

ORDINANCE NO. 089, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 26 OF THE CODE OF THE CITY OF FORT
COLLINS TO FURTHER AUTHORIZE AND IMPLEMENT THE CITY'S
PROVISION OF TELECOMMUNICATION FACILITIES AND SERVICES
AS PROVIDED IN CITY CHARTER ARTICLE XII, SECTION 7

WHEREAS, at a special election on November 3, 2015, City voters authorized the City to provide high-speed internet services, including, without limitation, high-bandwidth broadband services, telecommunication services, and/or cable television services within the City's growth management area; and

WHEREAS, at a special election on November 7, 2017, City voters approved an amendment to the City Charter adding a new Section 7 to Charter Article XII ("Charter Section 7"); and

WHEREAS, paragraph (a) of Charter Section 7 grants the City Council certain powers related to the City providing "telecommunication facilities and services," including, without limitation, "broadband Internet facilities and services," as both terms are defined in paragraph (f) of Charter Section 7 ("Telecommunication Facilities and Services"); and

WHEREAS, on July 20, 1993, the City Council adopted Ordinance No. 060, 1993 establishing the City's Electric Utility as an enterprise of the City under Section 20 of Article X of the Colorado Constitution (the "Electric Utility Enterprise") by adding Section 26-392 to the City Code; and

WHEREAS, on January 16, 2018, the City Council adopted Ordinance No. 011, 2018 ("Ordinance 011") to amend various City Code Sections to implement the authority granted in Charter Section 7 by authorizing the Electric Utility Enterprise to acquire, construct, provide, fund and contract for Telecommunication Facilities and Services and by authorizing the Electric Utility Enterprise to exercise the power to issue revenue bonds to fund the provision of Telecommunication Facilities and Services as provided in paragraph (b) of Charter Section 7; and

WHEREAS, Ordinance 011 also amended the City Code as follows:

- (a) Section 8-77 to provide that the Electric Utility Enterprise's revenues, debt issuance proceeds and expenditures related to telecommunication facilities and services shall be deposited, expended and administered through the City's Light and Power Fund;
- (b) Sections 2-504 and 26-21 to delegate to the City Manager the direct responsibility to administer and supervise the Electric Utility Enterprise's provision of telecommunication facilities and services and to make other conforming changes to the administration of Utility Services in light of this assignment of direct responsibility to the City Manager; and
- (c) Section 1-2 to amend the definition of *service area* to reflect that some service area directors do not report directly to the City Manager; and

WHEREAS, on January 16, 2018, the City Council also adopted Ordinance No. 010, 2018, to appropriate \$1.8 million from the City's General Fund as a loan to the City's Light and Power Fund to be used by the Electricity Utility Enterprise for start-up costs related to providing Telecommunication Facilities and Services; and

WHEREAS, on April 3, 2018, the City Council acting ex officio as the Board of the Electric Utility Enterprise adopted Ordinance No. 003 authorizing the issuance of revenue bonds to fund the construction and operation of the municipal broadband project to provide telecommunications facilities and services (the "Bonds"); and

WHEREAS, on May 1, 2018, the City Council adopted Ordinance No. 056, 2018, appropriating the proceeds from the Bonds for capital, operating, debt service and art in public places expenditure associated with the construction of a broadband system to provide telecommunications facilities and services to customers within the Fort Collins Light and Power Fund; and

WHEREAS, this Ordinance adds a new Article VIII to Chapter 26 of the City Code pertaining to the telecommunication services division of the Electric Utility and a part of the Electric Utility Enterprise and will further implement the authority granted in Charter Section 7 by adopting an operational framework and the authority necessary to begin providing telecommunication facilities and services to subscribers; and

WHEREAS, the City Council hereby finds that this Ordinance is necessary for the public's health, safety and welfare and is in the best interests of the City and its residents, businesses, and public and private organizations and of the Electric Utility's ratepayers.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 2-504 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 2-504. - Utility services; duties of Utilities Executive Director and City Manager.

- (a) Utility services shall be and is hereby created as a service area of the City.
- (b) Except as provided in paragraph (c) below, utility services shall be in the charge of the Utilities Executive Director who shall be directly responsible to the City Manager or his or her designee for the functions and duties of utility services, including, without limitation, the functions and duties necessary to provide for the design, construction, reconstruction, addition, repair, replacement, operation and maintenance of the City's electric, water, wastewater and stormwater utilities services, and who shall have control and supervision over such agencies, service units, departments, divisions, offices or persons assigned by the City Manager.

(c) The City Manager or his or her designee shall have the direct responsibility and authority to administer and supervise all functions and activities related to the provision of telecommunication facilities and services, as this term is defined in § 7(f) of Charter Article XII by the telecommunication services division of the electric utility. In exercising this authority, the City Manager or his or her designee, including but not limited to a Broadband Executive Director, may assign to other employees such duties, assignments and functions as he or she determines necessary for the proper and efficient administration of the telecommunication services division of the electric utility in providing telecommunication facilities and services.

Section 3. That Section 26-1 of the Code of the City of Fort Collins is hereby amended to add or modify certain definitions to read as follows:

Sec. 26-1. - Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section:

...

