

**STATE OF MICHIGAN  
BRANCH COUNTY CIRCUIT COURT**

JASON MATE, individually and as representative  
of a class of similarly-situated persons and entities,

Plaintiff,

Case No. 25-12507-CZ

Judge To Be Determined

v.

CITY OF COLDWATER, MICHIGAN, a  
municipal corporation, by and through THE  
COLDWATER BOARD OF PUBLIC UTILITIES,

FEB 19 '26 PM 2:12

Defendant.

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**DEFENDANT CITY OF COLDWATER'S MOTION FOR SUMMARY DISPOSITION OF  
PLAINTIFF'S CLASS ACTION COMPLAINT UNDER MCR 2.116(C)(8) AND  
INCORPORATED BRIEF IN SUPPORT**

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## INTRODUCTION

Over sixty-five years ago, the voters of the City of Coldwater (the “City”) approved a Charter provision requiring the Coldwater Board of Public Utilities (“CBPU”) to annually pay 6.5% of CBPU’s gross income to the City Treasurer for the City’s use and benefit. The annual payment recognizes and compensates the City for all the benefits CBPU receives through its use of City streets, services, and facilities. The City and CBPU have faithfully executed the will of the voters as dictated by the City Charter. Yet, Plaintiff now brings a purported class action alleging that the City has been unjustly enriched to the tune of more than \$13 million by doing what its voter-approved Charter mandates. There is nothing unjust about the City’s receipt of CBPU’s payment or how the payment has been (and continues to be) calculated. Because Plaintiff fails to allege any inequitable conduct, this Court should dismiss his Complaint as a matter of law.

First, Plaintiff’s equitable claim for “Violation of City Charter,” fails because the plain language of the Charter expressly requires CBPU to allocate its electric utility funds as alleged in the Complaint. Plaintiff’s entire case centers on the term “gross income,” as used in the Charter and what it means. Plaintiff advances the concocted theory that these two words mean all “revenue made in sales less the . . . costs associate[d] with [operating the] electric supply services,” rather than the simple, straightforward “all revenue or income” (the City’s reading). (Compl. ¶ 7). To that end, Plaintiff improperly looks outside the Charter’s language to an inapplicable and irrelevant federal tax regulation to argue that “gross income” does not mean “all revenue.” He then claims that CBPU, by reading the term “gross income” to mean “all income or revenue,” is miscalculating its annual payment by omitting costs in its calculation of “gross income.” But Plaintiff cannot impose a definition that does not exist in the language of the Charter, let alone one from a non-municipal context. Rather, the Charter expressly states that the undefined words it uses “shall”

have “their ordinary dictionary meaning.” Ex. A, Charter Excerpts at §1.4(a), Definitions and Construction. And per their ordinary dictionary meanings, “income” and “revenue” are synonymous, which is why—contrary to Plaintiff’s assertions—they are used interchangeably throughout the Charter’s provisions.

Second, Plaintiff cannot plausibly allege that the City’s receipt of a voter-approved payment from CBPU is “unreasonable” where, as here, the basis for that allegation is unmoored from the Charter or any other standard against which the alleged unreasonableness may be assessed. Put differently, there is no free-standing claim for an allegedly unreasonable rate, nor could Plaintiff make such a claim even if it did exist. Indeed, it is untenable to claim that the City’s receipt of funds for services provided to CBPU is “unreasonable” when it complies both with the City Charter and, by extension, Michigan law.

Effectively, Plaintiff’s claims are an attempt to siphon millions of dollars from a municipality that is engaging in conduct required by its own voters. The Michigan Supreme Court has confirmed that municipalities have broad discretion to conduct local affairs like the assessment of utility charges. Were there any question about the City’s legal authority (which there is not), the Michigan Constitution mandates that both Michigan constitutional and statutory law be liberally construed in a municipality’s favor. If permitted to proceed, this lawsuit will frustrate these principles and open the door to more litigation challenging voter-authorized conduct simply because a single resident disagrees with decisions made by a city’s voting majority. Plaintiff’s lawsuit should therefore be dismissed with prejudice under MCR 2.116(C)(8).

### **FACTUAL BACKGROUND**

The City of Coldwater is a municipality located in Branch County, Michigan. (Compl. ¶ 12). The CBPU is a department of the City that maintains and operates an electric utility that

provides energy to customers of the City. (Compl. ¶¶ 14-16). Chapter 15 of the City Charter establishes CBPU as a department of the City and outlines the powers of CPBU, including setting electrical rates for customers. (Compl. ¶¶ 14, 17). The current version of the Charter was adopted on November 9, 1960 by a majority vote of the City’s electors and became effective on January 1, 1961. Ex. A, Charter Excerpts at p. 1.

Section 15.9 of the Charter relates, among other things, to the City’s receipt of funds from CBPU for the operation of the electric utility and provides, in pertinent part:

(a) The Board of Public Utilities shall, annually, pay to the Treasurer for the use and benefit of the city, 6 1/2% of the gross income of the department, which payment shall be in recognition of and compensation for all benefits received from the city in the use of city streets, services, and facilities and shall constitute a part of the expenses of the administration and operation of the utilities of the city required to be paid under the first priority of Section 15.12 (a).

(b) Notwithstanding other provisions of this chapter, except when otherwise provided by Section 15.12 (b) of this chapter, the Board shall have power to transfer to the city such sums of money as it may deem proper and under such terms and conditions as the Board and the Council may mutually agree upon.

(Compl. ¶ 20, citing Charter §15.9(a)) (emphasis added).

Plaintiff is a customer of the City who has paid the City’s electric charges. (Compl. ¶ 11). Plaintiff asks this Court to order the City to “disgorge” more than \$13 million in electric charges paid by Plaintiff and the purported class during the class period. (Compl. ¶¶ 51, 56, p. 12 (Prayer for Relief)). This is because Plaintiff alleges that the City has improperly appropriated a portion of the funds from its electric utility to the general purposes of the City during fiscal years 2020 through the present. (Compl. ¶¶ 25-31).

Plaintiff specifically disputes how CBPU calculates the amount of electric utility funds it annually sends to the City, claiming that only 6.5% of CBPU’s gross income can be transferred and not 6.5% of CBPU’s gross revenue. (Compl. ¶¶ 3-5). Plaintiff has concocted the term “PILOT

Transfer Charge” to apply to the appropriations that he deems improper. (Compl. ¶¶ 3-5). In each of the challenged fiscal years, Plaintiff—by ignoring the Charter’s plain language—contends that the City violated §15.9(a) of the Charter because the appropriations from CBPU were not properly calculated using the electric utility fund’s gross income as a base. (Compl. ¶ 37). Looking outside the Charter, Plaintiff cites “prevailing accounting and tax principles” and a federal tax regulation to allege that “‘gross income’ is measured by the revenue made in sales **less** the direct costs involved in producing the product being sold,” and identifies “direct costs” as being purchase power, power plant, natural gas plant, distribution, substitution, and metering and lighting, which collectively total tens of millions of dollars. (Compl. ¶¶ 7-8, 22-23) (emphasis in original). Plaintiff then incorrectly concludes that that the CBPU “fails to deduct” its direct costs before calculating the annual payment to the City and thereby uses “gross revenue” as a base for its payment calculation instead of “gross income.” (Compl. ¶¶ 9, 24).

Plaintiff does not cite or refer to any portion of the Charter as his basis for distinguishing “gross income” from “gross revenue.” Nor can he. Rather, §1.4(a) of the Charter states that, “[e]xcept as otherwise specifically defined herein or indicated by the context, words used in this charter shall have their **ordinary dictionary meaning.**” Ex. A, Charter Excerpts at §1.4(a) (emphasis added). The Charter does not specifically define “gross income,” “gross revenue,” “income,” or “revenue.” See *id.* Nor do any sections of the Charter reflect a distinction between “gross income” and “gross revenue” or between “income” and “revenue.” Instead, the plain language of the Charter uses the terms “income” and “revenue” interchangeably. See Ex. A, Charter Excerpts at §§7.2, 7.6, 15.6, 15.8, 15.12.

In Count I of the Complaint (“Unjust Enrichment – Violation of City Charter”), Plaintiff alleges that the City has violated §15.9(a) of the Charter by “transfer[ring] 6.5% of the **gross**

revenues of the Electric Fund” when it supposedly should have been “transfer[ring] 6.5% of the gross income of the Electric Fund to the City.” (Compl. ¶¶ 46-47, emphasis added). Plaintiff asserts that calculating CBPU’s annual payment using a percentage from the Electric Fund’s gross revenue has resulted in the City “collect[ing] millions of dollars to which it is not entitled.” (Compl. ¶¶ 48-49).

In Count II of the Complaint (“Unjust Enrichment – Unreasonable Utility Rates”), Plaintiff alleges that, “[b]ecause the City’s Electric Rates included the PILOT Transfer Charge, those overall Rates have been unreasonable in violation of common-law ratemaking principles.” (Compl. ¶ 53). Thus, according to Plaintiff, “the City’s Electric Rates, ‘viewed as a whole,’ have been ‘excessive.’” (Compl. ¶ 53, quoting *Youmans v Bloomfield Twp*, 336 Mich App 161; 969 NW2d 570 (2021)).

The City now moves for summary disposition of Plaintiff’s Complaint for failure to state a claim under MCR 2.116(C)(8).

## **LEGAL STANDARD**

### **I. Michigan Court Rule 2.116(C)(8) Standard.**

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint and may be granted if “[t]he opposing party has failed to state a claim on which relief can be granted.” *Corley v Detroit Bd of Ed*, 470 Mich 274, 277; 681 NW2d 342 (2004); MCR 2.116(C)(8). A complaint fails to state a claim if no factual development justifies the plaintiff’s claim for relief as pled. *Johnson-Mcintosh v City of Detroit*, 266 Mich App 318, 322; 701 NW2d 179 (2005). Courts are directed to grant summary disposition under MCR 2.116(C)(8) when the claims are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Maiden v Rozwood*, 461 Mich 109, 119-20; 597 NW2d 817 (1999).

The Court may consider the Charter and the ordinances authorizing the appropriations in connection with this motion because they are a part of the Complaint under MCR 2.113(C)(2) (treating references to written instruments that are public records as part of the pleadings for all purposes). *See El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 163; 934 NW2d 665 (2019); cf *Krieger v Dep’t of Env’t, Great Lakes, & Energy*, 348 Mich App 156, 177-79; 17 NW3d 700 (2023). Plaintiff’s claims are based on allegedly unlawful “transfers” that supposedly violate the Charter. Plaintiff has thus adopted as true the fact of the appropriations.

This Court may also take judicial notice of the City’s Charter and ordinances. *See MRE 202(a)(3)* (providing that “a Court may take judicial notice on its own of . . . ordinances and regulations of Michigan governmental subdivisions or agencies”); *Rudolph Steiner Sch of Ann Arbor v Ann Arbor Charter Twp*, 237 Mich App 721, 723 n1; 605 NW2d 18 (1999) (taking judicial notice of municipal charter); *Krieger*, 156 Mich App at 180 (courts may take “judicial notice of public records . . . at any stage of the proceeding.”).

## **II. Construction of Laws in Favor of Municipalities.**

The Michigan Constitution expressly recognizes the power of local governments, mandating that “**the provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor.**” Const 1963, art 7, §34 (emphasis added). Section 34 was added to the Constitution to guide courts on how to treat municipalities.

The Michigan Constitutional Convention of 1961 remarked that this section was intended

to direct the courts to give a liberal or broad construction to statutes and constitutional provisions concerning all local governments. Home rule cities and villages already enjoy a broad construction of their powers and it is the intention here to extend to counties and townships within the powers granted to them equivalent latitude in the interpretation of the constitution and statutes.

2 Official Record, Constitutional Convention 1961, p 3395; *see also* Const 1963, art 7, §22.

This right to self-governance is further underscored by Michigan courts. *Adams Outdoor Advert, Inc v City of Holland*, 234 Mich App 681, 687-690; 600 NW2d 339 (1999) (recognizing the broad powers of home rule cities to not only exercise powers “specifically granted,” but also those “not expressly denied.”); *Hughes v Almena Twp*, 284 Mich App 50, 62; 771 NW2d 453 (2009) (courts must construe statutory powers in favor of local government). Indeed, the Supreme Court has held that the current Michigan Constitution directly reflects “the people’s will to give municipalities even greater latitude to conduct their business.” *Associated Builders and Contractors v City of Lansing*, 499 Mich 177, 186-87; 880 NW2d 765 (2016) (holding that municipality did not exceed its constitutional authority in enacting a prevailing wage ordinance). It has accordingly reaffirmed the belief that municipalities have extensive authority over “municipal concerns, property and government” and should be allowed to exercise their powers without fear that every single action will be reviewed or second-guessed by the judiciary. *Id.* All told, “[u]nder our current Constitution, there is simply no room for doubt about the expanded scope of authority of Michigan’s cities and villages.” *Id.* at 187.

Article 7, Section 34 of the Michigan Constitution applies to the City’s Charter, which Plaintiff claims the City has violated. A municipal charter “is the definition of [a city’s] rights and obligations as a municipal entity, so far as they are not otherwise legally granted or imposed.” *Common Council of City of Jackson v Harrington*, 160 Mich 550, 552; 125 NW 383 (1910). Because the Charter concerns a “city,” this Court must construe the Charter liberally in the City’s favor to preserve the City’s right to self-direct its municipal affairs. The City’s voters reaffirmed this concept in their City’s Charter:

The intent of the Charter Commission in drafting this charter and of the electors of the City of Coldwater in adopting it was that its provision[s] should be liberally construed to afford a maximum of local self government in accordance with the

spirit and intent of Article VIII of the Michigan Constitution and the statutes of the State.

Ex. A, Charter Excerpts, § 1.11, Liberal Construction.

### **ARGUMENT**

Even taking the Complaint allegations as true, neither of Plaintiff’s two unjust enrichment claims is viable. Unjust enrichment is “the unjust retention of money or benefits which in justice and equity belong to another.” *Tkachik v Mandeville*, 487 Mich 38, 47–48; 790 NW2d 260 (2010) (citations omitted). “No person is unjustly enriched unless the retention of the benefit would be unjust.” *Id.* at 48. Here, Plaintiff has not alleged any inequitable conduct. Instead, Plaintiff claims that the City has received excessive appropriations from CBPU contrary to the Charter’s terms and *this* renders the City’s conduct inequitable. However, these transfers are explicitly required by §15.9(a) of the Charter and are calculated consistently with the language of the Charter. And while Plaintiff implicitly claims that the appropriations lead to an electric utility rate that is too high, there is no freestanding “common law of reasonableness” that would support his claim for unjust enrichment where a voter-approved Charter requires the disputed appropriations. Legally authorized transfers are neither illegal nor improper. The Court should therefore dismiss Plaintiff’s Complaint under MCR 2.116(C)(8).

#### **I. PLAINTIFF FAILS TO STATE A CLAIM FOR “UNJUST ENRICHMENT – VIOLATION OF CITY CHARTER” BECAUSE THE CHARTER AUTHORIZES THE CITY’S ALLEGED CONDUCT.**

Count I fails as a matter of law because it is belied by the Charter’s plain language. “The prevailing rules regarding statutory construction are well established and extend to the construction of home rule charters.” *City of Detroit v Walker*, 445 Mich 682, 691; 520 NW2d 135 (1994); see also *infra*, p.6-7. “The provisions [of charters] are to be read in context, with the plain and ordinary meaning given to every word [and]. . . judicial construction is not permitted when the language is

clear and unambiguous.” *Barrow v Detroit Election Comm’n*, 305 Mich App 649, 663; 854 NW2d 489 (2014). Rather, “the framers of the charter, and the people of the City . . . in its adoption, must be presumed to have intended that the provision be construed as it reads.” *Woods v Bd of Trs of Policemen & Firemen Ret Sys of City of Detroit*, 108 Mich App 38, 43; 310 NW2d 39 (1981). Courts are thus “required to construe a charter’s language by its commonly accepted meaning as long as it does not produce absurdity, hardship, injustice, or prejudice to the drafters and ratifiers.” *Hackel v Macomb Co Bd of Comm’rs*, --- NW3d ----, 2025 WL 1689298, at \*5 (Mich 2025) (quoting *Walker*, 445 Mich at 691).

Here, the City’s Charter contains a “Definitions and Construction” provision. Ex. A, Charter Excerpts at §1.4. Per §1.4(a), “[e]xcept as otherwise specifically defined herein or indicated by the context, words used in this charter shall have their **ordinary dictionary meaning**.” *Id.* (emphasis added). The Charter does not specifically define “gross income,” nor does it define “gross revenue,” “income,” or “revenue.” See *Id.* Ordinary dictionary meanings must therefore apply to these terms. *Id.*; *Hackel*, 2025 WL 1689298, at \*5. To ensure a construction that “presume[s]” the Charter framers and City voters “intended that [§15.9(a)] be construed as it reads” and that “does not produce absurdity, hardship, injustice, or prejudice to the [Charter’s] drafters and [the City’s] ratifiers,” definitions at the time the City’s voters adopted the Charter must be used. *Woods*, 108 Mich App at 43; *Hackel*, 2025 WL 1689298, at \*5.

