

WATER AND SEWERS

ARTICLE VIII. ABANDONMENT OF CITY-OWNED UTILITY FACILITIES

Sec. 47-266. Definitions.

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

- (1) *Customer* means any person who (or which) has applied to or contracted with the city for utility service from a facility and for whom (or for which) a tap or a connection has been installed.
- (2) *Facility* means any line, pipe, valve, tank or similar facility which is owned by the city and used to provide water, sewer or gas service to any premises neither owned nor controlled by the city.
- (3) *Substitute service line* means a new, replaced or relocated service line connecting the customer's premises to a city-owned meter, sewer line or other utility facility.

(Code 1968, ss 49-601; Ord.No. 81-494, ss 1, 3-17-81)

Sec. 47-267. Effect generally.

(a) No facility may be abandoned if the effect of such abandonment is to terminate utility service to any customer, except in compliance with this article.

(b) Abandonment shall not affect the city's ownership of any such facility, but instead shall only affect the then current use of such facility. Nor shall any such abandonment preclude or limit the right of the city to use such facility or any property where such a facility may be located for utility purposes at some time thereafter, either after repair or reconstruction or after replacement of the facility so abandoned.

(Code 1968, ss 49-602; Ord.No. 81-494, ss 1, 3-17-81)

Sec. 47-268. When authorized.

- (a) A facility shall not be abandoned unless:
 - (1) The utility official first proposes such abandonment; and
 - (2) The facility is determined by the utility official to be surplus or is determined by a hearing examiner and the city council to be seriously substandard.
 - (b) A facility is surplus if no customer receives utility service directly from the facility.
 - (c) A facility is seriously substandard if:
 - (1) Because of age, wear or defects in materials or workmanship, the facility is subject to excessive leaks or sudden failure, or both;
 - (2) The facility lacks sufficient capacity to provide adequate service meeting general city standards for similarly situated facility;
 - (3) The location of the facility aggravates problems of contamination of the facility or of adjacent areas; or
 - (4) The location of the facility prevents or hinders access for repairs, replacements or maintenance.
- (Code 1968, ss 49-603; Ord. No. 81-494, ss 1, 3-17-81; Ord. No. 90-635, ss 153, 5-23-90)

Sec. 47-269. Procedure after utility official's determination.

- 1) If any facility which the utility official has proposed for abandonment is surplus, the utility official may authorize abandonment of the facility.
- 2) If any facility which the utility official has proposed for abandonment is not surplus, it shall not be abandoned without the approval of the city council, and such approval shall not be given unless and until each customer served directly by the facility at the time of the utility official's abandonment proposal has been offered the opportunity to be heard at a hearing held pursuant to this article. The utility official shall refuse to allow new connections to such facility while the abandonment proposal is pending.

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(Code 1968, ss 49-604, Ord. No. 81-494, ss 1, 3-17-81; Ord. No. 90-635, ss 153, 5-23-90)

Sec. 47-270. Purpose of hearing.

- (a) The purpose of the hearing shall be to determine the following questions:
- (1) Whether or not the facility is seriously substandard; and
 - (2) Whether or not the public convenience and necessity require the abandonment of the facility as proposed by the utility official.
- (b) In determining whether or not the public convenience and necessity require the abandonment as proposed by the utility official, the hearing examiner shall take into account all relevant facts and circumstances, including:

- (1) Any adverse effects the abandonment would have upon customers;
- (2) The tangible and intangible costs, if any, such abandonment would cause to be borne by the customers;
- (3) The measures, if any, which may be imposed to mitigate such adverse effects;
- (4) The cost of such mitigatory measures; and
- (5) The tangible and intangible costs, if any, which would be borne by all other ratepayers of the utility system if the abandonment is not allowed, such costs including the costs of excessive leaks and sudden failures, the costs of maintaining any facility which lacks sufficient capacity to provide adequate service, the costs which the location of the facility may cause in terms of contamination and lack of access, and other costs directly caused by continued operation of the facility.

(Code 1968, ss 49-605; Ord. No. 81-494, ss 1, 3-17-81; Ord. No. 90-635, ss 153, 5-23-90)

Sec. 47-271. Notice of hearing

Notice of the time and place fixed for the hearing shall be sent by certified mail to each customer receiving service directly from the facility and to all other persons who own property located in whole or in part within 50 feet of any part of the facility (as such ownership is shown on the ad valorem tax rolls of the city or, if not within the city, the county in which the property is situated). In addition, notice of the hearing shall be published once a week for two consecutive weeks in some newspaper of general circulation in the area in which the facility is located, the first publication to be at least 15 days prior to the date fixed for the hearing.

