STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

WILLIAM NOFAR, individually and as representative of a class of similarly-situated persons and entities,

Plaintiff,

v.

CITY OF NOVI, MICHIGAN
a municipal corporation,

Defendant.

2020-183155-CZ
Case No. 20- -CZ

Hon. JUDGE NANCI J. GRANT

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There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

PLAINTIFF'S CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiff William Nofar ("Plaintiff"), by his attorneys, Kickham Hanley PLLC and Randal Toma & Associates PC, individually and on behalf of a class of similarly situated class members, states the following for his Class Action Complaint against the City of Novi, Michigan (the "City"):

INTRODUCTION

1. The Michigan courts have long recognized that 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." *Wolgamood v. Village of Constantine*, 302 Mich. 384, 404-405, 4 N.W.2d 697 (1942). The City has disregarded this fundamental principle for many years, to the detriment of its citizens and inhabitants.

2. This is an action challenging the reasonableness of the City's water and sewer rates, collectively the "Rates", imposed by the City on citizens who draw water from the City's water supply system and who dispose of their sanitary sewage through the City's sewer system.

3. Since at least 2015, the City has set its Rates at a level far in excess of the rates that were necessary to finance the actual costs of providing water and sewage disposal services (the "Rate Overcharge"). The Rates during this period were established in contravention of established water and sewer rate-setting methodologies, and resulted in the accumulation of cash reserves far in excess of those necessary to support the City's water and sewer function. Indeed, between June 30, 2015 and June 30, 2019, the City increased its cash and investments in the Water and Sewer Fund from an already excessive $56 million to over $69 million through its continuing imposition of the Rate Overcharge.

4. The Water and Sewer Fund accumulated so much excess and unnecessary cash that, in June 2017, the City authorized the Water and Sewer Fund to advance up to $17 million to other City funds to finance capital improvements unrelated to the City's water and sewer system. In the fiscal year ending June 30, 2019, the Water and Sewer Fund advanced $3,000,000 of the authorized $17 million to the City's Capital Improvement Fund to finance capital improvements in the City. This fact alone proves that the City's Water and Sewer Rates have been unreasonable because they were designed to generate, and actually did generate, revenues far in excess of those necessary to supply water and sewer services to the City's inhabitants. As the Michigan Supreme Court recently observed, "[i]f the fees for a particular service consistently generate revenue exceeding the costs for

the service, the reasonableness of the fee for that service would be suspect." *Mich. Ass'n of Home Builders v. City of Troy*, 504 Mich. 204, 220, 934 N.W.2d 713, 722 (2019) (quoting *Mich. Ass'n of Home Builders v. City of Troy*, No. 331708, 2017 Mich. App. LEXIS 1521 (2017)).

5. The Rate Overcharges are unlawful because (a) they are arbitrary, capricious and/or unreasonable under common law; (b) they violate the Prohibited Taxes by Cities and Villages Act, MCL 141.91; and (c) they violate the City's own Charter, Sec. 13.3, which requires the City to establish "just and reasonable" Water and Sewer Rates.

JURISDICTION AND VENUE

6. Plaintiff resides in the City and is a water and sewer customer of the City. Plaintiff has paid the charges at issue and seeks to act as a class representative for all similarly-situated persons.

7. Defendant City of Novi (the "City") is a municipality located in Oakland County, Michigan. The City maintains a Water and Sewer Enterprise Fund (the "Water and Sewer Fund") and prepares financial statements for that Fund.

8. Venue and jurisdiction are proper with this Court because all parties are present here and the actions which give rise to Plaintiff's claims occurred in this County.

GENERAL ALLEGATIONS

9. The City has a water supply system (the "Water Supply System") to provide fresh water to inhabitants of the City. Since January 2016, the City has purchased its water at wholesale from the City of Detroit, as managed by the Great Lakes Water Authority ("GLWA"). Prior to January 2016, the City purchased its sewer services directly from the City of Detroit through its Water and Sewerage Department ("DWSD").

10. The City establishes Water Rates from time to time through the actions of the City Council. Relevant portions of City's Water and Sewer Ordinance are attached hereto as Exhibit 1 and incorporated herein by reference.

11. Plaintiff has received water service ("Water Service") from the City and paid the Water Rates imposed by the City. State building codes, incorporated into state and local law, require structures which have access to a municipal water supply system to utilize that system.

12. The City has a sewer system (the "Sewer System") to provide sewage disposal services to inhabitants of the City. Since January 2016, the City has purchased its sewer services from the Great Lakes Water Authority ("GLWA") indirectly through Oakland County. Prior to January 2016, the City purchased its sewer services from DWSD, also indirectly through Oakland County.