As used in the Charter when it was adopted on November 9, 1960, “gross” means “total; entire; with no deductions; **as, one’s gross income: opposed to net.**” The World Publishing Company, *Webster’s New World Dictionary of the American Language*, 640 (college ed. 1960) (“gross” Def 7) (emphasis added), attached hereto as Ex. B. “Income” means “the money or other gain periodically received by an individual, corporation, etc., for labor or services, or from

property, investments, operations, etc.” *Id.* at 737 (“income” Def 2), attached hereto as Ex. B. And “revenue” means “the return from property or investment; **income.**” *Id.* at 1245 (“revenue” Def. 1) (emphasis added), attached hereto as Ex. B. In other words, the plain meaning of “income” and “revenue” is the same in the Charter, as are the terms “gross income” and “gross revenue.”

Unsurprisingly, the synonymous use of “income” and “revenue” is reflected in the Charter. The two are used interchangeably in different sections of the Charter where the same budgetary topics are discussed:

- Section 7.2. Budget Procedure.

Not later than the first day of February of each year, each officer, department, and board of the city shall submit to the City Manager an itemized estimate of its expected **income and expenditures** during the next fiscal year for the department or activities under its control.... Not later than the second meeting of the Council in April of each year, he shall submit to the Council a recommended budget for the next fiscal year which, considering any anticipated unexpended balance or deficit at the end of the current fiscal year, is within the tax limit and **other anticipated revenue** of the city.

- Section 7.6. Budget Control.

(c) During each month, the City Manager shall submit to the Council data showing the relation between **the estimated and actual revenues and expenditures** for the general operation of the city to the end of the preceding month; and, if it shall appear that **the revenues** are less than anticipated, the Council may, by resolution, reduce appropriations, except amounts required for debt and interest charges, to such a degree as may be necessary to keep **expenditure within the revenues.**

- Section 15.6. Power of Board.

The Board shall have full power and authority to fix all rates for electricity, water and sewage disposal services....Such rates shall not be fixed any lower than will produce the **revenue required to pay all operating, maintenance, depreciation, and obsolescence expenses** of the city’s electric, water, and sewer and sewage disposal utility systems, together with a sufficient amount to provide for necessary expansions and extensions.

- Section 15.8. Board Fund Control.

Subject to the provisions of this charter, and the general accounting procedures of

the city which shall be consistent with and meet any requirements of law, the Board shall have and exercise control over **all of its funds**. **Such funds and revenues** shall be in a bank account separate from other city funds. Except as provided in Section 15.9 to 15.13 inclusive, **such funds shall be used only to defray the cost of operating** the city's electric plant or plants and distribution systems, water plant and system, and sewage plant and system, necessary overhead, plant and system extensions, debt service, and other incidental and pertinent expenses of operating, maintaining, improving, extending, and changing the electric, water, and sewage and sewage disposal plants and systems, including allowance for depreciation and obsolescence....

- Section 15.12. Distribution of Revenues of City Utilities.

(a) The **revenue** of each utility of the city shall be devoted to the following purposes in the order listed: First, to the expense of administration and operation of each utility...; second, such of the remaining amount of the **revenues** as may be required for the principal and interest on any indebtedness against the utility; third, of the remaining amount of the **revenues**, an amount shall each year, be placed in the city's public utility reserve funds or funds...; and fourth, unless otherwise required by law, the balance of such **revenues** shall be placed in the fund created by Section 15.13.

Ex. A, Charter Excerpts (emphasis added).

Ignoring these fundamental rules of charter construction, Plaintiff's Complaint looks outside the plain language of the Charter to assert a violation of §15.9(a). Grasping at "prevailing accounting and tax principles," Plaintiff's claim balances on a definition of "gross income" cherry-picked from a federal tax regulation, 26 CFR § 1.61-3. (See Compl. ¶¶ 7-8, 22-23). But 26 CFR § 1.61-3 **did not even exist** when the Charter was adopted on November 9, 1960. Rather, the earliest iteration of that regulation was enacted on November 26, 1960. Ex. C, Federal Regulation Excerpts. To presume the drafters and ratifiers of the Charter were using a definition that post-dated the Charter would create the exact absurdity the Supreme Court portended in *Hackel*. 2025 WL 1689298, at \*5 (The Court is "required to construe a charter's language by its commonly accepted meaning as long as it does not produce absurdity, hardship, injustice, or prejudice to the drafters and ratifiers."). Nor does the Charter require the City to define "gross income" in

accordance with any specific tax regulations. Rather, the Charter expressly states that undefined words have their “ordinary dictionary meaning.” Ex. A, Charter Excerpts at §1.4(a). And the ordinary dictionary meaning of “gross income” on November 9, 1960—the day the City’s voters adopted the Charter—was synonymous with “gross revenue.” *The World Publishing Company, Webster’s New World Dictionary of the American Language*, 640 (college ed. 1960) (“gross” Def 7); cf *id.* at 737 (“income” Def 2); cf *id.* at 1245 (“revenue” Def 1), attached here to as Ex. B.

“[T]he framers of the charter, and the people of the City . . . in its adoption, must be presumed to have intended that the provision be construed as it reads.” *Woods*, 108 Mich App at 43. Plaintiff’s manufactured distinction between “gross income” and “gross revenue” does not meet this mark. *Id.*; *Hackel*. 2025 WL 1689298, at \*5. As such, Plaintiff’s unjust enrichment claim is not viable as a matter of law, and Count I should be dismissed accordingly.

## **II. PLAINTIFF FAILS TO STATE A CLAIM FOR “UNJUST ENRICHMENT – UNREASONABLE UTILITY RATES” BECAUSE IT IS UNSUPPORTED BY ANY COGNIZABLE STANDARD OF “REASONABLENESS.”**

Count II is an unjust enrichment claim generally alleging “unreasonable utility rates” based on so-called “common-law ratemaking principles.” This claim fails as a matter of law because Michigan precedent demonstrates that municipal rates are presumed reasonable, and ratepayers cannot advance freestanding equitable claims claiming “unreasonable municipal rates” where—as in Count II—these claims fail to identify any standard or authority for “reasonableness” rendering the challenged rates unjust. As set forth above, the City has complied with the plain terms of its Charter. Because Count II fails to identify any additional, cognizable legal standard on which Count II is based, the Court should dismiss Count II under MCR 2.116(C)(8).<sup>1</sup>

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<sup>1</sup> Plaintiff cannot sustain an equitable claim for “unreasonable rates” based on the bare allegation that the City earns a “profit” for the City from the CBPU annual payment. See *Chocolay Charter Twp v City of Marquette*, 138 Mich App 79, 84; 358 NW2d 636 (1984) (“A municipality is not

“Michigan courts, as well as those in other jurisdictions, have recognized the longstanding principle of presumptive reasonableness of municipal utility rates.” *City of Novi v City of Detroit*, 433 Mich 414, 428; 446 NW2d 118 (1989). Municipal utility rates are “assumed to be reasonable in absence of a showing to the contrary or a showing of fraud or bad faith or that it is capricious, arbitrary or unreasonable.” *City of Detroit v City of Highland Park*, 326 Mich 78, 100-101; 39 NW2d 325 (1949). The Michigan Supreme Court has cautioned that “[c]ourts of law are ill-equipped to deal with the complex, technical processes required to evaluate the various cost factors and various methods of weighing those factors required in rate-making.” *City of Novi*, 433 Mich App at 414. The judiciary must refrain from strictly scrutinizing rate-making because, among other things, “[t]he rate-making authority of a municipal utility is expressly reserved to the legislative body giving the power to set rates under the municipal charter.” *Id.* at 430 (citing MCL 141.103(d); 141.121). And “[t]he burden of proof is on the plaintiff to show that any given rate or ratemaking practice is unreasonable.” *Trahey v City of Inkster*, 311 Mich App 582, 594; 876 NW2d 582 (2015) (citing *City of Novi*, 433 Mich at 432–33). Plaintiffs challenging the reasonableness of municipal utility rates thus bear a heavy burden: “Absent **clear** evidence of **illegal or improper expenses** included in a municipal utility’s rates, a court has no authority to disregard the presumption that the rate is reasonable.” *Trahey*, 311 Mich App at 595 (emphasis added).

In *Brunet v City of Rochester Hills*, No 354110, 2021 WL 5750616, at \*6-9 (Mich Ct App Dec 2, 2021) (attached as Ex. D), the Michigan Court of Appeals affirmed dismissal of Plaintiff’s counsel’s class action lawsuit challenging the defendant municipality’s water rates under (among

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required to furnish utility services at cost, but may charge a rate which will yield a profit.”); 12 McQuillin Mun. Corp. § 35.60 (3d ed.) (“While in theory, water from a municipally owned plant should come to the consumer without profit to the municipality, this does not exclude the idea of profit in operation. A city is entitled to a reasonable profit and it may even use that profit for other valid municipal purposes.”).

other things) an unjust enrichment theory of “unreasonableness” like the claim alleged here in Count II. Acknowledging the “longstanding principle that municipal utility rates are presumed reasonable,” the Court concluded that the plaintiff’s rate challenge could be “considered . . . abandoned” because the plaintiff “fail[ed] to identify a basis for ‘reasonableness’” the rates allegedly violated. *Brunet*, 2021 WL 5750616, at \*6. The *Brunet* court supported its unpublished decision with a robust analysis of published Michigan appellate opinions, all demonstrating that cognizable claims for unreasonable rates are—at a minimum—based on “a statute, contractual provision, or ordinance establishing the underlying basis for ‘reasonableness.’” *Id.* at \*8. Cases standing for this principle include *Meridian Twp v City of E Lansing*, Mich, 342 Mich 734; 71 NW2d 234 (1955); *City of Plymouth v City of Detroit*, 423 Mich 106; 377 NW2d 689 (1985); *City of Novi*, *supra*; and *Trahey*, *supra*, all of which concerned plaintiffs who alleged that municipal utility rates were “unreasonable” in light of explicitly identified legal standards of “reasonableness”:

In *Meridian Twp*, for example, the basis for “reasonableness” was a contractual provision stating that water rates must be “reasonable in relation to the costs incurred by the City for the supply of water.” *Meridian Twp.*, 342 Mich. at 748, 71 N.W.2d 234. In *City of Plymouth*, the basis for “reasonableness” was a contractual provision stating that water rates “shall always be reasonable in relation to the costs incurred by the Board for the supply of water.” *City of Plymouth*, 423 Mich. at 111, 377 N.W.2d 689. In *City of Novi*, the basis for “reasonableness” was a statute [MCL 123.141(2)] stating that “[t]he price charged by the city to its customers shall be at a rate which is based on the actual cost of service as determined under the utility basis of rate-making.” *City of Novi*, 433 Mich. at 419, 446 N.W.2d 118. And in *Trahey*, the basis for “reasonableness” was a municipal ordinance stating that water rates must be “just and reasonable.” *Trahey*, 311 Mich. App. at 594, 876 N.W.2d 582.

*Brunet*, 2021 WL 5750616, at \*8.

In contrast to these previous municipal rate challenges, the Court of Appeals found that the plaintiff in *Brunet* was “attempting to maintain a freestanding claim of ‘reasonableness’ that is not

grounded in any specific law nor in any type of cogent reasoning.” *Brunet*, 2021 WL 5750616, at \*8. While the plaintiff was “nominally correct that municipal utility rates must be ‘reasonable,’ . . . he overlooks the fact that the standard for ‘reasonableness’ is often uniquely determined by reference to the specific law, cost basis, or contract at issue.” *Id.*

Plaintiff’s freestanding claim for “unjust enrichment – unreasonable utility rates” is similarly groundless. Plaintiff cites no “statute, contractual provision, or ordinance establishing the underlying basis for ‘reasonableness’” alleged in this claim.<sup>2</sup> The only authority referenced in Count II is *Youmans v Bloomfield Twp*, 336 Mich App 161; 969 NW2d 570 (2021)—a case that undermines this very Court. Indeed, *Youmans* is another unsuccessful class action rate challenge brought by Plaintiff’s counsel based in part on unjust enrichment theories. There, the Court of Appeals reversed the trial court’s \$9 million-plus judgment in favor of the plaintiff, holding that the trial court erred by failing to apply the presumption that the disputed utility rates were reasonable. *Youmans*, 336 Mich App at 211-12. The Court’s opinion rejecting the plaintiff’s claims emphasized: (i) the centrality of the presumption of reasonableness for municipal utility rates; (ii) the directive that courts defer to the discretion of governmental bodies authorized to set rates when reviewing ratemaking; and (iii) the binding precedent set forth in *Trahey* confirming that courts have no authority to disturb municipal utility rates absent “clear evidence of illegal or improper expense” included in the rates. *Id.* at 212-21 (citing *Trahey*, 311 Mich App at 595).

*Youmans* does not stand for the principle that a plaintiff may advance unjust enrichment claims for “unreasonable utility rates” untethered from any governing authority. Indeed, even the plaintiff in *Youmans* lodged her unjust enrichment claim for unreasonable water rates based on an

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<sup>2</sup> Nor can Plaintiff now try to claim his assertion of “unreasonableness” is based on violations of the City Charter because any such claim is futile. See *supra* Section I.

alleged violation of MCL 123.141(3)—a statutory provision stating that “the retail rate charged to the inhabitants of a city, village, township, or authority which is a contractual customer . . . shall not exceed the actual cost of providing the service.” See *Youmans*, 336 Mich App at 224. Moreover, the *Youmans* Court specifically held that the plaintiff’s failure to show evidence that the defendant had been unjustly enriched was fatal to her equitable claims for fee refunds. *Id.* at 219-20. The Court noted parallels between the presumption of reasonableness afforded to utility rates and general equitable principles of unjust enrichment.<sup>3</sup> Despite the equitable nature of her claims, the plaintiff could not rebut the presumption that the township’s utility rates were reasonable because she did not present any evidence that the township had been unjustly enriched by assessing the disputed rates:

Whether the Township would receive an unjust “benefit” . . . depends on whether the water and sewer rates, viewed as a whole, were unreasonable inasmuch as they were “excessive,” not on whether some aspect of the Township’s ratemaking methodology was improper. [ . . . ] Unjust enrichment . . . doesn’t seek to compensate for an injury but to correct against one party’s retention of a benefit at another’s expense. And the . . . remedy, is therefore not compensatory damages, but restitution. Restitution restores a party who yielded *excessive and unjust benefits* to his or her rightful position . . . [P]laintiff’s strained interpretation of *Trahey* would permit an order of restitution in this case without any evidence or finding that the Township was enriched, let alone excessively compensated, by collecting and retaining the disputed utility charges.

*Id.* at 219 (emphasis in original) (citations omitted).

Here, the Court needs no evidence to dismiss Count II. The challenged portion of the City’s rates (i.e., the so-called “PILOT Transfer Charges”) are budgeted transfers that are required under the City’s voter-approved Charter. They are per se lawful. Plaintiff fails to allege how these legally authorized payments from CBPU constitute improper conduct or unjustly enrich the City. At best,

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<sup>3</sup> “In contemporary municipal utility ratemaking cases, a . . . focus on principles of ‘unjust enrichment’ is encapsulated within the rebuttable presumption that a municipality’s municipal utility rates are reasonable.” *Youmans*, 336 Mich App at 214 (citations omitted).

Plaintiff alleges that the City's electric utility rate is unreasonable because he says so. This is not the basis of an actionable or viable claim. Because Plaintiff's freestanding "unreasonable rates" claim fails to allege that the City violated any cognizable standard of "reasonableness," Plaintiff may not sustain a claim that the City was unjustly enriched by CBPU's annual payment to the City for its general purposes.

### CONCLUSION

For the foregoing reasons, Defendant City of Coldwater respectfully requests that this Honorable Court grant its Motion for Summary Disposition of Plaintiff's Complaint in its entirety under MCR 2.116(C)(8) and dismiss this action with prejudice.

Respectfully submitted,

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*Co-Counsel for Defendant*

Dated: February 18, 2026

## **CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2026, I filed the foregoing papers with the Clerk of the Court by hand-delivering them the Clerk's Office and further served them via email on all counsel of record in accordance with the January 14, 2026 Stipulated Order for Alternate Electronic Service.

*/s/Amanda Kathryn O'Boyle*  
Amanda Kathryn O'Boyle

# EXHIBIT A

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**[Adopted by a majority vote of the people of the City of Coldwater, State of Michigan, at the general election held on November 8, 1960.]**

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**PREAMBLE**

We, the people of the City of Coldwater, grateful to God for the blessings of freedom, peace, health, safety, and justice, and desirous of further securing these blessings to ourselves and our posterity, and to provide for the public peace and health, and for the safety of persons and property, do hereby ordain and establish this charter for the City of Coldwater.

