

TITLE 13

UTILITIES AND SERVICES¹

CHAPTER

1. ELECTRICITY, WATER, AND SEWERS.
2. GAS.

CHAPTER 1

ELECTRICITY, WATER, AND SEWERS

SECTION

13-101. Electric Power, Water, and Sewerage Board.

13-102. Violations of utility board's rules and regulations.

13-101. Electric Power, Water, and Sewerage Board. The Electric Power, Water, and Sewerage Board shall have exclusive management and control of the operation of the city's electric,² water,³ and sewer⁴ systems. (1979 code, § 13-101)

13-102. Violations of utility board's rules and regulations. It shall be unlawful for any person to violate any lawful rule or regulation of the Electric Power, Water, and Sewerage Board. (1979 code, § 13-102)

¹See title 4 in this code for the building and utility codes; see title 8 for related health and sanitation provisions.

See ordinance No.196 and Ord. No. 518 (Jan. 1995), of record in the recorder's office, the city's cable TV franchise.

See ordinance No. 422, of record in the recorder's office granting permission to South Central Bell Telephone Company to construct, maintain, and operate lines of telephone and telegraph in the City of Shelbyville.

²See the charter of this code for the act providing for the electric light and power distribution system. (Chapter number 465, Private Acts of 1939)

³See the charter of this code for the act providing for the waterworks system. (Chapter number 293, Private Acts of 1941)

⁴See the charter of this code for the act providing for the sewerage system. (Chapter 421, Private Acts of 1953)

CHAPTER 2

GAS

SECTION

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13-201. To be furnished under franchise. Gas service shall be furnished for the city and its inhabitants under such franchise as the city council shall grant. (1979 code, § 13-201)

13-202. Title. This ordinance shall be known and may be cited as the "United Cities Gas Company Franchise Ordinance." (as added by ord. No. 370)

13-203. Definitions. For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(1) "City" is the City of Shelbyville, Tennessee, a municipal corporation;

(2) "Company" is United Cities Gas Company, the grantee of the rights under this franchise, an Illinois and Virginia corporation, domesticated for the purpose of doing business within the State of Tennessee, with its principal place of business located at 5300 Maryland Way, Brentwood, Tennessee, 37027;

(3) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind. (1979 code, § 13-203)

13-204. Authority. There is hereby granted by the City of Shelbyville, Tennessee, to United Cities Gas Company, its successors and assigns, the right, authority, privilege and franchise to erect, construct, operate and maintain a system of gas mains, service pipes, regulator stations and all other necessary and appropriate equipment and facilities for the transmission and distribution of gas in, upon, across, along and under the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds in the present or future corporate limits of the City of Shelbyville and in the environs of said city, and to import, transport, sell and distribute gas, whether natural, manufactured, or mixed, within the city and its environs, for the supplying and selling of said gas to said city, and the inhabitants, institutions, and businesses thereof; and for such purpose to construct, operate, maintain, renew, replace, repair, and extend all necessary gas mains, service pipes and other appliances, fixtures and facilities as may be necessary for said purposes, to-wit, the transmission, distribution and sale of such gas to said city and the inhabitants thereof, for domestic, commercial, industrial and institutional uses, and such other purposes for which it is or may hereafter be used. (1979 code, § 13-204)

13-205. Duration. This franchise and the rights herein granted shall take effect and be enforced from and after the effective date hereof, as required by law, and upon the filings, of acceptance by the company, and shall continue in force and effect for a term of twenty-five (25) years after the effective date. Provided, that if the acceptance is not filed within thirty (30) days after final passage of this ordinance, the provisions of this franchise shall be null and void. (1979 code, § 13-205)

