City of Las Cruces®

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Council Action and Executive Summary

Item # 12 **Ordinance/Resolution#** 2671

For Meeting of October 15, 2012 (Ordinance First Reading Date)

For Meeting of November 19, 2012 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☒ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: AN ORDINANCE AMENDING AND REPEALING LAS CRUCES MUNICIPAL CODE SECTIONS 28-1 THROUGH 28-22; AMENDING AND REPEALING LAS CRUCES MUNICIPAL CODE SECTIONS 28-51 THROUGH 28-58; ADDING NEW LAS CRUCES MUNICIPAL CODE SECTION 28-59; AND REPEALING LAS CRUCES MUNICIPAL CODE SECTIONS 28-86 THROUGH 28-91.

PURPOSE(S) OF ACTION:

Amend, repeal and add to the Las Cruces Municipal Code.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: Marcia B. Driggers	**Department/Section:** City Attorney/Legal	**Phone:** (575) 541-2128
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Utilities Department staff in consultation with the City Attorney's Office has identified numerous sections of Las Cruces Municipal Code Chapter 28, Article I, and Article II, Division 1 and Division 2 that should be amended, repealed or added to. Some of the proposed amendments and repeals are minor word changes or the renumbering of sections. For example the word "consumer" is replaced with the word "customer". Whereas, other proposed amendments are substantial re-wordings, total repeals or new additions. For example Chapter 28, Article II, Division 2 entitled "Deposits" consisting of Sections 28-86 through 28-91 is repealed and replaced with new Section 28-59 entitled "Deposits".

For ease of comparison, three (3) versions of Chapter 28, Articles I and II, are attached as support information. Exhibit "A" is a clean copy of the final version after all proposed amendments, repeals and additions have been made. Attachment "1" is a comparison showing the additions to Chapter 28, Articles I and II, as underlined text, and showing the deletions as strikethroughs. Attachment "2" is a clean copy of the current version of Chapter 28, Articles I and II, without revision.

(Continue on additional sheets as required)

The following is a brief explanation of the material changes to the Code sections shown in legislative format on Attachment "1":

Changes to existing LCMC Sections 28-3 and 28-7(1) require that properties that are not required to pull City building permits either because they are governmentally owned or are located outside of the City limits have their utilities plans reviewed by the City if they want to connect to the City's utility system;

Changes to existing LCMC Section 28-12 clarify what constitutes an active City utility account;

Changes to existing LCMC Section 28-19 additionally require that each platted lot have separate utility service connections;

Changes to existing LCMC Section 28-52 provide an additional option if safe access to City meters is not available;

Changes to existing LCMC Section 28-53 reference the utility rate making process previously approved by the City Council when it established the Utilities Board;

Changes to existing LCMC Section 28-54 eliminate the 15 day period for delinquent accounts and require that the Utilities Board establish a payment due date;

Changes to existing LCMC Sections 28-55 and 28-56 provide that delinquent penalties and reconnection fees are to be established by the Utilities Board; and

Deletion of existing LCMC Sections 28-86 through 28-91 concerning utility deposits and the addition of new Section 28-59 authorizes the Utilities Board to establish billing and service regulations including provision for utility deposits.

The Utilities Board after review of each proposed modification, section by section, as presented by the Utilities Attorney at its September 13, 2012 Board meeting, voted to recommend City Council approval of the modifications in Board Resolution No. 12-13-011. The Utilities Board is empowered to recommend to the Council municipal code modifications that protect and benefit the utility systems and utility operations. However, the Utilities Board does not have the authority to revise the Las Cruces Municipal Code, which modifications can only be made by Council approved ordinances. The Utilities Board is therefore recommending that the Council approve the Code modifications as shown on Exhibit "A".

SUPPORT INFORMATION:

1. Ordinance.
2. Exhibit "A", Proposed revisions to existing Code sections.
3. Attachment "1", Comparison version showing the proposed additions to the existing Code sections as underlined text and showing the proposed deletions to the existing Code sections as strikethroughs.
4. Attachment "2", Existing Code sections.

(Continue on additional sheets as required)

SOURCE OF FUNDING:

Is this action already budgeted? N/A			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue? N/A			
	Yes	☐	Funds will be deposited into this fund: _____ in the amount of $_____ for FY___.
	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will amend, repeal and add to Chapter 28, Article I and Article II, Division 1 and Division 2, of the Las Cruces Municipal Code as shown on Exhibit "A".
2. Vote "No"; this will not amend, repeal and add to Chapter 28, Article I and Article II, Division 1 and Division 2, of the Las Cruces Municipal Code as shown on Exhibit "A", and could impede the protections and benefits to the utility systems and utility operations sought by the Utilities Board.
3. Vote to "Amend"; this could improve or impede the protections and benefits to the utility systems and utility operations sought by the Utilities Board.
4. Vote to "Table"; this could impede the protections and benefits to the utility systems and utility operations sought by the Utilities Board.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.
N/A.