13. The City establishes Sewer Rates from time to time through the actions of the City Council.

14. Plaintiff has received sewer service ("Sewer Service") from the City and paid the Sewer Rates imposed by the City. The City's ordinances require the structures used by its citizens to be connected to the City's Sewer System. City Ordinance § 34-156 – § 34-158.

15. The City has continuously and systematically violated the common law, MCL 141.91, as well as its own Charter, Section 13.3, by imposing Rates that exceed the City's actual cost of providing water and sewer service by millions of dollars.

THE RATE OVERCHARGE

16. Since at least 2015, the City has set its Rates at a level far in excess of the rates that were necessary to finance the actual costs of providing water and sewage disposal services (the "Rate Overcharge"). The Rates during this period were established in contravention of established water and sewer rate-setting methodologies, and resulted in the accumulation of cash reserves far in excess

of those necessary to support the City's water and sewer function. Indeed, between July 1, 2015 and June 30, 2019, the City increased its cash and investments in the Water and Sewer Fund from $56 million to almost $70 million through its imposition of the Rate Overcharge. These assets represent almost three times the City's annual water and sewer-related expenditures.

17. This excessive accumulation of cash was not serendipitous but was undertaken pursuant to a plan to dramatically increase the cash in the Water and Sewer Fund through 2019 after paying all of the expenses of the Water and Sewer Fund, including capital improvements and debt service. In this regard, the City's budget for the fiscal year ending June 30, 2016 projected that the revenues of the Water and Sewer Fund would exceed its expenses by (1) $3,449,314 in the fiscal year ending June 30, 2016, (2) $2,729,524 in the fiscal year ending June 30, 2017, and (3) $3,233,800 in the fiscal year ending June 30, 2018.

18. Similarly, the City's budget for the fiscal year ending June 30, 2017 projected that the revenues of the Water and Sewer Fund would exceed its expenses by (1) $5,729,340 in the fiscal year ending June 30, 2017, (2) $4,288,919 in the fiscal year ending June 30, 2018 and (3) $4,102,752 in the fiscal year ending June 30, 2019.

19. In June 2017, the City decided it could put the Water and Sewer Fund's excess cash to work financing other governmental activities unrelated to the City's water and sewer system. On June 19, 2017 the City authorized the Water and Sewer Fund to advance up to $17 million to other City funds to finance capital improvements.

20. The City's financial statements for the fiscal year ending June 30, 2019 (p. 70) described this arrangement as follows:

> To minimize the overall cost of securing funds to maximize the amount of capital projects that can be completed using the capital improvements millage, the City has identified long-term capital reserves in the water and sewer enterprise fund th at are available for advancement to the capital improvement program capital projects fund without impacting the operations or rates charged to customers. On June 19, 2017, the City Council approved the advancement of an amount not to exceed $17 million

> from the water and sewer enterprise fund to the capital improvement program capital projects fund to be disbursed on an "as needed" basis. The advancement will bear a fixed interest rate of 3%, which represents the approximate market rate of interest the City would pay if it bonded independently to fund the projects. The reimbursement period will not exceed 10 years, with amounts to be repaid monthly, via internal transfers, using the proceeds from the voter-approved capital improvements millage. Principal payments on the outstanding loan will be straight-line over the 10 year period beginning July 2017 through June 2027. Payments will have first preference from the annual capital improvements millage before any other expenditure from the capital improvement program capital projects fund.

21. In the fiscal year ending June 30, 2019, pursuant to the authority provided by the City in June 2017, the Water and Sewer Fund advanced $3 million to the Capital Improvement Fund. This advance was critical to the City's efforts to address a structural deficit in the City's Capital Improvement Fund, which action was required by the State of Michigan.

22. In addition to the $3 million advance, the City also transferred $2.4 million to the Capital Improvement Fund to "finance construction of the Department of Public Works and Gun Range facilities" in the fiscal year ending June 30, 2019. *See* 2019 Financial Statements at p. 71. On information and belief, the City has no obligation to repay the Water and Sewer Fund the $2.4 million transfer.

23. The fact that the City was able to commit $17 million of its Water and Sewer Fund assets to purposes unrelated to the operation, maintenance and improvement of the City's water and sewer system is proof that the City did not and does not need that $17 million to operate, maintain or improve the water and sewer system. By accumulating at least $17 million more than the Water and Sewer Fund needs, the City has overcharged its water and sewer customers.

