

Agenda
Utilities Policy Advisory Committee (UPAC)
Wednesday, December 6, 2023
8:00 a.m. – 10:00 a.m.

Blue River Board Room, 121 S. Tejon Plaza of the Rockies or Microsoft Teams

[Click here to join the meeting](#)
[+1 719-733-3651,471741711#](tel:+17197333651)

8:00 a.m.	1. Call to Order	
8:05 a.m.	2. Approval of October 4, 2023 UPAC Meeting Minutes	Decision
8:10 a.m.	3. Selection of UPAC Officers	Decision
8:20 a.m.	4. Ethics, Open Meetings and Colorado Open Records Act (CORA) Review	Discussion
9:30 a.m.	5. Citizen Comment Citizens can provide comment in person, by joining the meeting from computer or by phone using the link above. If you would like to speak during the citizen comment period, please sign up to speak through BoardSubmissions@csu.org prior to the meeting.	Discussion
9:35 a.m.	6. Committee Member Discussion	
10:00 a.m.	7. Adjournment	

Next meeting: Jan. 10, 2023

Note: UPAC Bylaws, Rule 6: Customer and Public Comment: (b) At the discretion of the Chair, or the majority of the Committee Members present, customers and members of the public will be allowed to comment or ask questions concerning items discussed at regular meetings or concerning matters discussed at special meetings. Comments or questions by individuals will be limited to five minutes each, and all customer or public comments will not exceed twenty minutes on any agenda item unless time is extended by the Chair or majority of the Committee Members present.



Minutes
Utilities Policy Advisory Committee (UPAC)
Wednesday, October 4, 2023
Blue River Boardroom, 5th floor, 121 S. Tejon St., Colorado Springs, CO
and Microsoft Teams Virtual Meeting

Committee members present in the boardroom or via Microsoft Teams: Chair Larry Barrett, Vice Chair Hilary Dussing, Gary Burghart, Michael Borden, Katherine Danner, Scott Smith, David Watson, Chris Meyer, and Scott Callihan

Staff members present in the Boardroom or via Microsoft Teams: Al Wells, Marcela Espinoza, Bethany Schoemer, Tristian Gearhart, Tara McGowan, Scott Shirola, Natalie Watts, Abby Ortega and Lisa Barbato

City of Colorado Springs staff present in the boardroom or via Microsoft Teams: David Beckett and Renee Congdon

1. Call to Order

Chair Larry Barrett called the meeting to order at 8:01 a.m. and called the roll.

Chair Barrett welcomed new members Mr. Chris Meyer and Mr. David Watson. He also explained that he and Committee Member Gary Burghart were appointed to their third and final UPAC term and Committee Member Scott Smith was appointed to a regular position. Chair Barrett allowed each of the new UPAC members to introduce themselves to the rest of the committee.

2. Approval of July 5, 2023, UPAC Meeting Minutes

Vice Chair Dussing made a motion to approve the July 5, 2023, meeting minutes and Committee Member Danner seconded the motion. The motion carried unanimously.

3. Cost Recovery Mechanisms Assignment Update

Mr. Scott Shirola, Manager of Pricing and Rates, provided an update on the financial assignment staff provided earlier this year based on more current cost estimates and an update on the timeline.

He said the purpose of the cost recovery assignment is to provide a recommendation to the Utilities Board on whether Colorado Springs Utilities should revise and/or establish new cost recovery policies. Mr. Shirola explained that the cost recovery assignment involved new state regulations, customer behavior, industry transformation, and community planning and growth.

Committee Members and staff discussed financial analysis changes which included applying inflation over the 10-year budget. They reviewed the schedule and ability to execute the changes, incorporating and analyzing studies of wastewater to support growth within the city. Committee members discussed why removing annexation was part of the analysis and why the financial analysis included full project cost for projects started within the 10-year period for fee calculations.

Mr. Shirola compared the current cost recovery mechanisms across all four services and the current impact of growth on rates versus what UPAC recommended previously.

