

AN ORDINANCE TO ADD CHAPTER 35 (SUSTAINABLE ENERGY UTILITY) TO TITLE II (UTILITIES AND SERVICES) OF THE CODE OF THE CITY OF ANN ARBOR

The City of Ann Arbor ordains:

Section 1: That Chapter 35 of Title II of the Code of the City of Ann Arbor be added as follows:

**CHAPTER 35 – SUSTAINABLE ENERGY UTILITY**

**2:400. – Title.**

This Chapter shall be known as the "Sustainable Energy Utility Ordinance" of the City of Ann Arbor.

**2:401. – Purpose.**

- (1) Pursuant to Section 15.10 of the City Charter, this Chapter establishes the City of Ann Arbor’s Sustainable Energy Utility (“A2SEU”) for the purpose of providing an opt-in, fee-based, supplemental, municipally-owned energy utility that provides 100% renewably-sourced electricity, heat, cooling, light, and power, as well as other energy-related services, at participating homes, businesses, and other properties in the City.
- (2) This Chapter establishes standards, rules, and regulations with respect to the A2SEU; permits the establishment and collection of just and equitable rates and charges to fund the A2SEU; provides for credits, adjustments, exemptions, and appeals; establishes procedures for billing, collections, and liens; establishes the A2SEU Enterprise Fund, dedicated to exclusively accounting for the revenue and expenses of the A2SEU; and prescribes the powers and duties of certain municipal agencies, departments, and officials with regard to the A2SEU.

**2:402. – Definitions.**

For the purposes of this Chapter, the following terms shall have the meanings respectively ascribed to them by this section:

- (1) *A2SEU Enterprise Fund* means the fund established to separately account for the operations of the A2SEU, including its revenues and expenditures, with the intent that the costs of operating and maintaining the A2SEU and providing its offered services be recovered primarily through customer charges.
- (2) *Beneficial electrification* means actions to replace fossil fuel use with electricity in a way that reduces greenhouse gas emissions and energy costs.
- (3) *Charges* means the rates, fees, rentals, and all other charges for furnishing an A2SEU service including all repairs, maintenance, and alterations necessary to

furnish such service, which are authorized under the terms of service with the customer and which the City determines to be the responsibility of the service customer.

(4) *Director* means the director of the A2SEU.

(5) *Renewable energy* means energy derived from a sustainable resource that naturally replenishes over a human, not a geological, time frame, including energy derived from the following sources:

- a. Solar photovoltaic;
- b. Thermal inertia (e.g., networked geothermal systems, ground source heat pumps, or air source heat pumps); and
- c. Other sources identified in the A2SEU regulations adopted by the Director pursuant to Section 2:406.

#### **2:403. – Establishment of a Municipal Sustainable Energy Utility.**

The Ann Arbor Sustainable Energy Utility (“A2SEU”) is hereby established as a municipal utility of the City for the provision of electricity, heat, cooling, light, and power, as well as other energy-related services, within the boundaries of the City. The A2SEU, having been created, is hereby continued.

#### **2:404. – Operation of the A2SEU.**

(1) Operation of the A2SEU shall include those activities necessary to promote public health, safety, and welfare by providing 100% renewable energy, energy storage, beneficial electrification, and energy efficiency services that fulfill the requirements of the City of Ann Arbor as specified in this Chapter, including but not limited to the following:

- a. Planning, engineering, acquisition, construction, operation, maintenance, and installation of infrastructure necessary to provide such services.
- b. Acquiring, constructing, improving, enlarging, repairing, enhancing, replacing, financing, operating, and maintaining A2SEU facilities and infrastructure, together with such indirect and overhead costs which are fairly chargeable to such activities pursuant to accepted accounting principles and practices applicable to the local unit of government, including practices required under the Uniform Budgeting and Accounting Act, 1968 PA 2, as amended MCL 141.421 through 141.440a, and the rules and regulations promulgated thereunder.
- c. Undertaking activities required to comply with federal and state law and regulations.

- d. Providing public education, information, and/or outreach related to the A2SEU or required by federal or state regulations or required by permits issued to the local unit of government by federal or state regulatory bodies.
- (2) The title of all grounds and rights in real or personal property held, purchased, or otherwise secured by or on behalf of the A2SEU, shall be taken in the name of the City of Ann Arbor; and said energy services, and everything pertaining thereto, shall be the property of the City, and all contracts and purchases made by or on behalf of the A2SEU, shall be in the name of the City.