CHAPTER 1  
**GENERAL PROVISIONS**

**Section 1.1. Continuation of Existing Corporation.**

The organized city, now existing as a Michigan municipal corporation, known as the City of Coldwater, shall be and continue a body corporate under the name: "The City of Coldwater."

**Section 1.2. Boundaries.**

- (a) The city shall embrace the territory constituting the City of Coldwater on the effective date of this charter. Such territory is described as follows: Sections 15, 16, all that portion of section 17, lying east of Coldwater river, all that part of the north half of section 20 lying east of the river and lake, and all of section 21 and 22 of township six south, of range six west, being the township of Coldwater, Branch county, and all that portion of section 17 and section 20 in the township of Coldwater Branch county, lying west of the Coldwater river, owned and occupied by the City of Coldwater, and known as Oak Grove Cemetery, are hereby set off from said township and declared to be a city by the name of the City of Coldwater, by which name it shall be hereafter known.
- (b) Upon the annexation or detachment of territory, said boundaries shall be changed without amendment of this section.
- (c) The Clerk shall maintain and keep available in his office for public inspection and distribution copies of the official description and map of the current boundaries of the city. Such copies published under his authority shall be prima facie evidence of the boundaries of the city for all purposes.

**Section 1.3. Form of Government.**

The government of the city shall be that commonly known and designated as the Council-Manager form of government.

**Section 1.4. Definitions and Construction.**

- (a) Except as otherwise specifically defined herein or indicated by the context, words used in this charter shall have their ordinary dictionary meanings.
- (b) BOARD — Includes the word "commission".
- (c) CITY — Means the City of Coldwater and all of its departments.
- (d) CLERK — Means the City Clerk or recording officer of the city.
- (e) COUNCIL — Means the City Council of the City of Coldwater.
- (f) ELECTOR — Means a qualified elector, as defined in Article III of the Michigan Constitution, who is registered as required by law.
- (g) LAW — Denotes applicable federal law, the Constitution and statutes of Michigan, the applicable common law, and this charter.
- (h) PERSON — Extends and applies to bodies politic and corporate, and to partnerships and associations, as well as to individuals.

- (i) PRINTED or PRINTING — Means all methods of written expression and duplication, and includes teletype, telegraphic communications.
- (j) PUBLISH or PUBLISHED — Includes the setting forth of any matter for public notice in the manner provided by law, or, where there is no applicable law, at least once in one or more newspapers of the city qualified by law for the publication of legal notices, or, in the event of the inability of the city to so publish, by posting in at least one public place in each election precinct.
- (k) SIGN or SIGNATURE — Includes the facsimile of a signature when authorized by the Council.
- (l) TREASURER — Means City Treasurer.
- (m) All words indicating the present tense are not limited to the time of the adoption of this charter, but to extend to and include the time of the happening of any event or requirement to which any provision is applied.
- (n) The singular includes the plural, the plural includes the singular, and the masculine gender extends to and includes the feminine gender and the neuter.

#### **Section 1.5. Records to be Public.**

All records pertaining to the general governmental affairs of the city shall be public records, shall be kept in city offices, except when required for official reasons or for purposes of safekeeping to be elsewhere, and shall be available at city offices for inspection, copying, or reproduction at all reasonable times. Such records, or copies duly certified by the Clerk, shall be prima facie evidence of their contents.

#### **Section 1.6. Quorum.**

A quorum of any board created by or under authority of this charter shall consist of a majority of the number of its members.

#### **Section 1.7. Sundays and Holidays.**

Except as otherwise expressly provided in this charter, whenever the date fixed by law or ordinance for the doing or completion of any act falls on a Saturday, Sunday, or legal holiday, such act shall be done or completed on the next succeeding business day.

#### **Section 1.8. Penalties for Violations of Charter.**

Violations of this charter may be punished by a fine which shall not exceed \$500, or imprisonment for not more than 90 days, or by both such fine and imprisonment.

#### **Section 1.9. Chapter and Section Headings.**

The chapter and section headings used in this charter shall not be considered a part of the charter for the purpose of judicial construction, or otherwise.

#### **Section 1.10. Severability of Charter Provisions.**

If any portion of this charter is held to be invalid, such invalidity shall not affect the remainder of the charter, which can be given effect without the invalid portion and, to that end, this charter is declared to be severable.

**Section 1.11. Liberal Construction.**

The intent of the Charter Commission in drafting this charter and of the electors of the City of Coldwater in adopting it was that its provision should be liberally construed to afford a maximum of local self government in accordance with the spirit and intent of Article VIII of the Michigan Constitution and the statutes of the State.

CHAPTER 7  
GENERAL FINANCE

**Section 7.1. Fiscal Year.**

The fiscal and budget year of the city shall begin on the first day of July of each year.

**Section 7.2. Budget Procedure.**

Not later than the first day of February of each year, each officer, department, and board of the city shall submit to the City Manager an itemized estimate of its expected income and expenditures during the next fiscal year for the department or activities under its control. The City Manager shall compile such information and list the same upon a budget proposal form. He shall review such budget requests, and in a column parallel to and adjacent to that containing such budget requests, shall enter his budgetary recommendations for each item requested by the several officers and departments, with such additions thereto and deletions therefrom as he shall deem proper. Not later than the second meeting of the Council in April of each year, he shall submit to the Council a recommended budget for the next fiscal year which, considering any anticipated unexpended balance or deficit at the end of the current fiscal year, is within the tax limit and other anticipated revenue of the city.

**Section 7.3. Public Inspection of Budget Proposal.**

The budget proposal of the City Manager, together with his recommendations and its supporting schedules and information, shall be available for public inspection in the office of the Clerk.

**Section 7.4. Budget Hearing.**

A public hearing on the budget proposal shall be held not less than one week before its final adoption, at such time as the Council shall direct. Notice of the public hearing shall be published by the Clerk at least one week in advance thereof.

**Section 7.5. Adoption of Budget.**

- (a) At a regular meeting held not later than the second Monday in June of each year, the Council shall, by resolution, adopt a budget for the ensuing fiscal year and make an appropriation of the money needed therefor. Such resolution shall designate the sum to be raised by taxation for the general purposes of the city and for the payments of principal and interest on its indebtedness. Failure to adopt such resolution within the time herein set shall not invalidate either the budget or the tax levy therefor.
- (b) A copy of the appropriations for each fiscal year, certified by the Clerk, shall be furnished to the City Auditor within 10 days after the date of the adoption of the budget resolution.

**Section 7.6. Budget Control.**

- (a) Except for purposes which are to be financed by the issuance of bonds or by special assessments, no money shall be drawn from the treasury of the city, except in accordance with the budget in effect and the appropriation for such purpose, nor shall any obligation for the expenditure of money be incurred without an appropriation covering all payments which will be due under such obligation during the fiscal year. The Council, upon the written recommendation of the City Manager and by the affirmative vote of not less than six of its members, may appropriate unappropriated funds or transfer any unencumbered appropriation balance, or any portion thereof, from any budget item or account,

department, or agency to another.

- (b) Expenditures shall not be charged directly to any contingent or general account. Instead, the necessary amount of the appropriation from such account shall be transferred to the appropriate budget item or account and the expenditure then charged thereto.
- (c) During each month, the City Manager shall submit to the Council data showing the relation between the estimated and actual revenues and expenditures for the general operation of the city to the end of the preceding month; and, if it shall appear that the revenues are less than anticipated, the Council may, by resolution, reduce appropriations, except amounts required for debt and interest charges, to such a degree as may be necessary to keep expenditure within the revenues.
- (d) Within 30 days following the end of each fiscal year, the City Manager shall file with the Council a schedule of all encumbrances upon the budget appropriations existing at the end of the fiscal year, with his recommendations thereon, and the Council shall provide for the payment of such thereof as constitute valid claims against the city from corresponding budget items from the then current fiscal year.

#### **Section 7.7. Special Accounts.**

- (a) The Council may, by ordinance, establish and maintain accounts for accumulating moneys to be used for acquiring, extending, altering, constructing, or repairing public improvements and for the purchase of equipment of any type, in each case either for a specific item or items or for future unspecified public improvements or equipment, or both.
- (b) Appropriations to such accounts may be made by the Council either in the annual appropriation resolution or, from time to time during the fiscal year, from available funds, from whatever source derived, which are not required for other appropriations or obligations of the city. Such accounts shall be continuing accounts and the balances therein at the end of each fiscal year shall remain a part thereof.
- (c) Moneys which are accumulated for the purpose of public improvements, as set forth in sub-section (a) hereof, shall be used only at the direction of the Council, and only for the purpose provided in the original ordinance establishing such account, unless their use for some other municipal purpose be authorized by a majority vote of the electors of the city who vote on the proposition to amend such ordinance to provide for a change in the use of the moneys in such account. After the purpose of any such account has been fulfilled, any balance remaining therein may be transferred by the Council to any other special account or to the general fund of the city.
- (d) Moneys which are accumulated for the purpose of purchasing equipment, as set forth in sub-section (a) hereof, shall be expended only for the purpose provided in the ordinance establishing any such account, or as such ordinance may be amended from time to time, and, when no longer required for such purpose, such moneys or any part thereof, may be transferred to the general fund by a resolution adopted by the affirmative vote of not less than six members of the Council.

#### **Section 7.8. Withdrawal of City Moneys.**

- (a) Unless otherwise provided by law or by ordinance, all moneys drawn from the treasury shall be drawn pursuant to the authority and appropriation of the Council. The Council, upon the recommendation of the City Manager, where necessary to expedite operating procedures, may authorize, in writing, other officers and employees of the city to make minor disbursement from petty cash accounts, which disbursements shall be accounted for and shall be audited by the City Auditor.

CHAPTER 15  
**BOARD OF PUBLIC UTILITIES**

**Section 15.1. City Utilities.**

The city's electric, water, and sewage utility facilities and services shall constitute a department of the city government. Such utilities of the city shall be under the control and direction of a board, to be known as the Board of Public Utilities. The Board shall be composed of five members who shall be appointed by the Mayor, subject to the approval of the Council, for terms of five years each, with the terms of one member expiring in each year. Board members may be removed by the Council for inefficiency, neglect of duty, or malfeasance in office. The term of office of each member of the Board shall commence on the day of the first regular meeting of the Board next following the date of his appointment, except that the term of office of any person who is appointed to fill a vacancy shall commence on the date of his appointment. The Board shall organize at its regular meeting held in the month of July, and shall elect one of its members President. The Board shall hold at least one regular meeting in each month at a meeting place designated by the Board with the approval of the Council. Special meetings may be called at the request of the President or of any two members in the manner provided in this charter for calling special meetings of the Council. All meetings of the Board shall be open to the public. The Board shall keep a journal of its meetings, and its proceedings shall be filed with the Clerk as a public record. Within 15 days the Board shall designate its Secretary. Members of the Board shall not receive any compensation, but shall be allowed reasonable expenses when actually incurred by them upon authority of the Board.

**Section 15.2. Appointee of the Board of Public Utilities.**

The Board shall appoint a Director who shall be responsible to the Board and serve at its pleasure. The Board shall set his compensation. The Director shall have control and direction of and be responsible for the supervision of all of the utility facilities and the properties of the city pertinent thereto which are entrusted to the Board, and shall be responsible for the economical and proper operation and maintenance thereof. As the administrative agent of the Board, he shall have the control and direction of the employees of the Board, subject to the provisions of this charter.

**Section 15.3. Responsibilities of Board.**

Subject to the general direction of the Council, the Board of Public Utilities shall have charge of the city's electric services, water supply services, and sanitary sewers and sewage disposal facilities, and shall organize and conduct the affairs of the city's systems for the construction, generation, maintenance, purchase, extension, and distribution of electric light and power and water, and of the construction, extension, maintenance, and operation of the city's sanitary sewer and sewage disposal system and facilities, in a manner consistent with the best practices therefor. The Board shall make contracts concerning the electric, water, and sewage facilities of the city, subject to the overall control of the Council relating to all departments of the city.

**Section 15.4. Purchases and Sale of Personal Property.**

The Board of Public Utilities shall establish the procedures for the purchase and sale of personal property which may, in whole or in part, be through the officer charged with the functions of making purchases for the city. Subject to the approval of the Council, the Board shall provide the dollar limit within which purchases of personal property may be made without the necessity of securing competitive bids, and the dollar limit within which purchases may be made by the Director without the necessity of Board approval.

**Section 15.5. Property of the Board.**

The Board shall have the power to acquire property, and interest in property, both real and personal, in the name of the city, for its purposes, and shall have the power to dispose of personal property by sale, exchange, or lease. The Board may dispose of real property or any interest therein by sale, exchange, lease, or otherwise, upon the approval thereof by the affirmative vote of not less than six members of the Council, and subject to the limitations on the sale of property by the city contained in Sections 13.3 and 14.5 of this charter.

**Section 15.6. Power of Board.**

- (a) The Board shall have full power and authority to fix all rates for electricity, water, and sewage disposal services, which shall become effective 30 days after the same have been approved by the Council and filed with the Clerk as a public record. Such rates shall not be fixed any lower than will produce the revenue required to pay all operating, maintenance, depreciation, and obsolescence expenses of the city's electric, water, and sewer and sewage disposal utility systems, together with a sufficient amount to provide for necessary expansions and extensions.
- (b) The Board and the Council shall agree upon rates and conditions upon which the Board will furnish electricity and services for street lighting and other city uses, and water and sewage disposal services used by the city.

**Section 15.7. Appropriations to the Board.**

- (a) The Board of Public Utilities shall submit to the City Manager the itemized estimates required by Section 7.2. of this charter. The City Manager shall include such estimates in the budget proposal submitted to the Council, without change or recommendation on his part, except that he may make recommendations concerning such parts thereof as directly affect or relate to departments of the city for which he is responsible. The Council shall consider such estimates in the same manner as the estimates of other departments of the city when it adopts the budget of the city for the ensuing fiscal year of the city and the appropriation for such fiscal year shall include the operation, maintenance, extension, and improvement of the utilities of the city which are entrusted to the Board.
- (b) No appropriations of money shall be made by the Council for the operating expenses of the city's utility facilities entrusted to the Board, other than to pay for utility services actually used by the city, if it is agreed between the Board and the Council that such payment shall be made. No free service of electricity, water, or sewage disposal shall be furnished by the city's utility services to any person, public or private, or to any public agency or instrumentality, other than the city.

**Section 15.8. Board Fund Control.**

- (a) Subject to the provisions of this charter, and the general accounting procedures of the city which shall be consistent with and meet any requirements of law, the Board shall have and exercise control over all of its funds. Such funds and revenues shall be in a bank account separate from other city funds. Except as provided in Section 15.9 to 15.13 inclusive, such funds shall be used only to defray the cost of operating the city's electric plant or plants and distribution systems, water plant and system, and sewage plant and system, necessary overhead, plant and system extensions, debt service, and other incidental and pertinent expenses of operating, maintaining, improving, extending, and changing the electric, water, and sewage and sewage disposal plants and systems, including allowance for depreciation and obsolescence. All checks drawn for the payment of money, under authority of the Board, shall be signed by the City Treasurer in addition to the signature of any person authorized by

the Board to sign such checks.

#### **Section 15.9. Payments to the City.**

- (a) The Board of Public Utilities shall, annually, pay to the Treasurer for the use and benefit of the city, 6 1/2% of the gross income of the department, which payment shall be in recognition of and compensation for all benefits received from the city in the use of city streets, services, and facilities and shall constitute a part of the expenses of the administration and operation of the utilities of the city required to be paid under the first priority of Section 15.12 (a).
- (b) Notwithstanding other provisions of this chapter, except when otherwise provided by Section 15.12 (b) of this chapter, the Board shall have power to transfer to the city such sums of money as it may deem proper and under such terms and conditions as the Board and the Council may mutually agree upon.

#### **Section 15.10. Loans to the Board of Public Utilities.**

The Council shall have power to loan money to the Board of Public Utilities from funds of the city which are not appropriated or budgeted for expenditure within the term of such loan. Each such loan shall be based upon the payment of reasonable interest by the Board, to be determined by the Council, and the repayment thereof to the city in substantially equal annual or other periodic installments.

