

BEAVER CREEK TOWNSHIP

Ordinance No. 51

AN ORDINANCE TO REGULATE THE CONNECTION, USE,
OPERATION AND PARTICIPATION IN THE BEAVER CREEK-
GRAYLING CHARTER TOWNSHIPS UTILITIES AUTHORITY

ARTICLE 1

TITLE, PURPOSE AND SCOPE

Sec. 1.1 Title.

This Ordinance shall be known as the:

“Beaver Creek Township Ordinance To Regulate the Connection, Use, Operation, and Participation In The Beaver Creek-Grayling Charter Townships Utilities Authority.”

Sec. 1.2 Purpose, Policy And Objectives.

This Ordinance sets forth uniform requirements for the connection, use, operation, and participation in the Beaver Creek-Grayling Townships Utilities Authority (hereinafter referred to as the “BCGUA”), thus enabling the Beaver Creek Township to comply with all applicable state and federal laws regarding Utilities Authorities.

(a) To establish rules and regulations with respect to participation of businesses and residential development within the “district” that make-up BCGUA.

(b) To establish mandatory participation in the BCGUA for those existing and future businesses within the “district.”

(c) To establish mandatory participation in the BCGUA for any residential development that occurs within the “district.”

(d) To otherwise ensure compliance with state and federal laws and regulations applicable to the BCGUA.

Sec. 1.3 Scope.

This ordinance shall apply to all businesses and persons residing within the “district” as defined and provided in Exhibit A.

ARTICLE 2

DEFINITIONS AND ABBREVIATIONS

Sec. 2.1 Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this ordinance shall be as follows:

“**District**” means any and all businesses and residential development within Beaver Creek Township and Grayling Charter Township as specifically set forth in Exhibit A, and any amendments that may occur from time to time and subsequently approved.

“**Beaver Creek Township**” means Beaver Creek Township located in the State of Michigan.

“**Grayling Charter Township**” means Grayling Charter Township located in the State of Michigan.

“**BCGUA**” means a Utility Authority established pursuant to Act 233, Public Acts of Michigan, 1955, as amended, or other applicable statutory authority, for the purpose of, among other things, construction, operation, and/or maintenance of a water and waste water utility.

“**CFR**” means the Code of Federal Regulations, as amended.

“**Residential Development**” means any structure designed for habitation, including, but not limited to, houses, mobile homes, apartment buildings, condominiums and townhouses.

“**EPA**” means the United States Environmental Protection Agency.

“**Participation**” means that the business and/or person must be part of, connect to, and otherwise fully engaged with the BCGUA and the water and wastewater services provided. At present the services provided by BCGUA are water and wastewater treatment. Additional services may be added on over time and such services shall be included in this definition of participation.

“**Fees**” means the fees, special assessment, and other forms or payment determined by the BCGUA to be paid by all participants in the BCGUA for the services provided by BCGUA, including any and all add-ons, increases, and assessments.

“**Residential**” means of or pertaining to individual homes or dwelling units, including mobile homes, apartments, condominiums, single-family dwellings or multi-family dwellings.



**ARTICLE 3
MANDATORY PARTICIPATION**

Sec. 3.1 Participation By Those Businesses and Residential Development Within District

(a) All businesses that are now and in the future situated within the "district" shall participate in the BCGUA, and shall be obligated to pay the fees assessed by BCGUA.

(b) All residential development now and in the future situated within the "district" shall participate in the BCGUA, and shall be obligated to pay the fees assessed by BCGUA.

**ARTICLE 4
ADMINISTRATION AND ENFORCEMENT**

Sec. 4.1 Operation and Management.

(a) The operation and management of the BCGUA shall be under the supervision and control of BCGUA and its Board of Trustees.

(b) All businesses and residential development existing now or in the future within the "district" shall participate and shall be obligated to pay fees assessed by BCGUA.

Sec. 4.2 Notice of Violation.

