

INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE NO. 02-302

AN ORDINANCE AMENDING CHAPTER 40, ARTICLE II, DIVISION 2, SECTIONS , 40-63, 40-65, and 40-67 TO CLARIFY THE TRANSFER OF OPERATING PROFITS FROM THE COUNTY DEPARTMENT OF PUBLIC UTILITIES TO THE GENERAL FUND AND TO CLARIFY THE APPROPRIATE PROCUREMENT CODE FOR THE DEPARTMENT

WHEREAS, Incorporated County of Los Alamos (“County”) is an incorporated county under the law of the State of New Mexico; and

WHEREAS, pursuant to the New Mexico Constitution, the County is a Home-Rule jurisdiction and has adopted a governing charter; and

WHEREAS, County Charter Section 506 requires that the County and its Department of Public Utilities (“DPU”) through its Board of Public Utilities (“BPU”) include in its annual budget requirements an amount for payment of in lieu of franchise fees and the taxes that would be normally assessed against privately owned gas and electric utilities; and

WHEREAS, the Council has established in the County Code of Ordinances (“Code”), in Chapter 40, Article II, Division 2 codes reflecting these Charter requirements; and

WHEREAS, one of the Charter requirements in Section 509, is to transfer any remaining operating profits to the County’s General Fund; and

WHEREAS, the County, DPU, and the BPU, in 1997, set out in Resolution No. 97-07 a method for determining operating profits which are transferred to the County’s General Fund; and

WHEREAS, the Council wants the Code to reflect the fact that the County, as owner of the utility system, is lawfully entitled to a return on its investment in the form a transfer of profits as allowed for in Charter Section 509 and wants to clarify this expectation; and

WHEREAS, the Council believes that County, DPU, and BPU should focus on setting rates so that the DPU is operated on a compensatory basis pursuant to Charter Section 504; and

WHEREAS, certain amendments to Chapter 40, Article II, Division 2 are required to restate the proper allocation of funds and expenses; and

WHEREAS, Section 40-67 must be changed to reflect the correct procurement code applicable to the County’s Department of Public Utilities.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE INCORPORATED COUNTY OF LOS ALAMOS that:

Section 1. Section 40-63 of the Los Alamos County Code of Ordinances is amended to read as follows:

Sec. 40-63. - Budget.

- (a) *Generally.* The board shall submit a proposed budget to the council for adoption in accordance with article V, sections 506 and 509 of the Charter. The annual budget shall be a complete financial plan for the ensuing fiscal year, consisting of an operating and a capital budget conforming to article V, section 509 of the Charter, and the items listed in subsection (c) of this section. Should the council fail to adopt the department's proposed budget on or before the start of the ensuing fiscal year, the latest approved budget of the department shall be the budget of the department until the council adopts a new budget for the ensuing fiscal year. Budget changes shall be recommended by the board to the council for consideration for approval.
- (b) *Financial review.* ~~Prior to the end of the fiscal year, the board shall review the actual revenues and expenditures as submitted to it by the director and determine and recommend to the council the amounts to be classified as operating profit pursuant to article V, section 509 of the Charter. The amount recommended by the board to be classified as operating profits and any interest thereon shall be transferred, unencumbered at the end of the fiscal year, to the general fund. For revenue in excess of that budgeted as operating profits, the board may recommend such excess revenue for utility use. Excess revenue shall be deposited, with interest, in a separate account. No expenditures or transfers shall be made from this account until the recommendations of the board are acted upon by the council at a regular meeting. Final determination of the excess revenue shall be based upon the reconciliation of the department accounts according to the annual audit conducted by the independent certified public accountant. Any adjustment of the operating profit shall carry with it accrued interest thereon and must be acted upon by the council within 30 days of the audit completion and after consideration of the audit and board recommendations.~~

After publication of audited financial statements, BPU shall review the results from the previous fiscal year and the related updated 10-year projections of rates and revenues, funding of reserves (the Schedule of Funds) and Capital Project Program Plan as submitted to it by the director. Based upon this review, the Board shall determine and recommend to the council for their consideration and approval, as part of the annual budget submission, the following possible changes to the 10-year projections:

- (1) rate adjustments;
- (2) adjustments to Schedule of Funds;
- (3) adjustments to the Capital Program;
- (4) designation of any additional specific remaining amounts as operating profits transfers to the General Fund beyond those planned for as indicated in subsection (c) 12.

