

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.

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

ARTICLE 3. POWERS OF THE BOARD.

§ 15-13-30. BOARD POWERS.

The council shall retain its general powers and duties, both express and implied, to regulate, govern, and make policy for the electric utility unless specifically transferred to, vested in, and held exclusively by the board as outlined in this chapter.

§ 15-13-31. CONTRACTS AND EXPENDITURES.

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

§ 15-13-32. BUDGET AND PLANNING.

- (A) The general manager shall provide each proposed annual electric utility budget to the board. The board shall provide its recommendations on the utility budget to the general manager not less than 120 days before each fiscal year. Council retains the authority to approve the budget of the electric utility. The board shall have an open and transparent budget process including holding at least one public hearing.

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 The council and board shall hold at least one joint work session annually to
8 discuss strategic and generation plans, the proposed budget (operating
9 budget and capital improvement plan), new or revised City policies/master
10 plans, and other matters.
11

12 **§15-13-33. DEBT; EMINENT DOMAIN; SALE OF REAL PROPERTY.**

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

17 **§15-13-34. AMENDMENT OR REVOCATION OF BOARD POWERS.**

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

20 **§15-13-35. ADOPTION OF CUSTOMER CHOICE.**

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

25 **§ 15-13-36. EFFECTIVE DATE.**

26 This article takes effect on January 1, 2014.

27 **ARTICLE 4. RATEMAKING.**

28 **§ 15-13-40. RATES.**

29 Rates set by the board must be fair, just, and reasonable, shall not unduly
30 discriminate against any customer class, and shall recover revenues sufficient to
31 comply with all system obligations and council-approved financial policies. Per the
32 June 2012 rates approved by council, long-term contracts with certain primary
33 service customers expire on or about May 2015, and the approved rates will then
34 apply. Any future proposal for a special rate contract for primary service customers
35 will require the approval of council.

1 **§ 15-13-41. COMPREHENSIVE RATE REVIEW.**

- 2 (A) The board shall conduct a cost-of-service study and comprehensive review
3 of electric rates no less frequently than every five years. The first review
4 shall be made no later than the beginning of fiscal year 2018.
- 5 (B) The board shall adopt procedures for comprehensive rate reviews. The
6 procedures shall, at a minimum, include the following:
- 7 (1) An independent examiner having utility, rate, judicial, or
8 administrative law expertise shall preside over the process and give
9 written findings and recommendations to the board. The board shall
10 select this independent examiner subject to confirmation by council.
- 11 (2) An independent consumer advocate shall represent the interests of
12 residential, low-income, and small commercial customers. The
13 consumer advocate shall be sufficiently funded to allow effective
14 participation, including the ability to retain outside experts. The board
15 shall select this independent consumer advocate subject to
16 confirmation by council.
- 17 (3) Interested customers shall be entitled to party status to the
18 proceedings. The examiner may align customer parties in accordance
19 with shared rate class interests and limit the number of representatives
20 for each class. Residential customers who reside outside the City are
21 entitled to participate as a separate, unaligned rate class.
- 22 (4) The process shall allow a discovery process based on written requests
23 for information and responses. The process shall allow for the
24 protection of information exempt from disclosure pursuant to the
25 Public Information Act.

26 **§ 15-13-42. RATE ADJUSTMENTS.**

- 27 (A) Unless done through a comprehensive rate review under Section 15-13-41,
28 the board may not adjust base energy and demand rates by more than two
29 percent annually, unless otherwise required to meet a system obligation.
30 However, such a rate adjustment shall also meet the goal of being in the
31 lower 50 percent of Texas rates overall.
- 32 (B) The board may approve a rate for an optional service offering or pilot
33 program as it deems appropriate.
- 34 (C) The board must hold a public hearing on any proposed action on a rate under
35 this section.

- 1 (D) Council shall adjust the fuel and power supply charges in the annual budget
2 process. The general manager of the electric utility may make an interim
3 adjustment if necessary to eliminate an over-recovery or under-recovery
4 balance that differs from actual costs incurred by more than ten percent.
- 5 (E) After the effective date of this article, the annual City budget shall not adopt
6 electric rates other than the fuel and power supply charges. The budget
7 documents shall refer to the electric rate schedules separately adopted by the
8 board or council under this chapter.
- 9 (F) The board shall provide the City Clerk with current rate schedules.