(Continue on additional sheets as required)

COUNCIL BILL NO. 13-016
ORDINANCE NO. 2671

AN ORDINANCE AMENDING AND REPEALING LAS CRUCES MUNICIPAL CODE SECTIONS 28-1 THROUGH 28-22; AMENDING AND REPEALING LAS CRUCES MUNICIPAL CODE SECTIONS 28-51 THROUGH 28-58; ADDING NEW LAS CRUCES MUNICIPAL CODE SECTION 28-59; AND REPEALING LAS CRUCES MUNICIPAL CODE SECTIONS 28-86 THROUGH 28-91.

The City Council is informed that:

WHEREAS, the Utilities Department staff in consultation with the City Attorney's Office has identified numerous sections of Las Cruces Municipal Code Chapter 28, Article I, and Article II, Division 1 and Division 2, that should be amended, repealed or added to. Some of the proposed amendments and repeals are minor word changes or the renumbering of sections. Other proposed amendments are substantial re-wordings, total repeals or new additions; and

WHEREAS, the Utilities Board after review of each proposed modification, section by section, as presented by the Utilities Attorney at its September 13, 2012 Board meeting, voted to recommend City Council approval of the modifications in Board Resolution No. 12-13-011; and

WHEREAS, the Utilities Board is empowered to recommend to the Council municipal code modifications that protect and benefit the utility systems and utility operations. However, the Utilities Board does not have the authority to revise the Las Cruces Municipal Code, which modifications can only be made by Council approved ordinances; and

WHEREAS, the Utilities Board is therefore recommending that the Council approve the Code modifications as shown on Exhibit "A" attached hereto.

NOW, THEREFORE, be it ordained by the governing body of the City of Las Cruces:

(I)

THAT the Las Cruces Municipal Code, Chapter 28, is modified to incorporate the changes shown on Exhibit "A" as attached hereto.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2012.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: ____
Councillor Silva: ____
Councillor Smith: ____
Councillor Pedroza: ____
Councillor Small: ____
Councillor Sorg: ____
Councillor Thomas: ____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

Asst City Attorney

Exhibit A

FINAL CHANGES TO EXISTING CHAPTER

Chapter 28 - UTILITIES

ARTICLE I. - IN GENERAL

Sec. 28-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Utilities Board means the Board of Commissioners for the City of Las Cruces Utilities.

Utility means water, sewer, gas, solid waste and any other utility service furnished by the City to consumers thereof.

Sec. 28-2. - Scope.

All pertinent sections of this chapter are made a part of the terms and conditions whereby the City shall furnish any utility service to any person or whereby the City shall make any utility connections or perform any work of any kind in connection with the furnishing of any utility service pursuant to City rules and regulations.

Sec. 28-3. - Service to comply with technical provisions.

Any utility service furnished under this chapter shall be in accordance with and in compliance with all applicable technical provisions of this code, City ordinances, and regulations established by Utilities Board resolutions whether or not the building or facility receiving City utility service is located within or without the City, or whether or not it is permitted by the City or by the state.

Sec. 28-4. - Establishment of standards and specifications.

The Utilities Board shall have the authority to establish by Board resolution such standards and specifications as may be deemed necessary for the installation, construction, operation and maintenance of any utility service system owned and operated by the City within or without the City and under the management of the City. Such standards and specifications shall be filed in the office of the City Clerk.

Sec. 28-5. - Right of entry.

Subject to constitutional limitations, any authorized City inspector shall have free access at any time to all premises supplied with any City utility service for the purpose of examination in order to protect the utility services from abusive use or to protect the public safety.

Sec. 28-6. - Termination of service authorized.

The City shall have the right to disconnect or refuse to connect or reconnect any utility service for any of the following reasons:

(1) Failure to have the utility portion of constructions plans reviewed and approved by the City.

(2) Violation of the regulations pertaining to utility service.

(3) Nonpayment of bills.

(4) Willful or negligent waste of service due to improper or imperfect pipes, fixtures, appliances or otherwise.

(5) Tampering with any meter, seal or other equipment controlling or regulating the supply of utility service.

(6) Theft or diversion and use of service without payment therefor.

(7) Vacancy of premises.

Sec. 28-7. - Liability of City for damage.

The City shall not be liable for any damage to any customer of any utility service furnished by the City due to backflow of the sewer system, failure of supply, interruption of service or any other cause outside the direct control of the City. For damage beyond the meter, the City shall not be liable for damage unless the City is duly notified and a reasonable amount of time is allowed to correct such damage.

Sec. 28-8. - Application for service required.

Any person desiring any utility service furnished by the City shall make application for the service to the customer service section. Such application shall contain the applicant's name, address and the uses for which such utility service is desired. Before any utility service shall be provided to an applicant, such application shall be signed by the applicant in a signature format acceptable to the City, and filed with the customer service section, along with the required deposit.

