

TITLE V: PUBLIC UTILITIES

Chapter

50. UTILITIES GENERALLY

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GENERAL PROVISIONS

§ 50.01 DEFINITIONS.

For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(A) **COMPANY, GRANTEE and FRANCHISEE.** Any City, municipal and public utility system to which a franchise has been granted by the City.

(B) **CONSUMER and CUSTOMER.** Any user of a utility.

(C) *MUNICIPAL UTILITY*. Any City-owned utility system, including, but not by way of limitation, electric, water, sewerage and refuse service.

(D) *PUBLIC UTILITY*. This term shall refer to *PUBLIC UTILITIES* as defined in state statute.

(E) *SERVICE*. Providing a particular utility to a customer or consumer.

(F) *UTILITY*. All utility services, whether the same be City-owned facilities or furnished by public utility companies.

§ 50.02 FIXING RATES AND CHARGES FOR MUNICIPAL UTILITIES.

All rates and charges for municipal utilities, including, but not by way of limitation, rates for service, permit fees, deposit, connection and meter testing fees, disconnection fees, reconnection fees, including penalties for nonpayment, if any, shall be fixed, determined and amended by the Council and adopted by resolution. The resolution, containing the effective date thereof, shall be kept on file and open to inspection in the office of the City Administrator and shall be uniformly enforced. For the purpose of fixing the rates and charges, the Council may categorize and classify under the various types of service, provided that the categorization and classification shall be included in the resolution authorized by this Section.

§ 50.03 FIXING RATES AND CHARGES FOR PUBLIC UTILITIES.

All rates and charges for public utility franchises, not regulated by an agency of the state, shall be fixed and determined by the Council and adopted by Council resolution. Upon adoption the rates and charges shall become provisions of this Chapter. Public utility company rates and charges may be fixed and determined by the respective franchises in compliance with this Section, as follows.

(A) No rate or charge involving an increase thereof shall become effective until approved by the Council. To request the increase the franchisee shall prepare its written petition setting forth the then current and proposed rates and charges, the effective date of the proposed increases, (which may not be within 90 days of filing the petition) and the reason or reasons necessitating the proposed increase or increases. The petition shall be filed with the Council by serving the same on the City Administrator in person or by certified mail, return receipt requested.

(B) Within 30 days of the filing, the Council shall adopt a resolution and serve the same upon the resident superintendent of the franchisee in like manner as the petition may be served either approving the proposed increases or ordering a hearing thereon to be held within 60 days thereof. If no such action is taken by the Council, the increase or increases shall take effect on the date stated in the franchisee's petition as though approved by the Council.

(C) Prior to the hearing date, the franchisee shall, without delay, comply with the City's reasonable requests for examination and copying of all books, records, documents, and other information relating

to the subject matter of the petition. Should the franchisee unreasonably delay, fail, or refuse the requests, the same shall be grounds for a continuance of the hearing date.

(D) Notice of hearing shall be in the form and manner stated in the resolution. At the hearing all persons wishing to be heard thereon shall be afforded a reasonable opportunity. Findings and a decision shall be made by the Council within 15 days after the hearing and served upon the franchisee.

(E) Should the City have a franchise agreement with a franchisee and should that franchise agreement include a procedure for fixing rates and charges, the terms of the franchise agreement shall be used in place of this Section.

§ 50.04 CONTRACTUAL CONTENTS.

Provisions of this Chapter relating to municipal utilities shall constitute portions of the contract between the City and all consumers of municipal utility services and every such consumer shall be deemed to assent to the same. All contracts between franchisees and consumers of utility services other than municipal utilities shall be in strict accord with the provisions of this Chapter.

§ 50.05 CONNECTION OR TAPPING PROHIBITED; DELINQUENT ASSESSMENTS OR CHARGES.

No permit shall be granted to tap or connect with sewer or water mains when any assessment or connection charge for the sewer or water main against the property to be connected is in default or delinquent. If the assessment or connection charges are payable in installments, no permit shall be granted unless all installments then due and payable have been paid.

§ 50.06 UNDERGROUND UTILITY CONSTRUCTION.