Broadband Executive Director shall mean the executive director of the telecommunication services division of the electric utility as appointed by the City Manager.

City Manager shall mean the City Manager of the City of Fort Collins or the designated representative of the City Manager, including but not limited to, the Broadband Executive Director with respect to telecommunication facilities and services.

Customer shall mean a user of one (1) or more City utilities, excluding telecommunication subscribers, in whose name an account for related charges or other related financial responsibilities is maintained by the Financial Officer.

Developer or subdivider shall mean any person who plats and improves undeveloped land for industrial, commercial, residential or mixed use thereby creating a demand for City utility services.

Director or Utilities Executive Director shall mean the executive director in charge of utilities services under § 2-504(b).

...

Electric utility shall mean those departments of utility services responsible for the distribution and sale of electric service operated under the authority of the Utilities Executive Director pursuant to § 2-504(b).

Electric utility enterprise shall mean the electric utility and the telecommunication services division of the electric utility designated as a single enterprise of the City under § 26-392.

...

Holiday shall mean the twenty-four (24) hour calendar day for each of the following: New Year's Day, Martin Luther King, Jr. Day, Memorial Day, July 4th, Labor Day, Veterans' Day, Thanksgiving Day, and Christmas.

Imminent hazard shall mean the existence of a public nuisance or any other condition or occurrence that, as determined by the Utilities Executive Director, or with respect to telecommunication facilities and services by the Broadband Executive Director, poses a threat to public health, safety and welfare. This includes, but is not limited to, a condition that:

- (1) Poses a threat to any City utility system, including the telecommunication services system;
- (2) Interferes with the provision of utility or telecommunication facilities and services pursuant to this Chapter; or
- (3) Materially interferes with or impairs a utility's compliance with any environmental restrictions, regulations or permits applicable to the utility.

Mailing address shall mean the postal address or electronic mail address that has been provided by a customer or a telecommunication subscriber as shown in the records of the Financial Officer, and to which all utility bills and notices shall be sent.

Non-telecommunication services shall mean utility services provided by the water, wastewater, stormwater and electric utilities to a customer, excluding telecommunication services provided by the telecommunication services and facilities division to a subscriber.

...

Payment assistance program shall mean a financial assistance program implemented by utility services to provide temporary financial assistance to qualified utility customers in paying utility service account balances, funded by donations from other City utility customers, unclaimed funds held by utility services forfeited to the City under Division 4 of Article IV of Chapter 23 of the Code, and such other funds as may be made available for such purposes from time to time. The payment assistance program shall not apply to telecommunication subscribers unless or until such time as a payment assistance program specifically for telecommunication subscribers is adopted by Council.

...

Stormwater utility shall mean those departments of utility services that are in charge of the stormwater facilities for the City.

...

Telecommunication subscriber shall mean a customer receiving telecommunication facilities and services from the telecommunication services division in whose name an account for related charges or other related financial responsibilities is maintained by the Financial Officer, which telecommunication facilities and services are subject to the provisions of Article VIII, of this Chapter 26.

Telecommunication facilities and services or telecommunication services shall have the meaning given to it in Section 7(f) of Charter Article XII.

Telecommunication services division or division shall mean that division of the electric utility responsible for providing telecommunication facilities and services operated under the authority of the City Manager pursuant to § 2-502(c).

...

Utility bill shall mean the bill or bills issued by the Financial Officer to a utility customer or a telecommunication subscriber for utility services furnished, charges assessed, adjusted or negotiated and payments due thereon, late payment fees, penalties and all other sums due to the City from said customer or telecommunication subscriber.

Utility services shall mean the service area created under § 2-504, including the electric utility and the telecommunication services division (which collectively comprise the electric utility enterprise) and the stormwater utility, wastewater utility and water utility (each of which are separate enterprises).

Wastewater utility shall mean those departments of utility services that are in charge of the collection and treatment of wastewater for the City.

...

Water utility shall mean those departments of utility services that are in charge of the production, distribution and sale of water for the City.

Section 4. That Section 26-5 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-5. - Notice requirements generally.

Unless otherwise specified, whenever notice is required to be given by the provisions of this Chapter, it shall be to the last known mailing address of the person to be notified at the mailing address as defined in § 26-1. Service of such notice shall be effective upon the date of mailing or transmission of email.

Section 5. That Article VI of Chapter 26 of the Code of the City of Fort Collins is hereby amended to read as follows:

ARTICLE VI.
ELECTRIC*

Sec. 26-391. Definitions; application.

(a) The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

After-hours shall mean those hours between 4:00 p.m. and 8:00 a.m., Monday through Friday, all day Saturday, Sunday and holidays as defined in § 26-1.

...

(b) The provisions of this Article VI shall apply only to the distribution and sale of electric service operated under the authority of the Utilities Executive Director pursuant to § 2-504(b) and unless expressly stated herein or elsewhere in Chapter 26 or otherwise required by the context, the provisions of Article VIII related to the provisions of telecommunications facilities and services under the authority of the City Manager pursuant to § 2-504(c) shall not apply to the distribution and sale of electric service operated under the authority of the Utilities Executive Director pursuant to § 2-504(b) by the electric utility.

