INDIANOLA MUNICIPAL UTILITIES

IMU

Electric • Communications • Water

IMU Board of Trustees
April 13, 2015
Kent Center, Fleming Room
Simpson College, 701 C Street
5:30 p.m.

Agenda

1. Roll Call

2. Consent

   A. Claims

   B. Minutes

   C. Set April 27, 2015 as the date of a Public Hearing on the FY 2015 Budget Amendment

   D. Certificate of Completion for the Filter Building (Old Water Plant) Demolition project

   E. Certificate of Completion for the 2015 Y Street Water Main Relocation

3. Reports

   A. General Manager

   B. Chairperson

4. Strategic Plan Implementation Work Session

5. Other Business

6. Adjourn

IMU Regular Upstairs **2. A.**

Meeting Date: 04/13/2015

Information

Subject

Claims

Information

The April 6, 2015 Claims List was distributed previously.

Financial Impact

N/A

Staff Recommendation

IMU Regular Upstairs **2. B.**

Meeting Date: 04/13/2015

Information

Subject

Minutes

Information

Minutes of the March 23, 2015 meeting are attached.

Financial Impact

N/A

Staff Recommendation

Attachments

Minutes

BOARD OF TRUSTEE MINUTES
REGULAR SESSION – MARCH 23, 2015

The Board of Trustees met in regular session at 5:30 p.m. on March 23, 2015 in the City Hall Council Chambers. Chairperson Pat Reding called the meeting to order and on roll call the following members were present: Heather Hulen, Grant Johnson, Jim McClymond (via phone), Pat Reding and Deb White.

The consent agenda consisting of the following was approved on a motion by Johnson and seconded by Hulen. Question was called for and on voice vote the Chairperson declared the motion carried unanimously.

March 24, 2015 claims

March 9, 2015 minutes

A motion was made by Johnson and seconded by Hulen to approve the February 2015 Treasurer's Report and budget variance reports. Question was called for and on voice vote the Chairperson declared the motion carried unanimously.

It was moved by Johnson and seconded by Reding to amend the FY 2014-15 Salary Resolution for Todd Kielkopf, IMU General Manager, from $117,000 to $119,340 effective March 1, 2015. Question was called for and on voice vote the vote was, AYES: Reding and Johnson. NAYS: White, Hulen and McClymond. Whereupon the Chairperson declared the motion failed.

Chelle Klootwyk, Office Manager, presented plans to recognize the 125th Anniversary of the Electric Utility to be held on October 6, 2015.

A motion was made by White and seconded by Hulen to approve the purchase of a Chevy Equinox for the Metering Department from Karl Chevrolet (state bid vendor) in an amount not to exceed $21,500 plus tax and destination charges. Question was called for and on voice vote the Chairperson declared the motion carried unanimously.

Change order #7 for the 2013 Hwy 92 Transmission Relocation Project in an amount of $19,078.06 from Michels Power was approved on a motion by Johnson and seconded by White. Question was called for and on voice vote the Chairperson declared the motion carried unanimously.

The Board discussed dates and format for work sessions on strategic plan action items. It was the consensus of the Board to hold the first strategic planning work session on April 13, 2015 at 5:30 p.m.

Meting adjourned on a motion by White and seconded by Hulen.

Pat Reding, Chair

Diana Bowlin, City Clerk

IMU Regular Upstairs **2. C.**

Meeting Date: 04/13/2015

Information

Subject

Set April 27, 2015 as the date of a Public Hearing on the FY 2015 Budget Amendment

Information

Trustees adopted the FY 2016 budget this past February.

As per Iowa code, that budget also contained re-estimated amounts for the current fiscal year ending June 30, 2015. Total re-estimated expenditures exceed the FY 2015 budget adopted over a year ago by $4,017,300.

The primary cause were delays on the West Hwy 92 projects at I-35, transmission relocation west of R63 to R57, and the distribution relocation from R63 eastward currently underway. These projects were budgeted for the previous fiscal year.

Although IMU will get reimbursed for much of this work (see Miscellaneous revenue increase), the budget still needs formally amended for the expenditures. The end result to ending fund balances is the same as if they had occurred the previous fiscal year, less any costs incurred because of change orders.

The secondary cause is the structure of the Electric Revenue bond refinancing. Most of the transaction nets out because it is placed into trust until the call date. However the elimination of the $1.187 million in required reserve accounts, which will be used to repay outstanding debt within that trust, is a cash expenditure because the trust is external to IMU's cash-based financial statements.

The net result is that the Ending Fund Balance of $6.263 million following the amendment is about $98,500 higher than that presented in the original budget set in February of 2014 after accounting for the reduction in required reserves described above.

This meeting's agenda item simply sets April 27, 2014 as the date of a public hearing on the budget amendment. No comments were received at the FY 2016 budget public hearing in which they were presented as re-estimated amounts.

Financial Impact

N/A

Staff Recommendation

Attachments

Budget Amendment

BUDGET AMENDMENT AND CERTIFICATION RESOLUTION

To: Indianola City Council

At a meeting of the IMU Board of Trustees (Governing Board), held after public hearing as required by law, on 4/27/2015 (xx/xx/xx), the proposed budget for Fiscal 2015 (specify fiscal or calendar and year) was adopted as summarized and attached hereto.

Telephone
Area Code 515-961-9410

_______________ (signature) Board Secretary

Address 110 N. First Street
Indianola, IA 50125

Record of Public Hearing and Adoption of Budget Amendment:

On 4/27/2015 (xx/xx/xx), the IMU Board of Trustees met for the purpose of conducting a public hearing to amend the Fiscal 2015 (specify fiscal or calendar and year) budget as published. Notice of time and place of hearing had been published on ________ (xx/xx/xx) in the ________ (newspaper) and the affidavit of publication was available to file with the City Council.

The budget amendment was considered and taxpayers and residents heard for and against said estimate were as follows:

____

After giving opportunity for all desiring to be heard, the Board adopted the following budget resolution:
A RESOLUTION ADOPTING THE AMENDMENT TO Fiscal (specify fiscal or calendar) YEAR ENDING 6/30/2015 (xx/xx/xx) BUDGET

BE IT RESOLVED by the IMU Board of Trustees: The budget for Fiscal (specify fiscal or calendar) ending 6/30/2015 (xx/xx/xx) as set forth in the Adopted Budget Summary and in the detailed budget in support thereof showing the estimated revenues and expenditures for said calendar year is accordance with the summary And detail as adopted.

Passed and approved on, ________ (xx/xx/xx) by the following vote: (list names)

Ayes: ________________
____
____
____

Nays: ________________
____
____

Absent: ________________

________________ (signature) Chairperson

________________ (signature) Secretary

NOTICE OF PUBLIC HEARING
Budget Amendment

Indianola Municipal Utilities
(Name of Enterprise)

The IMU Board of Trustees (Governing Board) will conduct a public hearing to

amend the fiscal (specify fiscal or calendar) year 2015 (xxxx) budget at Council Chambers, City Hall

on 4/27/2015 (xx/xx/xx), beginning at 5:30 (x:xx) o'clock. PM (AM/PM) The Budget Estimate Summary of proposed revenues and expenditures is shown below. Copies of the ***detailed*** proposed budget may be obtained or viewed at the office of the City Clerk and Utility Finance Officer and at the city library. At the public hearing, any resident or taxpayer may present objections to, or arguments in favor of, any part of the proposed budget.

________ (date) ________________ (signature) Secretary

	Budget as certified or last amended	Current Amendment	Budget after Current Amended
(specify budget years)	2015 (xxxx)	2015 (xxxx)	2015 (xxxx)
Revenues & Other Financing Sources			
Use of money and property	519,100	-14,100	505,000
Charges for services	14,061,100	-173,000	13,888,100
Miscellaneous	2,179,800	2,435,200	4,615,000
Other Financing Sources	1,098,800	339,100	1,437,900
Total Revenues & Financing Sources	17,858,800	2,587,200	20,446,000
Expenditures & Transfers Out			
Expenditures	17,413,300	4,017,300	21,430,600
Transfers Out	1,098,800	339,100	1,437,900
Total Expenditures & Transfers Out	18,512,100	4,356,400	22,868,500
Excess of Revenues & Other Sources (+) (-) Expenditures & Transfers Out	-653,300	-1,769,200	-2,422,500
Beginning Fund Balance July 1 (month)	8,004,800	681,000	8,685,800
Ending Fund Balance June 30 (month)	7,351,500	-1,088,200	6,263,300

ADOPTED BUDGET SUMMARY

Fiscal 2016 — YEAR 2016
(specify fiscal or calendar year budget)

Indianola Municipal Utilities
NAME OF ENTERPRISE

(specify budget years)			Budget 2016		Re-Estimated 2015		Actual 2014
REVENUES & OTHER FINANCING SOURCES							
Use of Money and Property	(line 398)	241	566,700	271	505,000	301	449,318
Charges for Services	(line 414)	243	14,829,100	273	13,888,100	303	14,094,252
Miscellaneous	(line 416)	245	2,165,100	275	4,615,000	305	2,387,761
Operating Transfers In	(line 417)	247	1,137,800	277	1,437,900	307	2,211,816
Proceeds of Long Term Debt	(line 418)	248	0	278	0	308	0
Proceeds of Fixed Asset Sales	(line 419)	249	0	279	0	309	0
Total Revenues & Other Financing Sources		250	18,698,700	280	20,446,000	310	19,143,147
EXPENDITURES & TRANSFERS OUT							
Expenditures	(line 386)	255	18,256,900	285	21,430,600	315	18,146,729
Transfers Out	(line 387)	259	1,137,800	289	1,437,900	319	2,211,816
Total Expenditures & Transfers Out		260	19,394,700	290	22,868,500	320	20,358,545
Excess of Revenues & Other Sources Over (Under) Expenditures & Transfers Out		261	-696,000	291	-2,422,500	321	-1,215,398
BEGINNING Fund Balance	(line 390)	262	6,263,334	292	8,685,834	322	9,901,232
ENDING Fund Balance	(line 388)	263	5,567,334	293	6,263,334	323	8,685,834

Aug-14

Department of Management

Indianola Municipal Utilities

NAME OF ENTERPRISE

REVENUES DETAIL

Fiscal Year 2016

(specify if budget is fiscal or calendar year)

(specify budget years)			Budget 2016	Re-Estimated 2015	Actual 2014
Beginning Fund Balance		390	6,263,334	8,685,834	9,901,232
Use of Money & Property		398	566,700	505,000	449,318
Charges for Services:	Hospital	411			
	Water	404	2,154,100	2,154,100	2,265,561
	Sewer	405			
	Electric	406	12,675,000	11,734,000	11,828,691
	Gas	407			
	Telecommunications	408			
Total Charges for Services		414	14,829,100	13,888,100	14,094,252
Miscellaneous		416	2,165,100	4,615,000	2,387,761
Other Financing Sources:					
Operating Transfers In		417	1,137,800	1437900	2,211,816
Proceeds of Long Term Debt		418			
Proceeds of Fixed Asset Sales		419			
Total Revenues - All Sources		421	24,962,034	29,131,834	29,044,379

EXPENDITURES DETAIL

(specify budget years)			Budget 2016	Re-Estimated 2015	Actual 2014
Expenditures:					
	Hospital	338			
	Water	360	2,355,950	2,410,500	2,214,906
	Sewer	357			
	Electric	361	15,461,250	18,657,000	15,591,105
	Gas	362			
	Telecommunications	363	439,700	363,100	340,718
Total Expenditures:		386	18,256,900	21,430,600	18,146,729
Transfers Out		387	1,137,800	1,437,900	2211816
Ending Fund Balance		388	5,567,334	6,263,334	8,685,834
Total Expenditures & Transfers Out		389	24,962,034	29,131,834	29,044,379

IMU Regular Upstairs **2. D.**

Meeting Date: 04/13/2015

Information

Subject

Certificate of Completion for the Filter Building (Old Water Plant) Demolition project

Information

Engineers at Veenstra & Kimm prepared the attached Certificate of Completion for this project for Trustee consideration.

