STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

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

Plaintiff,

Case No. 2020-183155-CZ
Hon. Nanci J. Grant

-vs-

CITY OF NOVI, MICHIGAN, a municipal corporation,

Defendant.

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DEFENDANT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(8)

Defendant, CITY OF NOVI, by and through its attorneys, ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C., hereby moves, under MCR 2.116(C)(8), for entry of an order granting summary disposition and dismissal of Plaintiff's Complaint. Defendant incorporates the following brief in support of this motion:

BRIEF IN SUPPORT

INTRODUCTION

Plaintiff's Complaint asserts six counts against the City: three unjust enrichment claims and three assumpsit claims. These types of claims all involve an implied ***contract*** that Plaintiff alleges the City has breached. That implied contract supposedly arises out of the authority granted under statutory or charter laws allowing the City to charge water and sanitary sewer fees. The Michigan

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Supreme Court, however, has clearly barred contract causes of action, including those for restitution (i.e., refunds), that arise from and seek to enforce legislation—i.e., statutes, charters, and ordinances. Additionally, the Complaint seeks to assert contract causes of action to enforce a Michigan statute and a City charter provision, but, as a matter of law, Plaintiff does not have a private right of action against the City to enforce its City charter or the state law asserted.

Moreover, the equitable contract theories alleged in Plaintiff's Complaint are invalid for a number of reasons. First, the Supreme Court has found that asserting *equitable* claims in a case challenging public utility fees is an improper attempt to avoid utility fee challenge claims, at *law*, under the Headlee Amendment, which are subject to a one-year statute of limitations. Second, Plaintiff's claims in equity are improper because Novi—as specifically authorized by lawful state statutes, charter provisions, and Michigan Department of Treasury requirements—imposes, collects, and ultimately uses the subject charges for the Utility Systems and the benefit of the putative class members, not itself. The Complaint does not properly claim otherwise.

Plaintiff may disagree with the City's decisions as to *how* the funds from the fees are managed and spent—e.g., accumulating funds for needed utility system capital replacements and improvements scheduled to occur in the near future, temporary fund transfers with interest-bearing obligations to transfer the funds back, etc.—but, as a matter of law and equity, the City, separate and apart from its rate paying residents and businesses, is not "benefitting" from anything and its decisions are not unjustly or inequitably "enriching" the City or anyone else, because the funds are for the utility systems that serve the public, including Plaintiff. In sum, the equitable causes of action filed in this case are inapplicable and fundamentally invalid causes of action. Plaintiff's causes of action simply are not the proper vehicles by which to challenge the way a city charges and uses fees for essential services like public water and sanitary sewage collection and disposal. Therefore, summary disposition is appropriate.

STANDARD OF REVIEW

Summary disposition under MCR 2.116(C)(8) is appropriate where a plaintiff has "failed to state a claim on which relief can be granted." Such a motion "tests the legal sufficiency of a complaint based solely on the pleadings." *Dalley v Dykema Gossett, PLLC*, 287 Mich App 296,

304-305; 788 NW2d 679 (2010). A motion brought under MCR 2.116(C)(8) accepts all well-pleaded factual allegations as true and is granted "when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify relief." *Id.*

BACKGROUND

The vast majority of Defendant City of Novi's population of 66,243 residents[1] and its hospital, schools, and extensive business sector are dependent on the City's public water and sanitary sewer systems for their day-to-day living and business operations. These two systems (the "Utility Systems") are massive,[2] extremely expensive to operate and maintain,[3] and without question essential to public health, safety, and welfare, as well as economic and environmental sustainability throughout the community.

After sifting through the specious rhetoric in the Complaint, Plaintiff's arguments for unjust enrichment and assumpsit essentially fall into two categories:[4] (1) The City has supposedly accumulated "$69 Million"[5] in reserve funds, which, according to Plaintiff's uninformed and out-of-context opinion, is a lot of money and therefore must mean the City has been overcharging him and other system users; and (2) The City has allegedly transferred money from the Utility System

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[1] Southeast Michigan Council of Governments (SEMCOG), 2020 Census, Interactive Mapping Tool, Novi, Michigan: https://maps.semcog.org/2020Census/.

[2] As explained at p. 2 of Defendant's Response in Opposition to Class Certification previously filed with this Court, the Utility Systems' horizontal assets include more than a combined 650 miles of water mains and sanitary sewers and the Systems' vertical assets include a 1.5 million gallon water storage tank and a 1 million gallon underground sewage retention basin, together with many other associated and related assets needed to operate and provide public water and sewer services. As used above, the term "horizontal assets" refers to system infrastructure that generally runs *parallel to and is under* the ground, and the term "vertical assets" refers to system infrastructure that is generally *perpendicular to and above* the surface.

[3] As also explained in Defendant's previously filed Response in Opposition to Class Certification, at pp. 2-3, the total replacement cost for the Utility Systems combined equals more than $950 Million, with an estimated $15,000,000 in capital expenditures required over the next five years just to maintain the desired level of service. In addition, the City has already committed $18,500,000 from its reserves for water and sewer capital improvement projects that are currently under construction, and another $22,300,000 in necessary water and sewer replacement projects is required in the next five years.

[4] The City is not agreeing to these arguments, just summarizing *Plaintiff's* allegations for purposes of bringing this motion under MCR 2.116(C)(8).

[5] The actual amount in reserves not committed to projects under construction at the time of Plaintiff's Complaint was closer to $40 Million. *See*, Defendant's Response in Opposition to Class Certification, pp.2-3. Regardless of which amount is correct, Plaintiff takes no account of the fact that this amount, relatively speaking, is a small number when juxtaposed with the $950 Million in essential infrastructure assets that the City is responsible for maintaining and the deficit in funding for known needed System improvements.

funds to other funds,[6] so it should refund that money.

The six counts in Plaintiff's Complaint consist of three counts for "unjust enrichment" and three counts for "assumpsit." Each count contains nearly identical allegations that the City should be required to "disgorge the amounts" or Plaintiff should "recover the amounts" that the City supposedly has collected in excess of the amounts it was "entitled" to collect. (*See, e.g.,* Complaint ¶¶ 45-47 (pp. 10-11), 52-54 (p. 11), 58-60 (p. 12), 64-66 (p. 13), 62-64 (p. 14), 68-70 (p. 14)). In some counts, Plaintiff refers to and claims the City violated a specific law that entitled, or authorized, the City to collect fees, and in other counts Plaintiff refers to such authority by use of the word "entitled," without a reference to the specific law entitling the City.

To be clear, the City is entitled—actually required—to charge and collect the public water and sanitary sewer system fees ("Utility Fees") under several laws, including State statutes, the City Charter, and the City Code. For instance, the Michigan Legislature not only authorizes, but mandates that the City establish rates to support the Utility Systems under §21(1) of the Revenue Bond Act ("RBA") 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**.
> (b) The payment of the interest on and the principal of bonds payable from the public improvements when the bonds become due and payable.
> (c) The creation of any reserve for the bonds as required in the ordinance.
> (d) Other expenditures and funds for the public improvement as the ordinance may require.

MCL 141.21(1)(emphasis added).

Also, consistent with the above state laws, §13.3 of the City Charter (Exhibit A) states, as a *general* authorization, 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. There shall be no discrimination in such rates within any classification of users

[6] As explained later in this brief, any transfers from the water and sewer funds to another public fund benefitted the putative class and were legal and authorized, as a matter of law, and cannot therefore be found to be unjust. See, *infra*, this Brief, at pp. 10-11.

> thereof nor shall free service be permitted, but higher rates may be charged for services outside the City limits.

Sections 34-145(b), 34-17 and 34-19 of the City Code then provide further and more *specific* legal authority for the City to establish sewer and water rates, respectively, as follows:

> Section 34-145.
> (b) The [sanitary sewer system] rates and charges established pursuant to subsection (a) shall be based upon a methodology which complies with applicable federal and state statutes and regulations. The amount of the rates and charges **shall be sufficient to provide for debt service and for the expenses of operation, maintenance and replacement of the system as necessary to preserve the same in good repair and working order**. The amount of the rates and charges shall be reviewed annually and revised when necessary to **ensure system expenses are met and that all users pay their proportionate share of operation, maintenance and equipment replacement expenses**.
>
> Section 34-17.
> 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.
>
> Section 34-19.
> 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.

(Exhibits B and C)(Emphasis added).

Moreover, with respect to the alleged "transfers" to other funds Plaintiff claims to have occurred, the Michigan Department of Treasury's Uniform Charts of Accounts says otherwise by specifically authorizing such transfers, "Money that accumulates as unrestricted net position of [a utility enterprise] fund **may be transferred** to another fund if authorized by the governing body." (Exhibit D, pp. 117, 130-132) (Emphasis added). And Plaintiff's Complaint fails to disclose that the "transfers" it identifies to the City's Capital Improvement Projects (CIP) fund are an investment, like any other investment, of funds that are transferred back to the Utility System funds **with interest**.

Procedurally, Plaintiff previously filed a Motion for Class Certification, which this Court granted on July 21, 2021, and the City then filed a Motion for Reconsideration, which the Court denied on October 1, 2021, on the grounds that it would have been "inappropriate for the Court to rule on the substance of this case" in the context of reconsidering a class certification motion, and indicating that such matters would be "more appropriately briefed in a dispositive motion."

(Exhibit E). Two days prior to this Court's denial of reconsideration and statements above, the Michigan Supreme Court issued an Order in another case challenging municipal utility service rates. In that case, the Court explained that equitable claims, such as the unjust enrichment and assumpsit claims here, are improper in this type of case, because they seek to subvert the one-year statute of limitations applicable to rate challenge cases under the Headlee Amendment. *Gottesman v Harper Woods*, ___ Mich ___ (2021) (Exhibit F); see *infra*, this Brief, at pp. 6-8.

ARGUMENT

I. SUMMARY DISPOSITION SHOULD BE GRANTED AS TO ALL COUNTS IN PLAINTIFF'S COMPLAINT UNDER MCR 2.116(C)(8), BECAUSE THEY ARE EQUITABLE CAUSES OF ACTION THAT CONSTITUTE AN ATTEMPT TO "DODGE THE BAR" ESTABLISHED BY LAW FOR CAUSES OF ACTION UNDER ART. 9, §31 OF THE MICHIGAN CONSTITUTION (THE "HEADLEE AMENDMENT").

Plaintiff pleads equitable causes of action allegedly supported by repetitive allegations that the City's Utility Fees are "excessive," "unreasonable," "overcharges," "revenue raising," and "disproportionate," and based on these allegations Plaintiff tries to claim that the "fees" are therefore actually "disguised taxes."[7] These are precisely the types of assertions in fee vs. tax cases that involve causes of action for violation of art. 9, §31 of the Michigan Constitution (i.e., the Headlee Amendment). *See, e.g.*, *Bolt v City of Lansing*, 459 Mich 152; 587 NW2d 264 (1998). Therefore, Plaintiff is attempting to disguise Headlee Amendment legal claims as equitable causes of action for unjust enrichment and assumpsit. But why would Plaintiff do this instead of bringing Headlee Amendment claims? Because he hopes doing so might avoid the one-year statute of limitations applicable to Headlee Amendment claims and invalidly achieve six years of damages instead. MCL 600.308a(3).

The Michigan Supreme Court has a long history of spotting this type of avoidance maneuver and precluding it.[8] In *Taxpayers Allied for Constitutional Taxation v Wayne County*, 450 Mich 119, 124-26, 537 NW2d 596 (1995), the Court recognized that "[i]f legal limitations periods did

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[7] See Complaint, ¶¶ 16, 17, 24, 44-46, 50-53, 57-59, 63-66, 60-64(p.13-14), and 67-70(p.14).
[8] "[T]his Court has long recognized that statutes of limitation may apply by analogy to equitable claims. See, e.g., *Smith v. Davidson*, 40 Mich. 632, 633 (1879); *Lothian v. Detroit*, 414 Mich. 160, 168–170 (1982)." *Taxpayers Allied*, 450 Mich 119, 127 n 9.

not apply to analogous equitable suits, "**a plaintiff [could] dodge the bar set up by a limitations statute simply by resorting to an alternate form of relief provided by equity**." 450 Mich 119, 127 n 9; 537 NW2d 596 (1995); quoting *Lothian v. Detroit*, 414 Mich. 160, 169; 324 N.W.2d 9 (1982) (Emphasis added). In *Taxpayers Allied*, the Supreme Court also determined that the one-year period for claims is "a reasonable restriction **designed to protect the fiscal integrity of governmental units who might otherwise face the prospect of losing several years' revenue from a tax that had previously been thought to comply with Headlee restrictions**." 450 Mich 119, 124-26 (Emphasis added).

Just this past month, the Supreme Court entered an Order in *Gottesman v City of Harper Woods,* applying its decision in *Taxpayers Allied* to a class action complaint challenging municipal utility fees on equitable unjust enrichment and assumpsit grounds, similar to what Plaintiff is attempting to do in this case. *Gottesman*, ___ Mich ___ (2021) (Docket No. 160806, 2021 WL 4487059) (Exhibit F). While the plaintiff in *Gottesman* was initially able to convince the Court of Appeals to uphold its pleading in avoidance of the Headlee Amendment statute of limitations, the Supreme Court determined that "the Court of Appeals erred by holding that plaintiff's equitable claims could afford additional relief because 'plaintiff would be entitled to recover for several more years under [his equitable claims] than under [the Headlee Amendment.]'" *Id.*, quoting from *Gottesman v Harper Woods*, unpublished per curium opinion of the Court of Appeals, issued December 3, 2019 (Docket No. 344568, 2019 WL 6519142), p. 14 (Brackets in original)(Exhibit G). The Court remanded the case back to the Court of Appeals for further consideration of this issue, as well as another issue unrelated to this case.

Contrary to the Supreme Court's admonition and rejection of the practice, Plaintiff in this case has asserted six counts of equitable claims in order to dodge the one-year limitations period for a Headlee Amendment claim. If allowed to do this, Plaintiff will succeed in subverting the laws that are specifically "designed to protect the fiscal integrity of governmental units." *Taxpayers Allied*, 450 Mich at 124-26. In contravention of these important protections under Michigan law, Plaintiff's Complaint—a class action expected to have over 20,000 members—is designed to inflict the maximum damage possible to the fiscal integrity of, and the City's ability to maintain, its public

water and sanitary sewer system infrastructure, which provides essential life and economic sustaining services throughout the Novi community. Accordingly, summary disposition should be granted, as a matter of law, to prevent this attempted evasion and subversion of legal limitations established by law.

II. SUMMARY DISPOSITION SHOULD BE GRANTED AS TO ALL COUNTS OF THE COMPLAINT UNDER MCR 2.116(C)(8), BECAUSE THE CITY OF NOVI COLLECTED AND EXPENDED THE SUBJECT CHARGES BY LAWFUL STATUTORY, CHARTER, ORDINANCE, AND MICHIGAN DEPARTMENT OF TREASURY REQUIREMENTS, AND NOT BY UNJUST OR INEQUITABLE MEANS, OR THROUGH MALICIOUS INTENT, CAPRICIOUS ACTION, OR CORRUPT CONDUCT.

"The 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 v Detroit,* 433 Mich 414, 432–433; 446 NW2d 118 (1989). In reviewing Plaintiff's causes of action in this case, it must be acknowledged that "Michigan courts, as well as those in other jurisdictions, have recognized the longstanding principle of **presumptive reasonableness** of municipal utility rates." *City of Novi,* 433 Mich at 428 (emphasis added). The *Trahey* Court further instructed: **"[a]bsent 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). As a result, plaintiffs challenging the reasonableness of municipal water and sewer rates bear a heavy burden.

In addition to that already heavy burden, the Michigan Supreme Court has explicitly instructed 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 at 430 (emphasis added). As such, the Supreme Court insists that the judiciary refrain from scrutinizing rate-making because, among other things, "[t]he rate-making authority of a municipal utility is expressly reserved to the legislative body given the power to set rates under the municipal charter." (*Id.* at 429-30, citing MCL 141.103(d); 141.121). "Where a municipality has the power to engage in an activity for a public purpose, **the courts will not interfere with the**

discretionary acts of its municipal officials . . ." *See City of North Muskegon v Bolema Const Co*, 335 Mich 520, 526; 56 NW2d 371 (1953), quoting *Wolgamood v Village of Constatine,* 302 Mich 384, 395; 4 NW2d 697 (1942)(emphasis added).

A. <u>Plaintiff failed to plead the allegations necessary for equitable claims against the City's exercise of judgment and discretion vested in it by law for deciding the rates to charge for use of its water and sewer systems</u>.

With respect to *equitable* claims, such as the six counts in this case, our Supreme Court has further instructed that, "[i]n order to warrant the interposition of a **court of equity** in municipal affairs, there must be **malicious intent, capricious action, or corrupt conduct**, something which shows the action of the body whose acts are complained of did not arise from an exercise of judgment and discretion vested by law in them." *Id.* (emphasis added).

Plaintiff ignores the Supreme Court's instruction that courts must not interfere with discretionary decisions about how to provide utility services to the public. Throughout his Complaint, Plaintiff asserts specious allegations that simply second-guess and criticize the City both for the methods it uses to fund needed Utility System infrastructure replacement and improvement projects that enable the City to continuously provide water and sewer service to residents and businesses, and also for the transfers of funds to other City accounts to pay for portions of City projects that benefit the Utility Systems or provide earned interest revenue for the Systems that off-sets a portion of rate increases (i.e., helps to keep rates down). See, *infra*, this Brief, at pp. 10-11. Regardless, at the end of the day, a close examination of Plaintiff's rhetoric-ridden pleadings reveals the absence of the required allegation of "malicious intent, capricious action, or corrupt conduct" by the City, and thus Plaintiff's Complaint fails to state a valid cause of action. *See, Id.*

B. <u>Plaintiff also failed to plead a valid claim for unjust enrichment and assumpsit</u>.

Moreover, any attempt to amend the Complaint to include some kind of statement baldly alleging the "malicious intent, capricious action, or corrupt conduct" elements would be futile and would not remedy the lack of a valid claim for unjust enrichment in this case. Claims for unjust enrichment require: "(1) the receipt of a benefit by the defendant from the plaintiff and

(2) an inequity resulting to the plaintiff because of the *retention* of the benefit by the defendant . . . In other words, the law will imply a contract to prevent unjust enrichment only if the defendant has been **unjustly or inequitably enriched** at the plaintiff's expense." *Morris Pumps v Centerline Piping, Inc,* 273 Mich App 187, 195; 729 NW2d 898 (2006) (internal citations omitted)(emphasis added). Assumpsit is a remedy "sounding in unjust enrichment." Konopka, *supra*, at 2071-72; 1 Am Jur 2d Actions § 13; *see also*, *Woods v Ayres*, 39 Mich 345, 348-49 (1878). Like unjust enrichment, it involves the recovery of money invalidly collected. *Bond v Pub Sch of Ann Arbor Sch Dist,* 383 Mich 693, 704; 178 NW2d 484 (1970). Taking everything as true in Plaintiff's Complaint, the above elements have not, and cannot be met in this case, as a matter of law.

There can be nothing unjust about following the law. The City collected the charges of which Plaintiff complains by lawful statutory, charter, and ordinance mandates. The Revenue Bond Act ("RBA"), as a matter of law, specifically mandates that the City "shall" establish "rates"—defined under MCL 141.103 to include "charges" and "fees"—for its public Utility Systems. MCL 141.121(1). Likewise, §13.3 of the City Charter and §§34-145(b), 34-17 and 34-19 of the City Code also require the charging and collection of fees for the City's Utility Systems. See, this Brief, *supra*, pp. 4-5; see also, Exhibits A-C. Therefore, the City is not only acting pursuant to authority and discretion granted to it by both City and State of Michigan laws, but according to those laws the City has no choice but to charge the Utility Fees at issue in this case (i.e., the City is doing what the law says it must do).

Additionally, with respect to Plaintiff's claims about "transfers," for purposes of this Motion the Court can accept as true the allegation in Plaintiff's Complaint that there have been transfers of funds from the Water and Sewer Fund to the Capital Improvements Fund, but Plaintiff has not included the legislative body's **full** decision on this subject, as reflected in the City Council Resolution, officially adopted on June 19, 2017 (Exhibit H). That formal Resolution **mandates repayment** of any advanced funds **with interest** on a monthly basis and full repayment within 90 days, if needed by the Utility Systems at any time for system improvement projects, emergencies, etc. *Id.* Moreover, such transfers are entirely authorized and appropriate, as a matter

of law. The Michigan Department of Treasury specifically authorizes such transfers by a City Utility System "enterprise fund"[9] in its Uniform Charts of Accounts: "Money that accumulates as unrestricted net position of this fund **may be transferred to another fund** if authorized by the governing body." (Exhibit D, pp. 117, 130-132)(emphasis added). Furthermore, state law also authorizes municipalities owning a public utility to make "contributions from the operating revenues of the utility in such amounts and for such purposes as shall be determined by the governing body of the public utility to be in the public interest, subject to the approval of the legislative body of the municipality." MCL 123.391

Here, the transfer was temporary, as an investment that pays actual interest to the Utility System fund to defray the costs that are otherwise charged to the system users, just like other investments of those funds. The system users, including Plaintiff and the putative class, are actually benefitted by the transfers. Therefore, this practice is perfectly valid, lawful, just, and equitable—and Plaintiff's claims for unjust enrichment and assumpsit fail as a matter of law.

Furthermore, the act of a transfer alone is not enough, especially when it is lawful. To have stated a valid claim, Plaintiff would have had to include an allegation that the "transferred" funds are not transferred back to the Utility System for its use. Plaintiff either knew he could not make such an allegation because it is untrue, or he did not fully investigate this allegation and claim before asserting it. Either way, its absence in the Complaint is another basis upon which this claim is invalid.

C. Since the City charges and uses the fees in question in accordance with the state's Revenue Bond Act, other state laws and regulations, and the City's lawful Charter and ordinances, Plaintiff's unjust enrichment and assumpsit claims fail as a matter of law.

Furthermore, even if, *arguendo,* the City was enriched—which it was not—"not all enrichment is necessarily unjust in nature." *Morris Pumps,* 273 Mich App at 196. Instead, "it is necessary to determine whether that enrichment was **unjust or inequitable**." *Id.* (emphasis added).

[9] "Enterprise funds may be used to report any activity for which a fee is charged to external users for goods or services." Mich. Dept. Treasury, Uniform Charts of Accounts, p. 117 (Exhibit D). The City's water fund and sewer fund are enterprise funds because they are used for the fees charged to system users for water and sewer services provided by the City.

Where, as here, the City collected the subject charges through lawful statutory, charter, and ordinance mandates, it cannot be said that such charges were collected unjustly or inequitably. See e.g., *Kochis v City of Westland,* 409 F Supp 3d 598, 611 (ED Mich, 2019) (granting summary judgment of an unjust enrichment claim where fees were collected under ordinances that were "not on their face unlawful.").

In *Kochis,* the owner of real property in the City of Westland brought a putative class action to challenge Westland's debris removal and nuisance ordinances claiming that the fees were excessive and sought restitution under unjust enrichment, among other claims. *Id.* at 603-04. The Court held that the ordinances at issue were lawful on their face and that the claim for unjust enrichment based on fees collected under those ordinances failed as a matter of law. *Id.* at 611. After citing the elements of an unjust enrichment claim, the Court held that the fees charged under the facially lawful ordinance did not constitute "evidence of a benefit conferred on [Westland]" or "evidence of an inequity resulting from the fees charged by [Westland] under its ordinances." *Id.*

In this case, just as in *Kochis,* the City has charged the fees in question pursuant to the State's RBA and the City's lawful Charter and ordinances, and, therefore, Plaintiff's unjust enrichment and assumpsit claims likewise fail as a matter of law and should be dismissed.

III. SUMMARY DISPOSITION SHOULD BE GRANTED AS TO ALL COUNTS IN PLAINTIFF'S COMPLAINT UNDER MCR 2.116(C)(8) BECAUSE EACH COUNT ALLEGES A CONTRACT CLAIM THAT IS NECESSARILY BASED ON THE CITY ALLEGEDLY EXCEEDING ITS LEGAL AUTHORITY, WHICH CLAIMS ARE PROHIBITED AS A MATTER OF LAW.

A claim for unjust enrichment is "the equitable counterpart to a claim for breach of contract . . . occur[ing] when [a person] has or maintains money or benefits which in justice and equity belong to another." *AFT Mich v State,* 303 Mich App 651, 677; 846 NW2d 583 (2014), *aff'd sub nom AFT Michigan v State of Michigan*, 497 Mich 197, 866 NW2d 782 (2015). "Assumpsit may be upon an express contract or promise, or for nonperformance of an oral or simple written contract, or it may be a general assumpsit upon a promise or contract implied by law." *Kristoffy v Iwanski*, 255 Mich

25, 28; 237 NW 33 (1931).[10]

Accordingly, both assumpsit and unjust enrichment are equitable claims that seek restitution under an implied **contract** theory.[11] Consistent with this contract law and remedy foundation, each of Plaintiff's assumpsit and unjust enrichment counts contains nearly identical claims alleging that the City supposedly has collected in excess of the amounts it was legally *"entitled"* to collect and that the City should be required to "disgorge the amounts" or Plaintiff and the purported Class should "recover the amounts." (*See, e.g.,* Complaint ¶¶ 45-47 (pp. 10-11), 52-54 (p. 11), 58-60 (p. 12), 64-66 (p. 13), 62-64 (p. 14), 68-70 (p. 14)). Thus, the gravamen for *each count* is the assertion that the Utility Fees are "unjust" and "inequitable" because the City has charged and received fees beyond the amount it was "entitled" *by law* to receive—after all, it can only be a "law" that would "entitle" the City to collect the fees. As described in the Background section of this brief (*supra,* at pp. 4-5), the legal entitlement for the collection of the Utility Fees, and upon which each of Plaintiff's six counts is necessarily based, comes from statutes, ordinances, and charter provisions—i.e., the Revenue Bond Act §21(1), City Charter §13.3, and City Code §§34-145(b), 34-17 and 34-19. (Exhibits A-C). Therefore, in each count of the Complaint, Plaintiff is alleging that the City has breached an implied *contract* that arises out of the authority granted under state and local laws requiring the City to charge the Utility Fees.

As such, all six counts of Plaintiff's Complaint trigger the application of a body of both U.S. Supreme Court and Michigan Supreme Court law barring such contract-based claims and restitution, as a matter of law. In *Studier v Michigan Pub Sch Employees Ret Bd,* 472 Mich 642, 661; 698 NW2d 350 (2005), the Michigan Supreme Court, extensively and favorably citing legal authority from the U.S. Supreme Court,[12] held that due to limitations on legislative power, **the law**

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[10] Assumpsit is a form of restitution, developed in order to apply contractual principles to situations not involving a valid express contract. Emily Sherwin, *Restitution & Equity*, 79 Tex L Rev 2083, 2094 (2001); Note, Eric J. Konopka, *Hey, That's Cheating! The Misuse of the Irreparable Injury Rule as a Shortcut to Preclude Unjust-Enrichment Claims*, 114 Colum L Rev 2045, 2055-57, 2071-72 (2014).

[11] The issue of whether an equitable claim can be maintained by a party is a **question of law**. *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 193; 729 NW2d 898 (2006)(Emphasis added). Also, "The existence and interpretation of a contract are **questions of law**." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006)(Emphasis added).

[12] *Nat'l R. Passenger Corp. v. Atchison, Topeka & Santa Fe R. Co.,* 470 U.S. 451, 465–466(1985).

necessarily provides for a "strong presumption that statutes do not create contractual rights." (citations omitted) (emphasis added). This presumption dictates that, as a matter of law, **"[i]n order for a statute to form the basis of a contract, the statutory language 'must be plain and susceptible of no other reasonable construction than that the Legislature intended to be bound to a contract.'"** *Studier*, 472 Mich at 662 (citations omitted)(emphasis added). Unless there is an expression of an actual intent of the government to bind itself through its legislation, **"courts should not construe laws declaring a scheme of public regulation as also creating private contracts"** to which the government is a party. *Id.* (Emphasis added). Rules of statutory construction such as these also apply to city legislation, i.e., ordinances and charters. *Great Lakes Soc v Georgetown Charter Twp,* 281 Mich App 396, 407; 761 NW2d 371 (2008) ("Ordinances are treated as statutes for the purposes of interpretation and review" and "the interpretation and application of a municipal ordinance presents a question of law.").[13]

In the case of *In re Certified Question (Fun 'N Sun RV, Inc. v. Michigan),* 447 Mich. 765, 777–778; 527 NW2d 468 (1994), the Court addressed the issue of whether policyholders who paid premiums into a State of Michigan accident fund were entitled to reserve funds in excess of what was needed to cover liabilities. The plaintiffs argued that they were entitled to such excess amounts under an implied contract theory based on the applicable statutes governing the state accident fund. *Id.* at 776. After analyzing the various statutes involved with the state accident fund program, the Court found that, **because there was no provision in those laws indicating that the policyholders were promised or entitled to the excess funds**, the plaintiffs had no contract rights to make a claim for a distribution of said excess funds to them. *Id.* at 777-785.

Here, Plaintiff and the purported Class are system users who paid fees into the City's utility system enterprise funds for the provision of water and sanitary sewer utility services, and they

[13] *See also, Warren's Station, Inc v City of Bronson*, 241 Mich. App. 384, 388; 615 NW2d 769 (2000); *Bonner v City of Brighton,* 495 Mich 209, 222; 848 NW2d 380 (2014)("Since the rules governing statutory interpretation apply with equal force to a municipal ordinance, the goal of construction and interpretation of an ordinance is to discern and give effect to the intent of the legislative body" and "the most reliable evidence of [legislative] intent is the language of the ordinance itself and, therefore, the words used in an ordinance must be given their plain and ordinary meanings.")

claim that the City's rates and collection of those fees have resulted in reserve funds that are in excess of what the City needs and was authorized by various laws to collect, thus entitling them to receive distributions of the excess funds under theories of implied contract rights. Plaintiff, however, has not identified any provision in those laws underlying Counts I-VI that would demonstrate a legislative intent to create or imply a contract between the Class members and the City that would allow them to bring contract law claims like "assumpsit" or "unjust enrichment."