Sec. 26-392. Electric utility and telecommunication services division considered a single city-owned enterprise.

(a) The electric utility, including the telecommunication services division shall constitute a single enterprise of the City, to be known as the electric utility enterprise, which may, by ordinance of the City Council, acting ex officio as the board of such enterprise, issue its own revenue bonds or other obligations (including refunding securities) on behalf of the City, which revenue bonds or other obligations shall be payable solely from the net revenues (including special assessments) derived from the operation of the electric utility enterprise. Such revenue bonds or other obligations may be additionally secured by mortgages on or security interests in any real or personal property of the City used in the operation of the electric utility enterprise. The ordinance issuing any such revenue bonds or approving any such other obligations shall be adopted in the same manner and shall be subject to referendum to the same extent as ordinances of the City Council.

(b) Any pledge of net revenues derived from the operation of the electric utility enterprise shall be subject to limitations on future pledges thereof contained in any ordinance of the City Council authorizing the issuance of outstanding bonds or other obligations of the City payable from the same source or sources. All bonds or other obligations issued or approved by ordinance of the City Council payable from the net revenues derived from the operation of the electric utility enterprise and all revenue bonds or other obligations issued by ordinance of the board of the electric utility enterprise payable solely from the net revenues derived from the operation of the electric utility enterprise shall be treated as having the same obligor and as being payable in whole or in part from the same source or sources.

(c) The electric utility enterprise shall also be authorized to have and exercise the following powers in furtherance of its purposes: to hold meetings concurrently with regular or special meetings of the City Council; to have and use a seal; to issue its revenue bonds for purposes related to the electric utility enterprise, including the electric utility system and the telecommunication system, in the manner in which City revenue bonds may be issued; to pledge any revenues of the electric utility enterprise, including the City's electric utility and the telecommunication services division to the payment of such revenue bonds and to pay such revenue bonds therefrom; to enter into contracts relating to the electric utility and the telecommunication services division in the manner in which City contracts may be entered into; to make representations, warranties and covenants relating to the electric utility and the telecommunication services division on behalf of the City; to exercise rights and privileges of the City relating to the electric utility and the telecommunication services division; and to bind the City to perform any obligation relating to the electric utility and the telecommunication services division other than any multiple-fiscal year direct or indirect debt or other financial obligation of the City without adequate present cash reserves pledged irrevocably and held for payments in all future years.

(d) All revenues and expenditures of the City or the enterprise relating to the electric utility and the telecommunication services division shall be considered revenues and expenditures of the electric utility enterprise and shall be accounted for in the light and power fund as more fully set forth in § 8-77.

(e) The electric utility shall annually operate and maintain the City street lighting system as an additional payment in lieu of franchise fees otherwise to be paid by the enterprise pursuant to § 23 of Charter Article V.

...

Sec. 26-398. [Reserved]

...

Section 6. That a new Article VIII entitled "Telecommunication Facilities and Services" is hereby added to Chapter 26 of the Code of the City of Fort Collins and reads in its as follows:

ARTICLE VIII

TELECOMMUNICATION FACILITIES AND SERVICES

Sec. 26-570. Purpose and establishment of telecommunication services division.

- (a) The purposes of this Article are to:
 - (1) establish and define the telecommunication services division as a separate and distinct operational unit of the electric utility and a part of the electric utility enterprise in accordance with § 7(f) of Charter Article XII;

(2) set forth the respective responsibilities of telecommunication subscribers and the telecommunication services division;

(3) promote the health, safety and welfare of the community in the use and provision of telecommunication facilities and services;

(4) provide for the equitable distribution among telecommunication subscribers of the costs of construction, expansion, replacement, maintenance and operation of telecommunication facilities and services; and

(5) provide for the safe and efficient distribution of telecommunication services to City residents to the full extent permitted by the City Charter.

(b) A telecommunication services division is hereby established as a part of the City's electric utility and electric utility enterprise in accordance with § 7(f) of Charter Article XII, and as a separate and distinct operational unit of the electric utility and electric utility enterprise.

(c) The telecommunication services system shall consist of and include all facilities, equipment, wiring, optic fiber, and other property owned and installed or used by the telecommunication services division to provide telecommunications facilities and services, including without limitation, any broadband internet facilities using any technology having the capacity to transmit data to enable a subscriber to the service to originate and receive high-quality voice, data, graphics and video.

Sec. 26-571. Definitions; application

(a) The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

After-hours shall mean for the telecommunication services division, the hours and days included in the terms and conditions of service, rates fees and charges or rules and regulations adopted pursuant by the City Manager pursuant to this Article VIII.

Business telecommunication service shall mean any telecommunication facilities and services provided by the telecommunication services division that is not residential telecommunication service as defined in this Section. Business telecommunication service includes telecommunication facilities and services to small business and enterprises service.

Residential telecommunication services shall mean telecommunication facilities and services provided by the telecommunication services division to a dwelling or dwelling unit.

