cass Cable T.V., Inc. desired to transfer and assign its cable television system and the Franchise Agreement to Centel Cable Television Company of Michigan (Centel Cable), and to obtain the prior approval of the City to such a transfer and assignment, as required by the Franchise Agreement;

WEHEREAS, on November 9, 1988 the City held a public meeting, the purpose being to analyze and evaluate the notice from Cass Cable T.V., Inc.; and

WHEREAS, after due consideration, analysis and deliberation, the City found the financial condition, technical and legal qualifications and performance of Centel Cable sufficient, and reasonable to meet the future cable related needs and interests of the City and its residents;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHITEHALL, MICHIGAN:

1. The assignment and transfer of the Franchise Agreement from Cass Cable T.V., Inc. to Centel Cable is hereby approved;
2. This ordinance shall be effective on the date of closing of the transaction transferring and assigning said cable television system from Cass Cable T.V., Inc. to Centel Cable.

Passed and approved by the City Council of Whitehall, Michigan this 9<sup>th</sup> day of November, 1988.

ATTEST  
Brian M Bulthuis  
City Clerk

City of Whitehall  
Emery Hatch  
Mayor

APPROVED AS TO FORM AND CONTENT  
XXX XXXX  
City Attorney  
CITY OF WHITEHALL

**ORDINANCE NO. 26-C**

**AN ORDINANCE TRANSFERRING A NONEXCLUSIVE FRANCHISE  
PREVIOUSLY GRANTED TO CENTEL CABLE TELEVISION COMPANY OF  
MICHIGAN TO C-TEC CORPORATION**

WHEREAS, Centel Cable Television operates a cable television system in the City of Whitehall, Michigan pursuant to a nonexclusive franchise granted by the City to Centel Cable in Ordinance No. 26 dated May 11, 1971 as supplemented and amended by Ordinance No. 26-A dated October 28, 1986 and Ordinance No. 26-B dated November 9, 1988; and

WHEREAS, On April 7, 1989 Centel Cable notified the City that Centel Cable desired to transfer and assign its cable television system and the Franchise Agreement to C-TEC Corporation and to obtain the prior approval of the City to such a transfer and assignment as required by the franchise Agreement; and

WHEREAS, On April 25, 1989 the City, at regular Council meeting, analyzed and evaluated the notice from Centel Cable; and

WHEREAS, After due consideration, analysis, and deliberation, the City found the financial condition, technical and legal qualification, and performance of C-TEC Corporation sufficient and reasonable to meet the future cable-related needs and interests of the City and its residents;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHITEHALL, MI:

1. The assignment and transfer of the Franchise Agreement from Centel Cable Television Company of Michigan to C-TEC Corporation is hereby approved;
2. This ordinance shall be effective on the date of closing of the transaction transferring and assigning said cable television system from Centel Cable Television Company of Michigan to C-TEC Corporation.

Passed and approved by the City Council of Whitehall, Michigan this \_\_\_day of \_\_\_\_\_, 1989.

ATTEST  
Brian M. Bulthuis  
City Clerk

CITY OF WHITEHALL  
Emery M. Hatch  
Mayor

APPROVED AS TO FORM AND CONTENT:  
Allen E. Vander Ploeg  
City Attorney

## ORDINANCE #26D

AN ORDINANCE RESTATING AND AMENDING ORDINANCE 26 PROVIDING FOR THE LICENSING OF THE INSTALLATION AND OPERATION OF COMMUNITY ANTENNA TELEVISION SYSTEMS WITHIN THE CITY OF WHITEHALL SETTING FORTH CONDITIONS AND PRESCRIBING PENALTIES FOR VIOLATION OF ITS PROVISIONS.

### The City of Whitehall ordains:

- SECTION 1. **DEFINITIONS.** For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, word used in the present tense includes the future. Words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory. The word “may” is merely directory.
- (1) “Clerk” is the City Clerk and “Council” is the City Council of the City of Whitehall.
  - (2) The symbol “CATV” refers to the community antenna television systems.
  - (3) “Licensee” is a person to whom a license has been issued pursuant to provisions of this Ordinance.
- SECTION 2. **APPLICATION OF LEASE.** Every person desiring to install, erect, construct, operate, and maintain a community television antenna plant within the City of Whitehall shall make application in writing, signed by the applicant or his duly authorized agent, to the City Clerk. Said application shall be accompanied by a general plan of the system and a financial statement of the applicant. Each applicant shall in his application accept the terms of this Ordinance and agree to perform all the conditions thereof.
- SECTION 3. **COMPLIANCE WITH THE APPLICABLE LAWS.** Any person duly licensed to operate a CATV system shall at all times be subject to all lawful exercise of the police power of the City and to such reasonable regulation as the City shall hereafter by resolution or ordinance provide, which rules may include a rule prohibiting the use of the City streets and alleys for the installation of an entirely new system of cable to be used exclusively for the transmission of television programs.
- SECTION 4. **LICENSE LIABILITY-INDEMNIFICATION.** Each applicant shall in his application agree to save the City harmless from loss sustained by the City on account of any suit, judgment, execution, claim, or demand, whatsoever, resulting from negligence on the part of the company in the construction, operation, or maintenance of his CATV system in the City. The City shall notify any licensee within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence as aforesaid on the part of such licensee.
- SECTION 5. **INSURANCE.** Each applicant shall in his application demonstrate by certificate of insurance that he is protected by liability insurance issued by an insurance company authorized to do business in the State of Michigan against claims for property damage in the amount of \$25,000 for any one accident and personal injuries in the amount of \$100,000 for a personal injury to any one person, and \$300,000 for all personal injuries resulting from any one accident.

