

ORDINANCE NO. 2011-04

AN ORDINANCE ADDING A NEW ARTICLE 13.1200, "ELECTRIC SYSTEM PRO RATA" TO THE CODE OF ORDINANCES, ESTABLISHING A SYSTEM FOR SECURING THE CONSTRUCTION AND FINANCING OF ELECTRIC IMPROVEMENTS WITHIN THE CORPORATE LIMITS OF THE CITY OF BRIDGEPORT AND ITS EXTRATERRITORIAL JURISDICTION; PROVIDING FOR A PRO RATA AND OVERSIZING COST REIMBURSEMENT PROGRAM; DEFINING TERMS; ESTABLISHING PROCEDURES AND RESPONSIBILITIES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City of Bridgeport is a Type A general law municipality located in Wise County, created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

**WHEREAS**, the City Council of the City of Bridgeport has determined that a system should be established regulating the procedure under which electric distribution lines and other improvements are extended into the various service areas located within the corporate limits of the City and its extraterritorial jurisdiction and establishing a procedure for the payment of costs associated with these extensions; and

**WHEREAS**, the City Council of the City of Bridgeport finds that this ordinance will meet a legitimate public need, clarify responsibilities of property owners and developers, and serve to protect the public health, safety and welfare as well as fulfill the purposes of Chapter 212 of the Local Government Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIDGEPORT, TEXAS:**

**SECTION 1**

Chapter 13 "Utilities" of the Bridgeport Code is hereby amended by adding a new Article 13.1200 to read as follows:

**"ARTICLE 13.1200  
ELECTRIC SYSTEM PRO RATA**

**Sec. 13.1201. Definitions.**

As used in this article, the following terms shall have the respective meanings ascribed to them. Words and terms used in this article, but not defined in this article shall have the meaning ascribed to them in the subdivision ordinance. Words and terms defined in both ordinances shall be read in harmony unless there exists an irreconcilable conflict in which case the definition contained in this article shall control.

**City** means the City of Bridgeport, Texas.

**Developer** means the owner of land proposed to be developed, or the person or entity filing an application for development of land, or their representatives.

**Development** means any activity that requires the submission of a subdivision plat (excluding a one-lot replat), development plan, or the securing of a building permit.

**Escrow** means money placed in the possession of the City to accomplish the purposes set out in this article, including, but not limited to, the following: purchase of right-of-way and the design and construction of public utilities and streets.

### **Sec. 13.1202. Purpose.**

The purpose of this article is to provide for the orderly, safe, and healthy development of the area both within the City and within its extraterritorial jurisdiction and to promote the health, safety, and general welfare of the community. It is also the purpose of this article to establish responsibilities for the extension of electric distribution lines and other electric utility improvements into the various service areas located within the City limits of the City and its extraterritorial jurisdiction, to provide a procedure for acquiring necessary easements and rights-of-way, and to establish responsibilities for paying for the cost of constructing the electric improvements, preparing the engineering and survey work necessary to design and install the electric improvements and the cost of inspecting any and all construction undertaken pursuant to this article. This article is designed to be used in conjunction with the subdivision ordinance to ensure an orderly development plan for the growth of the community, and to ensure the creation and effective operation of a utility infrastructure appropriate in size and character to support reasonable levels of development within the community.

### **Sec. 13.1203. Basic policy.**

(a) Subdivisions within the City and its extraterritorial jurisdiction within the City's Certificated Service Area shall be provided with an approved electric utility service system.

(b) The developer shall pay all costs attributable to the installation of electric facilities as are needed to fulfill the basic criteria requirements of the City for service within the subdivision, as determined by the City's electric distribution line extension policy.

(c) The construction of all electric utility system infrastructure for a subdivision shall be covered by a written agreement prepared or approved by the City Attorney which clearly defines the scope and details of the proposed improvements and particularly contains the developer's agreement to abide by all regulations of the City and to deliver to the City clear and unencumbered title to all the proposed improvements at the time of acceptance by the City, which must be prior to commencing service.

(d) Electric utility system extensions will be made in conformance with the City's adopted capital improvement program and are projected to occur over many years based upon the fiscal capability of the City and the growth characteristics of each area of the City.

