

ORDINANCE NO. 18-_____

AN ORDINANCE AMENDING ARTICLE 1 (GENERAL PROVISIONS) OF CHAPTER 12 (UTILITIES) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO COLORADO SPRINGS UTILITIES

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Article 1 (General Provisions) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

- 12.1.101: DEFINITIONS:
- 12.1.102: LEGISLATIVE FINDINGS:
- 12.1.103: ENTERPRISE STATUS:
- 12.1.104: DELEGATION OF AUTHORITY:
- 12.1.105: UTILITIES ~~POLICY~~ GOVERNANCE:
- 12.1.106: DELEGATION OF AUTHORITY TO THE ~~EXECUTIVE DIRECTOR~~ **CHIEF EXECUTIVE OFFICER** AND STAFF:
- 12.1.107: AUTHORITIES, POWERS AND DUTIES OF UTILITIES CHIEF EXECUTIVE OFFICER**
- 12.1.107~~8~~: REGULATION OF ELECTRIC, STREETLIGHT, NATURAL GAS, WATER AND WASTEWATER RATES, CHARGES AND REGULATIONS:
- 12.1.108~~9~~: UTILITIES CONTRACTS:
- 12.1.109~~10~~: ADOPTION OF ~~REGULATIONS~~ **UTILITIES ENTERPRISE POLICIES AND SERVICE STANDARDS:**
- 12.1.110~~1~~: EXCLUSIVITY:
- 12.1.111~~2~~: USER CHARGES FOR UTILITY SERVICES:
- 12.1.112~~3~~: COLLECTION OF CHARGES AND REMEDIES:
- 12.1.113~~4~~: UTILITIES DIVERSION:
- 12.1.114~~5~~: ABATEMENT OF IMMINENT HAZARDS:
- 12.1.115~~6~~: SPECIAL CONTRACT SERVICE:
- 12.1.116~~7~~: EMERGENCY CURTAILMENT OF UTILITY SERVICE:
- 12.1.117~~8~~: REVOCABLE PERMITS:
- 12.1.118~~9~~: ESTABLISHMENT OF EXCLUSIVE WATER AND WASTEWATER SERVICE TERRITORIES OUTSIDE CITY LIMITS:

12.1.101: DEFINITIONS:

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~~ADMINISTRATIVE REGULATION: A regulation promulgated by the Executive Director for internal administration of the Utilities.~~

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CHIEF EXECUTIVE OFFICER: The Chief Executive Officer of Colorado Springs Utilities employed by the Utilities Board pursuant to City Charter section 6-10, or the Chief Executive Officer's designee.

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~~EXECUTIVE DIRECTOR: The Executive Director of Colorado Springs Utilities or the Director's designee. The Director shall have the duties and responsibilities of the Chief Executive Officer.~~

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~~QUALITY BY DESIGN PROCESS DOCUMENT: A regulation promulgated by the Executive Director as authorized by subsection 12.1.109A of this article.~~

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SERVICE STANDARDS AND SPECIFICATIONS: A regulation promulgated by the ~~Executive Director or Department Director~~ **CHIEF EXECUTIVE OFFICER OR THE CHIEF EXECUTIVE OFFICER'S DESIGNEE** as authorized by subsection 12.1.109~~10~~**10B** of this article.

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UTILITIES ENTERPRISE POLICIES: Regulations promulgated by the Chief Executive Officer for internal administration of Utilities as authorized by subsection 12.1.110A of this article.

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12.1.102: LEGISLATIVE FINDINGS:

A. Article XX of the Colorado Constitution establishes the process for creating home rule cities and provides that home rule cities may own and operate ~~u~~Utilities within and without territorial limits.