- SECTION 6. **LICENSEE RULES.** The licensee shall have the authority to promulgate such rules, regulations, terms, and conditions governing the conduct of his business as shall be reasonable necessary to enable the licensee to exercise his rights and perform his obligations under this ordinance and to assure an uninterrupted service to each and all of his customers, provided, however, that such rules, regulations, terms, and conditions shall not be conflict with the provisions hereof, or the rules of any state or federal regulatory agency, or the laws of the State of Michigan.
- SECTION 7. **NOTICE OF INTERRUPTION FOR REPAIRS.** Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the licensee shall do so at such time as will cause the least amount of inconvenience to its customers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its customers.
- SECTION 8. **PAYMENT TO CITY.** The licensee shall pay to the City, for the privilege of operating a CATV system under this ordinance, a sum equivalent to three percent (3%) of the annual gross operating revenues taken in and received by it on all retail sales of television signals within the City and for all service installation and reconnects in excess for the amount that may be paid to a utility company for such service installations and reconnects.
- SECTION 9. **RATES.** Rates to be charged for service hereunder shall be fair and reasonable and designed to meet all necessary costs of the service including a fair rate of return on the net valuation of the properties devoted thereto under efficient and economical management. The licensee agrees that he shall be subject to all authority now or hereafter possessed by the City or any other regulatory body having competent jurisdiction to fox just, reasonable, and compensatory television signal distribution rates. When his license shall take effect, the licensee shall have authority to charge and collect not to exceed the scheduled rates attached to and made part of the licensee's application.
- SECTION 10. **SAVINGS TO CUSTOMERS.** If during the term of this license, the licensee receives refunds, or if costs to licensee of receiving the television signals which it relays is reduced by order of any regulatory body having competent jurisdiction, the licensee shall pass on to his customers such refunds or any savings resulting from such reduced costs.
- SECTION 11. **PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.** The licensee shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant preference or advantage, provided, however, that nothing in this ordinance shall be deemed to prohibit the establishment of free of charge service to public or private educational institutions, and such public buildings as fire stations, police stations, or the City Hall.
- SECTION 12. **RECORDS AND ANNUALS REPORTS.** The City shall have access at all reasonable hours to all of the licensee's plans, contracts, and engineering, accounting, financial, statistical, customer and service records relating to the property and the operation of the licensee in the City and to all other records required to be kept hereunder. The following records and reports shall be filed with the City Clerk and in the local office of the licensee.
- (1) Licensee's Rules and Regulations. Copies of such rules, regulations, terms and conditions as are adopted by the licensee for the conduct of his business.
  - (2) Gross Revenue. An annual summary report showing gross revenues received by the licensee from his operations within the City during the preceding year and such other

information as the City shall require to properties and expense related to the licensee's service within the City.

- SECTION 13. **SEMIANNUAL PAYMENT OF LICENSE FEE.** The licensee shall pay to the City Treasurer the license fee mentioned in Section 8 within thirty (30) days after each half of his fiscal year, following his inception of service to subscribers located in the City of Whitehall. At the same time he shall file with the City Clerk a summary report of gross revenues received by the licensee during such period from his subscribers located within the City.
- SECTION 14. **TRANSFER OF LICENSE.** No sale or transfer of the Whitehall system shall be effective unless the vendee, assignee; or lessee has filed in the office of the City Clerk an instrument, duly executed, reciting the fact of such sale, assignment, or lease, accepting the terms of this ordinance and agreeing to perform all the conditions thereof.
- SECTION 15. **PROGRAMMING STANDARDS.** The Licensee shall carry all local television stations, present and future, without degradation to signal and without duplicating regularly scheduled local broadcasting programs in a period of fifteen (15) days after said local broadcast. The CATV system shall not originate any program other than time, weather, and music on any originating station carried on the cable except to eliminate duplication as state above.
- SECTION 16. **INDEMNIFICATION – PROGRAMMING DISPUTES.** Each applicant shall in his application agree to save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim, or demand whatsoever resulting from a disputed over programming. The City shall notify any licensee within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any improper or illegal program origination or duplication as aforesaid on the part of said licensee.
- SECTION 17. **MASTER ANTENNA CONSTRUCTIONS STANDARDS.** The licensee shall agree to construct that portion of the master antenna network erected in the City in accordance with the building and electrical codes of this City, and shall exclusively use underground cable for transmission of all programs.
- SECTION 18. **AVAILABILITY OF FACILITIES.** The licensee shall supply its facilities to all residents of the City who may request this service where there is a population density of fifty homes per mile of system or more, and shall maintain a centrally located business office open at all reasonable business hours to all persons in the City who desire the services of the licensee. No installation of service shall disturb existing TV lead-in services, other than to disconnect from the TV Sets being serviced.
- SECTION 19. **LIMITATION ON SERVICE TO SYSTEM.** The service performed pursuant to licenses issued hereunder shall not include the performance of repairing, servicing or selling television sets or television antennas, nor shall the licensee recommend service by others except as directly related to cable installation and/or connection.
- SECTION 20. **NECESSITY FOR LICENSE.** No person shall own or operate a community antenna television system in the City except by license pursuant to this Ordinance. The Clerk shall issue a CATV license only upon receipt of an application which complies with all of the requirements of this Ordinance.

SECTION 21. **SUSPENSION, REVOCATION OF LICENSES.** Licenses shall be subject to suspension and revocation in the manner prescribed. Any failure by the licensee to properly perform any of the conditions or terms of this ordinance shall be cause for the revocation of his license and all rights thereunder. The Clerk shall report any noncompliance in writing to the City Council, which, upon due notice to the licensee and after reasonable opportunity to place himself in compliance and to heard on the charge of noncompliance, may revoke such license. After notice to the licensee, each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as prescribed in Section 5.6 of the Charter of the City of Whitehall.

SECTION 22. This Ordinance shall take effect 10 days following publication according to Charter.

**ADOPTED: FEBRUARY, 1993**

Wallace Weesies

**PUBLISHED: FEBRUARY, 1993**

Scott Huebler

**ORDINANCE NO. 27**

**CITY OF WHITEHALL, MICHIGAN**

ORDINANCE 27 PROVIDING FOR THE GRANTING OF FRANCHISES FOR THE INSTALLATION AND OPERATION OF COMMUNITY ANTENNA TELEVISION SYSTEMS WITHIN THE CITY OF WHITEHALL SETTING FOR VIOLATION OF ITS PROVISIONS.

The City of Whitehall ordains:

**ARTICLE 1: GENERAL**

27.1010 **Title.** This chapter shall be known as the Cable Communications Ordinance.

27.1020 **Purpose.** The purposes of this Ordinance are to:

- (a) Provide for the franchising and regulation of cable television within the City of Whitehall;
- (b) Provide for a cable communications system that will meet the current needs of the City and that can be improved and upgraded to meet future needs;
- (c) Provide for the payment of fees and other valuable consideration to the City for the use of the public ways and for the privilege to construct and operate cable communications systems;
- (d) Provide for the regulation by the City of certain rates to be charged to subscribers for certain cable communications services;
- (e) Provide for the development of cable communications as a means to improve communication between and among the members of the public and public institutions of the City; and to
- (f) Provide remedies and prescribe penalties for violation of this Ordinance and any franchise granted hereunder.

27.1030 **Applicability.** This Ordinance is applicable to any application for a cable franchise filed on or after February 11, 1993 and to any such franchise granted thereafter and to any franchised renewed thereafter.

27.1040 **Definition.** For the purpose of this Ordinance the following terms, phrases, words, and their deviations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include words in the plural number. The word "shall" is mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meanings.

- (A) **"Application"** shall mean a proposal seeking authority to construct and operate a cable television system within the City pursuant to this Ordinance. It shall include the initial proposal plus all related subsequent amendments and correspondence with the City.