Sec. 28-9. - Denial of service to debtors.

The city may decline, fail or cease to furnish utility service to any person who may be in debt to the city for any reason, except ad valorem taxes and special assessments.

Sec. 28-10. - Effect of approval of application for service.

Approval of the application for any utility service by the City shall be deemed permission for such service.

Sec. 28-11. - Use of service assumed.

All customers with active City utility service shall be responsible for all applicable charges whether or not the premises are occupied.

Sec. 28-12. – Unauthorized use.

No customer with active City utility service shall make any unauthorized changes to said services.

Sec. 28-13. – Tampering, damage, or trespass.

No person not having authority to do so, shall open any water hydrant or tamper with any utility service furnished by the City or in any other way damage any equipment or premises or trespass on any property belonging to the City connected with any utility service.

Sec. 28-14. - Temporary interruption of service.

The City reserves the right to cut off any utility service without notice in emergencies. When an interruption in service is necessary for the maintenance and improvement of the utility system, affected customers will be notified as circumstances permit.

Sec. 28-15. - Restriction of use.

The City reserves the right at any time to restrict or prevent the use of any utility service furnished by the City during periods of emergency or circumstances demanding such restriction or prevention of use.

Sec. 28-16. – Sale of service by customer.

No customer shall sell to others any utility service obtained from the City unless the customer is a public utility or a governmental entity.

Sec. 28-17. - Supervision of connections.

Connections for any utility service furnished by the City shall be made only with the approval of and under the supervision of the City.

Sec. 28-18. - Separate connections.

Every building, structure or platted lot in the City shall have a separate City-owned utility service connection or connections, unless specifically authorized by the utilities director.

Sec. 28-19. - Unlawful connections.

No person shall make any connection in any manner to any City owned utility system without the prior knowledge and consent of the City.

Sec. 28-20. - Unlawful use.

No person, other than authorized City employees, shall be authorized to connect, turn on, turn off or disconnect any utility service offered by the City, or remove, replace or repair any equipment connected to any such utility service.

Sec. 28-21. - Maintenance of system by customer.

The customer of any utility service furnished by the City shall maintain and keep in good repair all connections, appliances and other apparatus installed and used in connection with such utility service.

Secs. 28-22—28-50. - Reserved.

ARTICLE II. – RATES, FEES AND CHARGES

Sec. 28-51. - Meters required.

Meters for the measurement of utility services furnished by the City shall be furnished and installed by and shall remain the property of the City.

Sec. 28-52. - Access to meters.

Safe access to City utility meters shall be granted the City at all reasonable times. If safe access is not available to City utility meters, the utilities director may direct the relocation of the meters which relocation expense may be the responsibility of the customer.

Sec. 28-53. - Determination of charges.

The rates, fees and charges related to utility services furnished by the City shall be determined by the Utilities Board and shall be on file in the office of the City clerk. Utility rates established by the Utilities Board may be appealed to the City Council as approved in Council Resolution No. 09-170, which approved the appeals' procedure for any rate class affected by utility rates set by the Utilities Board, and any amendments or revisions thereto.

Sec. 28-54. - Payment due date.

The Utilities Board shall establish a utility bill payment due date and shall provide for a service discontinuance schedule for failure to pay and options for utility bill payment plans.

Sec. 28-55. - Penalty for failure to pay.

If any customer of utility services furnished by the City shall fail to pay his bill therefor when the bill is due, a penalty as determined by the Utilities Board shall be imposed.

Sec. 28-56. - Reconnection after disconnection.

If the utility service is disconnected for nonpayment of the bill, the customer thereof shall have the right to have the service reconnected only upon the payment of the amount due and, in addition thereto, a reconnection fee as established by the Utilities Board from time to time.

Sec. 28-57. - Liens for nonpayment.

The City shall have the right to assess a lien on the real property served and provided with City utility service for which delinquent City utility charges are owing. Such lien shall be for the actual amount due and shall be enforced and collected together with interest and reasonable attorney fees in the manner provided by law.

Sec. 28-58. - Voluntary discontinuance of service.

A customer wishing to discontinue the use of utility service shall give written notice thereof to the utility customer service office. Failure to do so shall render the customer liable for the payment of all bills until such notice has been given.

Sec. 28-59. - Deposits.

The Utilities Board shall establish billing and service regulations for all City utilities, which regulations shall take effect upon approval by Utilities Board resolution. The regulations shall provide for utility deposits and shall replace existing Section 28-86 through 28-91 upon approval by Utilities Board resolution.

Secs. 28-60—28-85. - Reserved.