(A) *Underground construction required.* All utility lines hereafter installed, constructed, or otherwise placed within the City for electric (except as otherwise provided in this code), telephone, TV cable or other like or similar services to serve residential, commercial, and industrial customers in newly platted areas and which utilize metallic conductors to carry electric current, whether owned, installed, or constructed by the supplier, consumer, or any party shall be installed and placed underground, subject only to the exceptions hereinafter stated; however, aboveground placement, construction, modification or replacement of meters, gauges, transformers, street lighting, and service connection pedestals shall be allowed. The requirements of this Section shall apply equally outside of the corporate limits of the City coincident with City jurisdiction of platting, subdivision regulation, or comprehensive planning as may now or in the future be allowed by law. All companies installing and operating lines such as those described herein shall be referred to as "utility companies" for purposes of this Section.

(B) *Exceptions to application.* The following exceptions to the strict applicability of this Section may be allowed upon the conditions stated:

(1) **Transmission lines.** Aboveground placement, construction, modification, or replacement of those lines commonly referred to as "high voltage transmission lines" upon which the conductor's normal operating voltage equals or exceeds 69,000 volts (phase to phase) may be allowed; provided, that 60 days prior to commencement of construction of such a project, the City shall be furnished notice of the proposed project and, upon request, the utility company involved shall furnish any relevant information regarding such project to the City. This Section shall not be construed as waiving the requirements of any other ordinance or regulation of the City as the same may apply to any such proposed project.

(2) **Technical and economic feasibility.** Aboveground placement, construction, modification, or replacement of lines shall be allowed in residential, commercial, and industrial areas where the Council, following consideration and recommendation by the Planning Commission, the Utilities Committee, and the Public Utilities Director finds that:

(a) Underground placement would place an undue financial burden upon the landowner or the utility company or deprive the landowner of the preservation and enjoyment of substantial property rights; or

(b) Underground placement is impractical or not technically feasible due to topographical, subsoil or other existing conditions which adversely affect underground utility placement.

(3) **Temporary service.** Aboveground placement of temporary service lines shall only be allowed:

(a) During the new construction of any project for a period not to exceed 24 months;

(b) During any emergency to safeguard lives or property within the City; or

(c) For a period of not more than seven months when soil conditions make excavation impractical.

(C) **Repair and maintenance of existing installations.** Nothing in this Section shall be construed to prevent repair and maintenance of existing overhead utility lines. Replacement or modification of existing overhead utility lines is not permitted hereunder.

(D) **Developer responsibility.** All owners, platters or developers are responsible for complying with the requirements of this Section and prior to the final approval of any plat or development plan shall submit to the Planning Commission written instruments from the appropriate utility companies showing that all necessary arrangements with the companies for installation of the utilities have been made.

(E) **Placement.**

(1) All utility lines shall be placed within appropriate easements or dedicated public ways so as to cause minimum conflict with other underground services. Whenever feasible, all utilities shall be placed within the same trench.

(2) All utility companies shall submit annually to the Public Utilities Director and the Public Works Director current maps revealing locations of underground installations whether such installations were installed prior to the effective date of this Section hereafter.

§ 50.07 REMOTE-TYPE WATER METERS REQUIRED.

In all new construction using one-inch size water meter, or smaller, remote-type water meters shall be installed at the expense of the owner.

RULES AND REGULATIONS

§ 50.20 BILLING, PAYMENT, AND DELINQUENCY.

All municipal utilities shall be billed monthly and an utilities statement or statements shall be mailed to each consumer each month. All utility charges shall be delinquent if they are unpaid on the due date set forth in the statement; provided, that if the due date shall fall on a Saturday, Sunday, or legal holiday, the time shall be extended to the close of business on the next succeeding day on which business is normally transacted. A late fee of ten percent of the actual charge for utilities only shall be added to, and become part of, all delinquent utility bills. If service is suspended due to delinquency it shall not be restored at that location until a reconnection charge has been paid for each utility reconnected in addition to amounts owed for service and late fees.

§ 50.21 APPLICATION, CONNECTION AND SALE OF SERVICE.

Application for municipal utility services shall be made upon forms supplied by the City and strictly in accordance therewith. No connection shall be made until consent has been received from the City to make the same. All municipal utilities shall be sold and delivered to consumers under the then applicable rate applied to the amount of the utilities taken as metered or ascertained in connection with the rates.

§ 50.22 DISCONTINUANCE OF SERVICE.

