

TITLE 18

WATER, ELECTRICITY AND SEWERS<sup>1</sup>

CHAPTER

1. CLINTON UTILITIES BOARD.

CHAPTER 1

CLINTON UTILITIES BOARD<sup>2</sup>

SECTION

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18-101. Creation and purpose. Except as otherwise provided in the general laws of the State of Tennessee and the charter of the City of Clinton, the planning, development, production, transmission, distribution, purchase and sale of electricity and water and the collection of wastewater and other utility and comparable services provided by the City of Clinton, both within and without the limits of the city, and the agencies and facilities used for such purposes, shall be under the jurisdiction, control and management of a board to be known as the "Clinton Utilities Board," to be constituted as provided in this chapter. (1969 Code, § 14-101, as replaced by Ord. #456, Sept. 2004)

18-102. Definitions. The following terms, whenever used or referred to in this chapter, shall have the following respective meanings unless a different meaning clearly applies from the context:

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<sup>1</sup>Chapters 2-5 of title 18 were repealed by Ord. #456, Sept. 2004.

<sup>2</sup>Charter reference

Art. IX

Municipal code references

Building, utility and housing codes: title 12.

- (1) "Board" shall mean the Clinton Utilities Board.
- (2) "Charter" shall mean the charter of the City of Clinton.
- (3) "City" shall mean the City of Clinton.
- (4) "City council" shall mean the City Council of the City of Clinton.
- (5) "Director" shall mean an individual member of the board.
- (6) "Division" shall mean that part of the system that includes all of one (1) branch of the operation of the system, such as the branch having charge of the electric power operations or the branch having charge of the water operations.
- (7) "Mayor" shall mean the Mayor of the City of Clinton.
- (8) "System" shall mean and shall include the electric system, the water system, the wastewater system and any other system or services that the board is authorized by law to operate or provide and which is approved by the city council. To the full extent permitted by law, services may be provided to customers that are not physically connected to the facilities of the system and all such service shall be deemed to have been provided by the system. (1969 Code, § 14-102, as replaced by Ord. #456, Sept. 2004)

18-103. Organization of board. (1) Members. The board shall consist of five directors to be appointed by the mayor with the consent and approval of a majority of the members of the city council present and voting. One director of the board shall be appointed from the city council for a term of office that shall correspond with the regular term of office of the city council member appointed as director. The remaining four directors shall be appointed thirty (30) days prior to the expiration of the terms of office of the respective director, and all of such appointments shall be for terms of four (4) years each, beginning July 1<sup>st</sup> of each respective year. In the event of a failure to appoint a successor to any director of the board, the director, whose term has expired, shall continue to serve until his or her successor has been duly appointed as herein provided. In the event of any vacancy in the term of a director that occurs more than three (3) months prior to the end of such term, city council shall fill the vacancy for the remainder of the director's unexpired term as otherwise provided above.

(2) Eligibility. Any person who has resided within the corporate limits of the city for a period of at least one (1) year, immediately preceding his or her appointment, and who is an owner of real property therein, shall be eligible to serve as a director.

(3) Compensation. Each director of the board shall be paid a monthly allowance for attendance at regular meetings of the board that shall not exceed the monthly compensation paid by the city to members of city council, and which shall be fixed from time to time by resolution of the board, to take effect when the next full term of a director begins following the passage of such resolution. In addition thereto, each director shall be reimbursed for all necessary travel and other authorized expenses incurred while engaged in the business of the

board in accordance with the travel policies established from time to time by the city.

(4) Board officers. The board shall elect from among its members a chair who shall preside over the meetings of the board, a vice-chair who shall sit for the chair during the chair's absence or disability and such other officers as the board deems necessary. The board may also appoint a secretary who is an employee of the system and who shall serve at the will of the board. The secretary shall keep the minutes of the meetings of the board and shall perform such other duties as the board may prescribe. An election of officers of the board shall be held each year at a regular meeting of the board following the appointment of a director for a full term, but not later than the second regular meeting following such appointment. A director holding an office provided for in this paragraph shall hold office until such officer's successor has been elected, or until such officer ceases to be a director. In the event of any vacancy of an elected office during a director's term, the board may hold an election to fill the vacancy at any regular meeting of the board.