LEGISLATIVE CHANGES SHOWING MODIFICATIONS TO EXISTING CHAPTER

Chapter 28 - UTILITIES

ARTICLE I. - IN GENERAL

Sec. 28-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Utilities Board means the Board of Commissioners for the City of Las Cruces Utilities.

Utility means water, sewer, gas, solid waste and any other utility service furnished by the City to consumers thereof.

Sec. 28-2. - Scope.

All pertinent sections of this chapter are made a part of the terms and conditions whereby the City shall furnish any utility service to any person or whereby the City shall make any utility connections or perform any work of any kind in connection with the furnishing of any utility service pursuant to ~~the~~City rules and regulations~~ of the city council~~.

Sec. 28-3. - Service to comply with technical provisions.

Any utility service furnished under this chapter shall be in accordance with and in compliance with all applicable technical provisions of this code, ~~state law and city ordinances, rules and regulations~~City ordinances, and regulations established by Utilities Board resolutions whether or not the building or facility receiving City utility service is located within or without the City, or whether or not it is permitted by the City or by the state.

Sec. 28-4. - Establishment of standards and specifications.

The ~~city council~~Utilities Board shall have the authority to establish by ~~rule or regulation~~Board resolution such standards and specifications as may be deemed necessary for the installation, construction, operation and maintenance of any utility service system owned and operated by the City within or without the City and under the management of the City~~ council.~~. Such~~ rules, regulations,~~ standards and specifications shall be filed in the office of the City Clerk~~. Violation of such rules, regulations, standards and specifications shall be deemed a petty misdemeanor~~.

Sec. 28-5. ~~- Inspection outside city.~~

~~In order to protect the utility service supply, the city will not make any water or sewer taps outside the city limits until the premises involved have been inspected and approved by the city.~~

~~Sec. 28-6.~~ - Right of entry.

Subject to constitutional limitations, any authorized City inspector ~~of the city~~ shall have free access at any time to all premises supplied with any City utility service ~~by the city~~ for the purpose of examination in order to protect the utility services from abusive use or to protect the public safety.

Sec. 28-~~7~~6. - Termination of service authorized.

The City shall have the right to disconnect or refuse to connect or reconnect any utility service for any of the following reasons:

(1) Failure to ~~meet~~have the ~~applicable provisions~~utility portion of ~~law~~constructions plans reviewed and approved by the City.

(2) Violation of the ~~rules and~~ regulations pertaining to utility service.

(3) Nonpayment of bills.

(4) Willful or negligent waste of service due to improper or imperfect pipes, fixtures, appliances or otherwise.

(5) ~~Molesting~~Tampering with any meter, seal or other equipment controlling or regulating the supply of utility service.

(6) Theft or diversion and use of service without payment therefor.

(7) Vacancy of premises.

Sec. 28-~~8~~7. - Liability of City for damage.

~~(a)~~ The City shall not be liable for any damage to any customer of any utility service furnished by the City due to backflow of the sewer system, failure of supply, interruption of service or any other cause outside the direct control of the City. For damage beyond the meter, the City shall not be liable for damage unless the City is duly notified and a reasonable amount of time is allowed to correct such damage.

~~(b) Every applicant for utility service shall sign a statement to the effect provided for in subsection (a) of this section.~~

Sec. 28-~~9~~8. - Application for service required.

Any person desiring any utility service furnished by the City shall make application for the service to the customer service ~~department.~~section. Such application shall contain the applicant's name, address and the uses for which such utility service is desired. Before any utility service shall be provided to an applicant, such application shall be signed by the applicant in a signature format acceptable to the City, and filed with the customer service ~~department~~section, along with the required deposit.

Sec. 28-~~10~~9. - Denial of service to debtors.

The city may decline, fail or cease to furnish utility service to any person who may be in debt to the city for any reason, except ad valorem taxes and special assessments.

Sec. 28-~~11~~10. - Effect of approval of application for service.

Approval of the application for any utility service by the City shall be deemed permission for such service.

Sec. 28-~~12~~11. - Use of service assumed.

All ~~premises connected to any~~customers with active City utility service ~~of the city~~ shall be ~~assumed to be using such~~responsible for all applicable charges whether or not the premises are occupied.

Sec. 28-12. – Unauthorized use.

No customer with active City utility service~~, and the owner or occupant shall be charged therefor so long as such premises shall remain connected with the utility service.~~ shall make any unauthorized changes to said services.

Sec. 28-13. ~~– Use of service contrary to permit.~~

~~Any person having a permit from the city for the use of any utility service offered by the city who shall use such utility service for any purpose other than mentioned in such permit~~**– Tampering, damage, or** ~~who shall make any unauthorized changes in such service shall be deemed guilty of a petty misdemeanor.~~

~~Sec. 28-14. - Damage,~~ trespass ~~of equipment~~.