24. But the City's excessive reserves due to the Rate Overcharges are far greater than $17 million. At the time the City approved the $17 million in advances in June 2017, the Water and Sewer Fund had over $64 million in cash and investments. At that time, the City effectively acknowledged that its reserves were excessive by stating that its needed "long term capital reserves" were only approximately $20 million. Therefore, as of June 2017, the City thus maintained cash and

investments that were approximately $44 million more than the City itself determined were necessary to fund the future capital obligations of the Water and Sewer Fund. As of June 2019, those excessive reserves had increased to approximately $49 million.

25. The only possible justification the City could offer for its accumulation of nearly $70 million in cash and investments is that those funds are necessary to finance future capital improvements to the City's water and sewer system. That justification would be legally insufficient but, in any event, the City cannot possibly avail itself of that justification for at least two reasons.

26. First, unlike some older communities which have aging water and sewer systems in need of imminent replacement, the City's water and sewer system is still in its early phases and no major replacements are needed in the near future. Consistent with these needs, the City's current capital improvement plan for its water and sewer assets for the fiscal year ending June 30, 2020 through the fiscal year ending June 30, 2025 calls for an average of only $3.5 million in expenditures per year over that period.

27. Second, not only are the City's future capital needs modest, but the City does not even plan to use its accumulated cash reserves to pay for those modest future capital improvements. Instead, as reflected in its annual budgets, the City has traditionally planned to fund, and actually funded, its water and sewer capital improvements through a "pay as you go" approach – *i.e.*, including in its Rates on an annual basis the amount needed to fund current period capital improvements. And the City's Water and Sewer Fund has very little debt, which confirms that the City has not traditionally financed water and sewer capital improvements by issuing bonds or other debt instruments.

28. In an April 1, 2019 Budget Message to City residents, the City Manager stated:

> The City of Novi continues to invest significantly in **water and sewer** infrastructure on an annual basis to ensure the transmission and distribution systems are adequate now and into the future. **More than $7.5 million in water and sewer capital improvements are planned over the next three years; all being paid from**

> **current rates** and not having to issue debt while keeping annual rate increases very low compare to other communities. [emphasis added]

29. Even the City's $20 million "long term capital reserve" is excessive given that the City has not traditionally funded capital improvements by tapping cash reserves.

30. By virtue of the Rate Overcharge described above, the City has accumulated cash reserves in the Water and Sewer Fund far beyond those necessary to ensure the continued provision of water and sewage disposal service to its residents.

31. Because the Rate Overcharge was included in the Water and Sewer Rates imposed by the City, each class member paid the Rate Overcharge when they paid their water and sewer bill.

32. Payment of the Rate Overcharge is not voluntary because, if water and sewer customers do not pay their bills, they could lose their properties.

33. City Ordinance Section 34-147 provides the following with respect to Sewer Services:

> *Lien.* The charges and rates for sewer services provided for in this subdivision which are under the provisions of section 21 of Act No. 94 of the Public Acts of Michigan of 1933 (MCL 141.121, MSA 5.2751) as amended, are made a lien on all premises served thereby, unless notice is given that a tenant is responsible, are hereby recognized to constitute such lien. Whenever any such charge against any piece of property shall be delinquent for three (3) months, the city official in charge of the collection thereof shall certify bi-annually on May 1 and November 1 of each year to the treasurer or assistant treasurer of the city the fact of such delinquency, whereupon such charge shall be by him/her entered upon the next tax roll as a charge against such premises and shall be collected and the lien therefore enforced in the same manner as general city taxes against such premises are collected, and the lien thereof enforced; provided however, where notice is given that a tenant is responsible for such charges and services as provided by section 21 of Act No. 94 of the Public Acts of Michigan of 1933 (MCL 141.121, MSA 5.2751), as amended, no further service shall be rendered such premises until a cash deposit as set by resolution of the council shall have been made as security for payment of such charges and services

34. Similarly, City Ordinance Section 34-21 provides the following with respect to Water Services:

> The charges for water services are a lien on-premises served and are hereby recognized to constitute such lien. Whenever any such charge against any such premises shall be delinquent for three (3) months, the city employee in charge of the collection thereof shall certify bi-annually, on May 1 and November 1 of each year, to the treasurer or assistant treasurer of the city the fact of such delinquency, whereupon such charge shall be by him/her entered upon the next tax roll as a charge against such premises and shall be collected, and the lien therefore enforced, in the same manner as general city taxes against such premises are collected and the lien thereon enforced. When a tenant is responsible for such services as is provided by section of Act No. 94 of the Public Acts of Michigan of 1933, (MCL 141.21), as amended, no service shall be rendered such premises until a cash deposit as set by resolution of the council shall have been paid as security for payment of assessed charges and services.