Therefore, being without any language creating a contractual right or a right to excess funds, Plaintiff and the putative Class cannot overcome the presumption that the underlying legislation entitling the City to collect the Utility Fees do not create contractual rights to sustain Counts I-VI, and these claims must be dismissed as a matter of law.

IV. IN ADDITION TO THE ABOVE REASONS FOR GRANTING SUMMARY DISPOSITION OF ALL COUNTS, SUMMARY DISPOSITION SHOULD BE GRANTED UNDER MCR 2.116(C)(8) AS TO COUNTS III AND VI OF PLAINTIFF'S COMPLAINT, BECAUSE, AS A MATTER OF LAW, PLAINTIFF AND THE PUTATIVE CLASS DO NOT HAVE A PRIVATE RIGHT OF ACTION AGAINST THE CITY TO ENFORCE ITS CITY CHARTER.

In Counts III and VI of the Complaint, Plaintiff claims that the City has violated §13.3 of its City Charter (Exhibit A),[14] and, as a result, Plaintiff and the putative Class are supposedly entitled to a refund of the Utility Fees the City has collected from them. These counts of Plaintiff's Complaint should be dismissed, as a matter of law, because the plain language of the City's Charter states that its provisions are only enforceable by officers of the City–**not** private citizens like Plaintiff and the Class membership.

A. <u>There is no private right of action to enforce the municipal laws at issue in this case</u>.

It is well established in Michigan that parties do not have a private right of action under

[14] The Complaint only cites Charter §13.3, which, as explained earlier in this brief, *supra* at pp.4-5, is a general and broadly worded provision applicable to *all* City utility rates. The Complaint fails to mention the other requirements under Code §§34-17, 34-19, and 34-145(b) (Exhibits B-C), which are more specific provisions applicable directly to the water and sewer system rates. For instance, §34-145 specifically mandates that: "The amount of the rates and charges **shall be sufficient to provide for** debt service and for **the expenses of operation, maintenance and replacement of the system as necessary to preserve the same in good repair and working order**." (Emphasis added). Code §34-145, when read together with Charter §13.3, must be construed as indicating that, as long as the amounts collected through rates and charges will be used to pay for the expenses of the utility system, then it is just and reasonable.

municipal laws that plainly do **not** confer such a right. This is especially true when the municipal laws explicitly confer that right to a public official. The Court of Appeals most-recently applied this principle in *McMillan v Douglas,* 332 Mich App 354, 355-56; 913 NW2d 336 (2017), holding that a landlord's alleged violation of a county ordinance governing issuance of rental permits did not create a private cause of action for a tenant to demand a refund of rent paid to the landlord.[15] The Court explained that "[w]hen a provision 'creates a new right or imposes a new duty unknown to the common law and provides a comprehensive administrative or other enforcement mechanism or otherwise entrusts the responsibility for upholding the law to a public officer, a ***private*** right of action will not be inferred.'" *Id.* at 357-58, citing *Claire–Ann Co v Christenson & Christenson, Inc*, 223 Mich App 25, 31; 566 NW2d 4 (1997)(emphasis added).

B. <u>Plaintiff's Complaint fails to allege authority which provides Plaintiff with a private right of action to enforce the municipal law at issue in this case, because the City's laws grant that right only to City officials, and not to Plaintiff or the other putative class members</u>.

Here, Plaintiff's Complaint does not cite any provision of the City's Charter that would permit them to launch a private cause of action against the City for a Charter violation, much less to seek the remedy of "disgorgement" of tens of millions of dollars that are dedicated to essential public utility services and infrastructure work. That is because there is no such provision in the City's Charter. Instead, the legal recourse and enforcement rights that *do* exist are found in the following provisions of the City Charter itself:

> Section 2.2 – Further definition of powers. In addition to the powers possessed by the City under the Constitution and Statutes of the State of Michigan and those set forth throughout this Charter, **<u>the City</u> shall have power** with respect to **and may, by** ordinance or other **lawful acts of its officers, provide for** the following, subject to any specific limitation placed thereon by this Charter:
> . . . (h) **The enforcement of all local, police, sanitary and other regulations** as are not in conflict with the general laws;
>
> Section 4.7. – City Manager . . .
> (a) Powers and Duties. The City Manager shall be the chief administrative officer of the City and shall be responsible to the Council for the administration of all City

[15] *See also, Ballman v Borges*, 226 Mich App 166, 168-69; 572 NW2d 47 (1997)(ordinance providing that no rent shall be recoverable if dwelling was unfit for human habitation, did not give rise to a private cause of action by tenant against landlord to recover rent previously paid); *Szkodzinski v Griffin,* 171 Mich App 711; 431 NW2d 51 (1988)(ordinance providing that "any person owning, possessing or harboring any dog shall be responsible for and shall be held accountable for any and all acts or actions of such dog" did not create private cause of action for damages resulting from dog attack).

> affairs placed in his or her charge by or under this Charter. **The City Manager shall have the following powers** and duties:
> . . . (4) **To see that all laws, provisions of this Charter and acts of the Council subject to enforcement by the Manager or by officers subject to the Manager's direction and supervision are faithfully executed**.
>
> Section 4.14. – Director of Public Safety. . .
> (a) Police Department. The Council shall provide for, establish and maintain, within the administrative division of the City, a **Police Department to enforce all laws** and all ordinances and codes **which are in force in the City** and to preserve peace and good order in the City.

(City Charter, Exhibit A)(Emphasis added).

According to the above three provisions of the Charter, the City and its police department and city manager are specifically listed as having the power to enforce the provisions of the City's laws, which include the City's charter and ordinances. No one outside of the City has been provided the power to enforce the City's laws, including Plaintiff and the other members of the putative Class in this case.

As in *McMillan*, *supra*, the plain language of the City's laws confirm that enforcement is delegated solely to the City and its public officers—not to private citizens or businesses. (Exhibit A, §§2.2, 4.7, and 4.14). Therefore, as a matter of law, Counts III and VI fail to state a valid cause of action and should be dismissed.

V. IN ADDITION TO THE ABOVE REASONS FOR GRANTING SUMMARY DISPOSITION OF ALL THE CLAIMS IN THIS CASE, SUMMARY DISPOSITION SHOULD BE GRANTED AS TO COUNTS II AND V, BECAUSE, AS A MATTER OF LAW: (A) MCL 141.91 DOES NOT PROVIDE A PRIVATE RIGHT OF ACTION; (B) MCL 141.91 DOES NOT APPLY TO FEES, AND EVEN IF IT DID, THE CITY'S UTILITY FEES WOULD FALL UNDER THE EXCEPTION PROVIDED IN MCL 141.91; AND (C) CONTRACT CLAIMS TO ENFORCE LEGISLATION ARE INVALID.

Counts II and V of Plaintiff's Complaint allege that the City has violated MCL 141.91, which reads 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.

With respect to a court's application of this state law to the City's decisions and regulations, including those applicable to charges for public utility services, the Michigan Constitution mandates that: "**The provisions of . . . law concerning . . . cities . . . shall be liberally**

construed in their favor." Const 1963, art 7, §34 (emphasis added). Accordingly, **in considering the following two arguments**, this Court is constitutionally required to "liberally construe" MCL 141.91 **in favor of** finding that the City's Utility Fees are not in violation of MCL 141.91.

A. <u>As a matter of law, Plaintiff and the putative class members do not have a private right of action for refund against the City under MCL 141.91, thus Counts II and V must be dismissed</u>.

As a general rule, parties do not have a private right of action under statutory laws that do not confer such a right. *Office Planning Group, Inc. v. Baraga-Houghton-Keweenaw Child Dev. Bd.*, 472 Mich. 479, 496; 697 N.W.2d 871 (2005).[16] In *Office Planning Group,* the Michigan Supreme Court decided the issue of whether a disappointed bidder could bring a private cause of action to enforce §9839(a) of the Head Start Act to gain access to other bidders' documents. *Id.* at 481-482. "[I]n determining whether plaintiff may bring a private cause of action to enforce the § 9839(a), we must determine whether Congress intended to create such a cause of action." *Id.* The Court found that "[b]ecause the Head Start Act does not evidence an intent to create a private remedy for an alleged violation of § 9839(a), plaintiff's action must be dismissed." *Id.* See also, *Lash v City of Traverse City*, 479 Mich 180, 196-197; 735 NW2d 628 (2007) (in absence of authority in a statute, plaintiff's claim that a private cause of action for monetary damages may be pursued because it is the only mechanism by which the statute can be enforced is incorrect, where declaratory and injunctive relief may be pursued).

On its face, the provisions of MCL 141.91 do not authorize a private cause of action of any kind. In terms of legislative intent, MCL 141.91 does not even mention the word "fees" or demonstrate that it has any application whatsoever to public water and sewer fees. See, *infra*, this Brief, at pp. 19-20. Moreover, through its adoption of MCL 600.308a (Exhibit I) as part of the Legislation implementing the Headlee Amendment, the Legislature confirmed its intent that MCL 141.91 not be construed broadly to create or authorize a private cause of action. Under MCL 600.308a, the

[16] In *Office Planning Group*, the Michigan Supreme Court favorably quotes and cites the U.S. Supreme Court's decisions explaining this general rule in *Touche Ross & Co. v. Redington,* 442 U.S. 560, 568; 99 S.Ct. 2479 (1979) and *Cannon v. Univ. of Chicago,* 441 U.S. 677, 688; 99 S.Ct. 1946 (1979).

Michigan Legislature saw fit to provide private taxpayers with a specific statutory avenue and rights to file a private civil action either in a county circuit court, or directly with the court of appeals, to enforce the tax provisions of the Headlee Amendment. **MCL 141.91 and MCL 600.308a both relate to the imposition of taxes**. However, unlike MCL 600.308a, MCL 141.91 does not provide any authority for taxpayers to file a civil claim for violation of its provisions, nor does any other statute.

It is worth further noting that MCL 600.308a was adopted two years after the Headlee Amendment and sixteen years after MCL 141.91, so it could have easily included the same authority for taxpayers to file a civil enforcement action for an alleged violation of MCL 141.91, **but it did not do so**.

Based on all of the above, and considering the Constitutional mandate to liberally construe MCL 141.91 in favor of the Defendant, it must be concluded that the Legislature did not intend to create a private cause of action to challenge fees under MCL 141.91. Const 1963, art 7, §34. The Counts seeking to enforce MCL 141.91 must therefore be dismissed, as a matter of law.

B. Summary disposition should be granted as to Counts II and V because MCL 141.91 does not apply to fees for public utility services, and even if it did, the City's Utility Fees would fall under the exception provided in MCL 141.91.

In Counts II and V, the Complaint ignores the above constitutionally-required favorable construction rule and tries to manufacture a claim that the City has initiated taxes, through the imposition of the Utility Fees, in violation of MCL 141.91. Notably, MCL 141.91 makes absolutely no mention of the word "fees." The purpose of MCL 141.91 is plain on its face: If a city is going to impose any taxes, those taxes shall be in the form of an "ad valorem property tax," unless another provision of law authorizes the city to do so. It does not even mention "fees" and should, according to Const 1963, art 7, §34, be liberally construed by this Court as not being directed at or applicable to utility fees that are collected by cities.

Even if MCL 141.91 applied, which it does not, and even if this Court construes the City of Novi's Utility Fees to be taxes, the RBA specifically authorizes the City to collect them: "Rates for services furnished by a public improvement shall be fixed . . ." and "The rates shall be fixed and revised by the governing body . . ." MCL 141.121(1) and (2). As such, considering the RBA, the Utility Fees

would fall under the "[e]xcept as otherwise provided by law" provision of MCL 141.91, because the RBA specifically authorizes the City to do exactly what it is doing with these charges for the water and sewer systems—in fact, the RBA uses the words "shall be" and thus *mandates* the City to charge the fees it is charging. MCL 141.121(1) and (2).

Again, the Court is constitutionally required to "liberally construe" both MCL 141.91 and MCL 141.121 *in favor of* the City, as opposed to twisting and stretching those statutes to support the manufactured claims *against* the City in the Complaint. Therefore, the Court should find that MCL 141.91 is inapplicable to the City fees and dismiss the Counts relating to that statute.

VI. IN ADDITION TO THE OTHER REASONS STATED IN SECTIONS I-V OF THIS BRIEF, SUMMARY DISPOSITION SHOULD BE GRANTED UNDER MCR 2.116(C)(8) AS TO COUNTS IV, V, AND VI OF THE COMPLAINT, BECAUSE ASSUMPSIT HAS BEEN ABOLISHED IN MICHIGAN AS A CAUSE OF ACTION.

Counts IV, V, and VI of the Complaint assert "assumpsit" as the cause of action against Defendant. Assumpsit, as a cause of action, has been abolished by Michigan law. In *Fisher Sand & Gravel Co v Neal A Sweebe, Inc,* 494 Mich 543, 564; 837 NW2d 244 (2013), the Michigan Supreme Court recognized, "assumpsit as a form of action was abolished" with the passage of the General Court Rules in 1963. Several other courts have also recognized the abolishment of assumpsit as a cause of action in Michigan.[17] Thus, these counts are invalid causes of action in this case.

CONCLUSION

For the reasons stated in this Motion and Brief, summary disposition should be granted under MCR 2.116(C)(8) as to all counts of the Complaint.

Respectfully submitted,
ROSATI, SCHULTZ, JOPPICH &
AMTSBUECHLER, P.C.
BY: */s/ Steven P. Joppich*
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[17] *See, e.g., Halpern 2012, LLC v City of Ctr Line,* 404 F Supp 3d 1109, 1115 (ED Mich, 2019); *Garner Properties & Mgt v Charter Twp of Redford,* unpublished opinion of the U.S. Dist. Ct., E.D. Mich., iss'd Aug. 8, 2017 (Docket No. 15-14100), p 17; *MS Rentals, LLC v City of Detroit,* 362 F Supp 3d 404, 411-12 (ED Mich, 2019); *NILI 2011, LLC v. City of Warren,* unpublished opinion of the U.S. Dist. Ct., E.D. Mich., iss'd Nov. 14, 2017 (Docket No. 15-13392), p 9.

PROOF OF SERVICE

The undersigned certifies that the foregoing was served upon all parties to the above cause to each of the attorneys/parties of record herein at their respective addresses disclosed on the pleadings on November 1, 2021.

BY:
- ☐ U.S. Mail
- ☐ Hand Delivered
- ☐ Federal Express
- ☐ Telefacsimile
- ☐ Overnight courier
- ☒ Other: ***E-file***

Signature:
/s/ Sharon L. Sleeker

EXHIBIT A

PART I - CHARTER[1]

Footnotes:

--- (**1**) ---

Editor's note— Printed herein is the Charter of the City of Novi, Michigan, adopted on November 8, 1977 and made effective on January 1, 1978. Amendments are indicated by a history note in parentheses following the amended section. Additions made for clarity are enclosed by brackets [ ].

State Law reference— Home rule cities generally, MCL 117.1 et seq., MSA 5.2071 et seq.; power to adopt and amend Charter, Mich. Const. 1963, Art. VII, § 22.

PREAMBLE

We the people of the City of Novi, asking the blessing of Almighty God, and by virtue of authority granted by the Constitution and by Public Act 279 of 1909 [MCL 117.1 et seq., MSA 5.2071 et seq.], as amended, and by laws pertaining to Home Rule Cities of the State of Michigan, do hereby ordain and establish this home rule Charter for the City of Novi, Michigan.

CHAPTER 1. - NAME AND BOUNDARIES

Section 1.1. - Name and boundaries.

The following described territory, together with all territories that may hereafter be annexed thereto, shall continue and remain a body corporate under the official name and title of "City of Novi" and shall be subject to the municipal control of said City, to wit:

Beginning at the northeast corner of Section 1, T. 1 N., R. 8 E., Novi Township, Oakland County, Michigan, thence southerly along the east line of Section 1-12-13-24-25 and 36 to the southeast corner of Section 36, thence westerly along the south line as altered by excepted parcel noted hereinafter of Sections 36, 35, 34, 33, 32, and 31 to the southwest corner of Section 31, thence northerly along the westerly line of Sections 31, 30, 19 and 18 to the northwest corner of Section 18, thence easterly along the northerly line of Sections 18 and 17 to the northeast corner of Section 17 and the southwest corner of Section 9, thence northerly along the westerly line of Sections 9 and 4 to the northwest corner of Section 4, thence easterly along the northerly line of Sections 4, 3, 2, and 1 to the point of beginning, including all of Sections 3, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 36, and that part of Sections 1, 2, 4, 9, 17, 18, 19, 27, 33, 34, and 35 except the following parcels:

(a) Part of Section 1 described as:

(1) E. 16 acres of N. 36 acres of N.E. Frc. ¼ ex. W. 150 ft. of N. 290 ft.

(2) W. 150 ft. of N. 290 ft. of E. 16 acres of N. 36 acres of N.E. ¼.

(3) N. 40 acres of S. 80 acres of N.E. Frc. ¼.

(4) S. 40 acres of N.E. Frc. ¼.

(5) N. 45 acres of E. 65 acres of W. ½ of S.E. ¼, also N. 61 acres of E. ½ of S.E. ¼.

(b) Part of Section 2 described as:

(1) W. ½ of N.E. Frc. ¼.

(2) E. ¾ of S.E. ¼ ex. beg. at SE. Sec. Cor., th. W. 191.70 ft., thence N. 01 degrees, 19 ft., 30 in., E. 158.03 ft., thence N. 89 degrees, 13 ft., 10 in., E. 188.63 ft., thence S. 0 degrees, 12 ft., W. 160.55 ft. to P.O.B., also ex. S. 208 ft. of E. ½ of W. ½ of S.E. ¼.

(c) Part of Section 4 described as:

(1) W. ½ of the S.W. ¼ and S.W. ¼ of N.W. ¼.

(2) Part of the N.E. Frc. ¼ and part of the N.W. Frc. ¼ beg. at a pt. on N. Sec. line E. 1,869.12 ft. from N.W. cor. of Sec., th. N. 89 degrees, 30 ft. E. along Sec. line 1,353.66 ft., th. S. 00 degrees, 30 ft. E. 1,287 ft., th. S. 89 degrees 30 ft. W. 1,353.66 ft., th. N. 0 degrees, 30 ft. W. 1,287 ft. to P.O.B.

(3) Part of N.W. Frc. ¼ beg. at N.W. cor. of Sec., th. E. alg. N. Sec. line 1,869.12 ft., th. S. 1,848 ft., th. W. 1,869.12 ft., to W. Sec. line, th. alg. Sec. line 1,848 ft. to P.O.B.

(d) Part of Section 9 described as:

(1) W. ½ of W. ½.

(e) Part of Section 17 described as:

(1) That part of W. ½ of N.W. ¼ lying sly. of U.S. 16 Hwy. ex. S. 156 ft. of W. 770 ft.

(2) W. ½ of S.W. ¼, ex. N. 510 ft. of W. 770 ft., also ex. S. 1,110 ft.

(3) W. ½ of E. ½ of S.W. ¼.

(4) E. ½ of E. ½ of S.W. ¼, ex. S. 10 acres, also ex. E. 200 ft. of remainder.

(f) Part of Section 18 described as:

(1) S. 312.30 ft. of N.E. ¼, ex. E. 990 ft.

(2) S. ¼ of S.W. Frc. ¼ and W. ½ of S.E. ¼.

(g) Part of Section 19 described as:

(1) N.W. ¼ of N.E. ¼ and N.W. Frc. ¼.

(h) Part of Section 27 described as:

(1) "Brookland Farms No. 1" as recorded in Oakland County, Michigan, Register of Deeds Liber 86, Pages 8-9.

(i) Part of Section 33 described as:

(1) S. ½.

(j) Part of Section 34 described as:

(1) S. ½.

(k) Part of Section 35 described as:

(1) That part of the S.W. ¼ of N.W. ¼ lying E. of P.M.R.R.R/W.

(2) S.E. ¼ of N.W. ¼ and W. 10 Parcels of S.W. ¼ of N.E. ¼ and N.E. ¼ of S.W. ¼.

(3) West ½ of S.W. ¼, ex. that part lying N.W. of P.M.R.R.

(4) Part of S.E. ¼ of the S.W ¼ beg. on S. Sec. line dist. S. 89 degrees, 09 ft. W. 1,013.54 ft. from S. ¼ cor., th. S. 89 degrees, 09 ft. W. 318.8 ft., th. N. 00 degrees, 29 ft. W. 1,305.43 ft., th. N. 88 degrees, 56 ft., 30 in. E. 256.84 ft., th. S. 00 degrees, 38 ft., E. 640 ft., th. N. 89 degrees, 09 ft. E. 66 ft., th. S. 00 degrees, 38 ft. E. 666 ft. to P.O.B.

State Law reference— Incorporation, consolidation of territory and alteration of boundaries of home rule cities, MCL 117.6 et seq., MSA 5.2085 et seq.

CHAPTER 2. - MUNICIPAL POWERS

Section 2.1. - General powers.

Unless otherwise provided or limited in this Charter, the City and its officers shall possess and be vested with any and all powers, privileges and immunities, expressed or implied, which cities and their officers are, or hereafter may be, permitted to exercise or to provide for in their charters under the Statutes and Constitution of the State of Michigan, including all powers, privileges and immunities granted to cities and their officers by Act 279 of the Public Acts of 1909 of the State of Michigan [MCL 117.1 et seq., MSA 5.2071 et seq.], as amended, and including all powers, privileges and immunities which cities are, or may be, permitted to provide in their charters by said Act 279 of the Public Acts of 1909 [MCL 117.1 et seq., MSA 5.2071 et seq.], as amended, as fully and completely as though these powers, privileges and immunities were specifically enumerated and provided for in this Charter; and in no case shall any enumeration of particular powers, privileges or immunities herein be held to be exclusive.

The City and its officers shall have power to exercise all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be herein expressly enumerated or not; to do any act to advance the interests of the City, good government and prosperity of the municipality and its inhabitants; to make and enforce all laws, ordinances and resolutions which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by the Constitution and Statutes of the State of Michigan in cities, except where forbidden, or where the subject is covered exclusively by a general law. The City and its officers should have power to provide for the public peace and health and for the safety of persons and property and to provide that the levy[,] collection and return of state, county, and school taxes shall be in conformity with the general laws of the state except that the preparation of the

assessment roll, the meeting of the Board of Review, and the confirmation of the assessment roll shall be as provided by this Charter.

State Law reference— Permissible that Charter provide that the city may exercise all municipal powers in the management and control of municipal property and in the administration of the municipal government, MCL 117.4j(3), MSA 5.2083(3).

Section 2.2. - Further definition of powers.

In addition to the powers possessed by the City under the Constitution and Statutes of the State of Michigan and those set forth throughout this Charter, the City shall have power with respect to and may, by ordinance or other lawful acts of its officers, provide for the following, subject to any specific limitation placed thereon by this Charter:

State Law reference— Restrictions on city powers, MCL 117.5, MSA 5.2084.

(a) The regulation of trades, occupations and amusements within its boundaries, including the sale of intoxicating liquors and the number of licenses to be issued therefor and for the prohibition of such trades, occupations and amusements as are detrimental to the health, morals or welfare of its inhabitants;

State Law reference— Permissible that Charter provide for regulation of trades and occupations, MCL 117.4i(4), MSA 5.2082(4).

(b) The establishment and vacation of streets, alleys, public ways and other public places and the use, regulation, improvement and control of the surface of such streets, alleys, public ways and other public places and of the space above and beneath them;

State Law reference— Permissible that Charter provide for regulation of public ways, MCL 117.4h(1), MSA 5.2081(1).

(c) The acquisition by purchase, gift, condemnation, lease, construction, or in any manner permitted by statute, of private property of every type and nature for public use; which property may be located within or without the County of Oakland and which may be required for or incidental to the present or future exercise of the purposes, powers and duties of the City, either proprietary or otherwise;

State Law reference— Permissible that Charter provide for condemnation, MCL 117.4e(2), MSA 5.2078(2).

(d) For the maintenance, development, operating, leasing and disposal of City property, subject to any restrictions placed thereon by statute or this Charter; provided, specifically, that if it shall become necessary to take and appropriate private property for the public uses or purposes specifically in this Section, the right to occupy and hold the same and the ownership therein and thereto, may

be acquired by the City in the manner, and with like effect, as provided by the general laws of this State relating to the taking of private property for public use in cities and villages, including Chapter XIII of Public Act 3 of 1895 [MCL 73.1 et seq., MSA 5.1429 et seq.];

State Law reference— Permissible that Charter provide for maintenance and disposition of city property, MCL 117.4e(1), MSA 5.2078(1).

(e) The selling and delivering of water, heat, power and light within and without its corporate limits in an amount not to exceed that permitted by statute and the Constitution;

State Law reference— Authority to operate utilities, Mich. Const. 1963, Art. VII, § 24; permissible Charter provisions concerning public utilities, MCL 117.4c, 117.4f, MSA 5.2076, 5.2079.

(f) The use, upon the payment of reasonable compensation, by others than the owners of property located in the streets, alleys and public places and used in the operating of a public utility;

State Law reference— Permissible that Charter provide for joint use of public property, MCL 117.4h(2), MSA 5.2081(2).

(g) The use, control and regulation of streams, water and watercourses within its boundaries, but not so as to conflict with the laws or actions thereunder where a navigable stream is bridged or dammed;

State Law reference— Permissible that Charter provide for regulation of watercourses, MCL 117.4h(4), MSA 5.2081(4).

(h) The enforcement of all local, police, sanitary and other regulations as are not in conflict with the general laws;

State Law reference— Permissible Charter provision, MCL 117.4i(9), MSA 5.2082(9).

(i) The regulating or limiting, where less than a total prohibition of the use, occupancy, sanitation and parking of mobile homes within the City; and the right of the City to so regulate any mobile homes shall not be abrogated because of any detachment thereof from its wheels or because of placing it on, or attaching it to, the ground by means of any temporary or permanent foundation or in any manner whatsoever;

(j) The acquiring, establishment, operation, extension and maintenance of facilities for the storage and parking of vehicles within its corporate limits, including the fixing and collection of charges for service thereof on a public-utility basis and, for such purpose, to acquire by gift, purchase, condemnation or otherwise the land necessary therefor;

State Law reference— Permissible that Charter provide for vehicle parking facilities, MCL 117.4h(6), MSA 5.2081(6).

(k) Regulating, restricting and limiting the number and location of oil and gasoline stations and storage in bulk plants;

State Law reference— Permissible that Charter provide for regulating gas stations, MCL 117.4i(2), MSA 5.2082(2).

(l) Establishing districts or zones within which use of land and structures, the height, the area, the size and location of buildings and required open spaces for light and ventilation of such buildings and the density of population may be regulated by ordinances in accordance with statutory provisions governing zoning; and to prescribe by ordinance, method of enforcement of conditions imposed by the Board of Appeals on applications for variances or for certificates or licenses under provisions of a zoning ordinance;

State Law reference— Permissible that Charter provide for zoning, MCL 117.4i(3), MSA 5.2052(3).

(m) Licensing, regulating, restricting and limiting the number and location of advertising signs or displays and billboards within the City;

State Law reference— Permissible that Charter provide for regulation of billboards, MCL 117.4i(5), MSA 5.2082(5).

(n) The preventing of injury or annoyance to the inhabitants of the City from anything which is dangerous, offensive or unhealthful and for the preventing and abating of nuisances and punishing those occasioning them or neglecting or refusion [refusing] to abate, discontinue or remove the same;

(o) The regulating of airports located within its boundaries and, for the purpose of promoting and preserving the public peace, safety and welfare, controlling and regulating the use of the air above the City by aircraft and airborn[e] missiles and spheres of all types;

(p) The requiring, as a condition of approving plats of land or premises hereafter laid out, divided or platted into streets and alleys within the City, that all streets shown on said plat be graded, graveled and paved or otherwise improved; that all ditches, drains and culverts necessary to make such streets usable be constructed; and that cement sidewalks be constructed in the proper places, all in accordance with City specifications. The Council may require a bond or cash deposit conditioned upon the installation of such of the foregoing improvements as it required, within such time as it determines;

(q) The regulating and control of the collection and disposal of garbage and rubbish within its boundaries;

(r) The requiring of an owner of real property within the City to maintain sidewalks abutting on such property; and if the owner fails to comply with such requirements or if the owner is unknown, to construct and maintain such sidewalks and assess the cost thereof against the abutting property in accordance with provisions of Chapter 11 of this Charter and ordinances adopted pursuant thereto;

(s) The requiring of an owner of real property within the City to abate public hazards and nuisances which are dangerous to the health or safety of inhabitants of the City within a reasonable time after the Council notifies the owner that such hazard or nuisance exists; and if the owner fails to comply with such requirements or if the owner is unknown, to abate such hazard or nuisance and assess the costs thereof against such property in accordance with provisions of Chapter 11 and ordinances adopted pursuant thereto;

(t) The compelling of owners of real property within the City to keep sidewalks abutting upon their property clear from snow, ice or other obstructions; and if the owner fails to comply with such requirements, to remove such snow, ice or other obstructions and assess the cost thereof against the abutting property in accordance with provisions of Chapter 11 and ordinances adopted pursuant thereto;

(u) The control over all trees, shrubs and plants in the public streets, highways, parks, or other public places in the City and all dead, diseased trees, noxious weeds, shrubs, flowers and plants on private property and trees on private property overhanging the street, sidewalk or public places and the removal thereof and assess the cost thereof against the abutting property in accordance with Chapter 11 and ordinances adopted pursuant thereto;

(v) A plan of streets and alleys within its limits;

State Law reference— Permissible that Charter provide for plan of streets and alleys within 3 miles of city, MCL 117.4h(3), MSA 5.2081(3).

(w) The maintenance, development, operation, leasing and disposal of City property, subject to any restriction placed thereon by statute or this Charter;

(x) To establish any department that it may deem necessary for the general welfare to the City; provided, however, that this provision shall not extend to and include public schools;

(y) A plan of street lighting within its limits;

(z) The regulating and control of traffic and parking of automobiles and other vehicles upon the public streets;

(a-1) The regulating and control of junkyards, sanitary landfills and of excavations and removal of land;

(a-2) The Council may provide by ordinance for the merit system of personnel management for employees in the service of the City and may provide for a pension system and recognize standard plan of group life, hospital, health or accident insurance for its appointive officers and employees.