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D. The City Charter directs the City Council to sit as the Board of Directors for Utilities. Council recognizes that ~~its service~~ in its capacity as Utilities Board **it conducts all business in full compliance with applicable legal, statutory, and regulatory requirements.** ~~is different from its legislative and regulatory capacities as Council because as the Utilities Board it has fiduciary responsibilities consistent~~

with the City Charter to protect and enhance the value of Utilities for benefit of the citizen owners. Further, the Utilities Board must assure the operation of Utilities in accord with sound business principles and in a manner which adds to the quality of life in the City of Colorado Springs and the other communities in which Utilities has operations. **in this capacity, it must govern Colorado Springs Utilities in accord with sound business principles, in a manner that supports long-term sustainability of the enterprise and maximizes value to the citizens.**

~~E. The electric and natural gas industries are now in transition from monopolies to competitive markets, and competitors are already positioning themselves for competition with Utilities within the City of Colorado Springs and its traditional service territories. The operation of water and wastewater facilities is also becoming subject to competitive forces including private providers of contract management services. In order to remain competitive and to protect the value of the Utilities enterprise, Council recognizes that there is a need for a more effective and responsive overall decision making process for Utilities' operations.~~

FE. Council further finds that ~~the Utilities Board~~ **it** will best be able to carry out its fiduciary responsibilities for **exercising its power and authority for the governance of Utilities by directing the adoption of a governance manual for Utilities as provided in this chapter. The governance manual requires the Utilities Board to excel at the primary obligations of governance for the organization to meet its Board-directed mission and customer-focused performance expectations.** ~~Utilities by Council's delegating to the Utilities Board as much power and authority as is legally possible for the governance, management and operation of Utilities and by directing the adoption of a new governance process for Utilities as provided in this chapter. This governance process requires the Utilities Board to focus on creating a link with the citizen owners of CSU, to establish and maintain written policies defining strategic goals for Utilities, to delegate overall responsibility for management of Utilities to the Executive Director, and to adopt effective policies for governing the management and operation of Utilities by the Executive Director. Further, the Utilities Board will adopt and maintain written policies within four (4) categories: Utilities Board governance; ends policies; Board-Executive Director relations and executive limitations.~~

~~G. This chapter and the corresponding "housekeeping" revisions to the remainder of this Code are intended to establish and to recognize a new governance process whereby the Utilities Board, among other things, will designate the ends to be achieved by Utilities and will define executive limitations which restrict the Executive Director with the intent of delegating to the Executive Director a broad range of discretion to make reasonable interpretations of the Utilities Board's policies in operational decision making necessary for management and operation of the Utilities as a competitive enterprise.~~

HF. In adopting this approach, the Council intends that **as the Utilities Board it will work with the Chief Executive Officer in partnership to achieve excellence in governance to attain long-term organizational sustainability. The Utilities Board and the Chief Executive Officer work jointly to set the strategic direction and vision for the enterprise. The Utilities Board shall establish a clear distinction between its duties, responsibilities and authorities and the Chief Executive Officer's responsibilities and authorities through formal, written governance policies. The Utilities Board shall respect the exclusive authority of the Chief Executive Officer to lead the enterprise. To the maximum extent legally possible and guided by the Utilities Board governance policies, the Chief Executive Officer is authorized to make decisions, take actions, establish processes and procedures, implement plans and work on behalf of the enterprise with customers, elected officials, government agencies, stakeholders and the public to meet the Utilities Board's strategic focus and Board Expected Results. The Chief Executive Officer shall support the Utilities Board by implementing its direction and decisions and assisting the Utilities Board in obtaining sufficient information and knowledge to meet their joint responsibilities.** ~~the Utilities Board will establish the policies to reflect the collective values of the Utilities Board in governing utilities. These collective values are that Utilities provide economic and reliable services; that Utilities customers have open, honest and satisfactory relations with Utilities; that there be fair and accurate assessment of the performance of the Executive Director, and that the Executive Director and the Executive Director's staff be empowered to exercise reasonable judgment and discretion in carrying out their responsibilities.~~

12.1.103: ENTERPRISE STATUS:

The Utilities Board shall govern and the ~~Executive Director~~ **Chief Executive Officer** shall manage and operate Utilities consistent with the requirements of the City Charter and the Colorado Constitution for an enterprise.