(Code 1968, ss 49-606; Ord. No. 81-494, ss 1, 3-17-81)

Sec. 47-272. Conduct of hearing.

A hearing examiner shall be appointed by the director. The hearing shall be conducted in an open and public manner and in accordance with sections 37-88, 37-90, 37-93, 37-95 and 37-96 through 37-99 of this Code. Each customer served directly by the facility proposed to be abandoned who files a written request with the hearing examiner and any other person who demonstrates a justifiable interest shall be designated as a party at interest. Any party at interest may be represented by counsel. The hearing examiner shall determine whether the record of the hearing shall be made by narrative summary, by tape recording or by stenographic transcription.

(Code 1968, ss 49-607; Ord. No. 81-494, ss 1, 3-17-81; Ord. No. 81-1649, ss 1, 8-25-81; Ord. No. 94-1099, ss 1, 10-12-94)

Sec. 47-273. Burden of proof.

At any hearing conducted under this article, the utility official shall carry the burden of proving by clear and convincing evidence that:

- (1) The facility proposed for abandonment is seriously substandard; and
- (2) The public convenience and necessity require such abandonment.

(Code 1968, ss 49-608; Ord. No. 81-494, ss 1, 3-17-81; Ord. No. 90-635, ss 153, 5-25-90)

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Sec. 47-274. Findings and report.

(a) After the close of the hearing, the required hearing examiner shall determine:

- (1) Whether or not the facility proposed to be abandoned is seriously substandard; and
- (2) Whether or not the public convenience and necessity require the abandonment as proposed (or as modified so as to include measures to mitigate any adverse effect). Such findings shall be expressed in the examiner's report which, together with the record of the hearing, shall be certified to the city council by the hearing examiner.

(b) If the hearing examiner finds that measures are necessary and appropriate to mitigate any adverse effects of the abandonment, such measures shall be expressed in the report as terms and conditions of the abandonment. Such measures may include, but are not limited to:

- (1) The provision of a substitute service line upon reasonable terms and conditions.
- (2) Abandonment of only a part of the facility.
- (3) Converting the facility to a private facility with the responsibility for maintenance, repair and replacement being assumed by one or more customers.
- (4) Other similar measures.

(Code 1968, ss 49-609; Ord. No. 81-494, ss 1, 3-17-81)

Sec. 47-275. Action by city council.

The city council may adopt, reject or modify the report of the hearing examiner made pursuant to the provisions of this article. The city council may remand the matter to the hearing examiner for further proceedings as to certain specified issues. The decision of the city council shall be made by motion, a copy of which shall be delivered to the

utility official. The decision of the city council, unless otherwise qualified, shall be final.

(Code 1968, ss 49-610; Ord. No. 81-494, ss 1, 3-17-81; Ord. No. 90-635, ss 153, 5-23-90)

Sec. 47-276. Mitigatory measures.

If the city council prescribes that the city should undertake mitigatory measures prior to abandonment of a facility, the utility official shall take all steps necessary to cause such mitigatory measures to be implemented. The utility official shall not allow any work necessary to provide such mitigatory measures to be conducted upon private property unless the person in control of such private property consents to the performance of such work and the entry upon such property.

(Code 1968, ss 49-611; Ord. No. 81-494, ss 1, 3-17-81; Ord. No. 90-635, ss 153, 5-23-90)

Sec. 47-277. Termination of service.

No utility service to a customer may be terminated because of abandonment of a facility unless:

- (1) The utility official has determined that all terms and provisions of the council motion authorizing such abandonment have been satisfied or, if all terms and conditions have not been satisfied, that the customer (or some person who owns or controls the premises of the customer) has failed or refused to allow such terms and conditions to be satisfied; and
- (2) The customer has received 90 days' written notice of such termination by certified mail or by hand delivery to the premises of the customer.

When the foregoing conditions have been satisfied, the utility official is authorized to abandon the facility and to terminate all utility service provided through such facility.

(Code 1968, ss 49-612; Ord. No. 81-494, ss 1, 3-17-81; Ord. No. 90-635, ss 153, 5-23-90)