Approval allows timely payment of contracted and retained amounts to P&P Contractors.

Financial Impact

N/A

Staff Recommendation

Attachments

Certificate

CERTIFICATE OF COMPLETION

INDIANOLA MUNICIPAL UTILITIES
INDIANOLA, IOWA
FILTER BUILDING DEMOLITION

March 27, 2015

We hereby certify that we have made an on-site review of the completed construction of the Filter Building Demolition as performed by P&P Contractors.

As Engineers for the project, it is our opinion the work performed is in substantial accordance with the plans and specifications, and that the final amount of the Contract is Forty Five Thousand Nine Hundred Fifty and 00/100 Dollars ($45,950.00).

VEENSTRA & KIMM, INC.	Accepted: INDIANOLA MUNICIPAL UTILITIES
By Forrest Aldrich	By
Title Project Manager	Title
Date 3/27/2015	Date

28576

IMU Regular Upstairs **2. E.**

Meeting Date: 04/13/2015

Information

Subject

Certificate of Completion for the 2015 Y Street Water Main Relocation

Information

Engineers at Veenstra & Kimm prepared the attached Certificate of Completion for this project for Trustee consideration.

Approval and allows timely payment of contracted and retained amounts to Vanderpool Construction, Inc.

Financial Impact

N/A

Staff Recommendation

Attachments

Certificate

CERTIFICATE OF COMPLETION

Y STREET WATER MAIN RELOCATION
INDIANOLA MUNICIPAL UTILITIES
INDIANOLA, IOWA

We hereby certify that we have made an on-site review of the completed construction of the Y Street Water Main Relocation as performed by Vanderpool Construction, Inc.

As Engineers for the project, it is our opinion the work performed is in substantial accordance with the plans and specifications, and that the final amount of the Contract is Thirty-Four Thousand Two Hundred Sixty and 00/100 Dollars ($34,260.00).

VEENSTRA & KIMM, INC.	Accepted: INDIANOLA MUNICIPAL UTILITIES
By Sara Kappos	By
Title Project Engineer	Title
Date 3/31/15	Date

28595

IMU Regular Upstairs **3. A.**
Meeting Date: 04/13/2015

Information

Subject

Administrative News Items

Information
Notable items for the week are attached.

Financial Impact
N/A

Staff Recommendation

Attachments

News Items

NEWS ITEMS

TO: IMU Trustees
FROM: IMU Administrative Staff
DATE: April 10, 2015

1. **WENS Mass Notifications:** City of Indianola departments, IMU utilities and Warren Co. Emergency Management are locally implementing Alert Iowa. This service allows citizens and other community stakeholders to select text messages they'd like to receive pertaining to emergencies, outages, maintenance, evacuations, etc. Beta testing is underway now with the public rollout later this spring.

2. **W Hwy 92:** IMU crews and its contractors completed their work on time to meet the IDOT contractor's work schedule. Other utilities did not. Therefore, work will begin next week on only the eastern portion of the project (R Street east) with sections delayed up to 6 weeks. IDOT and the prime roadway contractor noted appreciation for IMU's efforts at the now-weekly project update meeting.

3. **STEM Event:** E-mail invitations were sent out this week, along with an announcement in the Chamber e-newsletter. The event's agenda is attached.

4. **Gigabit Nation:** IMU was scheduled to be featured on an online radio blog program, Gigabit Nation. Craig Settles hosts this program, which focuses on broadband adoption strategies. The audience is primarily within the telecom industry.

5. **WCEDC Event:** Thanks again to Chelle for her extra work in helping coordinate the WCEDC business awards on Thursday. As the past event's winner, IMU presented the Innovation Award.

INDIANOLA STEM SYMPOSIUM & APPRECIATION NIGHT

Celebrating Science, Technology, Engineering, and Math

Thursday, April 23, 2015

5:00 - 7:00 pm

Hosted at Simpson College at the Kent Center, Hubbell Hall

5:00	Introduction to IMU Partners Indianola High School Tech Hub student teams - *Meet the Indians as they head to state competition!*
5:15	View demonstrations by local project teams and meet local **STEM** leaders!
6:00	Regroup for hors d'oeuvres sponsored by **enactus**
6:15	Featured STEM speakers **Mark Petri,** Director of the Iowa Energy Center **Geoff Wood** of Gravitate (the entrepreneurial center of gravity in downtown Des Moines) Simpson professors **Dr. Aaron Santos** and **Dr. Derek Lyons** **Dr. Chris Draper** of EmergeHUB.org
6:30	Mingle
7:00	Adjourn

SPONSORED BY:

IMU
A NETWORK SERVICES PARTNER

enactus

SIMPSON COLLEGE

IMU Regular Upstairs **4.**
Meeting Date: 04/13/2015

Information

Subject

Strategic Plan Implementation Work Session

Information

Attached are materials for facilitating a discussion between Trustees, the General Manager, and IMU management team on strategic plan items.

Goals of this discussion include:

1. Orienting new(er) Trustees on the formal & informal structures that impact how services are delivered.
2. Focused communication about specific strategic action steps either planned or underway.
3. Providing effective feedback.

Financial Impact

N/A

Staff Recommendation

Attachments

Fall 2014 Strategic Plan
Resolutions
IAMU Manual

Indianola Municipal Utilities

Strategic Plan,
Service Objectives,
& Operating Strategies

(FY 2015 – 2017 edition)

Fall 2014 - Version 4

<u>INDIANOLA MISSION STATEMENT</u>

The City of Indianola and the Indianola Municipal Utilities will cooperatively provide essential, high-quality, and cost-effective services that give opportunities for residents to pursue the highest possible quality of life.

We Value…

A dedicated, creative, professional, and skilled workforce including appointed and elected officials that possess integrity and perform their duty in an ethical and impartial manner;

A safe and efficient workplace and community;

Attaining a high level of customer service;

Sustainable service delivery based on research and foresight;

Protection and responsible use of natural resources;

Affordable rates that balances needs in the community;

Working as partners within our community and with other entities;

Fairly and consistently imposing and applying regulatory actions;

Providing equal access to resources that benefit people's lives;

Citizens that are knowledgeable and engaged in our community.

EXECUTIVE SUMMARY

The purpose of this Strategic Plan is to identify areas in which the Indianola Municipal Utilities (IMU) can both build upon traditional strengths while also taking advantage of new opportunities over the next 3 fiscal years.

It is a comprehensive planning resource for policymakers and staff of Indianola Municipal Utilities. The intent is for policymakers to periodically provide direction on:

1. Purpose
2. Services that define our roles
3. Objectives that guide our delivery of services
4. Strategies that fit within overall objectives
5. Goals for improving each strategy

Management staff provides input on the above items plus:

1. An implementation plan and benchmarks
2. Task management
3. Proposed budgets, financial analysis, and rates

For this planning cycle, Core Services are consistent with those contained in previous plans.

The Strategic Analysis (page 4) contained in this Executive Summary compiles Trustees' and management staff's assessment of the organization's operating environment to provide those Core Services. The analysis identifies:

1. Traditional strengths of IMU.
2. Activities that can improve those traditional strengths without being detrimental to capitalizing on new opportunities.
3. New opportunities arising in the electric, water, communications industries.
4. Activities that can help IMU capitalize on new opportunities and be complimentary to traditional organizational strengths.

Using the Strategic Analysis, Trustees and staff developed 10 Action Items (page 5) that impact the broader organization in the areas of:

- Personnel/staffing
- Infrastructure
- Financial resources
- Customer service
- Community support

These Action Items are then placed into the detailed plan as Strategies or Goals for individual Core Services (page 6) and marked as priorities (*). Additional steps and milestones are also noted within the detailed plan.

No planning system is complete without a method to determine progress, successes, and warning signs of impending challenges. IMU uses a quarterly performance report with indicators to communicate these.

Strategic Analysis-

Traditional strengths:

Educated, trained and committed stakeholder team that is supportive of new ideas, adaptable to change, and focused on positive outcomes

Local workforce sized to respond to outages and emergencies in a timely manner

Utility plant assets are proactively maintained to provide long-term reliable services with the capacity to meet future needs

Competitive rates and fees built on a relatively conservative and stable financial plan

A commitment to safety

Diverse wholesale sources with relatively predictable long-term cost per unit trends

Brand name associated with quality, community leadership and customer service

Stable economy & consumption patterns

New opportunities to capitalize on:

Ability to attract strategic partners that bring dynamic perspectives & new auxiliary network services that benefit both residential & commercial customers and drive telecom sales growth

Build on IMU's electric and telecom investments as a community differentiating factors highlighting reliability, technology, and sustainability

EPA-mandated generation unit retirements may increase the value of peaking capacity, resulting in funds for priority capital projects

Improving economic viability of customer-owned solar arrays as on-peak resources that reduce demand charges; potential grant-funded study by IAMU how to best integrate solar into local systems

Ways to improve traditional strengths & overcome known challenges:

Hire team-oriented employees with the abilities to implement the utility's strategies and mentor them during the upcoming retirement transition

Train, plan, and equip for unexpected events that disrupt commerce, workforce activities & customers

Review long-term wholesale energy strategies

Consistently reinvest ratepayer funds in projects that proactively counteract decaying infrastructure & facilities based on updated long-term plans

Broader marketing and expansion of the fiber system

Improve customers' experiences, feedback systems through use of more streamlined technologies, new service programs, and positive internal relations

Address cyber security issues to avoid negative perceptions and events

Ways to capitalize on opportunities & overcome potential challenges:

Integrate new media/technology platforms that create public relations synergies between public/utility services, including those provided by private partners

Proactively maintain high customer satisfaction by communicating reliability, programs, and services including sustainability efforts; consistently address IMU's roles on city projects and with service partners

Work with community leaders and metro-area developers on smart growth strategies & policies

Plan how to adapt to regulatory changes, particularly those impacting air quality, carbon footprint, and fluoride tolerance levels

Action Plan-

1. Enhance marketing and customer awareness/outreach to communicate the holistic value of IMU and its services, including community development efforts:
    - Develop local target markets for key messages using a combination of staff, interns, and contracted professionals-
        - Reliability, Community, Sustainability, and Technology core messages and images
        - New IMU logo and web site platform
        - More active in Chamber of Commerce programs
        - 125th year of Public Power (various activities throughout the year)
    - Better engage Indianola businesses and customers through the IMU Partners Program and Sustainability Committee
        - Enhance the positioning of Indianola & Simpson College as destinations for innovation and sustainability
        - Debut of IMU Partners Program (by end of October, 2014)
        - Enroll new members by December, 2014 (target of 50 by July 2015)
        - Display members' videos on IMU Channel 2 and streaming site (in December, 2014)
        - Produce videos on Indianola's innovation and sustainability initiatives
        - Work with committees and interns (start in October 2014 and ongoing)
    - Deployment strategies using both in-person and multi-platform video-
        - Press releases, print materials, slide shows, video, and external/newspaper
        - Conduct routine one-on-one meetings with key accounts of all utilities
        - Local distribution on Channel 2 and available on streaming site
        - Co-host and participate in technology and sustainability-related events
        - Participate within City & other community marketing efforts

2. Develop and adopt viable Capital Improvement Plan (CIP) schedules for each utility and implement budgeted projects <u>annually</u> (IMU Trustees, GM & Dept. Heads):

