

Charter and Code Major Provisions

Charter

303.1. Creation. In addition to the departments created by this Charter, the Council may establish, by resolution, County departments it finds necessary to provide the services and functions required for the public good and shall prescribe the functions of the departments established. **No function assigned by this Charter to a particular department is subject to change by the Council.**

302. - Duties and Powers of the County Manager.

The County Manager shall be the chief executive officer of the County. The County Manager shall be responsible to the Council for all operational requirements of the County and shall execute the vision, strategic goals and policies established by the Council....

303.2. *Administration.* **Each County department, except as provided in this Charter, shall be under the direction and supervision of the County Manager** and shall be administered by an officer known as the department head.

Charter BPU Authority:

- **There shall be a Department of Public Utilities** which shall operate the County-owned electric, gas, water and sewer utility systems **under jurisdiction and control of the Board of Public Utilities**. Charter 500.
- The Board of Public Utilities shall consist of **five (5) members who shall be appointed by the Council.** § 501.1
- **501.3.** Organization of the Board of Public Utilities. **The Board of Public Utilities shall adopt and shall file with the Council procedural rules and regulations not inconsistent with this Charter. No action shall be taken by the Board of Public Utilities except by the affirmative vote of at least three members. Three members shall constitute a quorum for the business of the Board.** The Board shall meet at least once a month. The meetings and records shall be public. The County Administrator and the Utilities Manager shall be ex officio but non-voting members of the Board of Public Utilities.
- **502. - Manager of the Department of Public Utilities.** The head of the Utilities Department shall be known as the Utilities Manager. The Board of Public Utilities shall appoint, suspend or remove the Utilities Manager only with the formal approval of the Council. The Manager shall be appointed solely on the basis of his professional qualifications. **The Manager shall conduct the business of the Utilities Department subject to the policies established by the Board.** All other officers and employees of the Utilities Department shall be appointed and removed by the Manager in accordance with the regulations of this Charter and the personnel ordinance.

- 503. - Cooperation with Other County Departments.** The Utilities Department shall have the right to require the services of the various County offices and departments and shall reimburse such departments to the extent agreed to by the Board and the Administrator. **The Utilities Department may provide its services to other County offices and departments and shall be reimbursed from non-utility funds to the extent agreed to by the Board and the Administrator. Utility commodities shall be sold to the County on a compensatory basis and the Department of Public Utilities shall be reimbursed for these commodities from non-utility funds.**
- 504. - Rates and Charges.** **The rates to be paid by consumers for electricity, gas, water and sewer service shall be proposed by the Board of Public Utilities and shall become effective upon adoption [by Ordinance, see 203.1] by the County Council.** The Board of Public Utilities shall hold a public hearing before a change in rates or charges is put up for adoption. Two weeks before the hearing[,], a notice of the hearing and the proposed change must be published. **The Department of Utilities shall be operated on a compensatory basis.** The rates and charges **shall be just, reasonable, and comparable to those in neighboring communities** and shall be uniform for all consumers of the same class. Different rate schedules may be established for different classes of consumers. Charges for other services provided by the Department of Public Utilities shall be set by the Board of Public Utilities.
- 505. - Accounting and Reporting.** **The Department of Public Utilities shall,** not later than forty-five (45) days or other time set by ordinance after receipt of the report of the annual audit required by this Charter, **furnish the Board of Public Utilities and the Council its annual report which shall include balance sheets,** prepared according to generally accepted accounting principles, **showing the financial condition, as of the end of the previous fiscal year, of each utility in the Department and of the Department as a whole.** Such reports shall be kept on file in the County Clerk's office and shall be public records. A summary of the annual report shall be sent to all consumers.
- 506. - Budget.** The Department of Public Utilities Manager shall formulate the proposed budget with the Board of Public Utilities for timely submission to the Council for adoption. **The proposed budget shall include payments to be made to the County in lieu of the franchise fees and the taxes that would be normally assessed against privately owned gas and electric utilities.** It shall also include a proposed Schedule of Funds which shall prescribe the necessary annual rates for funding **from revenue** the **replacement reserves, extension reserves,** and any other reserves required. (Ord. No. 389, § 7, 1994)
- 507. - Bond Issues.** Subject to applicable state statutes[,], **the Council, on the recommendation of the Board of Public Utilities,** may authorize the issuance and sale of revenue bonds and general obligation bonds to finance the [operations, long term commodity contracts] acquisition, construction, improvements and extensions of the utilities.

- **508. - Investment of Funds.** The Board shall have the right to invest the reserve and contingency funds of the Department in accordance with laws and statutes of the State of New Mexico governing investment of public funds by local governing boards and bodies.