- (B) **“Basic service”** shall mean subscriber cable television services which includes the delivery of local television broadcast signals, access channels, leased channels, and local origination channels, as covered by the regular monthly charge paid by all subscribers to any service tier, excluding premium services, two-way services and FM radio services.
- (C) **“Cable Commission or Commission”** shall mean a governmental or an intergovernmental authority that may be established by local legislative action that shall have the authority to police the provisions of any Agreement and make recommendations for enforcement or improvement on behalf of the City in an advisory manner. “Cable Commission” and “Commission” may include the “City”.
- (D) **“Cable television services”** shall mean the one-way transmission of video programming and associated non-video signals to subscribers together with subscriber interaction, if any, which is provided in connection with the video programming.
- (E) **“Cable communications system”** shall mean a non-broadcast facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, under common ownership and control, that distributed or is designed to distribute to subscribers cable television services, but such term shall not include:
  - (1) A facility or combination of facilities that serves only to retransmit the televisions signals of one or more television broadcast stations;
  - (2) A facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way;
  - (3) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or
  - (4) Any facilities of any electric utility used solely for operation its electric utility system.
- (F) **“City”** is the City of Whitehall, Michigan. “City” may include “Cable Commission” or “Commission”.
- (G) **“Connection”** shall mean the attachment of the drop to the radio or television set or other communications device of the subscriber.
- (H) **“Construction, Construction is completed, Construction has been Completed, and Construction shall be Completed”** shall mean that strand has been put up and all necessary cable, including trunk and feeder cable, has been lashed; for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored and, except as prevented by weather condition or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed, including modules for return path signals if proposed, that power supplies have been installed and all bonding and grounding has been completed and all necessary connectors, splitters and taps have been installed; that construction of the head ends of hubs has been completed and all necessary processing equipment has been installed; and that any and all other construction necessary for the system to be ready to deliver cable television service to subscribers in a safe and reliable manner has been completed

consistent with the terms of this Franchise and industry standards. The term “completion of construction” does not include marketing and installation of subscriber service.

- (I) **“Council”** shall mean the governing body of the City of Whitehall.
- (J) **“Dedication”** shall mean those dedications and easements for public roadways and utilities and other rights of way maintained for the benefit of the public and controlled by the City; the terms, conditions, or limitation of which are not inconsistent with the erection, construction, or maintenance of a cable television system, its structures, or equipment.
- (K) **“Drop”** shall mean the cable that connects a subscriber’s premises to the nearest feeder line of the cable system.
- (L) **“Easement”** shall mean a right to use all public rights of way, including public utility easements.
- (M) **“Feeder Line”** shall mean the coaxial or fiber optic cable running from the trunk line to line extenders and taps for the purpose of interconnecting with individual subscribers.
- (N) **“FCC”** shall mean the Federal Communication Commission or any legally appointed or designated agent or successor.
- (O) **“File”** shall mean the deliver, by mail or otherwise, to the appropriate office, officer, or agent of the City of any document or other instrument which this Agreement requires the Grantee to file with the City. The date of receipt by the City shall be considered the file date.
- (P) **“Force majeure”** shall mean acts of God, strikes, acts of a public enemy, wars, blockades, insurrections, riots, unusual delays in transportation, reasonable inability or Grantee to procure materials, and earthquakes or any other natural causes beyond Grantee’s reasonable control and which could not have been reasonable anticipated. The settlement of strikes or labor disturbances shall be entirely within the discretion of the party having the difficulty. Any requirement that force majeure shall be remedied with all reasonable dispatch shall not require settlement by acceding to the demands of the opposing party or parties when such course is inadvisable in the discretion of the party having the difficulty.
- (Q) **“Franchise”** shall mean the nonexclusive right and authority to construct, maintain, and operate a cable communications system through use of the public streets, dedications, public utility easements, other public rights of way, or public places in the City pursuant to a contractual agreement executed by the City and a Grantee.
- (R) **“Gross revenues”** shall mean all revenue from the cable communications system derived directly or indirectly by Grantee, its affiliates, subsidiaries, parent, and any other person in which Grantee has a financial interest in association with the provisions of cable communications services within the City. Gross revenues shall include, but not be limited to, basic service monthly fees, institutional service fees, program service fees, installation, studio rental, production equipment and personnel fees, reconnection fees, leased channel fees, converter rentals, advertising revenues, and copyright fees. Gross revenues shall also include, value at retail price levels, the value of any goods, services, or other enumeration in non-monetary form, received by Grantee or others described above in consideration of performance by the Grantee or others described above of any

advertising or other service in connection with the cable system. Gross revenues shall not include any taxes on services furnished by Grantee payable to the State of Michigan or any other governmental unit and collected by Grantee on behalf of said governmental unit, or any revenues from the provision of cable communications services outside the City.

- (S) **“Installation”** shall mean the connection of the system at the subscriber’s premises.
- (T) **“Person”** shall mean an individual or legal entity, such as a corporation or partnership.
- (U) **“Premium service”** shall mean pay television offered on a per channel or per program basis.
- (V) **“Service tier”** shall mean a specific set of cable subscriber services which are made available as, and only as, a group for purchase by subscribers at a separate rate for the group.
- (W) **“Street”** or **“public way”** shall mean the surface of and the space above and below any public street, road, highway, path, sidewalk, alley, court, or easement now or hereafter held by the City for the purpose of public travel or public utilities and shall include public easements or rights of way.
- (X) **“Subscriber”** shall mean a recipient of cable communications services or other services provided over a cable communications system.
- (Y) **“White Lake Area”** shall mean all those governmental units in the vicinity of White Lake; specifically the City of Montague, City of Whitehall, Blue Lake Township, and White River Township.

## **ARTICLE 2: AUTHORITY**

- 27.2010 **Requirement of a Franchise.** It shall be unlawful to construct, install, maintain or operate a cable communications system or part of a cable communications system within the City without a valid franchise obtained pursuant to the provisions of this Chapter.
- 27.2020 **Term.** The term of a franchise shall be as specified in the franchise agreement, but it shall not exceed a period of fifteen (15) years.
- 27.2030 **Use of Property.**
- (A) A franchise grants to Grantee the authority to use the City’s public streets, sidewalks, easements, and other rights of way for the purposes of this Agreement. No property right is bestowed by a franchise.
  - (B) A franchise shall authorize the use of the public ways for installing cables, wires, lines, and other facilities in order to operate a cable television communications system but shall neither expressly nor impliedly be deemed to authorize the Grantee to provide service to, or, install cables, wires, lines, or any other equipment or facilities upon private property without an applicable easement or the owner’s consent, or to utilize publicly or privately owned utility poles or conduits without a separate agreement with the owners thereof.

27.2040 **Non-Exclusive.** The grant of authority for use of the City's public streets, sidewalks, easements and other rights of way is not exclusive and does not establish priority for use over other franchise holders, permit holders, or the City's own use of public property. A Grantee shall respect the rights and property of the City and other authorized users of public streets, sidewalks, easements, and other rights of way shall be submitted to the City for resolution, which decision shall be final.

