

ORDINANCE NO.

AN ORDINANCE ADDING CHAPTER 15-13 TO THE CITY CODE TO CREATE A BOARD TO OVERSEE THE ELECTRIC UTILITY; REPEALING SECTION 2-1-143 OF THE CITY CODE; AMENDING SECTION 2-7-72 AND SECTION 4-8-3 OF THE CITY CODE TO APPLY TO THE BOARD.

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) SYSTEM OBLIGATION means any bonded indebtedness or outstanding obligation payable in whole or in part from the pledged revenue of the electric utility and the terms, covenants, and conditions contained in an ordinance or contract concerning such indebtedness or obligation.

§ 15-13-2. SYSTEM OBLIGATIONS NOT IMPAIRED

Nothing in this chapter shall be construed to impair the City's ability to comply with any system obligation. The board shall strictly comply with the terms, covenants, and conditions of any system obligation in exercising its powers and duties.

1 **ARTICLE 2. ELECTRIC UTILITY BOARD.**

2 **§ 15-13-20. BOARD CREATED.**

- 3 (A) The Electric Utility Board is hereby created to oversee the business of the
4 electric utility in accordance with this chapter and advise the council on all
5 matters concerning the electric utility.
- 6 (B) This chapter does not create an entity with a corporate status separate from
7 the City nor transfer title to any funds, assets, or property of the electric
8 utility.

9 **§ 15-13-21. MEMBERSHIP.**

- 10 (A) The board consists of seven members. A subcommittee of council shall
11 nominate members for appointment by the full council. The council may not
12 appoint one of its own members.
- 13 (B) Appointed members must reside within the service area of the electric
14 utility.
- 15 (C) In selecting a nominee for the board, the council subcommittee tasked with
16 the nomination process shall consider the professional expertise and
17 experience of the person with respect to areas of knowledge or relevance to
18 the utility industry, such as ratemaking, engineering, finance, energy,
19 community service or activism, and environmental science or policy;
- 20 (D) The board should include representatives of key customer classes and utility
21 stakeholders, such as residential, low-income, commercial, and
22 environmental interests.
- 23 (E) One member must reside outside the corporate limits of the city. The council
24 subcommittee shall confer with other elected officials representing the
25 service area of the electric utility regarding the nomination of the member
26 required to reside outside the corporate limits of the city.
- 27 (F) Members serve four-year terms that begin on January 1. A member may not
28 serve more than two full four-year terms in succession. Three of the board's
29 first appointed members shall be randomly selected by drawing to serve
30 initial terms of two years.
- 31 (G) Council may remove an appointed member by a vote of two-thirds of
32 council.
- 33 (H) If a vacancy occurs, council shall make an appointment to serve the
34 remainder of the vacated term in the same manner as a regular appointment.

- 1 (I) Members are subject to Chapter 2-7 (*Ethics and Financial Disclosure*).
- 2 (J) Member compensation and expense reimbursement policy, if any, shall be
- 3 set by separate ordinance.

4 **§ 15-13-22. MEETINGS AND ACTION.**

- 5 (A) A quorum is four members. The board may act only by the favorable vote of
- 6 at least four members.
- 7 (B) The board may adopt bylaws, establish standing advisory committees, and
- 8 form temporary working groups of less than a quorum. Board meetings
- 9 should be conducted under Robert's Rules of Order.
- 10 (C) At the first meeting of each even-numbered year, the board shall elect a
- 11 chair and vice-chair to serve for a two-year term, or until their successors are
- 12 elected. The board shall appoint a secretary, who is not required to be a
- 13 member. The secretary shall keep the records of the board, including those
- 14 required by Chapter 551, Government Code (*Open Meetings Act*), produce
- 15 agendas, and record and certify the official minutes.
- 16 (D) The board shall meet at least monthly.
- 17 (E) The board and advisory committees shall comply with Chapters 551 and
- 18 552, Texas Government Code.
- 19 (F) The board's meeting procedures shall allow time for public comment and
- 20 encourage public involvement.
- 21 (G) Board agendas shall be posted by the city clerk. A link to current agendas
- 22 shall be kept on the homepage of the electric utility's website.

