

ORDINANCE 2925
AN ORDINANCE AMENDING
TITLE 5, CHAPTER 20, OCCGF,
AUTHORIZING AND APPROVING THE CREATION OF
ELECTRIC CITY POWER, INC. PURSUANT TO
THE MONTANA NONPROFIT CORPORATION ACT
IN ORDER TO SECURE AND PROVIDE
RELIABLE AND ECONOMIC SUPPLIES
OF ELECTRICITY FOR THE CITY OF GREAT FALLS,
ITS RESIDENTS AND OTHER CONSUMERS

WHEREAS, the City of Great Falls (the “City”) did adopt a Charter on July 1, 1986 with plenary self-governing powers not prohibited by the Constitution or statutes of the State of Montana (the “State”);

WHEREAS, the continued growth, economic development and prosperity of the City and its residents requires the availability of secure, reliable and economic supplies of electricity at stable, cost-based rates for all residential, commercial, industrial and other electric consumers within the City;

WHEREAS, the City has previously been licensed by the Montana Public Service Commission as an “electricity supplier” under the Electric Utility Industry Restructuring and Customer Choice Act, Title 69, Chapter 8, Montana Code Annotated, as amended, with the authority to provide electricity supply services to certain classes of consumers within the State;

WHEREAS, the City Commission has previously enacted Title 5, Chapter 20, OCCGF, authorizing the City to establish and operate a municipal electric utility;

WHEREAS, the City Commission now desires to amend Title 5, Chapter 20, OCCGF, to provide for creation and organization of a nonprofit corporation to be known as “Electric City Power, Inc.” to own, operate and take all other actions necessary or desirable in connection with the municipal electric utility of the City; and

WHEREAS, the City intends to authorize the issuance by the Corporation of certain bonds, notes or other evidences of indebtedness on behalf of the City, the interest on which is intended to be excludable from the gross income of the holder under the Internal Revenue Code and intends that both the City and Electric City Power, Inc. shall comply with the requirements of Revenue Procedure 82-26, 1982-1 C.B. 476, or any successor thereto, in the issuance of such bonds, notes or other evidences of indebtedness;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA that Title 5, Chapter 20, OCCGF, be amended as follows:

Section 1. Ordinance 2861 is hereby repealed.

Section 2: OCCGF 5.20 pertaining to establishing and operating an electric utility is hereby enacted to read in its entirety as set forth in Exhibit A.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, on the 1st day of November, 2005.

Randall H. Gray, Mayor

ATTEST:

Peggy J. Bourne, City Clerk

(SEAL OF CITY)

Approved for Legal Content: City Attorney

State of Montana)
County of Cascade :ss
City of Great Falls)

I, Peggy J. Bourne, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Ordinance 2925 was placed on its final passage and passed by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 1st day of November, 2005, and approved by the Mayor of said City on the 1st day of November, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this 1st day of November, 2005.

Peggy J. Bourne, City Clerk

(SEAL OF CITY)

State of Montana)
County of Cascade :ss
City of Great Falls)

Peggy J. Bourne, City Clerk, being first duly sworn, deposes and says: That on the 1st day of November, 2005, and prior thereto, she was the City Clerk of the City of Great Falls, Montana; that as said City Clerk she did publish and post as required by law and as prescribed and directed by the Commission, Ordinance 2925 of the City of Great Falls, in three conspicuous places within the limits of said City to-wit:

On the Bulletin Board, first floor, Civic Center Building
On the Bulletin Board, first floor, Cascade County Court House
On the Bulletin Board, Great Falls Public Library

Peggy J. Bourne, City Clerk

(SEAL OF CITY)

Exhibit A

Chapter 5.20

ESTABLISH AND OPERATE AN ELECTRIC UTILITY

Sections:

5.20.010	Findings, determinations and declarations.
5.20.020	Definitions.
5.20.030	Establishment of Electric Utility.
5.20.040	Organization of Electric City Power, Inc.
5.20.050	Purpose of the Corporation.
5.20.060	Powers of the Corporation; Limitations.
5.20.070	Rates.
5.20.080	Rules of Operation.
5.20.090	Availability of Rules and Schedule of Rates, Charges and Classifications.
5.20.100	Tax-Exempt Obligations.
5.20.110	Transitional Provisions.
<u>5.20.120</u>	<u>Removal of Directors; Sale or Dissolution of Corporation.</u>

5.20.010. Findings, Determinations and Declarations. The City Commission hereby finds, determines and declares that:

- A. The continued growth, economic development and prosperity of the City and its residents requires the availability of secure, reliable and economic supplies of electricity at stable, economical and cost-based rates for all residential, commercial, industrial and other electric consumers within the City;
- B. The restructuring of the electric utility industry in the State has exposed the City and residential, commercial, industrial and other electric consumers within the City to volatile and unstable market-based rates for electricity supply service; and
- C. It is necessary, desirable and in the best interest of the City, its residents and all electricity consumers within the City for the City to establish and organize Electric City Power, Inc. (the "Corporation") pursuant to the provisions of the Montana Nonprofit Corporation Act, Title 31, Chapter 2, Montana Code Annotated, as amended (the "Nonprofit Act"), to own, construct, finance, operate and maintain the properties, facilities, rights and interests comprising the City's municipal electric utility established pursuant to Section 5.20.030, OCCGF, and to provide electricity supply services to consumers within and outside of the boundaries of the City at stable, cost-based rates, all for and on behalf of the City.