(5) Bylaws. The board shall have the right to adopt bylaws consistent with the provisions of this chapter.

(6) Meetings. The board shall hold regular monthly meetings at such time and place as may be established by resolution of the board or in accordance with the board's bylaws. All meetings of the board shall be open to the public except as otherwise permitted by law. Special meetings can be held as needed following appropriate notice as is required by law. No action shall be taken by the board except by the affirmative vote of at least three directors. Three directors shall constitute a quorum of the board, but a smaller number may adjourn from day to day. The general manager shall be allowed to attend all meetings of the board and shall have a seat and voice but no vote in such meetings. Except as otherwise expressly provided by this chapter, action by the board may be by motion or by resolution passed on a single reading and may be made effective immediately upon passage. (1969 Code, § 14-103, as replaced by Ord. #456, Sept. 2004)

18-104. Organization of system. The board shall adopt and implement an organizational structure for the system to ensure its efficient and effective management. The subdivision of such structure, the detailed separation of duties within the structure and the creation of subordinate offices and positions within the structure shall be as required by the board. The board may alter the system's organization structure as necessary or convenient provided such changes do not violate any general laws, the charter or any of the system's contractual obligations. (1969 Code, § 14-104, as replaced by Ord. #456, Sept. 2004)

18-105. Powers of board. (1) Independent control. Except as expressly provided in this chapter, the board shall have and exercise and is hereby

granted all the powers and duties possessed by the city to construct, acquire, expand or operate the system. The board, either by itself or by its duly authorized officers and employees, shall have and maintain full control and complete jurisdiction over the management and operation of the system and may make all contracts and do any and all acts and things that are necessary, convenient or desirable in order to operate, maintain, enlarge, extend, preserve and promote an orderly, economic and business-like administration of the system. The control, supervision and management of the system shall, without limitation, be such as is provided by this chapter, the charter and the general laws of the State of Tennessee. Except as expressly provided in this chapter, the system shall be free from the jurisdiction, direction or control of other city officers and employees and of the city council.

(2) Contracts and suits. The board or its authorized representative may sue and be sued in the name of the city or the board, and may make contracts and incur liabilities in the name of the board.

(3) Surety bonds. The board may require corporate surety bonds from such of the system's officers and employees and in such amounts, as the board shall deem necessary. Premiums for such bonds shall be paid out of the funds of the system.

(4) Rates. The board shall fix rates to be charged for services rendered by the system. Such rates shall be fair, reasonable and uniform for all customers in the same class, but different rate schedules may be applied to different classes of customers, as determined by the board. This paragraph shall also apply to rates charged by subsidiaries that may be acquired or organized by the board.

(5) Contracts, leases and agreements. The board may, in the operation of the system, either by itself or by its duly authorized officers and employees, execute deeds and enter into leases, contracts and agreements, provided the terms of such leases, contracts and agreements shall be limited to the terms of not more than twenty-five (25) years. The time limit prescribed in this paragraph for the duration of contracts and agreements shall not apply to bond issues. The authority given the board by this section shall not be construed to give the board authority to sell or lease all or a major part of any division of the system.

(6) Bonds and notes. The board shall have the power to issue bonds or notes for the benefit of the system or a part thereof when such authority is granted to the board by state law, the charter or by resolution or ordinance of city council. All bonds or notes payable out of the revenues of the system or a part thereof shall be issued in accordance with the requirements of applicable law and shall be approved by a resolution or resolutions of the board, which may be adopted at the same meeting at which introduced and shall take effect immediately upon adoption.

(7) Rules and regulations. The board shall have authority to make and enforce all necessary and desirable rules and regulations for the efficient use,

operation and management of the system and shall have the same force and effect as if approved by city council.

(8) Joint use of poles and other property. The board shall have the power to make agreements or contracts with any person, firm or public or private corporation for the joint use of poles and other property, belonging either to the system or such other person, firm or corporation or belonging jointly to both parties.