- **509. - Priority of Budgeted Expenditures.** In order that the Department of Public Utilities can plan and utilize its proceeds for the maintenance, improvement and extension of the utilities system before any part of such proceeds is diverted to general County purposes, all funds derived from the operation of the utilities shall be managed and expended in accordance with the following policies. **From the proceeds of the operation of the Department:**

1. There shall first be set aside the **funds required for current operations.**
2. There shall next be set aside the **funds required to redeem and pay interest on any bond** issue for the utility which shall become due and payable during the next fiscal year.
3. There shall next be provided an **adequate reserve to finance replacements** required by normal depreciation of the utility plant or equipment as provided in the Schedule of Funds. These reserves may not be used by the County for financing County operations.
4. **There shall be paid to the General Fund** those amounts set forth in the budget as **payments to be made to the County in lieu of franchise fees and taxes that would be normally assessed against privately owned gas and electric utilities.**
5. There shall next be a **provision for additions and improvements foreseen as necessary to meet future requirements** for the utility systems as provided in the Schedule of Funds.
6. **All remaining operating profits shall be transferred to the County General Fund.**

510. - Management Audit. Within two years of the adoption of this Charter and at least every five years thereafter, the **Board of Public Utilities shall employ a qualified consultant to review, comment, and make recommendations as to the operation and condition of the County Utilities.**

- **§ 40-42 [BPU] Powers and duties.** (a). The duties, responsibilities and authority of the board of public utilities shall include the following:
 - (1) **Jurisdiction and control over the utility systems owned by the county;**
 - (2) Ensuring the proper **utilization of existing operating funds,** capital and personnel resources to **maintain an acceptable level of service;**
 - (3) Identifying and **planning needed expansion and extensions** of the existing utility systems whether within or outside of the county;
 - (4) **Developing policy guidelines for system operation, quality of service, rates and balance of reserve funds and for the operation of the blended utility systems;**
 - (5) Ensuring **effective and harmonious operation** of the department using existing county resources;

- (6) **Formulating**, with the utilities' manager, **the budget** for the systems;
- (7) **Preparing a five-year plan for the capital expansion** of the systems, replacement **activities** and acquisition of real property, with annual updates submitted with each budget;
- (8) Negotiating a **contract for the employment of the utilities' manager**. Such contract and any amendments thereto shall **not become effective until approved by the council**; and
- (9) The board of public utilities shall appoint, suspend, or remove the utilities' manager only with the formal approval of the council.

DPU Manager Authority and Duties

- The head of the Utilities Department shall be known as the Utilities Manager. The Board of Public Utilities shall appoint, suspend or remove the Utilities Manager only with the formal approval of the Council...**The Manager shall conduct the business of the Utilities Department subject to the policies established by the Board**.... §502.
- **§ 40-44. Powers, duties and responsibilities of the manager.** In addition to the provisions of the Charter, the powers, duties and **responsibilities of the manager** shall include:
 - (1) Serving as secretary to the board or designating another department employee for that purpose with board approval;
 - (2) Recommendation of salaries and rates of compensation of the employees of the department of the board. Employees of the department shall come under chapter 30 of this Code, the personnel rules and regulations of the county, the classification plan and the pay plan;
 - (3) **Supervision and custody of all county property used by the department;**
 - (4) **Formulating with the board, the annual budget for the department;**
 - (5) Preparation of regular and special reports as required; and
 - (6) Performance of such other functions as the board may direct.
- **§40-45. Policy, rules and regulations.** **The board of public utilities shall propose the public policy of the department and those other policies unique to each utility system.**

Policies shall be adopted by the board at public hearings and shall become effective upon approval by the council.

The board shall establish and adopt, at a public hearing, **rules and regulations governing the conditions of utilities service**, system extension policies and such other matters as deemed necessary.

Rules and regulations established by the board shall become effective when transmitted to the council and filed with the county clerk.

The service rules shall include (by way of illustration but not by way of limitation) billing intervals, format of bills, delinquencies, termination of service because of non-payment,

reconnection charges, charges for extraordinary services, deposits, credits and other matters relating to the normal operation of the utilities systems...

The council may refer to the board such other matters as the council may wish the board to consider and the board shall report its comments thereon within the time requested by the council.

Budget Issues that may arise:

- **§ 506. Budget.** See Above
- **§ 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.

Rate Issues:

- **§ 504. Rates and Charges.** See Above
- **§ 203.1. Actions Requiring Ordinances.** In addition to those acts required by state law or by this Charter to be done by ordinance, those acts of the Council shall be by ordinance which:
 - (a) establish a rule or regulation for the violation of which a penalty is or may be imposed;
 - (b) levy taxes;
 - (c) grant or renew a franchise;
 - (d) **set the rates charged by the County for utilities or waste removal;**
 - (e) Authorize the borrowing of money;
 - (f) convey or lease, or authorize the conveyance or lease, of any County-owned land.All other acts of the Council may be done either by ordinance or by other formal action.
- **§ 203.3. Emergency Ordinances.** Notwithstanding the provisions of section 202.2 of this charter, in order to meet a public emergency that is an immediate danger to the public health or safety, the Council may adopt emergency ordinances by the affirmative vote of a majority of a quorum of councilors. **No such ordinances shall** levy taxes, grant or renew a franchise, convey or lease County lands, **or set utility or waste removal rates....**