(Ref. of 11-5-13)

State Law reference— Permissible that Charter provide for a system of civil service, MCL 117.4i(7), MSA 5.2082(7).

Section 2.3. - Further definition of powers.

All powers granted in Act 279 of 1909 of the Public Acts of the State of Michigan [MCL 117.1 et seq., MSA 5.2071 et seq.], as amended, which are not in conflict with the provisions of this Charter, are hereby adopted as part of this Charter by reference thereto, but the City shall not be subject to any limitations or restrictions of said Act except where in contravention or conflict with the provisions of any general law of the state or where provided for in this Charter.

Section 2.4. - Intergovernmental contracts.

The City shall have the power to join with any governmental unit or agency, or with any number or combination thereof, by contract or otherwise as may be permitted by law, to have performed (a) jointly, or (b) by one or more of them for or on behalf of the other or others, or (c) by any other person, firm or corporation, any function which is permitted to be so performed by law by such governmental unit or agency, and to provide for the financing thereof.

State Law reference— Intergovernmental contracts between municipal corporations, MCL 124.1 et seq., MSA 5.4081 et seq.; intergovernmental transfers of functions and responsibilities, MCL 124.531 et seq., MSA 5.4087(1) et seq.

Section 2.5. - Outside fire protection.

In the exercise of the powers contained in Section 2.1., the Council shall have the right to contract with persons, firms, corporations or governing bodies to furnish or have furnished fire protection to property outside or within the City boundaries for a fair consideration.

Section 2.6. - Outside police protection.

In the exercise of the powers contained in Section 2.1., the Council shall have the right and power to contract with other governing bodies for mutual police protection in order to afford full and adequate protection to the City and its inhabitants and property, not only as to the area of the City but in the general metropolitan area where happenings may affect the City or its residents.

CHAPTER 3. - NOMINATIONS AND ELECTIONS[2]

Footnotes:

State Law reference— Michigan election laws, MCL 168.1 et seq., MSA 6.1001 et seq.; mandatory that Charter provide for the time, manner and means of holding elections, MCL 117.3(c), MSA 5.2073(c), MSA 5.2073(c).

Section 3.1. - Election districts; voting precincts.

The City shall constitute one election district and such voting precincts as the Election Commission may establish. The Council shall fix the location of the polling places.

State Law reference— Mandatory that Charter provide for one or more wards, MCL 117.3(e), MSA 5.2073(e); election precincts, MCL 168.654 et seq., MSA 6.1654 et seq.

Section 3.2. - Qualifications of electors.

The residents of the City having the qualifications of electors in the State of Michigan and registered with the City shall be electors of the City.

State Law reference— Qualifications for registration as elector, MCL 168.492, MSA 6.1492.

Section. 3.3. - Election procedures.

The election of all City officers shall be on a nonpartisan basis. Otherwise, general election laws shall apply to and control all procedures relating to registration and elections unless otherwise provided herein.

State Law reference— Mandatory that Charter provide for registration of electors, MCL 117.3(c), MSA 5.2073(c); registration of electors generally, MCL 168.491 et seq., MSA 6.1491 et seq.

Section 3.4. - Election Commission.

The Election Commission shall consist of the City Clerk and two (2) members appointed by the Council. Such Commission shall have the duties and powers conferred on city election commissioners by statute. The City Clerk shall act as Chairman of the Commission.

Section 3.5. - Election Inspectors.

The Election Commission shall, before each election, appoint for each precinct of the City a Board of Inspectors of each election, consisting of not less than three (3) qualified electors, and shall fix their compensation.

Section 3.6. - Board of Canvassers.

The Board of Canvassers shall consist of four (4) members who shall possess the powers and duties as prescribed by statute and shall canvass all elections; except that if any such persons are candidates for office or nomination at the election to be canvassed, such persons shall not serve as Canvassers of such election. Members of the Board shall possess the qualifications required by statute, and their selection shall he made in accordance with the statute in such case made and provided. A quorum thereof shall be constituted as prescribed by statute.

State Law reference— Board of canvassers, MCL 168.30a, MSA 6.1030(1).

Section 3.7. - Election officials.

When any City election or primary is held on the same day as a State or County election or primary, the same election officials shall act in both the City and State or County election or primary.

Section 3.8. - Regular city elections; when held.

A regular City election shall be held on the first Tuesday following the first Monday in November of each odd-numbered year. All other regular general elections shall be held on the dates and in the manner provided by the election laws of the State of Michigan.

State Law reference— Odd-year general election, MCL 168.644a et seq., MSA 6.1644(1) et seq.

Section 3.9. - Special elections.

Special elections shall be held when called by resolution of the Council at least sixty (60) days in advance of such election or when required by this Charter or the statutes of the State of Michigan. Any resolution calling a special election shall set forth the purpose of such election. Special elections shall be conducted in conformity with the provisions of the election laws of the State of Michigan, except as otherwise provided in this Charter.

(Res. of 12- 4-17)

Note— A resolution adopted Dec. 4, 2017 , provided that an annotation be added by the city clerk stating: "The Charter language pertaining to the deadline for filing nominating petitions for elected office is superseded by Section 644f(1) of the Michigan Election Law, Act 116 of the Public Acts of 1954, as amended by Act 276 of the Public Acts of 2012. Every person desiring to become a candidate for elected City office must file a nominating petition no later than 4 p.m. on the 15th Tuesday before the odd-year primary election."

State Law reference— Special election approval, MCL 168.631, 168.639; MSA 6.1631, 6.1639.

Section 3.10. - Nonpartisan primary election; when held.

Primary elections for the nomination of candidates for elective office under the provisions of this Charter shall be held on the first Tuesday following the first Monday in August of each odd-numbered year.

Editor's note— See Code of Ordinances § 13-2 for designation of primary date as Tuesday following the second Monday in September of each odd-numbered year.

State Law reference— Odd-year primary election, MCL 168.644b, MSA 6.1644(2).

Section 3.11. - Vacancies for unexpired terms.

When vacancies for unexpired terms of the elective officers are to be filled by election under provisions of Section 5.6(c) of this Charter, separate provisions shall be made on the ballot for such purpose.

Section 3.12. - Notice of election.

Notice of the time and place of holding any City election, the officers to be elected and the matters to be voted upon shall be given by the Clerk by posting such notice in not less than three (3) public places in the City two (2) weeks prior to such election and by publishing such notice at least two (2) times; the first publication to be made not less than ten (10) days prior to such election in a newspaper circulated in the City.

State Law reference— Notice of election, MCL 168.653a, MSA 6.1653(1).

Section 3.13. - Form of ballot.

The form, printing and numbering of ballots in all elections shall conform to that prescribed by statute, except that no party designations or emblem shall appear on ballots for elections of City elective offices. The names of candidates shall rotate in [the] manner prescribed by statute.

If two (2) or more candidates or nominees for the same office have the same or similar surnames, the Election Commission shall print the residence address under the respective names of such candidates or nominees on the ballots (or on labels or slips to be placed on voting machines, when used). Except as provided in this Section, there shall be no supplemental identification of candidates on the ballot.

State Law reference— Arrangement of ballot, MCL 168.706, MSA 6.1706.

Section 3.14. - Voting machines.

Ballots may be cast by the use of voting machines and, if used, shall conform to all of the provisions of the statutes in such case made and provided.

State Law reference— Voting machines at primaries, MCL 168.584 et seq., MSA 6.1584 et seq.; voting machines generally, MCL 168.770 et seq., MSA 6.1770 et seq.

Section 3.15. - Voting hours.

The polls of all elections shall be opened and closed at the time prescribed by statutes for State elections.

State Law reference— Opening and closing of polls, MCL 168.720, MSA 6.1720.

Section 3.16. - Supplies and equipment.

The Council shall provide all necessary voting booths, voting machines, equipment, ballot boxes and supplies for the conducting of all elections and primaries.

State Law reference— Polling places, equipment and supplies, MCL 168.662, MSA 6.1662.

Section 3.17. - Nomination to office.

Candidates for any elective office, to be voted for at any municipal election held under the provisions of this Charter, except as provided in Section 5.6(c), shall be nominated at a primary election, and no other name shall be placed upon the election ballot for the election of such officers except those nominated in the manner hereinafter prescribed. However, whenever the number of candidates for nomination to any office does not exceed three (3) times the number to be elected to that office, then in such case, no primary election for the nomination of candidates for such office shall be held, and such candidates shall be deemed to be nominated to such office. The names of such candidates for any such office shall be placed upon the election ballot to be voted for at the next regular municipal election, in all respects as though the said candidates had been nominated at a primary election.

(Amended 8-7-84)

State Law reference— Mandatory that Charter provide for nomination of elective officers, MCL 117.3(b), MSA 5.2073(b); nonpartisan nominating petitions, MCL 168.544a, MSA 6.1544(1).

Section 3.18. - Nominations for primary elections.

The method of nomination of the elective officers of the City for primary elections shall be by petition signed by not less than one hundred (100) nor more than two hundred (200) electors of the City; or in lieu thereof, a candidate may notify the Clerk of the City in writing that he or she is a candidate for a designated office, giving his or her legal name and address, and pay to the Clerk the sum of One Hundred ($100) Dollars to be paid into the general fund of the City. All nominating petitions or notifications of candidacy with required cash payment, shall be filed with the Clerk between the eightieth day and 4:00 p.m. at the prevailing time on the sixtieth day preceding such

primary election. The form of nominating petition shall be substantially as that designated by the Secretary of State for nomination of nonpartisan judicial offices. Signing of petitions shall be governed by general election statutes.

(Ref. of 11-5-13)

Editor's note— Effective March 31, 2010, Section 3.18 of the Novi City charter is superceded by MCL 168.644e and MCL 168.644f.

Section 3.19. - Approval of petitions.

The Clerk shall accept only nomination petitions which conform to the above requirements and, if accepted, endorse thereon an approval and the date of filing. When a petition is filed by persons other than the person appearing thereon as candidate, it may be accepted only when accompanied by the written consent of the candidate. Within five (5) days after the last day for filing petitions, the Clerk shall make the final determination as to the validity and sufficiency of each petition. If the Clerk finds the petition does not satisfy the requirements, the Clerk shall forthwith notify the candidate in writing of such fact, by personal messenger if possible.

Any candidate whose petition is invalid or insufficient shall be allowed to file a supplementary or replacement petition before 4:00 p.m. at the prevailing time on the eighth day after the last day for filing the original petition; thereafter no further petitions may be filed.

(Ref. of 11-5-13)

Section 3.20. - Certification.

The names of the candidates who file valid nominating petitions and the names of candidates who comply with filing for candidacy by paying the required cash payment shall be certified by the Clerk to the Election Commission to be placed on the ballot for the next City primary election.

Section 3.21. - Public inspection of petition.

All nominating petitions shall be open to public inspection in the office of the Clerk.

Section 3.22. - Who are nominated.

When only one person is to be elected to any one office, then the two (2) candidates receiving the highest number of votes for nomination to that office shall be the candidates, and the only candidates, whose names shall be placed upon the ballot for that office at the regular municipal election. When more than one person is to he elected to any office, then the candidates, equal in number to twice the number of persons to be elected to that office, receiving the highest number of votes for said office, and no others, shall be placed upon the ballot as candidates for said office at the next regular municipal election.

Where no primary contest is involved, those candidates who have complied with Section 3.18. for an elective office shall be determined to be nominated.

Section 3.23. - Return of Board of Election Inspectors.

Immediately upon the closing of the polls, the Board of Election Inspectors in each precinct shall count the ballots and ascertain the number of votes cast in such precinct for each of the candidates and upon each of the questions and propositions voted upon and shall make immediate return thereof to the Clerk upon blanks to be furnished, by the Clerk.

Section 3.24. - Canvass of the returns of the primary election.

The Board of Canvassers shall meet at the Council Chambers at 8:00 p.m., at the prevailing time, on the Thursday following such primary election, shall canvass the returns filed with the Clerk, and shall determine the results thereof. Such meeting shall be public, and after the results have been determined, the same shall be published in a manner to be prescribed by the Board of Canvassers. The Board of Canvassers, after determination of the results of such election, shall certify this determination to the Clerk.

State Law reference— Board of canvassers, MCL 168.30a, MSA 6.1030(1); canvass of returns, MCL 168.323, MSA 6.1323.

Section 3.25. - Canvass of the vote.

The Board of Canvassers shall convene at the Council Chambers at 8:00 p.m., at the prevailing time, on the Thursday following any regular or special election and shall canvass the results of such election, determine the vote upon City questions and propositions, and declare whether the same have been duly adopted or rejected and what persons have been duly elected at such election to the several City offices voted upon thereat.

State Law reference— Board of canvassers, MCL 168.30a, MS A 6.1030(1); canvass of returns, MCL 168.323, MSA 6.1323.

Section 3.26. - Who elected.

The person receiving the highest number of votes for any office shall be deemed to have been duly elected to that office. If more than one person is to be elected to any office, then the persons, equal in number to the number to be elected to that office, receiving the highest number of votes for that office shall be deemed to have been duly elected to that office. Upon the completion of the canvass of the returns, the Board of Canvassers shall publish the results of such canvass.

Section 3.27. - Where candidates are tied.

If at any regular or primary election, there shall be no choice between candidates, by reason of two (2) or more candidates having received an equal number of votes, the

Board of Canvassers shall appoint a date at which time the right to nomination or election shall be determined by lot. Notice of the time and place at which such determination shall be made shall be given to all persons interested therein at least twelve (12) hours prior to the time at which determination is to be made. Such notice shall be given by the Clerk at the last or usual place of abode of the persons interested in such determination. This manner of determining by lot shall be the same as provided by the General Election Laws of the State for such determination in case of a tie vote for a County office.

State Law reference— Determination of election by lot, MCL 168.851 et seq., MSA 6.1851 et seq.

Section 3.28. - Challengers.

A regularly nominated candidate shall be entitled, upon written application to the election authority not less than ten (10) nor more than twenty (20) days before election, to appoint one person to represent the candidate as Challenger at each polling place where electors may cast ballots. A person so appointed shall have all the rights and privileges prescribed for Challengers by or under the General Election Laws of the State of Michigan. The Challengers may exercise their rights throughout the voting and until the ballots have been counted.

(Ref. of 11-5-13)

State Law reference— Challenges, MCL 168.727 et seq., MSA 6.1727 et seq.

Section 3.29. - Recount.

A recount of the votes cast at any election for any office or on any matter may be had in accordance with election statutes.

State Law reference— Recounts, MCL 168.861 et seq., MSA 6.1861 et seq.

Section 3.30. - Recall.

Any elected City official may be recalled from office by the electors of the City in the manner provided by statute. A vacancy created by such recall shall be filled in the manner prescribed by this Charter and by law.

State Law reference— Permissible that Charter provide for recall of its officers, MCL 117.4i(6), MSA 5.2082(6); recall generally, MCL 168.951 et seq., MSA 6.1951 et seq. See also Mich. Const. 1963, Art. II, § 8.

CHAPTER 4. - ORGANIZATION OF GOVERNMENT

Section 4.1. - Form of government.

The form of government provided for in this Charter shall be known as the "Council-Manager Plan". There is hereby created a Council of six (6) Councilmembers and one Mayor, elected in the manner hereinafter specified, which shall have full power and authority, except as herein otherwise provided, to exercise all powers conferred upon the City.

(Ref. of 11-5-13)

Section 4.2. - Election of Mayor and Council.

The Mayor and members of the Council shall be elected on a nonpartisan ballot from the City at large and shall be subject to recall as herein provided. No individual shall at the same election be a candidate for both Mayor and Councilmember.

(Ref. of 11-5-13)

State Law reference— Mandatory that Charter provide for election of a body vested with legislative power, MCL 117.3(a), MSA 5.2073(a).

Section 4.3. - Term of office.

Each member of the Council shall be elected to serve a term of four (4) years, with three (3) Councilmembers being elected every two (2) years. The Mayor shall be elected for a term of two (2) years. The Mayor and Council shall be the judge of the election and qualifications of its own members.

(Ref. of 11-5-13)

Section 4.4. - Legislative body.

The Council shall constitute the legislative and governing body of the City possessing all the powers herein provided for, with power and authority to pass such ordinances and adopt such resolutions as they shall deem proper in order to exercise any or all of the powers possessed by the City. The Mayor shall have a voice and vote in the proceedings of the Council equal with that of the other members of the Council but shall have no veto power. The Mayor shall be the presiding officer of the Council.

(a) *Limitations of Council.* The Council shall deal with City officers and employees solely through the City Manager, and no individual member thereof shall give orders to any subordinate of the City Manager either publicly or privately. No member of the Council shall direct or request: (1) the appointment of any person to, or the removal of any person from, any employment or office for which the City Manager is responsible; nor (2) the purchase of any specific materials, supplies, or equipment except at public meetings. It is not the intention of this provision to prevent frank discussion of the business of the City between the City Manager and the Council or any member of the Council at any time but to prevent the

personal favoritism or prejudice of any member of the Council from hampering the administration of the City government as set forth in this Charter.

(b) *Investigative Powers of Council.* The Council or any person or committee authorized by it for that purpose, shall have power to inquire into the conduct of any department and to make investigations as to municipal affairs and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers and other evidence. Failure on the part of any officer of the City to obey such subpoena or to produce books, papers or other evidence as ordered under the provisions of this Section shall constitute misconduct in office. If such failure shall be on the part of any employee of the City, the same shall constitute a misdemeanor, punishable in the manner provided by statute in such cases.

(c) *Compensation of Council.* Each Councilmember shall be paid for his or her services the sum of four thousand five hundred dollars ($4,500.00) per year. Such compensation shall be paid in monthly installments. A Councilmember shall receive no further compensation for his or her official duties or any other purpose, except reasonable expenses as may be allowed by the Council when such expenses are actually incurred on behalf of the City, upon proper documentation thereof being furnished in such form and manner as the Council shall prescribe for all City employees seeking reimbursement of expenses.

(Ref. of 11-5-13 ; Ref. of 8-5-14)

State Law reference— Mandatory that Charter provide for compensation of officers, MCL 117.3(d), MSA 5.2073(d).

Section 4.5. - The Mayor.

The Mayor shall be presiding officer and chief executive officer of the City and shall perform such other duties as are, or may be, imposed or authorized by the laws of the State or this Charter. The Mayor shall execute or authenticate by his or her signature such instruments as the Council, this Charter or any statute of the State of Michigan or law of the United States shall require. The Mayor shall be the conservator of the peace and may in emergencies exercise within the City the powers conferred upon sheriffs to suppress riot and disorder and shall have the authority to command the assistance of all able-bodied citizens to aid in the enforcement of the ordinances of the City and to suppress riot and disorder. In times of public danger or, emergency, the Mayor may, with consent of the Council, take command of the police and such other departments and subordinates of the City as may be deemed necessary by the Council to maintain order and, enforce laws.

(a) *Mayor Pro Tem.* The Mayor shall, at the first regular meeting of the Council after the election of the Mayor, appoint another member of the Council to serve as Mayor Pro Tem: who, during the absence or inability of the Mayor to perform the duties of that office, shall act in the name and stead of the Mayor and shall, during the time of such absence or inability, exercise all the duties and possess all the powers of the Mayor.

(b) *Compensation of Mayor and Mayor Pro Tem.* The Mayor, and the Mayor Pro Tem when acting as Mayor shall receive compensation of six thousand five hundred dollars ($6,500.00) per year. Such compensation shall be paid in monthly installments. The Mayor or Mayor Pro Tem while serving as Mayor shall receive no further compensation for undertaking the official duties of that office or any other purpose. Reasonable expenses may be allowed by the Council when such expenses are actually incurred on behalf of the city, upon proper documentation thereof being furnished in such form and manner as the Council shall prescribe for all City employees seeking reimbursement of expenses.

(Ref. of 11-5-13 ; Ref. of 8-5-14)

State Law reference— Mandatory that Charter provide for duties and compensation of officers, MCL 117.3(d), MSA 5.2073(d).

Section 4.6. - Administrative plan.

Except as otherwise provided by this Charter, the administrative plan of the City shall be as set forth in this Section, with such other additions to the administrative plan as may be adopted by the Council by ordinance.

The City Manager, City Clerk, City Assessor, and City Attorney shall be the appointed officers of the City, whose duties shall be as established by this Charter. Those officers of the City who administer departments within the City (except the City Manager, Clerk, Assessor, and Attorney) shall be the administrative officers of the City and shall be appointed by and subject to the direction and supervision of the City Manager and shall serve at the pleasure of the City Manager. All administrative officers of the City shall perform such duties as are provided for such officers by state or federal law, this Charter, City ordinances, and the administrative directions of the City Manager. All personnel employed by the City who are not elected officers or appointed officers of the City, or who are not declared to be administrative officers by or under the authority of this Charter, shall be deemed to be employees of the City.

There shall be a Department of Finance, a Department of Public Safety, and a Department of Public Service. The Council may establish such other departments or administrative offices of the City it deems necessary or advisable and may prescribe the general functions thereof, with the specific duties, responsibilities, and operation of any such department to be prescribed by the City Manager in accordance with this Charter and City ordinance. The Council may, by resolution, combine any administrative office in any manner which is not inconsistent with provisions of state law or this Charter. The City Manager, with the consent of Council, may serve as the head of one or more such departments or offices or may appoint one person as the head of two (2) or more of them. The City Manager may establish such administrative departments or offices as he or she deems necessary and advisable, in accordance with budget appropriations as provided under this Charter, and shall prescribe the specific duties and responsibilities of, and shall direct and supervise, any administrative officers responsible to him or her.

All City officers and employees shall exercise and possess all of the powers, privileges, and immunities granted to City officers and employees exercising the same duties for cities generally under the general laws of the State. The Council may not diminish the duties or responsibilities of any appointed officer beyond those set in this Charter.

(Ref. of 11-5-13)

Section 4.7. - City Manager.

The Council shall appoint a City Manager for an indefinite term and fix his or her compensation. The Manager shall be appointed solely on the basis of executive and administrative qualifications.

(a) *Powers and Duties.* The City Manager shall be the chief administrative officer of the City and shall be responsible to the Council for the administration of all City affairs placed in his or her charge by or under this Charter. The City Manager shall have the following powers and duties:

(1) To appoint and, when he or she deems it necessary for the good of the City, suspend or remove all City employees and appointive administrative officers provided for by Section 4.6 of this Charter, except as otherwise provided by law, this Charter or personnel rules adopted pursuant to this Charter. The Manager may authorize any administrative officer who is subject to his or her direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency.

(2) To direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by this Charter or by law.

(3) To attend all Council meetings and shall have the right to take part in discussion but may not vote.

(4) To see that all laws, provisions of this Charter and acts of the Council subject to enforcement by the Manager or by officers subject to the Manager's direction and supervision are faithfully executed.

(5) To prepare and submit the Annual Budget and Capital Program to the Council.

(6) To submit a monthly report and shall within sixty (60) days after the end of each fiscal year submit to the Council and make available to the public a complete report on the financial operations, financial condition and administrative activities of the City as of the end of each fiscal year.

(7) To make such other reports as the Council may require concerning the operations of City departments, offices and agencies subject to his direction and supervision.

(8) To keep the Council fully advised as to the financial condition and future needs of the City and make such recommendations to the Council concerning the affairs of the City as the Manager deems advisable.

(9) To perform such other duties as are specified in this Charter or may be required by the Council.

(b) *Acting City Manager.* The City Manager shall, by letter filed with City Clerk, designate, subject to approval of City Council, a qualified appointive administrative officer to exercise the powers and perform the duties of City Manager during his temporary absence, disability or vacancy in office. During such absence, disability or vacancy, Council may revoke such designation at any time and appoint another officer to serve until the City Manager shall return or his disability shall have ceased or a new City Manager shall have been appointed. No person who has been elected a member of the Council under this Charter shall be eligible for appointment as City Manager or Acting City Manager until two (2) years have elapsed following the expiration of the term for which the person was elected.

(Ref. of 11-5-13)

State Law reference— Mandatory that Charter provide for duties of city officers, MCL 117.3(d), MSA 5.2073 (d).

Section 4.8. - Removal of City Manager.

The Council may remove the Manager from office in accordance with the following procedures:

(a) The Council shall adopt, by affirmative vote of not less than four (4) of its members, a preliminary resolution, which must state the reasons for removal, and may suspend the Manager from duty for a period not to exceed forty-five (45) days. A copy of the resolution shall be delivered promptly to the Manager.

(b) Within five (5) days after the copy of the resolution is delivered to the Manager, he or she may file with the Clerk a written request for a public hearing. This hearing shall be held at a Council meeting not earlier than fifteen (15) days nor later than thirty (30) days after the request is filed. Notice of the date of hearing shall be promptly delivered to the Manager. The Manager may file with the Clerk a written reply to the preliminary resolution not later than five (5) days before the hearing.

(c) The Council may adopt a final resolution of removal, which may be made effective immediately, by affirmative vote of not less than five (5) of its members, at any time after five (5) days from the date when a copy of the preliminary resolution was delivered to the Manager, if a public hearing has not been requested, or at any time after the public hearing if a hearing has been requested.

(d) The Manager shall continue to receive his or her salary until the effective date of a final resolution of removal. The action of the Council in suspending or removing the Manager shall not be subject to review.

(Ref. of 11-5-13)

Section 4.9. - City Clerk.

The City Clerk shall be appointed by the Council and shall hold office at the pleasure of the Council and shall be directly responsible to the Council. The functions and duties of the City Clerk shall be as follows:

(a) The Clerk shall be the Clerk of the Council. The Clerk shall give notice of its meetings, attend all meetings of the Council and shall keep a permanent journal of its proceedings in the English language. The Clerk shall keep a record of all ordinances, resolutions and actions of the Council.

(b) The Clerk shall have power to administer all oaths required by State law, this Charter and the ordinances of the City.

(c) The Clerk shall be custodian of the City seal and shall affix it to all documents and instruments requiring the seal and shall attest to the same. The Clerk shall also be custodian of all papers, documents and records pertaining to the City, the custody of which is not otherwise provided for by this Charter. All records of the City shall be public and the Clerk and other officers entrusted with such records shall so maintain and keep the same that they may be available to the public at all reasonable times. The Clerk shall give to the proper officials of the City ample notice of the expiration or termination of any official bonds, franchises, contracts or agreements to which the City is a party.

(d) The Clerk shall at all times cooperate with the City Manager and provide such information and reports and perform such duties as are requested by the City Manager, so long as they are not inconsistent with the duties of the office as herein provided.

(e) The Clerk shall certify by signature all ordinances and resolutions enacted or passed by the Council and perform other duties required by State or Federal law, this Charter, the Council and ordinances of the City.

(Ref. of 11-5-13)

State Law reference— Mandatory that Charter provide for duties of city officers, MCL 117.3(d), MSA 5.2073(d).

Section 4.10. - City Attorney.

The City Attorney shall be appointed by the Council and shall hold office at the pleasure of the Council. The functions, duties and compensation of the Attorney shall be as follows:

(a) The Attorney shall act as legal advisor to and be attorney for the Council and shall be responsible solely to the Council. The Attorney shall advise any officer or department head of the City in matters relating to that person's official duties when so requested and shall file with the Clerk a copy of all written opinions given by the Attorney.

(b) The Attorney shall prosecute ordinance violations and conduct for the City such cases in court and before other legally constituted tribunals as the Council may request. The Attorney shall file with the Clerk copies of such records and files relating thereto as the Council may direct.

(c) The Attorney shall prepare or review all ordinances, contracts, bonds and other written instruments which are submitted by the Council and shall promptly give an opinion as to the legality thereof.

(d) The Attorney shall call to the attention of the Council and the City Manager all matters of law and changes or developments therein affecting the City.

(e) The Attorney shall perform such other duties as may be prescribed by this Charter, by the Council, or as prescribed by State or Federal law, or regulation.

(f) The Attorney shall at all times cooperate with the City Manager and provide such information and reports and perform such duties as are requested by the City Manager, so long as they are not inconsistent with the duties of the office as herein provided.

(g) The Attorney shall recommend to the Council retention of special legal counsel to handle any matter in which the City has legal interest or to assist the Attorney if it is in the best interest of the City.

(h) The compensation set by the Council for the Attorney shall be in contemplation of the normal duties of that office. Special compensation may be provided at the discretion of the Council for appeals to, or litigation in, the Federal courts, the Circuit Court or State appellate courts; for work requiring extensive hearings before quasi-judicial or administrative tribunals; for legal work in connection with the issuance of bonds of the City; for condemnation proceedings or for other matters outside the scope of the normal duties of the office. No special compensation, nor any compensation to special legal counsel, shall be paid except in accordance with an agreement made between the Council and the Attorney or special counsel prior to the time such special services have been rendered.

(Ref. of 11-5-13)

State Law reference— Mandatory that Charter provide for duties of city officers, MCL 117.3(d), MSA 5.2073(d).

Section 4.11. - City Assessor.

The City Assessor shall be appointed by the Council and shall hold office at the pleasure of the Council and shall be directly responsible to the Council. The functions and duties of the City Assessor shall be as follows:

(a) The Assessor shall possess all the powers vested in, and shall be charged with all the duties imposed upon, assessing officers by statute.

(b) The Assessor shall prepare all regular and special assessment rolls in the manner prescribed by statute, Charter and by ordinance.

(c) The Assessor shall at all times cooperate with the City Manager and provide such information and reports and perform such duties as are requested by the City Manager, so long as they are not inconsistent with the duties of his office as herein provided.

(Ref. of 11-5-13)

State Law reference— Mandatory that Charter provide for duties of city officers, MCL 117.3(d), MSA 5.2073(d).

Section 4.12. - City Treasurer.

The Director of Finance shall be the City Treasurer and shall perform all the duties required by this Charter and the general laws of the State or which the Council shall by ordinance prescribe.

(Ref. of 11-5-13)

State Law reference— Mandatory that Charter provide for duties of city officers, MCL 117.3(d), MSA 5.2073(d).

Section 4.13. - Director of Finance.