23 **ARTICLE 3. BOARD DUTIES**

24 **§ 15-13-30. PURPOSE**

25 The board shall exercise general oversight of the operations and business of the

26 electric utility. The board may take any actions allowed by this chapter and shall

27 advise council on all matters concerning the electric utility as it deems appropriate,

28 or as may be requested by council.

29 **§ 15-13-31. BOARD ACTION.**

- 30 (A) Except as otherwise provided by this chapter, the board may approve
- 31 policies, contracts, and expenditures related to the electric utility and the
- 32 provision of electric service.

1 (B) An action of the board may not conflict with a charter provision or an
2 ordinance, resolution, or other action adopted by council.

3 (C) All board actions require council review and adoption.

4 **§ 15-13-32. COUNCIL REVIEW OF BOARD ACTIONS**

5 (A) An action of the board under Section 15-13-31 (*Board Action*) shall be
6 posted for review and consideration on the next available council agenda in
7 compliance with Code agenda procedures.

8 (B) Council may adopt, reject, or modify an action of the board, or may
9 postpone the action for consideration at a later time.

10 **§ 15-13-33. BUDGET AND PLANNING.**

11 (A) The board shall provide recommendations on the utility budget to the
12 general manager not less than 120 days before each fiscal year. The board
13 shall have an open and transparent budget review process including holding
14 at least one public hearing.

15 (B) The board shall submit to the general manager, not less than 120 days before
16 each fiscal year, a list of recommended capital improvements and
17 amendments to the utility's strategic and generation plans for the next five
18 years.

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

21 (D) The council, or a council subcommittee, shall hold at least one joint work
22 session with the board annually to discuss strategic and generation plans, the
23 proposed operating and capital budgets, new or revised City policies and
24 master plans, and other matters.

25 (E) To increase the transparency of electric utility expenditures, the board shall
26 advise council regarding the level of the general fund transfer, the formula
27 for calculating the transfer, and all other transfers and inter-departmental
28 cost allocations.

29 **§ 15-13-34. COMPREHENSIVE RATE REVIEWS.**

30 (A) The board shall conduct a comprehensive review of electric rates based on a
31 cost-of-service study no less frequently than every five years. The first
32 review shall be made no later than the beginning of fiscal year 2018.
33
34

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

- 3 (1) An independent examiner having utility, rate, judicial, or
4 administrative law expertise shall preside over the process and give
5 written findings and recommendations to the board.
- 6 (2) An independent consumer advocate shall represent the interests of
7 residential, low-income, and small commercial customers. The
8 consumer advocate shall be sufficiently funded to allow effective
9 participation, including the ability to retain outside experts.
- 10 (3) Interested customers shall be entitled to party status to the
11 proceedings. The examiner may align customer parties in accordance
12 with shared rate class interests and limit the number of representatives
13 for each class. Residential customers who reside outside the City are
14 entitled to participate as a separate, unaligned rate class.
- 15 (4) Funding for the independent examiner and funding for the consumer
16 advocate shall each not be less than the amount requiring council
17 approval under Article VII, Section 15 of the Charter (*Purchase*
18 *Procedure*).
- 19 (5) The process shall allow a discovery process based on written requests
20 for information and responses. The process shall allow for the
21 protection of information exempt from disclosure pursuant to the
22 Public Information Act.