CLASS ALLEGATIONS

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

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

37. Plaintiff's claims are typical of the claims of members of the Class. Plaintiff is a member of the Class he seeks to represent, and Plaintiff was injured by the same wrongful conduct that injured the other members of the Class.

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

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

a. Whether the Rate Overcharges imposed by the City are taxes;

b. Whether the Rate Overcharges violate MCL 141.91;

c. Whether the City's Rates have been unreasonable;

d. Whether the City has been unjustly enriched by collecting the Rate Overcharges;

e. Whether the Rate Overcharges violate Section 13.3 of the City's Charter; and

f. Whether the City should be forced to disgorge the improperly collected Overcharges.

40. Plaintiff will fairly and adequately protect the interests of the Class, and Plaintiff has no interests antagonistic to those of the Class. Plaintiff is committed to the vigorous prosecution of this action, and has retained competent and experienced counsel to prosecute this action.

41. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The prosecution of separate actions would create a risk of inconsistent or varying adjudications. Furthermore, the prosecution of separate actions would substantially impair and impede the ability of individual class members to protect their interests. On the other hand, it is probable that the amount which will be recovered by individual class members will be large enough in relation to the expense and effort of administering the action to justify a class action. Plaintiff anticipates no difficulty in the management of this action as a class action.

COUNT I

UNJUST ENRICHMENT – UNREASONABLE WATER AND SEWER RATES

42. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

43. Water and Sewer Rates must be reasonable. *Mapleview Estates v. City of Brown City*, 258 Mich. App. 412 (2003).

44. Because the City has set the Rates at a level that has permitted the City to accumulate excessive cash reserves, the Rates are arbitrary, capricious, and unreasonable.

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

46. The City has been unjustly enriched because it received Overcharges to which it was not entitled, and it would be unfair for the City to retain the Overcharges under the circumstances.

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

COUNT II

UNJUST ENRICHMENT – VIOLATION OF MCL 141.91

48. Plaintiff incorporates each of the preceding allegations as if fully set forth herein.

49. The Michigan Prohibited Taxes by Cities and Villages Act, MCL 141.91 provides:

> Sec. 1. Except as otherwise provided by law and notwithstanding any provision of its charter, a city or village shall not impose, levy or collect a tax, other than an ad valorem property tax, on any subject of taxation, unless the tax was being imposed by the city or village on January 1, 1964.

50. The City has violated MCL 141.91 by imposing and collecting the Rate Overcharges, which are disguised taxes that are not ad valorem property taxes, and were first imposed after January 1, 1964.

51. The Rate Overcharges are motivated by a revenue-raising purpose, the Rate Overcharges render the Rates disproportionate to the City's actual costs of providing water and sewer service, and payment of the Rate Overcharges is not voluntary.

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

53. The City has been unjustly enriched because it received Overcharges to which it was not entitled, and it would be unfair for the City to retain the Overcharges under the circumstances.

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

COUNT III

UNJUST ENRICHMENT – CHARTER VIOLATION

55. Plaintiff incorporates each of the preceding allegations as if fully set forth herein.

56. City Charter § 13.3, entitled "Rates" provides in pertinent part that:

> The Council shall have the power to fix from time to time such just and reasonable rates as may be deemed advisable for supplying inhabitants of the City and others with such public-utility services as the City may provide. …

57. The City has contravened Charter Section § 13.3 by setting and imposing Rates that are not "just and reasonable."

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

59. The City has been unjustly enriched because it received Overcharges to which it was not entitled, and it would be unfair for the City to retain the Overcharges under the circumstances.

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

COUNT IV

ASSUMPSIT – MONEY HAD AND RECEIVED UNREASONABLE WATER AND SEWER RATES

61. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

62. Water and Sewer Rates must be reasonable. *Mapleview Estates v. City of Brown City*, 258 Mich. App. 412 (2003).

63. Because the City has set the Rates at a level that has permitted the City to accumulate excessive cash reserves, the Rates are arbitrary, capricious, and unreasonable.