    Electric-
    - Resolve CenturyLink & Mediacom pole attachment issue/demo pole lines via formal compliance agreements
    - Design & engineering for a target of <u>$5 million</u> in electric, conduit, and fiber to serve the NW quadrant of Indianola. Begin with conceptual designs that are divided into 3 to 4 prioritized sub-areas (April 2015)
    - Transition to spending capital-based revenues & water loan principal payments on asset/facility replacements (eliminate spending these on O&M activities)-
        - Generation & transformer capacity payments to address future major maintenance at generators/controls & substations
        - 69kV credits to re-build the transmission line over time
        - Remove water loan principal payments from the retail rate base by 2020; currently equal to vehicles & major maintenance

    Water-
    - Pro-active maintenance projects at the Water Plant to prolong its lifespan
    - Engineer and construct prioritized main replacements; alternate between 2 projects in FY 2014 then 1 project the next year, 2 projects the next, etc

Network Services-

- Bolster the IMU/MCG brand and build a wider geographic customer base by tracking neighborhood interest in services to be offered elsewhere in Indianola
- Develop a policy to guide fiber extensions; review options including costs per potential connection, Contributions in Aid of Construction and extended contracts

3. Participate in utility growth planning discussions and activities:

Electric-

- Review policymaker's commitment to underground vs. overhead electric system and fiber network given-
    - Cost differentials
    - Expected growth in customer demand for broadband choice
    - Competing capital funding needs between electric system replacements, network extensions, and proactive development
    - Continued preference for annual rate revenue vs. debt financing sources
- Pursue a 2nd USDA Revolving Loan Fund; target infrastructure loans to property developers, industrial customers, and larger-scale energy efficiency projects
- Evaluate commercial & industrial electric rate design in conjunction with any structural changes to the pricing of wholesale energy
- Analyze and report on community engagement collaborations that promote energy efficiency such as Grants to Green and energy efficiency project funding.
- Plan with MidAmerican on commercial/industrial growth outside of IMU electric territory to ensure long-term capacity will exist on their system when it is needed (and that is partially fed by IMU)

Administration-

- Assist with business retention, expansions, and attraction using IMU-matched incentives offered in conjunction with the City of Indianola, WCEDC facilitated-projects, and regionally with the Greater Des Moines Partnership
- Promote the development of ventures, start-ups, and new opportunities through support of the IMU Partners Program
- Review how other municipal utilities work to encourage community growth and public engagement
- Promote the adoption of smart growth strategies and economically viable sustainability policies

4. Enhance plans for staffing levels, development & training (GM & Dept. Heads):

   Electric-
   - Continue hiring plan for the lineman retirement transition (October 2015)
   - Evaluate boring options to extend electric & fiber systems

   Network Services-
   - Hire the planned 20 hrs/week PT position for Network Services and IMU Partners support activities (funds were derived from savings incurred following a prior retirement)

   Administration-
   - Develop formal succession & training plan (by June 2016)
   - Improve Workforce Connection as a source for internal staff & crew information

5. Evaluate services shared between the City & IMU to determine if strategic options exist to improve finance, GIS mapping, information technology, safety programs, disaster/recovery and outage reporting (GM & IMU and city departments):
   - Improve the IMU Board's understanding of shared functions, roles of each, and level of involvement in setting expectations
   - Improve the coordination of union negotiations and analyzing employee benefits with City of Indianola policymakers
   - Monthly accrual-based accounting reports.
   - Integrate the use of teleconferencing.
   - Increase the GIS Committee's coordination of add-on software options.
   - Develop hazard mitigation plans and funding options
   - Push notification systems (WINS) for outages and customer notifications
   - Improve Accounting, HR, and OSHA workflow systems
   - Evaluate the value of deploying a "City App"

6. Use technology and programs to improve both the customer experience & information flows throughout the service delivery process, including customer sign-ups, permits, work orders, metering and auditing, etc. (GM & IMU and city departments).
   - Review Service Plans with Clerk's Office to improve the customer experience; review fee structures as needed
   - Establish standardized telephone scripts and phone tree menus to improve transfer and escalation processes
   - Work to find & contract with technology solution providers as needed.

   - Investigate service line insurance options

Resolution # 133
Of the Indianola Municipal Board of Trustees

General Management Duties

BE IT RESOLVED by the Indianola Municipal Utilities Board of Trustees for the City of Indianola, Iowa that:

1. The Board of Trustees hereby delegates General Management duties for those utilities under the board's management and control. These duties specifically exclude those of the City Clerk, Chief Accounting Officer, City Treasurer, City Attorney, City Manager, or their designees. The board shall adopt a position description consistent with, but not limited to, the duties listed in this resolution that sets forth qualifications and other duties.

2. The Board of Trustees shall appoint the individual selected to carry out the General Management duties and fix his or her compensation.

3. The President of the board shall provide for a committee to annually review the performance and compensation of the individual appointed to carry out the General Management duties. That committee shall make a recommendation to the board for changes to his or her compensation.

4. General Management duties include:
    a. Enforcing and executing the goals, resolutions, service plans, policies, and procedures established by the Board of Trustees and in a manner consistent with federal, state, and local laws, regulations, ordinances, and policies.
    b. Preparing and recommending utility service rules, policies, specifications, and procedures to the Board of Trustees.
    c. Selecting, hiring, evaluating, classifying, and fixing the compensation of all employees for authorized positions, subject to any process agreed upon in a collective bargaining agreement and applicable laws and regulations. Compensation amounts shall be subject to approval by the Board of Trustees.
    d. Investigating the conduct of utility affairs.
    e. Disciplining and discharging any persons employed by the Board of Trustees, subject to any process agreed upon in a collective bargaining agreement, policies adopted by the board, and applicable laws or regulations.
    f. Supervising making public improvements and repairs to utility systems, including soliciting bids, preparing contracts, and enforcing contract terms and conditions.
    g. Supervising of all physical property and facilities.
    h. Preparing the annual budget for each utility fund.
    i. Monitoring, reviewing and commenting on the financial position of each utility.
    j. Preparing and recommending utility service rates and charges.
    k. Approving the purchasing of goods, materials, and supplies under policies adopted by the Board of Trustees.

l. Overseeing all contracts for services authorized by the Board of Trustees and enforcing contract terms and conditions.
m. Approving the reimbursement of proper expenses to persons employed by the Board of Trustees. The City Clerk or the Chief Accounting Officer shall approve all reimbursements to the individual appointed to carry out these General Management duties.
n. Cooperatively representing the board's interests for shared services provided under the direction of the City Council or City Manager, except those services whose duties and supervision have been otherwise provided for by resolution of the board.

5. Any prior resolutions establishing the position or duties of the General Manager are hereby repealed.

This resolution shall take effect immediately.

Approved this 9th day of April, 2007.

IMU Chairperson

ATTEST:

Trustee Clerk

Resolution # 134
Of the Indianola Municipal Board of Trustees

Duties and Services Shared by the City Council and the Board of Trustees

BE IT RESOLVED by the Indianola Municipal Utilities Board of Trustees for the City of Indianola, Iowa that:

1. The Board of Trustees agrees to annually expend its fair portion for shared services rendered by individuals empowered under this resolution, subject to having substantive and cooperative participation in the selection of said individuals and an annual evaluation of services rendered. Individuals employed to carry out shared services shall be appointed, compensated, employed, and supervised as provided for in the Code of Ordinances and Personnel Management Guide for the City of Indianola, Iowa.

2. The City Manager of the City of Indianola shall annually submit budgets to the Board of Trustees for their consideration for the board's portion of expenditures related to carrying out shared services.

3. The definition of "officers" shall be limited to the President and Vice-President of the Board of Trustees, the City Clerk, the City Treasurer, the City Chief Accounting Officer, the City Attorney, and the individual appointed to carry out General Management duties.

4. The appointed City Clerk of the City of Indianola shall:
    a. Be the Secretary of the Board of Trustees.
    b. Administer the oath of office.
    c. Authenticate official proceedings and actions of the Board and its officers.
    d. Be the official custodian of all documents of the utilities under the management and control of the Board of Trustees. Documents shall include all electronic records. Copies of any of these records, papers or public documents shall be provided to the appropriate officer when needed for that officer to discharge their official duties.
    e. Maintain the official copies of all resolutions, utility service plans, policies, and procedures in effect for the Board of Trustees.
    f. Keep and file all communications directed to the Board of Trustees.
    g. Ensure compliance with applicable laws and regulations regarding the recording, safekeeping, distribution, and publication of all documents, agendas, minutes, proceedings, and other similar matters related to clerk duties.
    h. Be authorized to approve reimbursements to any officer.
    i. Designate other individuals to carry out his or her duties as needed as authorized by the City Manager.

5. The designated Chief Accounting Officer of the City of Indianola shall:
    a. Jointly account for both city and utility funds using a common accounting system and reporting revenue and expenditures to officials on a monthly basis.
    b. Have the authority to disburse funds for the following without specific authorization by the Board of Trustees:
        i. Payroll expenses in periodic amounts approved by the board
        ii. Any bona-fide debt obligation and interest payment
        iii. Purchased energy or transmission expenses as contracted for by the board
        iv. Generating fuel or repairs during a bona-fide emergency

c. Prepare a schedule of claims not otherwise provided for above for approval by the Board of Trustees, including any amounts disbursed under item (b) above.
d. Receive all utility funds, credit them to the proper fund, and deposit them into accounts under the custodial care of the City Treasurer.
e. Issue warrants or checks on the appropriate utility funds for allowed claims.
f. Report each month the receipts, disbursements, transfers, and balance of each fund of each utility.
g. Reconcile all funds with the account balances determined by City Treasurer at the end of each month and prepare a report in conjunction with the City Treasurer.
h. Prepare the official annual financial statements and reports of utility operations and funds in the manner required by law, regulation, or ordinance.
i. Establish policies and procedures to care for the proper accounting and safekeeping of utility funds.
j. Serve as the internal auditor for all utility funds and to report areas of concern directly to the Board of Trustees.
k. Administer grants.
l. Recommend changes regarding accounting, utility billing and collection rules, regulations, policies, procedures, and practices to the Board.
m. Be authorized to approve reimbursements to any officer.
n. Designate other individuals to carry out his or her duties as needed as authorized by the City Manager.

6. The City Manager of the City of Indianola is authorized to designate individuals who shall issue monthly billings for utility services based on meter readings provided by the utilities. The Board of Trustees shall be solely responsible for establishing billing and collection rules and regulations for the utility services under its management and control, subject to state and federal laws, rules, and regulations.

7. Nothing in this resolution shall prevent the Board of Trustees from approving the combining of officials' duties described in this resolution.

8. This resolution shall take effect immediately.

Approved this 11th day of June, 2007.

IMU Chairperson

ATTEST:

Trustee Clerk

RESOLUTION #156

Of the Indianola Municipal Board of Trustees

Duties and Services of the Treasurer and Attorney

BE IT RESOLVED by the Indianola Municipal Utilities Board of Trustees for the City of Indianola, Iowa that:

A. Resolution #135 is hereby repealed and that the Board of Trustees shall hereafter engage legal representation as needed for specific services pertaining to matters involving Indianola Municipal Utilities.

B. The IMU Board of Trustees shall duly appoint a Treasurer, who shall:

    1. Be the official custodian of all utility funds but shall not have the authority to expend or disburse funds except with the express authorization of the Board of Trustees.

    2. Be responsible for the safe custody of all utility funds in the matter provided by law and Board policies.

    3. Reconcile depository and investment statements with the utility's total receipts, disbursements, transfers and total fund balances reported by the Chief Accounting Officer.

    4. Prepare a monthly report in conjunction with the Chief Accounting Officer.

    5. Be compensated in a manner and amount determined by the Board.

Approved this 24th day of September, 2012.