### **ARTICLE 3: FRANCHISE APPLICATIONS**

27.3010 **Filing of Applications.** Applications for a cable television franchise will be considered pursuant to the following procedures:

- (A) An application may be filed at any time or pursuant to a request for proposals (RFP) issued by the City.
- (B) The City may request additional information from an applicant for a franchise at any time.
- (C) All applications to be acceptable for filing must be accompanied by a filing fee of \$1,000. The City shall apply all filing fees received against all costs associated with its evaluation of any pending application. In the event that total costs are less than total filing fees, the City shall refund a portion of the filing fee.

27.3020 **Content of Applications.** To be acceptable for filing, an application must conform to any applicable RFP and all the information specified therein. Where any application is not filed pursuant to an RFP, it shall contain, at minimum, the following information:

- (A) Identification of the ownership of the applicant, if not a natural person, including the names and addresses of all persons with one (1) percent or more ownership interest and the ultimate controlling natural persons and identification of all officers and directors and any other primary business affiliation of each.
- (B) An indication of whether the applicant, or any entity controlling the applicant, including any officer of a corporation or major stockholder thereof, has been adjudged bankrupt, has had a cable franchise revoked, or been found guilty by any court or administrative agency in the United States of: (1) a violation of a security or antitrust law; or (2) a felony or any other crime involving moral turpitude. Identify any such person or entity and fully explain the circumstances.
- (C) A demonstration of the applicant's technical, legal and financial ability to construct and operate the proposed cable facility.
- (D) A description of the physical facility proposed, including channel capacity (one-way and two-way if any), the area to be served, a summary of technical characteristics and headend and access facilities.
- (E) A description of how any construction will be implemented, identification of areas having above ground or below ground cable facilities, the proposed construction schedule and a description (where appropriate) of how service will be converted from any existing facility to a new facility.

- (F) A description of the services to be provided over the system, including identification of television signals (both broadcast and non-broadcast) to be carried and all non-television services to be provided initially. Where service will be offered by tiers, identify the signals and/or services to be included on each tier.
- (G) The proposed rates to be charged, including rates for each service tier, as appropriate, and charges for installation, converters and other services.
- (H) Information as necessary to demonstrate compliance with all relevant requirements contained in the Chapter.
- (I) A demonstration of how the proposal is reasonable to meet the future cable-related community needs and interests. In particular, the application should describe how the proposal will satisfy the needs as analyzed in any recent community needs assessment commissioned by the City.
- (J) A demonstration that the proposal is designed to be consistent with all federal and state requirements.
- (K) Pro forma financial projection for each year of the franchise term. The projections shall include a statement of income, balance sheet, statement of sources and uses of funds and schedule of capital additions. A significant assumptions shall be explained in notes or supporting schedules that accompany the projections.
- (L) A complete list of all cable communications systems in which the applicant, or a principal thereof, holds an equity interest.
- (M) An affidavit of the applicant or duly authorized officer thereof, certifying, in a form acceptable to the City, the truth and accuracy of the information contained in the application and acknowledging the enforceability of application commitments.
- (N) In the case of an application by an existing franchisee for a renewed franchise, a demonstration that said franchisee has substantially complied with the material terms of the existing franchise and with the applicable law.
- (O) Other information that the City, or its agents, may request of the applicant.

27.3030

**Applicant Representatives.** Any person who files an application with the City for a cable television franchise shall forthwith, at all times, disclose to the City in writing, the names, addresses and occupations of all persons who are authorized to represent or act on behalf of the applicant in those matters pertaining to the application. The requirement to make such disclosure shall continue until the City shall have rejected an applicant's application or until an applicant withdraws its application.

27.3040

**Consideration of Applications.**

- (A) The city will consider each application for a franchise where the application is found to be acceptable for filing and in substantial compliance with the requirements of this Chapter and any applicable RFP. In evaluating an application, the City will consider, among other things, the applicant's past service record in other communities, the nature of the proposed facilities and services, proposed rates and whether the proposal would adequately serve the public needs and the overall interests of the citizens of

the City. Where the application is for a renewed franchise, the City shall consider whether: (1) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law; (2) the quality of the operator's service, including signal quality, response to consumer complaints and billing practices (but without regard to the mix, quality or level of cable services or other services provided over the system) has been reasonable in light of community needs; (3) the operator has the financial, legal ability to provide the services, facilities and equipment as set forth in the operator's proposal; and (4) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

- (B) Where the City determines that an applicant's proposal, including the proposed service area, would serve the public interest, it may grant a franchise to the applicant. The franchise agreement will constitute a contract, freely entered into, between the City and the grantee. Said franchise agreement shall incorporate by reference the relevant provisions of this chapter. Any such franchise must be approved by Ordinance of the City Council.
- (C) In the course of considering an application for a renewed franchise, the Council shall hold a public hearing, following at least 14 days prior notice, in which the public and the franchisee seeking renewal shall be offered an opportunity to speak, offer evidence and question witnesses. A recording shall be made of such hearing. Based on the record of such hearing and the application (including any negotiations relative thereto), the Council shall determine whether to grant a renewed franchise and shall issue a written opinion stating the reasons for its decision.
- (D) A franchise granted pursuant to the Chapter shall not take effect until the applicant pays a grant fee to the City. The grant fee shall be equal to the City's direct cost's in the franchising process less the application filing fees received. The City shall provide to the grantee a statement summarizing such costs prior to the execution of the franchise.

27.3050 **Acceptance.** A franchise and its terms and conditions shall be accepted by a grantee by written instrument, in a form acceptable to the City Attorney and filed with the City within thirty (30) days after the granting of the franchise by the City. In its acceptance, the grantee shall declare that it has carefully read the terms and conditions of this Ordinance and the franchise and agrees to abide by same. In accepting a franchise, a grantee shall indicate that it has relied upon its own investigation of all relevant facts, that it was not induced to accept the franchise and that it accepts all reasonable risks related to the interpretation of the franchise.

#### ARTICLE 4: FRANCHISE CONDITIONS

27.4010 **Non-Transferability of Rights.**

- (A) A franchise issued pursuant to this Chapter shall not be sold, assigned, transferred, leased, or dispersed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consideration, or otherwise hypothecated in any manner, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any person or entity, or the controlling interest in any corporation holding a franchise hereunder be changed without the prior consent of the City, which

shall not be unreasonable withheld. Such a transfer of control is not limited to major interest holders but includes actual working or de facto control by minor interest holders in whatever manner exercised. Every change, transfer, or acquisition of control of Grantee shall make the Franchise subject to cancellation unless and until the City shall have consented. Change in control by virtue of inheritance shall not come into the provisions of this section. A rebuttable presumption that a change in controlling interest has occurred shall arise upon the acquisition or accumulation by any person or group of persons of five (5%) percent of the voting stock, singularly or collectively, before such acquisition or accumulation.

