

RULES AND REGULATIONS NUMBER 8

RULES AND REGULATIONS REGARDING ADMINISTRATIVE APPEALS, APPEALS TO THE EL PASO WATER UTILITIES PUBLIC SERVICE BOARD OF TRUSTEES, VARIANCES, AND COMPLAINTS

BY THE AUTHORITY GRANTED TO THE EL PASO WATER UTILITIES PUBLIC SERVICE BOARD PURSUANT TO CITY OF EL PASO ORDINANCE NUMBER 752, PASSED AND ADOPTED MAY 22, 1952, ET SEQ AND PURSUANT TO CHAPTER 1502, SECTION 1502.071 OF THE TEXAS LOCAL GOVERNMENT CODE, AND THE LAWS OF THE STATE OF TEXAS, BE IT RESOLVED BY THE EL PASO WATER UTILITIES PUBLIC SERVICE BOARD OF THE CITY OF EL PASO, TEXAS THAT THE FOLLOWING RULES AND REGULATIONS SHALL IN ALL INSTANCES GOVERN THE RIGHT OR RIGHTS REGARDING ADMINISTRATIVE APPEALS, APPEALS TO THE EL PASO WATER UTILITIES PUBLIC SERVICE BOARD, VARIANCES AND COMPLAINTS OF ANY CUSTOMER OF THE EL PASO WATER UTILITIES.

SECTION 1. SCOPE, PURPOSE AND POLICY:

This Rules and Regulations No. 8 of the El Paso Water Utilities Public Service Board (“Utility”) is hereby adopted to provide a fair and equitable opportunity for persons to appeal certain decisions of the Utility’s President/CEO, or his or her designee; to request an appeal to the El Paso Water Utilities Public Service Board; to request variances from the Rules and Regulations of the Utility, and to file complaints and receive resolution thereof with the Utility, regarding service and billing issues and regarding application of the Rules and Regulations of the Utility.

Rules and Regulations No. 8 is meant to provide an appeal process for an individual customer, person or company, which may be affected by a decision or Rule and Regulation. Rules and Regulations No. 8 is not, never has been and shall not be interpreted in any case to provide a means for a customer or his or her representative or attorney to challenge the overall management policies or governance decisions of the El Paso Water Utilities Public Service Board of Trustees or the President/CEO.

For purposes of this Rule and Regulation a “person” is defined as a customer of the Utility, an individual, corporation, organization, government or governmental subdivision or agency, business, business trust, partnership, association or other legal entity. An appeal must be submitted in written form to the President/CEO.

SECTION 2. ADMINISTRATIVE APPEALS

Prior to any appeal to the El Paso Water Utilities Board of Trustees a person as defined herein shall make his or concern or complaint concerning, rates, charges and/or Rules and Regulations in writing to the Vice President for Strategic, Financial and Management Services at 1154 Hawkins Blvd., El Paso, Texas 79925. An example of such a complaint would be an inquiry or complaint

regarding the interpretation of the Rules and Regulations or the individual application of charges established by the Utility.

- a. Customers desiring to make inquiry or complaint by telephone or in person should initially contact the Utility Customer Service Department or the Utility Department that administers the Rule and Regulation the subject of their objection. For example, if the inquiry or complaint is regarding a billing question, then he or she should contact the Utility Customer Service Department and ask to speak to a customer service representative. If the inquiry or complaint concerns a development action, plan or program, he or she should contact the Utility Development Engineering Service Department. If the inquiry is a storm water question, he or she should contact the Utility Storm Water Engineering Division. Such complaints received in writing shall be investigated by the Utility officials designated by the President/CEO and a written response will be provided to the customer regarding the determination of the Utility within forty-five (45) days of the investigation.
- b. Should a customer not receive a satisfactory explanation and/or resolution of his or her concerns, questions or complaint, he or she should submit that fact in writing to the Vice President for Strategic, Financial and Management Services of the Utility and request an Administrative Hearing. The Utility will schedule an Administrative Hearing with the customer and/or his representative or attorney within thirty (30) days of receipt of the written notice to the Utility of an unsatisfactory resolution to his or her concern. The Administrative Hearing will be conducted during normal business hours at the offices of the Utility before an Administrative Committee consisting of not more than three (3) supervisory employees of the Utility as appointed by the President/CEO. After the Administrative Hearing, the Chair of the Administrative Committee will notify the customer in writing of the determination of the Administrative Committee within thirty (30) days of the conclusion of the hearing itself.
- c. In an instance where the customer has followed the administrative process provided for herein and has determined that the Utility has not satisfactorily resolved his or her concerns as a result of the Administrative Hearing; then, in that event, the customer may request in writing to the President/CEO an appeal to the El Paso Water Utilities Public Service Board of Trustees. Such request will be processed in accordance with this Rule and Regulation Number 8.

