

## **12.1.110: ADOPTION OF UTILITIES ENTERPRISE POLICIES ~~AND~~ SERVICE STANDARDS AND RULES AND REGULATIONS:**

The Chief Executive Officer shall have the power and authority to adopt and promulgate Utilities Enterprise Policies and service standards and specifications consistent with the provisions of the City Charter or this Code concerning matters that are applicable to all operations and finances of the Utilities.

### A. Utilities Enterprise Policies:

1. The Chief Executive Officer shall have the power and authority to adopt 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, and all operational units.

2. The Chief Executive Officer, by Utilities Enterprise Policies, may delegate authority to staff reporting to the Chief Executive Officer to adopt Utilities Enterprise Policies concerning matters applicable to each respective operational unit.

3. Public notice and comment is not required for the adoption of Utilities Enterprise Policies.

### B. Service Standards And Specifications, Rules And Regulations:

1. Power And Authority: The Chief Executive Officer shall have the power and authority to promulgate service standards and specifications and rules and regulations 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 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 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 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 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.

e. Computer Services: Reserved.

f. Telecommunications Activities: Reserved.

g. Nonregulated Products And Services: Reserved.

**h. Underground Damage Prevention Safety Program: Underground damage prevention safety program rules and regulations necessary to operate and enforce the Underground Damage Prevention Safety Program detailed in City Code Chapter 12, Article 10, shall pertain to, but shall not be limited to, the following: 1) governing excavations near and around underground utility infrastructure; 2) protecting persons and underground utility infrastructure from non-emergency excavation work; and 3) damage reporting requirements.**

2. Delegation Of Authority: The Chief Executive Officer by Utilities Enterprise Policies may delegate authority to staff reporting to the Chief Executive Officer to adopt service standards and specifications **and rules and regulations** for each respective department and other operational units.

3. Public Notice, Comment And Hearing:

a. Application: Except when public notice, comment, or hearing is otherwise required by law, this subsection B3 applies to the adoption of service standards and specifications.

b. List Of Interested Persons: The 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 **or rules and regulations** is contemplated, 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 **or rules and regulations** proposed by 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 **or rules and regulations**; 2) the proposed adoption and effective dates; 3) a statement that a copy of the proposed service standards and specifications **or rules and regulations, as applicable,** are on file and open for public inspection in the Office of the 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 **or rules and regulations**, 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 Chief Executive Officer shall mail the notice to all persons on the list.

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

f. Public Hearing: The 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 **or rules and regulations**.

4. Adoption Of Proposed Service Standards And Specifications: The Chief Executive Officer or the 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 Chief Executive Officer or the 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 Office of the 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 Utilities Enterprise Policies and service standards and specifications shall remain in full force and effect until amended, withdrawn or adopted. (Ord. 98-173; Ord. 01-42; Ord. 18-42)

#### **12.1.115: 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 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 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 Chief Executive Officer shall be considered a public nuisance and the City Attorney may commence an action for appropriate legal and/or equitable relief in conformance with the provisions of this subsection A.

B. Penalty: Any person who performs or fails to perform an act where the performance or failure to perform is declared in any provision of this chapter to be unlawful, shall be fined and/or imprisoned as provided in section [1.1.201](#) of this Code. A separate and distinct offense shall be deemed to have been committed for each day on which violation shall occur or continue.

##### C. Abatement Of Imminent Hazards:

1. Notwithstanding any other provisions of this chapter to the contrary, if the 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, ~~agent~~<sup>ey</sup> of the owner, ~~or~~ occupant of property upon which the imminent hazard exists, **or entity causing the imminent hazard**, stating that the imminent hazard exists and requiring that the actions as deemed necessary be taken in order to abate the imminent hazard. The order issued by the 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 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 entity causing the imminent hazard** 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 **or entity causing the imminent hazard**, 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 **or entity causing the imminent hazard** therefor, and if unpaid, to initiate assessment proceedings against the property **or entity causing the imminent hazard** 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 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.

4. In the event that the owner or agent of the owner shall fail within thirty (30) days after billing to pay the costs and expenses for the abatement of the imminent hazard, a lien may be assessed against the property upon which the imminent hazard exists for the costs of abatement in accord with chapter 2, article 6 of this Code. The lien created hereby shall be superior and prior to all other liens excepting liens for general and special taxes.

5. With respect to enforcing the imminent hazard order, the Chief Executive Officer or the 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 Chief Executive Officer or the Chief Executive Officer's designees or agents when entry is sought pursuant to this section, the Chief Executive Officer or the 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 Chief Executive Officer or the Chief Executive Officer's designees or agents for the purpose stated therein.

6. Any person aggrieved by the imminent hazard order of the Chief Executive Officer may appeal the order to ~~the~~ Hearing Officer, ~~who shall be~~ appointed by the Chief Executive Officer, provided written application therefor upon the 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, **or entity causing the imminent hazard,** and, after notice thereof to the appellant, the hearing shall be held no more than ~~ten (10)~~**thirty (30)** 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. **At the conclusion of the evidence, the Hearing Officer shall make written findings of fact, conclusions of law and orders regarding the imminent hazard order. The Hearing Officer may, at the conclusion of the hearing, take the matter under advisement and issue the written findings of fact, conclusions of law and orders within thirty (30) days.** The decision of the 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 Chief Executive Officer. Nothing contained herein shall be construed to preclude the Chief Executive Officer from seeking other remedies in addition to, or in lieu of, the remedies granted herein.

8. The phrase "imminent hazard" shall include, but not be limited to, a violation of any of the provisions of this chapter, or the existence of a public nuisance or any other condition or occurrence which is a menace to the public health, safety and welfare, and which interferes with, or arises out of, the provision of utility services pursuant to this chapter. (Ord. 98-173; Ord. 01-42; Ord. 18-42)

**9. The decision or determination of the Hearing Officer shall in all cases be final and conclusive. A decision or determination of the Hearing Officer may only be reviewed by the District Court pursuant to CRCP 106(a)(4). There shall be no stay of execution of the Hearing Officer's decision pending decision by the District Court, except by court order.**