

**ORDINANCE NO.**

**AN ORDINANCE ADDING CHAPTER 15-13 TO THE CITY CODE TO CREATE AN INDEPENDENT BOARD OF TRUSTEES TO GOVERN THE ELECTRIC UTILITY; REPEALING AND REPLACING SECTION 2-1-143 OF THE CITY CODE TO CREATE AN ADVISORY PANEL; AMENDING SECTION 2-7-72 AND SECTION 4-8-3 OF THE CITY CODE TO APPLY TO THE BOARD OF TRUSTEES; AMENDING SECTION 15-9-2 TO DEFINE THE APPLICABILITY OF CHAPTER 15-9.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** The City Code is amended to add a new Chapter 15-13 to read:

**CHAPTER 15-13. ELECTRIC UTILITY.**

**ARTICLE 1. GENERAL PROVISIONS.**

**§ 15-13-1. DEFINITIONS.**

In this chapter:

- (1) BOARD means the Electric Utility Board.
- (2) CAPITAL PROJECT means any plant, station, edifice, facility, improvement, or other capitalized investment proposed to be constructed or acquired by the electric utility, including but not limited to the real property, buildings, structures, turbines, towers, panels, piping, equipment, fixtures, water rights, and engineering, design, construction, financing, debt service, and brokerage costs that are part of or incidental to the construction or acquisition.
- (3) ELECTRIC UTILITY or UTILITY means all facilities, lines, equipment, systems, inventory, and property owned, operated, or acquired by the City, wholly or jointly with others, to generate, transmit, distribute, and meter electrical energy and power, or to provide district cooling and street lighting.
- (4) RATE means any rate, fee, or charge for a utility service or product.
- (5) RENEWABLE PURCHASE POWER CONTRACT means a contract for the purchase of wholesale electric power produced by a renewable energy technology defined by Subsection 39.904(d), Utilities Code, with a generating capacity over 10 megawatts for a term more than five years.
- (6) SYSTEM OBLIGATION means any bonded indebtedness or outstanding obligation payable in whole or in part from the pledged revenue of the

1 electric utility and the terms, covenants, and conditions contained in an  
2 ordinance or contract concerning such indebtedness or obligation.

3 **§ 15-13-2. SYSTEM OBLIGATIONS NOT IMPAIRED**

4 Nothing in this chapter shall be construed to impair the City's ability to comply  
5 with any system obligation. The board shall strictly comply with the terms,  
6 covenants, and conditions of any system obligation in exercising its powers and  
7 duties. Council may exercise a power transferred to the board under this chapter if  
8 necessary to comply with a system obligation.

9 **§15-13-3. INVESTIGATIVE BODY.**

10 Council retains the power set forth in Article I, Section 8 (*Investigative Body*) of  
11 the charter and may exercise such powers with respect to the board and the electric  
12 utility.

13 **ARTICLE 2. ELECTRIC UTILITY BOARD.**

14 **§ 15-13-20. BOARD CREATED.**

- 15 (A) Under Chapter 552, Local Government Code, a board of trustees to be  
16 known as the Electric Utility Board is created as an agency of the City. The  
17 board shall regulate and govern the business of the electric utility in  
18 accordance with this chapter. The mission of the board is to provide clean,  
19 affordable, reliable energy and excellent customer service.
- 20 (B) This chapter does not create an entity with a corporate status separate from  
21 the City nor transfer title to any funds, assets, or property of the electric  
22 utility.
- 23 (C) The board may hold only powers that are given to council by the charter and  
24 other law.

25 **§ 15-13-21. MEMBERSHIP.**

- 26 (A) The board consists of seven members, one of whom is the mayor. Council  
27 shall appoint the remaining members, who shall be nominated by a  
28 subcommittee of council. The council may not nominate one of its own  
29 members.
- 30 (B) Appointed members must reside within the service area of the electric  
31 utility.
- 32 (C) Except for the mayor, members serve four-year terms that begin on January  
33 1. A member may not serve more than two full four-year terms in

1 succession. Three of the board's first appointed members shall be randomly  
2 selected by drawing to serve initial terms of two years.

- 3 (D) One member must reside outside the corporate limits of the city. The council  
4 subcommittee shall confer with other elected officials representing the  
5 service area of the electric utility regarding the nomination of the member  
6 required to reside outside the corporate limits of the city.
- 7 (E) Council may remove an appointed member by a vote of two-thirds of  
8 council.
- 9 (F) If a vacancy occurs, council shall make an appointment to serve the  
10 remainder of the vacated term in the same manner as a regular appointment.
- 11 (G) Members are subject to Chapter 2-7 (*Ethics and Financial Disclosure*).
- 12 (H) Member compensation and expense reimbursement policy, if any, shall be  
13 set by separate ordinance.