- (B) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the City may inquire into all qualifications of the prospective controlling party, and Grantee shall assist the City in any such inquiry. The City may require any reasonable condition which it deems necessary at the time of review to ensure that the cable communications system will comply with the provisions of this Agreement for the balance of the term of the Franchise.
- (C) Any unauthorized transfer in violation of this section shall be deemed a material breach in default of this Agreement and shall subject the Grantee to all applicable penalties and remedies prescribed in this Agreement and to all other remedies, legal and equitable, which are available to the City.
- (D) Grantee shall notify the City of any occurrence which constitutes an unauthorized transfer under section 80.4010, or of the entry of any judgment, petition, or order as provided in Sections 27.4060 and 27.4070, within four (4) days of the occurrence of such event.

27.4020

**Letter of Credit.**

- (A) Grantee shall deposit with the City a cash bond or Letter of Credit from a financial institution chosen by the Grantee and approved by the City in the amount of Five Thousand Dollars (\$5,000). The Letter of Credit may not be revoked or terminated until completion of the system plus an additional sixty (60) days except with written approval of the City. Thereafter a Three Thousand Five Hundred Dollars (\$3,500) cash bond shall be maintained. The form and content of such cash bond or Letter of Credit shall be approved by the City Attorney. The cash bond or Letter of Credit shall be used to insure the faithful performance by Grantee of all provisions of this chapter, compliance with all orders, permits, and directions of any agency, authority, board, department, division, or office of the City having jurisdiction over its acts or defaults under the license, and the payment by Grantee of any costs, claims, liens, liquidated damages, and taxes due the City which arise by reason of the construction, operation, or maintenance of system, or breach or termination of the franchise.
- (B) If Grantee fails to make timely payment to the City or its designee of any amount due as a result of this Agreement, or of any other written agreements between Grantee and the City, or fails to make timely payment to the City of any taxes due, or fails to repay the City for damages, costs, or expenses which the City shall be compelled to pay by reason of any default of Grantee, or fails to comply with any provisions of this Franchise which the City determines can be remedied by a draw on the irrevocable Letter of Credit, the City may draw upon the Letter of Credit in the amounts sufficient to repay the City, with interest and any penalties, plus costs and reasonable attorney fees incurred thereby.

- (C) Not later than thirty (30) days after the mailing of notification to Grantee of drawing pursuant to the above subsections, the Grantee shall cause the Letter of Credit to be restored to the full amount required hereby. Failure to effect timely restoration of the Letter of Credit shall constitute a material breach of this Chapter and the Franchise.
- (D) Upon termination of the Franchise, the Letter of Credit shall be delivered to the Grantee within ninety (90) days of such termination, provided there are no outstanding defaults on the part of the Grantee which results or may result in assessment of liquidated damages. The remainder of the Letter of Credit, less such assessment, shall be forthwith delivered to Grantee.
- (E) The rights reserved to the City with respect to the Letter of Credit are in addition to all other rights of the City, authorized by law, and no action, proceeding, or exercise of a right with respect of such Letter of Credit shall affect any other right the City may have.
- (F) Failure to deposit said Letter of Credit as required above, or the failure to maintain said Letter of Credit, in the full amount required hereby in effect during the entire term of this Agreement, and of any renewal or extension thereof, shall constitute a material breach of this Agreement.

27.4030

**Insurance and Indemnity.**

- (A) After the granting of the Franchise and following simultaneously with filing of the acceptance of the Franchise and at all times during the term of the Franchise Grantee shall obtain and deliver to the City, written evidence of payment of premiums for and the originals or duplicate originals of the following:
  - (1) A general comprehensive public liability policy or policies indemnifying, defending, and holding harmless the City, it's officials, boards, authorities, agents, and employees from and against all claims by any person whatsoever, including the costs, defense costs, attorney fees, and interest arising therefrom, on account of injury to or death of a person or persons occasioned by the operations of the Grantee under the Franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of One Million Dollars (\$1,000,000.00) per personal injury or death of any one (1) person and in any one (1) accident or occurrence.
  - (2) A property damage insurance policy or policies indemnifying, defending, and saving harmless the City, it's officials, boards, authorities, agents, and employees from and against all claims by any persons whatsoever, including the costs, defense costs, attorney fees and interest arising therefrom, for property damage occasioned by the operation of the Grantee under the Franchise herein granted, or alleged to have been so caused or occurred, within a minimum liability of Five Hundred Thousand Dollars (\$500,000.00) for property damage to the property of any one (1) person in any one (1) accident or occurrence.
- (B) All insurance policies called for herein shall be in a form reasonable satisfactory to the City Attorney.
- (C) Failure to comply with the provisions of this section shall constitute a material breach of the Chapter and the Franchise.

27.4040

**Payment of Fees and Costs.**

- (A) Grantee in consideration of the privilege granted under this Franchise for the use of public ways and the privilege to construct and operate a cable television system, shall pay to the City not more than five percent (5%) of its total revenues for the entire term of the Franchise.
- (B) Grantee shall file with the City, by the end of each year, a financial statement showing the total revenues received by Grantee during the preceding calendar year. Grantee shall pay the yearly portion of the Franchise fee to the City on or before the time such financial statement is due to be filed. Grantee also file, no later than one (1) month after the end of its fiscal year, a statement of its total basic service revenues for the preceding fiscal year, audited by an independent public accountant, certified in the State of Michigan, if so requested by the City. Grantee shall bear the cost of such audit. Any Franchise fee payment in adjustment for any shortfall of the total annual payment for the year shall be made at that time. Adjustments for any overpayment shall be by credit to subsequent yearly payments.
- (C) In the event the Franchise is revoked or otherwise terminated prior to its expiration date, the Grantee shall file with the City, within ninety (90) days of the date of revocation or termination, an audited financial statement showing the gross revenues received by the Grantee since the end of the previous year and shall make adjustments at the time for the franchise fees due up to the date of revocation or termination.
- (D) Nothing in this Ordinance shall limit the City's authority to tax Grantee.
- (E) No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, not shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of the Ordinance. All amounts paid shall be subject to auditing and revision by the City.
- (F) Failure to comply with this section shall constitute a material breach of the Ordinance and shall subject the Grantee to all measures, legal or equitable, whether available to the City under this Ordinance or otherwise.

27.4050

**Forfeiture and Termination.** In addition to all other rights and powers retained by the City under this Ordinance and any franchise issued pursuant thereto, the City reserves the right to forfeit and terminate the franchise and all rights and privileges of the franchisee, with or without cause, by majority vote of the City Council after at least 30 days prior written notice, with reasons if any, and an opportunity to appear and make arguments at the public hearing before the Commission.