5.20.020. Definitions. For the purposes of this ordinance, and in addition to the words and terms defined elsewhere in this ordinance, the following words and terms shall have the meanings ascribed to them in this section, except where the context clearly indicates different meaning:

- A. Acquisition, Acquire, Construction or Construct shall mean, without limitation, construction, acquisition, operation, maintenance, testing, extending, renewing, relocating, removing, replacing, repairing and using electric facilities.
- B. Consumer shall mean any person, firm, partnership, corporation, cooperative, organization, governmental agency or other form of legal entity currently or potentially receiving electric services within and/or outside the boundaries of the City.
- C. Electric Facilities shall mean fuel sources; water supply; generation, transmission and distribution facilities and equipment; and all necessary or convenient facilities and appurtenances thereto whether the same be located above or below ground, or within and/or outside the boundaries of the City.
- D. Internal Revenue Code shall mean the Internal Revenue Code of 1986, as amended.
- E. Municipal Electric Utility shall mean: (i) the ownership, management and operation of electric facilities; (ii) the provision of electricity supply services to the City and to industrial, commercial, residential and other electric consumers within and outside of the boundaries of the City; (iii) the sale of electricity at wholesale or retail; and (iv) all other services necessary, desirable, incidental or related thereto; all to the extent permitted by law.
- F. Revenue Bonds shall mean bonds, notes or other evidences of indebtedness authorized by the City and issued by the Corporation which shall be payable from the revenues of the municipal electric utility.
- G. Services shall mean electric power and energy in the form of generation services, transmission services, distribution services, sale services or marketing services within and/or outside the boundaries of the City.
- H. Tax-Exempt Obligations shall mean revenue bonds, the interest on which is excludable from the gross income of the holder pursuant to Section 103 of the Internal Revenue Code.

5.20.030. Establishment of Municipal Electric Utility. In the exercise of the self-governing powers contained in its Charter and pursuant to applicable law, the City does hereby establish a municipal electric utility for the purpose of securing and providing reliable and economic long-term supplies of electricity to the City, its residents and electric consumers.

5.20.040. Organization of Electric City Power, Inc. The organization and incorporation of the Corporation pursuant to the Nonprofit Act is hereby authorized and approved. The Articles of Incorporation and the Bylaws of the Corporation, ~~in substantially the forms presented to this meeting shall be approved by resolution~~ of the City Commission, ~~are hereby approved~~ and shall be placed on file with the City Clerk. The City Manager is hereby authorized and directed to take all actions necessary to complete the incorporation of the Corporation pursuant to the Nonprofit Act.

5.20.050. Purpose of the Corporation. The Corporation shall own, operate and manage the municipal electric utility and shall operate for the primary purpose of securing and providing reliable, long-term supplies of electricity to the City, its residents and electric consumers. In furtherance of such purpose, the Corporation may acquire or construct electrical facilities, participate with others in the acquisition or construction of electrical facilities, may enter into contracts to secure supplies of electricity and related services and, in order to achieve economies of scale and other benefits, may own, acquire, construct or contract for long-term sources of electricity that are in excess of the present requirements of the City, its residents and consumers and may enter into contracts for the sale of electricity to any consumer outside of the City or any investor-owned, cooperative or municipal utility or other purchaser.

5.20.060. Powers of the Corporation; Limitations. The Corporation shall have and exercise all powers conferred pursuant to the Nonprofit Act and its Articles of Incorporation that are necessary or desirable for the accomplishment of its purposes. Notwithstanding the foregoing,

- A. the Corporation shall not issue or incur any bonds, notes or other evidences of indebtedness without the prior approval of the City Commission, and
- B. the Corporation shall have no power to bind or create obligations of the City, and each bond, note or other evidence of indebtedness of the Corporation shall contain a statement to the effect that
 - 1. neither the City, the State, any agency, authority or instrumentality of the State or any municipality or local governmental unit is obligated to pay the principal thereof or interest thereon; and
 - 2. neither the faith and credit nor the taxing power of the City, the State, any agency, authority or instrumentality of the State or any municipality or local governmental unit is pledged or in any way obligated to pay the principal thereof or interest thereon.

5.20.070. Rates. The Board of Directors of the Corporation shall from time to time consider and recommend rates and charges for electricity supply and other services provided by the Corporation. Such rates and charges shall be designed to enable the Corporation to operate on a self-sufficient and self-sustaining basis and to produce revenues at all times sufficient to pay all operating, maintenance, debt service, repair and replacement costs of the Corporation and to provide reserves necessary or desirable for working capital, capital improvements and replacements and rate stabilization purposes. All rates and charges recommended by the Board

of Directors of the Corporation shall be subject to the approval of the City Commission, by resolution adopted subsequent to notice and public hearing as required by Title 69, Chapter 7, Part 1, Montana Code Annotated, as amended.

