

# Model City Charter Provisions

For a Public Utilities Authority



# Foreword

These Model City Charter Provisions are designed to assure an adequate legal and organizational basis for efficient, reliable, and financially sound performance by municipally owned utilities. Model provisions can serve as useful guides, but city officials (including the Law Director or City Attorney) and citizens concerned with a charter revision will need to review and adapt these suggestions to the situation in their particular city, and to applicable state laws. Provisions such as those calling for appointment of utility commissioners by the mayor may not meet local conditions, since in many communities utility commissioners are elected. In some cities, there is no utility commission; the city council oversees the operations of the municipal utility(ies). The term “city” in this document also refers to any other type of local government organization or political subdivision, such as towns or villages.

The purpose of this document is to provide a general guideline, based on the experience of a number of municipal electric utility systems in the United States. It is imperative that bond counsel and local counsel review these model provisions for their applicability and suitability to local conditions.

These Model City Charter Provisions for a Public Utilities Authority were first prepared in 1952. Revisions were made in 1962, 1977, 1986, 1996, 2012 and 2018.

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Published by the American Public Power Association  
2451 Crystal Drive  
Arlington, Virginia 22202

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## Authority



### Public Utilities Authority

There is hereby created a Public Utilities Authority for the City of \_\_\_\_\_ (the “Authority”), which shall be responsible for the planning, development, production, purchase, transmission, and distribution of all electricity, gas, water, telecommunications, cable television, and other utility-related services by the city.

## Board, Its Organization & General Provisions



### Board of Public Utilities Commissioners

There is hereby created the Board of Public Utilities Commissioners of the city (the “Board”), which shall have exclusive jurisdiction, control, and policymaking responsibility of the Authority and all its operations and facilities. The Board shall have all powers and duties possessed by the city to construct, acquire, expand and operate municipal utility services, and to do any and all acts or things that are necessary, convenient, or desirable in order to operate, maintain, enlarge, extend, preserve and promote an orderly, reliable, economic and prudent administration and provision of such utility services.

The Authority, under the supervision and control of the Board, shall operate as a separate unit of city government, except as otherwise provided in this charter. Both the Board and the Authority shall be free from the jurisdiction, direction, and control of other city officers and of the city council, except as otherwise provided herein. The Authority may sue or be sued in its own name. All damage claims arising from the operations of the Board and the Authority shall be paid by the Board, acting on behalf of the Authority, from the appropriate funds of the respective utility systems of the Authority. The Board may, from time to time, make, establish, alter, or amend bylaws, rules and regulations not in conflict with law or this charter for the transaction of its business.



### Organization of the Board

#### (a) Number of commissioners.

The Board shall consist of five commissioners, to whom may be added, at the discretion of the city council, either the mayor, or the city manager, or a representative of the council, as an ex officio member without vote.

#### (b) Appointment and tenure.

The commissioners shall be nominated by the mayor and confirmed by the council. The first commissioners shall be appointed to serve initial terms of one, two, three, or four years, from the first Monday of the month following the effective date of this charter. The initial term of each commissioner will be designated by the mayor, provided that no more than two commissioners may serve a coterminous term. Subsequent appointments shall be for terms of four years, unless the commissioners shall be removed from office as provided in subsection (d) of this section. No commissioner shall serve for more than two consecutive terms. Members shall continue to hold office after the expiration of their respective terms until such time as the nominated replacement is confirmed by the council.

### **(c) Vacancies.**

Vacancies shall be filled by the mayor, with the approval of the council, for the balance of any unexpired term. No vacancy on the Board shall impair the right of the remaining commissioners to exercise all the powers of the Board.

### **(d) Qualifications.**

All commissioners must be residents of the municipality and customers of the Authority at the time of their appointment and during their terms of office. No voting commissioner may hold any city office or be an employee of the city government or conduct any business with the Authority. A commissioner convicted of a felony shall be removed from office. In addition, commissioners may be suspended or removed from office by the mayor, for cause and with the approval of the council. The council will review any suspension or removal within 30 days.

### **(e) Compensation.**

Commissioners serve on a volunteer basis and shall not be compensated for their services. Commissioners may be reimbursed for expenses (including any training expenses) incurred in carrying out their official duties, to the extent reasonably related thereto.

### **(f) Officers.**

The Board by majority vote shall elect from among its members a chairman who shall preside over the meetings of the Board, and a vice-chairman who shall act for the chairman during absences. The general manager or other staff member(s) of the utility shall be responsible for maintenance of records. Election of officers shall be held at the first regular meeting at which all members are present following the appointment of a new commissioner for a full term, but not later than the second meeting following the appointment.

### **(g) Meetings.**

(i) The Board shall establish a schedule of meetings. Special meetings can be held as required following appropriate notice. The Board shall adopt rules for the conduct of its meetings. No action shall be taken by the Board except by the affirmative vote of at least three commissioners, who shall constitute a quorum.

(ii) Meetings and documents of the Board are open and available to the public, as required by and subject to open meetings and open records laws of the State. Subject to the foregoing, where materials and/or discussions pertain to such issues as utility personnel, property acquisition or disposal, potential or actual litigation, or to power supply proposals, negotiations, trade secrets, competitive confidential business information, or contracts, executive sessions or privacy exclusions may be employed.