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

65. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

66. By virtue of the City's inclusion of the Rate Overcharges in the Rates, the City has collected amounts in excess of the amounts it was legally entitled to collect. Therefore, Plaintiff is entitled to maintain an equitable action of assumpsit to recover back the amount of the illegal exaction. *See, e.g.*, *Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

COUNT V

ASSUMPSIT – MONEY HAD AND RECEIVED VIOLATION OF MCL 141.91

58. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

59. The Michigan Prohibited Taxes by Cities and Villages Act, MCL 141.91 provides:

> Sec. 1. Except as otherwise provided by law and notwithstanding any provision of its charter, a city or village shall not impose, levy or collect a tax, other than an ad valorem property tax, on any subject of taxation, unless the tax was being imposed by the city or village on January 1, 1964.

60. The City has violated MCL 141.91 by imposing and collecting the Rate Overcharges., which are disguised taxes that are not ad valorem property taxes, and were first imposed after January 1, 1964.

61. The Rate Overcharges are motivated by a revenue-raising purpose, the Rate Overcharges render the Rates disproportionate to the City's actual costs of providing water and sewer service, and payment of the Rate Overcharges is not voluntary.

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

63. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

64. By virtue of the City's inclusion of the Rate Overcharges in the Rates, the City has collected amounts in excess of the amounts it was legally entitled to collect. Therefore, Plaintiff is entitled to maintain an equitable action of assumpsit to recover back the amount of the illegal exaction. *See, e.g.*, *Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

COUNT VI

ASSUMPSIT – MONEY HAD AND RECEIVED CHARTER VIOLATIONS

65. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

66. City Charter § 13.3, entitled "Rates" provides in pertinent part that:

> The Council shall have the power to fix from time to time such just and reasonable rates as may be deemed advisable for supplying inhabitants of the City and others with such public-utility services as the City may provide. …

67. The City has contravened Charter Section § 13.3 by setting and imposing Rates that are not "just and reasonable."

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

69. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

70. By virtue of the City's inclusion of the Rate Overcharges in the Rates, the City has collected amounts in excess of the amounts it was legally entitled to collect. Therefore, Plaintiff is

entitled to maintain an equitable action of assumpsit to recover back the amount of the illegal exaction. *See, e.g.*, *Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

PRAYER FOR RELIEF

Plaintiff requests that the Court grant the following relief:

A. Certify this action to be a proper class action with Plaintiff certified as Class Representative and Kickham Hanley PLLC designated Class Counsel;

B. Define the Class to include all persons or entities who/which have paid the City for Water Service and/or Sewer Service at any time in the six years preceding the filing of this lawsuit and/or who/which pay the City for Water Service or Sewer Service during the pendency of this action (the "Class Period");

C. With regard to Counts I through VI, enter judgment in favor of Plaintiff and the Class and against the City;

D. Order and direct the City to disgorge and refund all Rate Overcharges collected during the Class Period and to pay into a common fund for the benefit of Plaintiff and all other members of the Class the total amount of Rate Overcharges to which Plaintiff and the Class are entitled;

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

F. Find and declare that the Rate Overcharges violate MCL 141.91 and the City's Charter, as well as find that the Rate Overcharges are arbitrary, capricious, and unreasonable under common law principles;

G. Permanently enjoin the City from imposing or collecting Rates which exceed the City's actual costs of providing water and sewer service;

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

I. Award Plaintiff a reasonable "incentive award" for his service as Class Representatives; and

I. Grant any other appropriate relief.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

KICKHAM HANLEY PLLC

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Date: August 27, 2020

EXHIBIT - 1

Sec. 34-16. - Definitions.

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

Premises means any property that is connected directly or indirectly to the water system.

System and *water system* mean the complete water system for the city, including all plants, works instrumentalities and properties used or useful in connection with obtaining a water supply, the treatment of water, and the distribution of water, either now in existence, acquired pursuant to this article, or hereafter acquired.

Water connection fee or *water connection charge* means the amount charged for connecting to the water supply system of the city which may include any or all of the following components, if applicable:

(1) Debt service fee or charge;

(2) Costs of construction, administration, operation, maintenance and replacement of the water supply system; or

(3) Costs of construction, administration, operation, maintenance and replacement of a water main extension.

The terms water connection fee or water connection charge, may be used interchangeably through this chapter, in respect to the water supply system, with the following terms: user fee or charge, connection fee or charge, water service connection fee, direct contribution, service fee or charge, lateral availability fee, availability connection charge, permit fee and/or debt service fee or charge, tap fee or tap charge.

Water services means the infrastructure and the water supply which is paid for by the users through charges for usage and through charges for connection fees.