27.4060

**Foreclosure.**

- (A) Upon the foreclosure or other judicial sale of all or a substantial part of the cable communications system facilities, or upon the termination of any lease covering all or a substantial part of the cable communications system, or upon the occasion of additional events which effectively cause termination of the systems operation, Grantee shall notify the City of such fact and such notification or the occurrence of such terminating events shall be treated as a notification that a change in control of

the Grantee has taken place, and the provisions of this Agreement governing the consent of the City to such change in control of Grantee shall apply.

- (B) In the event that a secured creditor of the Grantee forecloses upon the Grantee's interest in the system and proceeds to operate the system by receivership or otherwise, such action shall not be deemed grounds for termination of the franchise agreement.

27.4070

**Receivership.**

- (A) The City shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver to take over and conduct the business of Grantee, unless such receivership shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:
  - (1) Within one hundred twenty (120) days after the election or appointment, such receiver shall have fully complied with all of the provisions of this Franchise and remedies and defaults thereunder; and
  - (2) Within said one hundred twenty (120) days, such receiver shall have executed an agreement, duly approved by the court having jurisdiction, whereby such receiver assumes and agrees to be bound by each every provision of this Franchise as granted to Grantee except where expressly prohibited by Michigan law.
- (B) Grantee shall immediately notify the City in writing if:
  - (1) Grantee files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors;
  - (2) Grantee files an answer admitting the jurisdiction of the Court and the material allegations of an involuntary petition filed pursuant to the Bankruptcy Code, as amended; or
  - (3) Grantee is adjudicated bankrupt, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of any receiver or trustee of all or any part of its property including all or any part of the cable system.
- (C) In the event that a secured creditor of the Grantee forecloses upon the Grantee's interest in the system and proceeds to operate the system by receivership or otherwise, such action shall not be deemed grounds for termination of the franchise agreement.

27.4080

**Removal of Cable Communications System.** At the expiration of the term for which the Franchise issued hereunder, is granted or upon its termination as provided herein, Grantee shall, within one hundred eighty (180) days after notice by the City, remove at its own expenses all designed portions of the cable communications system from all streets and public ways to their former condition. Grantee shall have the right to sell the physical plant to a subsequent Grantee, subject to City approval, in which case said plant need not be removed. If Grantee fails to remove all facilities within one hundred eighty (180) days after notice by the City, the City may perform the work at Grantee's expense or assume

ownership of any and all of Grantee's physical properties not properly removed in accordance with this section.

27.4090

**Rates.**

- (A) The initial rates which the Grantee shall charge shall not be increased for a period of two (2) years from the date of granting of a Franchise or renewal.
- (B) The City reserves the right to reasonably regulate by ordinance or resolution the rates for any service or equipment, as allowed by state and federal law. Such rates and charges subject to regulation shall be just and reasonable, considering Grantee's costs, including reasonable return on investment over the remaining term of the Franchise, and shall not give preference of advantage to any subscriber or class of subscribers. Fees and charges subject to regulation by the City pursuant to state and federal law shall not be increased without prior approval of the City. The City shall promptly respond to any request for an increase in fees and to charges subject to such regulation.
- (C) Rates and charges not regulated by the City may be changed by Grantee following a minimum thirty (30) days prior written notice to the City and each subscriber.

27.4100

**Records.** Grantee shall maintain a complete set of books and records within Muskegon County. Upon reasonable notice to Grantee, the City will have the right to inspect all records relating to cable operations pursuant to the Franchise at any time during normal business hours.

27.4110

**Public Drops.**

- (A) Grantee shall provide, without charge, one (1) drop to any four (4) school district buildings and to any four (4) municipal buildings as determined by the District and City. Grantee shall furnish public drops with two way modulators limited to the public governmental/school access channel. A character generator, purchased by the Cable Commission shall installed by Grantee at a location and time to be determined by the Commission with an additional unit provided to the School District if a second public access channel is provided.
- (B) The cable television system installed by Grantee shall include an emergency alert audio override capability which will permit designated officials of the Commission to override by remote control the audio of all channels for the purposes of public notification of emergency conditions only. The Commission shall pay for all costs, excluding installation and the monthly dedicated phone line charge which shall be paid for by Grantee, associated with the emergency alert audio override.

27.4120

**Parental Control.** Grantee shall provide subscriber controlled lock out devices, audio and visual, at no additional cost to subscribers upon their request. These devices should provide the greatest degree of parental discretion and control. The City may designate by resolution specific devices by brand and model and may revise its designations as improved devices become available.

**ARTICLE 5: ADMINISTRATION**

27.5010

**Service of Notice.**

- (A) All notices required to be given to the City under any provision of this Agreement shall be in writing and shall be deemed served when delivered by hand or mailed by certified mail, return receipt requested, to the City Clerk.
- (B) All notices required to be given to the Grantee under any provision of this Agreement shall be in writing and shall be deemed served when delivered by hand or mailed by certified mail, return receipt requested, to Grantee's address for service of notice.
- (C) Grantee shall maintain within the White Lake area an address for service of notice by mail.

27.5020 **Severability.** Should any section of this Chapter, or any portion thereof, be held invalid, unconstitutional, preempted, or otherwise rendered unenforceable by any court of competent jurisdiction, legislation, or administrative agency, any such partial invalidity of this Chapter shall not affect the remaining portions hereof.

27.5030 **Local Regulatory Framework.** The City Council may establish a governmental or intergovernmental Cable Television Commission consisting of a minimum of three (3) persons having authority to act for and on behalf of the City in an advisory capacity any matters relating to the administration of this Franchise. The Legislative Body may increase or decrease the number of Commission members, or change the membership of the Commission, or alter the authority and power of such Commission from time to time as it may deem necessary and desirable. The Grantee shall cooperate with the Commission in respect to those matters and powers vested within it as set forth by the Legislative Body.

27.5040 **Availability of Facilities.** The grantee shall supply its facilities to all residents of the City who may request this service where there is a population density of twenty (20) homes per mile of service, and grantee shall maintain a centrally located business office within the White Lake area open at all reasonable business hours to all persons in the City who desire the services of the licensee.

**Effective date.** This Ordinance shall be effective 10 days following date of publication.

Adoption Date: 2-11-93  
 Publication Date: 2-15-93  
 Effective Date: 2-25-93

**CITY OF WHITEHALL**

By: WALLACE WEESIES, Mayor  
 By: SCOTT HUEBLER, Clerk

**CERTIFICATE**

This ordinance was adopted at a meeting of the City Council, held on February , 1993. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF WHITEHALL

By: (Scott Huebler)  
 Its City Clerk

## MICHIGAN CONSOLIDATED GAS COMPANY GAS FRANCHISE ORDINANCE

### ORDINANCE NO. 28

AN ORDINANCE, granting to MICHIGAN CONSOLIDATED GAS 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 conduct a local gas business in the CITY OF WHITEHALL, MUSKEGON COUNTY, MICHIGAN for a period of thirty years.