____

IMU Chairperson

ATTEST:

____

City Clerk

IOWA
ASSOCIATION OF MUNICIPAL
UTILITIES

Municipal Utility Law 101:

A Basic Primer on Common Legal Issues and Frequently Asked Questions

Disclaimer: The following information is a basic primer on municipal utility issues and is not intended as a comprehensive review of the applicable law. The cited sections and other relevant provisions should be examined in rendering specific legal advice.

A. Municipal Utility Authority

1. Home Rule

In the state of Iowa, municipalities have "Home Rule" authority. This authority is expressly granted by the 25th amendment to the Iowa Constitution, found in Article III, section 38A of the Iowa Constitution. The language of Article III, section 38A provides that a municipality has "home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly."

Iowa Code section 364.1 defines the scope of power for a city:

> A city may, except as expressly limited by the Constitution, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents.

The U.S. Constitution and federal law also impose limits on the authority of a city.

2. Municipal Utilities

Iowa law defines a "city utility" and provides a process for its formation. A "city utility" is defined in Iowa Code § 362.2(6) as:

> "all or part of a waterworks, gasworks, sanitary sewage system, storm water drainage system, electric light and power plant and system, heating plant, cable communication or television system, any of which are owned by a city, including all land, easements, rights of way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the utility."

In accordance with Iowa Code § 388.2(1)(a), "approval of the voters of the city" is required to "establish, acquire, lease, or dispose of a city utility." The establishment or discontinuance of a utility board also requires approval of the "voters of the city." The vote can be taken during the general election, regular city election, or at a special election "called for that purpose." Iowa Code § 388.2(1)(b).

3. Establishment and Governance

A majority of voters must approve the establishment of a municipal utility. Iowa Code § 388.2(2).If the proposal is defeated, "a similar proposal may not be submitted to the voters of the city for at least four years from the date of the election at which the proposal was defeated." Iowa Code § 388.2(2)(b). In the same or a subsequent ballot, voters may be asked to place the governance of the municipal utility under a board of trustees composed of either three or five members. The number of trustees must be specified on the ballot. Iowa Code § 388.2(1)(d).

Iowa Code §388.3 sets out the requirements for membership on a board.Board members are appointed by the mayor, subject to the approval of the council. The council must establish six year staggered terms and the compensation of board members. A public officer or salaried employee of the city may not serve on a utility board. A utility board "may exercise all powers of a city in relation to the city utility, city utilities, or combined utility system it administers" with a few exceptions. Iowa Code § 388.4. The board may not certify taxes, pass ordinances or amendments, or issue general obligation or special assessment bonds. Iowa Code § 388.4(1). In addition, "all property of a city utility or combined utility system must be held in the name of the city." The board may acquire or dispose of property, but the property must be held in the name of the city.Iowa Code § 388.4(2).This is commonly done by real estate being held in the name of "City of X for the benefit of its City X's Utility Board Trustees".

The utility board is required to provide a "detailed annual report, including a complete financial statement" for the council's information. Iowa Code § 388.4(3).The board must also comply with publication requirements. See Publication Requirements.

4. Changing the size of the Utility Board

Background. There are varying legal opinions as to whether a council can change the size of a board without an election. IAMU has relied on the opinion of our outside counsel at the Ahlers Law Firm in Des Moines. That opinion points to Iowa Code section 388.2. Paragraph 1(a) requires that "the proposal to establish or discontinue a utility board is subject to approval of the voters of the city." Paragraph "1d" requires that the proposal "must specify either three or five members." Those who contend that the council can change the size of the board without voter approval generally note that such an action is neither "establishing" nor "discontinuing" a board. Others, including IAMU and our legal counsel argue that if voters must approve either a three or five member board, then only the voters can change the size. To conclude otherwise obviates the section 388.2(1)(d).

Conclusion. Whether that argument is conclusive or not, the legal opinions that matter are those of the attorneys, i.e., bond counsel, who represent public bodies, bank underwriters, and bond buyers. A utility, by its nature, is a capital-intensive business. To operate successfully, it must be able to issue bonds. It is our understanding that there is near unanimity among attorneys who practice as utility bond counsel on the point that changing the size of a board of trustees without approval by election creates an assumption that the board is illegally constituted. One preeminent member of the bar who specializes in public finance contends that such action is a violation of standard bond covenants and may cause any outstanding bonds to be immediately callable. We do not know how widely that specific view is held, but there is wide agreement among bond counsel in Iowa regarding the inability of a board, so constituted, to issue any new bonds. Even in the absence of controversy (the desire to increase the size of the board is sometimes for the board's own convenience in getting a quorum at meetings), the question should be put to the voters. The stakes are too high to do otherwise.

5. Residency Requirement for Utility Board Members

Iowa law does not place any residency requirements on members of utility boards. A city may have an ordinance requiring all persons appointed to city boards and commissions to be residents of the city. Check your City's Municipal Code.

6. Gender Balance of Utility Boards

In 2009, the Iowa legislature amended Iowa Code § 69.16A requiring gender balance on utility boards. "[A]ll appointive boards...of a political subdivision of the state that are established by the Code...shall be gender balanced..." A board made up of 3 members must have at least one of either gender. A board with 5 members must have at least two of either gender. The Code does allow an exception if, after three months of a "good faith effort" to fill the vacant position, no "qualified person" is found, an appointment can be made that would otherwise be prohibited. The person or persons making the appointment must use a "fair and unbiased method of selecting the best qualified applicants." This law applies to all boards on or after January 1, 2012. A board member whose term expired before January 1, 2012 could have beenreappointed for another term without consideration of gender. Iowa Code § 69.16A (2).

7. Local Control v. Iowa Utilities Board Jurisdiction

Municipal utilities are locally controlled and are regulated by the local board of trustees or city council. For municipal electric and gas utilities, the split between board and council control is roughly half. For water utilities, most are governed by city councils. To provide board control of a utility, a referendum must be passed in the community. The process for establishing a board is set forth in Iowa Code Chapter 388. The process is also discussed under the heading, "Council or Board Governance."

Under Iowa Code Chapter 476, public utilities are regulated by the Iowa Utilities Board (IUB). The IUB has limited regulatory control over municipal utilities. Iowa Code Section 476.1B sets forth the jurisdiction of the IUB over municipal utilities. The areas of jurisdiction that are most relevant cover disconnection rules and safety standards. Section 476.1B also provides jurisdiction in the assessment of fees for the consumer advocate and the Iowa Energy Center, service area, energy efficiency plans and results, alternate energy purchase plans and customer offerings, and discrimination of users of renewable energy resources. Municipal utilities are not rate regulated by the IUB and are not required to file tariffs with the IUB. The local board or council sets rates and approves the service tariff. (IAMU maintains a model service tariff – which is available on the IAMU website.)

476.1B Applicability of authority — municipally owned utilities.

1. Unless otherwise specifically provided by statute, a municipally owned utility furnishing gas or electricity is not subject to regulation by the board under this chapter, except for regulatory action pertaining to:
   a. Assessment of fees for the support of the division and the office of consumer advocate, as set forth in section 476.10.
   b. Safety standards.
   c. Assigned areas of service, as set forth in sections 476.22 through 476.26.
   d. Enforcement of civil penalties pursuant to section 476.51.
   e. Disconnection of service, as set forth in section 476.20.
   f. Discrimination against users of renewable energy resources, as set forth in section 476.21.
   g. Encouragement of alternate energy production facilities, as set forth in sections 476.41 through 476.45.
   h. Enforcement of section 476.56. *[Disclosure of annual energy costs]*
   i. Enforcement of section 476.66. *[Customer contribution fund]*
   j. Enforcement of section 476.62. *[Energy efficient lighting]*
   k. Assessment of fees for the support of the Iowa energy center created in section 266.39C and the center for global and regional environmental research created by the state board of regents.
   l. Filing energy efficiency plans and energy efficiency results with the board. The energy efficiency plans as a whole shall be cost-effective. The board may permit these utilities to file joint plans. The board shall periodically report the energy efficiency results including energy savings of each of these utilities to the general assembly.
   m. An electric power agency as defined in chapter 28F and section 390.9 that includes as a member a city or municipally owned utility that builds transmission facilities after July 1, 2001, is subject to applicable transmission reliability rules or standards adopted by the board for those facilities.
   n. Filing alternate energy purchase program plans with the board, and offering such programs to customers, pursuant to section 476.47.

2. The board may waive all or part of the energy efficiency filing and review requirements for municipally owned utilities which demonstrate superior results with existing energy efficiency efforts.
3. Unless otherwise specifically provided by statute, a municipally owned utility providing local exchange services is not subject to regulation by the board under this chapter except for regulatory action pertaining to the enforcement of sections 476.11, 476.29, 476.95, 476.96, 476.100, 476.101, and 476.102.

8. Publication Requirements

According to Iowa Code Section 384.84(7)(a)(1), utility board resolutions must be published in the same manner as ordinances.

Iowa Code Section 388.4(4) includes the publication requirements for statements of the proceedings, meeting minutes, expenditure claims, and the annual salary publication. The board is also required to prepare a “condensed state of the proceedings of the board” immediately following a regular or special meeting. The statement is to include any claims allowed and is required to be published in a newspaper of general circulation in the city. For cities with a population greater than 150,000, a pamphlet must be made monthly with the preceding months business reported. The pamphlet is to be distributed to the city library, daily newspapers of the city, the city clerk and made available to persons who request it. Iowa Code § 388.4(4).

The same publication requirements apply to entities that are created pursuant to Chapter 28E. Iowa Code §28E.6(3)(a).

9. Franchises

A franchise is an agreement that grants a utility the right to operate within the city right-of-way, sets the terms and conditions of operation, and provides for the compensation for use of the right-of-way. Iowa law allows cities to grant franchises to “erect, maintain, and operate plants and systems for electric light and power, heating, telegraph, cable television, district telegraph and alarm, motor bus, trolley bus, street railway or other public transit, waterworks, or gasworks, within the city.” Iowa Code § 364.2(4)(a). The franchise cannot be exclusive and can only be granted for a maximum of 25 years.

To establish a franchise, the issue must be brought to the voters of a city at an election. The city council may move to place the ordinance granting the franchise on the ballot or a valid petition can be submitted requiring the council to place the issue on the ballot. Iowa Code § 364.2(4)(b).The language of the ordinance must be provided and proper notice of the election must be made. Iowa Code § 364.2(4)(b)& (c). The ordinance may contain conditions and use regulations, including the ability to confer the power “appropriate and condemn private property upon the person franchised.” Iowa Code § 364.2(4)(e).

Telephone companies have been excluded from the list of utilities for which a franchise can be granted. The exclusion occurred by amendment in 1998 after the passage of the Federal Telecommunications Act of 1996. Because a franchise cannot be granted under Iowa law, no franchise fee can be collected from telephone companies for the use of a city’s right-of-way. However, the Telecom Act does provide that a city may “require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.” 47 U.S.C § 253 (c). As a result, municipal telephone utilities must be required to pay the same fees that are required of other telephone utilities.

There are significant costs involved in the management of a city's right-of-way, including the degradation, repair, disruption, administration, and use. Therefore, IAMU recommends that cities attempt to enter franchise agreements with all utilities using public rights of way. IAMU has two model ordinances available to members. The first ordinance requires every utility operating in the city to have a franchise. This ordinance includes an anti-bypass provision which has met legal challenges. The second ordinance is a model franchise agreement which contains various terms and conditions. This ordinance can serve as a starting point in negotiations with utilities. IAMU recommends that a franchise agreement be 10 - 15 years in duration rather than the statutorily allowed 25 because of the ever changing utility industry.

