

CHAPTER 15. UTILITIES COMMISSION

Sec. 209. Created; definitions.

There is hereby created and made a part of the government of the City of New Smyrna Beach a utilities commission to be known and designated as "Utilities Commission, City of New Smyrna Beach, Florida," which shall consist of five (5) members. For the purposes of this act, unless otherwise designated, the word "commission" shall mean the utilities commission of New Smyrna Beach and the word "commissioner" shall mean a member of the said utilities commission. Except as otherwise authorized, the utilities commission shall function the same as it previously functioned under Laws of Fla., ch. 67-1754. This act shall not supersede or alter the general law in effect and agreements entered into prior to the effective date of this act [June 12, 1985].

(Laws of Fla., ch. 67-1754, § 1; Ord. No. 25-84, § 2, 10-2-1984; Laws of Fla., ch. 85-503, § 1)

Sec. 210. Members--Appointment; term; vacancy; removal.

The commission shall consist of five (5) members to be appointed by the city commission. One (1) commissioner shall serve until the first Wednesday in September, 1967, one (1) shall serve until the first Wednesday in September 1968, one (1) shall serve until the first Wednesday in September 1969, one (1) shall serve until the first Wednesday in September 1970 and one (1) shall serve until the first Wednesday in September 1971. The city commissioners shall appoint a replacement for any commissioner whose term expires and the replacement shall be appointed for a term of three (3) years. Should a vacancy occur on the utilities commission by virtue of resignation, death or removal, the unexpired term shall be filled as provided above. Any commissioner may be removed from office upon a majority vote of the city commissioners for malfeasance, misfeasance, nonfeasance, conviction of a felony or upon recommendation of a majority of the utilities commissioners.

(Laws of Fla., ch. 67-1754, § 2; Ord. No. 25-84, § 2, 10-2-1984; Laws of Fla., ch. 85-503, § 2)

Sec. 211. Same--Qualifications.

Each commissioner shall be a qualified elector and freeholder in New Smyrna Beach, but no employee or elected or appointed officer of the city shall be a commissioner and no commissioner shall serve more than three consecutive terms.

(Laws of Fla., ch. 67-1754, § 3; Ord. No. 25-84, § 2, 10-2-1984; Laws of Fla., ch. 85-503, § 3)

Sec. 212. Meetings; rules and regulations; officers.

The commission shall meet at least once each month at the offices of the commission. All meetings of the commission shall be open to the public and minutes shall be kept of all meetings. The commission shall have authority to promulgate rules and regulations for the conduct of its meetings and the operation of its business. At the regular meeting of the commission in September of each year, the commissioners shall elect a chairman, a vice-chairman, a secretary and a treasurer from its membership; however, the office of secretary and treasurer may be combined.

(Laws of Fla., ch. 67-1754, § 4; Laws of Fla., ch. 85-503, § 4)

Sec. 213. Authority to appoint and employ necessary personnel.

The commission shall have the power to appoint and employ engineers, auditors, attorneys and such other personnel as may be necessary for the efficient operation of the city's utilities and the management of its business and affairs.

(Laws of Fla., ch. 67-1754, § 5; Laws of Fla., ch. 85-503, § 5)

Sec. 214. Authority over city's utilities.

The commission shall, pursuant to the New Smyrna Beach Charter, manage, operate and control all of the city's utilities and shall employ and discharge at their pleasure all employees whose services are performed in any manner in connection with said utilities.

(Laws of Fla., ch. 67-1754, § 6; Ord. No. 25-84, § 2, 10-2-1984; Laws of Fla., ch. 85-503, § 6)

Sec. 215. Commissioners' salary, expenses.

The commissioners shall be paid such salary as may from time to time be set by the city commission of the City of New Smyrna Beach, but no more than one hundred dollars (\$100.00) each month, and in addition shall be paid necessary expenses incurred in carrying on and conducting the business of the commission subject to the approval of the city commission.

(Laws of Fla., ch. 67-1754, § 7; Laws of Fla., ch. 85-503, § 7)

Sec. 216. Monthly statements; fiscal year; annual audit.

The commission shall submit to the city commission a monthly statement showing all sums or amounts received, operating expenses, amount charged to depreciation and extensions, reserve fund and amount appropriated to interest and sinking fund. The fiscal year of the commission shall begin October 1 and end September 30 of each year and the books and records of the commission shall be audited by an independent certified public accountant as of the close of business of each fiscal year.

(Laws of Fla., ch. 67-1754, § 8; Laws of Fla., ch. 85-503, § 8)

Sec. 217. General powers and authority.