**Sec. 13.1204. Platting required.**

It shall be unlawful for any person to provide electric service to any lot or tract of land or any part thereof unless and until a plat of such lot or tract of land meeting the platting requirements of the City, has been approved by the Planning and Zoning Commission and City Council and has been filed for record with Wise County. Before consideration of a final plat by the Planning and Zoning Commission and City Council, the developer of the tract or subdivision shall submit to the Director of Utility Services or the City Engineer for his approval a map or plat showing the location of electric distribution lines which will be required to ensure adequate service for the lots specified in the proposed tract or subdivision.

**Sec. 13.1205. Extension of electric service by developer.**

(a) In the event that a development proposal is submitted which will require the use of the City's electric utility system, and no such public system has yet been extended into the area where the proposed development is located, it will be the responsibility of the developer to comply with the terms and conditions of this article and the City's electric distribution line extension policy in order to ensure the immediate availability of electric service.

(b) It is, and shall remain, the responsibility of each individual developer to coordinate with the City those construction activities necessary to tie his or her development project into the electric distribution line serving that specific service area. In order to promote economic development, the City may participate in construction of electric distribution lines, provided that the City may share in pro rata reimbursement described in Section 13.1209.

**Sec. 13.1206. Determination of system availability.**

(a) When a developer plans to undertake a specific development project within the City or its extraterritorial jurisdiction and the development will require service through the City's electric utility system, it will be the responsibility of the developer to contact the City Engineer to determine system availability. The developer will advise the City Engineer in writing of the specific location of his development, the total size of the development in acreage, living units and/or square feet of commercial or industrial space, the type of development and land use to occur within the subdivision, and the approximate time when electric utilities will be required. The information may be incorporated into a preliminary plat or development plan application submitted to the City Engineer.

(b) The City Engineer shall review the City's current electric utility system and determine whether service is currently available to the development. If service is available through an existing distribution line, the City Engineer shall identify the point on that line where the development will be permitted connect to the system and will advise the developer in writing of the location where a connection will be permitted. The City Engineer shall support such written notice with such map exhibits as are necessary to clearly delineate the point of connection.

(c) In the event that a connection to an existing distribution line is possible, the City Administrator will determine if the line has been installed by the City as a portion of its capital improvement program or whether it was installed by a prior developer under the distribution line extension policy of the City. In the event that the distribution line was installed by the City as a portion of its capital improvement program, the developer will be advised that there will be no pro rata reimbursement charge to connect to the distribution line. The developer will be responsible for the entire cost of the service line connecting his development to the distribution line.

(d) If the distribution line or a portion of the electric system serving the development was installed by a prior developer under the distribution line extension policy of the City, the City Engineer will advise the developer of his pro rata share of costs for connection to this line. The developer shall pay the pro rata charge into the pro rata escrow account of the City prior to making a connection to the system.

### **Sec. 13.1207. Construction of electric distribution lines.**

If the City Engineer should determine that electric utility service to a proposed development is not available at the present time, the developer will be so advised in writing. In this situation, the developer must select among the following alternatives:

(1) Discontinue his proposed development until such time as an electric distribution line has been installed within the service area;

(2) Petition the City Council to expedite the construction of an electric distribution line capable of serving the proposed development under its regular capital improvement program; or

(3) Install the necessary electric distribution line(s) to the point necessary to serve the development. The developer will be responsible for all costs associated with the installation of necessary electric distribution line(s), including but not limited to engineering, attorneys fees, surveying, testing, easement preparation, easement acquisition, construction and inspection, in accordance with the City's electric distribution line extension policy. The electric utilities will be designed and constructed to city standards and specifications as the City Engineer determines to be applicable. The developer shall contract with the City for the construction of the electric utilities by the City. All financial arrangements shall be completed prior to the execution of a developer agreement. In the event that a developer elects to pursue this alternative, he will be eligible to receive a pro rata reimbursement, for a period of ten (10) years, from future developers who tie into these specific electric utilities.

### **Sec. 13.1208. Ownership and maintenance.**

All electric utility systems constructed within dedicated public right-of-way in connection with the development shall be and shall remain the property of the City and shall be maintained by the City.