All municipal utilities may be shut off or discontinued whenever it is found that:

(A) The owner or occupant of the premises served, or any person working on any connection with the municipal utilities, has violated any requirement of this Code relative thereto or any connection therewith;

(B) Any charge for a municipal utility service, or any other financial obligation imposed on the present owner or occupant of the premises served, is unpaid after the notice thereof;

(C) There is fraud or misrepresentation by the owner or occupant in connection with any application for service or delivery or charges therefor; and

(D) Discontinuance of service shall be subject to any state requirements that are applicable.

§ 50.23 OWNERSHIP OF MUNICIPAL UTILITIES.

Ownership of all municipal utilities, plants, lines, mains, extensions, and appurtenances thereto shall be and remain in the City and no person shall own any part or portion thereof. However, private facilities and appurtenances constructed on private property are not intended to be included in municipal ownership. After construction and the payment of the cost thereof by special assessment or otherwise, the City assumes the responsibility for the cost of maintenance, repair, and replacement of water mains, including trunk mains and all connections thereto from the trunk main up to and including the curb boxes and sewer mains for the trunk main only. The abutting property owner is responsible for the maintenance, repair, and replacement of all sewer facilities extending from their property to the trunk sewer main, including the joints and connections thereto.

§ 50.24 RIGHT OF ENTRY.

The City has the right to enter in and upon private property, including buildings and dwelling houses, in or upon which is installed a municipal utility, or connection therewith, at all times reasonable under the circumstances for the purpose of reading utility meters, for the purpose of inspection and repair of meters or a utility system, or any part thereof, and for the purpose of connecting and disconnecting service.

§ 50.25 METER ACCURACY.

(A) All water and electric utilities service shall be supplied through a meter which shall accurately measure the amount thereof supplied to any consumer. The consumer shall supply a safe and proper place for the installation of the meters. Meters shall be tested for accuracy by the City upon the request of any consumer who believes their meter to be inaccurate. If, upon test, it appears that the meter overruns to the extent of three percent or more, the City shall pay the cost of the tests and shall make a refund for overcharges collected since the last known date of accuracy but for not longer than six months on the basis of the extent of the inaccuracy found to exist at the time of the tests. If, upon test, it appears that the meter is slow to the extent of three percent or more, the consumer shall pay for undercharges since the last known date of accuracy but for not longer than six months on the basis of the extent of the inaccuracy found to exist at the time of the test. If, when any meter is tested upon the demand of a consumer it is found to be accurate, slow, or less than three percent fast, the consumer shall pay the reasonable cost of the testing.

(B) In the event of any other error in utilities charges, the corrective payment for overcharges or undercharges shall be limited to the amount required for correction of error, not including any interest for a period of not to exceed six months.

§ 50.26 UNLAWFUL ACTS.

(A) It is unlawful for any person to willfully or carelessly break, injure, mar, deface, disturb or in any way interfere with any buildings, attachments, machinery, apparatus, equipment, fixture, or appurtenance of any municipal utility or municipal utility system or commit any act tending to obstruct or impair the use of any municipal utility.

(B) It is unlawful for any person to make any connection with, opening into, use or alter in any way any municipal utility system without first having applied for and received written permission to do so from the City.

(C) It is unlawful for any person to turn on or connect a utility when the same has been turned off or disconnected by the City for nonpayment of a bill, or for any other reason, without first having obtained a permit to do so from the City.

(D) It is unlawful for any person to "jumper" or by any means or device fully or partially circumvent a municipal utility meter or to knowingly use or consume unmetered utilities or use the services of any utility system, the use of which the proper billing authorities have no knowledge.

§ 50.27 MUNICIPAL UTILITY SERVICES AND CHARGES A LIEN.

(A) Payment for all municipal utility service and charges shall be the primary responsibility of the owner of the premises served and shall be billed to the owner unless otherwise contracted for and authorized in writing by the owner and the tenant, as agent for the owner, and consented to by the City. The City may collect the same in a civil action or, in the alternative and at the option of the City, as otherwise provided in this Section.

(B) Each such account is made a lien upon the premises served. All such accounts which are more than 45 days past due may, when authorized by resolution of the Council, be certified by the City Administrator to the County Auditor, and the City Administrator in so certifying shall specify the amount thereof, the description of the premises served and the name of the owner thereof. The amount so certified shall be extended by the County Auditor on the tax rolls against the premises in the same manner as other taxes, collected by the County Treasurer and paid to the City along with other taxes.