

INTRODUCED: 06/07/2010

REFERRED TO: Rules and Public Policy Committee

SPONSOR: Councillors Lutz, Speedy, Hunter, Scales, Freeman, Rivera, McQuillen, Cardwell, Day and McHenry

DIGEST: amends the Code to consolidate the department of waterworks board of directors into the board of public works

SOURCE:

Initiated by: Office of the Mayor

Drafted by: Mark A. Mertz, Assistant Corporation Counsel

LEGAL REQUIREMENTS FOR ADOPTION:

Subject to approval or veto by Mayor

PROPOSED EFFECTIVE DATE:

Adoption and approvals

GENERAL COUNSEL APPROVAL: _____



Date: June 2, 2010

CITY-COUNTY GENERAL ORDINANCE NO. _____, 2010

PROPOSAL FOR A GENERAL ORDINANCE to amend the Revised Code to consolidate the department of waterworks board of directors into the board of public works.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. Chapter 273, Article I of the "Revised Code of the Consolidated City and County," regarding the establishment of the Department of Water Works, hereby is amended by the addition of a NEW Section 273-105, to read as follows:

Sec. 273-105. Oversight.

The department shall be overseen by the board of public works, which is the successor to the board established by G. O. No. 112, 2001, § 2, which was successor to the board provided in IC 8-1.5-4-2.

SECTION 2. Chapter 273, Article II, Division 1 of the "Revised Code of the Consolidated City and County," regarding the Department of Water Works board of directors, hereby is amended by the deletion of the language that is stricken-through, and by the addition of the language that is underscored, to read as follows:

DIVISION 1. BOARD OF DIRECTORS POWERS OF THE BOARD OF PUBLIC WORKS
AND CITY CONTROLLER

Sec. 273-211. ~~Board of directors established.~~

~~There is hereby created a board of directors of the department of waterworks as successor to the board provided in IC 8-1.5-4-2.~~

Sec. 273-212. Membership of board.

- ~~(a) The membership of the board of directors shall consist of seven (7) members.~~
- ~~(b) Six (6) members shall be appointed by the mayor as follows:~~
 - ~~(1) Three (3) appointed by the mayor from persons nominated by the president of the city-county council;~~

~~(2) Three (3) appointed by the mayor from persons nominated by the minority leader of the major political party (as defined in IC 3-5-2-30) which is different from the major political party of which the president of the city-county council was a candidate.~~

~~(c) One (1) member shall be nominated by the mayor and appointed by the unanimous vote of the other six (6) members. Such member shall be the secretary-treasurer of the board of directors, but shall not be counted in determining a quorum and shall not vote except in cases of a tie.~~

Sec. 273-213. Terms of members of board of directors.

~~(a) Except for the secretary-treasurer and the initial appointments made under subsection (b), members of the board of directors shall be appointed for six-year terms. A director may be reappointed for successive terms.~~

~~(b) The initial members of the board of directors shall be appointed for terms as follows:~~

~~(1) The three (3) members appointed on nomination by the president of the city-county council shall be for terms ending December 31, 2002, December 31, 2004 and December 31, 2006; and~~

~~(2) The three members appointed upon nomination of the minority leader of the city-county council shall be for terms ending December 31, 2002, December 31, 2004, and December 31, 2006.~~

~~(c) A director may be removed by his or her appointing authority for cause only. The appointing authority shall state the reasons for removal in writing.~~

~~(d) If a member dies, resigns or is removed, the vacancy shall be filled upon nomination by the president of the city-county council or minority leader of the same major political party that nominated the person whose appointment is vacant, for the balance of the term of such person.~~

~~(e) The person appointed as secretary-treasurer shall serve for an initial term ending December 31, 2004, and thereafter for four-year terms. If the secretary-treasurer dies, resigns or is removed, the vacancy shall be filled by nomination by the mayor and appointed by unanimous vote of the other six (6) members.~~

Sec. 273-214. Officers.

~~The board of directors shall annually elect a chairperson and a vice chairperson from the members of the board of directors.~~

Sec. 273-215. Board of directors meetings.