The Director of Finance shall have direct supervision over the Department of Finance and the administration of the financial affairs of the City, including budgeting and the keeping of accounts and financial records, assessment roll and collection of taxes, special assessments and other revenue, purchasing activities, payroll, data processing and such other duties and activities as the Council may by ordinance prescribe. In addition to the foregoing:

(a) The Director shall be responsible for maintaining and keeping the books of accounts of the assets, liabilities, receipts and expenditures of the City and shall keep the Council and the City Manager informed as to the financial affairs of the City. The system of accounts of the City shall conform to such uniform system as may be required by law.

(b) The Director shall examine and audit all accounts and claims against the City. The Director shall determine that no withdrawals shall be made from any City fund which, after deducting all prior withdrawals therefrom, has not a sufficient amount therein to pay such proposed withdrawal.

(c) The Director shall, at least quarterly, and at any time upon direction of the City Manager or Council, examine and audit all books of account kept by any official, board or department of the City.

(d) The Director shall balance all books and accounts of the City at the end of each calendar month and shall make a report to the City Manager and Council.

(e) The Director shall keep accurate detailed accounts of:

(1) All taxes assessed by the City and all moneys due the City from any and every source.

(2) All moneys received and the several sources from which derived.

(3) All funds of the City and disbursements made therefrom.

(f) The Director shall have custody of all moneys of the City and all evidence of indebtedness belonging to the City or held in trust by the City.

(g) The Director shall collect all moneys of the City the collection of which is not provided for elsewhere by Charter or ordinance. The Director shall receive from other officers and employees of the City all money belonging to and receivable by the City that may be collected by it, including fines, license fees, taxes, assessments and all other charges.

(h) The Director shall disburse all City funds in accordance with the provisions of statute, this Charter and procedures to be established by the Council.

(i) The Director shall have such powers, duties and prerogatives in regard to the collection and custody of City taxes as are conferred by statute upon township treasurers in connection with state, county, township and school district taxes.

(j) The Director shall perform such other duties as may be prescribed by State or Federal law and regulation, this Charter or by the Council.

(Ref. of 11-5-13)

Editor's note— Amendments adopted at referendum on Nov. 5, 2013, deleted § 4.13 which pertained to creation of departments and which derived from the Charter adopted on Nov. 8. 1977. Said amendments also renumbered §§ 4.14 through 4.16 as §§ 4.13 through 4.16 to read as set out.

State Law reference— Mandatory that Charter provide for duties of city officers, MCL 117.3(d), MSA 5.2073(d); mandatory that charter provide for a system of accounts, MCL 117.3(n), MSA 5.2073(n).

Section 4.14. - Director of Public Safety.

The Director of Public Safety shall have the control and management of the police and fire divisions of the Public Safety Department; which divisions shall consist of a chief of each and such other officers, patrolmen, firemen and other employees or members as the Council shall authorize.

(a) *Police Department.* The Council shall provide for, establish and maintain, within the administrative division of the City, a Police Department to enforce all laws and all ordinances and codes which are in force in the City and to preserve peace and

good order in the City. A Police Chief shall be appointed by the City Manager after consultation with the Council. The Police Chief, under the general direction of the Director of Public Safety, shall be in command and be responsible for the operation of said Police Department and for the procurement and training of personnel therefor. The police force of the City shall have and exercise all the immunities, privileges and powers of police officers under the common law and statutes of the State of Michigan for the preservation of quiet, good order, and for the safety of persons and property in the City.

(b) *Fire Department.* The Council shall have power to enact such ordinances and to establish and enforce such regulations as it shall deem necessary to guard against the occurrence of fires in the City and to protect the property and persons or inhabitants of the City against the occurrence of fires and against accident or damage resulting therefrom. For this purpose, the Council shall provide for, establish and maintain a Fire Department within the administrative division of the City. A Fire Chief shall be appointed by the City Manager after consultation with the Council. The Fire Chief, under the general direction of the Director of Public Safety, shall supervise and direct the fire fighting and prevention forces of the City, shall be responsible for the use, care and management of the City's fire fighting apparatus, equipment and property, shall conduct such supervision and educational programs within the City as will diminish the risk and potentiality of fires, and shall be responsible for procurement and training of personnel therefor.

(Ref. of 11-5-13)

Editor's note— See the editor's note following § 4.13.

State Law reference— Mandatory that Charter provide for duties of city officers, MCL 117.3(d), MSA 5.2073(d).

Section 4.15. - Director of Public Service.

The Director of Public Service shall manage and have charge of the construction, inspection, operation and maintenance of public utilities and property owned or operated by the City and all other works connected therewith. The Director shall have charge of the enforcement of all the obligations of privately owned or privately operated public utilities enforceable by the City. The Director shall be responsible for the making and preservation of all surveys, maps, plans, drawings and estimates for public works.

(Ref. of 11-5-13)

Editor's note— See the editor's note following § 4.13.

State Law reference— Mandatory that Charter provide for duties of city officers, MCL 117.3(d), MSA 5.2073(d).

CHAPTER 5. - GENERAL PROVISIONS REGARDING OFFICERS AND PERSONNEL OF THE CITY

Section 5.1. - Eligibility for office in the city.

No person shall hold any elective office of the City unless the person is a qualified and registered elector of the City prior to the last day for filing petitions for such office and continues to be throughout the person's tenure of office.

No person shall hold any elective office of the City if the person shall have been found guilty of a felony by a competent tribunal.

The Council shall be the sole judge of the election and qualifications of its own members.

(Ref. of 11-5-13)

State Law reference— Mandatory that Charter provide for qualification of city officers, MCL 117.3(d), MSA 5.2073(d).

Section 5.2. - Nepotism.

Relatives by blood or marriage of any Councilmember or City Manager within the second degree of consanguinity or affinity shall be disqualified from being an employee of the City during the term for which such Councilmember was elected or during the tenure of office of such City Manager, except by the affirmative vote of five (5) members of the Council. This provision shall not apply to those employees who are employees of the City at the time of the election of such Councilmember or the appointment of such City Manager. Nor shall this provision apply to any employee if the status of relationship between an employee and a Councilmember or City Manager changes to a prohibited relationship after one year following the employment of such person or election of such Councilmember or appointment of such City Manager.

(Ref. of 11-5-13)

Section 5.3. - Vacancies in office.

(a) *Vacancies in Office of Council.* The office of any Councilmember, including the office of Mayor, shall be declared vacant by the Council before the expiration of term of such office:

(1) If a vacancy in office is created for any reason specified by statute or by this Charter;

(2) If no person is elected to, or qualified for, the office at the election at which such office is to be filled;

(3) If the Councilmember shall miss four (4) consecutive regular meetings of the Council or twenty-five percent (25%) of the regular meetings in any fiscal year of the City for reasons other than confining illness, unless such absence shall be excused by the Mayor and the reason therefor entered in its proceedings at the time of each absence;

(4) If the Councilmember is removed by the Council in accordance with the provisions of Section 5.4.

(b) *Vacancies in Office of Boards or Commissions.* The office of any member of any board or commission created by this Charter shall be declared vacant for reasons (1), (3) or (4) as listed in the foregoing part of this Section.

(Ref. of 11-5-13)

Section 5.4. - Removals from office.

Removals of a Councilmember, including the Mayor and members of boards or commissions created by this Charter or by the Council shall be made for either of the following reasons: (1) for any reason specified by statute for removal of City officers by the Governor or (2) for any act declared by this Charter to constitute misconduct in office. Removal of such officer shall be made by the City Council only after a hearing held pursuant to notice given by the City Clerk. The notice shall be given at least ten (10) days prior to the hearing and shall be served upon the officer personally or by delivering the same to the officer's last known residence. The notice shall contain the charges against such officer. The hearing shall afford an opportunity to the officer, in person or by attorney, to be heard in the officer's defense, to cross-examine witnesses and to present testimony. If such officer shall neglect to appear at such hearing and answer such charges, the failure to do so may be deemed cause for removal. A majority vote of the members of the Council in office at the time, exclusive of any member whose removal is being considered, shall be required for any such removal.

(Ref. of 11-5-13)

State Law reference— Removal of officers by governor, MCL 168.327, MSA 6.1327.

Section 5.5. - Resignations.

Resignations of elected and Council-appointed officers shall be made in writing and filed with the Clerk and shall be acted upon by the Council at its next regular meeting, or special meeting called for that purpose, following receipt thereof by the Clerk.

Section 5.6. - Filling vacancies.

(a) *Vacancies in Offices Appointed by Council.* Vacancies in offices appointed by the Council shall be filled in the manner provided for the original filling of such offices.

(b) *Vacancy in Office of Mayor.* In the event of the vacancy of the office of the Mayor, the Mayor Pro Tem will serve the remainder of that unexpired term as Acting Mayor, and the Council position made temporarily vacant (by Mayor Pro Tem's filling office of Mayor) shall be filled in accordance with Section 5.6(c). Upon the expiration of the term as Acting Mayor, the Mayor Pro Tem shall resume the office of Councilmember, provided that such term has not expired.

(c) *Vacancies in Elective Office.* Vacancies in elective offices other than the Mayor, including the temporary vacancy created by the Mayor Pro Tem's assuming the office of Acting Mayor as provided in Section 5.6(b), shall, within thirty (30) days after such vacancy occurs, be filled for a term expiring on the date of the next regular City election, by appointment of a person possessing the qualifications for the office by a majority vote of the members of the Council then in office.

If any such vacancy in the position of Councilmember, including the temporary vacancy created by the Mayor Pro Tem's assuming the office of Acting Mayor, as provided in Section 5.6(b), which the Council is authorized to fill, is not so filled within thirty (30) days or if three (3) or more vacancies exist simultaneously in such position, such vacancy or vacancies shall be filled for the respective unexpired terms at a special election. The temporary vacancy in the Council position created by the Mayor Pro Tem's assuming the office of Acting Mayor shall be filled for a term expiring on the date of the next regular City election. Notice of such special election shall be given by the Clerk ninety (90) days prior to such election, and the election shall be held in manner provided by this Charter. Candidates shall qualify by the filing of nominating petitions or cash payment in accordance with Section 3.18 and shall be certified to the Election Commission and placed on the ballot in manner identical to that provided in Sections 3.17, 3.18, and 3.20 hereof. No primary election shall be held.

Notwithstanding the foregoing, any vacancies which occur one hundred twenty (120) days or less before the next regular City election shall not be filled.

(Ref. of 11-5-13)

Section 5.7. - No change in term of office.

Except by procedures provided in this Charter, the terms of Mayor, Councilperson, and members of boards or commissions appointed for a definite term shall not be shortened or extended beyond the period for which the officer was elected or appointed; except that such officer shall continue to hold office until the officer's successor is elected or appointed and has qualified.

(Ref. of 11-5-13 ; Ref. of 8-5-14)

State Law reference— Term of officer not to be shortened or extended, MCL 117.5(d), MSA 5.2084(d).

Section 5.8. - Compensation of employees and officers.

The compensation of all employees and officers of the City whose compensation is not provided for herein shall be fixed by the Council within the limits of Council appropriations.

The respective salaries and compensation of officers and employees, as fixed pursuant to this Charter, shall be in full for all official services of such officers or

employees and shall be in lieu of all other fees, commissions and other compensations receivable by such officers or employees for their services to the City.

Any such fees, commissions and other compensation shall belong to the City and shall be accounted for by such officers or employees, paid into the City Treasury and a statement thereof filed periodically with the Clerk.

Nothing contained in this Section shall prohibit the payment of necessary bona fide expenses incurred in services on behalf of the City.

State Law reference— Mandatory that Charter provide for compensation of officers, MCL 117.3(d), MSA 5.2073(d).

Section 5.9. - Financial interest in contract or purchase.

(a) *Approval of Contract or Purchase.* No contract or purchase involving an expenditure in excess of One Hundred ($100) Dollars shall be made by the City in which any elective officer, or any member of the officer's family, has any financial interest, direct or indirect, other than the common public interest, unless approved by the affirmative vote of not less than four (4) members of the Council, and such interested officer shall not have the right to vote upon any such contract or purchase. A "contract" shall, for the purposes of this Section, include any arrangement or agreement pursuant to which any material service, or other thing of value, is to be furnished to the City for a valuable consideration to be paid by the City, or sold or transferred by the City, except the furnishing of personal services as an officer or employee of the City. The term "member of the officer's family" shall include only spouse, child, grandchild, father, mother, sister, brother and/or the spouse of any of them.

(b) *Definition of "Financial Interest".* Without limiting the generality of Paragraph (a) of this Section, an elective officer shall be deemed to have financial interest in a contract if the officer or any member of his or her family is a partner, officer, director, or sales representative of the person, firm or corporation with which such contract is made. Ownership, individually or in a fiduciary capacity, by an elective officer, or member of his or her family, of securities or of any beneficial interest in securities of any corporation with which a contract is made or any corporation which is a sales representative of any person, firm or corporation with which such contract is made, shall not be deemed to create a financial interest in such contract, unless the aggregate amount of such securities or interest in such securities so owned by such elective officer and the members of his family, shall amount to ten percent (10%) of any class of the securities of such corporation then outstanding.

(c) *Disclosure of Financial Interest.* Except as permitted in Paragraph (a) of this Section, any elective officer who knowingly permits the City to enter into any contract in which the officer has financial interest, without disclosing such interest to the Council prior to the action of the Council in authorizing such contract, shall be guilty of misconduct in office.

(d) *Surety on Bond.* No elective or appointive officer shall stand as surety on any bond to the City which may be required by this Charter or any ordinance of the City. Any

officer of the City who violates the provisions of this Paragraph shall be guilty of misconduct in office.

(e) *Effectiveness of Section.* This section of this Charter shall be in effect except as otherwise prohibited by the general law of the State.

(Ref. of 11-5-13)

State Law reference— Conflicts of interest as to contracts, MCL 15.321 et seq., MSA 4.1700(51) et seq.; standards of conduct and ethics, MCL 15.341 et seq., MSA 4.1700(71) et seq.

Section 5.10. - Oath of office and bond.

Every officer, elected or appointed, before entering upon the duties of office shall take the oath of office prescribed for public officers by the Constitution and shall file the oath with the Clerk, together with any bond required by statute, this Charter or the Council. In case of failure to comply with the provisions of this Section within ten (10) days from the date the officer is notified in writing of his or her election or appointment, such officer shall be deemed to have declined the office, and such office shall thereupon become vacant unless the Council shall, by resolution, extend the time in which such officer may qualify.

(Ref. of 11-5-13)

State Law reference— Oath of public officers, Mich. Const. 1963, Art. XI, § 1.

Section 5.11. - Surety bonds.

Except as otherwise provided in this Charter, all officers of the City whose duties involve the custody of public property or the handling of public funds, either by way of receipt or disbursement, or both, and all other officers and employees so required by the Council, shall, before they enter upon the duties of their respective offices, file with the City Clerk an official bond, in such form and amount as the Council shall prescribe and approve. Such official bond of every officer and employee shall be conditioned that he or she will faithfully perform the duties of his or her office and will, on demand, deliver over to his or her successor in office, or other proper officer or agent of the City, all books, papers, moneys, effects and property belonging thereto, or appertaining to the office, which may be in his or her custody as an officer or employee. Such bonds may be further conditioned as the Council may prescribe. The official bond of every officer whose duty it may be to receive or pay out money, besides being conditioned as above required, shall be further conditioned that he or she will, on demand, pay over or account for to the City or any proper officer or agent thereof, all moneys received by him or her as such officer or employee. The requirements of this Paragraph may be met by the purchase of one or more appropriate blanket surety bonds covering all or a group of City employees and officers.

All official bonds shall be corporate surety bonds, and the premiums thereon shall be paid by the City. All bonds of all officers or employees shall be filed with the Clerk.

(Ref. of 11-5-13)

Section 5.12. - Delivery of office.

Whenever any officer or employee shall cease to hold such office or employment, for any reason whatsoever, the officer or employee shall, within five (5) days or sooner, on demand, deliver to his or her successor in office, or to his or her superior, all the books, papers, moneys and effects in his or her custody as such officer or employee. Any officer violating this provision may be proceeded against in the same manner as public officers generally, for a like offense under statute. Any employee found guilty of violating this provision by a court of competent jurisdiction may be punished by a fine of not to exceed Five Hundred ($500) Dollars or imprisonment for not more than ninety (90) days, or both, in the discretion of the Court.

(Ref. of 11-5-13)

CHAPTER 6. - COUNCIL PROCEDURES

Section 6.1. - Regular meetings.

The Council shall provide by resolution for the time and place of its regular meetings and shall hold at least two (2) such meetings each month. A regular meeting shall be held on the Monday following each regular City election. If any time set for the holding of a regular meeting of the Council shall be a holiday, then such regular meeting shall be held on the next secular day which is not a holiday. If the Council meets at a place other than its regular meeting place, then public notice to such effect shall be published in a newspaper circulated in the City.

State Law reference— Open meetings act, MCL 15.261 et seq., MSA 4.1800(11) et seq.

Section 6.2. - Special meetings.

Special meetings of the Council shall be called by the Clerk on the written request of the Mayor or by any two (2) members of the Council. There shall be at least twenty-four (24) hours' written notice to the public and each member of the Council designating the time, place and purpose of any special meeting and served personally on, or left at, the usual place of residence of each of the Council members by the Clerk or someone designated by the Clerk. Any special meeting of the Council at which all members of the Council present, or have in writing waived the requirements that the required notice be given, and at which a quorum of the Council is present, shall be a legal meeting.

(Ref. of 11-5-13)

State Law reference— Open meetings act, MCL 15.261 et seq., MSA 4.1800(11) et seq.

Section 6.3. - Business of special meetings.

No business shall be transacted at any special meeting of the Council unless the same has been stated in the notice of such meeting. However, other than the enactment of an ordinance, any business which may lawfully come before a regular meeting may be transacted at a special meeting, if all the members of the Council present consent thereto and all the members absent file their written consent.

Section 6.4. - Meetings to be public.

All regular and special meetings of the Council shall be open to the public, and citizens shall have a reasonable opportunity to be heard; except that the Council may hold meetings closed to the public where allowed by statute.

State Law reference— Mandatory that Charter provide for public meetings, MCL 117.3(1), MSA 5.2073(1); open meetings act, MCL 15.261 et seq., MSA 4.1800(11) et seq.

Section 6.5. - Quorum; adjournment of meeting.

Four (4) members of the Council shall be a quorum for the transaction of business at all meetings of the Council, but in the absence of a quorum, the Mayor or any two (2) members may adjourn any regular or special meeting to a later date.

Section 6.6. - Compulsory attendance and conduct at meeting.

Any four (4) or more members of the Council may, by vote, either request or compel the attendance of its members and other officers of the City at any meeting. Any member of the Council or other officer who, when notified of such request for attendance, fails to attend such meeting, for reason other than confining illness, shall be deemed guilty of misconduct in office unless excused by the Council.

The presiding officer shall enforce orderly conduct at meetings, and any member of the Council or other officer who shall fail to conduct himself or herself in an orderly manner at any meeting shall, upon a majority vote of the Council, be deemed guilty of misconduct in office.

(Ref. of 11-5-13)

Section 6.7. - Organization and rules of council.

The Council shall determine its own organization rules and order of business, subject to the following provisions:

(a) A journal of the proceedings of each meeting shall be kept by the Clerk in the English language and shall be signed by the presiding officer and Clerk of the meeting.

(b) A roll-call vote shall be required on all ordinances, and the "Yes" or "No" vote shall be entered upon the records opposite the name of the Councilmember. Whenever the vote is unanimous, it shall only be necessary to so state.

(c) No member of the Council shall vote on any question in which the member has a financial interest other than the common public interest or on any question concerning the member's own conduct. On all other questions, each member who is present shall vote when his or her name is called unless excused by the unanimous consent of the remaining members present or unless he requests the same to be tabled until the next meeting of the Council, to be held in not less than twenty-four (24) hours. Such requests for postponement may be denied by vote of the Council; in which event, such member shall not be required to vote. If the question is tabled until the following meeting, such member shall then be required to vote unless excused by unanimous consent of the remaining members present. Any member refusing to vote, except when excused in accordance with this Paragraph, shall be guilty of misconduct in office.

(d) In all roll-call votes, the names of the members of the Council shall be called in alphabetical order, and the name to be called first shall be advanced one position alphabetically in each successive roll call.

(e) Any standing committees of the Council shall be composed of at least three (3) members who shall be appointed by the Mayor.

(Ref. of 11-5-13)

State Law reference— Mandatory that Charter provide for keeping of a journal of every session, MCL 117.3(m), MSA 5.2073(m); conflicts of interest as to contracts, MCL 15.321 et seq., MSA 4.1700(51) et seq.; standards of conduct and ethics, MCL 15.341 et seq., MSA 4.1700(71) et seq.

CHAPTER 7. - CITY LEGISLATION[3]

Footnotes:

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State Law reference— Mandatory that Charter provide for ordinances, MCL 117.3(k), MSA 5.2073(k); general authority relative to adoption of ordinances, Mich. Const. 1963, Art. VII, § 22.

Section 7.1. - Prior legislation.

All valid ordinances and regulations of the City of Novi, County of Oakland, State of Michigan, which are in force and effect at the time of the effective date of this Charter and not contrary to or inconsistent with this Charter, shall continue in force and effect until revised, altered, amended or repealed by the City.

Section 7.2. - Ordinances, resolutions, motions and orders.

All official actions of the Council shall be by ordinance, resolution, motion or order. Action by resolution, motion or order shall be limited to matters required or permitted to be so done by this Charter, by State or Federal law or which pertain to the internal affairs or concerns of the City government. All other acts of the Council and all acts carrying a penalty for the violation thereof shall be by ordinance.

The style of all ordinances shall be "The City of Novi Ordains". No ordinance shall be revised, altered or amended by reference to its title only. The section or subsections of the ordinance revised, altered or amended shall be reenacted and published in full, except as otherwise provided in this Charter. An ordinance may be repealed by reference to its number and title only. The effective date of any ordinance shall be prescribed therein and shall not be less than fifteen (15) days after its adoption unless the Council shall, upon attaching a declaration of emergency affecting the public peace, health or safety, fix an earlier date. Such emergency ordinance may be made effective immediately. No ordinance or measure making or amending a grant of a franchise, renewal or extension of a franchise or other special privilege shall ever be passed as an emergency measure.

Each ordinance shall be identified by a number and short title. All ordinances when enacted shall be recorded by the Clerk in a book to be called "Ordinances", and it shall be the duty of the Mayor and Clerk to authenticate such record by their official signatures thereon.

Copies of all ordinances and all amendments to this Charter shall be prepared and kept on hand in the office of the Clerk and shall be available for public distribution.

The copies of ordinances and of any compilation code or codes referred to in this Charter may be certified by the Clerk and, when so certified, shall be competent evidence in all courts and legally established tribunals as to the matters contained therein.

Section 7.3. - Publication.

The Council shall have power to determine the method of publication of all notices and proceedings required to be published by law, by this Charter or by the Council for which a mode of publication is not prescribed. In the event publication in a newspaper is required by charter or statute, then such publication shall be made in a newspaper, as defined by State law, which shall be published or circulated in the City.

State Law reference— Mandatory that Charter provide for publication of all ordinances before they become operative, MCL 117.3(k), MSA 5.2073(k).

Section 7.4. - Penalties.

The Council shall provide in each ordinance for the punishment of those who violate its provisions. No punishment for the violation of any City ordinance or for the commission by any officer of the City of any act declared by this Charter to constitute misconduct in office shall exceed a fine of Five Hundred ($500.00) Dollars or imprisonment for ninety (90) days, or both in the discretion of the Court. Any officer of

the City found guilty of any act declared by this Charter to constitute misconduct in office shall, in addition to such fine or imprisonment; or both, forfeit his or her office.

(Ref. of 11-5-13)

State Law reference— Limitation on penalties, MCL 117.4i(10), MSA 5.2082(10).

Section 7.5. - Publication of ordinances.

Each ordinance passed by the Council shall be published at least once within fifteen (15) days after the adoption of the ordinance by the Council. Publication shall be effected by posting a copy of the same in at least three (3) public places in the City, together with at least one of the following methods, to be stated in the ordinance; namely,

(a) By publication of the ordinance in full, after its final passage, as a part of the published proceedings of the Council, in a newspaper circulated in the City;

(b) By publication of the ordinance in full, after its final passage, in a newspaper circulated in the City;

(c) By publication of a brief notice in a newspaper circulated in the City stating the date of enactment and effective date of such ordinance, a brief statement as to the subject matter of such ordinance and such other facts as the Clerk shall deem pertinent, if any, and a statement that a complete copy of the ordinance is available for public use and inspection at the office of the City Clerk.

The Clerk shall, immediately after such publication and posting, enter in the record of the ordinance, in a blank space to be left for such purpose under the record of the ordinance, a certificate stating the time and place of publication and posting. Such certificate shall be prima facie evidence of the due publication and posting of the ordinance.

(Ref. of 11-5-13)

Section 7.6. - Special procedure on certain council actions.

The Council shall, in carrying out the following actions, be required to proceed in the following manner:

(a) *Action to Vacate Public Places.* Action to vacate, discontinue or abolish any highway, street, lane, alley or other public place, or part thereof, shall be by resolution. After the introduction of such resolution and before its final adoption, the Council shall hold a public hearing thereon and shall publish notice of such hearing at least one week prior thereto.

(b) *Action Requiring Affirmative Vote of Five (5) Members of Council.* The following actions shall require the affirmative vote of five (5) members of the Council for effectiveness thereof:

(1) Vacating, discontinuing or abolishing any highway, street, lane, alley or public place, or part thereof;

(2) Leasing, selling or disposing of any City-owned real estate or interest therein;

(3) Condemning private property for public use;

(4) Creating or abolishing any office;

(5) Appropriating any money;

(6) Imposing any tax or assessment.

(c) *Technical Codes.* The Council may adopt as an ordinance, by reference thereto in the adopting ordinance, in whole or in part, provisions of:

(1-1) Any Michigan statute; or

(1-2) Any detailed technical regulations promulgated or enacted by:

(i.) Any State or Federal agency,

(ii.) Any municipality, or

(iii.) By any organization or association which has developed a standard code or set of such technical regulations.

Such adopting ordinance shall clearly identify and state the purpose of the provisions or regulations, as adopted. Where any ordinance or code or amendment thereto, adopting provisions by reference, is enacted, all requirements for its publication may be met, other provisions of this Charter notwithstanding, by:

(2-1) Publishing the ordinance citing such provisions in the manner provided by this Charter for the publication of other City ordinances and including, as part of such publication, a notice that printed copies of the provisions so cited are available for inspection by, and distribution to, the public at the office of the Clerk; and

(2-2) So making copies available for public inspection and for distribution to the public at a reasonable charge.

(d) *Franchise and Contracts.* Every ordinance or resolution granting any franchise or right to occupy or use the streets, highways, bridges or public places in the City for any purpose shall be complete in the form in which it is finally passed. It shall remain on file with the Clerk for public inspection for at least one week before the final passage or adoption thereof.

State Law reference— Authority to adopt technical codes by reference, MCL 117.3(k), MSA 5.2073(k).

Section 7.7. - Compilation.

The Council shall have authority to direct the codification of ordinances adopted by the Council at such time or times as shall be determined by the Council.

State Law reference— Authority to codify, MCL 117.5b, MSA 5.2084(2).

Section 7.8. - Initiative and referendum.

An ordinance may be initiated by petition or a referendum on an ordinance enacted by the Council may be had, by a petition as hereinafter provided.

(a) *Petitions.* An initiatory or a referendum petition shall be signed by not less than fifteen percent (15%) of the registered electors of the City, who shall have signed said petition within three (3) months before the date of filing the petition with the Clerk. An initiatory petition shall set forth in full the ordinance it purposes to initiate, and no petition shall purpose to initiate more than one ordinance. Before being circulated for signatures, all such petitions may be approved as to form by the Clerk. No such petition need be on one paper but may be the aggregate of two (2) or more petition papers. Each signer of a petition shall sign his or her name in ink or indelible pencil and shall place thereon, after his or her name, the date and his or her place of residency by street and number or by other customary designation. To each petition paper there shall be attached a sworn affidavit by the circulator thereof stating the number of signers thereto and that each signature of the person whose name it purports to be was made in the presence of the affiant. Such petition shall be filed with the Clerk, who shall, within (10) days, canvass the signatures thereon to determine the sufficiency thereof. If found to contain an insufficient number of signatures of registered electors of the City or to be improper as to form or compliance with the provisions of this Section, the Clerk shall notify forthwith the person filing such petition and ten (10) days from such notification shall be allowed for the filing of supplemental petition papers. When found sufficient and proper, the Clerk shall present the petition to the Council at its next regular meeting.

(b) *Council Procedure.* Upon receiving an initiatory or referendary petition from the Clerk, the Council shall, within thirty (30) days, either:

(1) If it be an initiatory petition, adopt the ordinance as submitted in the petition or determine to submit the proposal to the electors of the City; or

(2) If it be a referendary petition, repeal the ordinance to which the petition refers or determine to submit the proposal to the electors of the City.

(c) *Ordinance Suspended.* The certification by the Clerk of the sufficiency of a referendary petition, within thirty (30) days after the passage of the ordinance to which such petition refers, shall automatically suspend the operation of the ordinance in question pending repeal by the Council or final determination by the electors, as the case may be.

(d) *Submission to Electors.* Should the Council decide to submit the proposal to the electors, it shall be submitted at the next election held in the City for any other purpose or, at the discretion of the Council, at a special election. The result shall be determined by a majority vote of the electors voting thereon, except in cases where otherwise required by the Constitution or laws of the State of Michigan.

(e) *Limitation on Amendment or Repeal.* An ordinance adopted by the electorate through initiatory proceedings may not be amended or repealed except by initiatory or referendum proceeding[s] for a period of two (2) years.

(f) *Limitation on Adoption.* An ordinance containing the same provision as that rejected by the electorate through initiatory or referendum proceedings cannot be adopted for a period of two (2) years from the date of the election rejecting the provision.

(g) *Conflicting Provisions.* Should two (2) or more ordinances be adopted at the same election having conflicting provisions, the one receiving the highest vote shall prevail as to those provisions.