Any person found to be violating a provision of this Ordinance may be served with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction of the violation (which under some circumstances, may be immediate). The person shall, within the period of time stated in notice, permanently cease all violations. The notice of violation shall be served by regular mail and by methods provided in Section 4 of this Ordinance.

Sec. 4.3 Enforcement.

Beaver Creek Township has the following enforcement powers to enforce this Ordinance:

(1) Right to File Civil Action To Compel Compliance and Participation in BCGUA.

(2) Issuance of Order to Show Cause. The Board of Trustees may issue an order requiring a business and/or person to appear and explain any noncompliance with the requirements of this Ordinance or any permit, order, decision or determination promulgated, issued or made under this Ordinance, and to show cause why more severe enforcement actions against the user should not go forward. A show cause hearing shall be held within 10 days after the order to show cause was issued, as follows:

(a) The hearing shall be conducted and evidence shall be taken by the entire Board of Beaver Creek Township. Notice of the hearing shall be provided to require the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing.

(b) Testimony taken at the hearing shall be under oath and recorded. A copy of the transcript of the hearing shall be made available at cost to any person upon payment of applicable charges for the transcript.

(c) After reviewing the evidence taken at the hearing, the entire Board of Trustees, by majority, shall decide whether further enforcement action is required and, if so, the nature and extent of that further action, including, but not limited to, the issuance of any order or imposition of any fines, fees, surcharges or penalties, as authorized by this Ordinance.

(e) Amendment, Suspension and Revocation of Orders. An order shall be subject to amendment, suspension or revocation as determined appropriate by the entire Board of Trustees. Notice of the amendment, suspension or revocation shall be served upon the user in the same manner as notice was provided for the original order. An amendment, suspension or revocation of an order shall be subject to the same procedures for review and appeal as the original issuance of the order, as provided by this Ordinance.

(e) Consent Orders. Board of Trustees may enter into a consent order with a user to resolve disputed claims and address identified and potential deficiencies in the user's compliance status. The consent order shall be in the form of an agreement and may contain appropriate provisions, including, but not limited to, compliance schedules and stipulated fines and remedial actions.

Sec. 4.4 Service of Orders, Notices of Violations and Notices of Assessments.

Except as otherwise expressly provided by this ordinance, all orders and Notices of Violations shall be served upon persons and shall contain the information as provided by this section.

(a) Service. Service shall be by personal delivery or certified mail (return receipt requested), addressed to the user, alleged violator or other person, as applicable. The person served shall sign and date the order or notice and shall return the signed original copy to the Beaver Creek Township; provided, that the failure to do so shall not affect the person's obligation to comply with the order or notice.

(b) Contents. All orders shall contain at least the following information, as applicable and to the extent known:

- (1) The name and address of the violator;
- (2) The location and time that the violation occurred or was observed, and the duration of the violation;
- (3) The nature of the violation, including the provisions of this Ordinance or of any permit, order, decision, determination or agreement violated;
- (4) The basis for determining that a violation has occurred (personal observation, pollutant analysis, etc.);
- (5) The amount of the fine, penalty or charge assessed or due, if any;
- (6) The manner in which, and time and date by which, any fine, penalty or charge must be paid, including any penalty or charge for late payment;
- (7) The remedial action ordered, the time within which required actions must be taken, and any consequences for failure to do so.
- (8) The right to appeal the issuance of the order or notice and a summary of the procedures for appeal, or other applicable administrative procedures.
- (9) The date and time the order or notice was issued.

(c) Request for Additional Information. A person served may request additional information from the Superintendent regarding the contents or requirements as provided by any order or notice. However, a request for additional information shall not extend the time for compliance with an order or notice.

Sec. 8.8 Municipal Civil Infractions.

(a) A user/person who violates any provision of this Ordinance (including, but not limited to, any notice, order, permit, decision or determination promulgated, issued or made by under this ordinance) is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than \$100.00 per day for each infraction, plus costs and other sanctions.