#### THE CITY OF WHITEHALL ORDAINS:

Section 1. **Grant of Gas Franchise and Consent to Laying of Pipes, Etc.** Subject to all the terms and conditions mentioned in this ordinance, consent is hereby given to Michigan Consolidated Gas Company, a corporation organized under the laws of the State of Michigan (the "Company"), and to its successors and assigns, to lay, maintain, operate, and use gas pipes, mains, conductors, service pipes, and other necessary equipment in the highways, streets, alleys, and other public places in the City of Whitehall, Muskegon County, Michigan, and a franchise is hereby granted to the Company, its successors and assigns, to transact local business in said City of Whitehall for the purposes of conveying gas into and through and supplying and selling gas in said City of Whitehall and all other matters incidental thereto.

Section 2. **Gas Service and Extension of System.** If the provisions and conditions herein contained are accepted by the Company, as in Section 6 hereof provided, then the Company shall furnish gas to applicants residing therein in accordance with applicable laws, rules and regulations and City Charter requirements; and provided further that such initial installation and any extensions shall be subject to the Main Extension provisions, the Area Expansion Program provisions (if and where applicable), and other applicable provisions now or from time to time hereafter contained in the Company's Rules and Regulations for Gas Service as filed with the Michigan Public Service Commission or successor agency having similar jurisdiction.

Section 3. **Use of Streets and Other Public Places.** The Company, its successors and assigns, shall not unnecessarily obstruct the passage of any of the highways, streets, alleys, or other public places within said City of Whitehall and shall within a reasonable time after making an opening or excavation, repair the same and leave it in as good condition as before the opening or excavation was made. The Company, its successors and assigns, shall use due care in exercising the privileges herein contained and shall be liable to said City of Whitehall for all claims damages and costs including actual attorney fees which may be incurred by the City of Whitehall arising from the default, carelessness, or negligence of the company or its officers, agents, and servants, and the Company shall define and hold the City harmless therefrom.

No road, street, alley, or highway shall be opened for the laying of trunk lines or lateral mains except upon application to the Board of Muskegon County Road Commissioners or the City of Whitehall or other authority having jurisdiction in the premises, stating the nature of the proposed work and the route. Upon receipt of such application, the Board Muskegon County Road Commissioners or the City of Whitehall, or such other authority as may have jurisdiction, shall not unreasonably refuse to issue a permit to the Company to do the work proposed.

Section 4. **Standards and Conditions of Service; Rules, Regulations and Rates.** The Company is now under the jurisdiction of the Michigan Public Service Commission to the extent provided by statute; and the rates to be charged for gas, and the standards and conditions of service and operation hereunder, shall be the same as set forth in the Company's schedule of rules, regulations, and rates as applicable in the several cities, villages, and townships in which the company is now rendering gas service, or as shall hereafter be validly prescribed for the City of Whitehall under the orders, rules, and regulations of the Michigan Public Service Commission or other authority having jurisdiction in the premises.

Section 5. **Successors and Assigns.** The words "Michigan Consolidated Gas Company" and "the Company," wherever used herein, are intended and shall be held and construed to mean and include both Michigan Consolidated Gas Company and its successors and assigns, whether so expressed or not. Any assignment or transfer of this Ordinance shall be subject to the approval of the City Council. Approval of a transfer or assignment of the above Ordinance if requested by the Company will not unreasonably be withheld.

Section 6. **Effective Date: Term of Franchise Ordinance; Acceptance by Company.** This ordinance shall take effect fifteen (15) days following the date of publication thereof, which publication shall be made within fifteen (15) days after the date of its adoption, and shall continue to effect for a period of thirty (30) years thereafter, subject nevertheless, to revocation at the will of the City of Whitehall Council at any time during said thirty (30) year period; provided, however, that when this ordinance shall become effective the City Clerk shall deliver to the Company a certified copy of the ordinance accompanied by written evidence of publication and recording thereof as required by law, and the Company shall, sixty (60) days after the date this ordinance takes effect, file with the City Clerk its written acceptance of the conditions and provisions hereof.

Section 7. **Regulatory Provisions.** As provided the City Charter, the grant of this franchise shall be subject to the right of the City (a) to repeal the same for misuse or non-use, or for failure to comply with the provisions thereof; (b) to require proper and adequate extension of plant and service and maintenance thereof at the highest practicable standard of efficiency; (c) to establish reasonable standards of service and quality of products, and prevent unjust discrimination in service or rates; (d) to make independent audit and examination of accounts at any time, and to require reports annually; (e) to require continuous and uninterrupted service to the public in accordance with the terms of the franchise throughout the entire period thereof; (f) to impose such other regulations as may be determined by the Council to be conducive to safety, welfare, and accommodation of the public.

Section 8.     **Effect and Interpretation of Ordinance.** All ordinances and resolution, and parts thereof, which conflict with any of the terms of this ordinance, are hereby rescinded. In the case of conflict between this ordinance and any such ordinances or resolutions, this ordinance shall control. The catch line headings which precede each Section of this ordinance are for convenience in reference only and shall not be taken into consideration in the construction or interpretation of any of the provisions of this ordinance.

Ayes: 7  
Nays: 0  
Date Passed: 1/25/1994  
Attested, by Order of the City of Whitehall

Scott Huebler, City Clerk

Wallace Weesies, Mayor

**CITY OF WHITEHALL**

**ORDINANCE NO. 11-02**

**CONSUMERS ENERGY COMPANY ELECTRIC FRANCHISE ORDINANCE**

AN ORDINANCE, granting to CONSUMERS ENERGY 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, waterways, and other public places, and to do a local electric business in the CITY OF WHITEHALL, MUSKEGON COUNTY, MICHIGAN, for a period of thirty years.

**THE CITY OF WHITEHALL ORDAINS:**

- SECTION 1.** GRANT, TERM. The CITY OF WHITEHALL, MUSKEGON COUNTY, MICHIGAN, hereby grants the right, power and authority to the Consumers Energy Company, a Michigan corporation, its successors and assigns, hereinafter called the "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 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 WHITEHALL, MUSKEGON COUNTY, MICHIGAN, for a period of thirty years.
- SECTION 2.** CONSIDERATION. In consideration of the rights, power and authority hereby granted, said Grantee shall faithfully perform all things required by the terms hereof.
- SECTION 3.** CONDITIONS. No highway, street, alley, bridge, waterway 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 order and condition as when said work was commenced. All of Grantee'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 Grantee's wires carrying electricity shall be securely fastened so as not to endanger or injure persons or property in said highways. The Grantee shall have the right to trim trees if necessary in the conducting of such business, subject, however, to the supervision of the highway authorities.
- SECTION 4.** HOLD HARMLESS. Said Grantee shall at all times keep and save the 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 on account of the permission herein given, said Grantee shall, upon notice, defend the City and save it free and harmless from all loss, cost and damage arising out of such negligent construction and maintenance.
- SECTION 5.** EXTENSIONS. Said Grantee shall construct and extend its electric distribution system within said City, and shall furnish electric service to applicants residing therein in accordance with applicable laws, rules and regulations.
- SECTION 6.** FRANCHISE NOT EXCLUSIVE. The rights, power and authority herein granted, are not exclusive.
- SECTION 7.** RATES. Said Grantee shall be entitled to charge the inhabitants of said City for electric 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 electric 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 8.** REVOCATION. The franchise granted by this ordinance IS subject to revocation upon sixty (60) days written notice by the party desiring such revocation.