(Ref. of 11-5-13)

State Law reference— Permissible that Charter provide for initiative and referendum, MCL 117.4i(6), MSA 5.2082(6).

Section 7.9. - Severability of ordinances.

Unless an ordinance shall expressly provide to the contrary, if any portion of an ordinance or the application thereof to any person or circumstances shall be found to be invalid by a Court, such invalidity shall not affect the remaining portion or application of the ordinance which can be given effect without the invalid portion or application; provided, such remaining portion or application is not determined by Court to be inoperable. And to this end, ordinances are declared to be severable.

CHAPTER 8. - GENERAL FINANCE[4]

Footnotes:

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State Law reference— Municipal finance act, MCL 131.1 et seq., MSA 5.3188(1) et seq.

Section 8.1. - Fiscal year.

The fiscal year of the City shall begin on the first day of July and end on the thirtieth day of June of the following year. Such year shall constitute the budget year of the City government.

Section 8.2. - Budget procedure.

On or before the first day of April, each City officer shall submit to the City Manager an estimate of the expenditure requirements of the next fiscal year for the department or activities under the officer's control. Such estimates shall be submitted on forms and in a manner prescribed in the City budget manual approved by the Council to govern the

preparation, submission and the administration of the annual budget. The City Manager shall prepare a complete, itemized balanced budget document containing the proposal for the next fiscal year and shall submit it, accompanied by a proposed appropriation resolution, on the third Monday in April.

(Ref. of 11-5-13)

Section 8.3. - Budget document.

The budget document shall present a complete financial plan for the ensuing fiscal year and shall include at least the following information for all funds of the City except trust and agency funds and special assessment funds. (A fund is defined as an independent fiscal and accounting entity with a self-balancing set of accounts):

(a) Detailed estimates of all proposed expenditures for each department and office of the City showing the expenditures for corresponding items for the current and last preceding fiscal year, with reasons for increases and decreases recommended, which shall be compared with appropriations for the current year;

(b) Statements of the bonded and other indebtedness of the City showing the debt redemption and interest requirements, the debt authorized and unissued, and the condition of sinking funds, if any;

(c) Detailed estimates of all anticipated income of the City from sources other than taxes and borrowing, with a comparative statement of the amounts received by the City from each of the same or similar sources for the last preceding and current fiscal year;

(d) A statement of the estimated balance or deficit, as the case may be, for the end of the current fiscal year;

(e) An estimate of the amount of money to be raised from current and delinquent taxes and the amount to be raised from bond issues which, together with income from other sources, will be necessary to meet the proposed expenditures and commitments of the City government during the ensuing year;

(f) Such other supporting schedules as the Council may deem necessary.

Section 8.4. - Budget hearing.

A public hearing on the proposed budget shall be held before its final adoption at such time and place as the Council shall direct. Such public hearing shall be held in accordance with the provisions of State statute.

Section 8.5. - Adoption of budget; tax limit.

Not later than the third Monday in May, the Council shall, by resolution, adopt a balanced budget for the next fiscal year; shall appropriate from the several funds of the City the sums necessary to finance the budget; and shall provide for a levy of the amount necessary to be raised by taxes upon real and personal property for municipal purposes, subject to the limitations contained in Section 9.1 of this Charter.

An appropriation shall be deemed an authorization granted by the Council to make expenditures and to incur obligations for specific purposes pursuant to limitations imposed in Section 12.1. An appropriation shall limit the amount which may be spent for such specific purposes as may be defined by the Council and shall specify the period of time during which such amount may be expended.

State Law reference— Mandatory that Charter provide for an annual appropriation, MCL 117.3(h), MSA 5.2073(h).

Section 8.6. - Budget control and amendments.

After the budget has been adopted and the appropriation resolution has been passed, no money shall be drawn from the Treasury, nor shall any obligation for the expenditure of money be incurred, except pursuant to the terms of the appropriation resolution. The Council may amend such resolution at any time so as to authorize: (a) the transfer of any unexpended and unencumbered balance of an appropriation made for a specific purpose; (b) the transfer of appropriations within a department, account, fund or agency; and (c) the appropriation and allocation of available revenues not included in the annual budget. The amended resolution shall be made upon the concurring vote of not less than five (5) members of the Council. The Council may make emergency appropriations as provided in the following Section. The remaining unexpended and unencumbered balance of any appropriation at the end of the fiscal year shall revert to surplus in the fund from which it was appropriated.

Section 8.7. - Emergency appropriations.

The Council shall have the authority to make emergency appropriations from fund surpluses to meet urgent and immediate needs at any time during the fiscal year. Any resolution of the Council authorizing emergency appropriations shall state the specific purpose for which the appropriation is made, the necessity therefore, the amount of the appropriation, and the source of the revenue that is appropriated to the purpose specified. In the event such emergency appropriations or proposed emergency appropriations should, during any fiscal year, aggregate more than one quarter of one percent (.25%) of the assessed value of the taxable real and personal property in the City as shown by the last preceding tax roll, then before final action shall be taken thereon, notice shall be given by publication once in a newspaper of general circulation in the City at least seven (7) days prior to the meeting at which action is to be taken. Such notice shall state the time and place of the meeting of the Council and a brief statement as to the subject matter of the appropriation. No further notice shall be required in the event the hearing on such appropriation shall be adjourned to a subsequent meeting. In the event that the Council shall declare it necessary for the public health, safety and welfare of the City that the resolution providing for such appropriation be given immediate effect, then, with a favorable vote of not less than five (5) members of the Council, the notice above provided for shall not be required, and such resolution may be given immediate effect.

Section 8.8. - Quarterly financial report.

At the beginning of each quarterly period during the fiscal year, and more often if required by the Council, the City Manager, or, in the Manager's absence, the Director of Finance, shall submit to the Council data showing the relation between the estimated and actual income and expenses to date; and it shall appear that the income is less than anticipated in the appropriation resolution, the Council shall reduce appropriations, except amounts required for debt and interest charges, to such a degree as may be necessary to keep expenditures in line with revenue.

(Ref. of 11-5-13)

Section 8.9. - Depository.

The Council shall designate the depository or depositories for City funds and shall provide for the regular deposit of all City funds. The Council shall provide for such security for City deposits as is authorized or permitted by the general laws of the State or required by the Council, except that personal surety bonds shall not be deemed proper security.

State Law reference— Designation of depositions, MCL 129.12, MSA 3.752; deposit of public moneys, MCL 211.43b, MSA 7.86.

Section 8.10. - Withdrawal of funds.

All funds drawn from the Treasury shall be drawn pursuant to the authority and appropriation of the Council and upon checks signed by two (2) officers of the City to be designated by resolution of the Council.

Section 8.11. - Audit.

An independent audit shall be made of all City accounts at least annually and more frequently if deemed necessary by the Council. Such audit shall be made by certified public accountant to be selected by the Council. A balance sheet statement prepared by the certified public accountant which shall disclose the assets, liabilities, reserves, and equities or each fund of the City at a specific date, except trust and agency funds, shall be published in a newspaper of general circulation in the City. If a single balance sheet is prepared for several funds, it must be in a columnar or sectional form so as to exhibit the accounts of each fund and balanced account group individually; provided further, that the balance sheet statement published in a newspaper of general circulation as required above shall be accompanied by a summary statement of any disclosures filed with the State Treasurer as required by Public Act 2 of 1968, of the Public Acts of the State of Michigan [MCL 141.421 et seq., MSA 5.3228(21)], as amended.

CHAPTER 9. - TAXATION[5]

Footnotes:

State Law reference— General property tax act, MCL 211.1 et seq., MSA 7.1 et seq.

Section 9.1. - Power to tax; limitations.

The City shall have the power to lay and collect taxes for municipal purposes.

The annual, general ad valorem property-tax levy shall not exceed:

(a) For general municipal purposes—six and one-half tenths of one percent (6½ mills),

(b) For specific street and highway improvement purposes—one tenth of one percent (1 mill),

(c) For Novi Public Library—one tenth of one percent (1 mill),

(d) For establishing and maintaining parks and recreation purposes—one-half tenth of one percent (½ mill), and

(e) For acquiring, constructing, improving, and maintaining drain, stormwater, and flood control systems in the City of Novi—one-tenth of one percent (1 mill)

(f) For the operation of the City of Novi Police and Fire Departments, including the payment of personnel and purchase of equipment—one and eight-tenths of one percent (1 8/10) mills)

of the assessed value of all real and personal property subject to taxation in the City, exclusive of any levies authorized by general statute to be made beyond Charter tax-rate limitations. This tax limitation may be increased for a period not to exceed three (3) years at any time by a majority vote of those electors in the City of Novi voting thereon at any regular City election or special election called for that purpose.

All Charter tax-limitation increases, granted for a period not to exceed three (3) years, by a majority vote of the electors of the City, pursuant to the Charter in effect as of February 24, 1969, shall continue in effect under this Charter for the unexpired period.

(Amended 8-10-82; Res. of 7-6-87, Ref. of 11-3-87)

State Law reference— Mandatory that Charter provide for annually levying and collecting taxes, MCL 117.3(g), MSA 5.2073(g).

Section 9.2. - Taxation.

The subjects of ad valorem taxation for City purposes shall be the same as for State, County and school purposes under the statute. City taxes shall be levied, collected and returned in the manner provided by statute.

State Law reference— Mandatory that Charter provide that subjects of taxation for municipal purposes shall be the same as for state, county and school purposes under general law, MCL 117.3(f), MSA 5.2073(f); property subject to taxation, MCL 211.1 et seq., MSA 7.1 et seq.

Section 9.3. - Exemption from taxes.

No exemptions from taxation shall be allowed, except as expressly required or permitted by statute.

State Law reference— Property exempt from taxation, MCL 211.7 et seq., MSA 7.7 et seq.

Section 9.4. - Tax day.

The taxable status of persons and property shall be determined as of the 31st day of December, which shall be deemed the tax day for the immediately succeeding calendar year, which is also the tax year; subject to the exceptions provided or permitted by statute.

State Law reference— Designation of tax day, MCL 211.2, MSA 7.2; time, place and method of assessment, MCL 211.10 et seq., MSA 7.10 et seq.

Section 9.5. - Preparation of the assessment roll.

The Assessor shall make and complete an assessment roll for the City, in the manner and form provided in the general tax law of the State, not later than the first Monday in March each year. On said date the Assessor shall file such roll with the Clerk for public inspection during the normal office hours of the Clerk, and such period of inspection shall continue until the date of convening of the Board of Review. On that date the Clerk shall turn such assessment roll over to the Board of Review. Further, the Assessor shall, by first class mail addressed to the owner named on the tax roll, notify the owner of any change in the assessment of the property; such notice shall be mailed prior to March 1. Failure on the part of the Assessor to give such notice shall not invalidate the assessment roll nor release the person or property assessed from any taxes provided in this Charter.

(Ref. of 11-5-13)

State Law reference— Mandatory that Charter provide for preparation of assessment roll, MCL 117.3(i), MSA 5.2073(i); assessment roll, MCL 211.24 et seq., MSA 7.24 et seq.

Section 9.6. - Board of Review.

The Board of Review shall be appointed by the Council and shall be comprised of three (3) persons who are residents of the City and have the qualifications required by this Charter for officers of the City. Said members of the Board, during their term of office, shall not be City officers, employees, nominees or candidates for elective City office. The Assessor shall be Secretary of the Board and shall attend its meetings

prepared to present the position of the office of Assessor without the right to vote upon any decision of the Board.

(Ref. of 11-5-13)

State Law reference— Mandatory that Charter provide for a board of review, MCL 117.3(a), MSA 5.2073(a).

Section 9.7. - Duties and functions of Board of Review.

For the purpose of reviewing and correcting assessments, the Board of Review shall have the same powers and perform like duties in all aspects as are by statute conferred upon and required of Boards of Review in townships, as applicable to cities, except as otherwise provided in this Charter. It shall hear the complaints of all persons considering themselves aggrieved by assessments; and if it shall appear that any person or property has been wrongfully assessed or omitted from the roll, the Board shall correct the roll in such manner as it deems just. In all cases, the roll shall be reviewed according to the facts existing on the tax day, and no change in the status of any property after said day shall be considered by the Board in making its decisions. Except as otherwise provided by statute, no person other than the Board of Review shall make or authorize any change upon or additions or corrections to the assessment roll.

Section 9.8. - Notice of sessions of Board of Review.

Notice of the time and place of the sessions of the Board of Review shall be published by the Clerk at least seven (7) days prior to the first session of the Board.

Section 9.9. - Meeting of the Board of Review.

The Board of Review shall convene in its first session on the Tuesday following the first Monday in March of each year, at such time of day and place as shall be designated by the Council, and shall remain in session for at least eight (8) hours for the purpose of reviewing and correcting the roll. If necessary, said Board, on its own motion or on sufficient cause being shown by any person, shall add to said roll the names of persons, the value of personal property, and the description and value of real property liable to assessment in said City, omitted from such assessment roll. They shall correct errors in the names of persons, in the descriptions of property upon such roll, and in the assessment and valuation of property thereon, and they shall cause to be done whatever else may be necessary to make said roll comply with the provisions of this Charter.

In each case in which the assessed value of any property is increased over the amount shown on the assessment roll prepared by the Assessor, when any property is added to such roll by the Board or when the Board has resolved to consider at its second session such increasing of an assessment or the adding of any property to such roll, the Assessor shall give notice thereof to the owners as shown by said roll, by first class letter mailed not later than the day following the end of the first session of the

Board; and shall file with the Board sworn certification to such effect. Such notice shall state the date, time, place and purpose of the second session of the Board. The failure to give any such notice, or of the owner to receive it, shall not invalidate any assessment roll or assessment thereon.

The Board of Review shall convene in its second session on the second Monday in March of each year, at such time of day and place as shall be designated by the Council, and shall continue in session until all interested persons have had an opportunity to be heard, but in no case for less than eight (8) hours. At the end of the second session, the Board may not increase any assessment or add any property to the rolls except in those cases in which the Board resolved at its first session to consider such increase or addition at its second session.

(Ref. of 11-5-13)

State Law reference— Mandatory that Charter provide for meeting of board of review, MCL 117.3(i), MSA 5.2073(i).

Section 9.10. - Endorsement of roll.

After the Board of Review has completed its review of the assessment roll, and not later than the first Monday in April, the majority of its members shall endorse thereon and sign a statement to the effect that the same is the assessment roll of the City for the year in which it has been prepared. The omission of such endorsement shall not effect the validity of such roll. The roll, as prepared by the City Assessor, shall stand as approved and adopted as the act of the Board of Review except when changed by a vote as herein provided.

State Law reference— Mandatory that Charter provide for levy, collection and return of state, county and school taxes, MCL 117.3(i), MSA 5.2073(i); completion of review of assessments prior to first Monday in April required, MCL 211.30a, MSA 7.30(1).

Section 9.11. - Clerk to certify tax levy.

Within three (3) days after the Council has adopted the budget for the ensuing year, the Clerk shall certify to the Assessor the total amount which the Council determines shall be raised by general ad valorem tax. The Clerk shall also certify all amounts of current or delinquent special assessments and all other amounts which the Council requires to be assessed, reassessed or charged upon any property or against any person.

(Ref. of 11-5-13)

Section 9.12. - City tax roll.

After the Board of Review has completed its review of the assessment roll, the Assessor shall prepare a copy of the assessment roll, to be known as the "City Tax

Roll"; and upon receiving the certifications of the several amounts to be raised, as provided in Section 9.11, the Assessor shall spread upon said roll the several ad valorem taxes according to and in proportion to the several valuations set forth in said assessment roll. To avoid fractions in computation on any tax roll, the Assessor may add to the amounts prescribed by statute. Any excess created thereby on any tax roll shall belong to the City.

State Law reference— Avoidance of fractions, MCL 211.39, MSA 7.80.

Section 9.13. - Tax roll certified for collection.

After spreading the taxes, the Assessor shall certify the tax roll and the Mayor shall annex his or her warrant thereto directing and requiring the Treasurer to collect prior to March 1 of the following year, from the several persons named in said tax roll, the several sums mentioned therein opposite their respective names as a tax or assessment, and granting to the Assessor, for the purpose of collecting the taxes, assessments and charges on such roll, all statutory powers and immunities possessed by township treasurers for the collection of taxes. On or before the fourth Monday in May, the roll shall be delivered to the Treasurer for collection.

(Ref. of 11-5-13)

State Law reference— Collection of taxes, MCL 211.44 et seq., MSA 7.87 et seq.

Section 9.14. - Tax lien on property.

On July 1, the taxes thus assessed shall become a debt due to the City from the persons to whom they are assessed. The amounts assessed on any interest in real property shall become a lien upon such real property, for such amounts and for all interest and charges thereon, and all personal taxes shall become a first lien on all personal property of such persons so assessed. Such lien shall take precedence over all other claims, encumbrances and liens to the extent provided by statute and shall continue until such taxes, interest and charges are paid.

Section 9.15. - Taxes due; notification.

The Treasurer shall give notice to the taxpayers of the City, by publication at least once in a newspaper of general circulation in the City (which publication of notice shall be made at least ten (10) days prior to the first day of July in each year), of the time when said taxes will be due for collection or shall give such notice of the time when said taxes will be due for collection, by first class mail, addressed to the owners of the property upon which taxes are assessed, according to the names of such owners and their addresses as indicated on the tax roll. Such notice shall be deemed sufficient for the payment of all taxes on said tax roll. Failure on the part of the Treasurer to give said notice shall not invalidate the taxes on said tax roll nor release the person or property assessed from any penalty or interest provided for in this Chapter in case of nonpayment of the same.

Section 9.16. - Collection fees.

All taxes paid on or before August 31 of each year shall be collected by the Treasurer without collection fee. Property taxes shall become delinquent if they remain unpaid on September 1. On September 1, the Treasurer shall add to all taxes paid thereafter a collection fee of one percent (1%) of the amount of said taxes. On September 15, the Treasurer shall add to all taxes paid thereafter an additional collection fee of three percent (3%) of the amount of said taxes, not including the original collection fee. Such collection fee shall belong to the City and constitute a charge and shall be a lien against the property to which the taxes themselves apply, collectible in the same manner as the taxes to which they are added. The City may by ordinance, provide interest and penalties for delinquent City real and personal property taxes.

(Ref. of 11-4-14)

Section 9.17. - Failure or refusal to pay personal property tax.

If any person, firm or corporation shall neglect or refuse to pay any personal property tax assessed to them, by October 1, the Treasurer shall collect the same by seizing the personal property of such person, firm or corporation in an amount sufficient to pay such tax, fees and charges for subsequent sale whenever the same may be found in the State.

No property shall be exempt from such seizures. The Treasurer may sell the property seized to an amount sufficient to pay the taxes and all charges in accordance with statutory provisions. The Treasurer may, if otherwise unable to collect a tax on personal property, sue, in accordance with statute, the person, firm or corporation to whom it is assessed.

(Ref. of 11-5-13)

State Law reference— Failure or refusal to pay tax, MCL 211.47, MSA 7.91.

Section 9.18. - Delinquent tax roll to County Treasurer.

If the Treasurer has been unable to collect any of the City taxes on said roll on real property before the first day of March following the date when said roll was received by the Treasurer, it shall be the Treasurer's duty to return all such unpaid taxes on real property to the County Treasurer in the same manner and with like effect as returns by township treasurers of townships, school and county taxes. Such returns shall be made upon a delinquent tax roll to be prepared by the Treasurer and shall include all the additional charges and fees hereinbefore provided; which charges shall, in such return, be added to the amount assessed in said tax roll against each description. The taxes thus returned shall be collected in the same manner as other taxes returned to the County Treasurer under the provisions of the general laws of the State and shall be and remain a lien upon the lands against which they are assessed, until paid.

(Ref. of 11-5-13)

State Law reference— Return of delinquent taxes, MCL 211.55 et seq., MSA 7.99 et seq.

Section 9.19. - Protection of city lien.

The City shall have power, insofar as the exercise thereof shall not conflict with or contravene the provisions of any general law of the State, to acquire by purchase any premises within the City at any tax or other public sale of by direct purchases from the State of Michigan or the fee owner when such purchase is necessary to protect the lien of the City for taxes or special assessments, or both, on said premises. The City may hold, lease or sell the same solely for the purpose of securing therefrom the amount of such taxes or special assessments, or both, together with any incidental expenses incurred in connection with the exercise of this power. Any such procedure exercised by the City in the protection of its tax lien shall be deemed to be for a public purpose.

Section 9.20. - Additional rights, duties, powers, immunities and procedures.

Except as otherwise provided by this Charter or ordinance, the rights, duties, powers, immunities and procedures established by State general law shall apply in the collection and enforcement of City property taxes.

State Law reference— General property tax act, MCL 211.1 et seq., MSA 7.1 et seq.

CHAPTER 10. - BORROWING POWER[6]

Footnotes:

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State Law reference— Municipal finance act, MCL 131.1 et seq., MSA 5.3188(1) et seq.

Section 10.1. - Grant of authority to borrow.

Subject to the applicable provisions of statute and Constitution, the Council may by ordinance or resolution borrow money and issue bonds and other evidence of indebtedness therefor, for any purpose within the scope of powers vested in the City. Such bonds or other evidences of indebtedness may include, but not be limited to the following types:

(a) General obligation bonds which pledge the full faith, credit and resources of the City of the payment of such obligations, including bonds for the City's portion of public improvements;

(b) Notes issued in anticipation of the collection of taxes of the current fiscal year. The proceeds of such notes may be spent only in accordance with appropriations as provided by Sections 8.6 and 8.7 of this Charter;

(c) Emergency bonds, due in not more than three (3) years, which pledge the full faith, credit and resources of the City for the payment of such obligations, for the repairing or rebuilding of any of its municipal buildings, works, bridges or streets, or for an emergency fund for the relief of the inhabitants of the City in case of fire, flood, tornado, riot and disorder, or other public crisis or calamity;

(d) Bonds issued in anticipation of special assessments, which bonds may be an obligation of one or more special assessment district or may be both an obligation of such special assessment district and general obligation of the City;

(e) Mortgage bonds for the acquiring, owning, purchasing, constructing or operating of any public utility, as provided in Article VII, Sections 23, 24 and 25, of the 1963 Michigan Constitution provided, such bonds shall not impose any liability upon the City but shall be secured only upon the property and revenues of such public utility, including a franchise, stating the terms upon which, in case of foreclosure, the purchaser may operate the same; which franchise shall in no case extend for a longer period than twenty (20) years from the date of the sale of such utility and franchise or foreclosure. Such mortgage bonds shall be sold to yield an amount not to exceed the limit permitted by law. A sinking fund shall be created in the event of issuance of such bonds by setting aside such percentage of the gross or net earnings of the public utility as may be deemed sufficient for such payment;

(f) Bonds issued at the rate of interest not to exceed the maximum rate permitted by law to refund money advanced or paid on special assessments;

(g) Bonds for the refunding of the funded indebtedness of the City;

(h) Revenue bonds as authorized by statute, as amended, which are secured only by the revenues from a public improvement. Principal, interest and redemption premiums on the bonds issued hereunder shall be payable solely from the revenues of the public improvement. All such bonds shall contain a statement on their face that neither the bonds nor the coupon thereon constitute an indebtedness of the City of Novi, within the meaning of any constitutional or statutory limitations or prohibitions;

(i) Other notes and bonds which may from time to time be authorized by statute.

State Law reference— City authority to borrow money on the credit of the city and issue bonds therefor, MCL 117.4a(1), MSA 5.2074(1); city authority to borrow money and issue bonds therefor in anticipation of the payment of special assessments, MCL 117.4a(2), MSA 5.2074(2).

Section 10.2. - Limits of borrowing powers.

The net bonded indebtedness incurred for all public purposes shall not at any time exceed ten percent (10%) of the assessed value of all the real and personal property in

the city subject to taxation as shown by the last preceding assessment roll of the City; provided that in computing such net bonded indebtedness there shall be excluded money borrowed under the following Sections:

(a) 10.1(b) Tax-anticipation notes;

(b) 10.1(d) Special assessment bonds, even though they are also a general obligation of the City;

(c) 10.1(e) Mortgage bonds;

(d) 10.1(h) Revenue bonds

and any other obligation excluded by statute or Constitution from such limitations. The resources of the sinking fund pledged for the retirement of any outstanding bonds shall also be deducted from the amount of the bonded indebtedness. The amount of emergency loans which the Council may make under the provision of Section 10.1(c) may not exceed one quarter of one percent (.25%) of the assessed value of all the real and personal property in the City (or such larger percentage as cities may by statute be permitted to provide for in their Charter); notwithstanding such loan may increase the indebtedness of the City beyond the limitation fixed in the preceding paragraph.

The total amount of such special assessment bonds issued under Section 10.1(d) which are a general obligation of the City shall at no time, by reason of future issues other than issues of refunding bonds, exceed the statutory limitations thereon, nor shall such bonds be issued in any calendar year in excess of the amount so permitted to be issued by statute unless authorized by a vote of the electors in the manner provided by statute.

State Law reference— Limitation of net bonded indebtedness incurred for all public purposes, MCL 117.4a(1), MSA 5.2074(1).

Section 10.3. - Vote of electors required.

The Council shall not have power to authorize any issue of bonds unless approved by a majority of the electors voting thereon at a general or special election, except the following bonds:

(a) Special assessment bonds;

(b) Bonds for the City portion of local improvements, not to exceed forty percent (40%) of the cost of such improvement;

(c) Refunding bonds;

(d) Bonds for relief from fire, flood, tornado, riot and disorder, public crisis or calamity or for payment of judgments;

(e) Revenue bonds; and

(f) Other bonds excluded by statute from the requirement for such vote.

Section 10.4. - Preparation and record of bonds.

Every bond issued by the City shall contain on its face a statement specifying the purpose for which the same is issued. It shall be unlawful for any officer of the City to sign or issue any such bond unless such statement is set forth on the face of the same or to use such bonds or the proceeds from the sale thereof for any purpose other than that mentioned on the face of such bond. Any officer who shall violate any of the provisions of this Section shall be deemed guilty of misconduct in office.

Bonds and all other evidence of indebtedness issued by the City shall be signed by the Mayor and the Clerk under the seal of the City. The coupons evidencing the interest upon said bonds may be executed with the facsimile signatures of the Mayor and the Clerk. A complete, detailed record of all bonds shall be kept by the Director of Finance. Upon payment of any bond or other evidence of indebtedness, the same shall be cancelled.

State Law reference— Cremation or disintegration of public obligations, MCL 129.121 et seq., MSA 3.996(1) et seq.

Section 10.5. - Unissued bonds.

Any authorization for the issuance of bonds by the City shall be void if such bonds shall not be issued within three (3) years from the date of such authorization.

Section 10.6. - Installment payment contracts.

The Council may enter into installment contracts for the purchase of property or capital improvement by a vote of not less than five (5) members. All contracts relating to real and personal property shall not extend over a greater period than ten (10) years. All such deferred payments shall be included in the budget for the year in which the installment is payable.

CHAPTER 11. - SPECIAL ASSESSMENTS[7]

Footnotes:

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State Law reference— Power re assessments, MCL 117.4a, 117.4b, 117.4d, 117.5; MSA 5.2074, 5.2075, 5.2077, 5.2084.

Section 11.1. - General power relative to special assessments.

The City Council shall, after public hearing, have power to determine and declare by resolution that the whole or any part of the expense of public improvement, repair or abatement of nuisance shall be defrayed by special assessments upon the property specially benefited.

(a) Those roads, maintained by the City, which have heretofore been designated as Basic Arterial Inter-County Thoroughfares on Plate II of Part V of the 1967 Master

Plan for the Village of Novi and adopted by the Village Council at a Special Meeting held September 25, 1967, shall be improved without specially assessing any costs thereof to the residential property adjacent thereto.

(b) Those paved roads which have been accepted and are maintained by the City, and have been reported to and approved by the Michigan Department of State Highways and Transportation for the purposes of Act 51 of the Public Acts of 1951 [MCL 247.651 et seq., MSA 9.1097(1) et seq.] as amended, shall be maintained, repaired and improved without specially assessing any costs thereof to the residential property adjacent thereto.

State Law reference— Permissible that Charter provide for assessing costs of public improvements, MCL 117.4d, MSA 5.2077.

Section 11.2. - Detailed procedure to be fixed by ordinance.

The complete special-assessment procedure to be used, including the preparing of plans and specifications, estimated costs, preparation, hearings, requirements for mailing and publishing of notices of hearing and correction of the special assessment roll, collection of special assessments, assessment of single lots or parcels and any other matters concerning the making of improvements, repairs or abatement of nuisance by the special assessment method, shall be provided by ordinance. The ordinance shall authorize additional assessments if the prior assessment proves insufficient to pay for the improvement in whole or in part or is determined to be invalid and shall also provide for the refund of excessive assessments. If the excess is less than five percent (5%) of the total cost, it may be placed in the general fund of the City.

Section 11.3. - Lien for special assessments.

From the date of confirmation of any roll levying any special assessment, the City shall possess a lien on the premises subject thereto, for the full amount of the unpaid special assessment and the interest on all unpaid installments thereof; and such amount shall also be a debt of the person to whom assessed until paid and, in case of delinquency, may be enforced as delinquent City property taxes or by a suit against such person.

Section 11.4. - Contested assessments.

No action of any kind shall be instituted for the purpose of contesting or enjoining the collection of any special assessment, unless (a) within thirty (30) days after the confirmation of the special assessment roll, written notice is given to the City Council indicating an intention to file such action and stating the grounds on which it is claimed such assessment is illegal; and unless (b) such action shall be commenced within sixty (60) days after the confirmation of the roll. If the City Attorney submits a written opinion finding said roll illegal, in whole or in part, the City Council shall revoke its confirmation, correct the illegality, if possible, and reconfirm the same. Property which is not involved in the illegality shall not be assessed more than was imposed upon the original confirmation without further notice and hearing thereon.

CHAPTER 12. - PURCHASES, SALES, CONTRACTS AND LEASES

Section 12.1. - Purchase and sale of property.