The commission shall have full and exclusive power and authority to prescribe rules, rates and regulations governing the sale and use of electricity, water, gas and sewage collection and treatment wherever such services are furnished by said commission and to change the same at its pleasure, after conducting a public hearing or hearings pertaining to rate changes. The commission is authorized to furnish electricity, power, water, gas and sewage collection and treatment to private individuals and corporations wherever the same may be required and feasible as determined by the commission and for said purpose the commission shall have the right to acquire, construct, maintain, extend, improve and develop electric production and distribution systems, water production and distribution facilities and systems, gas production and distribution systems and sanitary sewer facilities and systems, including the right to construct and maintain electric lines, water and gas mains and sewers in, along and under all public streets and highways and to contract with and receive grants and contributions from the United States or any of its agencies or departments, the state and any municipality, public body, corporation, partnership or individual for such purposes. The commission may extend city utilities beyond the corporate limits of the City of New Smyrna Beach in conformance with the requirements of Chapter 366, Florida Statutes, only upon approval by ordinance of the city commission and the commission may enter into a contract for a term of more than four (4) years only after approval by

ordinance of the city commission. The city commission may not withhold its approval or deny passage of an ordinance where such withholding or denial would cause the commission to violate any of the covenants or terms of its bond resolutions and related contracts, resolutions, and documents. The commission shall prepare and submit its budget for the ensuing year to the city commission on or before June 1 of each year, setting forth its estimated gross revenues and estimated requirements for operations and maintenance expenses, debt service, and depreciation. A copy of the budget shall be published once in a newspaper of general circulation in the city during the month of June. The commission shall adopt the budget for the ensuing year only upon approval by ordinance of the city commission. The city commission may not withhold its approval or deny passage of an ordinance approving the budget where such withholding or denial would cause the commission to violate any of the covenants or terms of its bond resolutions and related contracts, resolutions, and documents.

(Laws of Fla., ch. 67-1754, § 9; Ord. No. 25-84, § 2, 10-2-1984; Laws of Fla., ch. 85-503, § 9)

Sec. 218. Billing and collection of fees and charges; disposition of funds collected.

The commission shall have the exclusive power and authority to bill and collect the prescribed fees or charges for all services and utilities under its control and when collected, the flow of funds shall be: First, the payment of all operating and maintenance expenses of said utilities; second, the funding of all reserves required by revenue certificates issued by the city or said commission for projects under commission control including the debt service payments of all such revenue certificates as same become due; third, the payment to the general fund of the city a sum equal to six (6) percent of the gross revenues from utilities under commission control; such payments shall be made monthly. The surplus shall be paid annually to the general fund of the city after reserving an adequate fund for operation and maintenance expenses, capital improvements and line extensions as determined by the commission.

(Laws of Fla., ch. 67-1754, § 10; Laws of Fla., ch. 85-503, § 10)

Sec. 219. Acquisition of property by eminent domain; title.

The commission is empowered, by its duly constituted authorities, to exercise the right of eminent domain to appropriate property, except state or federal, for the purpose of obtaining, constructing and maintaining electric plants, substations and distribution lines; water or gas mains; reservoirs and pumping stations; sewer lines, pumping stations and disposal or processing plants; and to acquire all such lands, waters and lands adjacent to waters which the commission judges may be necessary for the full and complete construction, maintenance and operation of any utility. The title to all property, real or personal, owned or acquired by the commission shall be vested in the City of New Smyrna Beach.

(Laws of Fla., ch. 67-1754, § 11; Laws of Fla., ch. 85-503, § 11)

Sec. 220. Authority to shut off and discontinue water, electricity, etc.

The commission shall have the power to shut off and discontinue the supplying of water, electricity or any other utilities or services now or hereafter under the control, management or jurisdiction of the commission to any and all users for violation of any of the rules or regulations pertaining to the sale, distribution or use of such utilities and services and for nonpayment, when due, of the fees, rentals or other charges for utilities and services. Regulations governing the shutting off and discontinuance of any of such utilities and services and the terms and conditions for the restoration of such utilities and services, including interest and charges for shutting off and discontinuance or the restoration of said utilities and services may be adopted by the commission.

(Laws of Fla., ch. 67-1754, § 12; Laws of Fla., ch. 85-503, § 12)

Sec. 221. Agreements with holders of revenue bonds and other obligations.

The commission shall have power and authority to make agreements and covenants with the City of New Smyrna Beach and the holders of any revenue bonds or other obligations issued to finance, in whole or in part, any repairs, extensions or improvements of any utility with respect to the filing and collecting of fees, rentals and other charges for services and utilities. All such agreements and covenants shall constitute and be deemed valid contracts between the commission and the holders of any revenue bonds or other obligations and may be enforced by any holder of such revenue bonds or any other obligations in any court of competent jurisdiction subject, however, to any provision for enforcement which may be contained in such agreements or covenants or in the resolution or resolutions of the governing body of the city or the commission pursuant to which such obligations were issued.

(Laws of Fla., ch. 67-1754, § 13; Laws of Fla., ch. 85-503, § 13)

Sec. 222. Borrowing money.

The commission, upon a majority vote, is hereby authorized to borrow at any time an amount of money equal to ten (10) percent of the book value of the electric and water plants for any six (6) month period and to pay interest on such sum borrowed at a rate not to exceed the then prevailing interest rate and to issue its promissory note or notes as evidence of said indebtedness, which notes shall be signed by the chairman of the commission and the secretary thereof, provided that at no time shall such promissory note or notes exceed ten (10) percent of the book value of such plants and provided further that money so borrowed shall be expended only for current operating expenses.