12.1.104: DELEGATION OF AUTHORITY:

Except for the matters expressly provided herein, Council hereby delegates all of its authority over the management and operation of the Utilities to the Utilities Board with the intent that the Utilities Board be empowered to exercise authority, judgment and discretion over Utilities to the fullest extent legally possible. This delegation of authority does not include authority to pass ordinances, issue revenue bonds, institute eminent domain proceedings, appropriate funds or adopt annual budgets, approve intergovernmental agreements, adopt or change tariffs for regulated products and services, **create advisory boards in accordance with the City Charter, approve the sale, conveyance or lease of a substantial part of Utilities systems and water rights with an affirmative vote of a supermajority of sixty percent (60%) of the electors of the City voting upon that question in accordance with the City Charter,** or to take any action expressly required of the Council in its legislative capacity by

the Colorado Constitution, the City Charter, or other controlling law. Without limiting the foregoing general delegation of authority, this delegation specifically includes **administrative** authority for the Utilities Board to hire, evaluate and terminate services of **a Chief Executive Officer and set the salary of the Chief Executive Officer by motion, appoint Utilities Policy Advisory Committee members and customer advisory group members, approve the sale, conveyance or lease of Utilities property and water rights that are not a substantial part of a Utilities system consistent with Charter Sec. 6-80, and appoint directors and representatives to authorities, partnerships, joint ventures, and similar entities in which Utilities participates.** ~~an Executive Director.~~ Within all areas of this delegated authority, any action, decision or determination of the Utilities Board shall carry the same legal authority, weight and effect as if that action, decision or determination had been made by City Council in its legislative capacity.

12.1.105: UTILITIES POLICY GOVERNANCE:

The Utilities Board shall govern ~~the management and operation of Utilities by~~ adopting written **governance policies, including policies on Utilities Board duties, responsibilities, authorities, commitments and practices, Utilities Board/Chief Executive Officer partnership expectations, Chief Executive Officer responsibilities and authorities, Board expected results, and Board instructions to the Chief Executive Officer, and guidelines for the Chief Executive Officer. The intent of the policies shall be to reserve to the Utilities Board the functions of establishing overall governance policies.** ~~Utilities Board policies in four (4) categories: Utilities Board ends; Board CEO linkage; executive limitations and governance process policies. The intent of the policies shall be to reserve to the Utilities Board the functions of establishing overall governance policies, determining organizational ends policies, evaluating Executive Director performance and establishing necessary links to the ownership of CSU. The Utilities Board may adopt and revise the Utilities Board policies as they determine are necessary or prudent to carry out their fiduciary duties and the intent expressed. Further, the Utilities Board may adopt bylaws governing its meeting and agenda procedures and other pertinent matters.~~

12.1.106: DELEGATION OF AUTHORITY TO THE ~~EXECUTIVE DIRECTOR~~ **CHIEF EXECUTIVE OFFICER** AND STAFF:

To the maximum extent legally possible, the Utilities Board, in its discretion, is empowered to delegate its authority for the management and operation of Utilities as an enterprise to the ~~Executive Director~~ **Chief Executive Officer** ~~by~~**through the adoption of** written Utilities Board **governance** policies. In turn, the ~~Executive Director~~ **Chief Executive Officer** is authorized, in the ~~Executive Director's~~ **Chief Executive Officer's** discretion, to provide for the management and operation of Utilities by creating ~~departments~~**divisions** or other operational units and to delegate the ~~Executive Director's~~ **Chief Executive Officer's** authority

to staff reporting to the ~~Executive Director~~ **Chief Executive Officer** by written administrative regulations **Utilities Enterprise Policies**.

12.1.107: AUTHORITIES, POWERS AND DUTIES OF UTILITIES CHIEF EXECUTIVE OFFICER:

In addition to any other powers or duties conferred by the City Charter, this Code, other statutes, Utilities Board governance policies, ordinances, rules or regulations, the Utilities Chief Executive Officer shall have the authority to:

- A. Execute all business contracts entered into by Utilities and all other contracts and agreements.
- B. Delegate signature authority to staff reporting to the Chief Executive Officer by Utilities Enterprise Policy, and may provide for further delegation of this signatory authority as appropriate.
- C. Adopt or promulgate Utilities Enterprise Policies and service standards and specifications consistent with the provisions of the Charter or this Code concerning matters that are applicable to all operations and finances of the Utilities including all operational units.
- D. Delegate authority to staff reporting to the Chief Executive Officer by Utilities Enterprise Policy, to adopt service standards and specifications for each respective division.
- E. Make and enforce rules and regulations as may be necessary for the regulation, collection, rebating and refunding of user charges for utility services.
- F. Identify and certify an imminent hazard condition exists and abate the hazard in accord with the provisions of chapter 12 of this Code.
- G. Interrupt or curtail utility services or to provide for the interruption or curtailment of utility services whenever emergency circumstances, including, without limitation, supply limitations or restrictions, treatment restrictions or limitations, transmission or distribution system restrictions or failures, or operational problems, require immediate interruption or curtailment of utility services for operational or safety reasons. The Chief Executive Officer's authority under this section may be delegated by Utilities Enterprise Policy.
- H. Issue revocable permits for the use of public property primarily used by Colorado Springs Utilities, including watershed areas, for any purpose not inconsistent with the City Code, regulations established by the Chief Executive Officer, or other laws and ordinances regulating the use and occupancy of public property.