~~The board of directors shall hold regularly scheduled meetings at least once a month, at times and places prescribed by its rules or established by resolution. No notice to directors is required for holding, or taking any action at, a regularly scheduled meeting. A special meeting of the board of directors may be called by the chairperson, the secretary-treasurer or by three (3) directors, at any place in the department's jurisdiction as designated in the call. Each director shall be notified of the time and place of a special meeting by written notice delivered at least forty-eight (48) hours in advance of the meeting. The notice requirement may be waived as to a director who attends the meeting, or who executes a written waiver of notice either before or after the meeting.~~

Sec. 273-216. Quorum.

~~Four (4) members of the board of directors (excluding the secretary/treasurer) shall constitute a quorum for transaction of business. An affirmative vote of a majority of the entire board of directors shall be required for action by the board of directors.~~

Sec. 273-217211. Powers and duties of the board of ~~directors~~ public works.

The board of ~~directors~~ public works shall have the following powers and duties:

- (1) The power to acquire by purchase, lease or exchange and hold, rent or lease all real and personal property of the waterworks;
- (2) Those powers and duties prescribed by IC 8-1.5-4 and all other powers necessary or desirable in the conduct of its affairs;
- (3) The power to cooperate, and to coordinate the operation of the department of waterworks, with other city departments, including the department of public utilities, as may be necessary or appropriate in the opinion of the board of ~~directors~~ public works;
- (4) The power to enter into all agreements or understandings as may be necessary or appropriate, including, but not limited to arrangements for the provision of utility service and for payments in lieu of property taxes;
- (5) The power to consent to the regulatory jurisdiction of the Indiana Utility Regulatory Commission to the extent permitted or required by law;
- (6) The power to issue requests for qualifications or proposals and to enter into management or operating agreements;
- (7) The power to issue revenue bonds for the acquisition and expansion of the waterworks, subject to approval of such issuance and the bond resolution authorizing such issuance by resolution of the city-county council as required by or IC 36-3-5-8; and
- (8) The power to determine which functions and operations of the department, if any, will be retained by the city or transferred to one (1) or more divisions of the department, subject to approval by the city-county council.

Sec. 273-218212. Fiscal controls.

(a) All revenue from the operation of the department or from the disposal of any of its assets or rights shall be deposited in the waterworks revenue fund.

(b) Subject to the definitive terms of the bond resolution, the ~~city~~ controller, as the chief fiscal officer to the department, shall be responsible for ensuring that the receipt of revenues from customers of the utility, revenues derived from the operation of the waterworks or funds from the disposal of its assets or operating rights, shall all be deposited immediately upon receipt into the waterworks revenue fund, or as otherwise specifically directed by the board of ~~directors~~ public works for the provision of water utility service.

(c) Subject to the definitive terms of the bond resolution, all revenues received from the operation of the waterworks, or received from the disposal of any assets or operating rights thereof, shall be used only for the operation, maintenance, extension, financing, acquisition of professional or expert personnel, payment in lieu of taxes, or as otherwise specifically directed by the board of ~~directors~~ public works for the provision of water utility service.

(d) All rates and charges of the waterworks shall be determined by the board of ~~directors~~ public works and authorized, to the extent permitted or required by law, by the Indiana Utility Regulatory Commission or its successor regulatory agencies.

(e) The board of ~~directors~~ public works shall submit to the ~~city-county~~ council an annual report on the operations of the department.

Sec. 273-219. Changes to article restricted.

~~Whenever the covenants with respect to any indebtedness issued for purposes of the department of waterworks restrict or prohibit changes to the governing structure of the department, the terms of the covenants shall be binding upon the city, and the provisions of this article shall not be amended, except as permitted by such covenants and other applicable law.~~

SECTION 3. Section 273-223 of the "Revised Code of the Consolidated City and County," regarding the functions of the department of waterworks service advisory board, hereby is amended by the deletion of the language that is stricken-through, and by the addition of the language that is underscored, to read as follows:

Sec. 273-223. Functions of the service advisory board.

The service advisory board may furnish recommendations to the board of ~~directors~~ public works with respect to any of the powers and duties the board of ~~directors~~ public works may exercise and perform including, but not limited to recommendations concerning service, utility service agreements, rates, water quality, system expansion, and management.