(b) The provisions of this Article VIII shall apply only to the provision of telecommunication facilities and services under the authority of the City Manager pursuant to § 2-504(c) and unless expressly stated herein or elsewhere in Chapter 26 or otherwise required by the context, the

provisions of Article VI related to the distribution and sale of electric service operated under the authority of the Utilities Executive Director pursuant to § 2-504(b) shall not apply to the provision of telecommunication facilities and services by the telecommunication services division.

Sec. 26-572. Telecommunication facilities and services.

(a) To the full extent authorized in § 7 of Charter Article XII, telecommunication services division of the electric utility is authorized to acquire, construct, provide, fund and contract as necessary to provide telecommunication facilities and services within and outside the City, and to take such other actions as may be necessary for the proper administration of said facilities and services. The City's electric utility enterprise is also authorized to issue revenue and refunding securities and other obligations in the manner and to the full extent authorized in § 7(b) of Charter Article XII and in § 26-392 to fund the telecommunication services division's provision of telecommunication facilities and services.

(b) The provisions of this § 26-572 shall supersede any contrary or conflicting provisions of the Code, including, without limitation, provisions of this Chapter 26 specifying the authority, funding, operation and supervision of the electric utility.

Sec. 26-573. Determination of rates, fees and charges; budget.

(a) Subject to the conditions set forth in this Section, the City Council has delegated to the City Manager, in whole, its authority to set rates, fees and charges for furnishing telecommunication facilities and services to telecommunication subscribers to the full extent permitted under § 7 of Charter Article XII.

(b) The City Manager shall, from time to time, set such rates, fees and charges for telecommunication facilities and services at a level at least sufficient to pay the cost of providing telecommunication facilities and services, to pay the cost of operation and maintenance of telecommunication services system in good repair and working order; to pay into the general fund in lieu of taxes such amount as may be established by Council by ordinance; to pay the principal of and interest on all bonds and other obligations issued or created for the purpose of providing telecommunication facilities and services and payable from the revenues of the City's electric utility enterprise; to provide and maintain adequate working capital funds for the day-to-day business of the telecommunication services division; to provide and maintain an adequate fund for the replacement of depreciated and obsolete property; and for the extension, improvement, enlargement and betterment of the telecommunication services system. Such rates, fees, and charges may include a charge for damage to or failure to return telecommunication services equipment such as set top boxes, telephones, optical network terminals, modems or other moveable personal property leased or otherwise made available to telecommunication subscribers.

(c) The City Manager shall post telecommunication rates, fees, and charges for residential telecommunication services determined in accordance with subsection (b) above to be charged from time to time on the telecommunication services division website. A copy of such rates, fees, and charges shall be filed with City Clerk and shall be available for public inspection. The City Manager shall also notify City Council in writing of such rates, fees, and charges no later than

seven (7) days before such rates, fees and charges are posted on the telecommunication services division website. The schedule of rates, fees and charges adopted by the City Manager from time to time shall specify the effective date of such rates, fees and charges.

(d) The City Manager may adopt different rates, fees and charges for residential telecommunication services and business telecommunication services (including small business and enterprise services) and shall, in accordance with the processes and standards set forth in subsections (b) and (c) above, have the discretion to:

(1) determine standard rates, fees and charges for a defined set of small business services to be offered to business telecommunication subscribers from time to time; and/or

(2) determine rates, fees and charges for custom business telecommunication services, which shall be set forth in a services agreement, and to sign such services agreements on behalf of the telecommunications services division.

(e) Budgets for the telecommunication services division shall be prepared and adopted by the City Council at the same time as budgets for all utility services in accordance with § 5 of Charter Article XII.

Sec. 26-574. Terms and conditions of telecommunication facilities and services; rules and regulations.

(a) Telecommunication subscribers within and without the corporate limits of the City shall pay the rates, fees, and charges as adopted by the City Manager from time to time under § 26-573 for residential and business telecommunication services in accordance with such terms and conditions of service and subject to such general rules and regulations adopted by the City Manager from time to time. Terms and conditions of service and rules and regulations may differ for residential and business telecommunication services. Terms and conditions of service shall include an acceptable use policy for residential telecommunication services and network management practices followed by the telecommunication services division.

(b) The terms and conditions of service and general rules and regulations adopted by the City Manager from time to time shall be posted on the telecommunication services division website. A copy of such terms and conditions of service and general rules and regulations shall be filed with City Clerk which shall be available for public inspection. The terms and conditions of service and general rules and regulations adopted by the City Manager from time to time shall specify the effective date.

(c) The applicable terms and conditions of service and general rules and regulations shall govern and control in all respects the rendering of telecommunication facilities and services and charging and collecting rates, fees and charges for the sale of such services. Such terms and conditions of service and general rules and regulation may be modified from time to time by the City Manager.

Sec. 26-575. Obtaining and terminating telecommunication facilities and services.

(a) By requesting and using telecommunication facilities and services, telecommunication subscribers accept and shall be subject to the applicable terms and conditions of service and rules and regulations established pursuant to § 26-574.

(b) Requests to initiate residential telecommunication services must be made to the telecommunication services division through an electronic service request portal or by contacting the telecommunication services division and providing such information as may be required for the delivery of and payment for telecommunication facilities and services. Requests to initiate business telecommunication services may also be initiated through an electronic service portal request, by contacting the telecommunications services division, or as otherwise required by terms and conditions of service or the rules and regulations applicable to such business services.