I. **Establish regulations governing the issuance or denial of a revocable permit and setting insurance requirements, fees and permit terms and conditions necessary to protect the public health, safety and welfare and the safety and welfare of Colorado Springs Utilities operations, equipment and facilities.**

12.1.1078: REGULATION OF ELECTRIC, STREETLIGHT, NATURAL GAS, WATER AND WASTEWATER RATES, CHARGES AND REGULATIONS:

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C. * * *

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f. Customers or users, their representative or attorney, who desire to present witnesses other than themselves concerning the proposed resolution may request an opportunity to present testimony and/or exhibits by filing with the City Clerk and Utilities' Pricing Department Manager **Chief Executive Officer** a notice of intent to present witnesses, which shall contain a list of the names of witnesses which the user or customer proposes to present at the public hearing and a short summary of testimony of each witness, including a copy of all exhibits and other documentation that the user or customer proposes to present to City Council for its consideration, not less than seven (7) working days prior to the public hearing.

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12.1.1089: UTILITIES CONTRACTS:

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B. The ~~Executive Director~~ **Chief Executive Officer** is authorized to execute all business contracts entered into by Utilities and all other contracts and agreements ~~except those which require approval by the Utilities Board under Utilities Board policies or which the City Charter, this Code or other controlling law require to be executed by other officers of the City.~~ The ~~Executive Director~~ **Chief Executive Officer** may delegate this signatory authority by ~~administrative regulation~~ **Utilities Enterprise Policy** to staff reporting to the ~~Executive Director~~ **Chief Executive Officer** and may provide by ~~administrative regulation~~ **Utilities Enterprise Policy** for the further delegation of this signatory authority. The ~~Executive Director~~ **Chief Executive Officer** shall not have the authority to execute contracts or financial instruments that encumber or pledge the funds or other assets of the City of Colorado Springs, other than those of the Utilities, or otherwise affect the full faith and credit, of the City of Colorado Springs.

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~~12.1.109~~**10: ADOPTION OF REGULATIONS—UTILITIES ENTERPRISE POLICIES AND SERVICE STANDARDS:**

The ~~Executive Director~~ **Chief Executive Officer** shall have the power and authority to adopt and promulgate ~~administrative regulations~~ **Utilities Enterprise Policies and** service standards and specifications ~~and quality by design process documents~~ consistent with the provisions of the City Charter or Code concerning matters that are applicable to all operations and finances of the Utilities, ~~including departments, divisions, offices and agencies.~~

A. ~~Administrative Regulations And Quality By Design Process Documents~~ **Utilities Enterprise Policies:**

1. The ~~Executive Director~~ **Chief Executive Officer** shall have the power and authority to adopt ~~administrative regulations and quality by design process documents~~ **Utilities Enterprise Policies** consistent with the provisions of the City Charter and this Code concerning matters that are applicable to all operations, personnel and finances of the Utilities, ~~including departments and other~~ **all** operational units, ~~including divisions, offices and agencies.~~

2. The ~~Executive Director~~ **Chief Executive Officer**, by administrative regulation **Utilities Enterprise Policies**, may delegate authority to staff reporting to the ~~Executive Director~~ **Chief Executive Officer** to adopt ~~administrative regulations or quality by design process documents~~ **Utilities Enterprise Policies** concerning matters applicable to each respective department ~~and other operational units, including divisions, offices and agencies.~~

3. Public notice and comment is not required for the adoption of ~~administrative regulations or quality by design process documents~~ **Utilities Enterprise Policies.**