SECTION 4. Section 273-302 of the "Revised Code of the Consolidated City and County," regarding the expansion of the department of waterworks service area by intergovernmental agreements, hereby is amended by the deletion of the language that is stricken-through, and by the addition of the language that is underscored, to read as follows:

Sec. 273-302. Expansion of service area by intergovernmental agreements.

(a) Before the board of ~~directors~~ public works shall approve expansion of the department's service area beyond the service area set forth in section 273-103(b), the department shall have entered into an intergovernmental agreement with the county or municipality having jurisdiction over the territory containing the area to be served.

(b) The intergovernmental agreement shall contain the following terms:

(1) The boundaries of the area to be served;

(2) The term;

(3) The manner of providing water utility services;

(4) Provisions for termination of the intergovernmental agreement, provided however, that the real and personal property of the waterworks shall remain the property of the department; and

(5) That the agreement shall be in full force and effect when approved by concurrent resolutions or ordinances of the city-county council and the legislative body of the other municipality or county.

(c) All agreements adopted under this article shall contain substantially identical provisions and impose the same burdens and same benefits upon each entity entering into such agreements.

SECTION 5. Section 451-6 of the "Revised Code of the Consolidated City and County," regarding the possession and discharge of weapons on property of the department of waterworks, hereby is amended by the deletion of the language that is stricken-through, and by the addition of the language that is underscored, to read as follows:

Sec. 451-6. Possession and discharge of weapons on property of the department of waterworks.

(a) It shall be unlawful for any person, unless authorized by resolution of the board of ~~directors of the department of waterworks~~ public works, to discharge any firearms or have possession of any firearms or other explosive devices, or to endanger others by the use of any weapon, article or device, along or upon any reservoir owned, controlled or leased by the department of waterworks located in Marion County.

(b) The possession of a handgun by a person licensed to carry a handgun under IC 35-47-2 or by a person exempted from those licensing requirements by IC 35-47-2 shall not be unlawful under this section.

(c) The discharge of a firearm in protection of life or property as permitted by IC 35-41-3-2 shall not be unlawful under this section.

(d) Traditional fireworks celebrations and similar activities approved by the board of directors are not prohibited by this section.

SECTION 6. Section 706-103 of the "Revised Code of the Consolidated City and County," regarding the voluntary conservation of water, hereby is amended by the deletion of the language that is stricken-through, and by the addition of the language that is underscored, to read as follows:

Sec. 706-103. Voluntary conservation.

During normal conditions and advisory conditions, water users should follow the voluntary conservation measures as found in the Wise Water Use Policy adopted by the ~~Board of Directors of Indianapolis Water~~ board of public works.

It shall be the public policy of the City of Indianapolis to direct the Indianapolis Water and the ~~Board of Waterworks~~ board of public works to establish a rate structure that provides a financial incentive to customers to conserve water. Such a rate structure shall provide that customers are charged a water usage rate ~~which that~~ encourages the conservation of our public water supply through lower fees and rates per cubic foot of water consumption as the customer and/or water user uses a lower volume of water and for higher fees and rates per cubic foot of water consumption as the customer and/or water user uses a greater volume of water.

SECTION 7. The expressed or implied repeal or amendment by this ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.

SECTION 8. Should any provision (section, paragraph, sentence, clause, or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the Council in adopting this ordinance. To this end the provisions of this ordinance are severable.

SECTION 9. This ordinance shall be in effect from and after its passage by the Council, compliance with Ind. Code § 36-3-4-14, and compliance with the covenants with respect to any indebtedness issued for the department of waterworks.

The foregoing was passed by the City-County Council this _____ day of _____, 2010, at _____ p.m.

ATTEST:

Ryan Vaughn
President, City-County Council

Melissa Thompson
Clerk, City-County Council

Presented by me to the Mayor this _____ day of _____, 2010, at 10:00 a.m.

Melissa Thompson
Clerk, City-County Council

Approved and signed by me this _____ day of _____, 2010.

Gregory A. Ballard, Mayor