A municipal utility is the city, so it does not need a franchise to use public rights of way. Franchise fees must not be imposed in a discriminatory manner among providers of the same service. Iowa Code § 364.3(7). Cities that operate cable or telephone utilities should be aware of similar provisions for cable service pursuant to Iowa Code § 364.2 (4)(g) or telephone service pursuant to Iowa Code Section 388.10(2)(c). (Franchise fees are exempt from local option sales tax. Iowa Code § 423E.3(1).)

In cooperation with the League of Cities, IAMU has prepared a Model Right-of-Way Ordinance specifying right-of-way management fees for franchised and *franchiseable* utilities and other right-of-way users that do not pay franchise fees. This ordinance is available from IAMU.

Under Iowa Code § 364.2 (4) (f), a franchise fee cannot exceed five percent, without regard to the city's cost of inspecting, supervising, and otherwise regulating the franchise. That same Code section specifies where the franchise funds should be deposited in different circumstances. If a city franchise fee is assessed, the fee does not apply to the city as a customer. Iowa Code § 364.2 (4)(f).

10. Non-Competition by Government

Increasingly, potential competitors of municipal utilities raise the argument that municipal utilities are prohibited from certain activities because Iowa Code Chapter 23A prohibits governments from engaging in certain conduct in competition with private enterprises. Section 23A.2 (1) states that "[a] state agency or political subdivision shall not, unless specifically authorized by statute, rule, ordinance, or regulation" engage in certain competitive activities. However, many activities are authorized by law (i.e. operating a city utility) and most others are allowed if the city council passes an ordinance allowing the city to enter the activity. In addition, Iowa Code § 23A.2 (10)(c) provides that "[t]his chapter does not apply to...[t]he operation of a city utility, as defined by section 390.1, subsection 3."

11. Service Territories

a. Electric

Iowa has established service territories for all electric utilities. Iowa Code §§ 476.22 - 476.26 govern service territories. The territories were established in the late 1970's and are reflected on a map drawn at that time. Generally, the boundaries were the midpoint between facilities as they existed at the time the map was drawn. The utility boundaries do not necessarily coincide with city boundaries. In some cases, the utility area may extend beyond the city boundaries, in other cases parts of the city may be served by another utility. It is not uncommon for both situations to exist within the same city.

Utilities are obligated to serve all customers within their service area and are prohibited from serving customers outside their area. The service area law does allow the IUB to modify the boundaries, but the Board historically has refused to modify an area through a contested case. The only time boundaries have been modified is when the two utilities involved reach an agreementto do so, such as trading portions of territory.

b. Water

A rural water district desiring to provide services within 2 miles of a city must provide to the city a notice of intent to provide water service to the area by submitting a plan indicating the area within the 2 miles intended to be served. Iowa Code § 357A.2 (3). The city must respond within 90 days or the water district can provide service to the area within the 2 miles. If the city requires more time to study the feasibility of the project, they can ask for an extension. The law provides for an additional 90 days, or a total of 180 days to respond to the rural water district if the city requires additional time. The city may either waive its right to serve the area or reserve its right to do so, in which case the city must provide service to the area within 4 years. Iowa Code § 357A.2 (4). The city can reserve or waive its right to serve the area included in the rural water plan in whole or in part. These provisions do not preclude a city from serving an area that is annexed by the city. Iowa Code § 357A.21 provides that a rural water district organized under Chapter 357, 499, or 504 shall be compensated fairly for losses resulting from annexation.

Annexation of areas served by rural water districts also raise issues related to federal law. If a city annexes an area being served by a rural water district and that water district has used the revenues from the newly annexed area as a basis to secure federal funding, the service by the rural water district is protected under federal law, see 7 U.S.C. § 1926(b). This is all conditioned on the status of the rural water district and the area in question when the rural water district began service. The rural water district needs to be lawfully providing service to the area to receive the protection provided under 7 U.S.C § 1926(b).

A federal district court case, Rural Water #1 v. City of Sioux Center, 202 F.3d 1035, upheld a lower court finding that distinguished rural water “districts” formed under Iowa Code Chapter 357 from rural water associations formed under Iowa Code Chapter 504A with respect to the obligation to submit plans to the city for construction of facilities within two miles of a city limits. Some rural water associations have attempted to use this exemption from plan filing as a way to secure what they view as exclusive service territories.

c. Telecommunications

Municipal utilities are authorized to provide telecommunications services and pursuant to Iowa Code § 476.1B are not subject to Iowa Utilities Board regulation except for Iowa Code § 476.11, 476.29, 476.95, 476.96, 476.100, 476.101, and 476.102. Iowa Code § 388.10 sets forth specific requirements relating to the municipal nature of the telecommunication utility. There are local service areas for telephone companies, but they are not exclusive as they are for electric utilities. Iowa Code § 476.29 requires telecommunications companies to obtain a certificate of public convenience and necessity from the IUB before providing local exchange services.

12. Interconnection of Customer-owned Generation

IAMU has model policies for interconnection of customer-owned generation.
An alternative energy producer must give at least 30 days’ notice to the electric utility prior to the start of construction or installation of an alternate energy facility.

B. Customer Relations

1. Customer Deposits

IAMU believes that the IUB rules on deposits do not apply to municipal utilities, but the IUB staff in recent years has taken a more aggressive approach in policing deposit policies. We cite the rules to our members as a guideline. IUB rules, IAC 199-20.4(3), "Service Supplied by Electric Utilities", provide that deposits can be required for residential and commercial customers equal to the highest month in the previous 12-months. For a residence or commercial "place," the deposit can be the "projected one-month usage for the place." The IAMU model follows IUB rules that apply to rate-regulated utilities, i.e., the deposit is to be returned after 12 months of prompt payment (with 1 month forgivable late payment). 199 IAC20.4(7).The IAMU model suggests that utilities not pay interest on deposits:

> "With current interest rates in April 2011 very near zero, caution should be used, if the utility intends to offer interest on deposits. One solution is to peg the rate to an index. Some utilities have put each customer's deposit in a named sub-account at a bank. The bank tracks the interest and when it is time to return the deposit or apply it to an unpaid bill, the balance, with interest, is readily available. If the utility is changing its policy from one in which interest is paid on deposits to one in which it isn't, the utility rules should be prospective. While no changes would take effect retroactively, it might make sense to clarify that interest would be paid under prior rules of the utility. For example, "The utility does not pay interest on customer deposits made after ______ (insert the effective date of the new policy.""

Water service deposits may be required, but cannot exceed the usual cost of 90 days of service. Iowa Code §384.84(4)(d).

2. Disconnection of Utility Service

a. Electric and Gas Utilities (general provisions)

Municipal utilities are covered by IUB regulations concerning disconnection of electric and gas services. Electric disconnection rules are found at 199-IAC-20.4(15)-(17). Gas disconnection rules are at 199-IAC-19.4(15)-(17). A complete guide to disconnection of electric, gas, and water service can be found in IAMU's Disconnection of Service Handbook. The handbook is available on line at www.iamu.org. The handbook comes with a companion collection of model forms. Some general provisions for disconnection follow:

Most disconnections involve nonpayment of bills. In general terms, disconnection of a customer due to nonpayment can occur if the utility has made a reasonable attempt to collect; gives the customer 12 day notice. Customers must also be given a copy of the Customers Rights and Remedies sheet (sample provided in IAC 199-20.4(15)(d)(3)).

Residential customers are entitled to special protections. Disconnection of a residential customer may not take place on a weekend, holiday, or after 2:00 p.m. unless the utility is prepared to reconnect the same day. Disconnection of a residential customer shall be postponed if the disconnection would present an especial danger to the health of any permanent resident of the premises.IAC 199-19.4(15).

Disconnection of a residential customer is subject to special requirements from November 1 up to and including April 1. IAC 199-19.4(17). If the person might be eligible for low-income energy assistance or Weatherization funds, they must be given 12 days to apply. If the community action agency certifies within 30 days that they are eligible, then disconnection is prohibited for Nov. 1 through April 1. IAC 199-19.4(15) & (17).

The "20 degree" rule applies only to delinquent customers who received notice of termination, failed to qualify for any kind of energy assistance, agreed to a payment plan, and then defaulted again on the payment plan. IAC 199-19.4(15)(d)(8).These customers can be terminated unless the temperature is forecast to go below 20 degree Once the temperature reaches 20 degrees or at any time if the forecast is for 20 degrees or higher, the service can be terminated.199-IAC-19.4(15)(d)(8).

There are special disconnection rules that apply to households of deployed military personnel. If the utility is informed that one of the heads of household is a service member deployed for military service, as defined in Iowa Code section 29A.90, disconnection cannot take place at the residence during the deployment or prior to 90 days after the end of the deployment. Heads of household has the same definition as it does for purposes of the Internal Revenue Code.

b. Water (general provisions)

There are few restrictions on disconnection of water. The IUB regulations do not apply to municipal water systems. The applicable section relating to disconnection of water is Iowa Code §384.84. It contains provisions relating to a hearings, notice to landlords, and placing liens on property for nonpayment. Section 384.84(3)(b) allows disconnection of all services for a premises under a combined services account. In general, customers must be given written notice sent by ordinary mail to the delinquent account holder prior to discontinuing service. The delinquent account holder must be given an opportunity for a hearing. Iowa Code §384.84(3)(c). IAMU recommends the hearing be conducted by someone other than the person who made the determination to disconnect. For example, if the city clerk routinely mails disconnect notices to people after a certain period, then the hearing could be conducted by the city administrator, utility superintendent, mayor, or subcommittee of the council.

c. Notice of Disconnection to Tenant for Landlord's Failure to Pay.

Because municipal utilities are public agencies, customer accounts and customer delinquencies are subject to the open records law. Fundamental fairness suggests that a tenant of a building subject to disconnection as a result of nonpayment by a landlord is entitled to notice of the pending disconnection. The primary concern over this practice has been the provision of the Consumer Credit Code, Iowa Code §537.7103, which limits disclosure of information about a debt to another person. Iowa Code §537.7103(3)(a)-(b). Support for disclosure comes from rules of the IUB relating to the disconnection of electric and gas service. Chapter 199 of the Iowa Administrative Code, sections 19.4(15)(d)(3), 19.4(15)(d)(4), 20.4(15)(d)(5), and 20.4(15)(d)(3) set forth the IUB rules related to the posting of premises when disconnection will affect residential units leased from a customer. The Uniform Residential Landlord Tenant Law, found in Iowa Code Chapter 562A also offers some support for disclosure. Section 562A.26 provides tenant remedies for a landlord's willful diminishment of services by interruption of electricity, gas, water, or other essential services to the tenant. While this says nothing about disclosure of debt information to the tenant, taken in context of § 562A.2 providing for liberal construction to promote the purposes of the Landlord Tenant Law, it at least provides an argument favoring disclosure to the tenant. On balance, IAMU believes that the practice of disclosing the landlord's non-payment to the tenant is appropriate and defensible.

d. Posting Premises of Pending Disconnection

A provision of the Consumer Credit Code, Iowa Code § 537.7103(3)(a) and (c) makes posting a red notice card questionable. Subsection (c), for example, is part of a long list of things a creditor is prohibited from doing regarding dissemination of information related to a debt. It reads as follows:

> *The use of a form of communication to the debtor, except a telegram, an original notice or other court process, or an envelope, displaying only the name and address of a debtor and the return address of the debt collector, intended or so designed as to display or convey information about the debt to another person other than the name, address, and phone number of the debt collector.* Iowa Code § 537.7103(3)(c).

The prohibition seems close enough to the question at hand that it warrants placing the red card in a plain envelope, with no more than the customer's, name and address and the return address of the city.