10

11 **§ 15-13-43. COUNCIL REVIEW OF RATES.**

- 12 (A) Council has final discretion to review and approve rates adopted by the
13 board.
- 14 (B) The board's action to adopt a rate shall become final thirty days after
15 approval, unless council first adopts a resolution to hold a public hearing and
16 review the rate. The board shall provide a report of its action to the City
17 Clerk for distribution to council no later than the next business day after the
18 board action.
- 19 (C) If council adopts the resolution described in Subsection (B), the rate adopted
20 by the board does not take effect without council action to adopt or modify
21 the rate.

22 **§ 15-13-44. EFFECTIVE DATE.**

23 This article takes effect on October 1, 2014.

24 **ARTICLE 5. ADMINISTRATION**

25 **§ 15-13-50. ADMINISTRATION.**

- 26 (A) Nothing in this chapter is intended to conflict with the charter concerning the
27 administration of the City, its departments, and its workforce by the city
28 manager or give the board powers over personnel. Employees within the
29 reporting structure of the electric utility shall remain subject to all council-
30 approved policies and ordinances concerning pay, benefits, and personnel,
31 all civil service rules, and the City employee retirement system.
- 32 (B) The electric utility shall be managed and operated by a general manager,
33 who shall be appointed by, report to, and may be removed by the city
34 manager.

- 1 (C) The general manager may adopt rules under Chapter 1-2 (*Adoption of Rules*)
2 to administer and enforce this chapter.

3 **§15-13-51. FUEL AND POWER SUPPLY**
4

- 5 (A) The general manager may execute contracts for fuel supplies necessary to
6 generate power for sale, and for electric power for sale or re-sale, over a
7 rolling five-year period.
- 8 (B) Council must approve risk management policy regarding contracts and
9 transactions authorized by Section 2256.0201, Government Code.
- 10 (C) The general manager may execute contracts and transactions authorized by
11 Section 2256.0201, Government Code, in accordance with council-approved
12 risk management policy over a rolling five-year period.
- 13 (D) For transactions described in this section, the general manager shall comply
14 with the expenditure limits authorized by council for the rolling five-year
15 period.

16 **§15-13-52. TERMS OF SERVICE**

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

21 **§15-13-53. UTILITY INFRASTRUCTURE**
22

- 23 (A) Board policies governing the extension of the electric utility both inside and
24 outside city limits must provide that each extension project shall, when
25 completed, become the property of the City whether the extension is on
26 public or private property.
- 27
- 28 (B) The general manager may execute contracts governing attachments to utility
29 infrastructure by telecommunication, cable, and broadband providers under
30 terms and conditions that are consistent with Chapter 15-7.
31

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

35 **§ 2-1-143 ELECTRIC UTILITY ADVISORY PANEL.**
36

1 (A) The Electric Utility Advisory Panel shall:

- 2 (1) review and assess the electric utility's strategic, capital, and
3 generation plans and provide recommendations to the Electric Utility
4 Board and council on the merits and implications of the plans and
5 proposed revisions to the plan;
- 6 (2) assist the Electric Utility Board and council in engaging ratepayers in
7 discussions of the strategic, capital, and generation plans and revisions
8 to the plans;
- 9 (3) review and assess the electric utility's plans and programs for
10 alternative energy technologies, renewable energy sources, and energy
11 conservation;
- 12 (4) identify, hear public comment, and make recommendations on issues
13 of particular interest or concern to particular customer classes,
14 including low-income customers and those who reside outside of the
15 City; and
- 16 (5) advise the Electric Utility Board and council on other policy matters
17 concerning the electric utility.

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

20 (C) Each councilmember shall nominate a member.

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

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

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

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

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

- 31 (1) Arts Commission;
- 32 (2) Board of Adjustment;
- 33 (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.

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

5 **PART 8.** This ordinance takes effect on _____.

6 **PASSED AND APPROVED**

7
8 §
9 §
10 _____, 2013 § _____
11 Lee Leffingwell
12 Mayor
13

14
15 **APPROVED:** _____ **ATTEST:** _____
16 Karen M. Kennard Jannette S. Goodall
17 City Attorney City Clerk