~~It shall be unlawful for any~~No person~~,~~ not having authority to do so, ~~to~~shall open any water hydrant or tamper with any utility service furnished by the City ~~to consumers~~ or in any other way ~~to molest,~~ damage any equipment or premises or trespass ~~upon~~on any ~~equipment or premises~~property belonging to the City connected with any utility service.

Sec. 28-~~15~~14. - Temporary interruption of service.

The City reserves the right to cut off any utility service without notice in emergencies. When an interruption in service is necessary for the maintenance and improvement of the utility system, affected customers will be notified as circumstances permit.

Sec. 28-~~16~~15. - Restriction of use.

The City reserves the right at any time to restrict or prevent the use of any utility service furnished by the City during periods of emergency or circumstances demanding such restriction or prevention of use.

Sec. 28-~~17. -~~16. – Sale of service by customer.

~~It~~No customer shall ~~be unlawful for any person to resell~~sell to others any utility service obtained from the City ~~except only by special arrangement with~~unless the ~~city council.~~customer is a public utility or a governmental entity.

Sec. 28-~~18~~17. - Supervision of connections.

Connections for any utility service furnished by the City shall be made only with the approval of and under the supervision of the City.

Sec. 28-~~19~~18. - Separate connections.

Every building, structure or ~~consumer~~platted lot in the City shall have a separate City-owned utility service connection or connections, unless specifically authorized by the ~~city manager~~utilities director.

Sec. 28-~~20~~19. - Unlawful connections.

~~Any~~No person ~~who~~ shall make any connection in any manner to any City owned utility system~~, whether owned by the city or not,~~ without the prior knowledge and consent of the ~~owner of such utility system shall be deemed guilty of a petty misdemeanor~~City.

Sec. 28-~~21~~20. - Unlawful use.

No person, other than authorized City employees ~~of the city~~, shall be authorized to connect, turn on, turn off or disconnect any utility service offered by the City, or remove, replace or repair any equipment connected to any such utility service.

Sec. 28-~~22~~21. - Maintenance of system by ~~consumer~~customer.

The ~~consumer~~customer of any utility service furnished by the City shall maintain and keep in good repair all connections, appliances and other apparatus installed and used in connection with such utility service.

Secs. 28-~~23~~22—28-50. - Reserved.

ARTICLE II. — RATES, FEES AND CHARGES

~~DIVISION 1. - GENERALLY~~

Sec. 28-51. - Meters required.

Meters for the measurement of utility services furnished by the City shall be furnished and installed by and shall remain the property of the City.

Sec. 28-52. - Access to meters.

~~Free~~Safe access to City utility meters shall be granted the City at all reasonable times. If safe access is not available to City utility meters, the utilities director may direct the relocation of the meters which relocation expense may be the responsibility of the customer.

Sec. 28-53. - Determination of charges.

The rates, fees and charges ~~for the consumption of~~ related to utility services furnished by the City~~, as well as the charges and fees for connection thereto,~~ shall be ~~as~~ determined by the ~~city council from time to time~~Utilities Board and shall be on file in the office of the City clerk. Utility rates established by the Utilities Board may be appealed to the City Council as approved in Council Resolution No. 09-170, which approved the appeals' procedure for any rate class affected by utility rates set by the Utilities Board, and any amendments or revisions thereto.

Sec. 28-54. - Payment due date~~, delinquency~~.

~~All bills for~~ The Utilities Board shall establish a utility ~~services furnished by the city shall be~~bill payment due ~~and payable when rendered~~date and shall ~~be considered delinquent 15 days thereafter. A delinquent bill shall become subject to immediate~~ provide for a service

discontinuance ~~of service when the next~~schedule for failure to pay and options for utility bill ~~is rendered showing a previous balance due.~~ payment plans.

Sec. 28-55. - Penalty for failure to pay.

If any ~~consumer~~customer of utility services furnished by the City shall fail to pay his bill therefor when the bill is due, a penalty as determined by the ~~city council~~Utilities Board shall be imposed ~~for each time a collector is dispatched to collect the delinquent account~~.

Sec. 28-56. - Reconnection after disconnection.

If the utility service is disconnected for nonpayment of the bill, the ~~consumer~~customer thereof shall have the right to have the service reconnected only upon the payment of the amount due and, in addition thereto, a reconnection fee as established by the ~~city council~~Utilities Board from time to time.

Sec. 28-57. - Liens for nonpayment.

The City shall have ~~and reserve~~the right to assess a lien on ~~any premises from~~ the real property served and provided with City utility service for which delinquent City utility charges ~~may be due and delinquent.~~are owing. Such lien shall be for the actual amount due and shall be enforced and collected together with interest and reasonable attorney fees in the manner provided by law.

Sec. 28-58. - Voluntary discontinuance of service.

A ~~consumer~~customer wishing to discontinue the use of ~~any~~ utility service shall give written notice thereof ~~at~~to the ~~city hall~~ utility customer service office. Failure to do so shall render the ~~consumer~~customer liable for the payment of all bills until such notice has been given.

