

ARTICLE II. BOARD OF TRUSTEES¹

Sec. 130-26. Composition and term of office.

- (a) Pursuant to authority contained in V.T.C.A., Government Code, § 1502.070, and by the Charter of the city, the complete management and control of the city's waterworks, sanitary sewer and electric light systems shall be through a board of trustees, to consist of five citizens, one of whom shall be the mayor, permanently residing in New Braunfels, Comal County, Texas, to be known as the board of trustees of the New Braunfels Waterworks, Sanitary Sewer and Electric Light Systems, and referred to as the board of trustees, New Braunfels Utilities, in which name such board of trustees shall act and transact business, and referred to in this chapter as the "board of trustees" or "board."
- (b) All members of the board of trustees, except the mayor, shall be appointed by the city council to serve for five-year terms of office; with such term of office to commence on December 1; provided that vacancies in office for any reason other than the expiration of a trustee's term of office shall be filled only for the unexpired term of the office vacant.
- (c) Any member of the board of trustees whose term of office has expired shall continue to serve as a member of the board until their successor in office has been appointed. Appointments to the board of trustees resulting from the expiration of a member's term of office shall be made by the city council in November each year in which the term of office to be filled shall expire, or as soon as possible thereafter. All vacancies in membership on the board of trustees, other than the mayor, whether occasioned by failure or refusal of any person named to such board to accept appointment, or by expiration of the term of office or otherwise, shall be filled by the majority vote of the city council. No person who is related within the second degree of consanguinity or affinity to any member of the city council shall be eligible to membership on the board. No person who is employed by or serves as a board member for a utility, a governmental body other than the city council, or an agency that regulates NBU shall be eligible to serve on the NBU board of trustees. The term "employed" includes part-time and full-time employees, as well as someone who serves under contract as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the utility.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02; Ord. No. 2019-44, § 2, 7-22-19; Ord. No. 2023-87, § 1, 12-11-23)

Sec. 130-27. Organization and authority.

The members of the board of trustees shall continue to organize their body by the election of one of the board members as president and another as vice-president. The board of trustees shall also appoint a secretary who may or may not be a member of the board, as the board may elect. The board of trustees may make such resolutions and bylaws for the orderly handling of its affairs and the governing of its own procedure, and shall thereafter manage and operate the systems with the same freedom and in the same manner as is ordinarily enjoyed and followed by the board or directors of a private corporation operating properties of a similar nature; provided, however, that nothing in this section shall be construed to take away from the city council the exercise of all duties imposed upon such governing body under the provisions of the other sections of this article and/or the Charter of the city. A majority of the trustees shall constitute a quorum for the transaction of business at any

¹Cross reference(s)—Administration, ch. 2

meeting. Any member of the board of trustees, other than the mayor, who shall be continuously absent from all meetings of the board for a period of four consecutive months shall, unless granted a leave of absence by the unanimous vote of the remaining members of the board, be considered to have vacated their office. Any member of the board of trustees, other than the mayor, may be removed by action of the city council for adequate cause.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02)

Sec. 130-28. Insurance.

The board of trustees shall obtain and keep continuously in force a fidelity and indemnity bond of the so-called "blanket" type, covering both members of the board of trustees and any employees who are charged with the handling of any funds, securities and/or materials owned by NBU, written by a solvent and recognized indemnity company and covering such members, officers and employees in an amount of not less than \$5,000.00 per person, the premiums for such bonds to be paid out of the waterworks, sanitary sewer and electric light systems funds as part of the operating expenses of such systems.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02)

Sec. 130-29. Employment of general manager, chief executive officer (CEO) and attorney.

The board of trustees shall appoint a CEO of the systems and an attorney or attorneys. The CEO shall appoint all employees. No contracts of tenure shall be given to any employee.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02)

Sec. 130-30. Compensation of members; exception.

The members of the board of trustees, excluding the mayor, shall receive an annual compensation of not less than \$1,200.00, and such compensation may be increased from time to time by the city council as it is deemed advisable, subject to the limitations set out in the Charter of the city. A member of the board of trustees may waive receipt of this compensation by providing written notice of such waiver to the CEO. If a member of the board of trustees chooses to waive his or her annual compensation, the member may revoke the waiver and reinstate the member's annual compensation at any time by providing written notice of such reinstatement to the CEO. After revocation of the waiver, a member is entitled to a prorated amount of the compensation for the remainder of the fiscal year.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02; Ord. No. 2021-48, § 3, 6-28-21)

Sec. 130-31. Duties.