(b) Repeat offenses shall be subject to increased fines. As used in this section, "repeat offense" means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision of this ordinance (i) committed by a person within any 30 day period and (ii) for which the person admits responsibility or is determined to be responsible. The increased fine for a repeat offense under this Ordinance shall be as follows:

- (1) The fine for any offense that is a first repeat offense shall be not less than \$250.00 plus costs.

(c) In determining the amount of a municipal civil infraction fine, the court shall consider the type, nature, severity, frequency, duration, preventability, potential and actual effect, and economic benefit to the violator (such as delayed or avoided costs or competitive advantage) of a violation, the violator's recalcitrance or efforts to comply, the economic impacts of the fine on the violator, and such other matters as justice may require. A violator shall bear the burden of demonstrating the presence and degree of any mitigating factors to be considered by the court in determining the amount of a fine. However, mitigating factors shall not be considered unless the court determines that the violator has made all good faith efforts to correct and terminate all violations.

(d) The Board of Trustees and/or such other or additional persons as subsequently authorized by resolution of the Board of Trustees, is authorized to issue municipal civil infraction citations (directing alleged violators to appear in court) for violations of this Ordinance which are designated as municipal civil infractions.

**ARTICLE 5
MUNICIPAL LIABILITY**

Beaver Creek Township shall not be responsible to businesses and persons residing within the "district" for services provided by BCGUA or failure to provide services by BCGUA. It shall be the responsibility of the business and/or person to contact BCGUA with regard to connection, service, and all other issues.

**ARTICLE 61
MISCELLANEOUS**

Sec. 6.1 Headings.

The paragraph headings in this Ordinance are furnished for convenience of reference only and shall not be considered to be a part of this Ordinance.

Sec. 6.2 Recordation; Publication; Effective Date.

This Ordinance shall be recorded in the minutes of the meeting of the Beaver Creek Township Board of Trustees at which it was adopted, as soon as practicable after its adoption, which record shall be authenticated by the signature of the Township Supervisor, and shall be published once in the Crawford County Avalanche, a newspaper of general circulation within Beaver Creek Township.

Sec. 6.3 Validity.

If any section, paragraph, sentence, clause or phrase of this Ordinance shall be held invalid, it shall not affect any other part of this Ordinance.

Sec. 6.4 Repeal.

All ordinances and resolutions and parts thereof, insofar as the same may be in conflict with the provisions of this Ordinance, are hereby repealed.

Sec. 6.5 Conflict.

In the event of a conflict between this ordinance and any other ordinance except for an ordinance authorizing the issuance of bonds secured by the revenues of the System, this ordinance shall control.

Sec. 6.6 Effective Date.

This ordinance shall take effect upon publication, or twenty (20) days after its adoption, whichever occurs last.

ORDINANCE ADOPTED June 13, 2017 and signed June 22, 2017.

Township Supervisor

Sharon K. Hartman
Township Clerk

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of an Ordinance duly adopted by the Beaver Creek Township, at a meeting held on June 13, 2017.

DATED: June 22, 2017

Sharon K. Hartman
Township Clerk

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of an Ordinance duly adopted by the Beaver Creek Township, at a meeting held on June 13, 2017, the original of which is on file in my office and available to the public. Public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, Act 267 of the Michigan Public Acts of 1976, including in the case of a special or rescheduled meeting, notice by posting at least 18 hours prior to the time set for said meeting.

I hereby certify that the following Board of Trustees were present at said meeting:
Van Nuck, Meisner, Little, Raybuck. Absent: Hartman

I hereby certify that Member Van Nuck moved for adoption of this Ordinance, and that said motion was supported by Member Raybuck.

I further certify that the vote for adoption of said Ordinance was as follows:

YEAS: Van Nuck, Meisner, Little, Raybuck.

ABSENT: Hartman

NAYS: None

I further certify that this Ordinance has been recorded in the Ordinance book and that such recording has been authenticated by the signatures of the Township Supervisor and Township Clerk.

DATED: June 22, 2017.

Sharon K. Hartman
Township Clerk

Adopted: 6-13-2017
Published: 6-29-2017
Effective; 6-29-2017