

**GARDEN TOWNSHIP
ORDINANCE NO. 2018-02**

ORDINANCE REGULATING UTILITY LINES

GARDEN TOWNSHIP ORDAINS:

Section 1. Title. This Ordinance shall be known and may be cited as the Ordinance Regulating Utility Lines.

Section 2. Findings and Purposes.

A. Pursuant to Article 7, Section 29 of the Michigan Constitution, the Township is vested with reasonable control over its highways, streets, alleys, and public places.

B. Public Act 266 of 1909, MCL 560.601 *et seq*, provides that the Township may grant to any person, partnership, association or corporation the right to use the highways, streets, alleys, and other public places of the Township to set poles, string wires, lay pipes or conduits or to lay tracks for railways and to operate and maintain the same and the right to transact a local business in such township, subject to reasonable regulations prescribed by the Township.

C. The Township wishes to prescribe such reasonable regulations on the use of its highways, streets, alleys, and other public places in connection with utility lines, wires, and other related equipment and facilities.

D. The Township finds that it is in the best interest of the public health, safety, and welfare to prohibit public and private utilities from constructing utility lines, wires and/or related equipment and facilities along, across, within, and/or over any public street or public right of way in the Township on poles that exceed fifty (50) feet in height, subject to the terms set forth in this Ordinance.

E. This regulation is intended to accomplish the following purposes:

1. To preserve and enhance traffic safety in the Township by improving visibility and sight lines and reducing vehicular accident involving poles, overhead lines and wires, and other overhead facilities and equipment.
2. To better protect utility lines, wires, and related equipment and facilities from weather damage, vehicle accident damage and other causes.
3. To preserve and improve the Township's aesthetic environment by reducing the incidence and visibility of above-ground and overhead poles, lines, wires and related equipment and facilities.
4. To protect Township residents from the safety risks of fallen or downed poles or overhead lines, wires, and related equipment and facilities.
5. To preserve and improve operational reliability of utility services.

Section 3. Applicability and Definitions.

For purposes of this Ordinance, the following definitions apply:

- A. “Utility” means any person or company, public or private, that installs, constructs, relocates or replaces any utility lines, wires, or related equipment or facilities within the Township.
- B. “Utility lines, wires, and related equipment and facilities” means any wire, cable, conduit, or other material for the transmission or distribution of electrical, telecommunications, audio/visual, or other signals, impulses, or energy, and shall include equipment used in connection with such transmission or distribution lines and wires, such as transformers, switches, amplifiers, and other similar equipment.
- C. “Installed Underground” means the placement of utility lines below the finished grade of the right of way and the removal (if appropriate) of all poles, guy wires, and related structures used to support overhead utility service. Transformers, switches, amplifiers, and similar

equipment may be mounted on pads at ground level within the right of way, if such location will not interfere with use of the right of way.

Section 4. Regulations.

A. **Consent Required.** No public or private utility shall hereafter install, construct, relocate or replace any line, pole, main, tower, building, structure or appurtenance thereto within the public streets, roads, alleys or right-of-ways within the Township without first securing the approval and consent to the same by the Township Board or its duly authorized representative. This requirement shall not apply to repair of existing utility facilities nor construction of service connections for gas, electrical, telephone, or communication systems leading from such utility distribution lines to single family homes or isolated business or industrial buildings or structures being provided with such utility service. It shall apply, however, to multiple family developments and multiple commercial and/or industrial developments. The Township Board or its duly authorized representative shall not unreasonably withhold such approval and consent where the proposed facilities are shown to be necessary for the servicing of customers and for the protection or promotion of the health, safety and general welfare of the community, provided that all requirements of this Ordinance are satisfied.

B. **Fee; Escrow.** The Township may charge a fee for such consent in an amount to be set from time to time by resolution of the Township Board. In addition to the fee, the applicant shall establish an escrow account with the Township in an amount established from time to time by resolution of the Township Board. The escrow fund will secure the applicant's payment of all reasonable costs and expenses associated with the approval process, which costs can include, but are not limited to, fees of the Township Attorney, Township Planner, and engineering firm, as well as any reports or studies which the Township anticipates it may have done related to the approval

process. At any point during the approval process, the Township may require that the applicant place additional monies into escrow with the Township should the existing escrow amount filed by the applicant prove insufficient. If the escrow account needs replenishing and the applicant refuses to do so within fourteen (14) days after receiving notice, the approval process shall cease until and unless the applicant makes the required escrow deposit. Any escrow amounts which are in excess of actual costs shall be returned to the applicant.

C. **Plans.** Any public or private utility seeking such approval and consent shall submit plans showing the location of the proposed installation, construction or facility; the height, depth and size thereof; and its proximity to existing improvements and other utility facilities within the Township, as well as the public streets, roads, alleys or rights-of-way. The plans must include a detailed description of the project, its location and an explanation of why the location was chosen for the proposed utility lines, wires or related equipment, as well as a description of any alternate locations considered and why they were not selected; an analysis of the Township Zoning Ordinance and whether any portion of the utility lines, wires or related equipment are located in a zoning district with additional compliance requirements; all information supporting the underlying need of the project; an environmental study of the area affected; information addressing potential effects on public health and safety, as well as any other information requested by the Township. The Township may, in its sole discretion, have the plans reviewed by an engineer of the Township's choosing, and the costs of such review shall be paid from the escrow account established by the public or private utility.