#### **Section 15.11. Utility Reserve Fund.**

- (a) There is hereby created a public utility reserve fund in the amount of 15% of the undepreciated original cost of the utilities and facilities of the city entrusted to the Board, which reserve fund shall be maintained for the purpose of accumulating and holding available such money which, in addition to insurance carried by the city, may be deemed by the Board of Public Utilities to be prudently necessary for the protection, improvement, replacement, and extension of the city's public utilities and facilities entrusted to the Board. Such fund shall not be allowed to fall below the sum of 5% of the undepreciated original cost of the said utilities and facilities, as estimated by the Board and approved by the Council, including the value of any fire, wind, explosion, or other disaster type of insurance carried on the utilities and their facilities. The Council may, at any time, at the request or with the consent of the Board, and for so long as it deems desirable, increase the amount held and reserved in the city's public utility fund to a sum larger than the amount required to be maintained by this section.
- (b) Moneys placed in the city public utility reserve fund shall not be used for any purpose other than the purpose of the fund, as stated in this section, unless the proposition to do so is approved by a majority of the electors of the city who are the owners of property which is assessed for taxes by the city, and the lawful husbands and wives of such persons, voting on such proposition at a regular or special election. This subsection shall not prohibit the investment and reinvestment of such moneys in any manner permitted by law.

#### **Section 15.12. Distribution of Revenues of City Utilities.**

- (a) The revenues of each utility of the city shall be devoted to the following purposes in the order listed: First, to the expense of administration and operation of each utility, and the maintenance thereof as may be necessary to preserve it and its facilities in good repair and working order; second, such of the remaining amount of the revenues as may be required for the principal and interest on any indebtedness against the utility; third, of the remaining amount of the revenues, an amount shall each

year, be placed in the city's public utility reserve fund or funds which shall be sufficient to maintain the said fund at the per cent level established by Section 15.11 of this chapter, or such higher level as may be established under Section 15.11 (a) or for any reserve fund established for any bond issue, so long as any of the bonds thereof remain unpaid: Provided, that, in case of the depletion of the city's public utility reserve fund below the level so established, or if there exists any debt from the city to such fund, no funds shall be devoted to the next (fourth) purpose, until such level has been restored or such debt repaid, or both; and fourth, unless otherwise required by law, the balance of such revenues shall be placed in the fund created by Section 15.13.

- (b) In the event that the city shall issue bonds under the provisions of Act 94 of the Public Acts of 1933, as amended, or under the provisions of any other legislative authority authorizing the issuance of bonds based upon the revenue of a public utility, and to the extent that it has issued any such bonds, the provisions of this section, and of Section 15.13 shall be subject to the provisions of such act and any ordinance adopted in accordance therewith.

#### **Section 15.13. Uses and Distribution of Utility Funds Under Fourth Purpose.**

All revenues of the City's utility operations which are placed in the funds of the city in accordance with the fourth provision of Section 15.12 shall be placed in a fund which is hereby created to be known as the capital public improvement fund, to be used solely to defray the cost or a part of the cost of capital public improvements of the city. No moneys shall be expended from the capital public improvement fund, except to alleviate disaster, unless the proposition to do so is placed before the people of the city by a vote of not less than six members of the Council and is then approved by a vote of not less than a majority of the electors of the city voting on such proposition at a regular or special election, who are the owners of property assessed for taxes by the city, and the lawful husbands or wives of such persons.

#### **Section 15.14. Operating Personnel.**

The director shall have power to employ all personnel deemed by him to be necessary for carrying on the supervision, operation, maintenance, and general conduct of the utilities of the city entrusted to the Board. Such salaries and hourly rates of pay as are established within the department shall be consistent with the salaries and rates of pay established by the Council for city employees performing comparable work, but shall not be so limited for other employees of the Board.

#### **Section 15.15. Annual Report of Board of Public Utilities.**

An annual report shall be prepared by the Board within 60 days after the completion of the annual audit, made under the provisions of Section 7.14 of this charter, which report shall clearly show the financial position of the utility systems of the city entrusted to the Board by a profit and loss statement, balance sheet, and such other information as may be pertinent thereto. Such annual report shall be published in a manner determined by the Board, and one copy thereof shall be filed with the Clerk, one with the Public Library, and one with each newspaper published in the city.<sup>9</sup>

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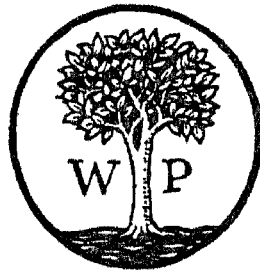
9. Editor's Note: The Schedule Chapter that immediately followed is included as an attachment to this Charter.

# EXHIBIT B

COLLEGE EDITION

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WEBSTER'S  
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certainly; feel one's way. *v.t.* to seek or find by groping; feel (one's way). *n.* a groping.

**gros-beak** (grōs'bēk'), *n.* [Fr. *grosbec*; see GROSS & BEAK], any of various birds of the finch family, with a thick, strong, comical bill.

**gro-schen** (grō'shən), *n.* [*pl.* GROSCHEIN], [G. < 14th-c. dial. *grosch(e)* < Czech *groš* < ML. *grossus*, short for *denarius grossus*, thick denarius, or *grossus Turonensis*, thick (coin of) Tours; see GROSS, GROAT (coin)], 1. in Austria, a bronze coin equal to 1/100 schilling. 2. in Germany, a) formerly, a small silver coin of varying value. b) [Colloq.], the 10-pfennig coin.

**gro-s-grain** (grō'sgrān'), *adj.* [Fr.; see GROGRAM], having heavy, crosswise cords: as, *grosgrain* silk. *n.* 1. *grosgrain* silk. 2. ribbon made of this.

**gross** (grōs), *adj.* [ME. *groos*, *grose*; OFr. *gros*, big, thick, coarse < LL. *grossus*, thick], 1. too fat; overfed; corpulent; burly. 2. glaring; flagrant; very wrong: as, a *gross* miscalculation. 3. dense; thick. 4. coarse; lacking fineness; not delicate. 5. lacking in refinement or perception; insensitive; dull. 6. vulgar; obscene; rude: as, *gross* language. 7. total; entire; with no deductions: as, one's *gross* income: opposed to *net*. 8. [Archaic], plain; evident; obvious. *n.* [ME. *groos*; orig. < OFr. *grosse*, fem. of *gros*], 1 [*pl.* GROSSES (-iz)], the mass or bulk; whole amount. 2. [*pl.* GROSS], twelve dozen. abbreviated *gr.*, *gro.* *v.t.* & *v.i.* [Colloq.], to make (a specified total amount) before expenses are deducted. —*SYN.* see *coarse*, *flagrant*.

**in the gross**, 1. in bulk; as a whole. 2. wholesale.

**gross ton**, a unit of weight, equal to 2,240 pounds: also called *long ton*.

**Gross-war-dein** (grōs'vār-dēn'), *n.* Oradea, a city in Romania: the German name.

**gross weight**, the total weight of a commodity or goods, including the weight of the covering material or container: distinguished from *net weight*: abbreviated *gr. wt.*

**Grosz, George** (grōs), 1893–; German painter in America.

**grot** (grōt), *n.* [Fr. *grotte*; It. *grotta*], [Poetic], a grotto.

**Grote, George** (grōt), 1794–1871; English historian.

**grotesque** (grō-tesk'), *adj.* [Fr.; It. *grottesco*, odd, extravagant < *grotta*, a grotto: so called from imitating designs found in excavations, etc.], 1. in or of a style of painting, sculpture, etc. in which forms of persons and animals are intermingled with foliage, flowers, fruits, etc. in a fantastic design; hence, 2. characterized by distortions or striking incongruities in appearance, shape, manner, etc.; fantastic; bizarre. 3. ludicrously eccentric or strange; ridiculous; absurd. *n.* 1. a grotesque painting, sculpture, etc. 2. grotesque quality, character, or style. 3. a grotesque figure or design. —*SYN.* see *fantastic*.

**grotes-quer-ie**, **grotes-quer-y** (grō-tes'kēr-ē), *n.* [*pl.* GROTESQUERIES (-iz)], [*<* *grotesque*], 1. a grotesque thing. 2. the quality or state of being grotesque. 3. grotesque paintings, etc. collectively.

**Gro-ti-us, Hugo** (grō'shi-əs), (born *Huig de Groot*), 1583–1645; Dutch statesman and jurist.

**grot-to** (grōt'ō), *n.* [*pl.* GROTTOS, GROTTOS (-ōz)], [It. *grotta* < LL. *grupta*; L. *crypta*; see CRYPT], 1. a cave. 2. a cave-like summerhouse, shrine, etc.

**grouch** (grōch), *v.i.* [prob. < ME. *grouchen*, to murmur, grudge; OFr. *grouchier*], [Colloq.], to grumble or sulk. *n.* [Colloq.], 1. a person who grouches. 2. a grumbling or sulky mood. 3. a cause for complaint.

**grouch-ily** (grōch'ē-lē), *adv.* [Colloq.], in a grouchy manner.

**grouch-iness** (grōch'ē-nis), *n.* [Colloq.], the quality or state of being grouchy.

**grouch-y** (grōch'ē), *adj.* [GROUCHIER (-i-ēr), GROUCHIEST (-i-ist)], [*grouch* + -y], [Colloq.], grumbling; sulky.

**ground** (grōnd), *n.* [ME. *grounde*, *grund*; AS. *grund*, sea bottom, etc. (cf. GROUND SWELL); akin to G. *grund*; ? IE. \**ghren-to*, what is touched in passing over < base \**ghren-*, to rub against, etc.; cf. GRIND], 1. a) originally, the lowest part, base, or bottom of anything. b) the bottom of the sea. 2. the solid surface of the earth. 3. the soil of the earth; earth; land: as, he tills the *ground*. 4. any particular piece of land; especially, one set aside for a specified purpose: as, a hunting *ground*. 5. any particular area of reference, discussion, work, etc.; topic; subject: as, let us go over the *ground* again. 6. the distance to a goal, objective, position, etc. 7. basis; foundation; groundwork. 8. *often pl.* the logical basis of a conclusion, action, etc.; valid reason, motive, or cause. 9. the background or surface over which other parts are spread or laid, as the main surface of a painting. 10. in *electricity*, the connection of an electrical conductor with the ground: abbreviated *grd.* See also *grounds*. *adj.* 1. of, on, or near the ground. 2. growing or living in or on the ground. *v.t.* 1. to place or set on the ground; cause to touch the ground. 2. to cause (a ship, etc.) to run aground. 3. to found on a firm basis; establish. 4. to base (a claim, argument, etc.) on: as, *ground* your claims on fact. 5. to instruct (a person) in the elements or first principles of. 6. to provide with a background. 7. in *aviation*, to cause to remain on the ground; keep from

flying: as, the plane was *grounded* by bad weather. 8. in *electricity*, to connect (an electrical conductor) with the ground, which becomes part of the circuit. *v.i.* 1. to strike or fall to the ground. 2. to strike the bottom or run ashore: said of a ship. 3. in *baseball*, to be put out on a grounder (usually with *out*).

**above ground**, alive.

**break ground**, 1. to dig; excavate. 2. to plow. 3. to start building. 4. to start any undertaking. 5. in *nautical usage*, to be hoisted from its bed: said of an anchor.

**cover ground**, 1. to traverse a certain distance. 2. to travel. 3. to get a certain amount of work done.

**cut the ground from under one's feet**, to deprive one of effective defense or argument.

**from the ground up**, from the first or elementary principles, methods, etc. to the last or most advanced; completely; thoroughly.

**gain ground**, 1. to move forward. 2. to make progress. 3. to gain in strength, extent, popularity, etc.

**give ground**, to withdraw under attack; retreat; yield.

**hold one's ground**, to keep one's position against attack or opposition; not withdraw or retreat.

**lose ground**, 1. to fall behind. 2. to lose in strength, extent, popularity, etc.

**on delicate ground**, in a situation requiring tact.

**on firm ground**, in a safe situation.

**on one's own ground**, 1. in a familiar situation. 2. on a subject that one knows well. 3. at home.

**on the ground of**, because of.

**run into the ground**, [Colloq.], to do too long or too often; overdo.

**shift one's ground**, to shift one's position; change one's argument or defense.

**stand one's ground**, to maintain one's position against attack or opposition; not withdraw or retreat.

**suit down to the ground**, [Colloq.], to suit completely.

**ground** (grōnd), past tense and past participle of *grind*.

**ground-age** (grōnd'āj), *n.* [*ground* + -age], a fee charged for permitting a ship to remain in a port.

**ground bait**, bait, often weighted bait, used in fishing close to the bottom of water.

**ground bass**, in *music*, a short phrase, usually of four to eight measures, played repeatedly in the bass against the melodies and harmonies of the upper parts.

**ground beam**, in *carpentry*, 1. a groundsel. 2. a sleeper.

**ground cherry**, any of various plants of the nightshade family, grown for ornamentation: some species have small, edible fruits enclosed in paperlike husks.

**ground color**, 1. the first coat of paint; base coat. 2. the background color.

**ground cover**, any of various low, dense-growing plants used for covering the ground, as in places where it is difficult to grow grass.

**ground crew**, a group of people in charge of the maintenance and repair of aircraft.

**ground-er** (grōnd'ēr), *n.* in *baseball*, *cricket*, etc., a batted ball that rolls or bounces along the ground.

**ground floor**, that floor of a building which is approximately level with the ground; first floor.

**in on the ground floor**, [Colloq.], 1. having the same terms and privileges as the original investors: said of someone buying shares of stock after the original issue. 2. in at the beginning (of a business, etc.); hence, 3. in at a position of advantage.

**ground glass**, glass whose surface has been ground so that it diffuses light and is therefore not transparent.

**ground hemlock**, an evergreen shrub with dark-green foliage and scarlet berries.

**ground-hog** (grōnd'hōg', grōnd'hog'), *n.* a ground hog.

**ground hog**, a woodchuck.

**ground-hog** (or **groundhog**) **day**, February 2, Candlemas Day, when the ground hog is said to come out of hibernation: if he sees his shadow, he will supposedly return to his hole for another six weeks of winter weather.

**ground ivy**, a creeping plant of the mint family, with round, toothed leaves and loose clusters of blue flowers.

**ground-less** (grōnd'lis), *adj.* [see GROUND & -LESS], without reason or cause; unjustified; baseless.

**ground-ling** (grōnd'lin), *n.* 1. a) a fish that lives close to the bottom of the water. b) an animal that lives on or in the ground. c) a plant that grows close to the ground; creeping plant. 2. in the *Elisabethan theater*, a person who watched the performance from the pit, which had only the ground for a floor; hence, 3. a person lacking critical ability or taste.

**ground loop**, an uncontrollable sharp turn sometimes made by a taxiing airplane in taking off or landing.

**ground-mass** (grōnd'mas'), *n.* the matrix in which rock crystals are embedded.

**ground-nut** (grōnd'nūt'), *n.* 1. any of various plants with edible tubers or tuberlike parts, as the peanut. 2. the edible tuber or tuberlike part.

**ground pine**, 1. any of several kinds of club moss, an evergreen with creeping or underground stems and erect, treelike branches. 2. a European plant that smells like resin.

**ground plan**, 1. a plan of the ground floor or of any

**inclusion body**, any of various small particles occurring in the leucocytes in various diseases, especially in scarlet fever.

**in-clu-sive** (in-klōō'siv), *adj.* [ML. *inclusivus* < L. *inclusus*, pp. of *incluere*], 1. including or tending to include; especially, taking everything into account; reckoning everything. 2. including the terms, limits, or extremes mentioned: as, a vacation from the first to the tenth *inclusive* is a vacation of ten days. Abbreviated *incl.*, *inc.*

**inclusive of**, including; taking into account.

**in-co-er-ci-ble** (in'kō-ēr'sə-b'l), *adj.* 1. that cannot be coerced. 2. in *physics*, incapable of being reduced to a liquid by pressure: said of a gas.

**in-cog** (in-kog'), *adj.*, *adv.*, *n.* [Collog.], incognito.

**in-cog-i-ta-ble** (in-koj'ə-tə-b'l), *adj.* [L. *incogitabilis*; see IN- (not) & COGITABLE], unthinkable.

**in-cog-i-tant** (in-koj'ə-tənt), *adj.* [L. *incogitans*; *in-*, not + *cogitans*, ppr. of *cogitare*, to cogitate, think], unthinking; thoughtless.

**in-cog-ni-ta** (in-kog'ni-tə), *n.* & *adj.* [*pl.* INCOGNITAS (-təz)], [It.], feminine of incognito.

**in-cog-ni-to** (in-kog'ni-tō, in'kæg-nē'tō), *adv.* & *adj.* [It. < L. *incognitus*, unknown; *in-*, not + *cognitus*, pp. of *cognoscere*, to know], with true identity unrevealed or disguised; under an assumed name, rank, etc.: as, the duke traveled *incognito*. *n.* [*pl.* INCOGNITOS (-tōz')], 1. a person who is incognito. 2. a) the state of being incognito. b) the disguise assumed. Abbreviated *incog-*. —*SYN.* see pseudonym.