B. Service Standards and Specifications:

1. Power and Authority: The ~~Executive Director~~ **Chief Executive Officer** shall have the power and authority to promulgate service standards and specifications consistent with the Charter and this Code, subject to the following guidelines:

a. Electric Generation, Transmission And Distribution: Service standards and specifications relevant to electric generation, transmission and distribution shall pertain to, but shall not be limited to, the following: 1) planning, design, construction, operation and maintenance of Utilities' electric generation plants, transmission and distribution systems and appurtenant facilities; and 2) regulation of

the transmission, distribution and use of electricity supplied by Utilities. In establishing the service standards and specifications, the ~~Executive Director~~ **Chief Executive Officer** shall seek to assure the safe and efficient operation of the electric production, transmission and distribution systems, and the protection of the systems, processes, equipment and facilities appurtenant thereto.

b. Gas Supply: Service standards and specifications relevant to gas supply shall pertain to, but shall not be limited to: 1) installation, construction, operation and maintenance of Utilities' natural gas distribution system; and 2) regulation of the distribution and use of natural gas supplied by Utilities. In establishing the service standards and specifications, the ~~Executive Director~~ **Chief Executive Officer** shall seek to assure the safe and efficient operation of the natural gas distribution system, and the protection of the system, process, equipment and facilities appurtenant thereto.

c. Water Supply: Service standards and specifications relevant to water supply shall pertain to, but shall not be limited to, the following: 1) installation, construction, maintenance, repair or replacement of property appertaining to the water system; 2) provision of water service to the public; and 3) assurance of potable and palatable quality of water. In establishing the standards and specifications, the ~~Executive Director~~ **Chief Executive Officer** shall seek to assure the safe and efficient operation of the water supply system, for a water supply sufficient to satisfy the public needs, and for water quality, by protecting the water supply and the public from polluting or unsanitary substances and conditions.

d. Wastewater Treatment: Service standards and specifications relevant to wastewater treatment shall pertain to, but shall not be limited to, the following: 1) discharge limitations, pretreatment requirements, wastewater lines and services; and 2) implementation of standards promulgated pursuant to the Federal Water Pollution Control Act amendments of 1972, PL 92-500, and subsequent amendments. In establishing the service standards and specifications, the ~~Executive Director~~ **Chief Executive Officer** shall seek to assure safe, efficient operation of the wastewater system, that will limit wastewater discharges to the system in concentrations and quantities which will not harm either the wastewater system, wastewater treatment process or equipment, that will not have an adverse effect on the receiving water, or will not otherwise endanger persons or property or constitute a nuisance.

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2. Delegation of Authority: The ~~Executive Director~~ **Chief Executive Officer** by ~~administrative regulations~~ **Utilities Enterprise Policies** may delegate authority to staff reporting to the ~~Executive Director~~ **Chief Executive Officer** to adopt service standards and specifications for each respective department and other operational units, ~~including divisions, offices and agencies.~~

3. Public Notice, Comment and Hearing:

a. * * *

b. List of Interested Persons: The ~~Executive Director~~ **Chief Executive Officer** shall maintain a list(s) of all persons who request notification of proposed adoption of service standards and specifications. A person may only request notification on his or her own behalf.

c. Preproposal: When promulgation of service standards and specifications is contemplated, ~~Executive Director~~ **the Chief Executive Officer** is encouraged, but not required, to provide an opportunity to interested persons to participate informally in conferences on proposals under consideration.

d. Notice: Notice of proposed adoption of service standards and specifications proposed by ~~Executive Director~~ **the Chief Executive Officer** shall be published in at least one newspaper of general circulation within the City at least fifteen (15) days and no more than thirty (30) days prior to the date set for final adoption of the proposed service standards and specifications. The notice shall include: 1) an explanation of the proposed service standards and specifications; 2) the proposed adoption and effective dates; 3) a statement that a copy of the proposed service standards and specifications are on file and open for public inspection in the Office of the ~~Executive Director~~ **Chief Executive Officer**; 4) designation of the public comment period and the means to provide the comment; and 5) opportunity and manner to request a public hearing. If any material is to be incorporated by reference in the proposed service standards and specifications, the material shall be identified in the notice by date, title and citation. On or before the day the notice of proposed adoption is published, the ~~Executive Director~~ **Chief Executive Officer** shall mail the notice to all persons on the list.

e. Public Comment: The ~~Executive Director~~ **Chief Executive Officer** must give full consideration to all comments received as provided in the notice.

f. Public Hearing: The ~~Executive Director~~ **Chief Executive Officer** may grant a public hearing if requested by a member of the public if a significant controversy of public import has arisen regarding the proposed service standards and specifications.

