

ORDINANCE NO. 23-911

AN ORDINANCE AMENDING THE AUTHORITY AND RESPONSIBILITIES OF THE CLARKSVILLE UTILITY COMMISSION; AND DECLARING AN EMERGENCY

WHEREAS, the city of Clarksville, Arkansas being a city of the first class owning and operating a waterworks and distribution system, wastewater system, electrical light plant and system, and fiber optic, broadband, and internet system is desirous of establishing a utility commission, by a majority vote of the city council.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Clarksville, Arkansas that:

Section 1. The Clarksville Municipal Code is hereby amended to read as follows:

2.60. 01 Created

1. Pursuant to Arkansas Code § 14-201-203(2020) There is hereby created a Commission to be designated as the Clarksville Connected Utilities Commission of the city of Clarksville, Arkansas," and hereafter in this ordinance referred to as" Commission," to be composed of five (5) citizens who are qualified electors of Johnson County. No member of the commission shall hold any elective office under the municipal, county, state, or federal government while a member of the commission. No member of the commission shall be an officer, director, or employee of any private utility company. Nominees to the commissioners can come from the commission and council and shall be appointed by the mayor and confirmed by a two-thirds vote of the city council and shall appoint one Commissioner each year for a term of five (5) years, following the initial appointment. Successor members shall be appointed for a term of five (5) years and shall serve until a successor is appointed. A "hold over" clause does not exist for a commission member, however re-appointment IAW this section is permitted. All vacancies occurring in the membership of the commission due to death, resignation, or other causes shall be filled by the mayor appointing a person to fill the unexpired term of the membership so vacated, subject to the approval of two-thirds (2/3) of the city council. The initial commissioner assignments will be established and appointed according to the following terms as determined by blind draw:

- (A) Position number one (1) shall serve for a term of one (1) year;
- (B) Position number two (2) shall serve for a term of two (2) years;
- (C) Position number three (3) shall serve for a term of three (3) years;
- (D) Position number four (4) shall serve for a term of four (4) years; and
- (E) Position number five (5) shall serve for a term of five (5) years.

2. The Commissioners shall, by December 31st, of each year, elect from their 5 members a chairman and a secretary. No chairman shall serve two (2) years in succession. The Commission shall adopt rules for their meetings, and in the event of any disagreement, the concurrence of three (3) Commissioners shall control.

3. The city council may repeal this ordinance by a majority vote of the city council. No action of the city council, whether pursuant to the provisions of this subchapter or otherwise, shall affect the rights, properties, or obligations held or incurred by the commission. If twenty-five percent (25%) of the electors of the city petition the city council to do so, a special election shall be ordered in accordance with § 7-11-201 et seq. not later than fourteen (14) days from the date on which the petition was filed to be held at least ninety (90) days after the order on the question whether the utility commission shall be abolished or continued. A majority vote of the electorate shall determine if the ordinance shall be repealed.

2.60.02 Authority

The Commission is hereby conveyed from the Clarksville City council the power and authority necessary to provide proper oversight of the electric, water, and sewer utilities, internet, fiber, and or broadband network with the power to operate and maintain them and to exercise the power necessary to the management, operation and control of the properties for the furnishing of water, wastewater, electricity and broadband services for the inhabitants of the city of Clarksville or the extended communities as agreed upon between the council and commission.

2.60.03 Powers: limitations.

Power – generally

1. The commission may borrow money and issue negotiable evidence of debt therefor either in the form of bonds or short-term notes, and it may execute such negotiable notes or bonds to obtain the funds needed to carry out its functions. The commission may also pledge its revenues including the income from operations, and it may mortgage waterworks or electric system property to secure the payment of money borrowed with city council approval.
2. Without limiting the generality of the foregoing, the commission is empowered to acquire, construct, and equip any and all facilities, consisting of real property, personal property, or mixed property of any and every kind, which in the judgment of the commission are necessary

or useful as a part of or in connection with the municipal waterworks and distribution system or electric light plant and system, or both including, without limitation, facilities for the generation of electric power and related transmission facilities, which may be located within or without the corporate boundaries of the city. In furtherance of its authority to construct facilities for the distribution or transmission of electric energy and to provide its customers reliable utility service, the commission may be authorized the use of eminent domain by the city council outside the corporate limits of the municipality creating the commission, but subject to the provisions of § 14-201-102(b) and only within the contiguous service territory.