**in-cog-ni-zant** (in-kog'ni-zənt, in-kon'f-i-zənt), *adj.* not cognizant (*of*).

**in-co-her-ence** (in'kō-hēr'əns), *n.* 1. lack of coherence; a being incoherent. 2. incoherent speech, thought, etc.

**in-co-her-en-cy** (in'kō-hēr'ən-si), *n.* [*pl.* INCOHERENCIES (-siz)], incoherence.

**in-co-her-ent** (in'kō-hēr'ənt), *adj.* not coherent; specifically, a) lacking cohesion; not sticking together. b) not logically connected; disjointed; rambling. c) characterized by incoherent speech, thought, etc.

**in-com-bus-ti-bil-i-ty** (in'kəm-bus'tə-bil'ə-ti), *n.* the quality or state of being incombustible.

**in-com-bus-ti-ble** (in'kəm-bus'tə-b'l), *adj.* not combustible; that cannot be burned; fireproof. *n.* an incombustible substance.

**in-come** (in'kum), *n.* [ME. < AS. *in*, in + *cuman*, to come], 1. a coming in. 2. the money or other gain periodically received by an individual, corporation, etc., for labor or services, or from property, investments, operations, etc.: abbreviated *inc.*

**in-com-er** (in'kum'ēr), *n.* a person or thing that comes in or follows another.

**income tax**, a tax on income or on that part of income which exceeds a certain amount.

**in-com-ing** (in'kum'ing), *adj.* [ME. < *incomen*, to come in; AS. *incuman*], coming in or about to come in: as, *incoming* profits. *n.* 1. a coming in. 2. what comes in.

**in-com-men-su-ra-bil-i-ty** (in'kə-men'shōr-ə-bil'ə-ti, in'kə-men'sēr-ə-bil'ə-ti), *n.* the quality or state of being incommensurable.

**in-com-men-su-ra-ble** (in'kə-men'shōr-ə-b'l, in'kə-men'sēr-ə-b'l), *adj.* [ML. *incommensurabilis*; see IN- (not) & COMMENSURABLE], 1. that cannot be measured or compared by the same standard or measure; without a common standard of comparison: as, coins and trees are *incommensurable*. 2. not worthy of comparison: as, your belief is *incommensurable* with truth. 3. having no common divisor: said of two or more numbers or quantities. *n.* an incommensurable thing, quantity, etc.

**in-com-men-su-ra-bly** (in'kə-men'shōr-ə-bli, in'kə-men'sēr-ə-bli), *adv.* 1. in an incommensurable manner. 2. to an incommensurable degree.

**in-com-men-su-rate** (in'kə-men'shōr-it, in'kə-men'sēr-it), *adj.* not commensurate; specifically, a) not equal in measure or size. b) not proportionate; not adequate: as, his ability is *incommensurate* to his work. c) that cannot be measured or compared by the same standard or measure; incommensurable.

**in-com-mode** (in'kə-mōd'), *v.t.* [INCOMMODO (-id), INCOMMODOING], [Fr. *incommoder*; L. *incommodare* < *incommodus*, inconvenient; *in-*, not + *commodus*, convenient], to inconvenience; bring discomfort to; put out; bother.

**in-com-mo-di-ous** (in'kə-mō'di-əs), *adj.* [*in-* (not) + *commodious*], 1. causing inconvenience; uncomfortable; troublesome. 2. inconveniently small, narrow, etc.

**in-com-mo-di-ty** (in'kə-mōd'ə-ti), *n.* [*pl.* INCOMMODITIES (-tiz)], [Fr. *incommodité*; L. *incommoditas*; see INCOMMODO], inconvenience; discomfort.

**in-com-mu-ni-ca-ble** (in'kə-mū'ni-kə-b'l), *adj.* [LL. *incommunicabilis*], that cannot be communicated or told.

**in-com-mu-ni-ca-bly** (in'kə-mū'ni-kə-bli), *adv.* in an incommunicable manner.

**in-com-mu-ni-ca-do** (in'kə-mū'ni-kə'dō), *adj.* [Sp.],

unable or not allowed to communicate; cut off from means of communication: as, the prisoners were held *incommunicado*.

**in-com-mu-ni-ca-tive** (in'kə-mū'ni-kā'tiv, in'kə-mū'ni-kə-tiv), *adj.* not communicative; not inclined to talk; reserved; reticent.

**in-com-mut-a-ble** (in'kə-mū'tə-b'l), *adj.* [L. *incommutabilis*; see IN- (not) & COMMUTABLE], that cannot be changed or exchanged.

**in-com-mut-a-bly** (in'kə-mū'tə-bli), *adv.* in an incommutabile manner.

**in-com-pact** (in'kəm-pakt'), *adj.* not compact; loosely assembled; not solid.

**in-com-pa-ra-bil-i-ty** (in'kəm-pēr-ə-bil'ə-ti, in-kom'pēr-bil'ə-ti), *n.* the quality or state of being incomparable.

**in-com-pa-ra-ble** (in-kom'pēr-ə-b'l, in-kom'pēr-b'l), *adj.* that cannot be compared; specifically, a) having no basis of comparison; having no characteristics in common; incommensurable. b) beyond comparison; unequalled; matchless; peerless: as, *incomparable* skill.

**in-com-pa-ra-bly** (in-kom'pēr-ə-bli, in-kom'pēr-bli), *adv.* in an incomparable manner; beyond comparison.

**in-com-pa-ti-bil-i-ty** (in'kəm-pat'ə-bil'ə-ti), *n.* [Fr. *incompatibilité*], 1. the quality of being incompatible; inability to live together harmoniously or get along well with each other; disagreement. 2. [*pl.* INCOMPATIBILITIES (-tiz)], something incompatible.

**in-com-pat-i-ble** (in'kəm-pat'ə-b'l), *adj.* [ML. *incompatibilis*], 1. not compatible; not in harmony or agreement; incongruous (often followed by *with*). 2. that cannot be held at one time by the same person: said of positions, ranks, etc. 3. in *medicine & pharmacy*, not suitable for being mixed or used together: said of substances having an undesirable action on each other or on the body. *n.* usually in *pl.* an incompatible person or thing.

**in-com-pat-i-bly** (in'kəm-pat'ə-bli), *adv.* in an incompatible manner.

**in-com-pe-tence** (in-kom'pə-təns), *n.* [Fr. *incompétence*], the quality, state, or fact of being incompetent.

**in-com-pe-ten-cy** (in-kom'pə-tən-si), *n.* incompetence.

**in-com-pe-tent** (in-kom'pə-tənt), *adj.* [Fr. *incompétent*; LL. *incompetens*; see IN- (not) & COMPETENT], 1. without adequate ability, knowledge, fitness, etc.; failing to meet requirements; incapable; unskillful. 2. not legally qualified. *n.* an incompetent person; especially, one who is mentally deficient.

**in-com-plete** (in'kəm-plēt'), *adj.* [LL. *incompletus*; see IN- (not) & COMPLETE], 1. lacking a part or parts; not whole; not full. 2. unfinished; not concluded. 3. not perfect; not thorough. 4. designating or of a chemical reaction that is reversible.

**in-com-plete-ly** (in'kəm-plēt'li), *adv.* not completely; not entirely; imperfectly.

**in-com-ple-tion** (in'kəm-plēt'shən), *n.* the state of being incomplete.

**in-com-pli-ance** (in'kəm-pli'əns), *n.* a being in-compliant.

**in-com-pli-an-cy** (in'kəm-pli'ən-si), *n.* in-compliance.

**in-com-pli-ant** (in'kəm-pli'ənt), *adj.* not compliant; not yielding; not pliant.

**in-com-pre-hen-si-bil-i-ty** (in'kəm-pri-hen'sə-bil'ə-ti, in-kom'pri-hen'sə-bil'ə-ti), *n.* the quality or fact of being incomprehensible.

**in-com-pre-hen-si-ble** (in'kəm-pri-hen'sə-b'l, in-kom'pri-hen'sə-b'l), *adj.* 1. not comprehensible; that cannot be understood; unintelligible. 2. [Archaic], illimitable.

**in-com-pre-hen-si-bly** (in'kəm-pri-hen'sə-bli, in-kom'pri-hen'sə-bli), *adv.* in an incomprehensible manner; beyond comprehension.

**in-com-pre-hen-sive** (in'kəm-pri-hen'siv, in-kom'pri-hen'siv), *adj.* 1. not inclusive; including little. 2. not able to comprehend well; understanding little.

**in-com-press-i-bil-i-ty** (in'kəm-pres'ə-bil'ə-ti), *n.* the quality or state of being incompressible.

**in-com-press-i-ble** (in'kəm-pres'ə-b'l), *adj.* that cannot be compressed.

**in-com-put-a-bil-i-ty** (in'kəm-pūt'ə-bil'ə-ti), *n.* the quality of being incomputable.

**in-com-put-a-ble** (in'kəm-pūt'ə-b'l), *adj.* that cannot be computed.

**in-con-ceiv-a-bil-i-ty** (in'kən-sēv'ə-bil'ə-ti), *n.* the quality of being inconceivable.

**in-con-ceiv-a-ble** (in'kən-sēv'ə-b'l), *adj.* that cannot be conceived; that cannot be thought of, understood, imagined, or believed.

**in-con-ceiv-a-bly** (in'kən-sēv'ə-bli), *adv.* 1. in an inconceivable manner. 2. to an inconceivable degree.

**in-con-clu-sive** (in'kən-klōō'siv), *adj.* not conclusive; not decisive; not final; ineffective.

**in-con-den-sa-bil-i-ty** (in'kən-den'sə-bil'ə-ti), *n.* the quality of being incondensable.

**in-con-den-sa-ble**, **in-con-den-si-ble** (in'kən-den'sə-b'l), *adj.* that cannot be condensed.

fat, āpe, bāre, cār; ten, ēven, hēre, ovēr; is, bīte; lot, gō, hōrn, tōōl, look; oil, out; up, ūse, fūr; get; joy; yet; chin; she; thīn, thēn; zh, leisur; n, nāg; ē for ē in āgo, ē in āgent, ē in sānity, o in cōmply, u in fōcus; \* as in āble (ā'b'l); Fr. bāl; ē, Fr. cōeur; ē, Fr. fēu; Fr. mōr; ā, Fr. cōq; ā, Fr. due; H, G. ich; kh, G. doch. See pp. x-xii. † foreign; \* hypothetical; < derived from.

to (a partner's lead) with a lead of the same suit.  
*n.* [ME. *return* < the *v.*], 1. a coming or going back, as to a former place, condition, etc. 2. a bringing, sending, carrying, or putting back; restoration or replacement. 3. something returned. 4. a coming back again; reappearance; recurrence: as, on his birthday they wished him many happy *returns* of the day. 5. something done or given as an equivalent for that received; repayment; requital; reciprocation. 6. *a*) profit made on an exchange of goods. *b*) *often in pl.* yield, profit, or revenue, as from labor, investments, etc. *c*) yield per unit as compared to cost per unit, as in the manufacture of a given product; rate of yield. 7. *a*) a bend or turn, as in a line, wall, etc. *b*) the section between two such bends. 8. an answer; reply; response. 9. a report; especially, *a*) an official or formal report, as of the financial condition of a company. *b*) *usually in pl.* a report on a count of votes at polling places: as, election *returns*. 10. in *architecture*, etc., the continuation, as of a molding, colonnade, etc., in a different direction, often at a right angle. 11. in *card games*, a lead in response to a partner's lead. 12. in *law*, *a*) the bringing or sending back of a writ, subpoena, summons, etc. to the proper court or official, usually with a short report endorsed on it. *b*) a certified report by an election official, assessor, etc. *c*) a certificate or report endorsed on any such document. 13. in *tennis*, etc., *a*) a batting or throwing back of a ball. *b*) a ball so returned. *adj.* 1. of or for a return or returning: as, a *return* ticket. 2. given, sent, done, etc., in return: as, a *return* visit. 3. returning. 4. returned. 5. changing or reversing direction or formed by a change or reversal in direction, as a bend in a road.

**in return**, as a return; as an equivalent, response, etc.  
**SYN.**—*return* is the common word meaning to go or come back, as to a former place, person, or condition (let us *return* home); *revert* implies a return to an earlier, usually more primitive, condition, or to the original owner, to a former topic of discussion, etc. (they have *reverted* to savagery); *recur* suggests the return of some action, occurrence, experience, etc. and often connotes its repeated return at intervals (malaria is characterized by a *recurring* fever).

**return-a-ble** (ri-tür'ne-b'l), *adj.* 1. that can be returned. 2. that must be returned.

**return ticket**, 1. a ticket for the trip back to the original starting point. 2. a round-trip ticket.

**re-tuse** (ri-tüs'ə, ri-tüs'), *adj.* [L. *retusus*, dull, pp. of *retundere*, to beat back], in *botany*, having a blunt or rounded apex with a small notch, as some leaves.

**re-type** (rē-tīp'), *for n.*, rē'tīp'), *v.t.* to type over again. *n.* something retyped.

**Reu-ben** (rōb'bin), [Heb. *re'ubēn*, lit., behold, a son], a masculine name; diminutives, *Rube*, *Ruby*. *n.* in the *Bible*, 1. the eldest son of Jacob; Gen. 29. 2. the tribe of Israel descended from him: Numb. 32.

**Reuch-lin, Jo-hann** (yō'hän roiH'lēn, roiH-lēn'), 1455-1522; German scholar of Greek and Hebrew.

**Ré-union** (rā'ūnyōn'; Eng. rē-ūnyōn), *n.* a French island in the Indian Ocean, east of Madagascar: area, 970 sq. mi.; pop., 242,000 (est. 1947); capital, St. Denis; former name, *Bourbon*.

**re-un-ion** (rē-ūnyōn), *n.* [*re-* + *union*; cf. Fr. *réunion*], 1. a bringing or coming together again; reuniting. 2. a gathering of persons after separation, as of members of a college class or of a family.

**re-un-ion-ist** (rē-ūnyōn-ist), *n.* an advocate of re-union; specifically, an advocate of the reunion of the Anglican Church with the Roman Catholic Church.

**re-un-ite** (rē'yoo-nīt'), *v.t. & v.i.* [*< ML. reunitus*, pp.], to unite again; bring or come together again.

**Reu-ters** (rōi'tērz), *n.* [after Baron Paul Julius von *Reuter* (1821-1899), the founder], a private British agency for gathering and distributing news among member newspapers; also *Reuter's News Agency*.

**Reu-ther, Walter Phillip** (rōi'thēr), 1907-; American labor leader; president of the C.I.O. (1932-1955).

**rev** (rev), *n.* [Colloq.], a revolution, as of an engine. *v.t.* [REVVED (revd), REVVING], [Colloq.], to change the speed of (an engine, motor, etc.): usually in *rev up*, to accelerate. *v.l.* [Colloq.], to undergo revving.

**Rev.**, 1. Revelation. 2. [pl. REVS.], Reverend. **rev.**, 1. revenue. 2. reverse. 3. review. 4. revise. 5. revised. 6. revision. 7. [pl. REVS.], revolution. 8. revolving.

**Re-val** (rē'vāl), *n.* Tallinn, the capital of the Estonian S.S.R.: the German name.

**re-vamp** (rē-vamp'), *v.t.* to vamp again or anew; specifically, *a*) to put a new vamp on (a shoe or boot). *b*) to renovate; patch up; redo.

**re-veal** (ri-vēl'), *v.t.* [ME. *reveles*; OFr. *revealer* (Fr. *révéler*); L. *revelare*, lit., to draw back the veil < re-

back + *velum*, a veil (see VEIL)], 1. to make known (something hidden or kept secret); disclose; divulge. 2. to expose to view; show; exhibit; display.

**SYN.**—*reveal* implies a making known of something hidden or secret, as if by drawing back a veil (to *reveal* one's identity); *disclose* suggests a laying open, as to inspection, of what has previously been concealed (he refuses to *disclose* his intentions); *divulge* suggests that what has been disclosed should properly have been kept secret or private (do not *divulge* the contents of this letter); *tell* may also imply a breach of confidence (kiss and *tell*) but more commonly suggests the making known of necessary or requested information (*tell* me what to do); *betray* implies either faithlessness in divulging something (*betrayed* by an informer) or inadvertence in revealing something (her blush *betrayed* embarrassment).—**ANT.** conceal, hide.

**re-veal** (ri-vēl'), *n.* [*< ME. revealen*, to bring down; OFr. *revealer*; *re-*, back + *valer* (see VAL)], 1. that part of the side of an opening for a window or door which is between the outer edge of the opening and the frame of the window or door. 2. the entire side of such an opening; jamb.