(c) The telecommunications services division will make reasonable efforts to initiate service as soon as possible during normal business hours but makes no representation or warranty as to the division's ability to meet a subscriber's desired initiation date.

(d) Requests to terminate residential telecommunication services shall be made through an electronic service request portal and/or by contacting the telecommunication services division. Requests to terminate business telecommunication services may also be initiated through an electronic service portal request or by contacting the telecommunication services division, or as otherwise required by terms and conditions of service or the rules and regulations applicable to such business services. The telecommunication services division will use reasonable efforts to terminate service as soon as possible after receiving a termination request (during normal business hours) but makes no representation or warranty as to its ability to meet a subscriber's desired termination date.

(e) A termination request given by a telecommunication subscriber does not relieve the subscriber from any minimum charges or payments required under applicable terms of service or rules and regulations.

(f) The telecommunication services division may refuse to provide service or install service equipment if the person or firm requesting the service or installation currently owes any delinquent amount for any utility or telecommunication services previously provided by utilities services, whether to the same or different premises, or owes a delinquent use charge, fee, deposit, assessment or any amount for any service equipment previously installed.

Sec. 26-576. Payment of rates, fees and charges; other conditions of telecommunication facilities and services.

(a) Rates, fees and charges due from residential and business telecommunication subscribers may be billed separately or incorporated into a single utility bill for all utility services. Except as expressly set forth to the contrary in this Article VIII or in Article XII, billing for telecommunication services shall be subject to the provisions of Article XII of this Chapter 26 regarding utility accounts, billing and collections.

(b) The telecommunication services division may terminate service, with or without notice and notwithstanding any provision to the contrary set forth in Article XI of this Chapter 26:

(1) for failure to pay any amounts as and when they become due in accordance with the applicable terms and conditions of service; or

(2) for failure to comply with all applicable terms and conditions of service, including the acceptable use policy, the general rules or regulations adopted by the City Manager or the provisions of this Article.

(c) It shall be unlawful for any person to obtain telecommunication services and facilities from the telecommunication services division except in accordance with the terms of this Article, or to re-sell services provided by telecommunication services division unless permitted by contract or terms and conditions of service.

(d) The telecommunication services division will use reasonable diligence at all times to provide continuous service at the speeds and specifications and in accordance with network management practices set forth in the applicable terms and conditions of service from time to time, but cannot guarantee constant or uninterrupted service and shall not be liable to the telecommunication subscriber for complete or partial failure or interruption of service, fluctuations in speed or capacity, or any direct, indirect or consequential loss, cost or damages of any nature whatsoever. Telecommunication subscribers are responsible for taking whatever precautions they deem appropriate to protect against damage or loss due to interruptions of service, fluctuations of speed or service or operation in accordance with the adopted network management practices.

Sec. 26-577. Inspection; right of access.

(a) The City Manager or his or her designee, including the Broadband Executive Director, may inspect any portion of the telecommunication services system and any equipment and facilities of any telecommunication subscriber at any reasonable time to ascertain compliance with applicable ordinances, terms and conditions of service and rules and regulations. Persons or occupants of premises receiving telecommunication facilities and services shall allow telecommunication services personnel ready access to the premises, including the interior thereof, for the purposes of such inspection and performance of any of their duties and any such persons or occupants shall, by granting such access, represent and warrant to the City and the telecommunication services division that they have the legal right and authority to grant that access. The telecommunication services division shall have the right to set up on the subscriber's property such devices as are necessary to conduct inspection, compliance-monitoring and/or maintenance operations. Where a telecommunication subscriber has security measures in place that would require proper identification and clearance before entry into a served premises, the subscriber shall make the necessary security arrangements so that, upon presentation of suitable identification, telecommunication utility personnel will be permitted to enter without delay for the purposes of performing specific responsibilities. While performing necessary work on private property, telecommunication services division personnel shall observe all security and safety rules applicable to the premises as established by the telecommunication subscriber.

(b) If a duly authorized representative of the telecommunication services division is refused admission to a subscriber's premises, or any City owned facilities, including communications modules and equipment, the City Manager or his or her designee, including the Broadband Executive Director, may discontinue telecommunication services until telecommunication services division representatives are afforded access to the premises and the telecommunication facilities and equipment located thereon to accomplish inspection and/or monitoring.

Sec.26-578. Property owner's consent for service; indemnity to City.

(a) Telecommunication facilities and services provided pursuant to the terms of this Article shall be deemed to be provided at the request and with the consent of the owner of the real property to which service is provided, unless and until telecommunication services division receives written notice of said owner's withdrawal of such consent. Any persons or occupants of that real property shall, by granting access, represent and warrant to the City and the telecommunication services division that they have the legal right and authority to grant such access.

(b) The City shall not be responsible for any injury to persons or damage to property occasioned or caused by the acts, omissions or negligence of the telecommunication subscriber or of any of the subscriber's agents, employees or licensees, in installing, maintaining, operating or using any of the telecommunication subscriber's lines, wire, equipment, machinery or apparatus, and for injury and damage caused by defects in the same.