13-206. Construction requirements. All gas mains, service pipes, fixtures, facilities and other appliances laid, constructed, maintained and operated by virtue of this franchise, shall be laid, constructed, maintained and operated in accordance with acceptable engineering practices and in full accord with any and all applicable engineering codes adopted or approved by the natural gas distribution industry and/or engineering profession and in accordance with any applicable statutes of the State of Tennessee, ordinances of the City of Shelbyville and the rules and regulations of the Tennessee Public Service Commission or of any other governmental regulatory commission, board or agency having jurisdiction over the company. Said facilities shall be so constructed as not to interfere with the drainage of said city, or interfere with or injure any street, sewer or other public improvement which said city has heretofore made or may hereafter make in, upon, across, along or under any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public grounds, or unnecessarily obstruct or impede such highway, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways or other public grounds of said city. (1979 code, § 13-206)

13-207. Construction safety requirements. When the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways or other public grounds are opened or any other opening is made by the company within the city, whether the same be made for the purpose of laying, constructing, replacing or repairing the mains, pipes and other appliances and fixtures of said company, said company shall place and maintain all necessary safety devices, barriers, lights and warnings to properly notify all persons of any dangers resulting from such entrances, and shall comply with all safety regulations required by federal, state or local laws. (1979 code, § 13-207)

13-208. Required relocation or removal. In the event that at any time during the period of this franchise the city shall lawfully elect to alter, or change the grade of, any street, alley or other public ways in which the company is maintaining gas mains, pipes or other appliances and fixtures, the company, upon reasonable written notice by the city, shall remove, or change or relocate its mains, pipes, or other appliances and fixtures as necessary to conform to the proposed alteration. However, the company shall be reimbursed its relocation costs whenever such reimbursement is authorized by a federal or state statute, for either urban renewal development or street relocation. (1979 code, § 13-208)

13-209. Construction restoration. When any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public ground is entered by the company, the company shall, within a reasonable time, restore the same to its former condition as nearly as practicable in such a manner as to meet the requirements of title 12 of the Shelbyville Municipal Code and the specified approval of the city manager, city's engineer, codes inspector, or other responsible agent of the city, provided, however, that such approval shall not be unreasonably withheld. In the event the company shall fail to restore said streets, avenues, roads, alleys, lanes, ways, utility easements, parkways, or other public grounds to their former state, as nearly as practicable, the city may itself, after giving the company reasonable written notice, make restoration and charge the costs thereof to the company. (1979 code, § 13-209)

13-210. Hold harmless. The company shall, at all times, defend, indemnify and hold harmless the city from and against any and all claims for injury to any person or property by reason of the failure of the company or its employees to exercise due care and diligence in and about the installing and maintenance of said system, guarding trenches and excavations while said system is being installed or subsequent extensions, repairs or alterations are being made or generally in the operation and maintenance of said system, provided the company shall have been notified in writing of any claim against the city on account thereof, and shall have been afforded the opportunity fully to defend the same. (1979 code, § 13-210)

13-211. Regulation. The city and the company hereby agree that this ordinance shall, from time to time, be subject to rules and regulations adopted by the company and approved by the Tennessee Public Service Commission or any other regulatory body having jurisdiction thereof during the term of this franchise, and shall also be subject to all rules and regulations adopted and approved by the Tennessee Public Service Commission itself; and that all such rules and regulations shall be and become part of this ordinance to the same extent and with the same effect as if said rules and regulations were herein set forth in full. The company shall not be obligated or required to make any extension of distribution mains, except in accordance with the provisions relating thereto adopted or approved by the Tennessee Public Service Commission. (1979 code, § 13-211)

13-212. Limitation of authority. Nothing contained herein shall be construed as preventing the company from installing, placing, replacing, taking up, repairing or removing gas pipes, mains, service pipes or other devices for furnishing gas service from using any easements for gas service which are shown on any plat or plats of any portion of the city heretofore or hereafter platted or recorded, or any easement which may hereafter be created, granted or dedicated for any such utility purposes by any person, firm or corporation whatsoever. (1979 code, § 13-212)

13-213. Sale or transfer of system. No sale or transfer of the gas plant or system, or the transfer of any rights under this franchise shall be effective until the vendee, assignee or lessee has filed in the office of the city recorder an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of this franchise, and agreeing to perform all the conditions thereof. (1979 code, § 13-213)