**revealed religion**, any religion based on the belief that a deity has revealed himself and his will to his creatures.

**re-veal-ment** (ri-vēl'mənt), *n.* a revealing or being revealed; disclosure; revelation.

**re-veil-le** (rēv'ə-li), *n.* [*< Fr. réveille* (-vous), imperative of (*se*) *réveiller*, to wake up; *rē-* (< L. *re-*) + *veiller* (< L. *vigilare*, to watch)], in *military usage*, 1. a signal on a bugle, drum, etc. at some fixed time early in the morning to waken soldiers or sailors or call them to first assembly. 2. the first assembly of the day.

**Re-val** (rē'vāl; Russ. rē'vel'y'), *n.* Tallinn, the capital of the Estonian S.S.R.: the Russian name.

**rev-el** (rev'el), *v.i.* [REVILED or REVELLED ('-ld), REVELING or REVELLING], [ME. *revelen*; OFr. *revealer*; L. *rebellare*; see REBEL], 1. to make merry; be noisily festive. 2. to take much pleasure; delight (with *in*): as, he *revels* in sports. *n.* 1. merrymaking; boisterous festivity; revelry. 2. *often pl.* an occasion of merrymaking or boisterous festivity; celebration.

**reve-la-tion** (rēv'ə-lā'shən), *n.* [ME. *revelacioun*; OFr.; LL. *revelatio* < pp. of L. *revelare*], 1. a revealing, or disclosing. 2. something disclosed; disclosure; especially, a striking disclosure, as of something not previously known or realized. 3. in *Christian theology*, *a*) God's disclosure or manifestation to his creatures of himself and his will. *b*) an instance of this. *c*) what is so disclosed or manifested. *d*) something, as the Bible, containing such disclosure or manifestation. 4. [R-], also *pl.* the last book of the New Testament, ascribed to John (in full, *The Revelation of Saint John the Divine*; *Apocalypse*; abbreviated *Rev.*)

**reve-la-tion-ist** (rēv'ə-lā'shən-ist), *n.* 1. a person who believes in divine revelation. 2. [also R-], the author of Revelation.

**reve-la-tor** (rēv'ə-lā'tēr), *n.* [LL.; see REVEAL], a person who reveals something.

**rev-el-er**, **rev-el-ler** (rev'el-ēr), *n.* a person who revels or takes part in a revel; merry-maker.

**rev-el-ry** (rev'el-ri), *n.* [pl. REVELERIES (-riz)], reveling; noisy merrymaking; boisterous festivity.

**rev-en-ant** (rēv'ə-nənt), *n.* [Fr., pp. of *revenir*, to come back < L. *re-*, back + *venire*, to come], 1. a person who returns, as after a long absence. 2. a person who returns as a spirit after death; ghost.

**re-venge** (ri-venj'), *v.t.* [REVENGED (-venjd'), REVENGING], [OFr. *revenger*, *revanchier* < *re-*, again, + *venger*, older *vengier*, to take vengeance < L. *vindicare*; see VINDICATE], 1. to inflict damage, injury, or punishment in return for (an injury, insult, etc.); take vengeance for; retaliate for. 2. to take vengeance in behalf of (a person, oneself, etc.); avenge. *v.i.* [Obs.], to take vengeance. *n.* 1. a revenging; vengeance. 2. what is done in revenging. 3. desire to take vengeance; vindictive spirit. 4. a chance to retaliate or get satisfaction, as by a return match after defeat in a previous one.—**SYN.** see *avenge*.

**be revenged**, to get revenge; take vengeance.

**re-venge-ful** (ri-venj'fal), *adj.* full of revenge; feeling or showing a desire for revenge.—**SYN.** see *vindictive*.

**rev-en-ue** (rēv'ə-nū, rev'ə-nū), *n.* [ME. & OFr. *revenue* (Fr. *revenue*, fem.), pp. of *revenir*, to return, come back; *re-*, back + *venire* < L. *venire*, to come], 1. the return from property or investment; income. 2. *a*) an item or source of income. *b*) *pl.* items or amounts of income collectively. 3. the income from taxes, duties, etc. of a unit of government, as a city, county, state, nation, etc. 4. the governmental department or bureau that handles the collection of such income. Abbreviated *rev.*

**revenue cutter**, see *cutter* (sense 3b).

**revenue stamp**, a stamp placed on an article to show that a tax has been paid on it.

retwist  
re-use

revaluate  
revaluation

revalue  
revalue

revegetate  
revegetation

fat, āpe, hāre, cūr; ten, ēven, hāre, ovē; is, hīte; lot, gō, hōrn, tōll, look; oil, out; up, the, fūr; get; joy; yet; chin; she; thin, shen; zh, leisure; g, ring; o for a in ago, e in agent, i in sanity, c in comply, u in focus; ' as in able (ā'b'l); Fr. hāl, & Fr. coeur; & Fr. feu; Fr. mors; & Fr. coq; & Fr. due; H, G, ich; kh, G. doch. See pp. x-xii, † foreign; \* hypothetical; & derived from.

# EXHIBIT C

Code of Federal Regulations  
Title 26. Internal Revenue  
Chapter I. Internal Revenue Service, Department of the Treasury  
Subchapter A. Income Tax  
Part 1. Income Taxes (Refs & Annos)  
Normal Taxes and Surtaxes  
Computation of Taxable Income  
Definition of Gross Income, Adjusted Gross Income, and Taxable Income

26 C.F.R. § 1.61–3, Treas. Reg. § 1.61–3

§ 1.61–3 Gross income derived from business.

#### Currentness

**(a) In general.** In a manufacturing, merchandising, or mining business, “gross income” means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources. Gross income is determined without subtraction of depletion allowances based on a percentage of income to the extent that it exceeds cost depletion which may be required to be included in the amount of inventoriable costs as provided in § 1.471–11 and without subtraction of selling expenses, losses or other items not ordinarily used in computing costs of goods sold or amounts which are of a type for which a deduction would be disallowed under section 162(c), (f), or (g) in the case of a business expense. The cost of goods sold should be determined in accordance with the method of accounting consistently used by the taxpayer. Thus, for example, an amount cannot be taken into account in the computation of cost of goods sold any earlier than the taxable year in which economic performance occurs with respect to the amount (see § 1.446–1(c)(1)(ii)).

**(b) State contracts.** The profit from a contract with a State or political subdivision thereof must be included in gross income. If warrants are issued by a city, town, or other political subdivision of a State, and are accepted by the contractor in payment for public work done, the fair market value of such warrants should be returned as income. If, upon conversion of the warrants into cash, the contractor does not receive and cannot recover the full value of the warrants so returned, he may deduct any loss sustained from his gross income for the year in which the warrants are so converted. If, however, he realizes more than the value of the warrants so returned, he must include the excess in his gross income for the year in which realized.

#### Credits

[T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7207, 37 FR 20767, Oct. 5, 1972; T.D. 7285, 38 FR 26184, Sept. 19, 1973; T.D. 8408, 57 FR 12419, April 10, 1992]

**Historical Treasury Decisions:** T.D. 6272, Nov. 25, 1957; T.D. 7285, Sept. 14, 1973.

SOURCE: T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 31, 1960; T.D. 10042, 90 FR 57915, Dec. 15, 2025; T.D. 10040, 90 FR 58400, Dec. 16, 2025, unless otherwise noted.

AUTHORITY: Section 1.139E–1 also issued under 26 U.S.C. 139E.; Section 1.139E–1(d)(6) also issued under 26 U.S.C. 7872.; Section 1.139E–2 also issued under 26 U.S.C. 139E.; Section 1.7872–5(b)(17) also issued under 26 U.S.C. 7872.; Section 1.892–3 also issued under 26 U.S.C. 892(c).; Section 1.892–4 also issued under 26 U.S.C. 892(c).

## HISTORICAL NOTES

### Effective and Applicability Notes

May 10, 1992. In general, the final regulations apply to liabilities that would, under the law in effect before the enactment of section 461(h), be allowable as a deduction or otherwise incurred after July 18, 1984. In the case of certain liabilities that require payment to another person in order for economic performance to occur, the regulations apply to liabilities that would, but for the enactment of section 461(h), be allowable as a deduction or otherwise incurred for taxable years beginning after December 31, 1991. In the case of the economic performance requirement for certain employee benefit provisions, the final regulations provide that economic performance generally is satisfied to the extent that any amount is otherwise deductible under the provisions and, effective April 10, 1992, the final regulations remove temporary regulations concerning employee benefits.

### [Notes of Decisions \(42\)](#)

Current through February 13, 2026, 91 FR 7103. Some sections may be more current. See credits for details.

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# EXHIBIT D

2021 WL 5750616

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK  
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UNPUBLISHED  
Court of Appeals of Michigan.

[Daniel BRUNET](#), Individually and as  
Representative of a Class of Similarly Situated  
Persons and Entities, Plaintiff-Appellant,

v.

CITY OF ROCHESTER HILLS, Defendant-Appellee.

No. 354110

|

December 2, 2021

Oakland Circuit Court, LC No. 18-164764-CZ

Before: [Murray](#), C.J., and [Jansen](#) and [Riordan](#), JJ.

## Opinion

Per Curiam.

\*1 Plaintiff Daniel Brunet, individually and as class representative, appeals as of right the trial court's opinion and order granting defendant City of Rochester Hills's motion for summary disposition and denying his motion for partial summary disposition. This case concerns charges imposed by defendant for municipal water and sewer services. Defendant asserts that these charges are unlawfully excessive, unreasonable, and in violation of [MCL 141.91](#) and a now-amended municipal ordinance. We affirm.

### I. FACTS AND PROCEEDINGS

Defendant operates a municipal water supply system, of which plaintiff is a customer.<sup>1</sup> The water system has two central purposes: (a) supply treated or “potable” water to municipal water customers, and (b) provide excess capacity for public fire protection. In March 2018, plaintiff filed a 10-count complaint against defendant, generally alleging that the water charges imposed by defendant on its customers since 2012 have been unlawful for the following two principal reasons. First, defendant accumulated surplus funds

to allegedly pay for future capital improvements to its water system, and these surplus funds are unnecessary to provide service to the *present* water customers. According to plaintiff, defendant may only charge its water customers for the present costs of supplying water. Second, defendant charges its water customers for the fire protection component of its water system. However, because fire protection operates for the benefit of the general public, not only the water customers themselves, the general public should be charged for the fire protection.<sup>2</sup> Plaintiff also noted that defendant had an ordinance providing that the fire protection component would be paid by defendant itself from its general fund. Plaintiff requested that the trial court certify the instant action as a class action with plaintiff himself as the class representative of all persons or entities who paid the water charges at any time in the preceding six years. He further requested that defendant disgorge the excess funds that it had received to the putative class in equity and that the trial court declare that the water charges are unlawfully excessive to the extent outlined in the complaint.

In March 2019, the trial court certified the class, which it defined as “all persons and entities who/which have paid the City for water and/or sewage disposal service at any time since March 30, 2012 or who/which pay the City for water and/or sewage disposal service during the pendency of this action.”

\*2 In December 2019, plaintiff moved for partial summary disposition, arguing that the water charges were unreasonable as a matter of law until November 2018 because defendant had the following ordinance in effect concerning the cost of fire protection services:

(b) Fire Service Fee. As a fire service fee for providing a water system with extra capacity available for fighting fires and protecting property in the city, the city shall be charged based on a base-extra capacity approach attributing to fire protection the difference between total system capacity and capacity required by other customer classes. The fire service fee shall be required and adjusted annually to reflect actual versus budgeted revenue requirement for the water fund for the previous year.

(c) Quarterly billing. Charges against the City shall be payable in quarterly installments from the current city's fire fund or from the proceeds of taxes which the city, within constitutional limitations, is authorized and required to levy in an amount sufficient for this purpose. [Rochester Hills Ordinance, § 102-124.]

Plaintiff argued that although Rochester Hills Ordinance, § 102-124 essentially required that the fire protection component be paid for by defendant itself, defendant violated the ordinance during the class period until November 2018 by charging its water customers for this service.<sup>3</sup> Thus, plaintiff argued, he and the class were entitled to a refund for monies paid for the fire protection component.

Defendant moved for summary disposition of the entire complaint.<sup>4</sup> Defendant acknowledged that the fund for its water system had accumulated a substantial surplus of about \$46 million in recent years. However, defendant asserted, the majority of the water system will need to be replaced in the upcoming five to 10 years, and it will likely use substantially all of its surplus funds to do so. Defendant explained that it always has intended to use the surplus funds for these upcoming capital improvement projects and that paying for the projects with cash is more fiscally responsible than doing so with bonds. Defendant argued that it was authorized by [MCL 141.121](#) to charge its customers for these future capital improvement projects and that its water charges were reasonable in all respects. Defendant also argued that a municipal regulation passed in 1999 authorized charging its water customers for the fire protection component, so its water charges were not unlawful to that extent.

The parties presented competing evidence concerning the reasonableness of the water charges, with plaintiff's experts opining that the water charges were unreasonably excessive, and defendant's experts opining that the charges were reasonable. The trial court discussed this evidence in a 37-page opinion and ultimately granted summary disposition in favor of defendant. In relevant part, the trial court reasoned that the water charges did not violate [MCL 141.91](#) because they were "user fees," not "taxes," under [Bolt v. City of Lansing](#), 459 Mich. 152, 587 N.W.2d 264 (1998); that the water charges were reasonable because plaintiff "has submitted no evidence of anything illegal or improper" and otherwise failed to overcome the presumption of reasonableness; and that plaintiff was not entitled to equitable relief with respect to the fire protection component of the water charges because his "sole evidence" in that regard was "an ordinance that was mistakenly left on the books and was arguably already overridden by lawful resolution."<sup>5</sup> Plaintiff now appeals.

## II. MCL 141.91

\*3 Plaintiff first argues that the water charges are an unlawful tax in violation of [MCL 141.91](#). We disagree.

We review de novo whether a municipal charge is a "tax." See [Mapleview Estates, Inc. v. City of Brown City](#), 258 Mich.App. 412, 413-414, 671 N.W.2d 572 (2003). We also review de novo questions of statutory interpretation. [PNC Nat'l Bank Ass'n v. Dep't of Treas.](#), 285 Mich.App. 504, 505, 778 N.W.2d 282 (2009). Finally, "[t]his Court reviews de novo a trial court's ruling on a motion for summary disposition." [Hartfiel v. City of Eastpointe](#), 333 Mich.App. 438, 444, 960 N.W.2d 174 (2020).

It is initially noted that plaintiff brought alternative claims for assumpsit and unjust enrichment.<sup>6</sup> "At common law, assumpsit was a proper vehicle for recovering unlawful fees, charges, or exactions—including unlawful utility charges—that the plaintiff had paid to a municipality under compulsion of local law." [Youmans v. Charter Twp. of Bloomfield](#), — Mich.App. —, —, — N.W.2d —, 2021 WL 67885 (2021) (Docket No. 348614); slip op. at 27 (cleaned up). "With the adoption of the General Court Rules in 1963, assumpsit as a form of action was abolished. But notwithstanding the abolition of assumpsit, the substantive remedies traditionally available under assumpsit were preserved." *Id.* (cleaned up). "Hence, an assumpsit claim is modernly treated as a claim arising under quasi-contractual principles, which represent a subset of the law of unjust enrichment." *Id.* (quotation marks and citations omitted). "Unjust enrichment is a cause of action to correct a defendant's unjust retention of a benefit owed to another." [Wright v. Genesee Co.](#), 504 Mich. 410, 417, 934 N.W.2d 805 (2019). Consequently, if plaintiff is correct that the water charges violated [MCL 141.91](#) (or any other law), he and the class would arguably be entitled to equitable relief to recover the charges unlawfully paid.

[MCL 141.91](#) provides as follows:

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.

MCL 141.121 provides, in relevant part, as follows:

(1) Rates for services furnished by a public improvement shall be fixed before the issuance of the bonds. The rates shall be sufficient to provide for all the following:

(a) The payment of the expenses of administration and operation and the expenses for the maintenance of the public improvement as may be necessary to preserve the public improvement in good repair and working order.

\* \* \*

(d) Other expenditures and funds for the public improvement as the ordinance may require.

(2) The rates shall be fixed and revised by the governing body of the borrower so as to produce the amount described in subsection (1)....<sup>7</sup>

\*4 MCL 141.121 places “the amount of the charge within the sound discretion of the city officials, especially when considered in relation to the objectives of the program in maintaining the system and paying off the bonds in the manner required by statute.” *Yurek v. City of Sterling Heights*, 37 Mich.App. 386, 390, 194 N.W.2d 474 (1971) (cleaned up).