(iii) The regular meeting of the Board shall be the \_\_\_\_\_ day(s) of each month at \_\_\_\_\_ p.m. All meetings of the Board shall be held in (name of room) of the City Hall, unless otherwise announced. The agenda for each meeting of the Board, and the announcement of an alternate meeting location, shall be posted in a public place, at least 72 hours in advance of the proposed meeting.

### **(h) Errors and omissions.**

The Authority shall hold harmless and indemnify its commissioners, general manager, agents, and employees to the full extent permitted by law, including, but not limited to, all liabilities, expenses, and losses incurred by such persons in connection with acts or failures to act, other than those constituting gross negligence or willful violations of laws (as determined by a final decision of a court of competent jurisdiction), committed within the scope of their duties, and shall defend, at the Authority's expense (including by advancing legal expenses where necessary and appropriate), all related claims and suits.



# Organization of the Authority

## **(a) Divisions.**

Within the Authority there shall be separate divisions for the electricity, gas, water, telecommunications, cable television, and any other utility operations. Separate funds and accounts shall be kept for each division as required by the uniform systems of accounts for each such utility, as promulgated by the Public Utilities Commission of the state or the Federal Energy Regulatory Commission. Each division shall be operated independently of the others, except insofar as the Board determines joint operations to be advisable and economical. Expenses incurred in joint operations shall be equitably prorated among the divisions of the Authority.

## **(b) Policy.**

The Board shall establish an annual budget and written policies governing utility operations to cover such areas as employees' duties, customer rates, service rules and termination procedures, expenditures of funds, long-range planning, and other appropriate activities.

## **(c) General manager.**

The Board shall appoint and employ a general manager who shall be qualified by training and experience for the overall management of the Authority. The general manager shall serve at the pleasure of the Board, which shall determine his/her salary, and shall have such authority as delegated by the Board. The general manager shall determine the number of employees and, if appropriate, contractors, necessary for the operation of the utility, and establish their duties and compensation. The general manager shall have control of all actual construction and repairs, the immediate management and operation of the Authority, and the enforcement and execution of all rules and regulations, programs, plans, policies and decisions made or adopted by the Board. The general manager shall maintain suitable permanent records regarding actions taken. The general manager shall prepare (or oversee the preparation of) plans and specifications, take bids, and execute contracts, subject to the direction and approval of the Board. The general manager shall prepare and submit to the Board periodic reports on the Authority's financial condition, reliability of service and compliance with local, state, and federal laws.

## **(d) Other employees.**

There shall be such other officers and employees of the Authority 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 local, state and federal laws or binding contracts entered into between employees and the Authority.

## **(e) Surety bonds.**

The Board may require surety bonds for any of the officers and employees of the Authority in such amounts as the Board deems necessary. The premiums for the bonds shall be paid by the Authority in the same manner as any other operating expense.



# Powers and Duties of the Board

## **(a) Real estate and contracts.**

The Board, in the efficient and economical operation of the Authority, both inside and outside city limits as state law permits, may: (1) sell the Authority's products and services to public and private corporations and to other consumers; (2) construct, operate and maintain generating plants, distribution systems, transmission lines, and other facilities, including analogous facilities to produce, distribute and transmit other utility services; (3) purchase real estate and franchises; and (4) enter into all contracts, leases, and agreements in furtherance thereof.

## **(b) Extensions of services.**

The Board may adopt regulations governing extensions of service of the Authority both inside and outside city limits in accordance with state law. The regulations shall provide the conditions under which the extensions shall be made to render them compensatory and shall provide that each extension project shall, when completed, become the property of the city whether on public or private property. The Board may provide for refunds where advances by the person benefited are necessary to make extensions compensatory.

## **(c) Joint operations with others.**

Subject to applicable state law, the Board may, on behalf of the Authority, enter into contracts and agreements with any public or private corporation(s) or any person(s) or individual(s), both inside and outside the boundaries of the city and state: (1) for the joint use of property belonging either to the Authority or to the other contracting party(ies) or jointly to both/all parties; and (2) for the joint acquisition of real and personal property, rights and franchises, and the joint financing, construction, and operation of plants, buildings, transmission lines, and other utility-related facilities.

## **(d) Eminent domain.**

The Authority may enter upon any land or water for the purpose of making surveys and may exercise the right of eminent domain in like manner as the city, and to the same extent as the city, when the Board determines that public necessity or convenience requires such action.

## **(e) Use of thoroughfares for utility installations.**

The Authority may use the ground or space over, under, or along any public way (including any road, railway, highway, street, sidewalk, thoroughfare, alley, or waterway) in its operations, 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 and prior condition.

## **(f) Rates.**

The Board shall determine rates to be charged for gas, electricity, water, communications, and other utility services rendered by the Authority. Rates shall be just, reasonable, compensatory, and with no undue preference or discrimination, provided that the Board may set special rates, by contract or by rate schedule, if reasonably justified by economic development or other community and municipal goals, provided that such special rates shall not place undue hardships or jeopardize reliable service to other customers or customer classes. The Board may require reasonable deposits as security for the payment of charges for utility services and may provide for the return of the deposits when satisfactory consumer credit has been established or upon the cessation of utility service after payment of all amounts owing, at the discretion of the Board.

