

## MEMORANDUM

**TO:** City of Long Grove  
**FROM:** Joshua T. Cobie  
**DATE:** December 8, 2023  
**RE:** Establishing a Utility Board

City Council Members:

The City Clerk has asked that I provide guidance to the City on the legal process it takes in Iowa for a City to establish a Utilities Board for the City's current electrical utility operated by the City and governed by the Council and Mayor.

The power and authority of a municipality to establish a utility board is set forth in Chapter 388 of the Iowa Code. In Section 388.1, subsection 2, a "utility board" is defined as a board of trustees established to operate a city utility, city utilities, or a combined utility system."

Further, Section 388.2 sets forth the process of establishing the utility board, and it starts with a submission of the proposal to the voters of the City. If the Council makes their own motion for a proposal, then the proposal may be submitted to the voters at the general election, regular city election, or at a special election called for that purpose, under 388.2(1)(b). Additionally, the proposal for establishing a utility board must specify a board of either 3 or 5 members. If a majority of those voting for or against the proposal approves the proposal, the city may proceed as proposed. If however the vote does not pass by a majority of the votes cast, the same or similar proposal cannot be resubmitted to the voters of the city for at least 4 years from the date of the election at which the proposal was defeated.

Section 388.3 provides the City's process upon approval of the utility board by the voters. Once a favorable majority vote by the voters is received, the mayor shall appoint the board members, as provided in the proposal, subject to the approval of the council. The council by resolution shall provide for staggered six-year terms for, and shall set the compensation of, board members. A board member appointed to fill a vacancy occurring by reason other than the expiration of a term is appointed for the balance of the unexpired term, and a public officer or salaried employee of the city hall shall not serve on a utility board. Finally, 388.3(5) is a recent amendment to the code section in 2022 which provides narrowed reasons that a mayor, with unanimous approval of the city council, may remove a utility board member. These include reasons such as willful or habitual neglect or refusal to perform duties of the office, willful misconduct, corruption, extortion, being convicted of a felony, intoxication conviction, campaign finance violations, failure to pay fines, or habitual non-attendance at board meetings. A

removal shall begin with a written notice, sent by certified mail stating the grounds for removal, and the board member shall be entitled to a hearing, after which the council would vote on removing or not removing the member.

Next, Section 388.4 describes the powers and duties of a utility board, including the power to be a party to legal action. They shall have all necessary powers to operate the city utility, except they are limited only as listed in this section 388.4, including not having the power to certify taxes to be levied, pass ordinances or amendments, or issue general obligation or special assessment bonds. The city utility itself, including all property making up the utility, must remain in the ownership of the city, but the utility board has all the powers and authorities of the city with respect to the operation, management, control, acquisition, sale, or other disposition of said property, subject only to the requirements, terms, covenants, conditions, and provisions of any resolutions authorizing the issuance of revenue bonds, pledge orders, or other obligations which are payable from the revenues of the city utility. The board shall make to the council a detailed annual statement, including a complete financial statement. Said Section 388.4 states that immediately following any meeting of the utility board, the secretary shall prepare a condensed statement of the proceedings and that shall be published in a newspaper of general circulation in the city. Said statement must include a list of the claims allowed, the name of the claimant, the reason for the claim, and the amount of the claim. Claims for salaries must show the gross amount of the claim except that salaries paid to persons regularly employed by the utility, for services regularly performed by them, must be published once annually showing the gross amount of the salary.

Finally, Section 388.5 provides that a utility board shall control tax revenues allocated to the city utility it administers and all moneys derived from the operation of the city utility, the sale of utility property, interest on investments, or from any other source related to the city utility. However, all city utility moneys received shall be held in a separate utility fund, with a separate account for each city utility system. Moneys paid out of the utility account can only be done at the direction of the board administering that utility.