Sec. 28-59. - Deposits.

The Utilities Board shall establish billing and service regulations for all City utilities, which regulations shall take effect upon approval by Utilities Board resolution. The regulations shall provide for utility deposits and shall replace existing Section 28-86 through 28-91 upon approval by Utilities Board resolution.

Secs. 28-~~59~~60—28-85. - Reserved.

~~DIVISION 2. - DEPOSITS~~

~~**Sec. 28-86. - Definitions.**~~

~~The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Chronically delinquent* means those customers who have been disconnected for nonpayment or failed to make prompt payments on three or more occasions during any 12-month period.~~

~~*Nonresidential customer* means all who are not residential customers.~~

~~*Prompt payments* means payments made on or before the next billing date.~~

~~*Residential customer* means service to residential dwellings where no more than two single-family dwelling units are served by a single meter.~~

~~Sec. 28-87. - Required for residential customers.~~

~~(a) Along with the application for utility service, all applicants for residential utility service shall be required to pay to the city a minimum deposit, which will be set by the city council by resolution from time to time, or, at the city's option, a deposit equal to an estimate by the city of the sum of the two highest billing months. If actual billings increase above the initial estimated two highest months' billings in any 12-month period, the city, at its election, may increase the deposit to the sum of the actual two highest months' billings.~~

~~(b) If any residential customer's account becomes chronically delinquent, the city shall require the higher of the two options mentioned in subsection (a) of this section.~~

~~(c) In lieu of a deposit as required in subsection (a) of this section, the city may accept a recent credit history from another utility showing a prompt payment history.~~

~~Sec. 28-88. - Required for nonresidential customers.~~

~~(a) Along with the application for utility service, all applicants for nonresidential utility service shall be required to pay to the city a minimum deposit, which will be set by the city council by resolution from time to time, or, at the city's option, a deposit equal to an estimate by the city of the sum of the two highest billing months. If actual billings increase above the initial estimated two highest months' billings in any 12-month period, the city, at its election, may increase the deposit to the sum of the actual two highest months' billings.~~

~~(b) If any nonresidential customer's account becomes chronically delinquent, the city shall require the higher of the two options mentioned in subsection (a) of this section.~~

~~(c) In lieu of a deposit as required in subsection (a) of this section, the city may accept an irrevocable letter of credit in a form acceptable to the city.~~

~~Sec. 28-89. - Waiver or reduction.~~

~~The customer services manager for the city may, at his discretion, waive or reduce the deposit requirements set forth in this division.~~

~~Sec. 28-90. - Refunds and interest; enforcement.~~

~~(a) All deposits required by this division shall at a customer's request be refunded or applied to the customer's account after 13 consecutive, prompt monthly payments. Where a deposit has been refunded and the customer is subsequently delinquent for two consecutive months, a new deposit shall be required.~~

~~(b) Interest shall be credited on all deposits at a rate to be set forth by the city council by resolution from time to time, and may be credited to the customer's account on an annual basis. Unrefunded deposits and interest accumulated thereon shall be applied to final billings. Interest shall not be paid on any deposits that are refunded within 90 days of the deposit date.~~

~~(c) Interest on deposits shall be earned from the deposit date to the final service date.~~

~~(d) Unclaimed deposits and interest refunds shall be handled as specified by law.~~

~~(e) Failure to make a deposit as set forth in this division shall result in refusal or termination of services.~~

~~Sec. 28-91. - Effect of transfer, moving.~~

~~There shall be no transfer or so-called transfer from one location to another of deposits made for utility service, and in each case the transfer shall be considered a new application for service and shall be treated as such. When premises are vacated, any amounts due for water service shall be paid in full, and utility service shall not be commenced at another place until this is done. Such removal from one place to another shall be considered as a new request for utility service, and applicants shall be required to make the current deposit that shall be in effect at the time such request is made.~~

~~Secs. 28-92—28-120. - Reserved.~~

CURRENT
CHAPTER 28 – UTILITIES

ARTICLES I AND II

Chapter 28 - UTILITIES

ARTICLE I. - IN GENERAL

Sec. 28-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Utility means water, sewer, gas and any other utility service furnished by the city to consumers thereof.

Sec. 28-2. - Scope.

All pertinent sections of this chapter are made a part of the terms and conditions whereby the city shall furnish any utility service to any person or whereby the city shall make any utility connections or perform any work of any kind in connection with the furnishing of any utility service pursuant to the rules and regulations of the city council.

Sec. 28-3. - Service to comply with technical provisions.

Any utility service furnished under this chapter shall be in accordance with and in compliance with all applicable technical provisions of this Code, state law and city ordinances, rules and regulations.

Sec. 28-4. - Establishment of standards and specifications.