(c) The telecommunication subscriber shall hold the City harmless and indemnify it against any and all claims and liability for injury to persons or damage to property when such injury or damage results from or is occasioned by the telecommunication facilities and equipment located on the subscriber's side of the point of delivery unless caused by the acts, omissions, or negligence of the City's agents or employees.

(d) The telecommunication subscriber shall pay all costs that may be incurred by the City in enforcing this indemnity.

Sec. 26-579. Violations and penalties.

(a) It is unlawful for any person to tamper with, molest or damage in any manner any property, equipment, appliance or appurtenance constituting a part of telecommunication services system or for any person to trespass upon the property of the City or interfere in any manner with the operations of the telecommunication services system. Any expense caused to the City for the repair or replacement of damaged, stolen, tampered with or misused telecommunication facilities or equipment shall be charged against and collected from the person who caused the expense.

(b) Any person receiving services from the telecommunication services division shall abide by all provisions of this Code and all the effective terms and conditions of service, including any acceptable use policy, general rules and regulations and policies and procedures adopted pursuant to § 26-574.

(c) The failure of any telecommunication subscriber to comply with any provision of this Code or any rule, regulation or policy issued thereunder (including terms and conditions of service, acceptable use policy and general rules and regulations and policies and procedures of the City, as they may exist from time to time) other than a failure to pay for telecommunication services provided to the subscriber, is a violation of this Code and, upon conviction, is punishable as provided in § 1-15. The violator may also be subject to any other penalties or liability provided by this Chapter, including the disconnection or discontinuance of any utility services until compliance is achieved.

Sec. 26-580. Records; privacy.

(a) Records of the telecommunication services division and its telecommunication subscribers shall be subject to the provisions of § 26-23 and § 26-26 relating to utility records, except as expressly set forth in this Article.

(b) Notwithstanding the provisions of subsection (a) above, to the extent that the provisions of § 26-23 or § 26-26 conflict with state or federal law applicable to telecommunication facilities and services, such federal or state law shall apply.

(c) Notwithstanding the provisions of subsection (a) above, § 26-26(2) shall not apply to the records of the telecommunication services division or its telecommunication subscribers.

Sec. 26-581. Administrative appeal procedure.

(a) Any telecommunication subscriber who believes that he or she has been aggrieved by a final determination or decision regarding the application of the requirements of this Article VIII or any terms and conditions of service or rules or regulations authorized under this Article may petition the City Manager for a hearing, provided that the aggrieved party makes written application for such hearing within seven (7) days of the date of such final determination or decision.. The City Manager shall appoint a hearing officer if the complaint involves a final determination or decision by the City Manager. If the complaint involves a final determination or decision by the Broadband Executive Director, the City Manager may either conduct the hearing or appoint a hearing officer, in his or her discretion. If a timely request for hearing is made, a hearing concerning the propriety of the final determination or decision shall be granted to the aggrieved party and, after notice to the aggrieved party, the hearing shall be held within a reasonable time after the filing of the request for hearing. At the hearing, the appellant and the City may be represented by an attorney, may present evidence and may cross-examine witnesses. A verbatim transcript of the hearing shall be made.

(b) The decision of the hearing officer or City Manager shall be based upon competent evidence presented at the hearing and shall be a final decision.

Sec. 26-582. Net neutrality; network management.

(a) The telecommunication services division will treat all data on the internet equally, and not discriminate or charge differently by individual user, content, website, platform, application, type

of attached equipment, or method of communication and will not intentionally block, slow down or charge money for specific websites and online content.

(b) The terms and conditions of service shall include the telecommunication services division's network management practices as promulgated by the City Manager from time to time, which set forth the practices and policies used by the telecommunication services division to manage and transmit network traffic. The telecommunication services division shall comply with any FCC standards requiring notice of such network management practices to telecommunications subscribers.

Sec. 26-583. PILOT; franchise; revenues.

(a) In addition to the rates, fees and charges for telecommunication facilities and services set forth in § 26-573 above, the telecommunication services division shall pay to the City a payment in lieu of taxes (PILOT). The PILOT shall be six and zero-tenths (6.0) percent of the monthly rates, fees and charges billed for all telecommunication services pursuant to § 26-573, which amounts shall be transferred to the City general fund. All franchise fees paid under subsection (b)(2) below shall be credited against the amount of the PILOT. The telecommunication services division may elect to charge telecommunication subscribers directly for the PILOT.

(b) The telecommunication services division is hereby granted a franchise to construct, install and maintain telecommunication facilities for the purpose of providing telecommunication facilities and services over, under, across and on City rights-of-way and electric utility easements, provided that:

(1) The franchise granted hereunder is subject to all requirements of the Charter;

(2) The telecommunication services division shall pay to the City a franchise fee in an amount equal to five (5) percent of its gross annual revenues from video sales components of telecommunications facilities and services; and

(3) The telecommunication services division shall pay and provide to the City, and may charge and collect from telecommunication subscribers, such additional fees as may be required by the City of other multi-channel video programming service providers under a franchise agreement from time to time.