It should be noted that creating a utility board should be done by the passing of an ordinance, that recites when the election was held that approved the establishment of the board, and reciting the rest of the rules as set forth in Iowa Code 388. I have found a good example of an ordinance for a utility board of trustees that was established in the City of Milford, Iowa, which is attached hereto for your reference. The City of Eldridge has a Utility Board Ordinance as well under Chapter 4, called the Eldridge Electric and Water Utility Board which I attach, but I think the Milford one is better drafted. The City would need to pass an ordinance similar to these and add them to our Code. Thereafter by resolution the Council would approve the mayor's appointees to be board members/trustees, and set their compensation.

## CHAPTER 24

### UTILITY BOARD OF TRUSTEES

24.01 Purpose  
24.02 Board Established  
24.03 Appointment of Trustees  
24.04 Bond  
24.05 Compensation

24.06 Vacancies  
24.07 Powers and Duties of the Board  
24.08 Control of Revenue  
24.09 Discriminatory Rates Illegal  
24.10 Discontinuance of Board

**24.01 PURPOSE.** The purpose of this chapter is to provide for the operation of the municipally owned water and electric utilities by a board of trustees.

**24.02 BOARD ESTABLISHED.** Pursuant to an election held November 14, 1935, the management and control of the municipally owned Water and Electric Utilities were placed in the hands of a Board of Trustees.

*(Code of Iowa, Sec. 388.2)*

**24.03 APPOINTMENT OF TRUSTEES.** The Mayor shall appoint, subject to the approval of the Council, five (5) people to serve as trustees for staggered six-year terms. Three people shall be residents of the City; two people may be nonresidents if each nonresident person owns property or a business in the City that is served by the Milford Municipal Utility services or is a high-level employee of a business in the City which receives Milford Municipal Utilities services and has previous relevant experience to the function of the Board of Milford Municipal Utilities. No public officer or salaried employee of the City may serve on the Utility Board.

*(Code of Iowa, Sec. 388.3)*

**24.04 BOND.** Each member of the Board shall be covered under the municipal utilities' blanket bond.

**24.05 COMPENSATION.** The Council shall by resolution set the compensation of Board members.

*(Code of Iowa, Sec. 388.3)*

**24.06 VACANCIES.** An appointment to fill a vacancy on the Board of Trustees shall be made in the same manner as an original appointment except that such appointment shall be for the balance of the unexpired term.

*(Code of Iowa, Sec. 388.3)*

**24.07 POWERS AND DUTIES OF THE BOARD.** The Board of Trustees may exercise all powers of the City in relation to the utilities, with the following exceptions:

*(Code of Iowa, Sec. 388.4)*

1. Taxes, ordinances and bonds. The Board may not certify taxes to be levied, pass ordinances or amendments, or issue general obligation or special assessment bonds.

*Code of Iowa, Sec. 388.4[1])*

2. Property. Title to all property must be in the name of the City but the Board has full control of such property subject to limitations imposed by law. The Board may not dispose of an interest in real property unless the disposition is consistent with the continued use of the property for utility purposes, without consent of the Council and a determination by the Board that the property is no longer needed for utility purposes.

*(Code of Iowa, Sec. 388.4[2])*

3. Reports to Council. The Board shall make a detailed annual report to the Council including a complete financial statement.

*(Code of Iowa, Sec. 388.4[3])*

4. Proceedings Published. Immediately following a regular or special meeting, the Board Secretary shall prepare and cause to be published in a newspaper of general circulation in the City a condensed statement of proceedings including a list of all claims.

*(Code of Iowa, Sec. 388.4[4])*

5. Annexation Agreement. The Board shall refuse water service to proposed non-municipal customers outside the City limits unless those proposed customers agree to annex the property to be so served to the City when the municipal limits of the City are adjacent thereto. Said agreement shall be filed with the County Recorder's Office and shall become a part of the chain of title to the subject real estate and shall be binding on succeeding purchasers and assigns thereof. The Board may waive this requirement when service is given in turn for needed easements or to sell to a duly organized water district. This requirement is not applicable when said service is to supply water to another municipality.