4. Adoption of Proposed Service Standards and Specifications: The ~~Executive Director~~ **Chief Executive Officer** or the ~~Executive Director's~~ **Chief Executive Officer's** designee shall adopt proposed service standards and specifications after a hearing or after conclusion of the public comment period. Adoption shall be by signature on the approved service standards and specifications of the ~~Executive Director~~ **Chief Executive Officer** or the ~~Executive Director's~~ **Chief Executive Officer's** designee. If no hearing is held, the adopted service standards and specifications shall be similar in substance and form to the proposed service standards and specifications referenced in the public notice.

5. Open to Inspection: Upon adoption, the service standards and specifications shall be available for inspection at the offices of the ~~Executive Director~~ **Chief Executive Officer** by any person at any time during regular business hours, and copies thereof may be purchased by any person upon payment of the cost of reproduction and postage.

C. Rulemaking Provisions: The rulemaking provisions of this section shall be prospective only. All previously existing ~~administrative regulations~~ **Utilities Enterprise Policies** and service standards and specifications shall remain in full force and effect until amended, withdrawn or adopted.

12.1.14~~11~~: EXCLUSIVITY:

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12.1.14~~12~~: USER CHARGES FOR UTILITY SERVICES:

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B. The ~~Executive Director~~ **Chief Executive Officer** shall make and enforce the rules and regulations as may be necessary for the regulation, collection, rebating and refunding of user charges for utility services.

12.1.14~~213~~: COLLECTION OF CHARGES AND REMEDIES:

A. Unpaid Charges; Lien; Collection:

1. Until paid, all charges imposed by Utilities for water and wastewater utility services, including connection fees, shall constitute a perpetual lien on and against the property connected to or served by the water system

and the wastewater treatment system, respectively, which may be recorded against the property at any time thereafter, and shall be chargeable against the owner of the property at the time of use of the service or the owner's successors in interest to the property. In the event that any charge imposed by this chapter shall not be paid when due, the ~~Executive Director~~ **Chief Executive Officer** may issue a notice to the owner of the property or the user or both, setting forth the amount of the charge due and payable, identifying the property connected to the water or wastewater system for which the charge is delinquent and stating that the City, on behalf of Utilities, claims a perpetual lien on and against the property for the unpaid charge. The notice shall be verified by the ~~Executive Director~~ **Chief Executive Officer** and filed with the Clerk and Recorder of the County in which the property is located. Until paid, the charge shall constitute a perpetual lien on and against the property served, and the lien may be foreclosed in the same manner as provided by the laws of the State of Colorado for the foreclosure of mechanic's liens.

2. In the event that any user charge imposed by this chapter for water or wastewater service shall not be paid when due, the ~~Executive Director~~ **Chief Executive Officer** may issue a notice to the owner of the property or the user or both, setting forth the amount of the charge due and payable and identifying the property connected to or using the water or wastewater system for which the charge is delinquent. The notice shall be verified by the ~~Executive Director~~ **Chief Executive Officer** and filed with the City Clerk. The City Clerk shall certify the charge to the County Treasurer to be placed upon the tax list for the current year and to be collected in the same manner as taxes with a ten percent (10%) penalty thereon to defray the costs of collection. All laws of the State of Colorado for the assessment and collection of general taxes and the redemption of same shall apply to the charges.

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12.1.14-314: UTILITIES DIVERSION:

A. Unlawful Acts:

1. It shall be unlawful for any person to install a bypass for any utility service without the express written authorization of the ~~Executive Director~~ **Chief Executive Officer**.

2. It shall be unlawful for any customer or the user at any premises knowingly to receive utility service by means of a bypass which has not been authorized in writing by the ~~Executive Director~~ **Chief Executive Officer**.

3. It shall be unlawful for any person to tamper with a utility meter or other utility equipment without the express written authorization of the ~~Executive Director~~ **Chief Executive Officer**.