### **(g) Authorization for expenditures.**

No money shall be drawn from the funds of the Authority nor shall any obligation for the expenditure of money be incurred except in conformity with authorization by the Board. Without prejudice to the generality of the foregoing, payments in the general course of business shall be made to the extent evidenced by documentation approved by the general manager or by some other employee to be designated by the general manager.

### **(h) 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 transfer of revenues constitutes a payment in lieu of taxes. A formula shall be established for these transfers to the general fund of the city that does not place an unreasonable financial burden on the electric utility or its consumers. Any shared utility/city funds or services (e.g., support of such city departments as human resources, legal, information technology or others) or services supplied gratis or at a discount to the city (e.g., streetlighting, holiday lighting, lighting for municipal buildings) shall be accounted for directly and explicitly to assure that the totality of value transferred from the utility to the city is consensual, appropriate, transparent and recognized.

### **(i) Bond issues and other indebtedness.**

Subject to applicable state laws, the Board may authorize the issuance and sale of revenue bonds or other types of indebtedness necessary to finance the acquisition, construction, improvement, and extension of the utility facilities owned by the city or Authority, including facilities owned or operated jointly with others. Use or issuance of general obligation bonds may entail approval by the city council.

### **(j) Short-term indebtedness.**

The Board may borrow money up to and not exceeding \$\_\_\_\_\_ for periods not to exceed \_\_\_ years and may issue negotiable notes, payable from the revenues of the Authority or a division thereof, as evidence of the indebtedness. The action of the Board may be by resolution, which may be adopted at the same meeting at which the resolution is introduced and shall take effect immediately upon adoption. The Board will limit short-term borrowing to capital expenditures that have a measurable life/schedule of depreciation. The Board will not engage in short-term borrowing to fund utility operational expenses, except to address very brief and minor cash flow considerations.

### **(k) Public information expenditures.**

The Board may authorize reasonable expenditures to acquaint the public with the policies, operations, programs, and plans of the Authority, or to protect the integrity, reliability, public ownership, competitiveness and ability to extend service of the utility(ies).

### **(l) Investment of surplus funds.**

The Board may invest surplus funds of the Authority in securities that are safe and authorized by bond resolution, by state investment regulations, or other specific action by the Board.

### **(m) Accounting, finance, budget and planning reports.**

The Board, in addition to the reports and accounting it may otherwise be required by law to make, shall furnish to the city council its annual financial report, which shall include a balance sheet and a statement of operations showing the financial condition of the Authority and each separate division, prepared according to the uniform system of accounts or generally accepted public utility accounting principles

required by the Public Utilities Commission of the state or the Federal Energy Regulatory Commission. The funds and accounts of the Authority shall be audited annually by a certified public accountant, and shall be open to public inspection. The Board shall also annually prepare a budget forecast for the ensuing year and furnish a copy to the mayor and the city council. If the budget requires payments to or from the general fund of the city, it shall be submitted to the mayor and the council in a manner prescribed by the charter for the use of such funds. The Board may also submit to the city council information concerning long-term power supply arrangements, capital improvement projects, and other programs that may have an impact on the city.

### **(n) Delegation of powers.**

While the Board must retain certain powers to itself, i.e., budget approval, rate-setting, and issuance of long-term indebtedness, it may from time to time delegate in writing other powers to officers or employees responsible to it, as necessary.



## **General Provisions**

### **(a) Disposition of public utilities.**

The city shall have no authority to cease to operate, or to sell, lease, abandon, or in any other way dispose of any public utility owned by it, without first holding a public hearing during which the city's financial advisor shall present a report to the city council concerning all relevant revenues and savings associated with the Authority throughout the city's ownership, and an analysis of all revenues, benefits (such as, but not limited to, reduced rates for municipal services, economic development, employment, local control, etc.) and savings to be lost by the city through the proposed sale of the Authority.

There shall be two council votes of at least four out of five Board members, with such two votes at least 12 months apart, to call a referendum election concerning sale of the Authority. The city will hold a referendum election, which must be passed by a supermajority of two-thirds (66 2/3 percent) of the voters, voting at the election, to approve such sale.

### **(b) Existing obligations.**

Contracts and obligations relating to the utility systems of the city entered into or incurred prior to the effective date of this charter shall not be impaired and shall be binding upon the Board and the Authority, insofar as they apply to the Authority.

### **(c) Repeal of prior statutes.**

All statutes and parts of statutes inconsistent with any provision of this charter are hereby repealed.

### **(d) Separability of provisions.**

The sections and subsections of this charter are declared to be separable, and in the event any one or more sections, subsections, or parts thereof be declared unconstitutional, illegal or unenforceable, such determination shall not affect the validity of other provisions of this charter.

### **(e) Effective date of charter.**

This charter shall take effect \_\_\_\_ days from and after its adoption by ordinance passed by the city council.





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