(c) *Budget items.* The budget shall include, but not be limited to:

- (1) A projection of revenues from commodity sales of each utility system by customer type, interest income, service fees and other sources;
- (2) Reserve accounts required by the Charter, bond ordinances and bond indentures;
- (3) A projection of normal expense for each utility system;
- (4) A projection of funds required for each replacement and addition and improvement project and a statement of objectives and schedule for their completion;
- (5) A projection of funds needed for contingencies;
- (6) A schedule of funds in accordance with section 40-65;
- (7) A capital-asset budget indicating new equipment associated with department projects;
- (8) A projection of bond payments, redemptions and other transactions under the bond ordinance or indentures;
- (9) A staffing schedule of the department showing the number of persons assigned to department projects and programs and changes therein for the fiscal year;
- (10) A ten ~~five~~ year plan update showing the status of the replacement and addition and improvement projects of the department;
- ~~(11) An amount for planning purposes for each fiscal year of at least five percent of the electric and gas utilities gross retail revenue and exclusive of that from the county and schools for commodities for their sole use, and an additional amount representing a percentage of the revenue from the Department of Energy, generated as a result of the Department of Energy/County Joint Power Pool Coordination Agreement, for transfer to the general fund as operating profits;~~
- ~~(1211) The disposition of net county revenues, if any, generated as a result of economy energy sales, bulk power sales, or brokered power sales shall be governed by subsection (b) of this section;~~
- (12) A Profit Transfer. Charter Section 509 anticipates possible profit transfers from the utility system to the general fund. The County as owner should have a return on its investment in the utility system. It is also prudent fiscal management to plan for a specific level of return. Therefore, this paragraph clarifies that expectation and sets the following budget policy:
 - i. After providing for the items specified in Charter Section 509 1. through 5., the budget shall include an amount for planning purposes for each fiscal year of at least five percent of the electric and gas utilities gross retail revenue and exclusive of that from the county and schools for commodities for their sole use, and an additional amount representing a percentage of the revenue from the Department of Energy, generated as a result of the Department of Energy/County Joint Power Pool Coordination Agreement, for transfer to the general fund as operating profits.
 - ii. After completion and approval of the County's audit, the profit transfer amount for the current fiscal year shall be calculated based upon actual audited revenues from

the previous fiscal year. Those calculated amounts will be presented to Council to approve as profit transfers to the general fund in the current fiscal year.

iii. For the period of fiscal years 2020 through 2022, after approval of the profit transfer amounts, but prior to the transfers occurring, the Council may, through formal action, re-direct these amount to be used within the Joint Utility System Fund for purposes designated by the Council. Those purposes may include, but are not limited to, accelerating investment in utility infrastructure, investing in utility infrastructure to facilitate coordination with roads projects, investing in utility infrastructure to facilitate economic development and housing projects, facilitating utility debt restructuring, and transferring funds between individual utility sub-funds.

- (d) *Capital project program plan.* In addition to items listed in subsection (c) of this section, the utilities board shall submit a capital project program plan which includes the following information concerning any planned capital project: program justification, funding sources, a proposed schedule and completion date, breakdown of elements into projected contracts with estimated costs; and other necessary financial information.
- (e) *Plan approval.* A capital project program plan approved by the council shall require no further council action aside from the normal consent calendar process except any contract costs or commitments which exceed, or are anticipated to exceed, the total original budget estimates.
- (f) *Written notice.* The utilities board shall provide notice, in writing, for its approval of any deviation from the capital project program plan to the council.

Section 2. Section 40-65 of the Los Alamos County Code of Ordinances is amended to read as follows:

Sec. 40-65. - Schedule of funds.

The schedule of funds, and any amendment of the schedule, as proposed by the board, shall be referred to the council for consideration for adoption. The schedule of funds shall prescribe the necessary yearly funding of reserves for replacements, additions and improvements, and other reserves authorized by Charter, bond ordinances and bond indentures or other governing instrument and shall be consistent with the needs of the utilities systems. The replacement reserve shall cover (among other things), ~~tools,~~ machinery and equipment, vehicles and system replacements. The schedule of funds shall reflect separate reserve allocations for separate utility systems.

Section 3. Section 40-67 of the Los Alamos County Code of Ordinances is amended to read as follows:

Sec. 40-67. - Expenditures and creation of obligations.

No money shall be disbursed, nor shall any obligation for expenditure of money be incurred, except as provided in the adopted budget. Obligations created against revenues of the department and payment of obligations therefrom shall not be valid unless created in accordance with the ~~state~~ County's procurement code.

Section 4. Effective Date. This Ordinance shall become effective thirty (30) days after notice is published following its adoption.

Section 5. Severability. Should any section, paragraph, clause or provision of this ordinance, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

Section 6. Repealer. All ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

ADOPTED this 25th day of February, 2020.

**COUNCIL OF THE INCORPORATED
COUNTY OF LOS ALAMOS**

**Sara C. Scott
Council Chair**

ATTEST: (SEAL)

**Naomi D. Maestas
Los Alamos County Clerk**