**24.08 CONTROL OF REVENUE.** The Board shall have full control of all moneys derived from the operation of the utility, the sale of utility property, interest on investments or from any other source related to the municipal utility and any tax revenues allocated to the utilities it administers. The Board shall make the annual or project appropriations to permit such expenditures.

*(Code of Iowa, Sec. 388.5)*

1. All utility moneys received shall be held in a separate fund with a separate account for each utility system, and money may be paid from that utility's account only under the Board's direction.

2. Any surplus, as defined by generally accepted accounting principles, of utility funds administered by the Board may be transferred to another City fund only with Board approval.

**24.09 DISCRIMINATORY RATES ILLEGAL.** The utilities may not provide use or service at a discriminatory rate, except to the City or its agencies, as provided in Section 384.91, *Code of Iowa*.

*(Code of Iowa, Sec. 388.6)*

**24.10 DISCONTINUANCE OF BOARD.** A proposal, on motion of the Council or upon receipt of a valid petition, to discontinue the utility board is subject to the approval of the voters of the City, except that the Board may be discontinued by resolution of the Council when the utilities it administers are disposed of or leased for a period of over five (5) years.

*(Code of Iowa, Sec. 388.2)*

**EDITOR'S NOTE**

Pursuant to an election held July 9, 1996, and Ordinance No. 12-96, adopted August 12, 1996, the Utility Board was increased from three to five members.

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## Chapter Four

### UTILITY BOARD

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#### **1.00 ESTABLISHMENT AND PURPOSE.**

There is hereby created an administrative agency to be hereinafter known as the Eldridge Electric and Water Utility Board.

The purpose of the Eldridge Electric and Water Utility Board is to provide for the orderly management of municipal utilities in the City of Eldridge, Iowa.

The management and control of the water works and the electric light and power plant of the City of Eldridge shall be from the effective date of this Code, under the management and control of the Board.

#### **2.00 METHOD OF APPOINTMENT OF THE BOARD.**

2.01 The Board shall be appointed by the Mayor and approved by the City Council of the City of Eldridge.

2.02 ~~The Eldridge Electric and Water Utility Board shall have five members. The appointments shall~~ be on a staggered basis, and the terms shall be for six years. The initial staggering shall be as follows: the term of the member serving until January 1, 2003 shall remain unchanged. The term of the member appointed January 2, 2000 shall expire on January 1, 2003. The term of the member appointed January 2, 2001 shall expire on January 1, 2006. The term of the member appointed January 2, 2002 shall expire on January 1, 2006. The initial term of the fifth member shall expire January 1, 2007.

2.03 The Board shall elect a chairperson who shall preside over the Board meetings. That term shall be established by the Board.

2.04 An annual report of all receipts and expenditures shall be made to the City Council at the close of each fiscal year by the Board.

2.05 The Board shall establish a separate account or accounts for the purpose of the municipal utilities under its jurisdiction. Money may be paid out of said account only at the direction of a majority of the Board.

#### **3.00 ADMINISTRATION**

3.01 The Electric and Water Utility Board shall establish such rules, bylaws, and procedures as are consistent with the Code of Iowa

3.02 Board members may be removed for cause by the Council upon written notice of charges to that member and after public hearings.

3.03 No City employee or official shall be eligible for Board membership. Employees and elected officials shall remain ineligible for six months after leaving city employment or leaving office.

3.04 The Board shall appoint or employ a Secretary. If the Secretary is employed and is someone other than a Board member, he shall have no vote. The Board shall set the Secretary's compensation.

3.05 The cost of shared equipment shall be allocated between the City and the Utility Board according to proportional use.

3.06 The compensation of employees who work for both the City of Eldridge and the Utility Board shall be set by resolution by the Board.

3.07 The compensation of Board members shall be set by the City Council by resolution.