In *Bolt v. City of Lansing*, 459 Mich. 152, 587 N.W.2d 264 (1998), our Supreme Court considered whether a “storm water service charge” was either a valid user fee or a tax that violated the Headlee Amendment, Const. 1963, art. 9, § 31, which generally prohibits the imposition of new municipal “taxes” that are not ratified by the voters. The charge was imposed on “each parcel of real property located in the city using a formula that attempts to roughly estimate each parcel’s storm water runoff,” and it was intended to fund the separation of combined sanitary and storm sewers within the city that had not already been separated. *Id.* at 155, 587 N.W.2d 264. In its analysis, the Court first observed that “a ‘fee’ is exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit. A ‘tax,’ on the other hand, is designed to raise revenue.” *Id.* at 161, 587 N.W.2d 264 (cleaned up). The Court then identified the following three factors to distinguish between a user fee and a tax: (1) “a user fee must serve a regulatory purpose rather than a revenue-

raising purpose,” (2) “user fees must be proportionate to the necessary costs of the service,” and (3) user fees contain an element of “voluntariness.” *Id.* at 161-162, 587 N.W.2d 264. The Court ultimately ruled that application of the three-factor test compelled the conclusion that the charge at issue was a tax for the purposes of the Headlee Amendment. *Id.* at 169, 587 N.W.2d 264.

In this case, plaintiff acknowledges in his brief on appeal that he is not maintaining a Headlee claim, but he argues that *Bolt* is persuasive authority for the proposition that the water charges at issue are unlawful “taxes” under MCL 141.91. In other words, because MCL 141.91 generally prohibits municipal taxes that are not otherwise authorized by law, and because application of the *Bolt* test indicates that the water charges here are “taxes,” it necessarily follows that the water charges violate MCL 141.91. However, plaintiff simply fails to address defendant’s argument that the water charges are authorized because they are fully consistent with MCL 141.121(1)(a) and (d). “An appellant’s failure to properly address the merits of an argument constitutes the abandonment of an issue.” *In re Application of Detroit Edison Co for 2012 Cost Recovery Plan*, 311 Mich.App. 204, 214, 874 N.W.2d 398 (2015). Thus, this issue is abandoned.<sup>8</sup>

Regardless, plaintiff’s argument is meritless. In essence, plaintiff argues that because a municipality generally may not charge current ratepayers for future capital improvements—as recognized by older cases such as *Wolgamood v. Village of Constantine*, 302 Mich. 384, 4 N.W.2d 697 (1942), and newer cases such as *Bolt*—it follows that the water charges here are not permissible “rates” or “fees” but are instead “taxes” because defendant acknowledges that the cash reserve will be used for future capital improvements. In our view, plaintiff overstates the principle derived from such cases.

\*5 In *Wolgamood*, our Supreme Court explained as follows:

A municipally owned utility is built and operated, not for a corporate profit, but for the purpose of providing utility services at a reasonable cost to the citizens of the municipality, who are generally identical with the customers. For a municipally owned light plant to charge rates which will, in addition to the necessary expenses of construction and operation, build up a reserve for

depreciation equaling the replacement cost of the plant, is to require the citizens and customers not only to pay for construction of their own utility but also to provide the capital for the construction of a new plant to serve future users. [*Wolgamood*, 302 Mich. at 404-405, 4 N.W.2d 697.]

In other words, a municipality may not charge current ratepayers for the costs of constructing the original municipal utility (typically through bonds that must be paid over time) and the future costs of replacing that same utility. Doing so “is to ask the consumers to pay off the capital investment twice, once as a debt service and again in the establishment of a depreciation reserve.” *Id.* at 405, 4 N.W.2d 697 (quotation marks and citation omitted). Of course, there is nothing in *Wolgamood*, or any other case of which we are aware, to suggest that a municipality may not charge current ratepayers once for the cost of the municipal utility. Thus, there is no question that current ratepayers may be charged for the cost of servicing bonds that were issued years ago to pay for the costs of constructing the original municipal utility. It follows that if the municipality originally constructed its utility through cash and intends to replace the utility in a similar manner, then current ratepayers may properly be charged for accumulating that cash reserve. That is, there is no conceptual difference between requiring ratepayers to service bonds and requiring ratepayers to contribute to a cash reserve that will be used for future capital improvements to the utility.

Accumulating such a cash reserve by charging ratepayers based on depreciation is an appropriate way to do so. In *City of Detroit v. City of Highland Park*, 326 Mich. 78, 39 N.W.2d 325 (1949), Highland Park argued that the water and sewage rates charged by Detroit were unreasonable because, among other reasons, Detroit included depreciation in its rates, and “to charge depreciation sufficient to amortize the cost over the service life of the system is to charge this generation for improvements to be used by the next generation.” *Id.* at 95, 39 N.W.2d 325. Our Supreme Court rejected that argument, explaining that Detroit advanced “huge sums ... as an investment in a utility on which Detroit may earn a reasonable return.” *Id.* Although Detroit issued bonds as well, “the bonds so issued were only for a small part of the total cost.” *Id.* “[O]n a utility basis where the city is not recovering its capital as part of the expense, depreciation charges sufficient to rebuild and restore the system over its

service are proper items of expense in determining the rate to be charged.” *Id.* at 98, 39 N.W.2d 325. “It is incumbent on the city of Detroit, the owner, to keep up, repair or rebuild the system to the extent that it becomes necessary through depreciation in order to protect its large investment, the advance of almost \$12,000,000 in cash besides the issuance of the bonds.” *Id.* Simply put, our Supreme Court approved of depreciation charges “sufficient to rebuild and restore the system” because Detroit was entitled to “protect its large investment.”

\*6 *Bolt* presented the same concern as *Wolgamood*. In *Bolt*, the Court reasoned that the charge at issue was a “tax” because, in relevant part, “[a]t the end of thirty years, property owners will have fully paid for a tangible asset that will serve the city for many years thereafter.... The revenue to be derived from the charge is clearly in excess of the direct and indirect costs of actually using the storm water system over the next thirty years and, being thus disproportionate to the costs of the services provided and the benefits rendered, constitutes a tax.” *Bolt*, 459 Mich. at 163, 587 N.W.2d 264. Thus, in *Bolt*, the ratepayers were expected to pay for the benefits of the improved system that they would enjoy and pay for the benefits of the improved system that future ratepayers, who would not pay the charge at issue, would enjoy. This constituted a similar “double charge” as in *Wolgamood*.

Accordingly, it is not enough for plaintiff to simply show that the water charges at issue are funding a reserve to pay for future capital improvements. Our Supreme Court approved of such a practice in *Highland Park*. Rather, at a minimum, plaintiff must also show that current ratepayers are being “double charged” for the water system, contrary to cases such as *Wolgamood* and *Bolt*. We consider that issue below.

### III. REASONABLENESS

Plaintiff argues that the water charges are unreasonable. We disagree. We review de novo whether a municipal charge is reasonable. See *Mapleview Estates, Inc.*, 258 Mich.App. at 413-414, 671 N.W.2d 572.

It is a longstanding principle that municipal utility rates are presumed to be reasonable. See *Highland Park*, 326 Mich. at 100-101, 39 N.W.2d 325 (“The rate lawfully established by the plaintiff is assumed to be reasonable in absence of a showing to the contrary or a showing of fraud or bad faith or that it is capricious, arbitrary or unreasonable, and the

burden of proof is on the defendant to show that the rate is unreasonable.”). In *Meridian Twp. v. City of East Lansing*, 342 Mich. 734, 71 N.W.2d 234 (1955), Meridian Township challenged the water rates set by East Lansing, arguing that East Lansing violated a provision of the contract between the parties stating that “such rates shall always be reasonable in relation to the costs incurred by the City for the supply of water.” *Id.* at 748, 71 N.W.2d 234. Our Supreme Court explained that the question before it was whether the water rates were “reasonable” as defined by the contract:

We are asked by the appellant to find that the rate charged is not reasonable as above prescribed. It will be noted that the clause under examination does not equate rates to costs. Identity is not required. Obviously there is elbow-room for adjustment. The requirement merely is that they shall be ‘reasonable’ in relation to costs. *The word ‘reasonable’ with respect to rates charged by utilities is a word of the most universal employment. It may be provided by ordinance, statute, or constitution, that rates shall be ‘reasonable,’ or ‘fair and reasonable.’* Moreover, should the question of rate arise on a contract implied in law, the judicial requirement is that the rate to be paid shall be ‘reasonable.’ It may also be employed (as in the case at bar) in a contract. The determination of its meaning, in any case, is not subject to mathematical computation with scientific exactitude but depends upon a comprehensive examination of all factors involved, having in mind the objective sought to be attained in its use. Here it is related to the costs incurred by the city in the supply of water. [*Id.* at 749, 71 N.W.2d 234 (internal citations omitted; emphasis added).]

Ultimately, our Supreme Court ruled in favor of East Lansing, stating that Meridian Township failed “to show that the rates

charged were, in fact, unreasonable with relation to costs.” *Id.* at 753, 71 N.W.2d 234.

In *City of Plymouth v. City of Detroit*, 423 Mich. 106, 377 N.W.2d 689 (1985), Detroit increased water rates it imposed on suburban Detroit municipalities by 39 percent. *Id.* at 109, 377 N.W.2d 689. Plymouth sued Detroit, alleging that the increase was unreasonable. *Id.* Detroit argued that the increase was necessarily reasonable under the version of MCL 123.141 in effect at the time, which essentially provided that “the city may charge its outlying customers not more than twice what it charges its own users.” *Id.* at 123, 377 N.W.2d 689. According to Detroit, because it did not charge the suburban municipalities more than twice what it charged its own customers, and because MCL 123.141 “represents the only applicable standard of reasonableness,” it logically followed that the 39-percent increase was reasonable. *Id.* Plymouth responded that a contractual provision between the parties stated that “rates shall always be reasonable in relation to the costs incurred by the Board for the supply of water.” *Id.* at 111, 377 N.W.2d 689. Thus, Plymouth argued, “the statute only provides for a statutory floor and ceiling of reasonableness and that the specific provisions of the contracts between the parties govern their relationship.” *Id.* at 124, 377 N.W.2d 689. In resolving the dispute, our Supreme Court agreed with our conclusion that “the statute does not render reasonable as a matter of law rates within its maximum and minimum provisions in the face of a contractual provision which states that rates shall be reasonable in relation to costs. Regardless of how the statute reads, [Detroit] has limited its discretion in setting rates by agreeing to the contractual provision.” *Id.* at 124-125, 377 N.W.2d 689 (quotation marks and citation omitted). Ultimately, however, the Supreme Court ruled in favor of Detroit, concluding that Plymouth failed to sustain its burden of showing that the water rates were unreasonable in violation of the contract:

\*7 The plaintiff had ample opportunity to substantiate its claim on the theory with which it had chosen to prove that the rates in question were violative of the contract between the parties. The trial court concluded that the rates charged had not been shown to be unreasonable. We find no error in the trial court’s conclusion.... [*Id.* at 137, 377 N.W.2d 689.]

In *City of Novi v. City of Detroit*, 433 Mich. 414, 446 N.W.2d 118 (1989), Novi challenged the water rates set by Detroit, arguing that they violated the newly enacted MCL 123.141(2), see 1981 PA 89, which provided, in relevant part, as follows:

The price charged by the city to its customers shall be at a rate which is based on the actual cost of service as determined under the utility basis of ratemaking....

The trial court ruled in favor of Detroit, but we reversed, explaining that MCL 123.141(2) established the standard that water rates must “reflect the actual cost of providing the service,” and as a result, the concept of reasonableness was no longer relevant. *Id.* at 427-428, 446 N.W.2d 118 (quotation marks and citation omitted). Our Supreme Court reversed this Court, stating as follows:

We acknowledge that the Legislature intended that municipal water rates more accurately reflect the actual cost of service when it eliminated the artificial limits imposed by the previous version of MCL 123.141. However, the Legislature's use of the phrase “based on the actual cost of service as determined under the utility basis of rate-making” cannot be construed to mean “exactly equal to the actual cost of service,” in light of the difficulties inherent in the rate-making process and the statutory and practical limitations on the scope of judicial review. The concept of reasonableness, as recognized by the courts of this state and other states in utility rate-making contexts, must remain operable, in order to provide a meaningful and manageable standard of review.

\* \* \*

For these reasons, we hold that 1981 PA 89 did not render inoperable the concept of reasonableness in the process of judicial review of municipal utility water rates. The burden of proof remains on the plaintiff to show that a given rate or rate-making method does not reasonably reflect the actual cost of service as determined under the utility basis of rate-making pursuant to MCL 123.141(2). [*Id.* at 430-433, 446 N.W.2d 118 (cleaned up).]

Our Supreme Court ultimately concluded that “the plaintiff City of Novi did not meet its burden of proving that the City of Detroit Water and Sewerage Department's rate-making method, or the resulting rates charged, did not comply with the utility basis of rate-making.” *Id.* at 438, 446 N.W.2d 118.

More recently, in *Trahey v. City of Inkster*, 311 Mich.App. 582, 876 N.W.2d 582 (2015), this Court summarized the following pertinent principles concerning the presumption of reasonableness:

The determination of reasonableness is generally considered by courts to be a question of fact. Michigan courts have long recognized the principle that municipal utility rates are presumptively reasonable. This presumption exists because courts of law are ill-equipped to deal with the complex, technical processes required to evaluate the various cost factors and various methods of weighing those factors required in rate-making. However, the presumption of reasonableness may be overcome by a proper showing of evidence. The burden of proof is on the plaintiff to show that any given rate or ratemaking practice is unreasonable. [*Id.* at 594, 876 N.W.2d 582 (cleaned up).]

\*8 Here, plaintiff argues that the water charges imposed by defendant are unreasonable for the following reasons: (1) “the City has charged far more than necessary to operate its water and sewer systems,” i.e., that “the City has been operating its Water and Sewer Fund for a profit because its revenues have consistently exceeded its expenses”; (2) his experts opined that the water charges were unreasonable because, among other things, “[b]y including depreciation in setting its rates, the City's rates double count certain capital expenses”; and (3) defendant did not accumulate the surplus *with the intent* of funding future capital improvements.

Plaintiff, however, does not identify the standard or authority for “reasonableness.” In other words, plaintiff does not identify a statute, contractual provision, or ordinance establishing the underlying basis for “reasonableness.” In

*Meridian Twp*, for example, the basis for “reasonableness” was a contractual provision stating that water rates must be “reasonable in relation to the costs incurred by the City for the supply of water.” *Meridian Twp.*, 342 Mich. at 748, 71 N.W.2d 234. In *City of Plymouth*, the basis for “reasonableness” was a contractual provision stating that water rates “shall always be reasonable in relation to the costs incurred by the Board for the supply of water.” *City of Plymouth*, 423 Mich. at 111, 377 N.W.2d 689. In *City of Novi*, the basis for “reasonableness” was a statute stating that “[t]he price charged by the city to its customers shall be at a rate which is based on the actual cost of service as determined under the utility basis of rate-making.” *City of Novi*, 433 Mich. at 419, 446 N.W.2d 118.<sup>9</sup> And in *Trahey*, the basis for “reasonableness” was a municipal ordinance stating that water rates must be “just and reasonable.” *Trahey*, 311 Mich.App. at 594, 876 N.W.2d 582.

Plaintiff apparently is attempting to maintain a freestanding claim of “reasonableness” that is not grounded in any specific law nor in any type of cogent reasoning. A bald assertion of some type of unknown reasonableness standard is not consistent with the caselaw discussed above, in which “reasonableness” was linked to a statute, contractual provision, ordinance, or other source of authority. Of course, plaintiff is nominally correct that municipal utility rates must be “reasonable,” but he overlooks the fact that the standard for “reasonableness” is often uniquely determined by reference to the specific law, cost basis, or contract at issue. In one case, a “reasonable” water rate had to simply reflect the costs of supplying water, whereas in another case, a “reasonable” water rate had to reflect the costs of supplying water as determined under the utility basis of rate-making. Yet, in other cases, as in *Trahey*, the concept of “reasonableness” was that referred to by ordinance. Thus, in light of plaintiff’s failure to identify a basis for “reasonableness” here, we could consider this issue abandoned. See *In re Application of Detroit Edison Co. for 2012 Cost Recovery Plan*, 311 Mich.App. at 214, 874 N.W.2d 398.

Regardless, most of plaintiff’s arguments in regard to his understanding of reasonableness are meritless and we dispose of them quite briefly. First, plaintiff argues that the mere fact that defendant accumulated a reserve of about \$50 million shows that the water charges were unreasonable.<sup>10</sup> However, as explained previously, our Supreme Court in *Highland Park* approved of such accumulated reserves to pay cash for future capital improvements. Second, plaintiff argues that his experts’ opinion created a genuine issue of material fact as to whether the water charges were unreasonable, given

that they opined that defendant “collected more than \$24 million in excess of the amounts it was entitled to collect.” However, one of those experts acknowledged during his deposition that he was unaware of the particular depreciating nature of defendant’s water system, the critical justification offered by defendant in support of its reserve.<sup>11</sup> Such a lack of knowledge fundamentally undermines the opinion of plaintiff’s experts. A plaintiff cannot proceed to trial simply because his or her expert was unaware of the pertinent facts. Compare *Pete v. Iron Co.*, 192 Mich.App. 687, 689, 481 N.W.2d 731 (1991) (concluding that summary disposition was properly granted to the defendant in a slip-and-fall case because, in relevant part, “[p]laintiff’s expert testified during deposition that he did not know what caused plaintiff’s fall, but opined that she may have ‘misstepped’ ”). In other words, where defendant argues that it accumulated its reserve to pay for substantial capital improvements in the upcoming five to 10 years and that its water charges are therefore reasonable, plaintiff’s experts cannot ignore that fact but nonetheless conclude that the water charges are unreasonable. Third, plaintiff argues that there is a question of fact as to whether defendant had a specific plan to use its reserve to fund future capital improvements before the instant action was filed. However, notwithstanding the testimony of defendant’s officers that defendant did have a specific plan for its reserve, and notwithstanding that plaintiff does not dispute that the reserve will actually be used to fund future capital improvements, plaintiff provides no authority for the proposition that defendant was obligated to have a specific plan for its reserve before the instant action was filed. See *Bohn v City of Taylor*, unpublished per curiam opinion of the Court of Appeals, issued January 19, 2019 (Docket No. 339306, 2019 WL 360730) (“Instead, plaintiffs contend that the City must have a specific plan for capital improvements equivalent to the amount in the reserve fund and that without such a plan, the fund’s existence is evidence that the rates are excessive. Plaintiffs do not provide any authority (legal or otherwise) to support this contention.”).<sup>12</sup>

\*9 Plaintiff’s best argument for reversal is that defendant “double counted” both debt service and depreciation for six particular assets, such that water customers were charged for both the original construction of those assets (funded through bonds) and anticipated future construction (funded through depreciation as a proxy for anticipated costs). However, the trial court did not address this argument. In his lower court brief discussing this position, plaintiff summarily directed the trial court to the three particular exhibits:

[FN 14]: See Exhibit 23 hereto (City's Objections and Responses to Plaintiff's Fourth Interrogatories and Fourth Requests for Production of Documents).

[FN 15]: See Exhibit 24 hereto (excerpts from City's annual financial statements showing principal debt expense for the assets listed below). See also Budget documents (Exhibit 20 hereto).

With this glaring lack of analysis and citation to the record, the trial court cannot be reasonably faulted for its failure to consider plaintiff's "double counting" argument. Plaintiff submitted dozens of pages of detailed accounting statements and responses to interrogatories, but he did not inform the trial court how it should consider these documents or where the pertinent facts relating to plaintiff's argument could be found. While true that [MCR 2.116\(G\)\(5\)](#) provides that "[t]he affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties, must be considered by the court when the motion is based on subrule (C)(1)-(7) or (10)," this subrule does not mean that a party may submit hundreds of pages of documents to the trial court and expect that court to parse through the documents to find the relevant facts establishing a genuine issue of material fact. Rather, this Court has explained that a trial court is "not obligated under [MCR 2.116\(G\)\(5\)](#) to scour the record to determine whether there exists a genuine issue of fact to preclude summary disposition." [Barnard Mfg. Co., Inc. v. Gates Performance Engineering, Inc.](#), 285 Mich.App. 362, 381, 775 N.W.2d 618 (2009) (quotation marks and citation omitted). "It is absurdly difficult for a judge to perform a search, unassisted by counsel, through the entire record, to look for such evidence." *Id.* at 379, 775 N.W.2d 618 (citation omitted).

Similarly, [MCR 7.212\(C\)\(7\)](#), which concerns briefs filed in this Court, provides, in relevant part, that "[f]acts stated must be supported by specific page references to the transcript, the pleadings, or other document or paper filed with the trial court." Thus, the mere citation to a multipage exhibit is insufficient. See [Derderian v. Genesys Health Care Sys.](#), 263 Mich.App. 364, 388, 689 N.W.2d 145 (2004) ("In support of this claim, plaintiffs provide general citations from Dr. Derderian's deposition, testimony from the profusionist in one patient's case, and one patient's medical records. Such general citations are insufficient."). Accordingly, because plaintiff failed to cite supporting documentary evidence for his assertion that defendant engaged in improper "double

counting," both in the trial court and in this Court, he is not entitled to relief on this basis.

#### IV. VIOLATION OF ORDINANCE

Finally, plaintiff argues that the water charges were unreasonable as a matter of law before November 2018 to the extent that defendant included a component for fire protection, contrary to former Rochester Hills Ordinance, § 102-124.

Initially, we note that plaintiff appears to be arguing only that the violation of former Rochester Hills Ordinance, § 102-124 resulted in the water charges being unreasonable. See [Trahey](#), 311 Mich.App. at 595, 876 N.W.2d 582 ("Absent clear evidence of illegal or improper expenses included in a municipal utility's rates, a court has no authority to disregard the presumption that the rate is reasonable."). While plaintiff cites multiple cases for the basic proposition that a municipality is bound by its own ordinances, see, e.g., [Taber v. City of Benton Harbor](#), 280 Mich. 522, 526, 274 N.W. 324 (1937), he does not challenge the basis for the trial court's dismissal of the counts of the complaint seeking relief for a violation of former Rochester Hills Ordinance, § 102-124 alone.<sup>13</sup> To the extent that plaintiff intended to challenge that dismissal, his argument is waived. See [Houghton ex rel Johnson v. Keller](#), 256 Mich.App. 336, 339-340, 662 N.W.2d 854 (2003) ("An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue."). Thus, we need only address the argument that the alleged violation of the November 2009 version of Ordinance § 102-124 resulted in the water charges being unreasonable.

\*10 "This Court must presume the amount of the [municipal utility] fee to be reasonable, unless the contrary appears upon the face of the law itself, or is established by proper evidence." [Jackson Co. v. City of Jackson](#), 302 Mich.App. 90, 109, 836 N.W.2d 903 (2013) (cleaned up). Here, the fire protection component of the water charges was substantively a component for "excess capacity" of the water system, i.e., water capacity that was beyond that necessary to service the ordinary needs of the water customers. In [Novi](#), our Supreme Court explained that "excess capacity is includable in the rate base where it is reasonably necessary to fulfill contractual obligations." [Novi](#), 433 Mich. at 435, 446 N.W.2d 118. Moreover, the Court suggested that when "facilities that are arguably excess capacity are constantly in use," the excess capacity is properly includable for that additional reason as

well. See *id.* (“In the instant case, because the DWSD system is integrated, the facilities that are arguably excess capacity are constantly in use.”).

Assuming that plaintiff is correct that the language of former Rochester Hills Ordinance, § 102-124 resulted in the water charges including an illegal component for excess capacity and thereby rebutting the presumption of reasonableness, the trial court correctly held that plaintiff is not entitled to equitable relief. In *Youmans*, another case involving a claim for equitable relief for allegedly inflated water charges, this Court explained that “[w]hether the Township would receive an unjust ‘benefit’ from retaining the disputed rate charges in this case depends on whether the water and sewer rates, viewed as a whole, were unreasonable inasmuch as they were ‘excessive,’ not on whether some aspect of the Township’s ratemaking methodology was improper.” *Youmans*, — Mich App at —, — N.W.2d —, slip op. at 30. Thus, this Court rejected the plaintiff’s argument that “in the face of illegal or improper expenses included in the disputed rates, she is not required to demonstrate that the rates actually *overcharged* for the related water and sewer services.” *Id.* (emphasis in original).

The same is true here. It would not be inequitable to allow defendant to retain the money for excess capacity because that excess capacity, i.e., the “fire service fee,” provided exclusive benefits to water customers. The fire service fee under former Rochester Hills Ordinance, § 102-124 was determined by “a base-extra capacity approach attributing to fire protection the difference between total system capacity and capacity required by other customer classes.” Simply, this means that the fire service fee was the difference between the capacity *required* by water customers and the overall water system capacity. This excess-capacity difference supported the fire protection services, which admittedly benefitted the general public, but also the water customers themselves. Defendant’s public utilities engineering manager explained the benefits of the excess capacity in an affidavit as follows:

4. One benefit of the water system’s capacity is that it ensures that the City will have sufficient water flow to fight fires. The system’s capacity also provides numerous benefits to ratepayers who purchase and use City water, including meeting customers’ minimum needs for average daily water flow.

5. The system’s capacity also allows the City to provide service under emergency conditions, maintain service

during an event that causes failure, and quickly recover from these events.

6. In addition, extra water system capacity allows system users to access sufficient water flow to irrigate their lawns. Many of the City’s water ratepayers take advantage of this benefit and use sprinkler systems to irrigate their lawns in summer months.

Thus, the excess-capacity costs that plaintiff attributes entirely to the costs of fire protection services actually provide unique benefits to water customers alone. Similarly, for example, our Supreme Court in *Novi* explained that the “base-extra capacity method” in that case required separating “base costs,” which were “[t]hose costs associated with furnishing water at average annual rates of use,” with other costs, such as “[t]hose additional costs associated with meeting water demands on the day or days of maximum use” and “[t]hose additional costs associated with meeting demands during the peak hour of use.” *Novi*, 433 Mich. at 421-422, 446 N.W.2d 118. In *Novi*, as in this case, charging water customers for excess capacity provided exclusive benefits to those customers.

\*11 It is impossible to disentwine the “fire protection” aspect of excess capacity with the “potable water” aspect of excess capacity. As noted, excess capacity is necessary to provide potable water during times of heightened demand or emergencies.<sup>14</sup> Moreover, even when excess capacity is used to provide fire protection, i.e., the water supply is used to fight a fire, that excess capacity still benefits water customers because those customers are (typically) able to maintain ordinary water use. If the water system had no excess capacity, then fighting a fire would result in water customers not having access to the ordinary water supply. Essentially, “fire protection” is but one example of heightened demand or emergency. If water customers may properly be charged for excess capacity to protect against heightened demand during a hot summer day—as plaintiff does not seem to dispute—it follows that they may also be charged for excess capacity to protect against fighting a large fire.

At a minimum, even if plaintiff is correct that the “fire protection” aspect of excess capacity exclusively benefits the general public and does not provide any unique benefits to water customers themselves, which would perhaps raise *Bolt*-type concerns, it is apparent that “fire protection” is so intertwined with the concept of excess capacity itself that the two cannot be disentangled by this Court, at least

where plaintiff has simplistically equated “fire protection” with excess capacity. Under these circumstances, equity does not entitle plaintiff and the class to relief.

former Rochester Hills Ordinance, § 102-124. Therefore, we affirm.

Jansen, J. (concurring).

I concur in the result only.

## V. CONCLUSION

The trial court correctly granted summary disposition in favor of defendant because plaintiff did not show that the water charges violated [MCL 141.91](#) or were “unreasonable,” or that he was entitled to equitable relief for the alleged violation of

## All Citations

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## Footnotes

- 1 To be precise, this case involves the water and sewer system, water and sewer customers, and water and sewer charges. For ease of discussion, we simply refer to the “water system,” “water customers,” and “water charges,” respectively.
- 2 Plaintiff refers to the future capital improvement component of the water charges as the “Reserve Charge” and the fire protection component as the “Fire Service Charge.” To be clear, however, defendant does not separately itemize or charge its water customers for these components. These terms are created by plaintiff for the purposes of this litigation.
- 3 Rochester Hills Ordinance, § 102-124 was amended in November 2018 to remove such language.
- 4 The trial court dismissed two counts of the complaint months earlier, so defendant's motion concerned the remaining eight counts.
- 5 The trial court also ruled in favor of defendant on other issues that plaintiff does not challenge on appeal.
- 6 Plaintiff also sought declaratory relief in his “Prayer for Relief.”
- 7 [MCL 141.121](#) is part of the Revenue Bond Act of 1933, [MCL 141.101 et seq.](#) Although [MCL 141.121](#) seems to contemplate only those situations in which bonds are issued, [MCL 141.104](#) provides that “[t]he powers in this act granted may be exercised notwithstanding that no bonds are issued hereunder.” Thus, the parties do not dispute that [MCL 141.121](#) may apply in this case, notwithstanding that defendant apparently does not intend to exclusively issue bonds to fund the future capital improvements. See [Seltzer v. Sterling Twp, 371 Mich. 214, 219, 123 N.W.2d 722 \(1963\)](#) (“It was clearly the intention of the legislature to give townships the power and authority under the Revenue Bond Act of 1933 to purchase, acquire, construct, improve, enlarge, extend or repair a water supply system and a sewage disposal system, and to own, operate and maintain the same, notwithstanding no bonds are issued in connection therewith.”).
- 8 Recently, our Supreme Court noted in different circumstances that merely because a particular “charge” is a “tax” for the purposes of the Headlee Amendment does not necessarily render it unlawful. See [Gottesman v. City of Harper Woods, 964 N.W.2d 365 \(2021\)](#).
- 9 Although the statute did not expressly include the word “reasonable,” our Supreme Court explained that the concept must nonetheless be imposed within the statute. See [id. at 433, 446 N.W.2d 118](#).

- 10 Plaintiff relies on *Mich. Ass'n of Home Builders v. City of Troy*, 504 Mich. 204, 934 N.W.2d 713 (2019), for the proposition that a municipal utility charge that consistently returns a profit is evidence (perhaps conclusive) that the charge is unreasonable. In that case, our Supreme Court favorably cited the dissenting opinion of Judge Jansen, who explained that consistent annual profits generated by the city's building fees was evidence that the fees were unauthorized by statute. See *id.* at 220, 934 N.W.2d 713. According to plaintiff, the same reasoning should apply here. Plaintiff's argument misses the mark because the statute at issue in that case provided that the building fees "shall be intended to bear a reasonable relation to the cost, including overhead." MCL 125.1522(1)-(2). Thus, as Judge Jansen observed, consistent annual profits indicated that the building fees were not, in fact, intended to bear a reasonable relation to the cost of operating the regulatory scheme. Here, in contrast, plaintiff does not ground his argument of "unreasonableness" in a similarly worded statute.

We also note that municipal utilities are not necessarily precluded from generating a reasonable profit. See *Chocolay Charter Twp. v. City of Marquette*, 138 Mich.App. 79, 84, 358 N.W.2d 636 (1984) ("A municipality is not required to furnish utility services at cost, but may charge a rate which will yield a profit."); *McQuillin: The Law of Municipal Corporations*, § 35:60 ("While in theory, water from a municipally owned plant should come to the consumer without profit to the municipality, this does not exclude the idea of profit in operation. A city is entitled to a reasonable profit and it may even use that profit for other valid municipal purposes.").

- 11 Although the expert only testified in the first person, the most reasonable inference is that neither expert was aware of the particular depreciating nature of defendant's water system. Tellingly, there is nothing in the experts' 27-page written opinion to suggest otherwise.
- 12 "Although unpublished opinions of this Court are not binding precedent, MCR 7.215(C)(1), they may, however, be considered instructive or persuasive." *Adam v. Bell*, 311 Mich.App. 528, 533 n.1, 879 N.W.2d 879 (2015) (quotation marks and citation omitted).

In any event, the law is contrary to plaintiff's argument that charges by a municipal utility are unreasonable if the municipality does not have a specific plan for use of its reserve before a lawsuit is filed. "A city has no duty to justify or explain its actions in setting rates until the party contesting their validity shows their invalidity by competent evidence." *McQuillin: The Law of Municipal Corporations*, § 35:57. In other words, a party contesting the validity of municipal charges (i.e., rates) must *first* produce evidence that the charges are unreasonable, and *then* the municipality must justify its actions in setting those charges. As applied here, defendant does not have to justify its actions in setting the water charges at issue—its alleged lack of a preexisting specific plan for use of the reserve—unless plaintiff first shows that the charges are unreasonable. Plaintiff cannot simply demand a justification for the water charges and subsequently argue that the purported insufficiency of the justification establishes that the water charges are unreasonable.

Moreover, plaintiff's argument is illogical for the simple reason that "[m]unicipal utility rates may include a profit margin," and "[t]he profit may be transferred to the general fund and used for purposes other than supplying the utility service." *Id.* Thus, so long as the charges are reasonable, the municipality may use accumulating reserves from those charges (i.e., profit) for any municipal purpose whatsoever. See *id.* It therefore cannot be the case that defendant is obligated to have a specific plan providing that accumulated reserves from its water charges must be used for one particular municipal purpose, or future capital improvements, rather than for some other lawfully allowed purpose.

- 13 The trial court ruled that Rochester Hills's ordinances are only enforceable by certain government officials and entities. Plaintiff does not argue otherwise on appeal.
- 14 Compare *In re Reliability of Electric Utilities for 2017-2021*, 505 Mich. 97, 103 n 1, 949 N.W.2d 73 (2020) ("Regulators overseeing capacity calculate peak demand using the hottest days of the year and add a

'reserve margin'—that is, some *extra* capacity—to ensure that suppliers meet even unexpectedly high spikes of demand.”) (emphasis in original).