(Ord. No. 77-37.3, § 1.01, 12-19-77; Ord. No. 03-37.29, Pt. I, 5-19-03; Ord. No. 07-37.33, Pt. I, 3-5-07)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 34-17. - Public utility rate basis of operation.

The water system shall be operated on a public utility rate basis, pursuant to the provisions of Act No. 94 of the Public Acts of Michigan of 1933 (MCL 141.101 et seq.), as amended. The system shall be operated under the management and direction of the city manager, subject to the overall general supervision and control of the council, and/or as a division of the sewer and water department as the council shall direct.

(Ord. No. 77-37.3, § 2.01, 12-19-77; Ord. No. 97-37.16, Pt. I, 4-7-97)

Sec. 34-18. - Fiscal year.

The water system shall be operated on the basis of a fiscal year beginning on July 1 and ending on the next following June 30.

(Ord. No. 77-37.3, § 3.01, 12-19-77)

Sec. 34-19. - Rates.

The rates to be charged by the water system shall be established and charged in accordance with the schedule of rates set by resolution of the council.

(Ord. No. 77-37.3, § 4.01, 12-19-77)

Sec. 34-20. - Billing.

Billing for water charges shall be made at least quarterly and shall be due and payable to the city treasurer thirty (30) days after the date of such bill, with a late fee of ten (10) percent added to the bill if not paid on or before the due date. A customer may contest the propriety of a late fee by appeal to the director of public services.

(Ord. No. 77-37.3, § 6.01, 12-19-77; Ord. 96-37.16, Pt. I, 5-6-96)

Sec. 34-21. - Delinquent charges constitute lien; authority of city to discontinue water for nonpayment of charges.

(a) *Lien.* The charges for water services are a lien on-premises served and are hereby recognized to constitute such lien. Whenever any such charge against any such premises shall be delinquent for three (3) months, the city employee in charge of the collection thereof shall certify bi-annually, on May 1 and November 1 of each year, to the treasurer or assistant treasurer of the city the fact of such delinquency, whereupon such charge shall be by him/her entered upon the next tax roll as a charge against such premises and shall be collected, and the lien therefore enforced, in the same manner as general city taxes against such premises are collected and the lien thereon enforced. When a tenant is responsible for such services as is provided by section 21 of Act No. 94 of the Public Acts of Michigan of 1933, (MCL 141.21), as amended, no service shall be rendered such premises until a cash deposit as set by resolution of the council shall have been paid as security for payment of assessed charges and services.

(b) *Discontinuance of water supply.* In addition to other remedies provided, the city shall have the right to shut off and discontinue the supply of water to any premises when it has determined any one (1) of the following conditions exist:

(1) A state of emergency threatening human health or safety necessitates immediate

termination of water service.

(2) A state of emergency threatening the security or sanitary integrity of the city's water distribution system or any part of it necessitates immediate termination of water service.

(3) Non-payment of water/sewer charges when due; in which case the procedure provided below shall be followed.

(4) The customer has violated a provision of this article; in which case the procedure provided below shall be followed.

(c) *Water service termination procedure.*

(1) Except when the immediate termination of water service is necessary, as provided above, the provisions of this section shall govern all terminations of water service.

(2) The city upon determination that conditions exist justifying the termination of water service, shall mail to, or personally serve upon the customer, a notice of termination. The notice of termination shall contain the following:

a. If amounts are owed to the city for nonpayment of water and sewer services, the notice of termination shall be included in the past due notice. The past due notice shall include the amount to be paid, a date, at least thirty (30) days from the due date upon which service may be terminated, and a notice that unless the city receives complete payment of the amount shown prior to the date of termination, water service shall be terminated;

b. If the customer is in violation of a provision of this article, the nature of the violation and the section number being violated, a dated of termination that is at least thirty (30) days from the date of the notice of termination, and a notice that unless the violation is corrected prior to the date of termination water service shall be terminated.

c. The notice shall state that a customer may notify the city that he or she disputes the correctness of all or part of the amount shown to be owed, if the amount in dispute was not the subject of a previous dispute, or that he or she disputes the alleged violation of the article cited.

(3) If, prior to the date of termination:

a. The city has not received complete payment of the amount shown on the past due notice or has not determined the violation has ceased to exist; or

b. The customer has not notified the city that he or she disputes the correctness of all or part of the amount shown on the past due notice, or that he or she disputes the existence of the violation; then the city shall terminate the water service provided to the customer on the date of termination.

(4) If the city receives payment of the entire amount shown on the notice of termination

prior to the date of termination, such payment shall be considered a timely and complete payment for purposes of this article. If the city determines that the violation no longer exists as of the date shown on the notice of termination, the department shall not terminate water service to the customer.