(4) The City Manager may require that the telecommunication services division provide such other benefits and payments to the City from time to time as may be required of other multi-channel video programming service providers under a franchise agreement in order to address competitive equity or similar provisions in such a franchise agreement.

(c) Revenues and expenses of the telecommunication services division shall be accounted for as a component of the light and power fund, in accordance with §28 of Charter Article V.

Section 7. That Article XII of Chapter 26 of the Code of the City of Fort Collins is hereby amended with the amended portions to read as follows:

Sec. 26-711. Definitions; application.

(a) The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in § 26-1 and this Section:

Financial Officer shall mean the head of the Financial Administration Unit or the designated representative of the Financial Officer.

(b) The provisions of this Article XII shall apply to customers of the electric, stormwater, water and wastewater utilities (defined as “customers” in § 26-1 to exclude “telecommunication subscribers”) and to customers of the telecommunication services division (defined as “telecommunication subscribers” in § 26-1) unless expressly stated herein or otherwise required by the context of the provisions of this Article XII.

Sec. 26-712. - Utility bill and account charges authorized; procedures.

(a) The fees and charges established by this Code for services from the electric, stormwater, water and wastewater utilities may be billed together in one (1) utility bill with such fees and charges separately itemized and shall be billed to utility users not less than once each month. Service fees and charges for telecommunication facilities and services may be billed separately or included on a combined utility bill with other utility services, and such amounts shall be itemized separately and be payable in addition to all combined utility fees and charges. The Financial Officer shall collect, receive and disburse all such fees and charges for the separate utility funds in accordance with the Charter and related provisions of this Code.

(b) The following account and miscellaneous fees and charges shall apply to all City utility customers receiving electric, stormwater, water and wastewater service (but not telecommunication facilities and services) pursuant to the terms of Chapter 26, whether within or outside of the corporate limits of the City, except as otherwise expressly stated:

...

Other miscellaneous charges for electric, stormwater, water and wastewater service will be based on direct cost plus fifteen (15) percent indirect costs.

(c) All utility services are presumed to be furnished and supplied to the real property served without regard to the actual user or person billed for the services, except for telecommunication utility services. Therefore, all utility fees and charges other than fees and charges for telecommunication facilities and services are chargeable against and payable by the owner of such real property, as well as the person contracting for the utility service.

...

Sec. 26-713. - Due date; delinquency.

(a) All fees and charges for the use of utility services are due and payable in full as of the due date specified on the utility bill and become delinquent after that date. Acceptance of partial

payment will not be deemed a waiver of the City's right to collect any remaining balance or to exercise any of its authorized remedies for nonpayment. Prior to service disconnection, customers may make arrangements for payment with the approval of the Utilities Executive Director, and as otherwise provided in the administrative rules and regulations adopted by the Financial Officer pursuant to § 26-720 and/or the City Manager pursuant to § 2-504 for all telecommunication facilities and services.

(b) All charges and fees on utility bills shall be effective as of the date mailed to the last known mailing address or sent electronically to the current electronic mail address of the customer or telecommunications subscriber.

(c) In case the user of any non-telecommunication services utility fails to pay a utility bill by the due date or fails to pay any other utility fee, charge, deposit or assessment prescribed by this Code, the City may disconnect either or both of the user's water and electric services to the property and has the right to enter upon private property to accomplish this purpose.

(d) Before discontinuing a utility service for nonpayment of any utility use charge, fee, deposit or assessment prescribed by this Code for electric, water, or wastewater services, the City shall give written notice (transmitted physically or electronically) to the user of the delinquency and the intent to terminate service, unless notice has been waived in writing by prior agreement concerning payment of the delinquent amounts. If the electric, water, or wastewater user files a written request with the utility prior to the termination date set forth in the notice, the utility shall schedule a protest hearing on any disputed matter relative to the proposed discontinuance of utility service. The user may appeal an unfavorable decision as provided in this Chapter.

(e) The terminated utility service will be restored after the customer or subscriber has paid in full all delinquent fees and charges, plus collection costs, together with the expenses of discontinuing and restoring service, including costs of after-hours labor and materials and specified fees, as provided in this Article.

(f) Each utility and the telecommunication services division may refuse to provide service or install service equipment if the person or firm requesting the service or installation of service equipment currently owes a delinquent amount for any utility services previously provided, whether to the same or different premises or if the person or firm requesting the service or installation of service equipment owes a delinquent utility use charge, fee, deposit, assessment or any amount for utility service equipment previously installed.

(g) If any utility refuses to provide service or install service equipment as specified herein, the person or firm requesting such service shall be provided a written refusal of service by the utilities as to the reason for the refusal and the delinquent amount that must be paid before the utilities shall fulfill the request.

(h) Notwithstanding (f) above, if any person or firm disputes the amount owed, such person or firm may receive service as requested after depositing with the utilities the full amount requested, to be held by the utilities, for a period not to exceed thirty (30) days, pending final determination by the Utilities Executive Director or City Manager of the amount owed by the requesting person

or firm. Such person or firm shall submit, within fifteen (15) days after the date on the refusal of service notice, a written statement as to the disputed amount (refusal of service reply), and the Utilities Executive Director or City Manager shall make his or her final determination within fifteen (15) days after receiving such refusal of service reply. The City Manager may adopt administrative policies authorizing waiver or adjustment of disputed fees for telecommunication facilities and services, provided the City Manager determines and finds that such waiver or adjustment does not prevent the telecommunication services division from collecting the cost to deliver telecommunication services.