**SECTION 9.** MICHIGAN PUBLIC SERVICE COMMISSION, JURISDICTION. 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 10.** REPEALER. This ordinance, when accepted and published as herein provided, shall repeal and supersede the provisions of an electric ordinance adopted by the City on November 11, 1980 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 WHITEHALL, MUSKEGON COUNTY, MICHIGAN, for a period of thirty years.

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

**SECTION 11.** EFFECTIVE DATE. This ordinance shall take effect ten (10) days from the date of its passage or upon the day after the date of its publication, whichever is later; 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.

We certify that the foregoing Franchise Ordinance was duly enacted by the City Council of the CITY OF WHITEHALL, MUSKEGON COUNTY, MICHIGAN, on the day of 8<sup>th</sup> day of February, 2011.

Edward L. Whalen, Mayor Pro Tem

Karen Helmlinger, City Clerk

ADOPTED: February 8, 2011  
PUBLISHED: February 13, 2011  
EFFECTIVE: February 23, 2011

## TABLE II: STANDARDS AND POLICIES FOR ISSUANCE OF FRANCHISES

### Section

11.01	Definitions; Utility franchises
11.02	Utility franchise required
11.03	Standards for granting of franchise
11.04	Policy of underground utilities
11.05	Underground relocation
11.06	New underground installations
11.07	Vacation of rights-of-way and relocation of facilities
11.08	Jurisdiction
11.09	Application of franchise

### §II.01 Definitions; Utility Franchises

For purposes of this Ordinance the following words shall have the meaning respectively ascribed to them by this section.

- (A) **“Applicant”** means a utility company which has applied for a Utility Franchise pursuant to this Chapter.
- (B) **“Energy”** means electricity, natural gas and all similar forms of Energy or substances which are used for lighting, heating, cooling and similar purposes.
- (C) **“Energy Utility”** means a person or company which transports, delivers or sells Energy as above defined to one or more customers through the use of Facilities located in the public ways including highways, streets, alleys and bridges, or who otherwise transact business in the City for the transportation and/or to transact business in the City for the transportation and/or delivery of electric, natural gas or similar Energy.
- (D) **“Utility Franchise”** means a franchise granted to any person or company transporting, delivering or selling utility services including without limitation Energy Utilities, which franchise is granted to operate a utility in the City and/or to transact business in the city.
- (E) **“Facilities”** means any plant, works, systems, improvements and equipment owned, leased or used by a utility, including poles, wires, fixtures, underground circuits, conduits, cables, towers, masts, transformers and other property used or installed in the public ways, which Facilities are necessary or convenient for the sale, transmission or distribution of Energy or other included utility services to a customer or customers.
- (F) **“Public Ways”** means all public ways or rights-of-way within the City are owned or controlled by the City, either as an easement or in fee simple, and including without limitation streets, highways, sidewalks, alleys and bridges, but not including parks or lands which are not used not intended for transportation or passage by the public.

### §II.02 Utility Franchise Required

No person may transport, deliver or sell utilities or Energy Utilities as above defined to one or more customers through the use of Facilities located in the Public ways of the City, nor may it

otherwise transact business in the City for the transportation and/or delivery of utilities unless and until the utility has been granted a franchise by the City Council of the City of Whitehall.

### **§II.03 Standards for Granting Franchise**

All franchises granted by the City of Whitehall shall be granted in the form of an ordinance. The said ordinance shall contain provisions which are reasonable designed to protect the health, safety and welfare of the inhabitants of the City, including, without limitation, the protection of the safety of persons, vehicles or property located or passing in the vicinity of the Facilities, the protection of surrounding properties, including property values, appearance, screening and other such measures, and location within the rights-of-way so as not to interfere with other utilities, public use and vehicular use of the public ways. Franchises shall be granted only under the conditions set forth in and authorized by the Constitution and laws of the State of Michigan and the ordinances of the City. No franchise shall be granted without a public vote, unless the franchise is revocable at will by the City. No franchise shall be granted for a period in excess of 30 years.

### **§II.04 Policy of Underground Utilities**

It is the policy of the City of Whitehall that underground installation of utilities, even where not required, is preferable to the addition of poles.

### **§II.05 Underground Relocation**

If a franchise has facilities on any other public utility company's above ground utility poles and the owner of said poles relocates its facilities to an underground conduit, franchisee shall relocate its facilities underground in the same location.

### **§II.06 New Underground Installations**

Under existing franchises now or hereafter established by ordinances of the City, and as hereafter amended or altered, and in such other areas of the City in which telephone lines and electric utility lines are underground, all franchisee's lines, cables and wires shall be installed underground.

### **§II.07 Vacation of Rights-of-Way and Relocation of Facilities**

The City has the right to vacate any public right-of-way within the City as well as any right to use same possessed by the franchisee and/or the City may require the franchisee to relocate its lines and facilities at franchisee's expense when such vacation and/or relocation is made necessary to secure the public health and welfare or is otherwise required by the City in the exercise of a governmental function.

### **§II.08 Jurisdiction**

The franchise 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 nothing shall be construed as a waiver by the franchisee of any or its existing or future rights under state or federal law or a limitation upon the existing or future powers of the City pursuant to its charter or state or federal law.

#### **§II.09 Application of Franchise**

A utility company which wishes to obtain a franchise from the City shall submit an application to the City Clerk. The City may provide forms for use by the Applicant. All applications, whether or not on a form, shall be in writing and shall include a detailed description of the Facilities intended to be erected, and the public ways, if limited, which will be utilized by the utility. All applications must be accompanied by a non-refundable application fee of \$1000.00.

**TABLE III: ZONING MAP CHANGES**

<b>Ord. No.</b>	<b>Date Passed</b>	<b>Description</b>
02-04	4-9-02	Changing the zoning designation of recently annexed land from R-1 Single Family Residential to M-1 Limited Industrial
02-05	4-9-02	Changing the zoning designation of a certain parcel of land from B-1 General Business and R-3 Multiple Family Residential to B-1 General Business in its entirety.
03-02	4-8-03	Changing a certain area of land from R-3 Multiple Family Residential to R-1 Single Family Residential.
03-07	12-9-03	Changing the west half of Block 8 from Lakefront Recreation to Restricted Commercial.