Comparative prices shall be obtained for the purchase or sale of all materials, supplies, services and public improvements, and formal bids shall be required as outlined below, except: (a) in the employment of professional services; or (b) in those instances when the Director of Finance (or the Council as hereinafter provided) shall determine that no advantage to the City would result therefrom.

The City Council shall establish by Ordinance those sales or purchases which must be approved by the City Council, and those sales or purchases which shall require the solicitation of sealed bids. No sale or purchase shall be divided for the purpose of circumventing the dollar-value limitation contained in such ordinance. The Council may authorize the making of public improvements or the performance of any other City work by any City department or agency without competitive bidding.

Purchases shall be made from the lowest competent bidder who meets the specifications and whose bid is most advantageous to the City. Sales shall be made to the bidder whose bid is most advantageous to the City. All such bids shall be publicly opened at an announced time and place, and contract shall be awarded at a regular or special City Council meeting.

The Council shall, by ordinance or resolution, establish detailed purchasing, sale and contract procedures, including procedures for written contracts and purchase orders, not inconsistent with this Charter.

(Res. of 6-5-89, Ref. of 11-7-89)

Section 12.2. - Contracts.

The authority to contract on behalf of the City vested in the Council and shall be exercised in accordance with the provisions of statute and of this Charter. No contract for employment or an agreement for the purchase of wares or merchandise or services shall be made unless the Director of Finance shall first have certified that an appropriation has been made for payment thereof when due. All orders and contracts which have not been approved by the Director of Finance as aforesaid shall be void. In the case of a contract obligating the City to periodic payments in future fiscal years for the furnishing of a continuing service or the leasing of property, such certification shall cover those payments on the contract which will be due in the current fiscal year.

No contract shall be amended after the same has been made except upon the authority of the Council.

No compensation shall be paid to any contractor or vendor except in accordance with the terms of the contract.

State Law reference— Restriction on making contracts with persons in default to city, MCL 117.5(f), MSA 5.2084(f).

Section 12.3. - Restriction on powers to lease property.

Any agreement or contract for the renting or leasing of public property for a period longer than three (3) years shall be subject to the same referendum procedure as provided in the case of ordinances passed by the Council. However, a summary of the terms of any such agreement or contract shall be published within ten (10) days after its approval by the Council, and any petition for such referendum must be filed within thirty (30) days after such publication to be effective.

The transfer or assignment of any agreement or contract for the renting or leasing of public property may be made only upon approval of the Council, but approval of such transfer shall not be subject to referendum.

State Law reference— Permissible that Charter provide for leasing public property, MCL 117.4e(3), MSA 5.2078(3).

CHAPTER 13. - MUNICIPALITY-OWNED UTILITIES[8]

Footnotes:

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State Law reference— Mandates relative to public utilities, Mich. Const. 1963, Art. VII, §§ 24, 25; permissible that Charter provide for operation of utilities, MCL 117.4c, 117.4f, MSA 5.2076, 5.2079.

Section 13.1. - General powers respecting utilities.

The City shall possess and hereby reserves to itself all the powers granted to cities by statute and constitution to acquire, construct, own, operate, improve, enlarge, extend, repair and maintain, either within or without its corporate limits, including but not by way of limitation, public utilities for supplying water, light, heat, power, gas, sewage treatment and garbage-disposal facilities, or any of them, to the municipality and the inhabitants thereof. It may also sell and deliver water, light, heat, power, gas and other public-utility services outside its corporate limits to an amount not to exceed the limitation set by statute and constitution.

Section 13.2. - Management of municipality-owned utilities.

All municipality-owned utilities shall be administered as a regular department of the City government under one or more departments established by ordinance as provided in this Charter and not by an independent board or commission.

Section 13.3. - Rates.

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. There shall be no discrimination in

such rates within any classification of users thereof nor shall free service be permitted, but higher rates may be charged for services outside the City limits.

Section 13.4. - Utility rates and charges; collection.

The Council shall provide by ordinance for the collection of all public-utility rates and charges of the City. Such ordinance shall provide, but not be limited to:

(a) That the City shall have, when permitted by statute, as security for the collection of such utility rates and charges, a lien upon the real property supplied by such utility; which lien shall become effective immediately upon the supplying of such utility service and shall be enforced in the manner provided in such ordinance;

(b) The terms and conditions under which utility services may be discontinued in case of delinquency in paying such rates or charges; and

(c) That suit may be instituted by the City in any court of competent jurisdiction for the collection of such rates or charges.

With respect to the collection of rates charged for water, the City shall have all the powers granted to cities by Public Act 279 of 1909, of the Public Acts of the State of Michigan [MCL 117.1 et seq., MSA 5.2071 et seq.].

Section 13.5. - Disposal of utility plants and property.

Unless approved by a two-thirds (2/3) majority vote of the electors voting thereon at a regular or special election, the City shall not sell, exchange, lease or in any way dispose of any property, easements, equipment, privilege or asset belonging to and appertaining to any municipality-owned public utility which is needed to continue operating such utility. All contracts, negotiations, licenses, grants, leases or other forms of transfer in violation of this Section shall be void and of no effect as against the City. The restrictions of this Sec tion shall not apply to the sale or exchange of any articles of machinery or equipment of any City-owned public utility which are worn out or useless or which have been, or could with advantage to the service, be replaced by new and improved machinery or equipment, to the leasing of property not necessary for the operation of the utility or to the exchange of property or easements for other needed property or easements.

Section 13.6. - Utility accounts.

Transactions pertaining to the ownership and operation by the City of each public utility shall be recorded in a separate group of accounts under an appropriate fund caption. Such accounts shall be classified in accordance with generally accepted utility-accounting practice. Charges for all service furnished to or rendered by other City departments or agencies shall be recorded. An annual report shall be prepared to show fairly the financial position of the utility and the results of its operations. Such report shall be available for inspection at the office of the Clerk.

CHAPTER 14. - PUBLIC UTILITY FRANCHISES

Section 14.1. - Granting of public utility franchises.

Public utility franchises, and all renewals, extensions thereof and amendments thereto, shall be granted by ordinance only. No exclusive franchise shall ever be granted for a longer period than thirty (30) years.

Each franchise shall include a provision requiring the franchise to take effect within one year after the adoption of the ordinance granting it, except in the case of grants to take effect at the end of any franchise existing as of the date of the adoption of this Charter or that may hereafter be granted.

No franchise ordinance which is not subject to revocation at the will of Council shall be enacted nor become operative until the same shall have first been referred to the people at a regular or special election and received the affirmative vote of three-fifths (3/5) of the electors voting thereon. No such franchise ordinance shall be approved by the Council for referral to the electorate before thirty (30) days after application therefor has been filed with the Council, nor until a public hearing has been held thereon, nor until the grantee named therein has filed with the Clerk an unconditional acceptance of all terms of such franchise. No special election for such purposes shall be ordered unless the expense of holding such election, as determined by the Council, shall have first been paid to the Treasurer by the grantee.

A franchise ordinance, or renewal, or extension thereof, or amendment thereto, which is subject to revocation at the will of the Council may be enacted by the Council without referral to the electors but shall not be enacted unless it shall have been so on file in the office of the Clerk for public inspection for at least four (4) weeks after publication of a notice in a newspaper of general circulation in the City that such ordinance is so on file.

(Ref. of 11-5-13)

State Law reference— Franchises limited to thirty (30) years, Mich. Const. 1963, Art. VII, § 30; submitted to electors required if irrevocable, Mich. Const. 1963, Art. VII, § 25; expenses of special election to be paid by grantee, MCL 117.5(i), MSA 5.2084(i).

Section 14.2. - Conditions of public utility franchise.

All public utility franchises granted after the adoption of this Charter, whether so provided in the granting ordinance or not, shall be subject to the following rights of the City, but this enumeration shall not be exclusive nor impair the right of the Council to insert in such franchise any provision within the power of the City to impose or require:

(a) To repeal the same for misuse, nonuse or failure to comply with the provisions thereof;

(b) To require proper and adequate extension of plant, service or maintenance thereof at the highest practicable standard of efficiency;

(c) To establish reasonable standards of service and quality of products and prevent unjust discrimination in services or rates;

(d) To require continuous and uninterrupted service to the public in accordance with the terms of the franchise throughout the entire period thereof;

(e) To use, control and regulate the use of its streets, alleys, bridges and other public places and the space above and beneath them;

(f) To require of any utility which may not be subject to regulation by any administrative agency of the State, proper and adequate extension of plant, service and maintenance thereof, at the highest practicable standard of efficiency. The facilities and service of any utility subject to the jurisdiction and control of any regulation by the Michigan Public Service Commission shall be in accordance with the rules and regulations of the Michigan Public Service Commission or its successor;

(g) After written request of the Council, to require the public utility to file with the Clerk copies of any annual report made that year by such utility to the Michigan Public Service Commission;

(h) To impose such other regulations as may be determined by the Council to be conductive to the safety, welfare and accommodation of the public.

Section 14.3. - Regulation of rates.

All public utility franchises shall make provision therein for fixing rates, fares and charges and may provide for readjustments thereof at periodic intervals. The value of the property of the utility used as a basis for fixing such rates, fares and charges shall in no event include a value predicated upon the franchise, goodwill or prospective profits.

Section 14.4. - Uses of public places by utilities.

Every public utility, whether it has a franchise or not, shall pay such part of the cost of improvement or maintenance of streets, alleys, bridges and other public places, as shall arise from its use thereof, and shall protect and save the City harmless from all damages arising from said use. Every such public utility may be required by the City to permit joint use of its property and appurtenances located in the streets, alleys and other public places of the City by the City and by other utilities, insofar as such joint use may be reasonably practicable and upon payment of reasonable rental therefor. In the absence of agreement and upon application by any public utility, the Council shall provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefor, and the arbitration award shall be final.

The Council may grant a permit at any time in or upon any street, alley, or public place; provided such permit shall be revocable by the Council at its pleasure, whether such right to revoke be expressly reserved in said permit or not; and provided that when such permit is granted for water mains, sewers or drains, it may be made irrevocable unless the grantee be a private person, firm or corporation.

State Law reference— Permissible that Charter provide for use of public places by public utilities, MCL 117.4h(2), MSA 5.2081(2).

Section 14.5. - Sale or assignment of franchise.

The grantee of a franchise may not sell, assign, sublet, or allow another to use the same unless the Council gives its consent. Nothing in this Section shall limit the right of the grantee of any public utility franchise to mortgage its property or franchise nor restrict the rights of the purchaser, upon foreclosure sale, to operate the same; except that such mortgages or purchaser shall be subject to the terms of the franchise and provisions of this Chapter.

CHAPTER 15. - MISCELLANEOUS

Section 15.1. - Notice to city of claim for injuries.

The City shall not be liable for damages sustained by any person either to person or property, by reason of the negligence of the City, its officers or employees. It shall not be liable by reason of any defective highway, street, bridge, sidewalk, crosswalk or culvert or by reason of any obstruction, ice, snow or other encumbrance upon such street, sidewalk, crosswalk or public highway situated in the City, unless such person shall serve or cause to be served, within sixty (60) days after such injury shall have occurred, a notice in writing upon the Clerk. The notice shall set forth substantially the time and place of such injury, the nature of the defect, the manner in which it occurred and the extent of such injury as far as the same has become known, the names and addresses of the witnesses known at the time by claimant and a statement that the person receiving such injury intends to hold the City liable for such damages as may have been sustained by the person. No person shall bring any action against the City for any damages to person or property arising out of any obstruction, ice, snow or other encumbrances upon such street, sidewalk, crosswalk or public highway situated in the City unless the person shall also present to the Clerk a claim in writing and under oath, setting forth particularly the nature and extent of such injury and the amount of damages claimed by reason thereof; these claims shall be presented to the Council by the Clerk.

It shall be sufficient bar and answer in any court to any action or proceeding for the collection of any demand or claim against the City under this Section, that the notice of injury and the verified proof of claim, as in this Section required, were not presented and filed within the time and in the manner as herein provided.

(Ref. of 11-5-13)

State Law reference— City liability for injuries, MCL 691.1401 et seq., MSA 3.996(101) et seq.

Section 15.2. - Publication and mailing of notices.

The Council shall select the method of publication of all notices, ordinances, and proceedings for which a mode of publication is not prescribed by this Charter or by law. The Council may determine that such publication may be made in a newspaper which is printed or circulated in the City, or that such publications may be made by posting to the

City's website or by any other means or method determined by the City Council to be appropriate to properly inform the general public in matters of municipal concerns.

In any case in which this Charter requires the mailing of notices, the affidavit of the officer or employee responsible for such mailing that such notice was mailed shall be prima facie evidence of such mailing.

(Ref. of 11-5-13)

Section 15.3. - No estoppel by representation.

No official of the City shall have power to make any representation or recital of fact in any franchise, contract, document or agreement, contrary to any public record of the City. Any such representation shall be void and of no effect as against the City.

Section 15.4. - City records.

All records of the City shall be public.

State Law reference— Mandatory that Charter provide that all records of the municipality shall be public, MCL 117.3(l), MSA 5.2073(l); freedom of information act, MCL 15.231 et seq., MSA 4.1801(1) et seq.

Section 15.5. - Headings.

The Chapter and Section headings used in this Charter are for convenience only and shall not be considered to be a part of this Charter.

Section 15.6. - Effect of illegality of any part of Charter.

Should any provision or Section, or portion thereof, of this Charter be held by a court of competent jurisdiction to be invalid, illegal or unconstitutional, such holding shall not be construed as affecting the validity of this Charter as a whole or of any remaining portion of such provision or Section; it being hereby declared to be the intent of this Charter Commission and of the electors who voted thereon that such unconstitutionality or illegality shall not affect the validity of any part of this Charter except that specifically affected by such holding. Further, it is hereby declared that it was the intent of the Charter Commission and of the electors of the City of Novi, in preparing and adopting this Charter, that said instrument should conform in all respects with the provisions and requirements of State law. In the event that any provisions of this Charter shall conflict with or contravene the provisions of any general law of the State of Michigan, the provisions of such general law of the State shall govern.

Section 15.7. - Amendments.

This Charter may be amended at any time in the manner provided in Act No. 279 of the Public Acts of 1909 [MCL 117.1 et seq., MSA 5.2071 et seq.], as amended. Should two (2) or more amendments, adopted at the same election, have conflicting provisions, the one receiving the largest affirmative vote shall prevail as to those provisions.

State Law reference— Power to adopt and amend Charter, Mich. Const. 1963, Art. VII, § 22; Charter amendment procedure, MCL 117.21 et seq., MSA 5.2100 et seq.

Section 15.8. - Definitions and interpretations.

Except as otherwise specifically provided or indicated by the context:

(a) All words used in this Charter indicating the present tense shall not be limited to the time of the adoption of this Charter but shall extend to and include the time of the happening of any event or requirement for which provision is made herein.

(b) The singular number shall include the plural; the plural number shall include the singular; and the masculine gender shall extend to and include the feminine gender and the neuter.

(c) The word "person" may extend and be applied to bodies politic and corporate and to partnership[s] as well as to individuals.

(d) The words "printed" and "printing" shall include reproductions by printing, engraving, stencil duplicating, lithographing or any similar method.

(e) Except in reference to signatures, the words "written" and "in writing" shall include printing and typewriting.

(f) The word "officer" shall include the Mayor and other members of the Council, the administrative officers, and members of the City boards and commissions created by or pursuant to this Charter.

(g) The word "statute" shall denote the Public Acts of the State of Michigan in effect at the time the provision of the Charter containing the word "statute" is to be applied.

(h) The word "Constitution" shall denote the Constitution of the State of Michigan in effect at the time the provision of Charter containing the word "Constitution" is to be applied.

(i) All references to specific local or Public Acts shall be to such local or Public Acts of the State of Michigan as in effect at the time the reference to such act is to be applied.

(j) All references to section numbers shall refer to section numbers of this Charter.

Section 15.9. - Trusts and bequests.

All trusts established for any municipal purpose shall be used and continued in accordance with the terms of such trust, subject to the cy pres doctrine. The Council may in its discretion receive and hold any property in trust for any municipal purpose and shall apply the same to the execution of such trust and for no other purposes except in cases where the cy pres doctrine shall apply.

Section 15.10. - Sundays and holidays.

Whenever the date fixed by this Charter or by ordinance for the doing or completion of any act falls on a Sunday or legal holiday, such act shall be done or completed on the next succeeding day which is not a Sunday or legal holiday.

Section 15.11. - Penalties for misconduct in office.

Any officer of the City found guilty by a court of competent jurisdiction of any act declared by this Charter to constitute misconduct in office may be punished by a fine of not to exceed One Thousand ($1,000) Dollars or imprisonment for not to exceed ninety (90) days or both in the discretion of the court. The punishment provided in this Section shall be in addition to that of having the office declared vacant as provided in Section 5.4.

Section 15.12. - Use of City property.

Property owned by the City as of November 24, 1999, shall not be used for the development of a golf course and/or banquet facility. Property acquired by the City after November 24, 1999, shall be used for such purposes only after voter approval at a general city election.

(Amended 11-2-99)

CHAPTER 16. - CITY LIBRARY

Section 16.1. - Establishment and maintenance.

The Council shall have power by ordinance to establish and maintain a public library and reading room for the use and benefit of the inhabitants of the City in accordance with and under the provisions of Act 164 of the Public Acts of 1877 for the State of Michigan [MCL 397.201 et seq., MSA 15.1661 et seq.], as amended, and may levy a tax of not to exceed one-tenth of one percent (1 mill) on the dollar annually on all taxable property in the City; such tax to be levied and, collected in like manner with other general taxes of said City and to be known as the "library fund".

Section 16.2. - Officers.

When established, the City Library shall be under the direction of a Board of Directors who shall be appointed and hold office in the manner prescribed by said statute, shall possess such powers as are conferred by said statute and shall perform the functions and duties prescribed by such statute and granted by ordinance enacted under the provisions of this Charter.

Section 16.3. - Contract for use of library.

By a favorable vote of not less than four (4) of the five (5) members of the Board of Directors and, if permitted by the ordinance enacted to establish the public library and reading room, the Board of Directors may enter into a contract for the use of any free public library and reading room in any township, city or village, as the case may be, and the Council may levy a tax of not to exceed one-tenth of one percent (1 mill) annually,

upon the assessed valuation of the City, for the purpose of paying for such use, to be collected as heretofore set forth.

CHAPTER 17. - SCHEDULE

Section 17.1. - Election on adoption of Charter.

(a) *Date.* This Charter shall be submitted to a vote of the registered electors of the City of Novi at a regular election to be held on November 8, 1977. The Charter shall be adopted if a majority of the ballots cast thereon are in favor of adoption.

(b) *Form of Ballot.* The form of the ballot for the submission of this Charter shall be as follows:

Instructions: A cross (X) in the square before the word "Yes" is in favor of the proposed Charter, and a cross (X) in the square before the word "No" is against the proposed Charter.

Shall the proposed Charter for the City of Novi drafted by the Charter Commission elected on November 5, 1974, be adopted?

Yes

No

Voting machines may be used in lieu of paper ballots, provided all procedures and use thereof shall be in accordance with provisions of Sections 168.770 to 168.793 of the Compiled Laws of the State of Michigan for 1948, as amended by Public Acts of 1967, No. 155.

(c) *Publication of Charter and Notice of Election.* The Charter Commission shall cause this Charter to be published in a newspaper circulated in the City at least once, not less than two (2) weeks and not more than four (4) weeks preceding the said regular election, together with notice of said election. Such notices shall also be posted in at least ten (10) public places not less than two (2) weeks prior to such election.

(d) *Procedure Governing Elections.* In all respects not otherwise provided for in this Chapter of this Charter, the election procedure shall be in accordance with provisions of the other Chapters of this Charter.

Section 17.2. - Effective date of Charter.

For the purpose of initiating the procedure for the election on the adoption of this Charter, this Charter shall take effect on June 21, 1977. For all other purposes, this Charter shall take effect on January 1, 1978, at 8:00 a.m. at the prevailing time.

Section 17.3. - Status of Schedule Chapter.

The purpose of this Schedule Chapter is to inaugurate the government of the City under this Charter, and it shall constitute a part of this Charter only to the extent and for the time required to accomplish this end.

RESOLUTION OF ADOPTION

At a regular meeting of the Charter Commission of the City of Novi held on the 14th day of June, 1977, the following Resolution was offered by Chairman Mabel F. Ash, who, having vacated and relinquished the chair to Vice Chairman Carol Grace Smith, made the motion acting as a Commissioner:

RESOLVED, That the Charter Commission of the City of Novi does hereby adopt the foregoing proposed Charter for the City, that a copy shall be transmitted to the Governor of the State of Michigan for his approval, and that the proposed Charter shall be published in the Novi News on or before October 25, 1977:

FURTHER RESOLVED, That the proposed Charter shall be submitted to a vote of the registered electors of the City of Novi at a regular election to be held on November 8, 1977.

The Resolution was seconded by Commissioner A. Russell Button and adopted by the following vote:

YEAS: Mabel F. Ash, A. Russell Button, James J. Cooper, Winifred M. Dobek, Barbara J. Shoemake, Carol Grace Smith, Homer Starr and Patrick M. Downey.

NAYS: None

ABSENT: None.

The Chairman declared the foregoing Resolution carried and requested the members of the Charter Commission to authenticate said Resolution and also copies of the Charter to be presented to the Governor, by attesting their names thereto in the following manner:

Mable F. Ash	A. Russell Button
James J. Cooper	Winifred M. Dobek
Barbara J. Shoemake	Carol Grace Smith
Patrick M. Downey	Homer Starr

All the Commissioners having attested as to said Resolution and also having attested as to the copies of the Charter to be signed by the Governor, the meeting adjourned subject to the call of the Chairman.

AFFIDAVIT OF SECRETARY

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

WINIFRED M. DOBEK, Secretary of the Charter Commission of the City of Novi, being duly sworn, says that at an election duly called and held in the City of Novi on the 5th day of Nov. 1974, the following-named persons were duly elected as the Charter Commission, to revise the Charter of the City of Novi; namely,

Mable F. Ash, Chairman

Carol Grace Smith, Vice Chairman

Winifred M. Dobek, Secretary

Patrick M. Downey

A. Russell Button

James J. Cooper

Barbara J. Shoemake

Homer Starr

and that the annexed and foregoing Charter was duly adopted by said Charter Commission by the foregoing Resolution, which is a true and correct copy thereof, and that the said Charter Commission directed that said Charter be presented to the electors of the City of Novi in accordance with the requirements of the Charter and the laws of the State of Michigan.

Further deponent sayeth not.

Winifred M. Dobek, Secretary
Charter Commission of the City of Novi

Subscribed and sworn to before me this 14th day of June, 1977.

David M. Fried
Notary Public, Oakland County, Michigan
My Commission expires: 9-21-80

CERTIFICATION OF RESOLUTION OF ADOPTION AND OFFICIAL CHARTER

The undersigned, as duly elected and acting secretary of the Charter Commission of the City of Novi, Oakland County, Michigan, hereby certifies that the attached copy of the Official Charter and Resolution of Adoption adopted by the Charter Commission of the City of Novi on June 14, 1977, at a duly held meeting at which a quorum was present, is a full, true, and accurate copy and that the Charter and Resolution have not been modified or rescinded at the date of this certificate.

Winifred M. Dobek, Secretary
Charter Commission of the City of Novi

Dated: June 22, 1977

CHARTER COMPARATIVE TABLE

The original charter, sections 1.1 through 17.3 was adopted on November 8, 1977. This table contains the disposition of Charter amendments adopted subsequent to November 8, 1977.

Adoption Dates	Referendum Date	Section this Charter
8-10-82	—	9.1
8- 7-84	—	3.17
7- 6-87	11- 3-87	9.1
6- 5-89	11- 7-89	12.1
11- 2-99	— Added	15.12
—	11- 5-13	2.2(s)
		3.18, 3.19
		3.28
		4.1—4.12
	Dltd	4.13
	Rnbd	4.14—4.16
	as	4.13—4.15
		5.1—5.4
		5.6, 5.7
		5.9—5.12

		6.2
		6.6, 6.7
		7.4, 7.5
		7.8(a)
		8.2, 8.8
		9.5, 9.6
		9.9
		9.11
		9.13
		9.17, 9.18
		14.1
		15.1, 15.2
4-22-14	8- 5-14	4.4(c)
		4.5(b)
		5.7
	11- 4-14	9.16
12- 4-17	—	3.9 (note)

EXHIBIT B

ARTICLE III. - SEWAGE DISPOSAL SYSTEM[5]

Footnotes:

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Cross reference— General construction standards for storm sewers and sanitary sewers, § 11-36 et seq.; design and construction standards for sanitary sewers, § 11-161 et seq.; urinating or defecating in public, § 22-158.

DIVISION 1. - GENERALLY

Sec. 34-122. - Dumping septic tank sludge or effluent upon property or into sewer.

(a) It shall be unlawful for any person to dump or discharge septic tank sludge and/or effluent, also called septic tank cleanings, upon any property, private or public, in the city.

(b) It shall be unlawful for any person to authorize, sanction or permit the dumping or discharging of septic tank sludge and/or effluent, also called septic tank cleanings upon any property, private or public, in the city.

(c) It shall be unlawful for any person to dump or discharge septic tank sludge and/or effluent, also called septic tank cleanings into any sewer intercepter or sewer system facility, within the city.

(Ord. No. 82-105, §§ 1.01—3.01, 10-18-82; Ord. No. 91-28.26, Pt. I, 3-4-91)

Secs. 34-123—34-125. - Reserved.

DIVISION 2. - CONNECTIONS

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)

Secs. 34-129—34-140. - Reserved.

DIVISION 3. - OPERATION AND MAINTENANCE[6]

Footnotes:

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Editor's note— Ord. No. 07-37.33, Pt. III, adopted March 5, 2007, amended Div. 3 by deleting former Subdivs. II—IX, XI, XIII, XVII—XIX, XXIII, XXVI, XXXI—XXXIII, and XXXV—XXXVII, which consisted of §§ 34-166—34-170, 34-186—34-191, 34-206—34-211, 34-226—34-231, 34-246—34-258, 34-271—34-283, 34-296—34-301, 34-316—34-328, 34-356—34-360, 34-386—34-390, 34-401—34-404, 34-432—34-436, 34-438—34-443, 34-446, 34-467, 34-468, 34-480, 34-481, 34-499.7—34-499.14, and 34-499.25—34-499.36. Said ordinance also amended Div. 3 by redesignating Subdivs. X, XII, XV, XVI, XX—XXII, XXIV, XXV, XXVII—XXX, XXXIII, and XXXIV as Subdivs. II—XVI. For a complete derivation of the former provisions see the Code Comparative Tables at the end of this Code.

Subdivision I. - In General

Sec. 34-141. - 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:

County means the Oakland County Department of Public Works.

Novi-Walled Lake Arm means that part of the Huron-Rouge Sewage Disposal System constructed by the county pursuant to a certain contract between the county and the city.

Premises means any property from which emanates the quantity of sewage ordinarily arising from the occupancy of the residence building by a single family of ordinary size.

Revenues and *net revenues* have the meanings as stated in Section 3 of Act No. 94 of the Public Acts of Michigan of 1933 (MCL 141.103, MSA 5.2733), as amended.

Rouge Valley System and *Huron-Rouge System* mean the Huron-Rouge Sanitary Sewer System acquired and constructed by the County of Oakland and the Village of Novi and the County of Wayne under contract dated April 20, 1962.

Sewer means any sanitary sewer located within the city.

System means the complete sanitary sewer system of the city including all sanitary sewers, all pumping stations and all other facilities now owned or hereafter acquired by the city, used or useful in connection with the collection and disposal of sanitary sewage.

Unit means the sewage disposal service necessary to serve one (1) residence of average size and occupancy.

(Ord. No. 71-28, § 1.01, 1-25-71; Ord. No. 07-37.33, Pt. II, 3-5-07)

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

Sec. 34-142. - Enforcement; violation deemed nuisance.

The provisions of this division shall be enforceable through the bringing of appropriate action for injunction, mandamus, or otherwise, in any court having jurisdiction, and it shall be the duty of the council and its officials, officers and agents to do all things necessary to bring all actions necessary for the prompt and vigorous enforcement of the provisions of this division. The violation of this division shall be deemed a nuisance per se.

(Ord. No. 71-28, § 16.01, 1-25-71)

Sec. 34-143. - Reserved.

Editor's note— Ordinance No. 97-37.16, Part II, adopted April 7, 1997, deleted § 34-143 in its entirety. Formerly, such section pertained to public utility rate basis of operation and derived from Ord. No. 71-28, § 2.01, 1-25-71.

Sec. 34-144. - Fiscal year.

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

(Ord. No. 71-28, § 3.01, 1-25-71)

Sec. 34-145. - Sanitary rates and charges for the Huron-Rouge System, Novi-Walled Lake Arm, and the Novi Commerce Sewer Exchange System.

(a) The rates and charges to users of the system shall be as follows:

(1) *Consumption charge.* Except as otherwise provide, each premises within the city connected to the sanitary sewer system shall pay a consumption charge based on the amount of water used as shown by the water meter installed in each premises or, where no water meter is located, a flat rate per quarter to be charged in accordance with the schedule of rates set by resolution of the council. Those premises located, within the Novi-Walled Lake Arm and connected to the sanitary sewer system, shall pay a consumption charge based on a flat rate per quarter to be charged in accordance with the schedule of rates set by resolution of the council.