SECTION 3. APPEALS TO THE EL PASO WATER UTILITIES PUBLIC SERVICE BOARD OF TRUSTEES.

A. APPLICABILITY.

1. A person may appeal certain decisions, as described in this Rule and Regulation, of the President/CEO to the Utility's Public Service Board of Trustees in accordance with the procedures outlined in this Rule and Regulation.

2. This Rule and Regulation applies only to decisions of the President/CEO regarding the following:
 - a. Customer billing disputes
 - b. Suspension, termination or disconnection of service for non-payment, hazardous conditions, an illicit discharge, or for any other reason the President/CEO is authorized to suspend, terminate, or disconnect service under these Rules and Regulations;
 - c. Denial of service;
 - d. Denial of a permit or authorization issued by the President/CEO on behalf of the Utility;
 - e. Application of a fee or charge;
 - f. Impervious cover determinations; and,
 - g. Administrative penalties or fines.
3. The Chair of the Utility's Public Service Board of Trustees, or his or her designee, will review the request for an appeal hearing as submitted to the President/CEO and determine if the request meets the requirements of this Rule and Regulation. If the request meets the requirements of this Rule and Regulation, the Chair in his or her sole discretion, will set a hearing on the appeal on the next available and regularly-scheduled Utility Board meeting (or in the discretion of the Chair, at a Special Utility Board meeting). The Utility will notify the appellant in writing of the date and time for the appeal hearing before the Utility Board, and the amount of time that will be allowed for the appellant to present his or her or its appeal to the Utility Board.
4. At the appeal hearing, the appellant, or the appellant's authorized attorney or other representative, may appear before the Utility Board and present the appeal. If the appellant or his or her representative does not appear before the Utility Board, appellant's appeal will be decided by the Utility Board on the basis of the written appeal and any materials or information provided by the President/CEO or other Utility staff. The Utility Board will not consider any written materials of the appellant that are not submitted to the Utility Board at least five (5) business days prior to the appeal hearing. The Utility Board may request input or additional information from the President/CEO or other Utility staff, and may confer with its attorney in executive session as provided for in the Texas Open Meetings Act. The Utility Board, by majority vote in open session, may affirm the decision of the President/CEO, modify, limit or condition the President/CEO's decision if the

Utility Board concludes that the President/CEO's decision is not consistent with the applicable Rules and Regulations of the Utility, or may defer final decision on the appeal to allow the person to seek a variance, if available, and as provided by this Rule and Regulation.

5. If the appellant is unable to appear at the date and time designated for the hearing on the appeal, the appellant or the appellant's authorized attorney or representative, may request in writing a continuance. The continuance request must be received by the Chair at least twenty-four (24) hours before the meeting of the Public Service Board of Trustees at which the hearing is to be heard. The Chair will grant the appellant's first written request for continuance upon timely receipt of the request. At the Chair's sole discretion, the Chair may grant or deny any additional continuance requests made after the first continuance request has been granted. If a continuance is granted, the Chair will reschedule the appeal hearing for a subsequent Utility Board meeting and have the appellant notified in writing of the date and time for the appeal hearing.
6. Prior to an appeal hearing, the Chair, in his or her sole discretion, reserves the right to reschedule or continue an appeal hearing to another meeting of the Utility Board. The Utility Board at a meeting on which the appeal hearing is set may, by majority vote, continue an appeal hearing to another meeting of the Utility Board.
7. Except as provided by Rules and Regulations No. 16, Section XIV, the decision of the Utility Board on an appeal is final and non-appealable further.

SECTION 4. VARIANCES

A. APPLICABILITY.

The El Paso Water Utilities Public Service Board may authorize, in specific cases, a variance from the requirements of the Rules and Regulations of the Utility if in the Utility Board's determination, the variance is not contrary to the public interest; will not compromise or threaten to compromise the public health, safety or welfare; will not result in unreasonable public expense or cost to the Utility; will not create or threaten to create a nuisance or potential nuisances, public or private; is not in conflict with the El Paso City Code or Charter, or other applicable law or policy; and/or due to special circumstances or conditions, a literal enforcement of the Rules and Regulations would result in unnecessary hardship to the variance applicant; and the requested variance otherwise would be consistent with the spirit and purpose of the Rules and Regulations from which the variance is sought and substantial justice is done. This Section 3 of this Rule and Regulation does not apply to variances under Rules and Regulations No. 17.