There is room in the interpretation of this prohibition to argue for the use of a notice card. After all, an extension of the restrictive interpretation would suggest that a post card bill could not be used for any delinquent account. That is not a logical or acceptable conclusion. IAMU's recommendation for prudence in this situation stems from the fact that a red notice card could be visible from the street and might be widely associated with the city's collection practice – raising concern over possible violation of the section noted above.

Another consideration for municipal utilities is following due process in actions affecting the public. Due process includes reasonable notice and a process for appeal of administrative actions. For a municipal utility, this requires the typical process billing, reminder of late payment, and notice of pending disconnection with information about appeals and posting of the premises. Eliminating some form of posting would detract from due process. It is allowable to include in a utility's services rules charges to the customer for collection activities like door posting and afterhours re-connect.

e. Late Payments Charges

The IUB rules on this topic do not apply to municipal utilities, though it is arguable that they could be applied to gas and electric utilities as part of disconnection of service. However, we cite the rules as a guideline. IUB rules provide that the late payment charge cannot exceed 1.5 percent per month of the delinquent bill. IAC 199-20.4(12)(b). Some utilities have changed their policies to apply a single late payment charge, i.e., not compounded, of 5 percent.

f. Liens

Section 384.84 provides that a lien may be placed on property for non-payment of water, sewer and solid waste collection bills. However, there is an exemption from the lien provisions for rental property that meets the following conditions: 1) the charge for water service is separately metered and paid directly by the tenant; 2) the landlord gives written notice to the city utility that the tenant is liable for the charges; and 3) a deposit not exceeding the usual cost of 90 days of water service is paid to the utility. It is not clear if the deposit can be made by either the landlord or the tenant. The landlord must provide a new written notice when the tenant changes in order to keep the lien exemption. The notice must include certain information about the tenant (name, address, date of occupancy). The landlord must be notified of the delinquency and of the intent to file a lien if the landlord requests in writing such notice. Iowa Code §384.84(4)(d).

Legislation passed in 2012 addressed situations in which the account holder is a tenant and requests a change of name for service. Notice of the request must be sent to the owner or landlord of the property if the owner or landlord made a written request for notice of any change of name for service under the account to the rental property.

3. Collections

a. General Provisions/IAMU Handbook

Iowa Code § 680.7 provides that funds owed to a city have priority in receivership, second only to taxes and before employees. Collection of utility bills of municipal utility customers is governed by Iowa Code § 384.84. Special provisions apply to municipal electric and gas utilities under Iowa Code Chapter476. Information about collection of bills, including utility obligations and restrictions toward a customer who declares bankruptcy, can be found in the on-line disconnection of service handbook on the IAMU website www.iamu.org (click on publications).

b. Liens

Liens can be placed on property for an unpaid bill of the property owner or, in some cases, a tenant, other than for unpaid electric or gas service. Provisions for notice and placement of liens on property were changed by legislation enacted in the 2012 session. If the tenant of rental property responsible for payment for utility services requests a change of name for service under his/her account, a copy of the request must be sent to the landlord, if the landlord has made a written request to receive such notice. As is currently the case for water service, a landlord may give notice to the utility of the name and address of a tenant responsible for payment of other utility/enterprise bills (sewer systems, storm water drainage systems, sewage treatment, solid waste collection, and solid waste disposal). Such notice shall prohibit the city/utility from placing a lien on the landlord’s property for the tenant’s delinquent bill. A new notice is required from the landlord for each change in tenancy. The tenant may be required to make a deposit of up to 90-days for each service.

c. Income Offset Program

Iowa Code § 8A.504 provides for the Income Offset collection program. Under this program, a municipal utility can certify to the Department of Administrative Services (DAS) the debt owed by a customer, which the utility would otherwise likely write off. The information provided to DAS must include the Social Security number of the customer or the IRS taxpayer ID. DAS will deduct from any payment due from the state to the debtor (e.g., tax return, lottery winnings, or payment for service), the amount of the debt and a collection fee. Information about the Income Offset program can be found at http://das.sae.iowa.gov/offsets/participationinfo.html.

d. Withholding of Car Registration

It may now be possible to withhold debtor's car registration at the county treasurer's office for debts owed to the city or municipal utility. In the following section, reference to "the state" includes political subdivisions.

> 321.40(6).*a.* The department or the county treasurer shall refuse to renew the registration of a vehicle registered to the applicant if the department or the county treasurer knows that the applicant has a delinquent account, charge, fee, loan, taxes, or other indebtedness owed toor being collected by the state, from information provided pursuant to sections 8A.504 and421.17. An applicant may contest this action by requesting a contested case proceeding fromthe agency that referred the debt for collection pursuant to section 8A.504. The department ofrevenue and the department of transportation shall notify the county treasurers through the distributed teleprocessing network of persons who owe such a delinquent account, charge, fee, loan, taxes, or other indebtedness.

e. Small Claims (Dollar Limits on Small Claims Actions)

A common question about the use of small claims actions deals with the dollar limits that apply. The small claims court process can be used where the amount in controversy is $5,000 or less, exclusive of interest and costs. A municipal utility may represent itself in small claims court. See Iowa Code chapter 631. The utility must have an attorney to sue in District Court if the amount is over $5,000.

4. Rate Increase Procedures

Under Iowa Code §384.84(1), a municipal utility has authority to establish, adjust and provide for the collection of rates. IUB approval is not needed for a rate change by a municipal utility. The rate increase should be adopted by ordinance of the council, or by resolution of the trustees, published in the same manner as an ordinance in accordance with Iowa Code §384.84. Although 384.84 does not specify timely notice, basic due process would probably require 30 days' notice, so IAMU recommends that municipal utilities provide 30 days' notice of a rate increase.

NOTE: It is IAMU's interpretation that the IUB rules for notice of rate increase do not apply to municipal utilities. Be aware that Iowa Code § 476.6(2) provides that utilities exempted from IUB rate regulation must provide 30 days written notice of any rate or charge increase to all affected customers. IAMU contends that this is a reference to utilities specifically exempted from rate regulation by Iowa Code § 476.1, e.g., Amana Service and the private gas utility that serves Centerville. The IUB has a form of notice for non-rate-regulated utilities; IAMU also contends that the form is intended for utilities specifically exempted from rate regulation under that section.

5. Service Rules

Because municipal utilities are not governed by a tariff filed with the IUB, it is a good practice to have Service Rules established for the utility. IAMU has Model Service rules. Service Rules are not filed with the IUB.

6. Regulatory Folklore

IAMU has often dealt with questions that seem to make up the folklore of regulation. For example, a story circulates widely that disconnection of water service is not legal because it would render toilets and drains useless, thereby creating a community health risk. While there is some logic to the story and maybe a good deal of common sense, the fact is that there is no law or administrative rule in Iowa that prohibits disconnection of water service for nonpayment of a water bill. In many communities, if water or another utility service is disconnected, a city inspector will condemn a property as uninhabitable until service is reinstated.

Regulatory folklore also stems from confusion over the applicability of laws and administrative rules. Here the problem stems from the fact that rates and services of private, for-profit utilities are regulated by the Iowa Utilities Board. These provisions do not apply to municipal utilities.

Adding to the development of regulatory folklore surrounding water utilities is the extent to which all water systems, including municipal utilities, are regulated by the EPA and the Iowa DNR. It is often easy to assume that if one agency cannot be identified with a rumored regulation, it must be under the jurisdiction of another.

C. Utility Operations

1. Audits

An annual audit is required for large cities. The requirements for audits of smaller cities can be found in Iowa Code § 11.6. In the case of a municipal communications utility, an auditor may investigate whether the utility is in compliance with Iowa Code § 388.10 restricting cross-subsidization for the benefit of the utility. The State Auditor's office has the right to audit your utility and your auditor's work.

2. Bidding Requirements

Municipal utilities are subject to the same public bidding requirements as all cities. Most of the Code on bidding is found in Chapter 26. The basic bidding requirement is that public bidding by closed bid is required for all public improvements over the competitive bid threshold in Iowa Code §314.1B. The competitive bid threshold is set by subcommittees that meet every other year to adjust the thresholds. Iowa Code §314.1B.Notice must be published to bidders at least once and not less than 4 days, or more than 45 days, before the date for filing bids. The notice must be filed in a newspaper that is published at least weekly and have a general circulation within the geographic area served by the government entity. Iowa Code §26.3 (1).

If the public improvement project does not meet the competitive bid threshold, the project may require competitive quotations. Competitive quotations are required for projects that have an estimated total cost that exceeds the competitive quotation threshold but is less than the competitive bid threshold. Iowa Code § 26.14(1).The current thresholds are as follows:

For 2012: the competitive bid threshold is $125,000 for all cities. For 2013: the threshold increases to $130,000. The threshold requiring competitive quotations is divided by population of cities. In 2012, a city having a population less than 50,000 is required to have competitive quotes if the public improvement is between $48,000 and $125,000 and a city with a population greater than 50,000 is required to have competitive quotes if the improvement is between $69,000 and $125,000. For 2013, the improvements requiring competitive quotes increase to between $50,000 and $130,000 and $72,000 and $130,000 respectively.

A public improvement is a building or construction project under the control of a government entity and is paid for in whole or in part with funds of the governmental entity. The following are exceptions to the definition of public improvement: urban renewal demolition and low-rent housing projects; industrial aid projects authorized under Chapter 419;emergency work or repair or maintenance work performed by employees of a governmental entity (Iowa Code 384.103);a highway, bridge, or culvert project; and construction or repair or maintenance work performed for a city utility under Chapter 388 by its employees or performed for a rural water district under Chapter 357A by its employees. Equipment or software is not a public improvement unless it is part of a building or construction project (i.e. office furniture part of a new building or renovation). A public improvement cannot be subdivided to reduce the overall project cost below the threshold amount.

For additional updated information, see www.iowadot.gov

3. Conflict of Interest – Local Contracts and Purchases

One of the conflict of interest provisions in Iowa law deals with contracts or purchases in which a city officer or employee has an interest. The general language is found at Iowa Code § 362.5(2), "A city officer or employee shall not have an interest, direct or indirect, in any contract or job of work or material or the profits thereof or services to be furnished or performed for the officer's or employee's city."

There are several exceptions to the general prohibition, including a situation in which the transaction was subject to competitive bidding. Iowa Code §362.5(3)(d). Another exception applies to small communities, where there is a presumption that it is harder to avoid such conflicts. Specifically, contracts or purchases of $2,500 or less, cumulatively in a fiscal year, in cities with populations of 2,500 or less are allowed, where a conflict would otherwise exist. Iowa Code §362.5(3)(k).

IAMU received a legal opinion from its attorneys that another exception would include purchase by a board-governed utility from a business in which, for example, the mayor or council member has interest. The opinion was based on cases, such as City of Spencer v. Hawkeye Security Insurance Company, 216 N.W.2d 406 (Iowa 1974), that affirm the independent and autonomous nature of a utility board. IAMU members may request a copy of the opinion.

4. Open Meetings

a. Iowa Public Information Board – Open Meetings/Records

Legislation passed in 2012 created the Iowa Public Information Board, a nine member Board with an attorney as Executive Director. Board members include three members from the media, three members representing local governments and three public members. All members are appointed by the Governor, subject to Senate confirmation.

For local governments there are some advantages to this new system. A city has the ability to ask the Board for an advisory opinion to address a specific issue. Those advisory opinions can be relied upon by a city the same as an Attorney General's opinion or the opinion of the City's Legal Counsel. However, the public is also given the same ability to go to the Board and file a complaint against the city alleging a violation of the open meetings/records law.

