

STATE OF MICHIGAN
WAYNE COUNTY CIRCUIT COURT

DEERHURST CONDOMINIUM
OWNERS ASSOCIATION, INC., a
Michigan non-profit corporation, and
WOODVIEW CONDOMINIUM
ASSOCIATION, a Michigan non-profit
corporation, individually and as
representatives of a class of
similarly-situated persons and entities,

Plaintiffs,

v.

CITY OF WESTLAND,
a municipal corporation,

Defendant.

Case No. 2015-006473-CZ

Hon. Daphne Means Curtis

15-006473-CZ

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PLAINTIFFS' FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiff Deerhurst Condominium Owners Association, Inc. and Woodview Condominium Association (collectively "Plaintiffs"), by their attorneys, Kickham Hanley PLLC and Foley & Robinette, P.C., individually and on behalf of a class of similarly situated class members, state the following for their Class Action Complaint against the City of Westland (the "City"):

INTRODUCTION

1. This is an action challenging the retail water rates (the “Water Rates”) and the retail sewage disposal rates (the “Sewer Rates”) (collectively, the “Rates”) imposed by the City on citizens who draw water from the City’s water supply system and who use the City’s sewer system. The City has systematically garnered millions from its water and sewer customers that it has used not to cover the actual expenses of providing water to those customers, but rather to fund the City’s general governmental obligations.

2. The Water Rates violate MCL 123.141(3) because they generate revenues for the City that exceed the City’s actual cost of providing water to its residents by millions of dollars (the “Water Rate Overcharges”).

3. In addition, certain cost components included in the Rates described more specifically below (the “General Fund Support Charges” and the “Rate Overcharges”) constitute “taxes” that have not been authorized by the City’s voters in violation of the Headlee Amendment to the Michigan Constitution. The City impermissibly uses these overcharges to supplement its general fund revenues – i.e., to finance governmental functions and expenses wholly unrelated to providing water and sewer services to its citizens.

4. The General Fund Support Charges and the Rate Overcharges are precisely the types of exactions the Michigan Supreme Court found was an unconstitutional tax in the seminal case of *Bolt v. City of Lansing*, 459 Mich. 152, 587 N.W.2d 264 (1998). The General Fund Support Charges and the Rate Overcharges are not legitimate user fees but rather constitute unlawful taxes under the *Bolt* decision. The General Fund Support Charges and the Rate Overcharges are motivated by a revenue-raising and not a regulatory purpose, the charges to Plaintiffs and the Class are grossly disproportionate to the City’s actual costs of providing to Plaintiffs and the Class the purported benefits for which the Charges are purportedly imposed, and payment of the Charges is not voluntary.

JURISDICTION AND VENUE

5. Plaintiffs each are water and sewer customers of the City, and each seeks to act as a class representative for all similarly situated persons.

6. Defendant City of Westland (the "City") is a municipality located in Wayne County, Michigan.

7. Venue and Jurisdiction are proper with this Court because all parties are present here and the actions which give rise to Plaintiffs' claims occurred in this County. Venue and jurisdiction also are proper with this Court under Article 9, Section 31 of the Michigan Constitution of 1963, and MCL 600.308a.

GENERAL ALLEGATIONS CONCERNING THE WATER AND SEWER RATES

8. The City maintains and operates a water supply system (the "Water Supply System") to provide fresh water to inhabitants of the City. The City purchases its water at wholesale from the City of Detroit. Plaintiffs each have received water service from the City and paid the Water Rates imposed by the City. The City's ordinances require the structures used by its citizens to be connected to the City's Water Supply System.

9. The City maintains and operates a sewer system (the "Sewer System") to provide sewage disposal services to inhabitants of the City. The City purchases its sewer services from Wayne County. Plaintiffs have received sewer service from the City and paid the Sewer Rates imposed by the City. The City's ordinances require the structures used by its citizens to be connected to the City's Sewer System.

10. The City of Detroit is authorized to supply wholesale water to local government units in Southeast Michigan, and derives that authority from MCL 123.141(1). The City of Detroit, through its Water and Sewerage Department ("DWSD"), supplies wholesale water to over 100 cities, villages, townships and authorities authorized to provide a water supply for their inhabitants.

11. Local government units which purchase water from the City of Detroit establish their own Water Rates and directly bill end users. However, Michigan state law prohibits a municipality which purchases its water from the City of Detroit and which supplies that water to its

residents from charging a retail rate that exceeds the municipality's "actual cost of providing the service."

12. In this regard, MCL 123.141 provides that "[t]he retail rate charged to the inhabitants of a city, village, township or authority which is a contractual customer as provided by subsection (2) shall not exceed the actual cost of providing the service." MCL 123.141(3).

13. The City is a "contractual customer" as defined by MCL 123.141(2) and therefore is bound by the provisions of MCL 123.141(3). *See Oneida Charter Township v. Lee*, 485 Mich. 849, 771 N.W.2d 785 (2009) ("MCL 123.141(3) prohibits only 'contractual customers as provided in subsection (2)' from charging retail rates in excess of the actual cost of providing service").

14. The City establishes Water and Sewer Rates from time to time through enacted ordinances. A copy of the City's Water and Sewer Ordinance is attached hereto as Exhibit A and incorporated herein by reference. The City has continuously and systematically violated MCL 123.141(3) by imposing Water Rates that exceed the City's actual cost of providing water service by millions of dollars.

15. The City maintains a Water and Sewer Enterprise Fund (the "Water and Sewer Fund") and prepares financial statements for that Fund. The financial statements show that, since at least 2007, the City has systematically transferred, on an annual basis, millions of dollars from the Water and Sewer Fund to the City's General Fund. In fact, in each fiscal year from 2010 to 2015, the City transferred at least \$3 million from the Water and Sewer Fund to the General Fund and the transfers were funded by charges imposed upon the City's water and sewer customers (the "General Fund Support Charge"). The City incorporated the General Fund Support Charge into the Rates and therefore each member of the class paid the General Fund Support Charge when they paid their water and sewer bill. The City utilized the General Fund Support Charge to pay for, among other things, health care insurance for retired General Fund employees, property tax refunds and other expenses unrelated to providing water and sewer services.