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5. It shall be unlawful for any person to engage in unauthorized metering which has not been authorized in writing by the ~~Executive Director~~ **Chief Executive Officer**.

6. It shall be unlawful for any customer or the user at any premises knowingly to receive utility service by means of unauthorized metering which has not been expressly authorized in writing by the ~~Executive Director~~ **Chief Executive Officer**.

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12.1.1415: ABATEMENT OF IMMINENT HAZARDS:

A. Legal Action:

1. Any use of or connection to the utility supply system in violation of any provision of this chapter, or any act or condition which damages, injures or threatens to damage or injure the utility system shall be considered a public nuisance and the City Attorney, ~~or Utilities general counsel at the request of the City Attorney,~~ may commence an action for appropriate legal and/or equitable relief in the District Court in and for the County of El Paso or in any other appropriate court. In any such action the City may recover reasonable attorney fees, costs, court reporter fees and other expenses of litigation.

2. Any discharge in violation of the provisions of this chapter or an order of the ~~Executive Director~~ **Chief Executive Officer** issued pursuant to this article or any discharge of wastewater, industrial wastes or other wastes into the wastewater treatment system contrary to the provisions of this chapter or any order of the ~~Executive Director~~ **Chief Executive Officer** shall be considered a public nuisance and the City Attorney, ~~or the Utilities general counsel at the request of the City Attorney,~~ may commence an action for appropriate legal and/or equitable relief in conformance with the provisions of this subsection A.

B. * * *

C. Abatement of Imminent Hazards:

1. Notwithstanding any other provisions of this chapter to the contrary, if the ~~Executive Director~~ **Chief Executive Officer** certifies in writing that an imminent hazard exists, and which requires immediate action in order to protect the public health, safety and welfare, he/**she** may issue an order to the owner, agency of the owner or occupant of property upon which the imminent hazard exists, stating that the imminent hazard exists and requiring that the actions as ~~he deems~~ **deemed** necessary be taken in order to abate the imminent hazard. The order issued by the ~~Executive Director~~ **Chief Executive Officer** shall, if appropriate, set forth the maximum time within which the owner, agent of the owner or occupant must abate the imminent hazard.

2. Whenever the ~~Executive Director~~ **Chief Executive Officer** shall issue the imminent hazard order, the order shall: a) be in writing; b) be personally served whenever feasible on the owner, or agent of the owner and occupant of the premises or, when the personal service is not feasible, either post it conspicuously at the premises or mail to the person by certified mail, return receipt requested, to his last known address; c) describe with reasonable particularity the condition existing on the premises which gives rise to the issuance of the imminent hazard order; d) specify, if applicable, the maximum time period within which the imminent hazard must be abated or otherwise corrected; e) state that an appeal is available provided the provisions of this section are followed; f) have a copy of this section attached; and g) state that, in the event the property owner, agent of the owner or occupant fails to comply with the imminent hazard order, the City or Utilities may take the steps as are necessary to correct the imminent hazard, bill the property owner therefor, and if unpaid, to initiate assessment proceedings against the property pursuant to the City's Zoning Code.

3. In the event the person to whom the imminent hazard order is issued fails or refuses to comply therewith, the ~~Executive Director~~ **Chief Executive Officer** is hereby empowered to cause the imminent hazard to be summarily abated in such manner or methods as are necessary and appropriate under the circumstances of each given case.

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5. With respect to enforcing the imminent hazard order, the ~~Executive Director~~ **Chief Executive Officer** or the ~~Executive Director's~~ **Chief Executive Officer's** designees, and their agents, may enter upon any premises or property for the purpose of inspecting, abating, repairing or removing or otherwise preventing the condition which is an imminent hazard to the public health, safety and welfare. In the event that the owner, agent of the owner or occupant of the premises subject to the imminent hazard refuses entry to the ~~Executive Director~~ **Chief Executive Officer** or the

~~Executive Director's~~ **Chief Executive Officer's** designees or agents when entry is sought pursuant to this section, the ~~Executive Director~~ **Chief Executive Officer** or the ~~Executive Director's~~ **Chief Executive Officer's** designees or agents may make application to any Judge of the Municipal Court of the City for the issuance of an inspection warrant. The application shall identify the premises upon which entry is sought and the purpose for which entry is desired, and shall state facts giving rise to the belief that a condition exists at the premises which is an imminent hazard to the public health, safety and welfare. Any warrant issued pursuant to the application shall command the owner, agent of the owner or occupant to permit inspection and entry by the ~~Executive Director~~ **Chief Executive Officer** or the ~~Executive Director's~~ **Chief Executive Officer's** designees or agents for the purpose stated therein.