D. **Pole Height Limitation; Underground Installation.** As of the effective date of this Ordinance, no public or private utility may construct utility lines, wires and/or related equipment and facilities along, across, within, and/or over any public street or public right of way

in the Township on poles that exceed fifty (50) feet in height. Utility lines, wires, and/or related facilities and equipment may be installed above ground on poles that do not exceed fifty (50) feet in height. For purposes of this requirement, utility lines, wires and/or related facilities and equipment shall include, but not be limited to, lines, wires, equipment and facilities used for electric transmission and distribution, telecommunications, cable television, internet service and other similar purposes. The height of the utility pole shall be measured from ground level and shall exclude any portion of the pole that is below ground level. Underground installation of utility lines, wires and/or related equipment and facilities is permitted, subject to Sections 4(A), 4(B), and 4(C) of this Ordinance.

E. **Colocation.** Notwithstanding Section 4(D), new utility lines, wires and other related equipment and facilities may be attached or collocated on existing utility poles that exceed fifty (50) feet in height, if and to the extent that the existing poles can accommodate the new attachments. In order to facilitate co-locating of lines, wires, equipment and facilities used for electric transmission and distribution, telecommunications, cable television, internet service and other similar purposes, existing utility poles and attachments that exceed fifty (50) feet in height may be maintained, replaced and upgraded with new poles and/or additional poles and attachments along the same route only to the extent that the poles are necessary to accommodate the new attachments. Colocation requires consent pursuant to Sections 4(A), 4(B), and 4(C) of this Ordinance.

F. **Retention of Control of Public Places.** Nothing contained herein shall be construed to alienate the title of the public in and to any public rights-of-way or any portion thereof, nor shall anything herein be construed in any manner as constituting a surrender by the Township of its general powers with respect to the subject matter hereof or with respect to any matter,

whatsoever, or in any manner be construed as limiting the right of the Township to regulate the use of and access to any public rights-of-way within its exclusive or concurrent jurisdiction and to otherwise exercise its police powers to protect the public health, safety and welfare.

G. **Township Contribution.** The Township may, in its sole discretion, make contributions to the underground installation required by the Ordinance, by acquiring necessary easements and rights-of-way. In order to facilitate this property acquisition, the Township may, in its sole discretion, exercise its powers of eminent domain.

H. **Additional Conditions.** The Township's granting of consent to a utility pursuant to Section 4(A) shall be subject to all of the following additional conditions:

- a. **Restoration.** The utility shall agree, at its sole expense and as soon as reasonably practicable, to restore any portion of the public ways that is in any way disturbed, damaged, or injured by the construction, maintenance, repair, removal or operation of any utility lines to as good or better condition than that which existed prior to the disturbance. In the event that the utility fails to make such repair within a reasonable time, the Township shall be entitled to complete the repair, and the utility shall pay the costs of the repair to the Township.
- b. **Compliance with Laws.** The utility shall agree to comply with all laws, statutes, ordinances, rules and regulations regarding the installation, construction, ownership, or use of all utility lines, wires and/or related equipment and facilities, whether federal, state or local, now in force or which hereafter may be promulgated. Before any installation is commenced, the utility shall secure all necessary permits, licenses, and approvals from all appropriate departments, agencies, boards or commissions of the Township or other governmental entity

as may be required by law. The utility shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be adopted or amended.

- c. ***Hold Harmless.*** The utility shall agree to keep and save the Township free and harmless from all claims, losses, liabilities, causes of action, demands, judgments, decrees, and costs and expenses of any nature (including without limitation attorney fees and expert witness fees) resulting solely from the acts or omissions of the utility or the utility's officers, agents, employees, contractors, successors, or assigns in connection with the utility's use of the Township's public ways. If any demand is made or any action is commenced against the Township resulting solely from the utility's acts or omissions (or the actions of the utility's officers, agents, employees, contractors, successors, or assigns) in connection with the utility's use of the Township's public ways, the utility shall, upon notice, defend and indemnify the Township and save it free and harmless from all loss, cost and damage arising out of such negligent construction and maintenance. The Township and its agents, employees, and contractors shall not be liable to the utility for any interference with or disruption in the operation of its utility lines, wires, or related facilities or equipment for any damage arising out of the utility's use of the Township's public ways.
- d. ***Assumption of Risk.*** The utility shall agree that it undertakes and assumes for its officers, agents, contractors, subcontractors, and employees all risk of

dangerous condition, if any, on or about any Township-owned or controlled property, including any public ways.

Section 5. Enforcement. This Ordinance may be enforced by injunction and/or abatement in the Delta County Circuit Court or other court of suitable jurisdiction.

Section 6. Severability. Should any portion of this Ordinance be held invalid for any reason, such holding shall not be construed as affecting the validity of any of the remaining portions.

Section 7. Repeal. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 8. Publication and Effective Date. This Ordinance shall become effective one day after publication in accordance with the statutes of the State of Michigan.

Approved this 9th day of October, 2018.

Richard Pichette, Supervisor

Brenda Lester, Township Clerk

I, Brenda Lester, Clerk of the Township of Garden, Delta County, Michigan, do hereby certify that Ordinance No. 2018-2 was published in the Escanaba Daily Press on the 5th day of November, 2018.

Brenda Lester, Township Clerk