Sec. 26-714. - Contributions may be passed on to consumer.

A contribution to the general fund by the City's utilities pursuant to the Charter in lieu of taxes and franchise fees that would be paid by a private utility may be passed on to the user of any utility or telecommunications facilities and services. Such contributions may include required franchise payments for video program sales and delivery services.

...

Sec. 26-716. - Budget billing.

Single-family residential users meeting the criteria of the budget billing program may request that the Financial Officer estimate their average monthly non-telecommunication services utility charges based upon the customer's historic use of utility services and bill the customer accordingly. The monthly budget billing amount may be adjusted by the Financial Officer to reflect changes in utility rates or changes in customer usage. The Financial Officer may discontinue budget billing for any customer upon a determination that customer usage patterns or customer payment history for a particular customer indicates that the use of budget billing is not practicable.

Sec. 26-717. - Rebates.

Eligible low-income elderly and disabled residents of the City may obtain a rebate on account of their utility bills for electric, stormwater, water and wastewater service (but not telecommunication services) as provided in § 26-611, et seq.

Sec. 26-718. - Unpaid charges a lien.

(a) Any non-telecommunication services charge imposed under this Chapter for utility services, together with interest and the collection costs, if not paid by the due date specified on the utility bill, constitute a perpetual lien on the property to which service was delivered.

...

Sec. 26-719. - Service initiation and termination at user's request.

(a) Requests to initiate any non-telecommunication services must be made to the utilities at least one (1) business day prior to the customer's desired initiation date, and additional notice may

be required to ensure services are available. Requests are managed as soon as possible during normal business hours and may incur additional fees and charges, as set forth in § 26-712 of this Code.

...

Sec. 26-720. - Administrative rules and regulations.

(a) The Financial Officer shall formulate and promulgate rules and regulations for the administration of this Article, not inconsistent with the provisions of this Article with respect to the billing and collection of utility fees and charges, credit and lending standards and rates and administrative practices for utility loan programs, which shall include, but not be limited to, efficiency-related conditions on loans for renewable energy development; extension of utility loans of up to twenty (20) years in total term length, at the option of the borrower, not to exceed the useful life of the funded improvements; and other matters relating to the administration of customer and subscriber accounts. Said rules and regulations may regulate without limitation, the forms and procedures for giving notice to customers and subscribers; policies for adjusting billed amounts as necessary to correct errors or for administrative efficiency or to achieve equity; procedures for appeals; and procedures for the documentation of liens. Any rules or regulations promulgated by the Financial Officer hereunder shall be effective upon the Financial Officer's filing of the same with the City Clerk. The City Manager may further formulate and promulgate rules and regulations that differ from those adopted by the Financial Officer for the administration of telecommunication facilities and services, which shall be effective upon the filing of the same with the City Clerk.

...

Sec. 26-722. Utility payment assistance program; purpose; funding; qualifications for assistance.

(a) The Utility Payment Assistance Program, is hereby formally established for the purpose of providing temporary financial assistance to qualified utility customers in paying past-due non-telecommunication services bills. For purposes of this Section, "past-due" shall mean a utility bill that has not been paid by the customer within twenty-three (23) days after the printing of such utility bill.

...

(c) Balances in the Utilities Payment Assistance Program account may be used only to pay all or a portion of the monthly non-telecommunication services bill of qualified electric and water utility customers, and only consistent with the following conditions:

...

Sec. 26-723. - Leased property owners.

(a) Owners of rental property served by City utilities are required to select the preferred manner for administering utility services to the rental property during tenant vacancies.

(b) Service options include:

(1) Leave utilities on: This option automatically transfers account responsibility into the property owner's name when a tenant discontinues service. A fee under Section 26-712 of this Code will be assessed to the property owner each time the services revert to the property owner. This option will not prevent discontinuance of service due to any delinquency. This option is not available with respect to telecommunication facilities and services, which are billed to and the responsibility of the telecommunication subscriber and not the property owner if different than the subscriber.

(2) Turn utilities off: This option discontinues metered utilities at the property when a tenant discontinues service. A service connection fee under § 26-712 of this Code will be assessed to the new service address account when services are reinstated. This option is automatically applied to telecommunication facilities and services.

Sec. 26-724. - Residential income-qualified assistance program.

(a) *Purpose.* To benefit ratepayers of the affected Utilities by enabling residents with household incomes below a certain level to commit a reasonable level of household income to monthly non-telecommunication services bills and in doing so, achieve greater conservation and efficiency improvements and consumption behaviors in qualified program households.

...

Introduced, considered favorably on first reading, and ordered published this 2nd day of July, A.D. 2019, and to be presented for final passage on the 16th day of July, A.D. 2019.



Mayor


ATTEST:



City Clerk



Passed and adopted on final reading on the 16th day of July, A.D. 2019.



Mayor

ATTEST:



City Clerk