(9) Eminent domain. The board shall have the same power and authority to exercise the right of eminent domain on behalf of the system as is now possessed by, or may hereafter be given to, the city council.

(10) Use of rights of way for utility installations. The board may use the ground over, under, or along any road, railway, highway, street, sidewalk, thoroughfare, alley, waterway or similar rights of way in the operations of the system, but shall in all cases and subject to the applicable general regulations of the city and state cause the surface of the public way to be restored to its usual condition if damaged by such use.

(11) Procurement. The board shall have the power to adopt rules and regulations governing purchasing for the system, which shall require competition and advertising, when practical. In lieu of adopting competitive purchasing rules or regulations, the board may elect to use the competitive bidding and purchasing procedures used by the city.

(12) Security for service charges. The board shall have the right to require reasonable deposits or other security for the payment of charges for services rendered by the system. By and with the consent of the owner of the property served by the system, the board may make such charges for services rendered by the system a lien on the real property served.

(13) Promotion and informational expenditures. The board shall have the power to authorize reasonable expenditures for advertising and otherwise promoting the increased use of the services of the system. The board may also authorize reasonable expenditures to acquaint the public and its customers with the policies, operations, programs and plans of the system.

(14) Discontinuance of service for nonpayment of charges. The board may discontinue all services of the system to any customer whenever such customer fails to pay for any service of the system. All such discontinuances shall be conducted in accordance with the board's rules and regulations therefore and any applicable law.

(15) Acquisitions; subsidiaries. To further the purposes of § 18-101, the board is authorized and empowered to acquire the systems of other municipalities, utility districts, corporations or other entities by merger, acquisition or other lawful means. The board may exercise any of the powers conferred upon it under this chapter through one or more subsidiary corporations or other entities that may be organized or acquired in accordance with applicable law. Each such subsidiary shall be subject to the control of the board. All rates for services charged by any such subsidiary shall be approved

by the board and shall be sufficient to pay all expenses and obligations incurred on account of the operation of such subsidiary.

(16) Delegation of powers. The board may from time to time delegate in writing its administrative, financial and operational powers to the officers, employees and agents of the system responsible to it as necessary to properly discharge its duties and operate the system.

(17) Other powers. The board shall also have such additional powers that are now authorized by law, or which may be authorized by state law in the future; and the enumeration of particular powers in this chapter shall not be construed to be exclusive. ( as replaced by Ord. #265, \_\_\_\_\_, and Ord. #456, Sept. 2004)

18-106. Duties of board. (1) Separate accounts for separate divisions of the system. The board shall require that separate books and accounts be kept on the electric, the water, the wastewater, and any other division created by the board so that such books and accounts will reflect the financial condition of each division separately, and may require that the moneys and securities of each division be placed in separate funds so that each division shall be self-sustaining. Each of the system's divisions shall be operated independent of the others except insofar as the board may be of the opinion that joint operations shall be advisable and economical. In the event of such joint operations, the expenses of such operations shall be prorated between the separate divisions in such manner as the board determines to be reasonable.

(2) Use of utility funds. All utility revenues shall be directed to the provision of utility services and not applied to the general fund of the city, unless the transfers of revenues constitutes a payment in lieu of taxes as authorized under this chapter or by state law. Any shared utility or city funds or services shall be accounted for properly.

(3) Annual budget. The board shall no later than the 1<sup>st</sup> day of June of each year prepare a budget for the proposed operation of the system for the following fiscal year. The budget shall present an estimate of the revenues to be derived from all sources, an estimate of expenses for power costs, salaries and wages, advertising, supplies and inventory, and other items of expenses in as much detail practicable; an estimate of proposed expenditures for extending and repairing services and other capital costs and expenditures; and an estimate of in lieu of tax payments.

(4) Auditing. An independent certified public accountant, not an employee of the city or the system, shall be employed by the board to make an annual audit of the system and such other audits and reports as the board may deem necessary. The board shall provide a copy of the system's annual audit to the city for public inspection.