16. The General Fund Support Charge was also imposed to cover the clean-up costs and litigation expenses the City incurred in connection with two significant rain events, which occurred in 2010 and 2011 and which caused flooding which impacted approximately 800 dwellings in the

City. The City paid approximately \$2 million to an outside contractor to remediate flood damage to the affected properties and paid another \$3.75 million in settlement of a class action arising out of the rain events. Even though the clean-up costs and settlement payments benefitted only approximately 800 of the City's residents, the City reimbursed itself for those payments by incorporating the costs into the Rates it charged to its 25,000 water and sewer customers.

17. The General Fund Support Charge and the associated transfers cannot be justified as payments for "contracted services" provided to the Water and Sewer Fund by the City's General Fund Departments, because the value of any such services are far less than the amounts transferred. In fact, while certain General Fund departments, such as the Finance Department, supply services to the Water and Sewer Fund, the City has grossly inflated the costs of those services in order to allocate a disproportionate amount of the costs to the Water and Sewer Fund. The amounts transferred from the Water and Sewer Fund to the General Fund that exceeded the actual value of the General Fund services were thus available for the City to use, and were actually used to pay for the general expenses of the City unrelated to providing water or sanitary sewer services.

18. Worse, for at least the last three fiscal years, by setting Rates far in excess of the City's actual cost of providing water and sewer services (the "Rate Overcharges"), the City has accumulated significant cash in the Water and Sewer Fund, even after transferring millions of dollars to the General Fund. For example, as of June 30, 2011, the Water and Sewer Fund had \$1.8 million in cash. By June 30, 2012, the Water and Sewer Fund had \$2.9 million in cash. By June 30, 2013, the Fund had \$4.1 million. By June 30, 2014, the Water and Sewer Fund had over \$6.1 million in cash. Thus, in just three years, the City increased its cash reserves in the Water and Sewer Fund by \$4.3 million – an increase of over 338%!! And had the City retained in the Water and Sewer Fund the \$10.6 million it transferred to the General Fund during that time period, the Water and Sewer Fund would have had over \$14.9 million in cash as of June 30, 2014.

19. A major reason the City has been able to stockpile cash in its Water and Sewer Fund after 2012 is that, in March 2013, the City dramatically increased fixed meter charges to its water and sewer customers. As of 2012, the City imposed upon each water customer a fixed meter charge of \$24 per month. In March 2013, however, the City changed how it assessed these fixed charges, by

creating different rates based upon the size of the water pipe that served each customer. Customers with two inch pipes were charged \$130 per month (in addition to the amounts they paid for actual water use). Customers with larger pipes were charged even more. Customers with one inch pipes or smaller were charged \$27 per month.

20. Plaintiffs' condominium units are serviced by two inch pipes. Due to the dramatic increases in the fixed charges, Plaintiffs' water bills skyrocketed in 2013. For example, Plaintiff Deerhurst Condominium Association's fixed charges increased from \$24.50 per meter to \$130 per meter, every two month billing cycle. Because Deerhurst has 28 water meters, Deerhurst experienced a \$22,000 annual increase in its water bill by virtue of the dramatic increase in the fixed charges. **Not surprisingly, the City's revenues from fixed charges increased from \$2.8 million in FY 2012 to \$5.2 million in FY 2014.** And at the same time there was no corresponding decrease in the commodity charges the City imposed based upon each customer's actual water use.

21. Moreover, there is a gross disparity between the amount the City pays DWSD for its water supply and the amount the City charges its water customers. The City's 2014-15 budget has total water revenues of **\$14.5 million** (\$5.24 million in fixed meter charges and \$9.275 million in commodity charges). On the other hand, the City incurred fixed and commodity charges to DWSD of only **\$5.64 million**. That means the City is collecting almost \$9 million more from its citizens than it pays to DWSD. The City's other water-related expenditures are dramatically less than \$9 million.

22. The City ostensibly is stockpiling the excess cash it does not transfer to the General Fund in order to create a substantial reserve to finance future improvements to the water and sewer system. Current water and sewer customers therefore are paying to finance benefit that will be conferred upon future water and sewer customers.

23. The fact that the City is able to divert millions of dollars of Water and Sewer Fund revenues for services unrelated to supplying water to its inhabitants and to create a significant reserve to finance future improvements to the water and sewer system is proof that the City is charging Water Rates which exceed the "actual cost of providing the service," in violation of MCL 123.141(3).

24. The General Fund Support Charges, and the Rate Overcharges -- further constitute “taxes” in violation of the Headlee Amendment to the Michigan Constitution.

25. In *Bolt*, the Court enforced Headlee and identified “three primary criteria to be considered when distinguishing between a fee and a tax” (459 Mich. at p. 161):

1. “[A] user fee must serve a regulatory purpose rather than a revenue-raising purpose”;

2. “[U]ser fees must be proportionate to the necessary costs of the service”; and

3. Payment of the fee is voluntary. [459 Mich. at pp. 161-62]

26. The General Fund Support Charges and the Rate Overcharges serve a revenue-raising purpose because they are being used to finance the City’s general governmental obligations unrelated to providing water and sewer service and because they are being accumulated in order to finance future improvements to the City’s water supply and sewer system.

27. The General Fund Support Charges and the Rate Overcharges are not proportionate to the necessary costs of the City’s water supply and sewer services for the reasons set forth in Paragraph 26.

28. Payment of the General Fund Support Charges and the Rate Overcharges is not voluntary but at the very least is effectively compulsory. The City requires all dwellings in the City to be connected to the public water supply and sewer system and, by virtue of that connection, to pay the City’s charges for water supply and sewer services. Moreover, the fixed charges described above are imposed and collective independent of actual water use. Thus, Plaintiffs and other class members cannot evade payment of the General Fund Charges and the Rate Overcharges by eliminating or reducing their water usage.

