

INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE 02-324

AN ORDINANCE AMENDING CHAPTER 40, ARTICLE II, DIVISION 2, SECTION 40-63 TO EXTEND THE OPTION OF REDIRECTING DEPARTMENT OF PUBLIC UTILITIES PROFIT TRANSFERS BY COUNCIL ACTION TO THE JOINT UTILITY SYSTEM FUND FOR PURPOSES DESIGNATED BY THE COUNCIL

WHEREAS, the Incorporated County of Los Alamos ("County") is an incorporated county of the State of New Mexico as provided in Section 5, Article 10 of the New Mexico Constitution; 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 of the Incorporated County of Los Alamos ("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 County's General Fund; and

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

WHEREAS, the Council wants the Code to reflect the fact that County, as owner of the utility system, is lawfully entitled to a return on its investment in the form of 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 the DPU County-owned utility systems are operated on a compensatory basis pursuant to Charter Section 504; and

WHEREAS, in County Ordinance 02-302 adopted by Council on February 25, 2020, to which provided, in part changes to Section 40-63 of the Code; and

WHEREAS, Section 40-63(c)(12)(iii) provided for the fiscal years 2020 through 2022 that the Council would be authorized to, prior to transferring specified profits on the County's electric and natural gas systems from the Department of Public Utilities to the County's General Fund, to return or redirect the General Fund profits back to specific DPU projects; and

WHEREAS, the County's Board of Public Utilities and Council wish to extend the time in which Council has this option to return and redirect the General Fund profit transfers.



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

Section 1. Chapter 40, Article II, Division 2, Section 40-63 of the County Code of Ordinances of the Incorporated County of Los Alamos is hereby amended 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. After publication of audited financial statements, BPU shall review the results from the previous fiscal year and the related updated ten-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 ten-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-year plan update showing the status of the replacement and addition and improvement projects of the department.

(11) 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:

- a. 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.
- b. 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.
- c. For a five (5) year period, which may be extended as provided below, and beginning with fiscal year 2023, upon approval of the profit transfer amounts by Council, the Council may through formal action re-direct some or all of the profit transfer amounts for use 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. The above five (5) year period may be extended by Council for one (1) additional year at the time of Council's consideration of an annual redirection of a profit transfer so that every year Council considers an annual redirection, there is an option for Council to add an additional year to the original five (5) year period.

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

Section 3. 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 4. 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 January 2022.

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

Randall T. Ryti

**Randall T. Ryti,
Council Chair**

ATTEST: (Seal)

Naomi D. Maestas

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