**2:405. – A2SEU Department and Governance.**

- (1) The A2SEU shall be a department of the City government. The A2SEU Department is hereby established.
- (2) The A2SEU Department shall be governed by a Director appointed by the City Administrator. The Director shall be charged and entrusted with the duty, power, and responsibility to:
- a. Plan the establishment of, improvements to, additions to, extensions of, and operation and maintenance of all public works and services of the City relating to the activities of the A2SEU. Such planning shall be done in coordination with the Public Services Administration and the Office of Sustainability and Innovations to allow for alignment with other City efforts when prudent;
  - b. Annually provide a report to the City Administrator that presents an analysis of the status and needs of the A2SEU and the recommendations of the Director with respect thereto; and
  - c. File all regulatory reports for the A2SEU mandated by federal and state bodies, including but not limited to the Federal Energy Regulatory Commission (and contractors thereto), the U.S. Department of Energy, the U.S. Energy Information Administration, and the Michigan Public Service Commission.
- (3) The City Administrator, after consultation with the City Attorney, shall issue a report to the City Council regarding the long-term recommended governance structure of the A2SEU. Such report shall be made on or before the earliest of the following three dates:
- a. Nine months after the first month in which there is a collection of revenue from customers for at least 20 megawatts of energy services;
  - b. Nine months after the first month in which there is a collection of revenue from at least 100 customers for networked geothermal services; or

c. December 30, 2028.

- (4) Any changes to the governance structure of the A2SEU shall be made by ordinance amending this Chapter.

**2:406. – Regulations.**

The Director shall adopt regulations implementing this Chapter. The Director must obtain the consent of the Director of the Office of Sustainability and Innovations before adopting any regulations that make changes or additions to the definition of renewable energy under this Chapter. The regulations shall take effect 30 days after being filed with the City Clerk unless modified or disapproved by the City Council. Regulations which are modified by the City Council take effect 30 days after modification.

**2:407. – A2SEU Enterprise Fund.**

- (1) An A2SEU Enterprise Fund is hereby established. The Director is authorized to establish or rename any other funds and accounts required by lenders or state law in connection with the financing or refinancing of improvements related to the A2SEU.
- (2) All receipts, revenues, and funds from any source derived from all activities of the A2SEU shall be deposited in the A2SEU Enterprise Fund, with accounting provided to the Director. The A2SEU Enterprise Fund shall take into consideration and preserve, for the use for which the same were set aside and accumulated, all funds of the City which stood to the credit of the A2SEU at the time that this ordinance became effective. The City shall also delineate all monies provided by other City departments to support the initial activities of the A2SEU after the effective date of this ordinance.
- (3) The receipts from the operation of the A2SEU and income from its investments shall be applied to the purposes thereof, in accordance with budget appropriations, including the payment of bonds outstanding or which may be issued for the purposes of the A2SEU and the interest thereon.
- (4) No part of the funds held in the A2SEU Enterprise Fund may be transferred to the general operating fund or used for any purpose other than undertaking, implementing, and maintaining and operating the A2SEU. This provision shall not be read to prohibit the A2SEU from paying the City for the value of services rendered to the A2SEU by the City.
- (5) The books and records of the A2SEU shall be maintained in accordance with generally accepted accounting principles, and the A2SEU Enterprise Fund shall be administered in accordance with state law and any other restrictions imposed by a funding source.

**2:408. – A2SEU rates and charges.**

- (1) The Director shall recommend to the City Council rates and other charges for the provision of A2SEU services.
- (2) The City Council shall fix the rates and charges for all A2SEU services.
- (3) Rates and charges shall be fair, reasonable, and compensatory and shall be uniform for all customers within the same class. Different rate schedules may be applied to different classes of customers.
- (4) Rates and charges shall be sufficient to pay all operating and maintenance expenses of the A2SEU, as well as all principal, interest, redemption costs, or other charges for authorized indebtedness for A2SEU operations.

**2:409. – Billing and Collection; Deposits.**

- (1) Billing for all A2SEU services shall be the responsibility of the Director, including determining the frequency of billing. The A2SEU may contract with other entities, including other City departments, for billing services.
- (2) The A2SEU Department is hereby authorized to enforce the payment of charges for any A2SEU service to any premises by discontinuing the applicable service to the premises. The City may also institute a civil action against a customer for payment.
- (3) Where an A2SEU service to any premises is turned off to enforce the payment of delinquent charges, such service shall not be resumed until all delinquent charges have been paid, including any turn-on charges.
- (4) Except as limited by state law, the City shall have as security for the collection of all charges for A2SEU services, as authorized by the Revenue Bond Act of 1933, as amended, a lien upon the premises to which such services were supplied. Such lien shall become effective immediately upon the distribution or supplying of any A2SEU service to such premises.
- (5) The Chief Financial Officer shall from time to time report to the City Council all unpaid charges for services furnished to any premises which on the last day of the month preceding the date of the report to the City Council have remained unpaid for a period of 6 months. The City Council shall thereupon assess the amount so found to be due as a tax against each lot or tax parcel for which charges have not been paid in full. As many lot or tax parcels may be included in a single resolution as shall be convenient. Immediately after the adoption of the resolution, the City Clerk shall give notice to the lot or tax parcel owners. The notice shall be sent by