29. “All water and sewer bill charges shall constitute a lien on the property served.” City Ordinance Sec. 102-67.

30. If water and sewer bill charges go unpaid for 6 months, “the mayor shall place such charges, together with an additional 30 percent penalty, on the next general city or county tax roll and the charges shall be collected as part of the general city or county tax roll on which such charges appear.” City Ordinance Sec. 102-68.

CLASS ALLEGATIONS

31. Plaintiffs bring this action as a class action, pursuant to MCR 3.501, individually and on behalf of a proposed class consisting of all persons or entities which have paid the City for water and sewer service during the relevant class periods.

32. The members of the Class are so numerous that joinder of all members is impracticable.

33. Plaintiffs' claims are typical of the claims of members of the Class. Plaintiffs are members of the Class they seek to represent, and Plaintiffs were injured by the same wrongful conduct that injured the other members of the Class.

34. The City has acted wrongfully in the same basic manner as to the entire class.

35. There are questions of law and fact common to all Class Members that predominate over any questions, which, if they exist, affect only individual Class Members, including:

- a. whether the Water Rates violated MCL 123.141(3);
- b. whether the General Fund Support Charges and the Rate Overcharges imposed by the City are taxes;
- c. whether the General Fund Support Charges and the Rate Overcharges imposed by the City violate the Headlee Amendment; and
- d. Whether the City has been unjustly enriched by collecting the General Fund Support Charges and the Rate Overcharges.

36. Plaintiffs will fairly and adequately protect the interests of the Class, and Plaintiffs have no interests antagonistic to those of the Class. Plaintiffs are committed to the vigorous prosecution of this action, and have retained competent and experienced counsel to prosecute this action.

37. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The prosecution of separate actions would create a risk of inconsistent or varying adjudications. Furthermore, the prosecution of separate actions would substantially impair and impede the ability of individual class members to protect their interests. In addition, since individual refunds may be relatively small for

most members of the class, the burden and expense of prosecuting litigation of this nature makes it unlikely that members of the class would prosecute individual actions. Plaintiffs anticipate no difficulty in the management of this action as a class action.

COUNT I

VIOLATION OF MCL 123.141(3)

38. Plaintiffs incorporate each of their preceding allegations as if fully set forth herein.

39. The City has violated MCL 123.141(3) by selling water to Plaintiff and the Class at a retail rate in excess of the City's actual cost of providing water service.

40. MCL 123.141(3) was enacted for the purpose of protecting retail consumers of water, like Plaintiffs and the Class, from being overcharged for water service.

41. MCL 123.141(3) does not provide a comprehensive administrative or other enforcement mechanism, nor does it entrust the responsibility for upholding the law to a public officer.

42. In imposing and collecting the Water Rate Overcharges, the City was acting in a proprietary capacity, for the primary purpose of generating a profit, and the supplying of water is not the type of activity normally supported by "taxes or fees", as those terms have been interpreted by the Michigan courts.

43. Plaintiffs and the Class have been injured as a direct and proximate result of the City's violation of MCL 123.141(3) because they have paid or incurred amounts in excess of the amounts they should have paid for water service had the City established Water Rates that did not exceed the City's actual costs of providing water service.

44. Plaintiffs and the Class are entitled to receive a refund corresponding to the total amount of the Water Rate Overcharges imposed or collected by the City during the six year period prior to the filing of this action.

45. The City should be required to disgorge the revenues attributable to the Water Rate Overcharges imposed or collected by the City during the six year period prior to the filing of this action and refund those Overcharges to Plaintiffs and the Class.

COUNT II

VIOLATION OF THE HEADLEE AMENDMENT

46. Plaintiffs incorporate each of their preceding allegations as if fully set forth herein.

47. The City is bound by the Michigan Constitution of 1963, including those portions commonly known as the Headlee Amendment.

48. In particular, the City may not disguise a tax as a fee under Article 9, Section 31 of the Michigan Constitution of 1963.

49. The General Fund Support Charges and the Rate Overcharges are disguised taxes and intended to avoid the obligations of the Headlee Amendment, including the requirement that the General Fund Support Charges and the Rate Overcharges, as taxes, be approved by a majority of the electorate.

50. The General Fund Support Charges and the Rate Overcharges have all relevant indicia of a tax:

- a. They have no relation to any service or benefit actually received by the taxpayer;
- b. The amount of the General Fund Support Charges and the Rate Overcharges is disproportionate to the cost incurred by the City in providing water and sewer service;
- c. The General Fund Support Charges and the Rate Overcharges are designed to generate revenue;
- d. The payers of the General Fund Support Charges and the Rate Overcharges benefit in no manner distinct from any other taxpayer or the general public;
- e. Payment of the General Fund Support Charges and the Rate Overcharges are not discretionary, but effectively mandatory;
- f. Various other indicia of a tax described in *Bolt v. City of Lansing* are present.¹

¹ Pursuant to MCR 2.1112(M), Plaintiffs identify subparts (a) through (f) of Paragraph 49 as “factual questions that are anticipated to require resolution by the Court.”

51. As a direct and proximate result of the City's implementation of the General Fund Support Charge and the Rate Overcharges, Plaintiffs and the Class have been harmed.

52. Plaintiffs seek their attorneys' fees and costs as allowed by Article 9, Section 32 of the Michigan Constitution of 1963 and MCL 600.308a.

53. Plaintiffs seek damages in the form of a refund of all amounts to which they and the Class are entitled.

COUNT III

UNJUST ENRICHMENT – UNREASONABLE WATER AND SEWER RATES

54. Plaintiffs incorporate each of the preceding paragraphs as if fully set forth herein.

55. Even if the General Fund Support Charges and the Rate Overcharges are not taxes, the Water and Sewer Rates must still be reasonable. *Mapleview Estates v. City of Brown City*, 258 Mich. App. 412.

56. The Water Rates and Sewer Rates are arbitrary, capricious, and unreasonable.

57. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the General Fund Support Charges and the Rate Overcharges, Plaintiff and the Class have conferred a benefit upon on the City.

58. The City has been unjustly enriched because it received General Fund Support Charges and Rate Overcharges to which it was not entitled, and it would be unfair for the City to retain the General Fund Support Charges and Rate Overcharges under the circumstances.

59. The City should be required to disgorge the amounts by which it has been unjustly enriched.

COUNT IV

UNJUST ENRICHMENT – VIOLATION OF MCL 141.91

60. Plaintiffs incorporate each of their preceding allegations as if fully set forth herein.

61. The Michigan Prohibited Taxes by Cities and Villages Act, MCL 141.91 provides:
Sec. 1. Except as otherwise provided by law and notwithstanding any provision of its charter, a city or village shall not impose, levy or collect a tax, other than an ad

valorem property tax, on any subject of taxation, unless the tax was being imposed by the city or village on January 1, 1964. [emphasis added].

62. The City has violated MCL 141.91 by imposing and collecting the General Fund Support Charges and Rate Overcharges. The General Fund Support Charges and Rate Overcharges are taxes that are not ad valorem property taxes and they were first imposed after January 1, 1964.

63. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the General Fund Support Charges and the Rate Overcharges, Plaintiffs and the Class have conferred a benefit upon on the City.

64. The City has been unjustly enriched because it received General Fund Support Charges and Rate Overcharges to which it was not entitled, and it would be unfair for the City to retain the General Fund Support Charges and Rate Overcharges under the circumstances.

65. The City should be required to disgorge the amounts by which it has been unjustly enriched.

COUNT V

UNJUST ENRICHMENT – CHARTER VIOLATION

66. Plaintiffs incorporate each of their preceding allegations as if fully set forth herein.

67. Section 17.3 of the City's Charter requires that the City establish "just and reasonable rates" for public utility services, including water and sewer services.

68. The City has exceeded the authority stated in its Section 17.3 of its Charter by imposing inequitable Water Rates and Sewer Rates upon Plaintiffs and the Class.

69. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the General Fund Support Charges and Rate Overcharges, Plaintiff and the Class have conferred a benefit on the City.

70. The City has been unjustly enriched because it received General Fund Support Charges and Rate Overcharges to which it was not entitled, and it would be unfair for the City to retain the General Fund Support Charges and Rate Overcharges under the circumstances.

71. The City should be required to disgorge the amounts by which it has been unjustly enriched.

PRAYER FOR RELIEF

Plaintiff requests that the Court grant the following relief:

A. Certify this action to be a proper class action with Plaintiffs certified as Class Representatives and Kickham Hanley PLLC and Foley & Robinette, P.C. designated Class Counsel;

B. With respect to Count I, define the Class to include all persons or entities which have paid the City for Water and Sewer Service at any time in the six years preceding the filing of this lawsuit or which pay the City for Water and Sewer Service during the pendency of this action;

C. With respect to Count II, define the Class to include all persons or entities which have paid the City for Water and Sewer Service at any time in the one year preceding the filing of this lawsuit or which pay the City for Water and Sewer Service during the pendency of this action;

D. With respect to Counts III, IV and V, define the Class to include all persons or entities which have paid the City for Water and Sewer Service at any time in the six years preceding the filing of this lawsuit or which pay the City for Water and Sewer Service during the pendency of this action;

E. With respect to Count I, enter judgment in favor of Plaintiffs and the Class and against the City, and order and direct the City to disgorge and refund all Water Rate Overcharges collected and to pay into a common fund for the benefit of Plaintiff and all other members of the Class the total amount of Water Rate Overcharges to which Plaintiffs and the Class are entitled;

F. With respect to Count II, enter judgment in favor of Plaintiffs and the Class and against the City, and order and direct the City to disgorge and refund all General Fund Support Charges and Rate Overcharges collected, and order the City to pay into a common fund for the benefit of Plaintiff and all other members of the Class the total amount of General Fund Support Charges and Rate Overcharges to which Plaintiffs and the Class are entitled;

G. With respect to Counts III, IV and V, enter judgment in favor of Plaintiffs and the Class and against the City, and order and direct the City to disgorge and refund all General Fund Support Charges and Rate Overcharges collected and to pay into a common fund for the benefit of Plaintiff and all other members of the Class the total amount of General Fund Support Charges and Rate Overcharges to which Plaintiffs and the Class are entitled;

H. Appoint a Trustee to seize, manage and distribute in an orderly manner the common fund thus established;

I. Find and declare that the Water Rate Overcharge violates MCL 123.141(3) and the Headlee Amendment and permanently enjoin the City from imposing or collecting Water Rates which exceed the City's actual costs of providing water service;

J. Find and declare that the General Fund Support Charges and the Rate Overcharges violate the Headlee Amendment, MCL 141.91 and the City's own Charter, and permanently enjoin the City from imposing or collecting General Fund Support Charges and the Rate Overcharges;

K. Award Plaintiff and the Class the costs and expenses incurred in this action, including reasonable attorneys', accountants', and experts' fees; and

L. Grant any other appropriate relief.

KICKHAM HANLEY PLLC

/s/ Gregory D. Hanley

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Date: November 24, 2015
KH144166

CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2015, I electronically filed the foregoing pleadings with the Clerk of the Court using the court's electronic filing system.

/s/ Edward F. Kickham Jr.

Edward F. Kickham Jr.

Exhibit A

ARTICLE III. - RATES AND CHARGES

DIVISION 1. - GENERALLY

Sec. 102-61. - Purpose; determination of.

- (a) It is hereby declared to be the intent and purpose of the city council to maintain reasonable and uniform rates and charges applicable to various classifications of users of the water system and sewer system so as to provide funds to, as far as possible:
- (1) Operate and maintain the water system and sewer system in a reasonable, proper and efficient manner; and
 - (2) Make the water contracts debt retirement payments and sewer contracts debt retirement payments as they become due.
- (b) Rates and charges for the use of the wastewater system of the city are hereby established and made against each lot, parcel of land or premises which may have direct or indirect connections to the system or which may otherwise discharge wastewater either directly or indirectly into the system.
- (c) The rates and charges established under this article shall be based upon a methodology which complies with applicable federal and state statutes and regulations. The amount of the rates and charges shall be sufficient to provide for debt service and for the expenses of operation, maintenance and replacement of the system as necessary to preserve the system in good repair and working order. The amount of the rates and charges shall be reviewed annually and revised when necessary to ensure system expenses are met and that all users pay their proportionate share of operation, maintenance and equipment replacement expenses.
- (d) The amount of rates and charges and the intervals at which users of the wastewater system are billed shall be determined by resolution of the city council.
- (e) The rates and charges for operation, maintenance and replacement established by this article shall be uniform within the area serviced by the city. No free service shall be allowed for any user of the wastewater system.
- (f) All customers of the city wastewater system shall receive an annual notification, either printed on the bill or enclosed in a separate letter, which will show the breakdown of the wastewater disposal bill into its components for:
- (1) Operation, maintenance and replacement; and
 - (2) Debt service.

(Code 1981, § 39-45)

Sec. 102-62. - Costs of purchasing water, sewage treatment and maintenance of interceptors.

The cost of purchasing water from the City of Detroit water supply system, and the cost of sewage treatment through the sewage plant facilities of the City of Detroit, and the maintenance of the Rouge Valley interceptors to carry such sewage to the treatment plant, as established from time to time by rates fixed by the county, shall be considered as operation expenses of the water system and sewer system, respectively.

(Code 1981, § 39-46)

Sec. 102-63. - Annual budget.

A budget showing in detail the estimated costs of administration, operation and maintenance of the water system and the sewer system for the next ensuing fiscal year shall be adopted by the city council at least 30 days prior to the commencement of each fiscal year.

(Code 1981, § 39-47)

Sec. 102-64. - Billing period; form of bill; special billing.

Bills for water and sewage disposal shall be billed no more than once a month in a single amount, showing water consumption and sewage disposal charges as one item, water debt service charges as one item, arrearages as one item, repair charges as one item, and all other charges as one item.

(Code 1981, § 39-48; Ord. No. 203-R, § 1, 7-16-01)

Sec. 102-65. - Due date for payment of bills.

All water and sewage disposal bills shall be payable on or before the due date without discount.

(Code 1981, § 39-49)

Sec. 102-66. - Penalty for late payment.

Charges for water consumption and sewage disposal charges not paid on or before the last net payment date, as indicated on the face of the bill therefor, shall be subject to a ten percent penalty charge.

(Code 1981, § 39-50)

Sec. 102-67. - Status as lien.

All water and sewer bill charges shall constitute a lien on the property served.

(Code 1981, § 39-51)

Sec. 102-68. - Certified statement of unpaid past due water bill charges; collection as general city taxes.

On May 1 and October 1 of each year, the city clerk shall deliver to the mayor a certified statement of all then unpaid water and sewer charges which were six months past due as of the preceding April 1 and September 1, respectively. The mayor shall place such charges, together with an additional 30 percent penalty, on the next general city or county tax roll and the charges shall be collected as part of the general city or county tax roll on which such charges appear.

(Code 1981, § 39-52)

Sec. 102-69. - Handling of funds.

The gross revenues of the water system and sewer system derived from the collection of the rates and charges for the use of the facilities of such systems are hereby ordered to be set aside, as collected, in a bank or banks as designated by the council, and duly qualified to do business in the state, in an account or accounts to be designated as the water and sewer receiving fund (referred to in this section as the "receiving fund"), and such revenues so deposited are pledged for the purposes of the following funds and shall be transferred from the receiving fund periodically in manner and at the times specified as follows:

(1)

Out of the revenues in the receiving fund, there shall be first set aside on the first day of each quarter into a separate depository account designated as the water and sewer operation and maintenance fund, a sum sufficient to provide for the payment of the next succeeding quarter's current expense of administration and operation of the water system and sewer system, and such current expenses for the maintenance thereof as may be necessary to preserve the same and all facilities thereof in good repair and working order.

- (2) There shall next be established and maintained a separate depository account designated as the contracts payment fund, the moneys from time to time on deposit therein to be used solely and only for the purpose of making the water contracts debt retirement payments and the sewer contracts debt retirement payments without preference.
- (3) Out of the revenues remaining in the receiving fund after provision has been made for current expenses of operation and maintenance of the water system and sewer system, there shall next be set aside on the first day of each quarter, into such contracts payment fund, all the remaining revenues until such time as there are sufficient moneys in such contracts payments fund to pay the water contracts debt retirement payments and the sewer contracts debt retirement payments within the next ensuing 12 months.
- (4) There shall next be established and maintained a separate depository account designated contracts payment reserve fund, the moneys from time to time on deposit therein to be used solely and only for the payment of the water contracts debt retirement payments and the sewer contracts debt retirement payments if the funds on hand in the contracts payment fund are not sufficient therefor.
- (5) Out of the revenues remaining in the receiving fund after meeting the current requirements of the operation and maintenance fund and the contracts payment fund as required in this section, there shall next be set aside into the contracts payment reserve fund all the remaining revenues until such time as the moneys in such fund total \$705,000.00.
- (6) Moneys in such contracts payment reserve fund shall finally be applied to the payment of the last maturing water contracts debt retirement payments and the sewer contracts debt retirement payments.
- (7) Any moneys remaining in the receiving fund after meeting the requirements of the operation and maintenance fund, the contracts payment fund and the contracts payment reserve fund may be used, at the option of the city council, for:
 - a. Advance water contracts debt retirement payments or sewer contracts debt retirement payments as authorized and provided in the water contracts and sewer contracts; or
 - b. For the acquisition and construction of additional extensions and improvements to the water system or sewer system, or the payment of indebtedness incurred thereof.

(Code 1981, § 39-53)

Sec. 102-70. - Investment of funds.

Moneys in the several funds established by this article may be invested and reinvested as near as may be practicable in any obligations permitted by law; provided, however, that the investment of moneys in the contracts payment fund being accumulated for the payment of the next maturing water contracts debt retirement payments and sewer contracts debt retirement payments shall be limited to any obligations permitted by law bearing maturity dates prior to the due date of such payments. Interest received from such investments shall remain a part of the fund from which such investments were made.

(Code 1981, § 39-54)

Secs. 102-71—102-90. - Reserved.

DIVISION 2. - WATER

Sec. 102-91. - Service charges.

The rates and charges for the services and benefits provided by the water system, together with a sum to cover the cost of billing the account, shall be as set forth in section 46-1.

(Code 1981, § 39-66)

Sec. 102-92. - Debt service and connection charges.

- (a) On any premises connected to any of the water mains of the water system as of January 15, 1962, the water debt service charge in force at the time of connection shall remain in force.
- (b) For any new single-residence connections to any of the water mains of the water system, the debt service charge shall be:
 - (1) For connections to single-residence lots having a frontage not to exceed 60 feet, the amount set forth in section 46-1, in cash, paid prior to a permit being issued, unless deferred by section 102-8.
 - (2) For connections to single-residence lots having a frontage in excess of 60 feet, the amount set forth in section 46-1, plus the additional fee set forth therein for each foot of frontage in excess of 60 feet, in cash, paid prior to a permit being issued for any such connection, unless deferred by section 102-8.
- (c) For all other connections, the debt service charge shall be the sum set forth in section 46-1 per front foot, in cash, to be paid prior to a permit being issued for any such connection.
- (d) For any premises desiring a connection to the water mains of the system, including those which have heretofore or are hereafter constructed or acquired by the city and including those constructed under the provisions of Ordinance No. 26, as amended, a permit shall be obtained from the city, and a connection charge as set forth in section 46-1 shall be paid at the time of application, unless deferred by section 102-8. Each residential unit, even though it may be part of a multiple-dwelling building, project or development, shall be deemed to be a separate premises and subject to this water connection charge. In addition thereto, the cost of water tap installation charges, meter and meter installation charges, remote register and register installation charges and construction water charges, as determined by the city, shall be paid by the person to whom the permit is issued prior to issuance thereof, unless such costs are deferred by section 102-8.

(Code 1981, § 39-67)

Sec. 102-93. - Water tap installation charges.

The charge for installation of water service leads from the water main to the property line shall be as follows:

- (1) For three-quarters of an inch and one-inch water service, as required by section 46-1.
- (2) For installation of two-inch, three-inch and four-inch water services, applicants shall pay the total estimated costs as determined by the department of public service at the time the application is submitted. Upon completion of construction, the department of public service shall determine

the actual costs based on costs of materials, labor, equipment and any other related costs. The applicant shall then pay the difference if the actual costs are greater than estimated costs, or be remitted the difference if the actual costs are less than the estimated costs.

(Code 1981, § 39-68)

Sec. 102-94. - Water meter and meter installation charges.

The charges for water meter and meter installation shall be as required by section 46-1.

(Code 1981, § 39-69)

Sec. 102-95. - Remote register and register installation charges.

The charges for a remote register and register installation shall be as required by section 46-1.

(Code 1981, § 39-70)

Sec. 102-96. - Construction water charges.

Applicants for new construction shall pay for unmetered water used from the water service during construction at the rate set forth in section 46-1.

(Code 1981, § 39-71)

Secs. 102-97—102-120. - Reserved.

DIVISION 3. - SEWER

Sec. 102-121. - Debt service charges and payment.

The following shall apply to sewer debt service charges:

- (1) On any premises connected to any of the sewers of the sewer system as of January 15, 1962, the sewer debt service charge in force at the time of connection shall remain in force.
- (2) For any new single-residence connections to any of the sewers of the sewer system which have been or which are hereafter constructed or acquired by the city, and including those constructed under the provisions of this chapter, the debt service charge shall be:
 - a. For connections to single-residence lots having a frontage not to exceed 60 feet, the sum set forth in section 46-1, in cash, paid prior to a permit being issued for any such connection, unless deferred by section 102-8.
 - b. For connections to single-residence lots having a frontage in excess of 60 feet, the sum set forth in section 46-1 plus the additional fee set forth therein for each foot of frontage in excess of 60 feet, in cash, paid prior to a permit being issued for any such connection, unless deferred by section 102-8.
- (3) For all other connections, such debt service shall be the sum set forth in section 46-1 per front foot, in cash, to be paid prior to a permit being issued for any such connection.
- (4) For any new connections to schools and churches and other public nonprofit organizations, such debt service charge and the method of payments thereof shall be fixed and determined by the department of public service at the time of application for such connections.

(Code 1981, § 39-79)

Sec. 102-122. - Sewer connection charge.

- (a) For any premises desiring a connection to the sewers of the system, including those which have been heretofore or are hereafter constructed or acquired by the city, or which have their outlet in sewers heretofore or hereafter constructed or acquired by the city, including those constructed under the provisions of Ordinance No. 26 and including those connected to sewers which have as their outlet the Middle Rouge Interceptor or the Michigan Avenue interceptor, or any interceptor or interceptors hereafter constructed or used in the city, a permit therefor shall be obtained from the city, and a unit connection charge, as required by section 46-1, shall be paid at the time of application, unless deferred by section 102-8, according to the schedule established by section 46-1.
- (b) In any case where the connection charge computed under the schedule established in section 46-1 exceeds \$10,000.00, such connection charge and the method of payment thereof shall be fixed and determined by the city council after recommendation of the department of public service at the time of application for any such connection. For any such connection, the recommendation of the department of public service shall be guided by, but not necessarily controlled by, the cost of providing an outlet for the number of proposed cubic feet per second of sewerage that it is estimated the applicant will discharge from its place of business.
- (c) For any connection to churches, public buildings, public nonprofit organizations, and uses not specifically covered in the above schedule, such connection charge and the method of payment thereof shall be fixed and determined by the city at the time of application for any such connection. In no case shall the connection charge be less than for one unit.
- (d) In addition thereto, the cost of any such connection, as determined by the city, shall be paid by the person to whom the permit is issued in such manner and upon such terms, unless deferred by section 102-8, as the city may from time to time provide by duly adopted rules and regulations.
- (e) For any uses not specifically covered in the above schedule, such connection charge and the method of payment thereof shall be fixed and determined by the city council at the time of application for any such connection. In no case shall the connection charge be less than one unit. In addition thereto, the cost of such connection as determined by the council shall be paid by the person to whom the permit is issued in such manner and upon such terms as the council may from time to time provide by duly adopted rules and regulations.

(Code 1981, § 39-80)

Sec. 102-123. - Special rates.

For miscellaneous services for which a special sewage rate should be established, such rates shall be fixed by the city council. Where a user uses a larger amount of water which is not discharged into the sewers of the sewer system, a special rate for sewage disposal service to such user may be established.

(Code 1981, § 39-81)

Sec. 102-124. - Sewage disposal rates.

- (a) *Generally.* The charge for sewage disposal from any premises connected to the trunk or lateral sewers of the sewer system shall be as required by section 46-1.
- (b) *Industrial waste control charge.* A monthly charge to be collected on all water bills to nonresidential customers will be as required by section 46-1. Such monthly charge shall not be applied on the basis of any meter which services solely residential users, regardless of the number of dwelling units serviced by such meter or which are used for fire protection purposes only.
- (c) *Industrial surveillance permit fee.* Annual industrial surveillance permit fees for class D permits shall be determined as required by section 46-1.

(Code 1981, § 39-82)

Sec. 102-125. - Minimum sewage disposal bills.

- (a) The minimum sewage disposal bill per billing period for metered premises shall be the rate required by section 46-1, plus the applicable debt service charge. On any residential premises connected to the sewer system of the city where no available water mains of the city exist, the sewage disposal bill per billing period shall be the rate required by section 46-1, plus the applicable debt service charge. On any residential premises connected to the sewer systems of the city, the sewage disposal bill per billing period shall be the rate required by section 46-1, plus the applicable debt service charge.
- (b) The sewage disposal bill per billing period on commercial premises connected to the sewer system of the city where no available water mains of the city exist shall be the rate required by section 46-1, plus the applicable debt service charge. On any commercial premises connected to the sewer system of the city, but not connected to available mains of the water system of the city, the sewage disposal bill per billing period shall be the rate required by section 46-1, plus the applicable debt service charge. The number of units applicable for each commercial premises will be determined according to the following schedule, no charge to be less than one unit:

Auto carwash (production lines), 10.00 units per production line.

Auto carwash (self-service), 1.00 unit per stall.

Auto dealers (new cars), 1.00 unit, plus 0.15 unit per stall.

Barbershops, 1.00 unit, plus 0.10 unit per chair.

Bars (drinks and/or dinners), 1.00 unit per 600 square feet of building area.

Bowling alleys (without bar or lunch), 1.00 unit, plus 0.10 unit per lane.

Beauty shops, 1.00 unit, plus 0.15 unit per booth.

Churches, 1.00 unit per 6,000 square feet of building area.

Cleaners, 1.00 unit per 1,000 square feet of building area.

Clinics, 1.00 unit, plus 0.50 unit per examining room.

Drugstores (without fountain service), 1.00 unit per 4,000 square feet of building area.

Grocery stores and supermarkets, 1.00 unit per 2,000 square feet of building area.

Hospitals, 1.00 unit, plus 0.75 unit per bed.

Hospitals (convalescent homes), 1.00 unit, plus 0.50 unit per bed.

Hotels and motels (not including restaurant or bar and without kitchen facilities), 1.00 unit, plus 0.25 unit per bed.

Laundry (self-service), 1.00 unit per 200 square feet of building area.

Multiple-family residence (including apartments), 1.00 unit per dwelling unit.

Office building, 1.00 unit per 4,000 square feet of building area.

Plating companies, 1.00 unit per 500 square feet of building area.

Restaurants (dinner and/or drinks), 1.00 unit per 600 square feet of building area.

Schools, 1.00 unit, plus 1.00 unit per teaching station.

Service station, 1.00 unit, plus 0.15 unit per pump.

Snack bars (drive-in), 1.00 unit per 600 square feet of building area, plus 0.08 unit per stall.

Stores (other than specifically listed), 1.00 unit per 4,000 square feet of building area.

Swimming pool (residential excluded), 1.00 unit per 2,000 square feet of service building area.

Theaters (inside with air conditioning), 1.00 unit, plus 0.01 unit per seat.

Theaters (drive-in), 3.50 unit per acre.

Trailer parks, 1.00 unit per house trailer space, whether occupied or not.

Other uses not specifically mentioned above, 1.00 unit per 4,000 square feet of building area.

(Code 1981, § 39-83; Ord. No. 203-R, § 2, 7-16-01)

Sec. 102-126. - Sewer tap installation.

All persons installing sanitary sewer house leads from the sanitary sewer main to the property line shall do so in accordance with approved plans and specifications which shall be made a part of the permit application and at their own expense, subject to the following conditions:

- (1) All necessary permits shall first be obtained from the city or any other governmental unit or agency having jurisdiction therein.
- (2) All necessary bonds will be posted prior to commencement of any work.
- (3) If insurance is required, the applicant shall file with the department of public service the necessary policies, binders, etc.