Ms. Tara McGowan, Engineering Manager, explained that staff evaluated what role incentives should play in supporting resources and infrastructure planning objectives. She said staff looked at what would be appropriate incentive groups that would benefit the system. Those incentives were – infill, densification, redevelopment and utility efficiency.

Committee Member Dussing requested data of previous and current incentives that are in place and how they have done.

Ms. McGowan advised the recommendation of the Utilities Board was to update review and design fees to fully recover appropriate costs including updating existing fees to current costs and adding new fees for service currently provided without fees. Committee Member Watson asked for clarification on how the recovery costs are shifted between the customer and the developer.

Mr. Shirola explained the purpose of this assignment was proposed because Springs Utilities needs to recover the same amount of costs to be able to fund reliability projects and support growth. Committee Member Smith recommended developing a general philosophy of splitting costs between the buyer and the developer.

Mr. Shirola provided a brief overview of the timeline of the cost recovery assignment advising there will be no meeting in November, however, there will be an Industry Workshop scheduled for Nov. 1. Following the workshop there will be a joint UPAC and Utilities Board meeting. Lastly, UPAC will formalize their recommendation and present it to the Utilities Board in early 2024.

Committee Member Watson asked if UPAC would be able to attend the Industry Workshop. Ms. Renee Congdon, City Attorney's Office – Utilities Division, advised if UPAC plans to attend the meeting would need to be noticed. Ms. Bethany Schoemer, Strategic Planning and Governance Specialist, advised staff is recommending only the industry at the workshop, however, staff will provide an in-depth summary with UPAC members following the workshop.

Mr. Tristian Gearhart, Chief Financial Officer, answered and discussed the Committee's

concerns of projection of projects, annexation, current and future inflation concerns, and the structure and phasing of fees.

Staff and Committee Members further discussed whether UPAC should or shouldn't attend the Industry Workshop. Ultimately, Mr. Gearhart recommended UPAC members to not attend the Workshop and staff will provide a recording and an extensive summary on the data that will be collected.

4. Citizen Comment

None.

5. Committee Member General Discussion

None.

6. Adjournment

Chair Barrett adjourned the meeting at 9:31 a.m.

Next meeting: Dec. 6, 2023, at 8:00 a.m.

UPAC Officer Selection for 2023



UPAC Officer Eligibility and Selection



According to UPAC Bylaws, the Committee shall elect the Chair and Vice-Chair for the next calendar year at the Committee's December meeting.



The Chair shall be elected by a majority vote of the Committee members following nomination(s) by a member or members of the Committee, which nomination(s) must be seconded. The Vice-Chair shall be elected in the same manner as the Chair. If a nominee fails to get elected, nominations shall be reopened.



The Chair and Vice-Chair shall have a voice and shall vote in the selection of the officers of the Committee.



Committee members shall not serve more than two consecutive years as Chair and not more than two consecutive years as Vice-Chair.

UPAC Officer Eligibility

UPAC Chair

Larry Barrett

Michael Borden

Gary Burghart

Kate Danner

Hilary Dussing

Scott Smith

David Watson

UPAC Vice Chair

Larry Barrett

Michael Borden

Gary Burghart

Kate Danner

Hilary Dussing

Scott Smith

David Watson

Ethics, Open Records, Open Meetings 2024 Update



Presented to
Colorado Springs Utilities Policy Advisory Committee

December 6, 2023

David Beckett – City Attorney's Office

Ethics

Ethics - Why Should You Care?



In your role as a UPAC member, you are a “covered person” subject to the City’s Code of Ethics

Ethics education is required to be given annually

Ethics - Themes of the Ethics Guidelines



- Goals:
 - Ensure independent objective judgment & ethical behavior
 - Ensure public confidence
 - Transparency
- Act with complete honesty, utmost integrity, and fair dealing
- Strive to avoid any conduct creating the appearance of impropriety
- No tolerance for violations