(2) *Sewer connection charge.* In addition to all other charges as provided in this division, all premises connected directly (or indirectly) to the sanitary sewer system of the city shall pay a sewer connection charge in accordance with the current resolution of the city council setting the amount of such charge on the basis of the current costs of sewer system construction, as amended from time to time by the council.

a. *Intent.* This section is intended to apply in those instances in which the city has determined that it would be in the public interest, and would further the public heath, safety, and general welfare, to construct sanitary sewer within the city without establishing a special assessment district or like method of charge therefore, including, without limitation, the construction of a sanitary sewer system to provide service for all or a substantial portion of the city served by the public sanitary sewer system. The users of the system shall be responsible for the cost of construction.

b. *Connection fee requirement* . Based upon the intent set forth in subsection (a), above, any owners of property connecting to any sanitary sewer constructed by the city after January 1, 1976, who have not paid for the installation of such public sanitary sewer by the way of (1) a special assessment, or (2) a specific debt service charge for connection to the particular sanitary sewer, or (3) by the property owner otherwise contributing a fair share to the capital expense of construction of the particular water main with respect to the property served, shall pay an connection fee prior to connecting to said water main, as provided in this section.

c. *Amount of connection fee* . Any owners of property required to pay an connection fee pursuant to subsection (b) above shall pay a per tap unit charge in accordance with the current resolution of the city council setting the amount of such charge on the basis of the current cost of sanitary sewer construction, as amended from time to time by the council.

d. *Payment of sewer connection charge* . The sewer connection charges provided in subpart (a)(2), and all other connection charges, debt service charges, lateral availability fees and availability connection charges required for connection to the City of Novi sewer system shall be paid in full prior to the issuance of a building permit, or prior to a site preconstruction meeting, whichever comes first; or in the case of an existing building, prior to the issuance of a plumbing permit for connection to the system, except as provided in subpart (a)(2)b, below.

e. *Installment payment of connection charges* . In those cases when a new commercial, industrial or office development is determined to require more than one tap unit factor the owner may elect to pay one-fifth of the sewer connection charges, debt service charges, lateral availability fees and availability connection charges (with the exception of those charges imposed to recoup the cost of infrastructure built pursuant to a special assessment district, or otherwise financed by private landowners, to whom the city is returning any portion of such charges) prior to the issuance of a building permit and the remaining four-fifths of such charges and fees in sixteen (16) quarterly installments plus interest at eight (8) percent. The unpaid balance shall be a lien on the property and upon failure of the owner to pay the same may be added to the next tax roll of the city and collected in the same manner in all respects as provided by law for the collection of taxes.

f. *Financial hardship provision.* In those cases where a single-family residential property owner demonstrates a financial hardship, the owner may elect to pay one-fifth of such connection charges (with the exception of those charges imposed to recoup the cost of infrastructure built pursuant to a special assessment district, or otherwise financed by private landowners, to whom the city is returning any portion of such charges) prior to the issuance of a building permit and the remaining four-fifths of the connection charges in sixteen (16) quarterly installments plus interest at eight (8) percent. The unpaid balance shall be a lien on the property and upon failure of the owner to pay the same may be added to the next tax roll of the city and collected in the same manner in all respects as provided by law for the collection of taxes. For purposes of this section, an owner demonstrates a financial hardship by demonstrating a maximum household income at or below the Oakland County Income Limits for Community Development Block Grant (CDBG) Income Eligibility—Low Income Category, as the same may be revised from time to time.

g. *Subsequent changes in use* . Once a property has been connected to the system subsequent changes in the character of the use of said property (including partial or total destruction, removal or abandonment of any or all improvements thereon) shall not abate the obligation to continue the payments of the charges and fees assigned at the time of connection; and if subsequent changes in the use of the property increase the amount of sewage emanating from the property, the city may increase the charges and fees assigned to the property and the charges and fees computed on the basis of the increased use shall be payable in the same manner as such charges and fees are payable in the first instance.

h. *Prepayment of installment agreement* . At any time during the installment period, the balance of said connection fee may be prepaid by paying the balance then due, together with all accumulated interest thereon.

i. *No abatement of payment* . Once connected to the system, partial or total destruction, removal or abandonment of any or all structures or improvements located on property subject to the sewer connection fee shall not abate the obligation to pay the fee in total.

(b) The rates and charges established pursuant to subsection (a) shall be based upon a methodology which complies with applicable federal and state statutes and regulations. The amount of the rates and charges shall be sufficient to provide for debt service and for the expenses of operation, maintenance and replacement of the system as necessary to preserve the same in good repair and working order. The amount of the rates and charges shall be reviewed annually and revised when necessary to ensure system expenses are met and that all users pay their proportionate share of operation, maintenance and equipment replacement expenses.

(c) The rates and charges for operation, maintenance and replacement hereby established shall be uniform within the area serviced by the City of Novi. No free service shall be allowed for any user of the sanitary sewer system.

(d) All customers of the City of Novi sanitary sewer system shall receive an annual notification, either printed on the bill or enclosed in a separate letter, which will show the breakdown of the sanitary sewer bill into its components for:

(1) Operation, maintenance and replacement; and

(2) Debt service, if any.

(Ord. No. 71-28, § 5.01, 1-25-71; Ord. No. 7628.00C, Pt. I, § 4.01, 9-7-76; Ord. No. 79-28.00D, Pt. II, 6-4-79; Ord. No. 90-28.24, Pt. I, 2-5-90; Ord. No. 91-28.28, Pt. II, 10-21-91; Ord. No. 92-28.29, Pts. I, II, 8-24-92; Ord. No. 07-37.33, Pt. II, 3-5-07)

EXHIBIT C

Chapter 34 - UTILITIES[1]

Footnotes:

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Charter reference— Power to sell and deliver water, heat, power and light within the city, § 2.2(e); municipally-owned franchises, Ch. 13; public utility franchises, Ch. 14.

Cross reference— Administration, Ch. 2; buildings and building regulations, Ch. 7; cable television systems, Ch. 9; design and construction standards, Ch. 11; drainage and flood damage prevention, Ch. 12; garbage and refuse, Ch. 16; housing, Ch. 18; performance guarantees, ch. 26.5; planning, Ch. 27; streets, sidewalks and other public places, Ch. 31; subdivision of land, Ch. 32.

ARTICLE I. - IN GENERAL

Secs. 34-1—34-15. - Reserved.

ARTICLE II. - WATER SUPPLY SYSTEM[2]

Footnotes:

--- (**2**) ---

Cross reference— General construction standards for water mains, § 11-36 et seq.; design construction standards for water mains, § 11-66 et seq.; tampering with drinking fountains, § 22-157.

DIVISION 1. - GENERALLY

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)

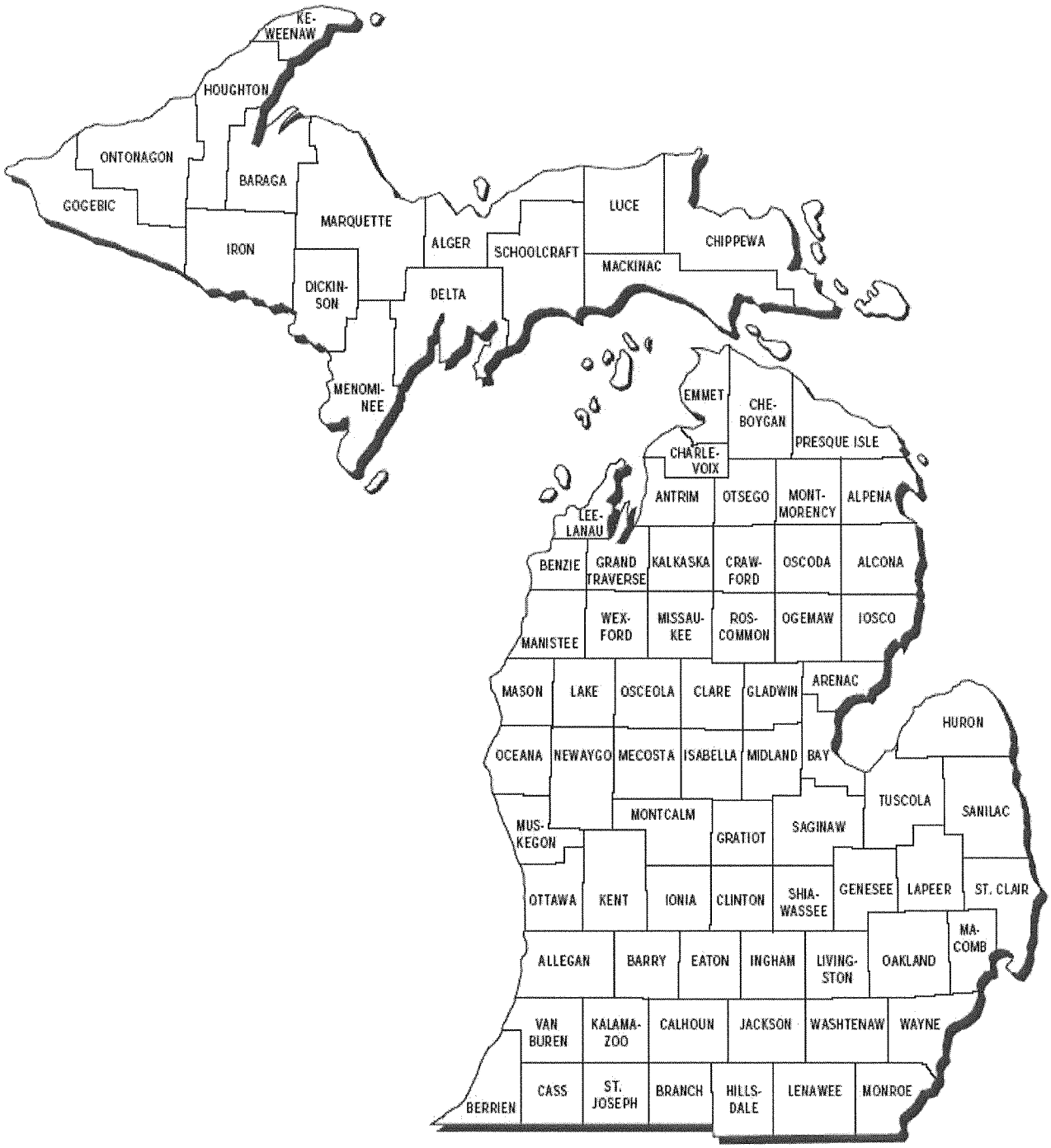
Sec. 34-19. - Rates.

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)

EXHIBIT D

MICHIGAN DEPARTMENT OF TREASURY
UNIFORM CHART OF ACCOUNTS
FOR LOCAL UNITS OF GOVERNMENT



MICHIGAN DEPARTMENT OF TREASURY
UNIFORM CHART OF ACCOUNTS
FOR LOCAL UNITS OF GOVERNMENT

MICHIGAN DEPARTMENT OF TREASURY
UNIFORM CHART OF ACCOUNTS
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UNIFORM CHART OF ACCOUNTS
FOR LOCAL UNITS OF GOVERNMENT

MICHIGAN DEPARTMENT OF TREASURY
UNIFORM CHART OF ACCOUNTS
FOR LOCAL UNITS OF GOVERNMENT

INTRODUCTION

This version of the Uniform Chart of Accounts is a full revision of the entire chart of accounts. All previous versions are now obsolete and should be destroyed.

The Uniform Chart of Accounts for Local Units of Government (Counties, Cities, Villages and Townships; and Authorities and Commissions established by counties, cities, villages and townships) has been developed by the Local Government Fiscal Accountability Division of the Michigan Department of Treasury with the assistance of the Michigan Committee on Governmental Accounting and Auditing.

All local units of government in Michigan must use the Uniform Chart of Accounts. However, some governments may choose to implement a chart of accounts that is more complex than this chart (use of additional digits, etc.). This is acceptable as long as the chart used is consistent with this Chart of Accounts.

The Local Government Fiscal Accountability Division is responsible for general oversight of the financial administration and related audits of local units of government. The Division issues guidance to assist local units in implementing new legislation that affects the accounting and auditing responsibilities of the units and provides instruction on the appropriate methods and procedures to be used when filing statutorily mandated financial reports. These responsibilities are established primarily by the Uniform Budgeting and Accounting Act, 1968 Public Act (PA) 2 and 1919 PA 71.

1968 PA 2, Michigan Compiled Laws (MCL) 141.421 states:

> (1) The state treasurer shall prescribe uniform charts of accounts for all local units of similar size, function, or service designed to fulfill the requirements of good accounting practices relating to general government. Such chart of accounts shall conform as nearly as practicable to the uniform standards as set forth by the governmental accounting standards board or by a successor organization that establishes national generally accepted accounting standards and is determined acceptable to the state treasurer. The official who by law or charter is charged with the responsibility for the financial affairs of the local unit shall insure that the local unit accounts are maintained and kept in accordance with the chart of accounts. The state treasurer may also publish standard operating procedures and forms for the guidance of local units in establishing and maintaining uniform accounting.

To access the full text of any Michigan Public Act or MCL section, go to the Michigan Legislature Web site at http://www.legislature.mi.gov.

The Uniform Chart of Accounts provides a systematic arrangement and means for the uniform accumulation, recording, and reporting of financial information and transactions for all local units of government in Michigan. This system follows Generally Accepted Accounting Principles (GAAP) and Michigan law. If used consistently and properly, it will facilitate the preparation of prescribed reports and will assure responsible local officials and the general public that similar transactions are recorded in the same manner, not only within a local unit but also among local units.

INTRODUCTION

The Uniform Chart of Accounts is presented as a "Table of Funds, Activities, and Account Numbers and Names" beginning on Page 24. The table provides funds, activities, account numbers, and the designated descriptive name to be used for all FUNDS, ACTIVITIES, BALANCE SHEET ACCOUNTS, REVENUE ACCOUNTS, and EXPENDITURE/EXPENSE ACCOUNTS.

The Uniform Chart of Accounts is designed to serve basic legislative, budgetary, and accounting objectives. In addition, it provides a means for local units to meet additional legal requirements of the unit for budgeting and uniform accounting and reporting, regardless of the size of the unit.

BUDGETS AND THE UNIFORM CHART OF ACCOUNTS

1968 PA 2 established budgeting requirements and prohibits deficit spending by local units of government in Michigan. Further, legislation concerning the requirement of local units to adopt a budget resulted in the enactment of 1978 PA 621, an amendment to 1968 PA 2.

The Budget Act requires all local units of government in Michigan to adopt balanced budgets, to establish responsibilities and define the procedure for the preparation, adoption and maintenance of the budget, and to require certain information for the budget process.

Proper accounting and auditing in accordance with the Uniform Chart of Accounts greatly enhances the ability of the local unit to prepare and approve a budget that accurately reflects the financial condition of the unit to ensure that services are provided within available means.

For specific legal requirements pertaining to budgets, please refer to the Uniform Budget Manual for Local Units of Government. This manual is available on Treasury's Web site at http://www.michigan.gov/treasury under Local Government/Accounting Information.

FINANCIAL REPORTING AND THE UNIFORM CHART OF ACCOUNTS

In addition to budget requirements, local governments are required to prepare annual (biennial for certain local units) financial statements in accordance with Generally Accepted Accounting Principles and obtain an audit of these financial statements. Local units of government will find that adhering to the Uniform Chart of Accounts will facilitate the preparation and audit of the required financial statements.

The Governmental Accounting Standards Board (GASB) (http://www.gasb.org) is the primary standard-setting body for acceptable accounting principles for state and local government entities.

The American Institute of Certified Public Accountants (AICPA) (http://www.aicpa.org) has formally recognized the GASB in this capacity and established a hierarchy for applying other sources of guidance. Local governments must follow the GASB standards and consider the applicability of the other accounting guidance to receive an unqualified opinion on the audited financial statements. Detailed information concerning basic financial records, documents, and procedures applicable to all local units of government in Michigan may be found in the "Accounting Procedures Manual for Local Units of Government in Michigan" on the Treasury

INTRODUCTION

Web site at http://www.michigan.gov/treasury under Local Government/Accounting Information. The manual was developed under the authority of 1968 PA 2 and 1919 PA 71.

CREATING AN ACCOUNT NUMBER

The Uniform Chart of Accounts contains numbers that are **MANDATORY, OPTIONAL,** and **OPEN.**

Account numbers are structured to reflect the **FUND, ACTIVITY, ASSET, DEFERRED OUTFLOWS OF RESOURCES, LIABILITY, DEFERRED INFLOWS OF RESOURCES, EQUITY, REVENUE, or EXPENDITURE/EXPENSE ACCOUNT** that they represent.

MANDATORY numbers must be used if the local unit has such a fund, activity, asset, deferred outflow, liability, deferred inflow, equity, revenue, or expenditure/expense account.

OPTIONAL numbers are not required to be used unless the local unit's accounting system requires more detailed classification of the fund, activity, asset, deferred outflows, liability, deferred inflows, equity, revenue, or expenditure/expense account. In that case, the OPTIONAL numbers designated in this Uniform Chart of Accounts must be used.

OPEN numbers are similar to OPTIONAL numbers in that they are not required to be used. However, if a local unit's accounting system requires detailed classification, and the Uniform Chart of Accounts does not contain an OPTIONAL (designated) number that is suitable, an OPEN number may be used. The local unit may select an OPEN number within the major category heading of the fund, activity, asset, deferred outflows, liability, deferred inflows, equity, revenue, or expenditure/expense account and assign a name and description to meet its needs.

FUNDS

A fund is an independent accounting entity with a self-balancing set of accounts, created for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations. It has accounts for assets, deferred outflows, liabilities, deferred inflows, reserves, equities, revenue, and expenditures/expenses.

Full descriptions of each fund, including its purpose, features, statutory authorization, and an explanation of its operation and use are included in this manual. This information is extremely useful for determining the appropriate fund to use for accounting purposes.

CREATING AN ACCOUNT NUMBER

There are three fund types and several categories of funds:

FUND TYPES AND CATEGORIES		
Governmental Fund Types	**Proprietary Fund Types**	**Fiduciary Fund Types**
▪ General Fund ▪ Permanent Funds ▪ Special Revenue Funds ▪ Debt Service Funds ▪ Capital Projects Funds	▪ Enterprise Funds ▪ Internal Service Funds	▪ Agency Funds ▪ Pension (and other employee benefit) Trust Funds ▪ Investment Trust Funds ▪ Private Purpose Trust Funds

ACTIVITIES

An activity is an office or department to which specific expenditures/expenses are to be allocated. Do not confuse this with the Statement of Activities which is similar to the income statement.

The purpose of aggregating costs by activities is to better understand the cost of providing the various functions of government. The intent is to assign costs to the function or activity that benefits from those costs - not to the individuals who control them. For instance, consider the cost of health care for police officers. The benefit package may have been chosen by the governing body, but since this represents part of the costs of providing police services, these costs should be assigned to the police activity or function (not to the governing body that made the decision to incur those costs).

In general, all costs should be assigned to the functions or activities that benefit from the costs. However, in order to be cost-beneficial, it is acceptable to allocate small dollar costs to a general government function. An example would be a telephone bill that is not separated by individual departments might be assigned to the building and grounds activity.

A group of related activities intended to accomplish a major service or regulatory program is a function.

The activities listed in this manual are grouped into eleven functions and are listed in function order. The use of control activity numbers is OPTIONAL. They can be used if a local unit wants the ability to monitor expenditures/expenses by function.

FUND DESCRIPTIONS - ENTERPRISE FUND TYPE

PROPRIETARY FUND CATEGORY

Proprietary fund reporting focuses on the determination of operating income, changes in net position, and cash flows. The Proprietary Fund Category includes enterprise and internal service funds (GASB Statement 34, Paragraph 66).

ENTERPRISE FUND TYPE

Enterprise funds may be used to report any activity for which a fee is charged to external users for goods or services. Governments should apply each of these criteria in the context of the activity's principal revenue source. Activities are required to be reported as enterprise funds if any one of the following criteria is met:

a. The activity is financed by debt that is secured solely by a pledge of the net revenues from fees and charges of the activity. Debt that is secured by a pledge of net revenues from fees and charges and the full faith and credit of a related primary government or component unit--even if that government is not expected to make any payments--is not payable solely from fees and charges of the activity (Some debt may be secured, in part, by a portion of its own proceeds but should be considered as payable "solely" from the revenues of the activity).

b. Laws or regulations require that the activity's costs of providing services, including capital costs (such as depreciation or debt service), be recovered with fees and charges, rather than with taxes or similar revenues.

c. The pricing policies of the activity establish fees and charges designed to recover its costs, including capital costs (such as depreciation or debt service).
(GASB Statement 34, Paragraph 67)

The cash and investments of enterprise funds are subject to the requirements of 1943 PA 20, MCL 129.91, and may be included in a pooled cash and investment account.

All claims (expenses) must be approved by the governing body of the local unit of government pursuant to statutory requirements as follows: Cities--1895 PA 215, MCL 87.7, MCL 88.20; Villages--1895 PA 3, MCL 65.7; Townships--Revised Statutes of 1846, MCL 41.75; Counties--1851 PA 156, MCL 46.11(g); 1909 PA 58, MCL 46.71; 1943 PA 182, MCL 46.53; and 1923 PA 301, MCL 46.63.

501 to 504--OPEN

Money that accumulates as unrestricted net position of this fund may be transferred to another fund if authorized by the governing body.

The cash and investments of the Sewer Fund are subject to the requirements of 1943 PA 20, MCL 129.91, and may be included in a pooled cash and investment unless restricted by the bond ordinance or authorizing resolution.

All claims (expenses) must be approved by the governing body of the local unit of government pursuant to statutory requirements as follows: Cities--1895 PA 215, MCL 87.7, MCL 88.20; Villages--1895 PA 3, MCL 65.7; Townships--Revised Statutes of 1846, MCL 41.75; Counties--1851 PA 156, MCL 46.11(g); 1909 PA 58, MCL 46.71; 1943 PA 182, MCL 46.53; and 1923 PA 301, MCL 46.63.

591--WATER FUND

This fund can be found in any local unit. It is used to record the revenues and expenses for the operation of a water system. Capital assets and depreciation are recorded within this fund.

The fund is established by a resolution of the local unit's governing body or by a vote of the people and subsequent resolution of the local unit's governing body. The accounting procedures for the issuance of revenue bonds are prescribed by the Revenue Bond Act of 1933.

Money that accumulates as unrestricted net position of this fund may be transferred to another fund if authorized by the governing body.

The cash and investments of the Water Fund are subject to the requirements of 1943 PA 20, MCL 129.91, and may be included in a pooled cash and investment account unless restricted by the bond ordinance or authorizing resolution.

All claims (expenses) must be approved by the governing body of the local unit of government pursuant to statutory requirements as follows: Cities--1895 PA 215, MCL 87.7, MCL 88.20; Villages--1895 PA 3, MCL 65.7; Townships--Revised Statutes of 1846, MCL 41.75; Counties--1851 PA 156, MCL 46.11(g); 1909 PA 58, MCL 46.71; 1943 PA 182, MCL 46.53; and 1923 PA 301, MCL 46.63.

592--WATER AND SEWER FUND

This fund can be found in any local unit. It is used to record the revenues and expenses for the operation of a combined water and sewer system. Capital assets and depreciation are recorded within this fund.

The fund is established by a resolution of the local unit's governing body or by a vote of the people and subsequent resolution of the local unit's governing body. The accounting procedures for the issuance of revenue bonds are prescribed by the Revenue Bond Act of 1933.

Money that accumulates as unrestricted net position of this fund may be transferred to another fund if authorized by the governing body.

The cash and investments of the Water and Sewer Fund are subject to the requirements of 1943 PA 20, MCL 129.91, and may be included in a pooled cash and investment account unless restricted by the bond ordinance or authorizing resolution.

All claims (expenses) must be approved by the governing body of the local unit of government pursuant to statutory requirements as follows: Cities--1895 PA 215, MCL 87.7, MCL 88.20; Villages--1895 PA 3, MCL 65.7; Townships--Revised Statutes of 1846, MCL 41.75; Counties--1851 PA 156, MCL 46.11(g); 1909 PA 58, MCL 46.71; 1943 PA 182, MCL 46.53; and 1923 PA 301, MCL 46.63.

593--CIVIC AUDITORIUM FUND

This fund is used to record the operations of the civic auditorium. It is a self-supporting fund which does business with individuals and firms outside the local unit departments and is, therefore, classified as an Enterprise Fund.

This fund is usually found in city government. It is used to record the revenues and expenses for the operation of a civic auditorium. Capital assets and depreciation are recorded within this fund.

The establishment and authorization of this operation is accomplished by a resolution of the legislative body or by a special vote of the people. Bond proceeds and the bond retirement are also accounted for in this fund if some of the capital assets of this fund are purchased from the sale of revenue bonds. The accounting for the issuance of revenue bonds is provided for by the Revenue Bond Act of 1933.

Money which accumulates in the unrestricted net position account may be transferred to another fund of the local unit if provided for by the legislative body and allowed by the revenue bond ordinance.

Money for the operation of the fund is supplied by a loan or appropriation from the General Fund, bond proceeds from the sale of bonds (used for capital assets), and rent received for the use of the facilities.

594--MARINA FUND

This fund is used to record the operations of a local unit owned marina. It is a self-supporting fund which does business with individuals and firms outside the local unit departments and is, therefore, classified as an Enterprise Fund.

This fund is usually found in city government. It is used to record the revenues and expenses for the operation of a marina. Capital assets and depreciation are recorded within this fund.

EXHIBIT E

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

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

Plaintiff,

v-

Case Number: **2020-183155-CZ**
Honorable Nanci J. Grant

CITY OF NOVI, MICHIGAN, a municipal corporation,

Defendant,

_____/

ORDER AND OPINION

At a session of said Court, held in the Courthouse in the City of Pontiac, County of Oakland, State of Michigan on the 1st day of October, 2021,

PRESENT: HONORABLE NANCI J. GRANT, CIRCUIT JUDGE

This matter is before the Court on Defendant City of Novi's Motion for Reconsideration of this Court's July 21, 2021, Order granting Plaintiff's Motion for class certification. To be successful on a motion for reconsideration, a party must demonstrate palpable error. MCR 2.119(F)(3) provides as follows:

> [A] motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

MCR 2.119(F)(3) provides that a motion for reconsideration "which merely presents the same issues ruled on by the court" will not be granted.

Here, Defendant argues that the Court failed to consider three recent Michigan Supreme Court decisions denying leave to appeal from decisions of the Court of Appeals in *Youmans v Charter Township of Bloomfield*, 961 NW2d 169 (July 6, 2021) denying leave to appeal from *Youmans v Charter Township of Bloomfield*, ____ Mich App ____, January 7, 2021 (Docket No. 348614); *Deerhurst Condominium Owners Association v City of Westland*, 961 NW2d 159 (July 6, 2021) denying leave to appeal from *Deerhurst Condominium Owners Ass'n, Inc v City of Westland*, Unpublished Per Curiam Opinion of the Court of Appeals, January 29, 2019 (Docket No. 339143); and *Bohn v City of Taylor*, 961 NW2d 187 (July 6, 2021), denying leave to appeal from *Bohn v City of Taylor*, Unpublished Per Curiam Opinion of the Court of Appeals, January 29, 2019 (Docket No. 339306). The Defendant argues that the holdings in these three cases render the Court's July 21, 2021, decision erroneous. The Court disagrees.

The Court reviewed the above-cited cases and finds that the cases do not discuss whether the respective trial courts erred in certifying a class action in a municipal rate case such as the one at bar. Rather, the cases provide legal analysis as to the **substance** of the claims that are now presented in this case. Michigan caselaw is clear that the "court should avoid making determinations on the merits of the underlying claims at the class certification stage of the proceedings." *Henry v Dow Chemical Co*, 484 Mich 483, 488 (2009). Specifically, "a court may not deny class certification on the ground that plaintiffs are unlikely to prevail on the merits of their underlying claims." *Id*. at 498.

The Court finds that it is inappropriate for it to rule on the substance of this case at this juncture. The Court notes that the holdings in *Youmans*, *Deerhurst*, and *Bohn*, supra, are more appropriately briefed in a dispositive motion rather than in a motion for reconsideration of an order certifying a class. The Court finds no palpable error.

Defendant's Motion is denied.

IT IS SO ORDERED.

Nanci J. Grant

NANCI J. GRANT, Circuit Court Judge SL

EXHIBIT F

Order

Michigan Supreme Court
Lansing, Michigan

September 29, 2021

Bridget M. McCormack,
Chief Justice

160806

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

KELLY GOTTESMAN, on Behalf of Himself and All Others Similarly Situated,
Plaintiff-Appellee,
v

SC: 160806
COA: 344568
Wayne CC: 17-014341-CZ

CITY OF HARPER WOODS,
Defendant-Appellant.

_____/

By order of July 28, 2020, the application for leave to appeal the December 3, 2019 judgment of the Court of Appeals was held in abeyance pending the decision in *Detroit Alliance Against the Rain Tax v Detroit* (Docket No. 158852). On order of the Court, the case having been decided on December 11, 2020, 506 Mich 996 (2020), the application is again considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE the judgment of the Court of Appeals and we REMAND this case to that court for further consideration.

The Court of Appeals erred by holding that defendant's impermeable-acreage charge is not a tax authorized before the adoption of the Headlee Amendment, Const 1963, art 9, § 6 and §§ 25 to 34, because "MCL 280.539(4) authorizes various types of *charges*; it does not authorize a *tax*." *Gottesman v Harper Woods*, unpublished per curiam opinion of the Court of Appeals, issued December 3, 2019 (Docket No. 344568), p 11. Assuming that the Court of Appeals was correct that the impermeable-acreage charge is a disguised tax under Headlee, see *Bolt v Lansing*, 459 Mich 152 (1998), the dispositive inquiry under Const 1963, art 9, § 31 is whether MCL 280.539(4) permitted the levying of the impermeable-acreage charge before the ratification of the Headlee Amendment, not whether the statute purports to authorize a "tax" or a "charge."

In addition, the Court of Appeals erred by holding that plaintiff's equitable claims could afford additional relief because "plaintiff would be entitled to recover for several more years under [his equitable claims] than under [the Headlee Amendment.]" *Gottesman*, unpub op at 14. As this Court has recognized, "statutes of limitations may apply by analogy to equitable claims." *Taxpayers Allied for Constitutional Taxation v*

Wayne Co, 450 Mich 119, 127 n 9 (1995) *(TACT)*. Thus, the fact that the six-year limitations period for plaintiff's equitable claims, MCL 600.5813, exceeds the one-year limitations period for the Headlee Amendment claim, MCL 600.308a(3), does not necessarily mean that the equitable claims may proceed.