(Code 1981, § 39-84)

Sec. 102-127. - Sewer tap inspection charge.

The charge for sewer tap inspection shall be as required by section 46-1.

(Code 1981, § 39-85)

Secs. 102-128—102-145. - Reserved.

DIVISION 4. - INDUSTRIAL WASTE SURCHARGES

Sec. 102-146. - Purpose and objectives.

This division has as its purpose the protection of public health and safety and, because of the widely varying quality characteristics of the sewage discharged by different users of the public sewer and the publicly owned treatment works, it is the objective of this division to impose sewage charges which reflect

the cost of treating sewage strength factors as well as sewage volume. These charges to commercial and industrial users will be in the form of a payment called a surcharge and will reflect industries' equitable costs of wastewater treatment in excess of the strength of domestic sewage. Sewage charges will be based on a volume rate and surcharge based on volume of discharge and the strength of BOD, suspended solids and phosphorus or other pollutants present in the wastewater. If other pollutants are required to be surcharged under this division, authorized variances, or by special arrangement with the owner of the publicly owned treatment works, the rules and regulations adopted in this division will apply, such rules and regulations being on file with the city clerk.

(Code 1981, § 39-90)

Sec. 102-147. - Authority.

This division is adopted pursuant to and in accordance with the requirements of federal law, Public Act 92-500, and applicable federal regulations, the requirements of the settlement agreement in United States of America vs. City of Detroit, et al, Civil Action No. 771100, and under the provisions of Act No. 185 of the Public Acts of Michigan of 1957 (MCL 41.723, MSA 5.2770(53)), as amended.

(Code 1981, § 39-91)

Sec. 102-148. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five days at 20 degrees Celsius, expressed in terms of weight and concentration (milligrams per liter (mg/l)) as measured by standard methods.

Commercial user means all nondomestic sources of indirect discharge other than industrial users, as defined in this section, including, but not limited to, a publicly or privately owned facility where persons are engaged in the exchange or sale of goods or services, hospitals, retail establishments, schools and facilities operated by local and state governments.

Indirect discharge means the discharge or the introduction of nondomestic pollutants from any source regulated under section 307(b) or (c) of the Federal Water Pollution Control Act, P.L. 92-500, as amended, into the public waste treatment system.

Industrial user means a source of indirect discharge under regulations issued pursuant to section 402 of the Act (33 USC 1342), which source originates from, but is not limited to, facilities engaged in industry, manufacturing, business, trade or research, including the development, recovery or processing of natural resources.

Industrial waste means any liquid, solid or gaseous waste or form of energy or combination thereof resulting from any process of industry, manufacturing, business, trade or research, including the development, recovery or processing of natural resources.

P means phosphorous in the waste expressed in terms of milligrams per liter (ppm).

Pollutant means any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

Public sewer means a common sewer controlled by a governmental agency or public authority.

Suspended solids means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering as measured according to standard methods.

Wastewater or sewage means spent water which may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, institutions, or other land uses, including drainage water inadvertently present in such waste.

Wastewater system or sewer system means any part or all of the property, structures, equipment, sewers, materials and/or appurtenances used in conjunction with the collection and disposal of wastewater, including the publicly owned treatment works (POTW).

(Code 1981, § 39-92)

Cross reference— Definitions generally, § 1-2.

Sec. 102-149. - Computation of surcharges.

The schedule of industrial waste pollutant strength surcharges is hereby adopted and made effective for users of the wastewater system of the city. Such surcharges shall be computed as follows:

Computation of Industrial Waste Pollutant Strength Surcharge

The industrial waste pollutant strength surcharge shall be computed in accordance with the following formula:

$$SC = 0.0624 V a (BOD-250) + b(TSS-300) + c(P-12)$$

Where:

SC	=	Pollutant strength surcharge fee in dollars for the billing period.
Volume	=	Volume of waste discharged in the billing period in Mcf (1,000 cubic feet).
BOD	=	Five-day biochemical oxygen demand of the waste expressed in milligrams per liter (ppm).
TSS	=	Total suspended solids in the waste expressed in milligrams per liter (ppm).
P	=	Phosphorus in the waste expressed in

		milligrams per liter (ppm).
a, b, c	=	Surcharge rates, dollars/pound for treating BOD, TSS and P, respectively.
0.0624	=	Factor which converts Mcf to MM lbs.

a = \$0.082/pound

b = \$0.083/pound

c = \$1.321/pound

For purposes of surcharge computation, the values of pollutant strengths shall not be less than the allowable values; the allowable values are:

BOD = 300

TSS = 250

P = 12

The total sewerage charge for a particular industry would be the sum of the base flow charge and the surcharge would be calculated from the following formula:

$$UC = V(R) + SC$$

Where:

UC	=	Total sewerage charge for the billing period in dollars.
V	=	Volume of waste discharged in billing period of Mcf.
R	=	Basic flow sewage rate is \$6.00/Mcf, effective January 1, 1980.
SC	=	Surcharge in dollars as computed above.

(Code 1981, § 39-93)

Sec. 102-150. - Standards and regulations.

In accordance with the basic service agreement between the city, the county and the county board of public works or other properly designated agent of the county named pursuant to Act No. 342 of the Public Acts of Michigan of 1939 (MCL 46.171 et seq., MSA 5.2767(1) et seq.), as amended, and Act No. 185 of the Public Acts of Michigan of 1957 (MCL 123.731 et seq., MSA 5.570(1) et seq.), as amended, this division provides that any person discharging wastewater into the publicly owned sewer system shall

comply with the standards, rules and regulations controlling the quality or quantity of discharge of wastewater into such system. Such standards, rules and regulations shall be as established from time to time by the county and/or its designated agent.

(Code 1981, § 39-94)

Secs. 102-151—102-175. - Reserved.

Kim Plets

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Filing Code: Amended Complaint, Filed

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