first class mail to the last known address of the person as shown on the assessment roll of the City, or by publication. The notice shall state the basis of the assessment and the amount, and shall give a reasonable time, not less than 30 days, within which payment must be made to the Treasurer. The notice shall include notice that failure to pay within the time set will result in a penalty of 10% of the amounts due. In all cases where payment is not made within the time set, the fact shall be reported by the City Treasurer to the City Assessor who shall place the same, together with a penalty of 10% of the amounts, on the next tax roll of the City. Charges so assessed shall be collected in the same manner as general City taxes.

- (6) In cases where the City is properly notified in accordance with applicable statutory provisions, that a tenant is responsible for unpaid A2SEU service charges, no such service shall be commenced or continued to the premises until there has been deposited with the A2SEU Department, a sum sufficient to cover twice the average quarterly bill for such premises as estimated by the Director.
- (7) A deposit may also be required by the Director in cases where the person applying for services has a delinquent A2SEU account owing or has had A2SEU services shut off in the last 180 days because of non-payment at another location. Such deposits shall be applied against any delinquent A2SEU service charges. If the application thereof satisfies the delinquency, such service shall not be discontinued.
- (8) No deposit shall bear interest and the deposit, or any remaining balance thereof shall be returned to the customer making the same, when the customer shall discontinue receiving service from the A2SEU or, except as to tenants as to whom notice of responsibility for such charges has been filed with the City, when any four (4) successive bills shall have been paid by that customer with no delinquency. Nothing in this section shall be read to prohibit the Director from recommending or implementing a rate structure in which an optional deposit allows for a lower rate for an A2SEU service.
- (9) The remedies provided in this section shall be cumulative together with all other remedies under state or common law and this Code.

#### **2:410. – Conditions of Service.**

- (1) All A2SEU customers shall be subject to the terms and conditions contained in their service agreements, as well as all rules and regulations heretofore or hereafter adopted or promulgated by the City, including the regulations adopted by the Director pursuant to Section 2:406, and all applicable ordinances (or provisions thereof) which may now or hereafter be in force.
- (2) An A2SEU customer shall not tamper with any A2SEU equipment. Nor shall any A2SEU customer install or have installed any device that impacts an A2SEU meter, metering system, or communication system. This section shall supplement

and not be in lieu of any provision of state law, including but not limited to MCL 750.282.

**2:411. – Public Emergency.**

Nothing in this ordinance shall negate or disrupt the City’s right to sever, disrupt, dig up, or otherwise destroy facilities owned by the City or used by the A2SEU, or used by the A2SEU’s customers, without any prior notice, if such action is deemed necessary by the A2SEU Director, the Public Services Area Administrator, the Fire Chief, the Police Chief, or the City Administrator because of a public emergency. A public emergency means any condition which, in the opinion of any of the officials named in this section, poses an immediate threat to the lives or property of the residents of the City, caused by any natural or man-made disaster, including but not limited to a storm, flood, fire, accident, explosion, major water main break, hazardous material spill, cyber attack, or act of terrorism. The A2SEU Department shall be responsible for repair, at its sole expense, of any A2SEU facilities damaged pursuant to any such action taken by the City.

**2:412. – Penalties.**

- (1) Violation of Section 2:410(2) is a misdemeanor and, upon conviction, a violator shall be punished by a fine of not more than \$500.00 and the costs of prosecution or by imprisonment for not more than 90 days, or by both. Each act or violation and each day, or portion thereof, a violation occurs is a separate violation.
- (2) Violation of any other provision of this Chapter or any regulation issued pursuant to this Chapter is a civil infraction subject to a fine of not more than \$500.00 plus court costs and costs of prosecution and equitable remedies as may be ordered by the court. Each act or violation and each day, or portion thereof, a violation occurs is a separate violation.
- (3) Violations of this Chapter may be enforced by the Community Services Area, Public Services Area, the Office of Sustainability and Innovations, or Community Standards.

Section 2. Effective Date. This ordinance shall take effect and be in force on and after ten days from publication thereof as provided for in the Charter of the City of Ann Arbor.