13-214. Franchise fee, term, renegotiation. The company shall continue to pay the inspection fee currently paid to the city under its prior franchises. In addition, the company shall pay an initial franchise fee in the amount of fifty thousand dollars (\$50,000). No franchise fee based on gross receipts shall be initially payable during the term of this franchise. However, the city reserves the option to reopen this section at the times set out below so as to provide for a franchise fee based on gross receipts from the sale of gas through the company's distribution system within the City of Shelbyville, or within its Shelbyville system within Bedford County should Tennessee law be changed to permit same. Said franchise fee, if negotiated in the future, shall become due and payable each year ninety (90) days from the end of the company's fiscal year, so long as the company shall supply and sell natural gas to the public within said city, or so long as this franchise is in effect. Any said franchise fee shall be treated and recovered as required by Tennessee Code Annotated, § 65-4-105, as it exists at the time of such renegotiation. in the event such a

franchise fee is negotiated, the city shall have access at all reasonable times to the appropriate books of the company for the purpose of ascertaining the amount due to the city, and the company shall furnish to the city an annual report showing the amount of its sales within its Shelbyville system.

This system may be reopened for the sole purpose of negotiating or renegotiating a franchise fee, on the following dates:

(1) 26th day of March, 1991 (five (5) years after the effective date of the franchise).

(2) 26th day of March, 1996 (ten (10) years after the effective date of the franchise).

(3) 26th day of March, 2001 (fifteen (15) years after the effective date of the franchise) .

(4) 26th day of March, 2006 (twenty (20) years after the effective date of the franchise).

In addition to the dates set out above, this section may be reopened in the event of a change in that portion of Tennessee Code Annotated, § 65-4-105, or any other provision of law that deals with the treatment and recovery of franchise fees, or in the event of any change in the governmental structure of the city and Bedford County.

In the event the city or the company shall desire a negotiation or revision of any franchise fee on any of the dates set out herein, it shall notify the other party in writing at least sixty (60) days prior to the appropriate reopening date. Said franchise fee may be initiated, increased, decreased, or otherwise modified, but if no change is agreed upon, the fee then in effect shall continue in effect.

Any fee agreed upon by the parties shall become effective on the first day of the month following said revision date and shall continue to be in full force and effect to the termination date of this franchise, unless same shall be further revised at a subsequent date as provided herein. Upon the revised franchise fee becoming effective in accordance with the provisions of this section, the fee in existence at that time shall be cancelled.

It is understood between the parties that the company's base rates (charges over and above purchased gas costs paid to the Company's pipeline suppliers) are uniform throughout the State of Tennessee. So long as no franchise fee is imposed hereunder, the company's base rates, plus taxes, in Shelbyville will be its lowest such rates within the State of Tennessee. (1979 code, § 13-214)

13-215. Severability . If any section or portion of any section of this ordinance shall hereafter be declared or determined by a court of competent jurisdiction to be invalid, the company, at its election (to be given to the city by notice in writing within thirty (30) days after any such declaration or determination) may ratify or confirm the remaining portions of this ordinance and upon such ratification or confirmation the remaining portions of this ordinance shall remain in full force and effect. (1979 code, § 13-215)

13-216. Acceptance by company. The company shall, within thirty (30) days after the passage of this ordinance, file with the City Recorder of the City of Shelbyville its unconditional acceptance of the terms and conditions of this ordinance signed by its president and, after the filing of such acceptance, this ordinance shall constitute a contract between the parties hereto and shall (subject to the rights and powers vested in and orders lawfully issued by the Tennessee Public Service Commission or such other regulatory body of the State of Tennessee as may hereafter succeed to the rights and powers of the Tennessee Public Service Commission) be the measure of the rights, powers, obligations, privileges and liabilities of the city and of the company. (1979 code, § 13-216)

13-217. Successors. All the privileges given and obligations created by this ordinance shall be binding upon the successors and assigns of the company. (1979 code, § 13-217)