(d) *Customer dispute.*

(1) At any time before the date of termination of water services for nonpayment or for a violation of this article, a customer may dispute the correctness of all or part of the amount shown or dispute the existences of the allegation in accordance with the provisions of this section. A customer shall not be entitled to dispute the correctness of all or part of the amount owed to the city if all or part of the amount were the subject of a previous dispute contested under this section.

(2) The procedure for a customer's dispute shall be as follows:

a. Before the date of termination, the customer shall notify the city, orally or in writing, that he or she disputes all or part of the amount shown on past due notice, or the existence of a violation, stating as completely as possible the basis for the dispute.

b. If the city determines that the present dispute is untimely or that the customer previously disputed the correctness of all or part of the amount shown to be owed, the department shall mail to the customer a notice stating that the present dispute is untimely or invalid. The city shall then proceed as if the customer had not notified the city of the present dispute.

c. If the city determines that the present dispute is not untimely or invalid, the city, within three (3) days after receipt of the customer's notice, shall arrange an informal meeting between the customer and official from the public services department.

d. Based on the city's records, the customer's allegations, and all of the relevant materials available to the official, the official shall resolve the dispute, attempting to do so in a manner satisfactory to both the city and the customer.

e. Within five (5) days of completion of the meeting, the official shall mail to the customer a copy of his or her decision resolving the dispute.

f. If the decision is unsatisfactory to the customer, the customer, within five (5) days of his or her receipt of the official's decision, may request, in writing, a formal hearing before a hearing examiner, to be appointed by the city manager.

g. The formal hearing before the examiner shall be held within ten (10) days of the city's receipt of a customer's written request.

h. At the hearing, the city and the customer shall be entitled to present all evidence that is, in the hearing examiner's view, relevant and material to the dispute, and to

examine and cross-examine witnesses. A tape-recorded (or at the option of the city, a stenographic) record of the hearing shall be maintained.

i. Based on the record established at the hearing, the examiner, within five (5) days of the completion of the hearing, shall issue his written decision formally resolving the dispute. The decision of the hearing examiner may be appealed to city council in accordance with chapter 1, section 1-12 of this Code.

(3) Utilization of this dispute procedure shall not relieve the customer of his or her obligation to timely and completely pay all other undisputed water and sewer service charges and the undisputed portions of the amounts which are the subject of the present dispute. Notwithstanding any provision of this article to the contrary, failure to timely and completely pay all such undisputed amounts shall subject a customer to termination of water service in accordance with the provisions of this article.

(4) Until the date of the hearing examiner's, or the hearing examiner's decision, whichever is later, the city shall not terminate the water service of this customer and shall not issue a notice of termination to him solely for nonpayment of the disputed amount or with respect to the disputed violation alone. If it is determined that the customer must pay some or all of the disputed amount, the city shall promptly mail to, or personally serve upon, the customer, a notice of termination which shall contain the following:

a. Amount to be paid;

b. Date of the notice of termination;

c. Date of termination, which shall be at least thirty (30) days after the date of notice of termination;

d. Notice that unless the city receives a complete payment of the amount shown prior to the date of termination, the water service shall be terminated.

(5) The city shall terminate water service for nonpayment of water and sewer charges only during the hours of 9:00 a.m. to 3:00 p.m., Monday through Thursday. No terminations shall be permitted on a legal holiday or on the day before a legal holiday.

(Ord. No. 77-37.3, § 7.01, 12-19-77; Ord. No. 97-160, Pt. XIX, 4-7-97; Ord. No. 97-37.17, Pt. I, 4-8-97; Ord. No. 97-37.18, Pt. I, 5-12-97; Ord. No. 07-37.33, Pt. I, 3-5-07; Ord. No. 08-37.34, Pt. I, 4-7-08; Ord. No. 10-37.35, Pt. I, 5-3-10)

Sec. 34-126. - Definitions.

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

Available public sanitary sewer means a public sanitary sewer system located in a right-of-way, easement, highway, street or public way which crosses, adjoins or abuts upon the property and passes not more than two hundred (200) feet at the nearest point from a structure in which sanitary sewage originates.

Debt service fee or charge means the charges levied to customers of the sanitary sewer system of the city which are used to pay principal, interest and administrative costs of retiring the debt incurred for the construction of the city's sanitary sewer system.

Premises means any property that is connected directly or indirectly to the sanitary sewer system.