14 **§ 15-13-22. MEETINGS AND ACTION.**

- 15 (A) A quorum is four members. The board may act only by the favorable vote of  
16 at least four members.
- 17 (B) The board may adopt bylaws, establish standing advisory committees, and  
18 form temporary working groups of less than a quorum. Board meetings  
19 should be conducted under Robert's Rules of Order.
- 20 (C) At the first meeting of each even-numbered year, the board shall elect a  
21 chair and vice-chair to serve for a two-year term, or until their successors are  
22 elected. The mayor may not serve as an officer. The board shall appoint a  
23 secretary, who is not required to be a member. The secretary shall keep the  
24 records of the board, including those required by Chapter 551, Government  
25 Code (*Open Meetings Act*), produce agendas, and record and certify the  
26 official minutes.
- 27 (D) The chair and secretary shall attest to all rate schedules, resolutions, policies,  
28 and regulations adopted by the board.
- 29 (E) The board shall meet at least monthly.
- 30 (F) The board and advisory committees shall comply with Chapters 551 and  
31 552, Texas Government Code.
- 32 (G) The board's meeting procedures shall allow time for public comment and  
33 encourage public involvement.

- 1 (H) Board agendas shall be posted by the City Clerk. A link to current agendas  
2 shall be kept on the homepage of the electric utility's website.

3 **ARTICLE 3. POWERS OF THE BOARD.**

4 **§ 15-13-30. BOARD POWERS.**

5 Subject to this chapter, the general powers and duties of council, both express and  
6 implied, to regulate, govern, and make policy for the electric utility are transferred  
7 to, vested in, and held exclusively by the board.

8 **§ 15-13-31. CONTRACTS AND EXPENDITURES.**

- 9 (A) The board may authorize contracts and expenditures that are necessary or  
10 prudent to conduct the business and operations of the electric utility in  
11 accordance with the appropriation ordinances of the City relating to the  
12 electric utility.
- 13 (B) The board may adopt resolutions establishing purchasing procedures for  
14 goods and services under Subsection 252.022(c), Local Government Code.
- 15 (C) The board must recommend, and council must approve, a transaction or a  
16 capital project that has a total cost exceeding \$100 million. The general  
17 manager may plan, study, assess, design, issue solicitations, and conduct  
18 discussions and negotiations regarding capital projects exceeding \$100  
19 million in order to provide relevant information and recommendations to the  
20 board and council for consideration.
- 21 (D) The board must recommend, and council must approve, a renewable power  
22 purchase contract. The contract may not be approved unless:
- 23 (1) the contract is solicited in compliance with state law procedures for  
24 competitive sealed bidding, competitive sealed proposals, or reverse  
25 auction; and
- 26 (2) the council holds a public hearing on the contract at least one week  
27 before the meeting at which the contract is posted for approval.

28 **§ 15-13-32. BUDGET AND PLANNING.**

- 29 (A) The general manager shall provide each proposed annual electric utility  
30 budget to the board. The board shall provide its recommendations on the  
31 utility budget to the general manager not less than 120 days before each  
32 fiscal year. Council retains the authority to approve the budget of the electric  
33 utility.

1 (B) The board shall submit to the city manager, not less than 120 days before  
2 each fiscal year, a list of recommended capital improvements and  
3 amendments to the utility's strategic and generation plans for the next five  
4 years.

5 (C) Every two years, the board shall present its recommendations regarding the  
6 strategic and generation plans to council for public hearing and approval.  
7

8 **§15-13-33. DEBT; EMINENT DOMAIN; SALE OF REAL PROPERTY.**

9 The board must initiate a proposal to authorize the use of eminent domain, a sale or  
10 lease of real property that is part of the electric utility, and an issuance of bonds or  
11 other debt obligations. Final authorization to exercise these powers is reserved to  
12 the council.

13 **§15-13-34. AMENDMENT OR REVOCATION OF BOARD POWERS.**

14 Council may revoke or modify powers granted to the board, or abolish the board  
15 entirely, by amending or repealing this chapter.

16 **§15-13-35. ADOPTION OF CUSTOMER CHOICE.**

17 Council is the governing body of the electric utility for the purpose of deciding  
18 when or if the electric utility will provide customer choice under Section 40.051,  
19 Utilities Code. The board has no power to, and may not, consider or adopt a  
20 resolution concerning customer choice.

21 **§ 15-13-36. EFFECTIVE DATE.**

22 This article takes effect on January 1, 2014.

23 **ARTICLE 4. RATEMAKING.**

24 **§ 15-13-40. RATES.**

25 Rates set by the board must be fair, just, and reasonable, shall not unduly  
26 discriminate against any customer class, and shall recover revenues sufficient to  
27 comply with all system obligations and council-approved financial policies.

28 **§ 15-13-41. COMPREHENSIVE RATE REVIEW.**

29 (A) The board shall conduct a cost-of-service study and comprehensive review  
30 of electric rates no less frequently than every five years. The first review  
31 shall be made no later than the beginning of fiscal year 2018.

32 (B) The board shall adopt procedures for comprehensive rate reviews. The  
33 procedures shall, at a minimum, include the following:

- (1) An independent examiner having utility, rate, judicial, or administrative law expertise shall preside over the process and give written findings and recommendations to the board.
- (2) An independent consumer advocate shall represent the interests of residential, low-income, and small commercial customers. The consumer advocate shall be sufficiently funded to allow effective participation, including the ability to retain outside experts.
- (3) Interested customers shall be entitled to party status to the proceedings. The examiner may align customer parties in accordance with shared rate class interests and limit the number of representatives for each class. Residential customers who reside outside the City are entitled to participate as a separate, unaligned rate class.
- (4) The process shall allow a discovery process based on written requests for information and responses. The process shall allow for the protection of information exempt from disclosure pursuant to the Public Information Act.

#### **§ 15-13-42. RATE ADJUSTMENTS.**

- (A) Unless done through a comprehensive rate review under Section 15-13-41, the board may not adjust base energy and demand rates by more than two percent annually, unless otherwise required to meet a system obligation.
- (B) The board may approve a rate for an optional service offering or pilot program as it deems appropriate.
- (C) The board must hold a public hearing on any proposed action on a rate under this section.
- (D) Council shall adjust the fuel and power supply charges in the annual budget process. The general manager of the electric utility may make an interim adjustment if necessary to eliminate an over-recovery or under-recovery balance that differs from actual costs incurred by more than ten percent.
- (E) After the effective date of this article, the annual City budget shall not adopt electric rates other than the fuel and power supply charges. The budget documents shall refer to the electric rate schedules separately adopted by the board or council under this chapter.
- (F) The board shall provide the City Clerk with current rate schedules.

1       **§ 15-13-43. COUNCIL REVIEW OF RATES.**

- 2           (A) Council has final discretion to review and approve rates adopted by the  
3           board.
- 4           (B) The board's action to adopt a rate shall become final thirty days after  
5           approval, unless council first adopts a resolution to hold a public hearing and  
6           review the rate. The board shall provide a report of its action to the City  
7           Clerk for distribution to council no later than the next business day after the  
8           board action.
- 9           (C) If council adopts the resolution described in Subsection (B), the rate adopted  
10          by the board does not take effect without council action to adopt or modify  
11          the rate.

12       **§ 15-13-44. EFFECTIVE DATE.**

13           This article takes effect on October 1, 2014.

14                               **ARTICLE 5. ADMINISTRATION**

15       **§ 15-13-50. ADMINISTRATION.**

- 16           (A) Nothing in this chapter is intended to conflict with the charter concerning the  
17           administration of the City, its departments, and its workforce by the city  
18           manager or give the board powers over personnel. Employees within the  
19           reporting structure of the electric utility shall remain subject to all council-  
20           approved policies and ordinances concerning pay, benefits, and personnel,  
21           all civil service rules, and the City employee retirement system.
- 22           (B) The electric utility shall be managed and operated by a general manager,  
23           who shall report to and may be removed by the city manager.
- 24           (C) The general manager may adopt rules under Chapter 1-2 (*Adoption of Rules*)  
25           to administer and enforce this chapter.

26       **§15-13-51. FUEL AND POWER SUPPLY**

- 27
- 28           (A) The general manager may execute contracts for fuel supplies necessary to  
29           generate power for sale, and for electric power for sale or re-sale, over a  
30           rolling five-year period.
- 31           (B) Council must approve risk management policy regarding contracts and  
32           transactions authorized by Section 2256.0201, Government Code.

1 (C) The general manager may execute contracts and transactions authorized by  
2 Section 2256.0201, Government Code, in accordance with council-approved  
3 risk management policy over a rolling five-year period.

4 (D) For transactions described in this section, the general manager shall comply  
5 with the expenditure limits authorized by council for the rolling five-year  
6 period.

7 **§15-13-52. TERMS OF SERVICE**

8 Chapter 15-9 governs the terms and conditions for receiving electric utility service.  
9 The general manager may adopt and enforce rules concerning the customer  
10 protection standards contained in Section 17.004, Utilities Code, that do not  
11 conflict with Chapter 15-9.