3. The commission may request for the establishment or modification of rates for water, wastewater, electricity, fiber, broadband or internet, as may be expressly authorized by the City Council.
4. The commission, with city council approval, is empowered to execute long-term power purchase agreements and other contracts for utility.

Service Area.

The Commission may from time to time make such enlargements of the plants and such extensions of the service thereof as may be necessary to serve the residents, businesses, and other entities of the city with electric, light, power, water, wastewater, broadband, and such other services as may hereafter be authorized by the City Council. The Commission may not make enlargements of the plants or extensions of services outside the city unless authorized by the City Council.

Standard Fees and Rates.

The City Council shall establish the standard fees and rates to be charged by the Commission which may be: (i) fixed; (ii) recurring; (iii) based on one or more measurements of usage; (iv) based on calculations referencing verifiable costs and/or indexes; or (v) any combination of the preceding methods. The Commission shall charge and collect standard fees and rates as established by the City Council; *except that*, if the Commission determines that a standard fee or rate established by City Council will produce excess revenues that are not required for reliable operations, the Commission may charge and collect a lesser amount. When no standard fee or rate applies, the Commission shall charge and collect for goods and services based on actual cost.

Audit. At the end of each fiscal year, the commission shall cause an audit to be made of the financial affairs of the commission by a certified public accountant-and there shall be made

available a copy to the mayor and to each member of the city council and commission upon completion.

Performance Indicators. The commission shall require the General Manager and/or the Chief Financial Officer (CFO) to report on certain key performance indicators in its monthly report to the council. This Key Performance Indicator (KPI) report shall address the following at a minimum:

1. Profit loss by Department
2. Debt service/bond payment status
3. Capital project expenditures and expenses.
4. Market penetration

Meetings and Records. All meetings of the commission shall be open to the public, and all rules, regulations, and records of the commission are public records.

2.60.04 Bond funds

1. The Commission shall make provision by creation of special fund for the payment of principal and interest of any revenue bonds issued by the city on behalf of the utility. It shall then determine the amount necessary and advisable to be set aside for the reasonable and efficient operation of the plants. After provision for payment of bonds and interest and operation, the Commission shall set aside a reasonable sum for maintenance of the plants and for the depreciation account. Funds remaining after such provisions shall be considered as net revenues and may be used as necessary for the extension, improvement, and enlargement of the plants and distribution systems and may be held as reserve funds to be used for any purpose as authorized in Section 2.60.02 herein, or as may be expressly authorized by the City Council.

2.60.05 Removal of Commissioners

A member of the commission may be removed from office by the mayor and a two-thirds (2/3) vote of the city council for malfeasance, misfeasance, nonfeasance, or other misconduct. The Council may conduct a hearing, and if the City Council finds the charges to be true, the City Council may remove such Commissioner and shall appoint a new Commissioner to serve the unexpired balance of such Commissioner' s term in accordance with 2.60.01 of this ordinances. The City Council shall have the power to fill any vacancy caused by the death, resignation, or inability to serve of any

Commissioner, by appointing a new Commissioner, as provided for in 2.60.01, to serve the unexpired balance of such terms. In accordance with Arkansas Code annotated §14-201-105.

Section 2. That the amendments reflected in this ordinance shall entirely replace Section 2.6 of the City Municipal Code.

Section 3. That all ordinances and parts of ordinances in conflict herewith are repealed to the extent of the conflict.

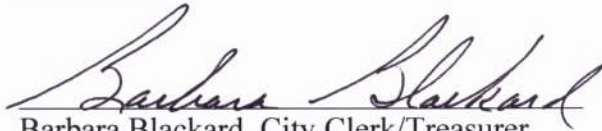
Passed this 8th day of May 2023.

APPROVED:



David Rieder, Mayor

ATTEST:



Barbara Blackard, City Clerk/Treasurer