(Laws of Fla., ch. 67-1754, § 14; Laws of Fla., ch. 85-503, § 14)

Sec. 223. Revenue certificates and promissory notes.

The commission shall, upon the approval by ordinance of the city commission, after conducting a public hearing or hearings, have the right, power and authority to issue revenue certificates or promissory notes for the purpose of paying all or a part of the cost of acquisition, construction, repairing, extensions, additions, equipping and the reconstruction of any of the city's utilities. The city commission shall not withhold its approval or deny passage of an ordinance where such a withholding or denial would cause the commission to violate any of the covenants or terms of its bond resolutions and related contracts, resolutions and documents. All of such revenue certificates or promissory notes while authorized and issued by the commission shall be obligations of the city of New Smyrna Beach and no referendum or freeholder election shall be required as a condition precedent to the issuance of such revenue certificates or promissory notes. All revenue certificates shall be offered for sale to not less than three (3) responsible bond brokers and the best bid excepted unless, in the discretion of the commission, a better bid can be obtained by negotiation. In such cases the commission shall have the right to reject all bids and sell said certificates upon the best terms offered therefor.

(1) Revenue certificates issued under the provisions of this act shall be payable from the revenues derived from the operation of the city's utilities or services under the supervision, operation and control of the commission and from any other funds legally available therefor.

(2) The commission shall not convey or mortgage any property or facility or any part thereof as security for the payment of revenue certificates.

(3) In the discretion of the commission, each or any issue of such revenue certificates may be secured by a trust agreement by and between the commission and a corporate trustee which may be any trust company or bank having the powers of a trust company within or outside of the state. Such trust agreement may pledge or assign the revenues to be received by the commission. The resolution providing for the issuance of revenue certificates or such trust agreement may contain such provisions for protecting and enforcing the rights and remedies of the certificate holders as may be reasonable, proper and not in violation of law, including covenants setting forth the duties of the commission in relation to the acquisition, construction, improvements, maintenance, operation, repair, equipping and insurance of the facilities, and the custody, safeguarding and application of all monies. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the commission. Such resolution or such trust agreement may restrict the individual right of action by certificate holders as is customary in trust agreements securing bonds or debentures of corporations. In addition to the foregoing, such resolution or trust agreement may contain such other provisions as the commission may deem reasonable and proper for the security of certificate holders. Except as this chapter otherwise provides, the commission may provide, by resolution or by trust agreement, for the payment of the proceeds of the sale of the revenue certificates and the revenues of the utilities and services to such officer, board or depository as it may determine for the custody thereof and for the method of disbursement thereof with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust agreement may be treated as a part of the cost of operation of the utilities affected by such trust agreement.

(4) The resolution or trust agreement providing for the issuance of the revenue certificates may also contain such limitations upon the issuance of additional revenue certificates as the commission may deem proper and such additional certificates shall be issued under such restrictions or limitations as may be prescribed by the resolution or trust agreement.

(Laws of Fla., ch. 67-1754, § 15; Ord. No. 25-84, § 2, 10-2-1984; Laws of Fla., ch. 85-503, § 15)

Sec. 224. Refunding revenue certificates.

The commission, upon approval by ordinance of the city commission is authorized to provide by resolution for the issuance of refunding revenue certificates for the purpose of refunding any revenue certificates heretofore issued by the city of New Smyrna Beach then outstanding or issued under the provisions of this chapter. The commission is further authorized, upon approval by ordinance of the city commission, to provide by resolution for the issuance of revenue certificates for the combined purpose of:

- (1) Paying the cost of any acquisition, construction, extension, addition, improving, equipping or reconstruction of a facility or facilities of the commission;
- (2) Refunding revenue certificates heretofore issued by the city of New Smyrna Beach and of the commission which shall theretofore have been issued under the provisions of this chapter and shall then be outstanding.

The issuance of such obligations, the maturities and other details thereof, the rights and remedies of the holders thereof, the rights, powers, privileges, duties and obligations of the commission with respect to the same shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable. The city commission shall not withhold its approval or deny passage of an ordinance where such a withholding or denial would cause the commission to violate any of the covenants or terms of its bond resolutions and related contracts, resolutions and documents.

(Laws of Fla., ch. 67-1754, § 16; Ord. No. 25-84, § 2, 10-2-1984; Laws of Fla., ch. 85-503, § 16)

Sec. 225. Legal status of revenue certificates or other obligations.

Any revenue certificates or other obligations issued pursuant to this chapter shall be and constitute legal investments for bonds, savings banks, trustees, executors, administrators and all other fiduciaries for all state, municipal and public funds and shall also be and constitute securities eligible for deposit as security for all state, municipal or other public funds notwithstanding the provisions of any other law or laws to the contrary.

(Laws of Fla., ch. 67-1754, § 17; Laws of Fla., ch. 85-503, § 17)