23 **§ 15-13-35. EFFECTIVE DATE.**

24 This article takes effect on January 1, 2014.

25 **ARTICLE 4. COUNCIL AUTHORITY**

26 **§ 15-13-40. POWERS RETAINED.**

- 27 (A) The council retains its general powers and duties, both express and implied,
28 to regulate, govern, and make policy for the electric utility.
- 29 (B) The board may only provide recommendations concerning the following
30 matters, which shall remain within the exclusive authority of council:
- 31 (1) a transaction or a capital project that has a total cost exceeding \$50
32 million. The general manager may plan, study, assess, design, issue
33 solicitations, and conduct discussions and negotiations regarding
34 capital projects exceeding \$50 million in order to provide relevant
35 information and recommendations to the council for consideration;

(2) a power purchase contract of more than five years in duration or ten megawatts in capacity. Council shall not approve such a contract unless:

(a) the contract is solicited in compliance with state law procedures for competitive sealed bidding, competitive sealed proposals, or reverse auction; and

(b) council holds a public hearing on the contract at least one week before the meeting at which the contract is posted for approval;

(3) the issuance of debt;

(4) the exercise of eminent domain;

(5) the sale or lease of real property;

(6) rates; and

(7) the budget of the electric utility and the general fund transfer.

§15-13-41. FUEL AND POWER SUPPLY

(A) Council must approve risk management policy regarding contracts and transactions authorized by Section 2256.0201, Government Code.

(B) For transactions described in this section, the general manager shall comply with the expenditure limits authorized by council over a rolling five-year period.

§15-13-42. ADOPTION OF CUSTOMER CHOICE.

Council is the governing body of the electric utility for the purpose of deciding when or if the electric utility will provide customer choice under Section 40.051, Utilities Code. The board may not consider or adopt a resolution concerning customer choice.

§ 15-13-43. EFFECTIVE DATE.

This article takes effect on January 1, 2014.

ARTICLE 5. ADMINISTRATION

§ 15-13-50. ADMINISTRATION.

(A) Nothing in this chapter is intended to conflict with the charter concerning the administration of the City, its departments, and its workforce by the city manager or give the board powers over personnel. Employees within the reporting structure of the electric utility shall remain subject to all council-

1 approved policies and ordinances concerning pay, benefits, and personnel,
2 all civil service rules, and the City employee retirement system.

3 (B) The electric utility shall be managed and operated by a general manager,
4 who shall be appointed by, report to, and may be removed by the city
5 manager.

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

8 (D) The board shall be provided with information, other than individual
9 customer information, that is relevant to a matter that is before the board for
10 consideration, or as may be requested by the board. The board and its
11 members shall keep confidential information provided to it that is exempt
12 from disclosure under Chapter 552, Government Code (*Public Information*
13 *Act*).

14 (E) The board may conduct executive sessions to consider matters exempt from
15 disclosure under the public power utility competitive matters exception to
16 the Section 552.133, Government Code. All other requests for an executive
17 session must be approved by the city attorney.

18 **PART 2.** Section 2-1-143 (*Electric Utility Commission*) of the City Code is repealed.

19
20 **PART 3.** Subsection (C) of Section 2-7-72 (*Reports*) of the City Code is amended to
21 read:

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

24 (1) Arts Commission;

25 (2) Board of Adjustment;

26 (3) Electric Utility Board;

27 (4)[(3)] Environmental Board;

28 (5)[(4)] Historic Landmark Commission;

29 (6)[(5)] Housing Authority of the City of Austin;

30 (7)[(6)] Parks and Recreation Board;

31 (8)[(7)] Planning Commission;

32 (9)[(8)] Public Safety Commission;

33 (10)[(9)] Zero Waste Advisory Commission;

- (11)(10) Water and Wastewater Commission;
(12)(11) Waterfront Planning Advisory Board;
(13)(12) Urban Renewal Agency; and
(14)(13) Zoning and Platting Commission.

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

§ 4-8-3 APPLICABILITY.

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 5. This ordinance takes effect on _____.

PASSED AND APPROVED

_____, 2013 § _____
Lee Leffingwell
Mayor

APPROVED: _____ **ATTEST:** _____
Karen M. Kennard Jannette S. Goodall
City Attorney City Clerk