The Board has broad authority to adopt rules, issue declaratory orders and advisory opinions, conduct contested case proceedings, request and receive information from a governmental body as necessary to perform its duties, including the examination of confidential records that may be the subject of a complaint, issue subpoenas, train local government officials, disseminate information to members of the public, prepare annual reports to the Governor and the General Assembly describing complaints, Board proceedings, investigations, hearings conducted, decisions rendered and make recommendations regarding future legislation related to open meetings/records.

Citizen complaints must be filed within 60 days from the date the alleged violation occurred or the citizen could have become aware of the violation through reasonable diligence. Upon receiving a complaint, the Board determines whether it has merit. If the Board determines the complaint does not have merit, it will be dismissed. If the Board believes that complaint has merit, all parties will be notified and the Board will promptly work with the parties to reach an informal, expeditious resolution. If an informal resolution cannot be reached, the Board will offer the parties an opportunity to resolve the dispute through mediation and settlement.

If the parties cannot reach settlement through mediation or if mediation does not result in settlement, the Board will initiate a formal investigation. If the Board determines that there is not probable cause for the complaint or the complaint is outside the Board's jurisdiction, the Board will issue a written order and dismiss the complaint.

If the Board determines that the complaint is valid, the Board issues a written order and commences a contested case proceeding. The Board hears the case and renders a final decision. If the Board determines that the complaint has merit, the Board can issue any appropriate order to ensure enforcement, including authorizing payment of damages.

A city official can defend against an action on the grounds that the violation, if it occurred, was harmless error or that clear and convincing evidence existed to justify a court to issue an injunction against disclosure.

The Board does not have jurisdiction over the legislative and executive branch of government.

Another advantage to local governments in the bill is that it at least attempts to clarify when "drafts" or working documents can be protected. Arguably, this provision is still difficult to tell what is or is not protected. The bill provides that "tentative, preliminary, draft, speculative, or research material" is considered to be a confidential document and is protected from disclosure under the open records requirements unless the document is actually submitted for use or used in the formulation, recommendation, adoption or execution of an official policy or action of the government body. These provisions take effect until July 1, 2013.

b. What is an Open Meeting?

Most issues related to the open meetings law concern whether a gathering is a meeting that must be open or whether certain topics can be discussed in closed session. An open meeting is a gathering of a majority of the governmental body for purposes of deliberation or action on a matter within the scope of the power of the body. A meeting must be open if a matter within the scope of authority of the body occurs, even if no action is taken. Thus, a meeting by 2 members of a 3 member board at the grocery would be an open meeting if they discuss utility business. There are procedures that must be followed for open meetings. A notice must be posted, preferably at the place the meeting will be held, at least 24 hours before the meeting. Iowa Code §21.4(2)(a). Notice must include time, date and place of the meeting including a tentative agenda. The notice must be reasonably calculated to apprise the public of the matters to be discussed. The agenda can be changed at the meeting, but the minutes should reflect why the item was changed and a vote by the members to change the item. Minutes must be kept of all actions, including sufficient information to determine how each member voted on an action. Iowa Code §21.3.

For closed meetings, a motion must be made in open session to close the meeting, state the reason, and a vote taken to close the meeting. Iowa Code § 21.5(2). The closed session must be recorded and detailed minutes of all discussion, persons present and action occurring. Iowa Code § 21.5(4). No action can be taken in closed session. Iowa Code § 21.5(3). The body must return to open session, summarize events of the closed session, and take any action in open session. The detailed minutes and tape recording are to be sealed and not open to public inspection except by order of a court. The minutes and tape recording must be kept for at least one year from the date of the meeting. Iowa Code §21.5(4)

c. When can a meeting be closed?

Provisions for closing a public meeting can be found at Iowa Code § 21.5. A meeting may be closed "only to the extent necessary" to discuss certain and only by affirmative public vote of at least 2/3 of the members. The topics that "may" be discussed in closed session are set out in Iowa Code Chapter 21.5 and § 388.10. Those most applicable to municipal utilities include:

1. **Matters of Litigation.** Discussion of records required to be closed; discussion of litigation or litigation that is imminent; employment decisions but only if the individual employee requests a closed session.
2. **Personnel Matters.** To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session. Iowa Code § 21.5(1)(i)
3. **Security**. Discussion of matters that if disclosed would reasonably be expected to jeopardize people or property. Iowa Code § 22.7(50)
4. **Confidential Records**. Review or discussion of confidential records. This is not a blanket exception. Iowa Code § 21.5(1)(a)
5. **Competitive information.** Discussions of matters that, if disclosed, would harm the competitive position of the utility. Iowa Code §388.9
6. **Sale of Real Estate**. A closed session may be called for the purpose of discussing the sale of particular real estate, where premature disclosure could reasonably be expected to reduce the price the governmental body would otherwise receive. The minutes and the audio recording must be made available for public examination when the transaction discussed is completed. Iowa Code§ 21.5(1)(j)

d. Reconvening a Meeting

A meeting may be reconvened after recess without notice IF: (1) it is reconvened within four hours of the start of the recess; (2) the time, date, and place of the reconvening meeting was made at the original meeting in open session and recorded in the minutes; and, (3) there was no change in the agenda. Iowa Code § 21.4(3)(a).

e. Penalties

Each member of a public body who participated in a violation of the Open Meetings Law is subject to a fine of $100 to $500. However, if a member of a governmental body knowingly participated in such a violation, the penalties increase to a range of $1,000 to $2,500. Damages will not be assessed against a person who voted against the closed session, or who had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with the requirements, or who reasonably relied on a formal written opinion or advisory of the attorney general or the attorney for the governmental body, or a formal oral opinion recorded in the minutes. Iowa Code § 21.6.

5. Open Records

a. What is an Open Record?

Because municipal utilities are considered to be public agencies, they are subject to the Iowa Open Records laws. Nevertheless, city and utility employees are often reluctant to release information about customer accounts, delinquent or otherwise, particularly when they believe the information is being sought for an improper purpose. Exceptions to the Open Records law can be found in Iowa Code §§ 22.4, 22.6, 22.7, and 388.9. Those most applicable to municipal utilities include:

1. **Customer Records.** Legislation proposed by IAMU and passed in 2012 exempts from the right to public access, private consumer information that is part of a city utility's records. The legislation does not limit the utility's right to use the customer data, just the right of a third party to obtain access to it. The new law, which went into effect on July 1, 2012, clarifies that a person cannot examine or copy customer account records as a matter of right under the open records law (Iowa Code Chapter 22). The law was needed, because it was not clear that such records had protection under the open records law and because utilities often have internet-based information, such as records of on-line billing and detailed meter data that third parties might attempt to access under Chapter 22. The legislation does not make customer information private; it simply exempts customer information from access through an open records request.

   Municipal electric and gas utilities should also be aware that the protection of customer records does not change the utility's obligation under Iowa Code section 476.56 to provide the annual cost of gas or electricity used at a property to the owner or to an interested prospective purchaser or renter of the property.

2. **Appraisal Information**. Appraisals or appraisal information about the sale or purchase of property for public purposes are confidential prior to the execution of the sale or the submission of the appraisal to the property owner or other interest holders.

3. **Confidentiality of Personnel Files**. Information in confidential personnel files of government officials, officers, and employees remains confidential, except that the following information contained in such files is public and must be produced upon request:

   a. Name and compensation of the individual;
   b. Dates of employment with the governmental body;
   c. Positions held with the governmental body;
   d. Educational institutions attended, including diplomas and degrees earned, names of previous employers, dates of that employment and positions held, and;
   e. The fact that an individual was discharged as a result of final disciplinary action after exhaustion of all applicable contractual, legal, and statutory remedies.

   Information from records of student employees shall only be released if allowed under the Family Educational Rights and Privacy Act [20U.S.C. §1232(g)].

4. **Public Access – Settlements.** Settlement agreements, including any required summary are public records. A summary of the resolution of the dispute shall be prepared upon request.

b. Production and Copying Fees/Policy

The cost and time involved in producing such records can be significant. The law allows cities and municipal utilities to recover reasonable costs for production, supervisory time, to establish reasonable times and places for the examination of public records, and to ask for deposit in advance to cover such costs. Iowa Code § 22.3.

IAMU recommends that each utility have a policy to address open records that at a minimum could include the following:

Persons seeking public records within the control of [name of city or utility] may examine such records at utility (or city) offices between the hours of XX:XX and XX:XX, Monday through Friday, except legal holidays, under the supervision of utility (or city) staff. After examination, persons seeking public records shall specifically and clearly indicate which records are wanted. Utility (or city) staff shall make and deliver copies at the rate of $XX.XX per page; costs shall be computed and paid in advance. Utility (or city) staff shall be afforded sufficient time to make and deliver said copies, i.e. 1-10 copies, one full (1) business day; 11-100 copies, two (2) full business days; 101-500 copies, five (5) full business days; 501-1000 copies, ten (10) full business days; 1000+ copies, twenty (20) full business days; each additional 1000 copies or increment thereof, ten (10) full additional business days.

Although the attached records are deemed to be 'public records' within the meaning of Chapter 22, Code of Iowa, you are hereby advised that your use of this information must comply with all local, state and federal laws including but not limited to laws relating to privacy, harassment, discrimination, debt collection, libel, slander and tort. Misuse of said information by you in violation of the law is exclusively your responsibility. [Name of utility or city] hereby denies any and all responsibility for how this information is used by you. If any third party makes a claim against [name of utility or city] for misuse of this information attributable to you, [name of utility or city] shall pursue all available legal remedies against you.

6. Red Flag Rules

As described in the section on open records, customer records, while not open records under Iowa Code Chapter 22, can be used and released by the utility for its own reasonable purposes. However, utilities should be award of federal Red Flag rules, intended to prevent unintended access to personal information. The Red Flag rules of the Federal Trade Commission went into effect on January 1, 2011. There is some uncertainty as to the applicability of the rules to municipal utilities. Congress passed the Red Flag Program Clarification Act, in December 2010. That act tightened the definition of "creditor," but did not clearly include or exclude specific types of entities, such as utilities, from the purview of the Red Flags Rule. In short, each municipal utility must determine whether it is a creditor subject to the Red Flags Rule. Whether a utility is subject to the rules or not, to the extent records contain personal information of customers, these records should be maintained in a manner that minimizes risk of identity theft. The FTC's interpretation of its rules can be found here: www.ftc.gov.

7. Sales Tax

In general, municipal utilities collect sales tax on electric, gas, water and telecommunication services. Iowa Code § 423.2(2). There are, however, a number of exemptions, the details of which are best defined in the administrative rules of the Iowa Department of Revenue and Finance. For example, sales tax on electricity and gas sold to residential customers has been phased out (17.38 IAC 17.38). Energy used in processing is generally exempt (701 IAC 17.3). Sales of electricity to a water utility for pumping water from a river or well are also exempt (701 IAC 17.31). IAMU has a primer on tax law, but it has not been recently updated. For now, questions about the applicability of sales tax that cannot be readily answered by review of the applicable sections of the Iowa Administrative Code should be addressed to the Department of Revenue and Finance.

The purchase of utility equipment and materials by a municipal electric or gas utility is subject to Iowa sales and use tax. [Section 423.2 of the Iowa Code sets forth and enumerates the sale of goods and services subject to the Iowa sales tax of 6 percent. Section 423.3 lists the exemptions from the tax. Paragraph 31 of that subsection describes the exemption that applies to local governments. However, subparagraph "a" of paragraph 31 makes an exception to the exemption for municipal gas, electric, cable TV, or communication services.] As it works in practice, the purchase of a truck for use by the municipal water utility is exempt from the tax, but the same truck, if purchased by or for the use of the electric utility is not exempt. If the truck was used half time for electric service and half time for water service, the utility would pay sales tax on half the purchase price.

During the 2012 legislative session, an exemption for sales tax on water and electricity for car washes was passed. In order to claim the exemption, a car wash must provide you with an exemption form issued by the Department of Revenue and Finance.