The city council shall have the authority to establish by rule or regulation such standards and specifications as may be deemed necessary for the installation, construction and maintenance of any utility service system owned and operated by the city within or without the city and under the management of the city council. Such rules, regulations, standards and specifications shall be filed in the office of the city clerk. Violation of such rules, regulations, standards and specifications shall be deemed a petty misdemeanor.

Sec. 28-5. - Inspection outside city.

In order to protect the utility service supply, the city will not make any water or sewer taps outside the city limits until the premises involved have been inspected and approved by the city.

Sec. 28-6. - Right of entry.

Subject to constitutional limitations, any authorized inspector of the city shall have free access at any time to all premises supplied with any utility service by the city for the purpose of examination in order to protect the utility services from abusive use.

Sec. 28-7. - Termination of service authorized.

The city shall have the right to disconnect or refuse to connect or reconnect any utility service for any of the following reasons:

(1) Failure to meet the applicable provisions of law.

(2) Violation of the rules and regulations pertaining to utility service.

(3) Nonpayment of bills.

(4) Willful or negligent waste of service due to improper or imperfect pipes, fixtures, appliances or otherwise.

(5) Molesting any meter, seal or other equipment controlling or regulating the supply of utility service.

(6) Theft or diversion and use of service without payment therefor.

(7) Vacancy of premises.

Sec. 28-8. - Liability of city for damage.

(a) The city shall not be liable for any damage to any customer of any utility service furnished by the city due to backflow of the sewer system, failure of supply, interruption of service or any other cause outside the direct control of the city. For damage beyond the meter, the city shall not be liable for damage unless the city is duly notified and a reasonable amount of time is allowed to correct such damage.

(b) Every applicant for utility service shall sign a statement to the effect provided for in subsection (a) of this section.

Sec. 28-9. - Application for service required.

Any person desiring any utility service furnished by the city shall make application for the service to the customer service department. Such application shall contain the applicant's name, address and the uses for which such utility service is desired. Before any utility service shall be provided to an applicant, such application shall be signed by the applicant and filed with the customer service department, along with the required deposit.

Sec. 28-10. - Denial of service to debtors.

The city may decline, fail or cease to furnish utility service to any person who may be in debt to the city for any reason, except ad valorem taxes and special assessments.

Sec. 28-11. - Effect of approval of application for service.

Approval of the application for any utility service by the city shall be deemed permission for such service.

Sec. 28-12. - Use of service assumed.

All premises connected to any utility service of the city shall be assumed to be using such utility service, and the owner or occupant shall be charged therefor so long as such premises shall remain connected with the utility service.

Sec. 28-13. - Use of service contrary to permit.

Any person having a permit from the city for the use of any utility service offered by the city who shall use such utility service for any purpose other than mentioned in such permit or who shall make any unauthorized changes in such service shall be deemed guilty of a petty misdemeanor.

Sec. 28-14. - Damage, trespass of equipment.

It shall be unlawful for any person, not having authority to do so, to open any water hydrant or tamper with any utility service furnished by the city to consumers or in any other way to molest, damage or trespass upon any equipment or premises belonging to the city connected with any utility service.

Sec. 28-15. - Temporary interruption of service.

The city reserves the right to cut off any utility service without notice in emergencies. When an interruption in service is necessary for the maintenance and improvement of the utility system, affected customers will be notified as circumstances permit.

Sec. 28-16. - Restriction of use.

The city reserves the right at any time to restrict or prevent the use of any utility service furnished by the city during periods of emergency or circumstances demanding such restriction or prevention of use.

Sec. 28-17. - Sale of service by customer.

It shall be unlawful for any person to resell to others any utility service obtained from the city except only by special arrangement with the city council.

Sec. 28-18. - Supervision of connections.

Connections for any utility service furnished by the city shall be made only under the supervision of the city.

Sec. 28-19. - Separate connections.

Every building, structure or consumer in the city shall have a separate city-owned utility service connection, unless specifically authorized by the city manager.

Sec. 28-20. - Unlawful connections.

Any person who shall make any connection in any manner to any utility system, whether owned by the city or not, without the prior knowledge and consent of the owner of such utility system shall be deemed guilty of a petty misdemeanor.

Sec. 28-21. - Unlawful use.

No person, other than employees of the city, shall be authorized to connect, turn on, turn off or disconnect any utility service offered by the city, or remove, replace or repair any equipment connected to any such utility service.

Sec. 28-22. - Maintenance of system by consumer.

The consumer of any utility service furnished by the city shall maintain and keep in good repair all connections, appliances and other apparatus installed and used in connection with such utility service.

Secs. 28-23—28-50. - Reserved.

ARTICLE II. - RATES AND CHARGES

DIVISION 1. - GENERALLY

Sec. 28-51. - Meters required.

Meters for the measurement of utility services furnished by the city shall be furnished and installed by and shall remain the property of the city.