B. Procedure.

1. To request a variance as provided for by this Section, the variance applicant must submit the request in writing to the Vice President, Strategic, Financial and Management Services of the Utility at 1154 Hawkins Boulevard, El Paso, Texas 79925. The request must include the following:
 - a. The name, address, billing address (if applicable), email address (if applicable), and telephone number of the person making the request for the variance.
 - b. A listing of the specific numbers, sections and paragraphs of the Rules and Regulations from which the variance is sought;
 - c. A statement describing why the variance is being requested, including but not limited to, showing (i) there is good and sufficient cause for the variance, (ii) the applicant will suffer unnecessary hardship if the variance is denied, (iii) no other rule, regulation, or law precludes the variance requested, and (iv) the public interest and public health, welfare and safety will be protected; and,
 - d. A check or money order for fifty dollars (\$50.00) made out to the El Paso Water Utilities for the non-refundable administrative costs of review of the requested variance.
2. A request for a variance under this Rule and Regulation may be submitted with and be considered at the same time that an appeal under Section 2 of this Rule and Regulation is considered.
3. Within forty-five (45) days after receipt of a variance request, the Utility Board will hold a public hearing on the request. The President/CEO will give written notice of the public hearing for the variance by mail to the person requesting the variance, at the address as stated in the application, and by posting notice of the appeal in the El Paso Water Utility's Public Service Board's meeting agenda, in accordance with the Texas Open Meetings Act.
4. Utility's Board will act on the request for a variance no later than the next regularly scheduled Utility Board meeting following the public hearing, provided that the next regularly scheduled Utility Board meeting is at least five (5) business days after the public hearing. The Utility Board may act on the request at an earlier Utility Board meeting after the close of the public hearing. In acting on the request for a variance, the Utility Board may by order adopted by the Utility Board:
 - a. Approve the request for a variance.

- b. Approve the request for a variance with modifications or special conditions that the Utility Board deems necessary or appropriate to further the purpose and objectives of the Rules and Regulations and Utility practice and policy, and that is in the public interest, including, but not limited to, limiting the time for which the variance is effective; or
 - c. Deny the request for a variance.
5. Unless otherwise provided by the order granting the variance, the Utility Board's decision on the variance is effective immediately. Unless otherwise provided by the Rules and Regulations, by the City of El Paso Code or Charter, or by other applicable law, there shall be no right to an appeal of the decision of the Utility Board on a variance request. All decisions by the Utility Board on a variance request are final.
6. No variance granted by the Utility Board shall be considered to set a precedent for the Utility or establish a Utility practice or policy unless so stated by the Utility Board in its written order.

SECTION 5. COMPLAINTS GENERALLY

A person may make a complaint to the Utility in person, in writing, or by telephone. Complaints received will be investigated by the Utility personnel designated by the President/CEO, and a written response will be provided to the complainant regarding the results of the investigation unless a verbal response is considered sufficient by the person. Unless provided by the person in writing, complaints will be informally reviewed and investigated with a written or verbal response provided. Unless further allowed for by Sections 2 or 3 of this Rule and Regulation, there is not right of appeal recognized for a decision of the President/CEO regarding the results of a general complaint investigation.

SECTION 6. SEVERABILITY CLAUSE

If any provision of this Rules and Regulations Number 8 or the application of this Rule to any person or under any set of circumstances is, for any reason, found to be void by a court of competent jurisdiction and authority, that provision shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this Rules and Regulations Number 8 or any other of these Rules and Regulations.

SECTION 7. SAVINGS.

This Rules and Regulations Number 8 is part of the other Rules and Regulations of the El Paso Water Utilities Public Service Board and, save and except as amended hereby, the remaining provisions of the Rules and Regulations shall continue and remain in full force and effect.

SECTION 8. REPEALER CLAUSE

The provisions of this Rule and Regulation shall be cumulative of all other Rules and Regulations governing or regulating the same subject matter as that covered herein; provided, however, that all prior Rules and Regulations inconsistent or in conflict with any of the provisions of this Rule and Regulation Number 8 are hereby expressly repealed to the extent that such inconsistency is apparent. This Rule and Regulation Number 8 shall not be construed to require or allow any act that is prohibited by any other Rule and Regulation of the Utility. All Rules and Regulations shall be construed harmoniously in every case.

SECTION 9. EFFECTIVE DATE

This Rule and Regulation Number 8 shall be and become effective from and after its adoption by the Utility's Public Service Board, and shall remain in effect until amended or modified by the action of the Utility's Public Service Board.


PASSED, APPROVED AND ADOPTED this 23rd day of May, 1979.

RULES AND REGULATIONS NO. 8, SECTION II, REVISED, APPROVED AND ADOPTED this 9th day of December, 1992.


RULES AND REGULATIONS NO. 8, HEADING, SECTION I, SECTION II, REVISED, APPROVED AND ADOPTED this 12th day of December, 2007.

RULES AND REGULATIONS NO. 8 REVISED COMPLETELY, APPROVED AND ADOPTED this 13th day of May, 2015.


**EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD**


Richard T. Schophoerster, PhD, P.E.
Chair

ATTEST:


Terri Garcia
Secretary/Treasurer

APPROVED AS TO FORM:


Robert D. Andron
General Counsel