12 **§15-13-53. UTILITY INFRASTRUCTURE**

13  
14 (A) Board policies governing the extension of the electric utility both inside and  
15 outside city limits must provide that each extension project shall, when  
16 completed, become the property of the City whether the extension is on  
17 public or private property.

18  
19 (B) The general manager may execute contracts governing attachments to utility  
20 infrastructure by telecommunication, cable, and broadband providers under  
21 terms and conditions that are consistent with Chapter 15-7.  
22

23 **PART 2.** Section 2-1-143 (*Electric Utility Commission*) of the City Code is repealed;  
24 Chapter 2-1 (*City Boards*) of the City Code is amended to add a new Section 2-1-143 to  
25 read:

26  
27 **§ 2-1-143 ELECTRIC UTILITY ADVISORY PANEL.**

28 (A) The Electric Utility Advisory Panel shall:

29 (1) review and assess the electric utility's strategic, capital, and  
30 generation plans and provide recommendations to the Electric Utility  
31 Board on the merits and implications of the plans and proposed  
32 revisions to the plan;

33 (2) assist the Electric Utility Board in engaging ratepayers in discussions  
34 of the strategic, capital, and generation plans and revisions to the  
35 plans;



- (3) review and assess the electric utility's plans and programs for alternative energy technologies, renewable energy sources, and energy conservation;
- (4) identify, hear public comment, and make recommendations on issues of particular interest or concern to particular customer classes, including low-income customers and those who reside outside of the City; and
- (5) advise the Electric Utility Board on other policy matters concerning the electric utility.

(B) Except as provided in Subsection (D), the panel is composed of seven members.

(C) Each councilmember shall nominate a member.

(D) If the panel finds that additional members are necessary to ensure adequate representation of stakeholders, including residential customers outside the City, the panel may by consensus nominate up to four additional members to council for appointment.

(E) Members must reside within the service area of the electric utility.

(F) At least one member must reside outside the City.

**PART 4.** Subsection (C) of Section 2-7-72 (*Reports*) of the City Code is amended to read:

(C) The members of the following boards and commissions shall report the information required by Subsection (E):

- (1) Arts Commission;
- (2) Board of Adjustment;
- (3) Electric Advisory Panel;
- (4) Electric Utility Board;
- (5)~~(3)~~ Environmental Board;
- (6)~~(4)~~ Historic Landmark Commission;
- (7)~~(5)~~ Housing Authority of the City of Austin;
- (8)~~(6)~~ Parks and Recreation Board;
- (9)~~(7)~~ Planning Commission;

- (10)~~(8)~~ Public Safety Commission;  
(11)~~(9)~~ Zero Waste Advisory Commission;  
(12)~~(10)~~ Water and Wastewater Commission;  
(13)~~(11)~~ Waterfront Planning Advisory Board;  
(14)~~(12)~~ Urban Renewal Agency; and  
(15)~~(13)~~ Zoning and Platting Commission.

**PART 5.** Section 4-8-3 (*Applicability*) of the City Code is amended to read:

This chapter applies to a person who lobbies the mayor, a council member, their aides, a member of a board governed by Chapter 2-1 of the Code, a member of a board, task force, or other bodies established by council and listed by the city clerk in accordance with Subsection~~[Section]~~ 2-1-3(C) of the Code, a member of a board established under Chapter 15-13 of the Code, and the following city staff: the city manager, an assistant city manager, their aides, the city attorney, an assistant city attorney, a department or assistant department director, and, where no assistant department director serves, the first principal assistant of the department.

**PART 6.** Section 15-9-2 (*Applicability*) of the City Code is amended to read.

**§ 15-9-2 APPLICABILITY.**

- (A) Except as provided in Subsection (B), if ~~[If]~~ there is a conflict or inconsistency between this chapter and another ordinance or Code provision ~~[outside this chapter regarding the operation of a utility with respect to service, charges, billing, or refunds],~~ the other ordinance or Code provision prevails.
- (B) If there is a conflict or inconsistency between this chapter and Chapter 15-13 (*Electric Utility*) or a rule, regulation, or policy of the Electric Utility Board, this chapter prevails.

**PART 7.** The city manager shall present to council, concurrently with council's consideration of the Fiscal Year 2015 budget, a plan to further transition governance and oversight of the electric utility to the board. The city manager may also present other ordinances to council that are appropriate to implement the transition.

**PART 8.** This ordinance takes effect on \_\_\_\_\_.

**PASSED AND APPROVED**

§  
§  
§

\_\_\_\_\_, 2013

\_\_\_\_\_  
Lee Leffingwell  
Mayor

**APPROVED:** \_\_\_\_\_

Karen M. Kennard  
City Attorney

**ATTEST:** \_\_\_\_\_

Jannette S. Goodall  
City Clerk