### **Sec. 13.1209. Pro rata cost allocation where electric utilities are financed by initial developer.**

(a) If an electric utility system or distribution line is installed within a service area by a developer, each subsequent development within the service area which ties into such electric utility system shall pay a pro rata share of the cost of the electric utility system installed by the initial developer. The pro rata fee shall be paid prior to connection to the electric utility system. The pro rata fee for each subsequent development seeking service shall be determined on a cost per acre basis by calculating the proportional area of the new development to the total area within the service area served by such electric utility system, multiplied by the total cost of such electric utility system installed by the initial developer. Total cost of the utilities shall include construction, engineering, attorney's fees, surveying, testing, easement preparation, easement acquisition, and inspection costs.

(b) Provided the City collects the funds, each initial developer shall be entitled to a rebate of the pro rata charge against subsequent developers for a period of ten (10) years following completion and acceptance of the electric utilities, or until the initial developer has been paid all allowable reimbursable charges, whichever occurs first. At the expiration of the tenth year, the developer will no longer be entitled to receive any reimbursement.

### **Sec. 13.1210. Management of escrow account.**

(a) The City shall establish an escrow account in the electric fund for the deposit of all pro rata payments made by subsequent developers. A separate escrow account shall be established for each electric utility system constructed by an initial developer. All pro rata fees received from subsequent developments or subdivisions in that service area shall be deposited into that specific escrow account.

(b) A minimum of twice each year, on January 30 and on July 31, the Director of Financial Services, or the person designated by the City Administrator, shall inventory each escrow account to determine what percentage of those monies is allocable to reimbursable oversizing costs for future carrying capacity owed by the City as determined under Section 13.1211, below. This allocation shall be determined in the same proportion that the cost of the oversized distribution line or system improvement bears to the cost of the line size that is necessary to serve the development. For other electric utility system improvements, the allocation shall be determined in the same proportion that the cost of the oversized improvements bears to the cost of the minimum improvements required by City ordinances to serve the development, as determined by the City Engineer. Upon completion of such inventory, the Director of Financial Services, or designated person, shall transmit all escrow funds due and owing to the

initial developer. Upon payment of these funds, the City will receive a credit for the amount of money allocable toward its reimbursable oversizing requirements as set forth in Section 13.1211, below.

(c) The developer shall be responsible for providing to the City, and maintaining with the City, an accurate current address. When escrowed funds are available for disbursement, the City shall notify the developer at the address on file with the City. If the developer fails to withdraw the funds within six (6) months, the funds shall be forfeited to the City's electric fund.

(d) At no time shall the developer be entitled to receive reimbursement for a sum greater than the initial cost of the electric utilities less the pro rata share of capacity of that utility system that would have been attributable to the initial development for its proportionate share of capacity in the system.

### **Sec. 13.1211. Future Carrying Capacity.**

In order to provide appropriate capacity for reasonably anticipated development in a service area, the City Engineer, with the approval of the City Council, may require a developer to install an electric distribution line or system improvement larger than necessary to support the developer's specific development. In the event that the City Engineer, with the approval of the City Council, requires the installation of an electric distribution line or system improvement larger than required to serve the development, the developer installing the line or improvement will be reimbursed by the City for the difference in cost between the size of the line required by the City Engineer and the line size or system improvement required to serve the development. The size of the facilities required to serve the development shall be determined by the City Engineer. The City may compensate the developer for the difference in cost mandated by oversizing through the process of allowing the developer credits of up to fifty (50) percent of all development fees charged against any portion or phase of the development. Upon written request of the developer, credit for development fees may be transferred from the current development project to subsequent development projects, subdivisions or phases undertaken by the developer."

## **SECTION 2**

This Ordinance shall be cumulative of all provisions of ordinances and of the Bridgeport Code of Ordinances, as amended, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

**SECTION 3**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 4**

All rights and remedies of the City of Bridgeport are expressly saved as to any and all violations of the provisions of any ordinances regarding the electric system pro rata program as of the effective date of this ordinance; and any accrued violations, or pending litigation, both civil and criminal, whether pending in court or not under such ordinances, shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

**SECTION 5**

This ordinance shall be in full force and effect from and after its passage, and it is so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF BRIDGEPORT, TEXAS, BY A VOTE OF 4 TO 0, ON THIS THE 1<sup>st</sup> DAY OF March, 2011.**

**APPROVED:**



**Keith McComis, Mayor**

**ATTEST:**



**Jessica McEachern, City Secretary**