(5) Sufficient rates. The board shall charge sufficient rates for each of its operating divisions to pay all obligations heretofore or hereafter incurred by the city or the board on account of the ownership and operation respectively

of each operating division, including all legal claims or judgments for which the city or the board has heretofore been, or may hereafter be, liable on account of the ownership and operation of the operating division, and including the payments to the city in lieu of taxes as provided in this chapter. Such obligations, whether in the form of bonds or otherwise, shall be provided for in the respective budgets of the respective operating division and need not be included in the general city budget.

(6) Payments in lieu of taxes on electric properties. From the separate revenues of the electric division, the board shall pay payments in lieu of taxes for its electric properties into the general fund of the city in such amounts as may be required by state law, and may make additional such payments to other governmental jurisdictions where the electric properties are situated when authorized by city council and subject to the requirements of state law.

(7) Retirement system. The board may elect to create or administer a pension plan for employees of the system that is separate and apart from any retirement plan maintained by the city.

(8) Payment of obligations. The board shall cause to be paid as the same come due, all obligations arising or resulting from its or the city's ownership and operation of the system. (1969 Code, § 14-106, as replaced by Ord. #456, Sept. 2004)

18-107. Expenditures and obligations of the system. No money shall be drawn from the treasury of the system nor shall any obligation for the expenditure of money be incurred except in pursuance of appropriations made by the board, and each such appropriation shall constitute authority for the system to make the expenditure and/or incur the obligation so approved. Any obligation incurred or created solely by a division of the system shall be payable only out of the revenues of such division. Obligations incurred or created jointly on account of the electric and of the water and of the wastewater divisions shall be paid from the revenues of the system. All contracts and agreements made by the board or pursuant to authority granted by the board shall contain a provision stating the revenues from which the obligations incurred thereunder are payable, but the failure to include such a provision in any contract shall not prevent the application of the limitation on the system's or city's liability imposed by this paragraph. (as replaced by Ord. #211, \_\_\_\_\_, and Ord. #456, Sept. 2004)

18-108. General manager. The board shall appoint a general manager of the system who shall have the executive ability and experience necessary to perform the duties of the chief executive officer of the system. The general manager shall be responsible to the board and shall serve at the will of the board. The powers and duties of the general manager shall include:

- (1) Executing all resolutions of the board.

(2) Appointing and removing all subordinate officers and employees of the system.

(3) Exercising control over the system and all divisions and operations thereof created under this chapter, or that may hereafter be created by the board, subject to the requirements of this chapter, the charter and other applicable law.

(4) Carrying out and enforcing all contracts of the system for the benefit of the system and its customers.

(5) Attending all meetings of the board with the right to take part in the discussion but having no vote.

(6) Recommending to the board for adoption such measures as the general manager may deem necessary or proper.

(7) Keeping the board advised as to the financial condition and the future needs of the system and preparing and submitting to the board the annual budget estimate.

(8) Performing such other duties as are customarily performed by the chief executive officer or a corporation and as may be prescribed by this chapter or be required of the general manager by general law or by resolution of the board. (1969 Code, § 13-108, as replaced by Ord. #456, Sept. 2004)

18-109. Other employees. There shall be such other officers and employees of the system as may be provided by the board. The officers and employees shall be appointed and removed by the general manager subject to the provisions of applicable law. (1969 Code, § 13-109, as replaced by Ord. #456, Sept. 2004)

18-110. General provisions. (1) Existing obligations. This chapter shall not impair any contracts or obligations relating to the system incurred by the city or the board prior to the effective date of this chapter nor shall it change or alter the obligations of any existing contracts obligating the system, all of which insofar as they apply to the system, shall be binding on the board.

(2) Repeal of prior ordinances. All ordinances and parts of ordinances inconsistent with any provision of this chapter are deemed repealed.

(3) Separability of provisions. The sections and subsections of this chapter are declared to be separate, and in the event any one or more sections, subsections, or parts thereof are declared unconstitutional, it shall not affect the validity of other provisions of this chapter. (as added by Ord. #456, Sept. 2004)