Public sanitary sewer system means a sanitary sewer intended for use by the public for collection and transportation of sanitary sewage for treatment or disposal.

Sewage disposal system and *system* mean the Huron-Rouge Sewage Disposal System and Huron-Rouge Sewage Disposal System Walled Lake Arm and any other sewage disposal system intended for use by the public for collection and transportation of sanitary sewage for treatment or disposal.

Structure in which sanitary sewage originates and *structure* mean a building in which toilet, kitchen, laundry, bathing or other facilities which generate water carrying sanitary sewage, are used or are available for use for household, commercial, industrial or other purposes.

System and *sewer system* mean the complete sanitary sewer system for the city, including all pumping stations, works, instrumentalities and properties used or useful in connection with maintaining a sanitary sewer system, the treatment of sanitary sewage, and the distribution of treated sewage, either now in existence, acquired pursuant to this article, or hereafter acquired.

(Ord. No. 83-112, § 1.01, 6-20-83; Ord. No. 07-37.33, Pt. II, 3-5-07)

Cross reference— Definitions and rules of construction generally. § 1-2.

Sec. 34-127. - Required.

(a) No newly constructed structure in which sanitary sewage originates located in an area served by the sewage disposal system, for which there is an available public sanitary sewer, shall be used or occupied by any person unless such structure is connected to the system.

(b) Any existing structure in which sanitary sewage originates lying within the boundaries of the city shall be connected to an available public sanitary sewer upon the earlier of the following events:

(1) Within ninety (90) days after the date of mailing or posting of written notice that a health hazard exists due to the failure of an existing private sewage disposal system due to soil conditions or other reasons; or

(2) Where new and/or additional tile fields are necessary in a septic system owing to

construction of new structures or additions to existing structures.

(c) It shall be the responsibility of the owner of a structure to comply with the provisions of this section.

(Ord. No. 83-112, § 2.01, 6-20-83; Ord. No. 98-112.01, Pt. I, 2-9-98)

Sec. 34-128. - Failure to connect.

(a) The superintendent of water and sewer shall cause a notice to be given to the owner of any structure in which sanitary sewage originates which is not connected to an available public sanitary sewer system as provided in section 34-127. The notice shall state the approximate location of the public sanitary sewer system which is available for connection of the structure involved, shall advise the owner of the requirements and the enforcement provisions of this division and shall advise the owner that the immediate connection of his structure to the system is required by the city.

(b) The notice provided for in subsection (a) of this section shall be given by first class or certified mail to the owner of the structure involved, as shown by the records of the city, or by posting such notice on the structure.

(c) When any structure in which sanitary sewage originates is not connected to an available public sanitary sewer within ninety (90) days after the date of mailing or posting of the written notice provided for in subsection (a) of this section, the city may bring an action for a mandatory injunction or order in any court having jurisdiction to compel the owner to connect to the available public sanitary sewer immediately. Any violation of this division is hereby declared to be a nuisance per se.

(Ord. No. 83-112, § 3.01, 6-20-83; Ord. No. 97-62.02, Pt. VII, 6-16-97)

Sec. 34-610. - Rates and charges.

The rates and charges for service furnished by and the use of the system and the methods of collection and enforcement of the collection of the rates shall be those in effect on date even herewith, as the same may be increased from time to time.

(Ord. No. 92-153, § 10, 8-10-92)

Sec. 34-611. - No free service or use.

No free service or use of the system, or service or use of the system at less than the reasonable cost and value thereof, shall be furnished by the system to any person, firm or corporation, public or private, or to any public agency or instrumentality, including the issuer.

(Ord. No. 92-153, § 11, 8-10-92)

Sec. 34-612. - Fixing and revising rates.

The rates presently in effect in the city are estimated to be sufficient to provide for the payment of the expenses of administration and operation and such expenses for maintenance of the system as are necessary to preserve the system in good repair and working order, to provide for the payment of the principal of and interest on the bonds as the same become due and payable, and the maintenance of the reserve therefor and to provide for all other obligations, expenditures and funds for the system required by law and this ordinance. The rates shall be reviewed not less than once a year in April and shall be fixed and revised from time to time as may be necessary to produce these amounts, and it is hereby covenanted and agreed to fix and maintain rates for services furnished by the system at all times sufficient to provide for the foregoing. In addition, the city hereby covenants to charge and collect rates each year so as to produce net revenues at least equal to one hundred ten (110) percent of debt service requirements on the bonds for the next fiscal year.

(Ord. No. 92-153, § 12, 8-10-92)