8. Property Taxes

a. Replacement Tax Background

In 1997 it was quite conceivable that Iowa might join other states and adopt a "retail wheeling" scheme, in which customers could choose from among hypothetically competitive power suppliers for energy that would be delivered over the incumbent distribution utility's system. Also, in 1996, the Federal Energy Regulatory Commission issued order 888 to provide open access to the nation's transmission grid. As a result there was a distinct possibility that these legislative and regulatory developments would result in disaggregation of electric utilities or at least functional separation of generation, transmission, and distribution.

Against this background, the investor-owned utilities proposed that the state replace the central assessment of utility property with an equivalent tax on the delivery of electricity. Their proposal would have imposed a tax on every kWh or therm of gas delivered in the state. The rationale was that a delivery tax would ensure the recovery of the same property tax dollars, regardless of who generated or sold the energy or where they were located.

IAMU objected to the proposal, as it would have shifted the tax burden from rate-payers of investor-owned to the ratepayers of municipal utilities. Most municipal utility property was exempt from tax, unless jointly-owned or used to serve customers outside the city. Legislative leaders did not act on the proposal, but directed the stakeholders to develop alternative legislation for the next session.

IAMU was an active participant in the stakeholder process. We agreed to replace the property taxes paid by municipal utilities with a tax on deliveries calculated at rates that varied for each utility and that collected the same number of tax dollars from the utility as were collected under central assessment. The new method of taxation on electric and gas property became law in 1998 and is known as the utility replacement tax.

b. Replacement Tax Rate.

The utility replacement tax has four parts. Most of the tax is collected on deliveries. Each municipal utility has its own rate applying to deliveries within its service territory or generation operated at greater than a 20 percent capacity factor. If a municipal utility did not serve customers outside the city and did not jointly-own generation in the five years prior to passage of the bill, the tax rate for that utility could be zero. There is also a tax of $0.00006 per kWh on electricity generated within the state (not including electricity from municipal generators, other than those that are jointly owned, and from wind energy). Some of the property tax collected under central assessment is also collected as a tax on transmission assets. Finally, there is a statewide property tax on the value of all utility property. The tax rate is very low (originally collecting a total of $150,000), but it preserves the value of utility property in the tax base of local governments, thus protecting local government bonding capacity.

c. Transfer Replacement Tax.

In 1998, IAMU was uncertain about the prospects for retail wheeling in Iowa. We also worried about the risk that a future legislature might decide to equalize the tax rate across the state. We had argued that although municipal property inside the corporate limits was not taxed, most municipal utilities made payments-in-lieu-of-taxes (PILOTS) or other transfers to the general fund or other funds of the city. If it was justifiable to shift the property taxes of investor-owned utilities from generation and transmission to the point of delivery, then it was equally justifiable to provide for replacement of municipal PILOTs. Should other entities be allowed to sell electricity or gas within the city, then a tax on deliveries would recover the lost PILOT revenue. The transfer replacement tax provisions were included in the legislation. Municipal electric and gas utilities calculate a transfer replacement tax that applies to all deliveries within the electric or natural gas competitive service territory. Iowa Code § 437A.32. The rate is calculated by dividing each year's transfers made pursuant to §384.89 by the total kWh or therms, other than those used by the city or delivered to other city departments, and then averaging the five most recent rates.

d. Transfer Replacement Tax – Protecting Utility Reserves

In the last couple of years, as cities looked for sources of additional revenue, the transfer replacement tax has become a problem for some utilities. Because the rate is determined by calculating a five-year rolling average of transfers, any one year of above average transfers raises the tax rate. A utility filing the transfer replacement tax form with the Chief Financial Officer of the city may be challenged, since the transfer tax rate multiplied by the most recent year's taxable deliveries will result in a larger tax than that offset by the most recent year's transfers. It was always the intent that the governing body of the utility would effectively set the tax rate by the amount of transfers it made, so a provision of the law allows the governing body to exempt from calculation of the tax any or all transfers. The exemption is in the sole discretion of the governing body, so a board of trustees could exempt any transfer or partial transfer to achieve the desired rate. If necessary, the board could exempt payments retroactively to achieve the desired result.

9. Transfers of Surplus Funds to City

Iowa Code § 384.89 allows the governing body of a city utility to transfer surplus funds to any other fund of the city. The utility must comply with all requirements, terms, covenants, conditions and provisions of proceedings and resolutions to which revenue bonds, pledge orders, and other obligations are issued and deposit funds as necessary to meet those obligations before the utility can transfer surplus funds to the city. There is no legal authority for a city to require its board operated municipal utility to make any fund transfers to the city.

10. Payments in Lieu of Taxes (PILOTs) and other transfers

Background. There is no question that a municipal utility provides benefits to the community as a whole that far exceed the value of property taxes paid by an investor-owned utility. These include rate savings, but they also include local control over the policies of the utility, e.g., local jobs, quick response to outage and storm damage, energy efficiency programs, underground construction, and movement of poles and lines to accommodate a public improvement. In addition, most municipal utilities make a payment in lieu of taxes (PILOT). On average across Iowa and the nation, the average PILOT is about 6% of revenue. PILOTs represent a community return on investment.

Should PILOTs be based on gross revenue? When the costs of electricity and gas were relatively stable, a gross revenue formula might have made sense. Times have changed. Electricity costs are expected to rise dramatically in coming years. There are many reasons, including the replacement of old generating plants, expansion of the transmission grid, higher fuel and fuel transportation costs, and payments for carbon emissions. These pass-through costs will greatly inflate a utility's gross revenue and PILOTs, putting an additional burden on customers who are already being hammered by the increased cost of service.

Some of these same factors apply to gas utilities. As with electric utilities, it is the payment for energy that makes up the biggest component of utility revenue. As carbon emission costs increase, a lot of electric generation is expected to shift from coal to gas, putting upward pressure on gas prices. Gas prices are currently quite stable, but they have been through periods of high volatility in recent years. PILOTs tied to gross revenue telegraph these price anomalies to consumers.

Alternatives to gross revenue PILOTs. Converting PILOTs from a gross revenue formula to one based on retail sales of kWh or therms ensures a more stable level of transfers and better reflects the utility's ability to support other local government functions. Other approaches that mitigate the impact of rising energy costs on PILOTs include formulas based on net revenue or even fixed dollar amount, with or without an escalator.

Are PILOTs or other transfers "surplus" funds? It is important to recognize that the only way a utility can transfer funds to the city is by declaring a surplus (see Iowa Code 384.84). A utility might get around that with a formal PILOT agreement, where the payment is deemed a cost of business. However, this question is open to legal interpretation.

Should service to other departments be "free" or discounted? Some utilities provide free or discounted service to other city departments as a return on the community's investment. A utility should strongly consider charging other city departments for service, even if turns around and makes a transfer for the same amount. If other city departments don't know how much they spend on energy or water, they have little incentive to use it wisely. One possibility is to make monthly transfers based on average usage for the previous year. If other departments use less they get to keep the balance as an energy efficiency incentive.

Transfers for public purpose. Utility contributions to support economic development and other public purposes are authorized, but the governing body must make a finding that there is a utility purpose. That is usually not too difficult if the purpose is economic development in the utility's service area, but for some requests, the finding is a long stretch. If the utility has surplus funds, the governing body wants to provide financial support, and the utility purpose is not evident, one solution is to transfer funds to another city fund and have the city authorize the financial support.

11. Council Approval of Utility Board Budget

The State Auditor's office has asked municipal utilities governed by boards of trustees to have their budgets approved by city councils prior to the end of the calendar year. This "approval" creates a conflict between 384.16 (utility budget must be approved by resolution of the council…) and sections 384.85(2), 388.4, and 388.5, which give the board exclusive control of utility funds and full city authority over the utility. The conflict between sections of the Code enacted at different times is described by Ivan Webber in a 12-2-10 letter to IAMU.

Although the inconsistency in code language may best be resolved through legislation, a council resolution along the line of this one might just do the trick:

> RESOLUTION NO.___________
>
> RESOLUTION ACCEPTING THE 20__ CALENDAR YEAR BUDGET
> OF (insert name of utility) ___________________________________
>
> WHEREAS, the Board of Trustees of _________________________ (UTILITY) operates on a calendar year basis, requiring preparation of an annual budget that is separate from the accounting year utilized by the City of _________________ (CITY); and
>
> WHEREAS, the Board of Trustees has published notice of a public hearing on its 20___ Calendar Year Budget, and conducted the public hearing on __________________, 20___, in accordance with Chapter 384, Code of Iowa, and as per instructions from the Comptroller of the State of Iowa; and
>
> WHEREAS, the UTILITY is required to file their adopted budget with the City Council not less than twenty days prior to the beginning of the calendar year;
>
> NOW THEREFORE BE IT RESOLVED, by the City Council of the CITY, Iowa, that:
>
> 1. The Calendar Year 2011 budget, as formally adopted by the Board of Trustees of the UTILITY, be hereby accepted for filing; and
>
> 2. The City Clerk is directed to file two copies of the aforementioned budget with the ___________________ County Auditor, as required by law.
>
> PASSED AND APPROVED THIS ____ DAY OF _____________, 20___
>
> [Signature and attestation]

12. Utility Services to City Facilities

Iowa Code § 384.91 provides that the city shall pay for services provided by the city utility, except that the city may pay at a reduced rate or receive free service so long as the city complies with all provisions concerning issued and outstanding revenue bonds or pledge orders. Your auditor will expect to see these free or reduced services as an item on the utility's balance sheet.

13. Utility Revenues for Economic Development

It is permissible for a municipal utility to use utility revenues for most economic development purposes. Chapter 15A.1 (1)(a) provides that "Economic development is a public purpose for which the state, a city, or a county may provide grants, loans, guarantees, and other financial assistance to or for the benefit of private persons." An Attorney General's Opinion issued November 10, 1986 specifically addresses economic development efforts by municipal utilities.

The Attorney General's opinion states that a city utility has power to determine what expenses are properly regarded as utility operating expenses. Economic development expenditures may be a valid utility operating expense for which utility funds may be expended. The opinion does not address the specifics of what types of economic development efforts might constitute a valid expense. It is left to each utility board of trustees or city council to determine if there is a utility purpose to the expenditure. Presumably, an economic development expenditure aimed at attracting a new industrial customer that would increase utility consumption would have a utility purpose and be a valid utility operating expense.

The Attorney General's opinion also alludes to another mechanism available to a municipal utility in pursing economic development. Pursuant to section 384.89 a municipal utility may transfer surplus funds to any other city fund. Presumably, the transferred funds could then be used for economic development as a valid public purpose under Ch. 15A.

14. Collective Bargaining

As a government entity, municipal utilities' unions are governed by Iowa Code Chapter 20, the Iowa Public Employee Relations Act. Iowa is a right to work state, meaning employees who are eligible for union membership are not required to join and it is the employee's choice whether to pay union dues. Iowa Code Chapter 731.Being a member of the union cannot be a prerequisite for employment with a municipal utility. Iowa public employee unions are prohibited from striking against public employers. Iowa Code § 20.12 (1).Every bargaining unit must have a collective bargaining unit agreement that covers work schedules, vacations, pay rates, and labor-management issues. Labor relations issues are also governed by federal law, including the National Labor Relations Board.

15. Pensions

Under Iowa Code Chapter 421, municipal utilities were authorized to create their own pension funds. A municipal utility must have either its own pension or participate in IPERS. The Code sections relating to Pensions include Chapter 421 and § 97B.42C.

16. Vehicle Signage

Publicly owned vehicles must have a one square foot label on both sides of the vehicle. Iowa Code § 721.8.

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