6. Any person aggrieved by the imminent hazard order of the ~~Executive Director~~ **Chief Executive Officer** may appeal the order to the hearing officer, who shall be appointed by the ~~Executive Director~~ **Chief Executive Officer**, provided written application therefor upon the ~~Executive Director~~ **Chief Executive Officer** is made within five (5) days of service of the imminent hazard order. In no event, however, shall the appeal of the imminent hazard order in any way stay or suspend the same. If a timely appeal is made, a hearing concerning the propriety of the order shall be granted to the owner or agent of the owner of the premises, and, after notice thereof to the appellant, the hearing shall be held no more than ten (10) days after the filing of the notice of appeal. At the hearing, the appellant and the City or Utilities may be represented by an attorney, may present evidence, and may cross examine witnesses. A verbatim transcript of the hearing shall be made. The decision of hearing officer shall be based upon competent evidence.

7. The remedies provided in this section shall be cumulative and in addition to any other remedies which may be available to the ~~Executive Director~~ **Chief Executive Officer**. Nothing contained herein shall be construed to preclude the ~~Executive Director~~ **Chief Executive Officer** from seeking other remedies in addition to, or in lieu of, the remedies granted herein.

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12.1.14~~5~~**16**: SPECIAL CONTRACT SERVICE:

12.1.14~~6~~**17**: EMERGENCY CURTAILMENT OF UTILITY SERVICE:

The ~~Executive Director~~ **Chief Executive Officer**, without prior notice to affected customers, is authorized to interrupt or curtail utility services or to provide for the interruption or curtailment of utility services whenever emergency

circumstances, including, without limitation, supply limitations or restrictions, treatment restrictions or limitations, transmission or distribution system restrictions or failures, or operational problems, require immediate interruption or curtailment of the utility services for operational or safety reasons. The ~~Executive Director's~~ **Chief Executive Officer's** authority under this section may be delegated by ~~administrative regulation~~ **Utilities Enterprise Policy**.

12.1.14~~7~~**18**: REVOCABLE PERMITS:

A. The space below the surface, upon the surface, and above the surface of public property primarily used by Utilities, including watershed areas, may be used and occupied for any purpose not inconsistent with this chapter, other provisions of this Code, regulations established by the Utilities ~~Executive Director~~ **Chief Executive Officer**, or other laws and ordinances regulating the use and occupancy of the public property; provided, however, it shall be unlawful for any person to use or occupy the space, whether below, upon or above the surface of the public property, or to construct any device or structure thereupon as hereinafter set forth except by and under the authority of a revocable permit granted and issued by the Utilities ~~Executive Director~~ **Chief Executive Officer**.

B. The Utilities ~~Executive Director~~ **Chief Executive Officer**, pursuant to section 12.1.10~~6~~**7** of this article, shall have the authority to establish regulations governing the issuance or denial of the permits, insurance requirements, fees, and permit terms and conditions necessary to protect the public health, safety and welfare, and the safety and welfare of Utilities operations, equipment and facilities.

12.1.14~~8~~**19**: ESTABLISHMENT OF EXCLUSIVE WATER AND WASTEWATER SERVICE TERRITORIES OUTSIDE CITY LIMITS:

* * *

Section 2. The codifier is instructed to amend the remaining articles under Chapter 12 (Utilities) by striking "Executive Director" wherever it appears and replacing it with "Chief Executive Officer" in the following articles of the City Code:

- Article 2: ELECTRIC CODE
- Article 3: NATURAL GAS CODE
- Article 4: WATER CODE
- Article 5: WASTEWATER TREATMENT CODE
- Article 6: UTILITIES COMPUTER SERVICES CODE
- Article 8: NONREGULATED PRODUCTS AND SERVICES

Article 9: STREETLIGHT SERVICE CHARGE

Section 3. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 4. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ____ day of _____, 2016.

Finally passed: _____

Council President

ATTEST:

Sarah B. Johnson, City Clerk