Ethics - UPAC Bylaws Rules of Conduct



- UPAC members may seek employment with Colorado Springs Utilities; if a job application is pending, member receives “excused absences”
- UPAC members may offer products and services to Colorado Springs Utilities after a “no conflict” determination from Colorado Springs Utilities’ CEO (who must consult with the Chair of the Utilities Board)
- UPAC members may not use their position to influence Colorado Springs Utilities’ procurement decisions
- UPAC members may ask for an advisory opinion regarding a potential future action

Ethics – City Code of Ethics



- Conduct your activities with UPAC's best interests in mind
- Safeguard Colorado Springs Utilities' confidential and proprietary information
- Avoid conflicts of interest and appearances of impropriety
 - Engaging in activities that might interfere with one's objectivity; offering preferential treatment; misuse of financial or customer information
- Disclose promptly any circumstances that might constitute a conflict of interest or an appearance of a conflict
- Unofficial messages should have clear disclaimers that the views expressed do not necessarily represent UPAC's views

Ethics – Code: Conflicts of Interest



- Conflicts of interest are prohibited; recusal is mandatory
- Covered persons may not:
 - Use (either for self or immediate family) or disclose confidential information
 - Knowingly make unauthorized commitments or promises purporting to bind the City or Utilities
 - Request or grant special consideration, treatment, or advantage beyond that available to every other private organization or individual
 - Endorse private organizations or individuals
 - Directly or indirectly participate in any matter in which they or an immediate family member has a substantial interest
 - Misappropriate services or other resources of the City for personal benefit

Ethics – Code: Appearance of Impropriety



- Not a prohibited conflict of interest; recusal is voluntary
- Created when a covered person takes a direct official action that may create a reasonable perception that his/her ability to carry out official duties with integrity, impartiality, and competence is impaired

Ethics – Code: Disclosure and Recusal



- Disclose in writing or orally at the public meeting
- Recuse from the matter by:
 - Refraining from voting on or taking any official action concerning the matter
 - Refraining from communicating with any covered person with authority to take official action (commenting on the matter through public or private statements, emails, blogs, tweets, or other social media)
 - Physically leaving any room or premises at which the matter is being discussed or considered

Ethics – Gifts



- Applies to “covered persons” and “immediate family members”
- Whether something is a “gift” is fact-based
- Whether the gift is “related to the covered person’s duties and responsibilities on behalf of the City” is an important fact
- Cannot exceed \$75 in value in a year from one donor
- Do not solicit, accept, or give gifts (event tickets, tours, etc.,) that could be perceived to influence objectivity or when a substantial interest may exist

Ethics – Gifts



- What is a Gift under City Code?

A payment, subscription, advance, forbearance, acceptance, rendering or deposit of money, services, or anything of value given, to include food, lodging, transportation, golf or other recreation or entertainment, and reimbursement for other than necessary expenses for official business on behalf of the City, unless consideration of equal or greater value is received.

Ethics – Gifts



- So long as not reasonably considered a bribe or means of improper influence on direct official action, the following examples of gifts are permitted:
 - Unsolicited awards (plaques & professional awards)
 - Awards or prizes at competitions or drawings open to the public
 - Gifts that become the property of the City or Utilities

Ethics – Gifts



Inappropriate hospitality or gifts per City Code

Involve offering or receiving accommodations, tours, event tickets, recreation, entertainment, meals or other similar personal benefits when a ***substantial interest exists*** that could influence or be perceived to influence objectivity when interacting with, representing, or conducting business for or on behalf of the City or Utilities

Substantial interest: a situation in which a reasonable person faced with making a decision, after considering the relevant circumstances, would tend to have their decision influenced by a personal or financial stake or consideration

Ethics – Gifts



- “Gifts” of fees, meals, lodging and transportation are generally OK when Colorado Springs Utilities pays for an approved conference, seminar, event or meeting
- Keep all documentation
- Report all gifts by contacting Colorado Springs Utilities’ UPAC liaison, Bethany Schoemer

Ethics - Gifts are Tricky; If in Doubt, ask Yourself:

- Is the action legal?
- Does it comply with UPAC's and Colorado Springs Utilities' values?
- If you do it/accept it, how will you feel?
"You" includes Immediate Family Members and Covered Persons
- How will it appear to the public and the media?



Ethics – Guidelines Citations



UPAC members are subject to

- UPAC's Bylaws
- The City of Colorado Springs Ethics Code (City Code §§ 1.3.101, *et seq.*)

Questions about Ethics

Contact the City Attorney's Office 719-385-5909

CORA –Colorado Open Records Act

The Incorrect Approach . . .



Colorado Open Records Act



- Strong presumption that the records you make, maintain or keep are public and can be “inspected”
- Both paper and electronic “writings” are “public records”
- “Writings” include emails (sent, received, opened, unopened), text messages, notes you take in meetings, photos, recordings, receipts, calendars, vendor proposals and other solicitation process documents, etc.
- Emails related to this Project are subject to CORA
- No specific CORA requirement that you retain documents
 - Colorado Springs Utilities will destroy records in accordance with its document deletion practices (such as 3 years for emails)
 - Exception – no destruction of relevant records once a CORA request is received

CORA's Exceptions: Records that are NOT Public



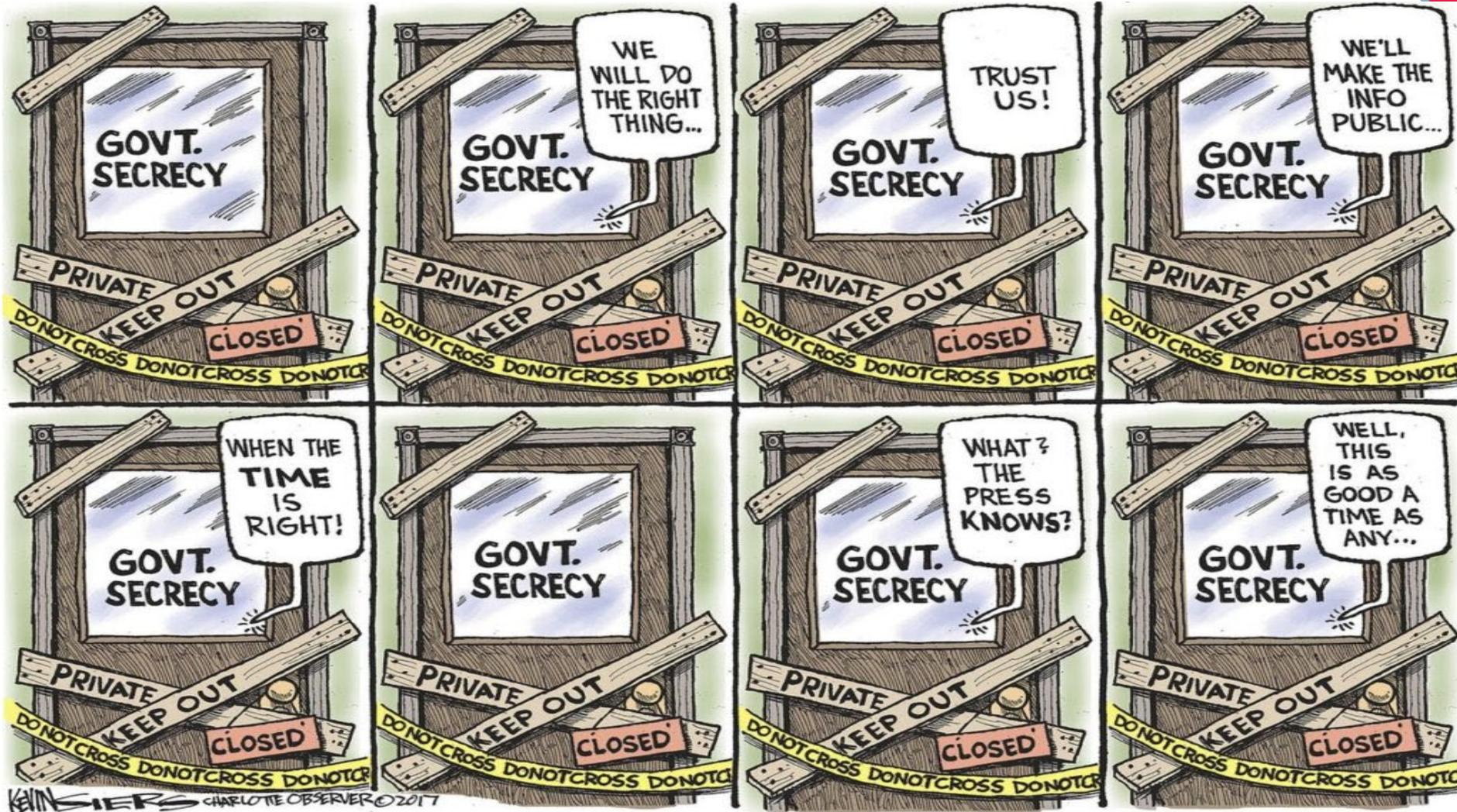
- Work Product: all intra- or inter-agency materials assembled for the benefit of elected officials that advise and express an opinion for the purpose of assisting the elected officials to make a decision
- Work product includes preliminary drafts and discussion copies that are NOT distributed to UPAC for discussion
- The elected official, however, can release any work product prepared by UPAC

Final Thoughts on CORA



- Responding to CORA likely will be the responsibility of Colorado Springs Utilities:
 - Official records: Agendas, minutes, bylaws, meeting recordings
 - Emails that staff have sent or received and retained per retention policy
- Copy Bethany Schoemer on any UPAC-related correspondence
- UPAC members have no obligation to keep UPAC-related materials, notes, or correspondence unless there is a current CORA request

Another Incorrect Approach . . .



Open Meetings

Colorado Open Meetings Law



- Formation of public policy is public business and shall not be conducted in secret: All “meetings” shall be open to the public
- A “meeting” occurs any time **three** or more members of UPAC discuss UPAC or Colorado Springs Utilities’ public business or take formal action in person, over the telephone, or by email
- Assume a “meeting” occurs when using “reply all” by email
 - Avoid “reply all”; get assistance from Bethany Schoemer

Open Meetings – What is Not a “Meeting”



A chance meeting at a social gathering at which discussion of public business is not the central purpose.

Open Meetings Require Notice



- Notice is required when UPAC
 - Has **three** or more members present or expected to be present
AND
 - Intends to discuss or conduct UPAC or Colorado Springs Utilities public business; OR
 - Intends to adopt a proposed policy or position; OR
 - Needs to take formal action
- Notice shall be provided no less than 24 hours prior to the meeting
- Notice preferably posted on a public website and be searchable

Public Forum Surprises – No Public Notice



- UPAC Assignment is on the Same Topic as Forum
 - Three UPAC members attend unexpectedly
 - Best Practice: Just listen
 - Report back at next UPAC meeting
 - Less than three UPAC members attend unexpectedly
 - You may speak in your non-UPAC capacity
 - Report back at next UPAC meeting
- UPAC Assignment is not related to forum topic
 - Multiple UPAC members attend unexpectedly
 - You may speak in your non-UPAC capacity
- In all instances, immediately notify Bethany Schoemer afterwards

Open Meetings – UPAC May Hold Closed “Executive Sessions”

- UPAC may not adopt any proposed policy, position, resolution, rule, regulation or other formal action in an executive session
- Examples of purposes:
 - Legal advice on specific legal questions
 - Matters required by federal or state law or rules and regulations to be kept confidential
 - Transactions involving real, personal, or other property interests
 - Documents protected by CORA’s mandatory nondisclosure provisions

Final Thoughts on Open Meetings



- Work with Colorado Springs Utilities' UPAC liaison, Bethany Schoemer, whenever a meeting needs to be noticed
- Before sharing material with other members that might be discussed as part of UPAC or Colorado Springs Utilities' public business ask yourself:
 - Am I sending this to two or more members of UPAC?
 - Might a discussion commence?
 - Can Bethany Schoemer facilitate distribution of this material to the rest of the UPAC members?
- **Questions?**