Subject to the provisions and restrictions contained in this article, and as set forth in bond ordinances, which can only be issued by the city, and the provisions of the City Charter, all of the provisions and covenants of which shall be binding upon the board of trustees in like manner as they would have been binding on the city council had operation of the systems been retained by the city council, the board of trustees shall have complete authority and control of the management and operation of the waterworks, sanitary sewer and electric light systems; and among the powers that may be exercised by the board of trustees, but not limited thereto, the same are hereby enumerated for greater certainty:

- (1) To take, have and exercise exclusive possession and control of such waterworks, sanitary sewer and electric light systems, and all additions thereto, and to collect, and enforce the collection of, all funds and revenues that may be or become owing or that may arise out of the operation of such systems,

and to disburse the same in accordance with the provisions of this article, and in the manner provided by V.T.C.A., Government Code, §§ 1502.070 and 1502.071;

- (2) To maintain, improve, enlarge and extend such waterworks, sanitary sewer and electric light systems;
- (3) To fix all rates for all services to be furnished by such systems, with the power to alter such rates at any time, subject to approval of the city council, as set out in section 11.12 of the charter;
- (4) To employ and pay the compensation of a CEO of the systems, and attorneys, engineers and other professional or technical aids as the board of trustees may deem necessary in the proper conduct of its business;
- (5) To adopt, alter, amend and enforce all such rules and regulations governing the conduct of the business of such systems as the board of trustees may deem necessary or proper; and
- (6) To do any and all things necessary in reference to the installing and maintaining of a complete system of records and accounts pertaining to such systems and to make the monies available for the payment of such revenue bonds in the manner provided by V.T.C.A., Government Code, § 1502.057.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02)

Sec. 130-32. Liability of members.

- (a) The members of the board of trustees, either singly or collectively, shall not be personally liable for any act or omission not willfully fraudulent or mala fide on their part. If any act or omission, willfully fraudulent or mala fide on the part of any employee, is investigated by the board of trustees, a report of such investigation shall be immediately provided to the city council by the mayor.
- (b) Complying with the city Charter, any member of the board of trustees who has a substantial financial interest, direct or indirect, or by reason of ownership of stock in any corporation, in any contract with the board or in the sale of any land, material, supplies or services to the board or to a contractor supplying the board, shall make known that interest to the board of trustees and refrain from voting upon or otherwise participating in their capacity as a board member in the making of such sale or in the making or performance of such contract. Any board member who conceals such substantial financial interest or violates the requirements of this subsection shall be guilty of malfeasance in office or position and shall forfeit their office or position. Violation of this subsection with the knowledge express or implied of the person or corporation contracting with or making sale to the board of trustees shall render the contract or sale voidable by the board. Where ownership or stock in a corporation is involved, such stock ownership in an amount in excess of one percent of the stock of such corporation shall constitute substantial interest.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02)

Sec. 130-33. Fiscal year; creating special funds; use of surplus funds.

The systems shall be operated on the basis of a fiscal year commencing on August 1 of each year and ending on July 31 of the following year, and the city covenants and agrees that as received, all revenues and income of every nature derived from the operation of its waterworks, sanitary sewer and electric light systems shall be deposited from day to day into accounts designated as utility system funds, kept separate and apart from all other funds or accounts, and such system funds shall be pledged, appropriated and used for the following purposes, and in the order of precedence shown, all in accordance with the laws of the state, the ordinances of the city and all current and future utility system revenue bond ordinances, as follows:

- (1) *First.* Payment of the necessary and reasonable expense of operating and maintaining the systems, including salaries, labor, materials, interest, repairs and extensions necessary to render efficient

service. Repairs and extensions referred to in this section shall include only such as are found by the board of trustees to be necessary to keep the systems in operation and render efficient service, or necessary to remedy some physical defect which would otherwise impair the security of any bonds authorized and issued.

- (2) *Second.* Payment to those funds required by bond ordinances previously adopted and as may be adopted in the future.
- (3) *Third.* All revenues of the systems remaining after the above requirements of this section have been satisfied (including any increased payments into the aforesaid interest and sinking fund, reserve fund and contingencies fund, as may be necessary by reason of the issuance of additional parity bonds in the future under the provisions of this section) and after all deficiencies existing in such requirements have been remedied, may be used either for retiring in advance of maturity bonds issued hereunder, previously issued bonds, or additional bonds issued on a parity therewith according to the provisions made for their prior redemption, or may be used to purchase bonds on the open market at not exceeding the market value thereof. All bonds so paid, redeemed, or purchased shall be canceled and shall not be reissued. It is further provided that all revenues of the systems remaining at the close of any fiscal year, after the requirements of the bonds herein authorized, the previously issued bonds, or additional parity bonds hereafter legally authorized have been completely satisfied in accordance with the provisions of the ordinances authorizing such bonds, may be transferred to the city's general fund as permitted by V.T.C.A., Government Code, § 1502.059.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02)

Sec. 130-34. Investigation by city council.

As provided in the city Charter, the city council shall have power to inquire into the conduct of the board of trustees, NBU, or any office, department, agency, officer or employee of the board of trustees, and to make investigations as to the affairs of the board, and for that purpose may subpoena witnesses, administer oaths and compel the production of books, papers or other evidence as ordered under the provision of this section. Any violation of this article shall constitute a misdemeanor and shall be punishable by a fine as provided in section 3.12 of the city Charter and/or cancellation of a faithful performance bond.

(Ord. No. 2002-29, § 1(Att. A), 7-22-02)

Secs. 130-35—130-55. Reserved.