Sec. 28-52. - Access to meters.

Free access to utility meters shall be granted the city at all reasonable times.

Sec. 28-53. - Determination of charges.

The rates and charges for the consumption of utility services furnished by the city, as well as the charges and fees for connection thereto, shall be as determined by the city council from time to time and on file in the office of the city clerk.

Sec. 28-54. - Payment due date, delinquency.

All bills for utility services furnished by the city shall be due and payable when rendered and shall be considered delinquent 15 days thereafter. A delinquent bill shall become subject to immediate discontinuance of service when the next bill is rendered showing a previous balance due.

Sec. 28-55. - Penalty for failure to pay.

If any consumer of utility services furnished by the city shall fail to pay his bill therefor when the bill is due, a penalty as determined by the city council shall be imposed for each time a collector is dispatched to collect the delinquent account.

Sec. 28-56. - Reconnection after disconnection.

If the utility service is disconnected for nonpayment of the bill, the consumer thereof shall have the right to have the service reconnected only upon the payment of the amount due and, in addition thereto, a reconnection fee as established by the city council from time to time.

Sec. 28-57. - Liens for nonpayment.

The city shall have and reserve a lien on any premises from which utility charges may be due and delinquent. Such lien shall be for the actual amount due and shall be enforced and collected together with reasonable attorney fees in the manner provided by law.

Sec. 28-58. - Voluntary discontinuance of service.

A consumer wishing to discontinue the use of any utility service shall give written notice thereof at the city hall. Failure to do so shall render the consumer liable for the payment of all bills until such notice has been given.

Secs. 28-59—28-85. - Reserved.

DIVISION 2. - DEPOSITS

Sec. 28-86. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chronically delinquent means those customers who have been disconnected for nonpayment or failed to make prompt payments on three or more occasions during any 12-month period.

Nonresidential customer means all who are not residential customers.

Prompt payments means payments made on or before the next billing date.

Residential customer means service to residential dwellings where no more than two single-family dwelling units are served by a single meter.

Sec. 28-87. - Required for residential customers.

(a) Along with the application for utility service, all applicants for residential utility service shall be required to pay to the city a minimum deposit, which will be set by the city council by resolution from time to time, or, at the city's option, a deposit equal to an estimate by the city of the sum of the two highest billing months. If actual billings increase above the initial estimated two highest months' billings in any 12-month period, the city, at its election, may increase the deposit to the sum of the actual two highest months' billings.

(b) If any residential customer's account becomes chronically delinquent, the city shall require the higher of the two options mentioned in subsection (a) of this section.

(c) In lieu of a deposit as required in subsection (a) of this section, the city may accept a recent credit history from another utility showing a prompt payment history.

Sec. 28-88. - Required for nonresidential customers.

(a) Along with the application for utility service, all applicants for nonresidential utility service shall be required to pay to the city a minimum deposit, which will be set by the city council by resolution from time to time, or, at the city's option, a deposit equal to an estimate by the city of the sum of the two highest billing months. If actual billings increase above the initial estimated two highest months' billings in any 12-month period, the city, at its election, may increase the deposit to the sum of the actual two highest months' billings.

(b) If any nonresidential customer's account becomes chronically delinquent, the city shall require the higher of the two options mentioned in subsection (a) of this section.

(c) In lieu of a deposit as required in subsection (a) of this section, the city may accept an irrevocable letter of credit in a form acceptable to the city.

Sec. 28-89. - Waiver or reduction.

The customer services manager for the city may, at his discretion, waive or reduce the deposit requirements set forth in this division.

Sec. 28-90. - Refunds and interest; enforcement.

(a) All deposits required by this division shall at a customer's request be refunded or applied to the customer's account after 13 consecutive, prompt monthly payments. Where a deposit has been refunded and the customer is subsequently delinquent for two consecutive months, a new deposit shall be required.

(b) Interest shall be credited on all deposits at a rate to be set forth by the city council by resolution from time to time, and may be credited to the customer's account on an annual basis. Unrefunded deposits and interest accumulated thereon shall be applied to final billings. Interest shall not be paid on any deposits that are refunded within 90 days of the deposit date.

(c) Interest on deposits shall be earned from the deposit date to the final service date.

(d) Unclaimed deposits and interest refunds shall be handled as specified by law.

(e) Failure to make a deposit as set forth in this division shall result in refusal or termination of services.

Sec. 28-91. - Effect of transfer, moving.

There shall be no transfer or so-called transfer from one location to another of deposits made for utility service, and in each case the transfer shall be considered a new application for service and shall be treated as such. When premises are vacated, any amounts due for water service shall be paid in full, and utility service shall not be commenced at another place until this is done. Such removal from one place to another shall be considered as a new request for utility service, and applicants shall be required to make the current deposit that shall be in effect at the time such request is made.

Secs. 28-92—28-120. - Reserved.