In light of these errors, we REMAND to the Court of Appeals to consider: (1) whether the appellant's impermeable-acreage charges were "service charges" under 1970 CL 280.539, so that they were authorized prior to the ratification of the Headlee Amendment, see Const 1963, art 9, § 31, see *American Axle & Mfg, Inc v Hamtramck*, 461 Mich 352, 357 (2000); and (2) if not, whether plaintiff may seek equitable remedies for the alleged violation of MCL 141.91 beyond the one-year limitations period governing the Headlee Amendment claim, see *TACT*, 450 Mich at 127 n 9. Because the first issue was not previously addressed by the trial court, the Court of Appeals may, in its discretion, remand to the trial court to resolve this issue in the first instance. See *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 443-444 (2005) (holding that an appellate court has the discretion to address "an issue raised before, but not decided by, the trial court" if "the lower court record provides the necessary facts").

We do not retain jurisdiction.

EXHIBIT G

2019 WL 6519142
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

Kelly GOTTESMAN, on Behalf of Himself and All Others Similarly Situated,
Plaintiff-Appellee/Cross-Appellant,
v.
CITY OF HARPER WOODS,
Defendant-Appellant/Cross-Appellee.

No. 344568
|
December 3, 2019

Wayne Circuit Court, LC No. 17-014341-CZ

Before: Letica, P.J., and M. J. Kelly and Boonstra, JJ.

Opinion

Per Curiam.

***1** Defendant appeals by leave granted[1] the trial court's order granting partial summary disposition in favor of plaintiff, and denying defendant's motion for partial summary disposition with respect to Count I of plaintiff's class action complaint, which alleged that defendant's storm water service charge (the Storm Water Charge or Charge) violates the Headlee Amendment, Const 1963, art. 9, § 31. Plaintiff cross-appeals the trial court's later order denying his motion for partial summary disposition and granting defendant's motion for partial summary disposition on Counts II and III of the complaint, which alleged assumpsit and unjust enrichment based on defendant's alleged violation of MCL 141.91.[2] We affirm in part, reverse in part, and remand for further proceedings.

I. FACTS AND PROCEEDINGS

This case arises from plaintiff's challenge to the Storm Water Charge imposed by defendant on its property owners. Defendant's storm water and sanitary sewers are connected to the Northeast Sewage Disposal System (NESDS), a complex combined sewer system that serves several municipalities. Before reaching the NESDS, the flow from defendant's storm water sewers merges with combined storm water and waste water flow from other cities and then passes through the Milk River Intercounty Drain, also known as the Milk River System. When the level of flow is elevated, excess flow can be temporarily stored in a combined sewer overflow retention treatment basin within the Milk River System. If the retention basin reaches its capacity, the excess combined flow is treated and then discharged into public waters.

In 2014, the Michigan Department of Environmental Quality (MDEQ) called for improvement of the Milk River System to come into compliance with certain state and federal regulations. The estimated cost of the improvements exceeded $36 million, and defendant was apportioned nearly $17 million of that cost. To pay for the required improvements, defendant began assessing the Storm Water Charge under an ordinance it adopted in 1992 when the Milk River System required an earlier improvement. Section 27-110 of the ordinance provides:

> All owners of real property within the city, other than the city itself, shall be charged for the use of the stormwater system based on the amount of impervious area which is estimated and determined to be contributory to the stormwater system. The impact of the stormwater from the property on the system shall be determined on the basis of the flat rates contained in this article.

The flat rates are measured in terms of "residential equivalent unit[s]" (REUs), which § 27-100 of the ordinance defines as follows:

> ***2** That area of residential property defined to be impervious to account for the dwelling unit, garage, storage buildings or sheds, driveways, walks, patios, one-half of the street frontage and other impervious areas calculated to be an average by randomly sampling

> fifty (50) residential parcels that area being determined to be three thousand two hundred fifty (3,250) square feet.

Section 27-120 describes the following method for calculating the Storm Water Charge to be levied upon real property owners within the city:

> (a) The total cost of the debt retirement and operation and maintenance of the stormwater system shall be calculated annually in conjunction with the city's budget process and shall become an integral part thereof.
>
> (b) The amount of the total land area of commercially used property shall be determined. That amount shall then be divided by the residential equivalent unit (herein defined at three thousand two hundred fifty (3,250) square feet) to determine the total number of equivalent units for commercial property.
>
> (c) The amount of total land area of institutionally used property that is impervious shall be determined. That amount shall then be divided by the residential equivalent unit (herein defined as three thousand two hundred fifty (3,250) square feet) to determine the total number of equivalent units for institutional property.
>
> (d) The amounts determined from (b) and (c) above shall be added to the amount of residential parcels in the city (determined to be five thousand four hundred fifty (5,450) at the time of enactment of this article) to determine total number of equivalent units to be billed. That total shall then be divided into the total estimated amount of debt retirement and operation and maintenance costs, as defined in section 27-100, to determine the billing unit amount.
>
> (e) Each parcel of real property in the city shall then be charged on the basis of their number of residential equivalent units times the billing unit amount.

With respect to vacant properties and residential parcels with less than 3,500 square feet in total land area, § 27-125 provides a schedule of reduced rates.[3] The Storm Water Charge is included as a user charge on all tax bills, § 27-130, and unpaid charges "constitute a lien against the property affected" and "shall be collected and treated in the same fashion as other tax liens against real property," § 27-135. Finally, § 27-140 provides property owners with the right to appeal the determination of a Storm Water Charge.

Plaintiff filed a class action complaint alleging several theories of liability against defendant, three of which are relevant to this appeal.[4] In Count I, plaintiff alleged a violation of the Headlee Amendment, Const 1963, art. 9, § 31. In Count II, plaintiff alleged assumpsit for money had and received for an alleged violation of MCL 141.91,[5] and, in Count III, plaintiff alleged unjust enrichment on the same basis. The trial court granted partial summary disposition in plaintiff's favor pursuant to MCR 2.116(C)(10) on the basis of its finding that the Charge is a tax that violates the Headlee Amendment. Defendant filed an interlocutory application for leave to appeal the trial court's decision on that issue. Thereafter, plaintiff moved for summary disposition on Counts II and III of his complaint. The trial court granted summary disposition in favor of defendant pursuant to MCR 2.116(I)(2) on those claims, finding that plaintiff had a legal remedy available that precluded resort to equitable remedies. Plaintiff subsequently filed a motion seeking a refund for the Headlee Amendment violation and to enjoin defendant from continuing to impose the Storm Water Charge. After this Court granted defendant's application for leave to appeal regarding the Headlee Amendment issue, the trial court denied plaintiff's motion for a refund and injunction without prejudice.

II. DEFENDANT'S APPEAL

***3** On appeal, defendant argues that the trial court erred by denying summary disposition in its favor on Count I because (1) the Storm Water Charge is a user fee, not a tax, and therefore, does not violate the Headlee Amendment; (2) it had authority to legally assess user charges under Chapter 21 of the Drain Code of 1956 (Drain Code), MCL 280.1 *et seq.*; and (3) the Storm Water Charge is authorized by defendant's 1951 Charter and, therefore, exempt from analysis under the Headlee Amendment.

A. WHETHER THIS STORM WATER CHARGE IS A TAX OR A USER FEE

First, defendant argues that the trial court erred by denying summary disposition in its favor on Count I because the Storm Water Charge is not a tax as a matter of law. We disagree.

The grant or denial of summary disposition is reviewed "de novo to determine if the moving party is entitled to judgment as a matter of law." *Maiden v. Rozwood*, 461 Mich. 109, 118; 597 N.W.2d 817 (1999). As stated in *Maiden*:

> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Id.* at 120 (citations omitted).]

Whether a charge is a tax or a user fee is a question of law that is also reviewed de novo. *Bolt v. City of Lansing*, 459 Mich. 152, 158; 587 N.W.2d 264 (1998).

1. THE HEADLEE AMENDMENT AND THE *BOLT* FACTORS

The Headlee Amendment was adopted by referendum and became effective December 23, 1978. It amended Const. 1963, art. 9, § 6, and added §§ 25-34. *American Axle & Mfg., Inc. v. Hamtramck*, 461 Mich. 352, 355-356; 604 N.W.2d 330 (2000). Const. 1963, art. 9, § 31, added the requirement of voter approval of new taxes. *Id.* at 356. It provides, in relevant part:

> Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon. [Const. 1963, art. 9, § 31.]

If, however, a charge is a user fee, then it is not affected by the Headlee Amendment. *Bolt*, 459 Mich. at 159.

As explained by our Supreme Court in *Bolt*, "[t]here is no bright-line test for distinguishing between a valid user fee and a tax that violates the Headlee Amendment[,]" and doing so requires the consideration of several factors. *Id.* at 160-161. "Generally, 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 (quotation marks and citations omitted). There are three main factors that are considered in distinguishing between a tax and a fee. *Id.* "The first criterion is that a user fee must serve a regulatory purpose rather than a revenue-raising purpose. A second, and related, criterion is that user fees must be proportionate to the necessary costs of the service." *Id.* at 161-162 (citations omitted). The third criterion is voluntariness. *Id.* at 162.

In *Bolt*, the Court considered a challenge to the city of Lansing's storm water service charge. *Id.* at 154. The city decided to separate its remaining combined sanitary and storm sewers, at a cost of $176 million over 30 years. *Id.* at 155. The project was financed through an annual storm water service charge, which was imposed on each parcel of real property using a formula that attempted to roughly estimate each parcel's storm water runoff. *Id.* "Estimated storm water runoff [was] calculated in terms of equivalent hydraulic area (EHA)," which was "based upon the amount of pervious and impervious areas within the parcel multiplied by the runoff factors applicable to each." *Id.* at 155-156 (quotation marks omitted). However, residential parcels that measured two acres or less were charged flat rates derived from a predetermined number of EHA units per 1,000 square feet. *Id.* at 156.

***4** The Court concluded that the charge failed the first and second criteria because a major portion of the cost involved capital expenditures, which constituted "an investment in infrastructure as opposed to a fee designed simply to defray the cost of regulatory activity," and the city made no attempt to allocate the portion of the capital costs that would have a useful life in excess of 30 years to the general fund. *Id.* at 163-164. In addition, the Court concluded that the

charges did not correspond to the benefits conferred because approximately 75% of property owners were already served by separated storm and sanitary sewers, which many paid for through special assessments. *Id.* at 165. The charge, however, applied to all property owners, rather than only those who actually benefited. *Id.* Further, the improved water quality and avoidance of federal penalties were goals that benefited everyone, not just property owners within the city. *Id.* at 166. The Court also concluded that the ordinance lacked "a significant element of regulation" because it did not consider the presence of pollutants on each parcel, it failed to distinguish between those responsible for greater and lesser levels of runoff, and there was no end-of-pipe treatment before the storm water was discharged into the river. *Id.* at 166-167. With regard to the third criterion, the Court concluded that the charge lacked any element of voluntariness. *Id.* at 167. The Court also noted several additional factors supporting the conclusion that the charge was a tax, including that the "storm water enterprise fund" derived from the charge replaced the portion of the program that was previously funded through property and income taxes, the charge could be secured by placing a lien on property, and the charge was billed through the city assessor's office and could be sent with property tax statements. *Id.* at 168-169. Accordingly, the Court concluded that the storm water service charge was a tax and not a valid user fee. *Id.* at 169.

In *Jackson Co. v. City of Jackson*, 302 Mich. App. 90, 93; 836 N.W.2d 903 (2013), this Court similarly concluded that the city of Jackson's storm water management charge was a tax that was imposed in violation of the Headlee Amendment. The city of Jackson maintained and operated separate storm water and waste water management systems that were historically funded from general and street funds generated through the collection of various taxes and fees. *Id.* at 94. In 2011, however, the city adopted an ordinance that established a storm water utility to operate and maintain the storm water management program. *Id.* at 95. The program was funded through an annual storm water system management charge imposed on each parcel of real property. *Id.* The charge was calculated using a formula that estimated the amount of storm water runoff from each parcel. *Id.* Storm water runoff was again calculated in terms of EHA, which estimated the amount of storm water leaving each parcel based on the impervious and pervious surface areas. *Id.* at 95-96. Parcels with two acres or less were charged a flat rate. *Id.* at 96. Property owners could receive credits for actions taken to reduce storm water runoff, and an administrative appeal was also available. *Id.* at 97.

This Court concluded that the management charge served the dual purposes of financing the protection of waterways, as required by state and federal regulations, and general revenue-raising, but that the minimal regulatory purpose was outweighed by the revenue-raising purpose. *Id.* at 105-106. In particular, this Court concluded that, as in *Bolt*, the ordinance contained few provisions that truly regulated the discharge of storm and surface water runoff and failed to require the city or property owners to treat storm and surface water runoff. *Id.* at 106. This Court further concluded that the most significant motivation for adopting the ordinance and fee was to protect the city's general and street funds, which previously funded the city's activities. *Id.* at 106-107. This Court also concluded that there was a lack of correspondence between the charge and a particularized benefit conferred because the general public benefited in the same manner as the property owners who were required to pay the charge. *Id.* at 108-109. In addition, the charge lacked proportionality because it failed to consider property characteristics relevant to runoff generation and allowed the city to maintain a working capital reserve of 25% to 30% of the storm water utility's total expenses. *Id.* at 110-111. Finally, this Court concluded that the charge was effectively compulsory and the lack of volition supported the conclusion that the management charge was a tax. *Id.* at 111-112.

In *Binns v. City of Detroit*, unpublished per curiam opinion of the Court of Appeals, issued November 6, 2018 (Docket Nos. 337609; 339176), [6] this Court upheld a drainage charge assessed by the city of Detroit and its agencies, the Detroit Water and Sewage Department (DWSD) and the Detroit Board of Water Commissioners (BWC), in a case involving original actions under the Headlee Amendment. The city has a combined storm water runoff and waste water sewer system. *Id.* at 3. The combined sewage is treated before being released back into the environment and federal and state regulations required more than $1 billion in investments into the combined sewer overflow (CSO) facilities in order to prevent untreated sewage from spilling into public waterways. *Id.* In 2016, DWSD revised its method of calculating the drainage charge for property owners in Detroit based on impervious surface area. *Id.* at 4.

***5** Applying the *Bolt* factors, this Court concluded that the city's drainage charge was a user fee rather than a tax. *Id.* at 14. First, this Court concluded that the drainage

charge served a regulatory purpose, rather than a revenue-raising purpose, because the federally-mandated treatment of combined sewage constituted the provision of a service. *Id.* at 14-15. Therefore, "[t]he regulatory weakness identified in *Bolt* and *Jackson Co.* concerning the release of untreated storm water back into the environment" was not present. *Id.* at 16. This Court further concluded that there was an adequate correspondence between the charges imposed and the benefits conferred because the charge benefited all property owners and the city's method of assessing the charge involved a high degree of precision. *Id.* This Court also concluded that there was no evidence of a revenue-raising purpose and the city had never used general fund expenses to pay for its combined sewer system treatment and disposal services. *Id.* at 16-17. Further, "the fact that the drainage charge [was] used in part to service debt incurred to pay for federally required capital investments [did] not by itself require the conclusion that the drainage charge constitutes a tax." *Id.* at 17. Unlike in *Bolt*, the charge was not used to fund future expenses for large-scale capital improvements, but rather "to amortize present debt costs incurred to pay for capital improvements in conformance with accepted accounting principles." *Id.* at 18.

With regard to the second *Bolt* factor, this Court concluded that the charge was reasonably proportionate to the necessary costs of service because it was calculated on the basis of aerial photography and city assessor data and no charge was imposed on parcels containing fewer than .02 impervious acres, which was the margin of error from flyover views. *Id.* at 18-19. In addition, there were procedures to dispute the impervious area measurement and substantial credits available to property owners who took steps to reduce the amount of storm water flowing from their properties into the DWSD sewer system. *Id.* at 19. Finally, this Court concluded that, although the charge was effectively compulsory, this factor was not dispositive given its consideration of the other two factors. *Id.* at 20-21.

2. APPLICATION

With regard to the first factor, we must determine whether the Storm Water Charge serves a regulatory or revenue-raising purpose. See *Bolt*, 459 Mich. at 161. In this case, a service is rendered in the form of removal and treatment of storm water runoff, and federal and state regulations have required improvements to the Milk Water System. Defendant has instituted the Storm Water Charge in order to pay for the required improvements. This indicates a regulatory component. *Binns*, unpub. op. at 14-15. In addition, unlike in *Bolt*, 459 Mich. at 165, the improvements will benefit all property owners who are required to pay it.

On the other hand, there is also evidence of a revenue-generating purpose for the Charge. Before 1992, defendant levied ad valorem property taxes to pay for storm water costs. Thus, as was the case in *Bolt*, 459 Mich. at 168, there is evidence that the Charge may have the effect of increasing revenues by omitting the storm water costs from the expenses covered by defendant's general fund. The question, however, is whether the revenue-generating purpose outweighs the regulatory purpose of the Charge. See *Jackson*, 302 Mich. App. at 106. In this case, despite the previous use of general funds, it appears that the primary motivating factor for the Storm Water Charge at issue was the improvements required by state and federal law. Therefore, like in *Binns*, unpub. op. at 14-16, the regulatory purpose is not minimal. However, as in *Bolt*, 459 Mich. at 166-167, defendant's ordinance does not consider the presence of pollutants on each parcel or distinguish between those responsible for greater and lesser levels of runoff.

The use of the Storm Water Charge to, in part, service debt incurred to pay for the required improvements is another relevant consideration. See *Binns*, unpub. op. at 17. The fact that the Charge is used in part to service such debt does not by itself require the conclusion that the Storm Water Charge is a tax because the payment of debt can be part of the cost of providing service. In *Binns*, this Court concluded that the charge was not used to fund future expenses, but to amortize present debt costs incurred. See *id.* In this case, however, defendant has admitted that it has not yet been required to make its first payment on the project. The debt service charges will not be fully implemented until the completion of the project in 2019. [7]

***6** With regard to the second factor, the charge must be reasonably proportionate to the costs of the service. See *Bolt*, 459 Mich. at 161-162. Like in *Bolt*, 459 Mich. at 156, and *Jackson*, 302 Mich. App. at 110, defendant determines the amount of the Storm Water Charge imposed on each property owner based on estimated figures. When the ordinance was adopted in 1992, defendant randomly sampled 50 residential parcels and determined that, on average, the residential parcels had 3,250 square feet of impervious areas. Based on that sampling, defendant's ordinance assumes that all residential properties in excess of 3,500 square feet have the same approximation of impervious area. The ordinance does

not consider the individual characteristics of the property, such as pollutants, the type or extent of improvements thereon, or how said improvements affect the amount of runoff flowing from the property. Indeed, all residential properties that are not exempt from the Charge pay either one-third, one-half, or a full billing unit [8] based strictly on the square footage of the property, regardless of how much of the property is actually impervious or pervious. The Charge imposed for a commercial property is likewise based on the full property size, without accounting for the true nature of the particular property. Although mathematical precision is not required, *Jackson*, 302 Mich. App. at 109, defendant's inflexible approximation approach is a far cry from the more particularized method involving individual measurements of impervious areas this Court found acceptable in *Binns*, unpub. op. at 18-19. In further contrast to *Binns*, defendant's ordinance provides no exemption or financial incentive for property owners who are able to demonstrate that their properties contribute less storm water to the system as a result of various proactive measures. [9] *Id.* at 18. Also, as in *Bolt*, 459 Mich. at 166, and *Jackson*, 302 Mich. App. at 108-109, the storm water system benefits not only the property owners who are subject to the Charge, but also the general public at large. [10] Moreover, based on the testimony of defendant's city manager, it appears that defendant is collecting far more than is required to operate the system, particularly given that its debt repayments have not yet become due.

With regard to the third factor, defendant concedes that the Storm Water Charge is not voluntary. While this factor is not dispositive, in this case the first factor presents a close question and the second factor supports the conclusion that the Storm Water Charge is a tax. In addition, as in *Bolt*, 459 Mich. at 168, the fact that the Storm Water Charge may be secured by placing a lien on property supports the conclusion that the Charge is a tax. Considering the totality of the circumstances, the trial court did not err by concluding that the Storm Water Charge is not a valid user fee, but a tax that violates the Headlee Amendment. Therefore, the trial court properly denied summary disposition in favor of defendant on Count I.

B. WHETHER THE DRAIN CODE AUTHORIZED THE STORM WATER CHARGE

Next, defendant argues that the trial court erred by denying summary disposition in its favor on Count I because it could legally assess user charges to property owners under the Drain Code as a matter of law. We disagree.

Defendant argued below that the Storm Water Charge was authorized by Chapter 21 of the Drain Code and, therefore, did not violate the Headlee Amendment; however, the trial court did not address this issue. Nonetheless, "where the lower court record provides the necessary facts, appellate consideration of an issue raised before, but not decided by, the trial court is not precluded." *Hines v. Volkswagen of America, Inc.*, 265 Mich. App. 432, 443-444; 695 N.W.2d 84 (2005). Because the facts necessary to resolve this issue have been provided, we may consider it. The denial of a motion for summary disposition is reviewed de novo. *Maiden*, 461 Mich. at 118. The proper interpretation of a statute is a question of law that is also reviewed de novo. *In re Complaint of Rovas Against SBC Mich.*, 482 Mich. 90, 97; 754 N.W.2d 259 (2008). Application of the Headlee Amendment is a question of law that is reviewed de novo. *Oakland Co. v. Michigan*, 456 Mich. 144, 149; 566 N.W.2d 616 (1997) (opinion by KELLY, J.).

"The plain language of art 9, § 31, excludes from its scope the levying of a tax, or an increased rate of an existing tax, that was authorized by law when that section was ratified." *American Axle*, 461 Mich. at 362. This is true even when the tax, although authorized, was "not being levied at the time Headlee was ratified and even though the circumstances making the tax or rate applicable did not exist before that date." *Id.* at 357. Thus, if the Charge in this case was a tax that was authorized under the Drain Code—a comprehensive act that predates ratification of the Headlee Amendment in 1978—then it does not violate the Headlee Amendment.

*7 Defendant argues that the Storm Water Charge was authorized under § 539(4) of the Drain Code, which provides:

> This section shall not be construed to prevent the assessing of public corporations at large under this chapter. In place of or in addition to levying special assessments, the public corporation, under the same conditions and for the same purpose, may exact *connection, readiness to serve, availability, or service charges* to be paid by owners of land directly or indirectly connected with the drain

> project, or combination of projects, subject to [MCL 280.]489a. [MCL 280.539(4) (emphasis added).]

MCL 280.489a sets forth procedural prerequisites a public corporation must follow before filing a petition for construction of a drain project in the event it "determines that a part of the land in the public corporation will be especially benefited by a proposed drain so that a special assessment, fee, or charge may be levied by the public corporation ...." Defendant acknowledges that it did not follow the procedures laid out in MCL 280.489a (or MCL 280.538a, the analogous statute concerning intercounty, as opposed to intracounty, drains). However, relying on *Downriver Plaza Group v. Southgate*, 444 Mich. 656, 663; 513 N.W.2d 807 (1994) (holding that city's authority to assess user fees was not impaired by failure to comply with prepetition procedure because compliance was impossible where construction of drain system was completed before MCL 280.489a went into effect), defendant argues that its noncompliance should be excused because the improvements to the Milk Water System were required by the MDEQ under MCL 280.423(3), [11] and did not arise from a drain project petition submitted to the Michigan Department of Agriculture and Rural Development.

We find defendant's reliance on MCL 280.539(4) unpersuasive. Moreover, it serves merely to distract from the critical issue before us, i.e., whether the Drain Code authorized a tax in the first place. Even if it was impossible for defendant to have complied with the procedural requirements set forth in the Drain Code, the fact remains that MCL 280.539(4) authorizes various types of *charges*; it does not authorize a *tax*. Consequently, and although we have concluded that the Storm Water Charge is a tax, it was not a tax authorized by the Drain Code, and the Drain Code therefore does not provide a basis for exempting the Charge from the requirements of the Headlee Amendment.

C. WHETHER DEFENDANT'S CHARTER AUTHORIZED THE STORM WATER CHARGE

***8** Finally, defendant argues that the trial court erred by denying its motion for summary disposition on Count I because the Storm Water Charge was authorized by its 1951 Charter and, therefore, is exempt from analysis under the Headlee Amendment. We disagree.

Defendant raised this argument below, but the trial court did not address it. As noted, however, "where the lower court record provides the necessary facts, appellate consideration of an issue raised before, but not decided by, the trial court is not precluded." *Hines*, 265 Mich. App. at 443-444. Because the facts necessary to address this issue have been provided, we may consider it. Again, both the denial of a motion for summary disposition, *Maiden*, 461 Mich. at 118, and application of the Headlee Amendment, *Oakland Co.*, 456 Mich. at 149 (opinion by KELLY, J.), are subject to de novo review on appeal.

Again, the Headlee Amendment "excludes from its scope the levying of a tax, or an increased rate of an existing tax, that was authorized by law when that section was ratified." *American Axle*, 461 Mich. at 362. Defendant relies on several provisions of its 1951 Charter that it argues provides pre-Headlee authorization for the Storm Water Charges. In particular, defendant relies on §§ 2.2, 14.1, 14.2, and 14.3 of the Charter. Section 2.2 provides, in relevant part:

> [T]he city shall have power with respect to and may, by ordinance and other lawful acts of its officers, provide for the following ... :
>
> (f) *Street, alleys, and public ways*. The establishment and vacation of streets, alleys, public ways and other public places, and the use, regulation, improvement and control of the surface of such streets, alleys, public ways and other public places and of the space above and beneath them ....

Chapter 14 governs "Municipal Utilities." Section 14.1 gives defendant the power to improve and maintain public utilities for supplying water and sewage treatment. Section 14.2 gives the city council the power to fix just and reasonable rates and other charges to supply those public utility services. Section 14.3 provides that "[t]he council shall provide by ordinance for the collection of all public utility rates and charges of the city[,]" and further provides "[t]hat the city shall have as security for the collection of such utility rates and charges a lien upon the real property supplied by such utility[.]"

While the cited charter provisions give defendant the power to make improvements to the storm water system and also to set rates and charges for supplying water and sewage treatment, none of these provisions give defendant the authority to impose a tax. In *Bolt*, 459 Mich. at 172-173 (BOYLE, J., dissenting), the dissent pointed out that the Lansing City Charter similarly allowed the city to operate and maintain public utilities and impose "just and reasonable

rates" and other charges. The majority, although not expressly addressing the issue, did not conclude that there was pre-Headlee authorization for the tax at issue in that case. The majority did, however, note that "even though the city may be authorized to implement the system [under the Revenue Bond Act], its method of funding the system may not violate the Headlee Amendment." *Id.* at 168 n 17 (opinion of the Court). In contrast, in *American Axle*, 461 Mich. at 360, the statute that provided pre-Headlee authorization expressly allowed for the assessment of the amount of a judgment on the "tax roll." Defendant's 1951 Charter did no such thing, but merely authorized certain "rates" and "charges." Therefore, we conclude that defendant's 1951 Charter did not provide pre-Headlee authorization for the tax imposed by defendant in this case, and that the trial court properly denied summary disposition in favor of defendant on Count I.

III. PLAINTIFF'S CROSS-APPEAL

***9** On cross-appeal, plaintiff argues that (1) he may plead and prove both legal and equitable theories of relief and obtain a recovery under both claims, and (2) after invalidating the Storm Water Charge, the trial court should have enjoined defendant from collecting the Charge in the future.

A. EQUITABLE REMEDIES

First, plaintiff argues that the trial court erred by granting summary disposition in favor of defendant on Counts II and III of his complaint because he is not prohibited from seeking equitable remedies for the alleged violation of MCL 141.91, in addition to pursuing relief under the Headlee Amendment. We agree.

The denial of a motion for summary disposition is reviewed de novo. *Maiden*, 461 Mich. at 118. "Whether a claim for unjust enrichment can be maintained is a question of law that we review de novo." *Karaus v. Bank of New York Mellon*, 300 Mich. App. 9, 22; 831 N.W.2d 897 (2012). In addition, this Court reviews trial court rulings regarding equitable matters de novo. *Id.* [12]

After the trial court granted plaintiff's motion for summary disposition on Count I, plaintiff filed a renewed motion for partial summary disposition on Counts II and III. Counts II and III of the complaint alleged claims for assumpsit and unjust enrichment based on the alleged violation of MCL 141.91. The trial court denied plaintiff's motion for summary disposition on Counts II and III, finding that there was a legal remedy available pursuant to MCL 600.308a and the Michigan Constitution, and instead granted summary disposition in favor of defendant under MCR 2.116(I)(2).

The trial court's ruling was based on the principle that "[e]quity does not apply when a statute controls." *Gleason v. Kincaid*, 323 Mich. App. 308, 318; 917 N.W.2d 685 (2018). "In other words, when an adequate remedy is provided by statute, equitable relief is precluded." *Id.* As stated by our Supreme Court in *Tkachik v. Mandeville*, 487 Mich. 38, 45; 790 N.W.2d 260 (2010):

> A remedy at law, in order to preclude a suit in equity, must be complete and ample, and not doubtful and uncertain .... Furthermore, to preclude a suit in equity, a remedy at law, both in respect to its final relief and its modes of obtaining the relief, must be as effectual as the remedy which equity would confer under the circumstances .... [Quotation marks and citations omitted.]

Defendant does not dispute that plaintiff could seek both legal and equitable relief in his complaint. According to defendant, however, because plaintiff prevailed on his Headlee Amendment claim, he cannot also recover on his unjust enrichment and assumpsit claims. Plaintiff, on the other hand, argues that his claims alleging a violation of MCL 141.91 are separate, there is no legal remedy available for a violation of MCL 141.91, and those claims are not subject to the same one-year limitations period as the Headlee Amendment claim.

The parties do not dispute that plaintiff's Headlee Amendment claim is subject to a one-year limitations period, see MCL 600.308a(3), whereas plaintiff's claims in Counts II and III for equitable relief are subject to a six-year limitations period, see MCL 600.5813. Accordingly, if plaintiff prevails on Counts II and III, he would be entitled to a refund of the Storm Water Charge since September 28, 2011 (six years before the complaint was filed). Given that plaintiff would be entitled to recover the Charge for several more years under Counts II and III than under Count I, we agree with plaintiff that the

legal remedy available for the Headlee Amendment violation is not an adequate substitute for the remedy that equity would confer for the alleged violation of MCL 141.91. