COUNCIL MEETING DATE: February 24, 2020

TO: President Dennis E. Flores and Members of City Council
VIA: Brenda Armijo, City Clerk
FROM: Mayor Nicholas A. Gradisar

SUBJECT: AN EMERGENCY ORDINANCE AMENDING THE BALLOT TITLE FOR BALLOT QUESTION 2A TO USE CERTAIN BALLOT LANGUAGE SUBMITTED BY OPPONENTS OF BALLOT QUESTION 2A IN ORDER TO ALLOW THE MAY 5, 2020 COORDINATED ELECTION TO PROCEED AS SCHEDULED AND SUBMITTING TO THE ELIGIBLE ELECTORS OF THE CITY OF PUEBLO, COLORADO AT THE SPECIAL MUNICIPAL ELECTION TO BE HELD ON MAY 5, 2020, PROPOSED AMENDMENTS TO THE CHARTER OF THE CITY OF PUEBLO AUTHORIZING THE BOARD OF WATER WORKS OF PUEBLO, COLORADO TO OPERATE A WATER AND ELECTRIC WORKS BY THE ADOPTION OF ORDINANCE NO. 9654 AND TERMINATING THE FRANCHISE AGREEMENT WITH BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP AND AUTHORIZING THE PURCHASE OR CONDEMNATION OF THE ELECTRIC DISTRIBUTION, TRANSMISSION AND GENERATION SYSTEMS OF BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP OR OTHERS LOCATED IN THE STATE OF COLORADO AS DETERMINED NECESSARY BY THE BOARD OF WATER WORKS OF PUEBLO, COLORADO

SUMMARY:

Attached is a proposed Ordinance amending the Ballot Title for Ballot Question 2A and referring the question of electric municipalization to the voters of the City of Pueblo at the May 5, 2020 Municipal Special Election. The amendment is necessary in order to allow the May 5, 2020 coordinated election to proceed as scheduled.

PREVIOUS COUNCIL ACTION:

On February 10, 2020, by Ordinance No. 9662, the City Council voted unanimously to refer Ballot Question 2A concerning electric municipalization to the voters of the City of Pueblo at the May 5, 2020 Municipal Special Election.

BACKGROUND:

On February 14, 2020, local residents Gus Sandstrom and Colennda Fratterelli, as Plaintiffs and Contestors, through the Denver, CO law firm of Recht Kornfeld, sued the City of Pueblo by filing a “Complaint and Verified Petition for Summary Adjudication of a Ballot Title Contest Pursuant to
The lawsuit was filed in the Pueblo County District Court and was assigned Case No. 2020 CV 030087.

The lawsuit against the City was defective because it failed to comply with C.R.S. 1-11-203.5 (2) which required the submission of alternative ballot language when the lawsuit was filed. When the City brought this defect to the attention of the attorneys representing the Plaintiffs and Contestors, the attorneys filed a First Amended Complaint on February 18, 2020.

The ballot title contained in Ordinance No. 9662, which was adopted by City Council on February 10, 2020, is in full compliance with the City Charter, the Pueblo Municipal Code and applicable state law. No additional ballot language is necessary.

Judicial resolution of the ballot language dispute will delay certification by the City Clerk of the ballot title to the County Clerk and Recorder. Further litigation will cause delay and may prevent the City from meeting the statutory deadlines for the City’s participation in the May 5, 2020 coordinated election.

In order to keep the May 5, 2020 election date and avoid paying the full cost of a mail ballot election on a later date, the City is willing to use certain ballot language proposed by the Plaintiffs in their First Amended Complaint while disagreeing with the Plaintiffs that their ballot language is necessary.

**FINANCIAL IMPLICATIONS:**

The City will incur the cost of a Special Municipal Election on May 5, 2020, to be conducted as a mail ballot election by the County Clerk. The costs of the election are currently unknown, but costs will be shared with the Pueblo West Metropolitan District and perhaps other special districts also holding elections on May 5, 2020.

**BOARD/COMMISSION RECOMMENDATION:**

On November 21, 2019, the EUC recommended, by a unanimous vote, that the City create a municipal electric utility and purchase or condemn Black Hills electric facilities located in the City and Pueblo County.

**STAKEHOLDER PROCESS:**

Members of the public are the primary stakeholders affected by the proposed Ordinance. The issue of creating a Municipal Electric Utility has been discussed at various public City Council meetings and work sessions and public meetings of the EUC for the past two years.

**ALTERNATIVES:**

If this Ordinance is not approved, the voters of the City of Pueblo will not be given the opportunity to vote on the creation of a municipal electric utility.

**RECOMMENDATION:**

This Ordinance must be adopted in order to refer the municipalization ballot measure to the voters.

**Attachments:** Proposed election ordinance and proposed Ordinance No. 9654.
ORDINANCE NO. 9673

AN EMERGENCY ORDINANCE AMENDING THE BALLOT TITLE FOR BALLOT QUESTION 2A TO USE CERTAIN BALLOT LANGUAGE SUBMITTED BY OPPONENTS OF BALLOT QUESTION 2A IN ORDER TO ALLOW THE MAY 5, 2020 COORDINATED ELECTION TO PROCEED AS SCHEDULED AND SUBMITTING TO THE ELIGIBLE ELECTORS OF THE CITY OF PUEBLO, COLORADO AT THE SPECIAL MUNICIPAL ELECTION TO BE HELD ON MAY 5, 2020, PROPOSED AMENDMENTS TO THE CHARTER OF THE CITY OF PUEBLO AUTHORIZING THE BOARD OF WATER WORKS OF PUEBLO, COLORADO TO OPERATE A WATER AND ELECTRIC WORKS BY THE ADOPTION OF ORDINANCE NO. 9654 AND TERMINATING THE FRANCHISE AGREEMENT WITH BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP AND AUTHORIZING THE PURCHASE OR CONDEMNATION OF THE ELECTRIC DISTRIBUTION, TRANSMISSION AND GENERATION SYSTEMS OF BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP OR OTHERS LOCATED IN THE STATE OF COLORADO AS DETERMINED NECESSARY BY THE BOARD OF WATER WORKS OF PUEBLO, COLORADO.

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

There is hereby submitted to a vote of the registered electors of the City of Pueblo at the Special Municipal Election to be held on May 5, 2020 proposed amendments to the Charter of the City of Pueblo authorizing the Board of Water Works of Pueblo, Colorado to operate a Water and Electric Works by the adoption of Ordinance No. 9654 set forth below and further authorizing the City to terminate the Franchise Agreement with the Black Hills/Colorado Electric Utility Company, LP (“Black Hills”) and further authorizing the Board of Water Works of Pueblo, Colorado to purchase or condemn the Certificate of Public Convenience and Necessity of Black Hills or others and any electric distribution, transmission and generation systems located in the State of Colorado as determined necessary by the Board of Water Works of Pueblo, Colorado. The ballot question...
(submission, clause and title) therefore shall be as follows:

QUESTION NO. 2A - WATER AND ELECTRIC WORKS

SHALL THE FRANCHISE AGREEMENT WITH BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, LP BE TERMINATED AND SHALL THE CHARTER OF THE CITY OF PUEBLO BE AMENDED TO AUTHORIZE THE BOARD OF WATER WORKS OF PUEBLO, COLORADO TO OPERATE A WATER AND ELECTRIC WORKS BY THE ADOPTION OF ORDINANCE NO. 9654 AND SHALL THE BOARD OF WATER WORKS OF PUEBLO, COLORADO, AS AN ENTERPRISE AND INSTRUMENTALITY OF THE CITY OF PUEBLO, BE AUTHORIZED TO ISSUE WITHOUT VOTER APPROVAL AND NOTWITHSTANDING THE PROVISIONS OF ANY INCONSISTENT LAW, BONDS AND OTHER OBLIGATIONS, PAYABLE FROM ANY BOARD OF WATER WORKS FUNDS OR OTHER REVENUE, INCLUDING REVENUE FROM WATER CHARGES, BOTH TO PROVIDE WATER-RELATED SERVICES AND TO PURCHASE, CONDEMN OR OTHERWISE ACQUIRE BY ANY LAWFUL MEANS, THE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OF BLACK HILLS/ COLORADO ELECTRIC UTILITY COMPANY, LP, OR OTHERS, AND ANY ELECTRIC DISTRIBUTION, TRANSMISSION AND GENERATION SYSTEMS LOCATED IN THE STATE OF COLORADO, AS DETERMINED NECESSARY BY THE BOARD OF WATER WORKS OF PUEBLO, COLORADO, INCLUDING WITHOUT LIMITATION DISTRIBUTION FACILITIES, TRANSMISSION LINES, GENERATING STATIONS, EQUIPMENT, ELECTRIC LIGHT AND POWER WORKS AND ALL APPURTENANCES THERETO INCLUDING BOTH REAL AND PERSONAL PROPERTY AND SHALL THE BOARD OF WATER WORKS OF PUEBLO, COLORADO, AS AN ENTERPRISE AND INSTRUMENTALITY OF THE CITY OF PUEBLO, HAVE THE AUTHORITY TO ISSUE WITHOUT VOTER APPROVAL AND NOTWITHSTANDING THE PROVISIONS OF ANY INCONSISTENT LAW, BONDS AND OTHER OBLIGATIONS, PAYABLE FROM ANY AVAILABLE REVENUE TO CONSTRUCT, RELOCATE, INSTALL AND EXPAND THE EQUIPMENT AND FACILITIES AND OTHER ASSETS COMPRISING THE ELECTRIC DISTRIBUTION, TRANSMISSION AND GENERATION SYSTEMS OF BLACK HILLS/ COLORADO ELECTRIC UTILITY COMPANY, LP, OR OTHERS, WITHIN THE STATE OF COLORADO, PAYING ALL NECESSARY AND INCIDENTAL COSTS RELATED THERETO AND BE AUTHORIZED TO ENTER INTO CONTRACTS WITH THIRD PARTIES TO MAINTAIN AND OPERATE SUCH ELECTRIC DISTRIBUTION, TRANSMISSION AND GENERATION SYSTEMS AND SHALL THE WATER AND ELECTRIC WORKS FUNCTION AS AN ENTERPRISE EXCLUDING ITS ACTIVITIES FROM THE APPLICATION OF TABOR WHICH, IN PART, REQUIRES THAT AN ENTERPRISE RECEIVE UNDER 10% OF ANNUAL REVENUE IN GRANTS FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED AND SHALL THE CITY COUNCIL BE AUTHORIZED TO ADOPT FUTURE ORDINANCES AND RESOLUTIONS AND SHALL THE BOARD OF WATER WORKS OF PUEBLO, COLORADO BE AUTHORIZED TO ADOPT FUTURE RESOLUTIONS AND SHALL THE MAYOR BE AUTHORIZED TO TAKE FUTURE ACTIONS NECESSARY OR APPROPRIATE TO CARRY OUT THE REQUIREMENTS, PURPOSE AND INTENT OF THIS MEASURE?

_____ For the measure

_____ Against the measure

SECTION 2.
The text of Ordinance No. 9654 is as follows:

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF PUEBLO that (brackets indicate matter being deleted; underscoring indicates new matter being added):

SECTION 1.

Sections 2-5, 15-2, 15-5 and 15-6 of the Charter of the City of Pueblo are hereby amended to read as follows and Sections 15-7 and 15-8 are hereby added to Article 15 of the Charter of the City of Pueblo:

Section 2-5. Appointive Boards and Commissions - Unless otherwise required by law, all boards and commissions shall be appointed by the Mayor, subject to Council confirmation and shall have such powers and perform such duties as are prescribed by the Charter or by ordinance.

Appointments by the Mayor shall specify the term of office of each individual in order to achieve overlapping of tenure.

All members shall be subject to removal by the appointing authority.

All boards and commissions shall choose their own chairmen and operate in accordance with the rules of procedure as set forth by the appointing authority.

Notwithstanding the foregoing, the Mayor and Council shall have no jurisdiction or control over the independent Board of Water Works of Pueblo, Colorado and shall act in accordance with [Section 15-2] Article 15 of this Charter.

Section 15-2. Board of Water Works of Pueblo, Colorado - The Board of Water Works of Pueblo, Colorado is hereby authorized to operate a Water and Electric Works which shall be an enterprise and instrumentality of the City of Pueblo. Title to the properties of the former water districts [now] previously consolidated and any property of the water and electric works [is in the City of Pueblo] shall be in the name of the Board of Water Works of Pueblo, Colorado as an enterprise and instrumentality of the City of Pueblo. The entire control, management and operation thereof shall be exercised by an independent Board named “Board of Water Works of Pueblo, Colorado” over which the Council and the Mayor shall have no jurisdiction or control, but shall adopt all ordinances requested by said Board which shall be reasonably necessary to assist the Board in the management of the water and electric works system and property, or to assist said Board to purchase or condemn additional water, water rights, reservoirs, reservoir sites and electric distribution, transmission and generation systems or property of any kind, needed to supply water and electricity.
The Board shall consist of the five current members of the Board of Water Works of Pueblo, Colorado who shall continue to serve until their respective terms of office expire. All elected at large for six year terms as hereafter provided. The Board shall initially consist of the following five members: one previously elected holding a six year term expiring December 31, 1965; one previously elected holding a six year term expiring December 31, 1967; one holding a six year term expiring December 31, 1969, elected at the November 1963 election; one appointed by the City Council from January 1, 1964 to December 31, 1965, and one appointed by the City Council from January 1, 1964 to December 31, 1967. Members of the Board of Water Works of Pueblo, Colorado shall be elected at large for six year terms. As the term of each member expires, a member to fill a new term of six years shall be elected, said terms to commence the first day of January next after their election. The Board of Water Works shall have and exercise all powers which are granted to cities of the first class by the Constitution and Laws of the State of Colorado. Except for the power to levy and collect taxes directly or indirectly, the Board of Water Works of Pueblo, Colorado will have and exercise all the powers of the City including those granted by the Constitution and by the laws of the State of Colorado, now or in the future, in regard to purchasing, condemning, acquiring, constructing, leasing, extending and adding to, maintaining, conducting and operating the water and electric works for all uses and purposes, and everything necessary, pertaining or incidental thereto, including authority to dispose of real or personal property not useful for or required in the water or electric works. The Board of Water Works of Pueblo, Colorado shall have authority to generate and dispose of energy for water works purposes or any other purpose of the City and may sell energy to territories outside the City. Surplus water may be supplied to territories outside the City until same is needed by the inhabitants of the City. It is hereby designated as the officer upon whom process may be served in any matter in which the Board of Water Works of Pueblo, Colorado has the sole authority to act for the City. The enumeration of particular powers in this Charter
is not exclusive of others. The members of the Board shall continue to receive their present salaries until changed by ordinance of the Council. This amendment shall become effective [January 1, 1964] when adopted by the eligible electors of the City of Pueblo.

Section 15-5. Election - The nomination and election of the [Commissioners and Trustees and] members of the Board of Water Works of Pueblo, Colorado shall be conducted in the same manner as is herein provided for the nomination and election of members of the Council.

Section 15-6. Contracts - No contract shall be entered into, and no purchase shall be made by the [Trustees or Commissioners of the existing water districts, or by the] Board of Water Works of Pueblo, Colorado [involving the expenditure of a sum in excess of One Thousand Dollars ($1,000.00)] except for personal, professional or technical services not lending themselves to competitive bidding, until after the publication of a proposal for bids [for the materials and services covered by such contracts or purchase shall have been advertised by one publication in a daily newspaper of general circulation in Pueblo, at least ten days prior to the making of such contract or purchase] in accord with a procurement policy which the Board of Water Works of Pueblo, Colorado may prescribe by resolution.

Section 15-7. Enterprise - The Board of Water Works of Pueblo, Colorado shall deliver electric power and water services as an enterprise, as that term is defined by Colorado law. The Board of Water Works of Pueblo, Colorado shall be operated and maintained as an enterprise so as to exclude its activities from the application of Article X, Section 20 of the Colorado Constitution. The Board of Water Works of Pueblo, Colorado may adopt, by resolution, rules governing its organization, the calling of special meetings and the conduct of its business. A majority of the members of the Board of Water Works of Pueblo, Colorado will constitute a quorum.

Section 15-8. Revenue Bonds - In accordance with and through the provisions of this section and in exercising its powers pursuant to Article 15 of this Charter, the Board of Water Works of Pueblo, Colorado is authorized to issue bonds or other obligations payable solely from the revenues derived or to be derived from the functions, services, benefits or facilities of such enterprise or from any other available funds of such enterprise. Such bonds or other obligations shall be authorized by resolution, adopted by the Board of Water Works of Pueblo, Colorado. Such bonds or other obligations may be issued without voter approval, provided that, during the fiscal year of the Board of Water Works of Pueblo, Colorado preceding the year in which the bonds or other obligations are authorized, the Board received under ten percent (10%) of its annual revenue in grants from all Colorado state and local governments
combined or, during the current fiscal year of the Board of Water Works of Pueblo, Colorado, it is reasonably anticipated that the Board will receive under ten percent (10%) of its revenue in grants from all Colorado state and local governments combined. The terms, conditions, and details of said bonds, notes or other obligations, and the procedures related thereto shall be set forth in the resolution of the Board authorizing said bonds or other obligations. Each bond, note or other obligation issued under this section shall recite in substance that said bond, note or other obligation, including the interest thereon, is payable from the revenues and other available funds of the Board of Water Works of Pueblo, Colorado pledged for the payment thereof. Notwithstanding any other provision of law to the contrary, such bonds, notes or other obligations may be issued to mature at such times as are authorized by the authorizing resolution, shall bear interest at such rates, and shall be sold at or above the principal amount thereof, all as shall be determined by the Board of Water Works of Pueblo, Colorado. Notwithstanding anything in this section to the contrary, in the case of short-term notes or other obligations maturing not later than one year after the date of issuance thereof, the Board of Water Works of Pueblo, Colorado may authorize its officials to fix principal amounts, maturity dates, interest rates, and purchase prices of any particular issue of such short-term notes or obligations, subject to such limitations as to maximum term, maximum principal amount outstanding, and maximum net effective interest rates as the Board of Water Works of Pueblo, Colorado prescribes. Refunding bonds of the Board of Water Works of Pueblo, Colorado shall be issued as provided in Part 1 of Article 56 of Title 11, C.R.S. as currently enacted or as subsequently amended. The powers provided in this section to issue bonds, or other obligations are in addition and supplemental to, and not in substitution for, the powers conferred by any other law, and the powers provided in this section shall not modify, limit, or affect the powers conferred by any other law either directly or indirectly. Bonds, notes, or other obligations may be issued pursuant to this section without regard to the provisions of any other law. Insofar as the provisions of this section are inconsistent with the provisions of any other law, the provisions of this section shall control with regard to any bonds lawfully issued pursuant to this section. Any pledge of revenue or other funds of the Board of Water Works of Pueblo, Colorado shall be subject to any limitation on future pledges thereof contained in any resolution of the Board.

SECTION 2.

If any section, provision, paragraph, clause or phrase of this Ordinance is held or decided to be unconstitutional, invalid or unenforceable for any reason, such decision shall not affect the constitutionality, validity or enforceability of the remaining portions of this Ordinance.
SECTION 3.

All other ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

SECTION 4.

The People of the City of Pueblo find that this Ordinance is necessary for the immediate preservation of the public health, safety and welfare.

SECTION 5.

This Ordinance shall become effective immediately after approval of same by the eligible electors of the City of Pueblo. Upon approval of this Ordinance, Ordinance No. 8186 shall be rescinded and the Franchise Agreement between the City of Pueblo and Black Hills/Colorado Electric Utility Company, LP dated August 10, 2010 shall be terminated.

End of Ordinance No. 9654

SECTION 3.

The officers and staff of the City are authorized and directed to perform any and all acts consistent with this Ordinance to implement the policies and procedures described herein.

SECTION 4.

Savings Clause: The ballot title for Ballot Question 2A must be submitted to the Pueblo County Clerk and Recorder on or before March 6, 2020. The immediate enactment of this Ordinance is necessary in order to preserve and protect the health, safety and welfare of the residents of the City. Pursuant to Sec. 3-20 of the City Charter, this Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on February 24, 2020.
Final adoption of Ordinance by City Council on February 24, 2020.

[Signature]
President of City Council

Action by the Mayor:

☑ Approved on February 26, 2020.

☐ Disapproved on ________________ based on the following objections:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

[Signature]
Mayor

Action by City Council After Disapproval by the Mayor:

☐ Council did not act to override the Mayor’s veto.

☐ Ordinance re-adopted on a vote of ________________, on______________________

☐ Council action on ________________ failed to override the Mayor’s veto.

[Signature]
President of City Council

ATTEST

[Signature]
City Clerk