5.20.080. Rules of Operation. The Board of Directors of the Corporation shall from time to time consider and recommend rules for operation of the municipal electric utility which shall contain, at a minimum, those requirements of good practice which can be normally expected for the operation of an electrical utility as required by Title 69, Chapter 7, Part 2, Montana Code Annotated, as amended. All rules of operation recommended by the Board of Directors shall be subject to approval by resolution of the City Commission.

5.20.090. Availability of Rules and Schedule of Rates, Charges and Classifications. A schedule of rates, charges or classifications imposed upon or otherwise payable by the customers served by the municipal electric utility and a copy of the rules established for the operation of the municipal electric utility shall be kept and maintained at the principal office of the Corporation and in the City Clerk's Office and the same shall be made available to public inspection at any time during regular office hours.

5.20.100. Revenue Bonds; Tax-Exempt Obligations. The City Commission may from time to time authorize the issuance of revenue bonds by the Corporation on behalf of the City to acquire or construct electric facilities. By enactment of this ordinance, the City has approved the creation and organization of the Corporation, the purposes and activities of the Corporation, and in general, the issuance of revenue bonds by the Corporation to acquire and construct electric facilities. However, no revenue bonds shall be issued by the Corporation unless the City Commission shall first adopt (within one year prior to the issuance of such revenue bonds) a resolution approving the issuance of such revenue bonds and the purposes for which such revenue bonds are to be issued. In the event that such revenue bonds are to be issued as tax-exempt obligations, the City and the Corporation shall comply with the requirements of Revenue Procedure 82-26, 1982-1 C.B. 476, or any successor thereto, and all such tax-exempt obligations shall comply with the following requirements:

- A. All of the original proceeds and investment proceeds of the tax-exempt obligations, except for a *de minimis* amount of less than \$5,000 that is included in the issue solely for the purpose of rounding the dollar amount of the issue, shall be used to provide tangible real or tangible personal property. Notwithstanding any other provision of this ordinance to the contrary, the Corporation may not finance the acquisition or construction of electric facilities with the proceeds of a tax-exempt obligation unless such electric facilities are located within the geographic boundaries of, or have a substantial connection with, the City.
- B. Before tax-exempt obligations may be issued to acquire or construct electric facilities, the City shall first adopt a resolution stating that it will accept title to the electric facilities financed by such tax-exempt obligations, including any additions to such electric facilities, when the tax-exempt obligations financing such electric facilities are discharged.

- C. The tax-exempt obligations of the Corporation are issued on behalf of the City and unencumbered fee title to the electric facilities (including any additions to such electric facilities) and exclusive possession and use of the electric facilities (including any additions to such electric facilities) shall vest solely in the City without demand or further action on the City's part when the tax-exempt obligations financing such electric facilities are discharged. Tax-exempt obligations are discharged when
1. cash is available at the place of payment on the date that the tax-exempt obligations are due (whether at maturity or upon prior call for redemption) and
 2. interest ceases to accrue on the tax-exempt obligations.
- D. The City shall have the right at any time to obtain unencumbered fee title and exclusive possession of all electric facilities financed by the tax-exempt obligations, and any additions to such electric facilities, by
1. placing into escrow an amount that will be sufficient to defease the tax-exempt obligations financing such electric facilities, and
 2. paying reasonable costs incident to the defeasance.

However, the City, at any time before it defeases such tax-exempt obligations, shall not agree or otherwise be obligated to convey any interest in the financed electric facilities to any person (including the United States of America or its agencies or instrumentalities) for any period extending beyond or beginning after the City defeases such tax-exempt obligations. In addition, except as may be provided in an ordinance approving a particular issue of tax-exempt obligations, the City shall not agree or otherwise be obligated to convey a fee interest in the electric facilities financed with any tax-exempt obligation issued by the Corporation to any person before the defeasance or within 90 days after the City defeases the tax-exempt obligations financing such electric facilities.

5.20.110. Transitional Provisions. The City Manager (or his designee) is hereby authorized and directed to assign and transfer to the Corporation (insofar as is practicable and at such time and in such manner as he shall determine) all licenses, permits, contracts, agreements and other instruments heretofore entered into by the City in connection with or relating to the municipal electric utility.

5.20.120. Removal of Directors; Sale or Dissolution of Corporation. A vote of four-fifths of the members of the City Commission shall be required in order to: (i) remove any Director of the Corporation; (ii) approve the dissolution of the Corporation; (iii) approve the sale of all or a substantial portion of the assets of the Corporation; or (iv) approve an amendment to this Ordinance that reduces the aforesaid number of members of the City Commission required for vote to take any of the actions described in (i) through (iii) of this Section.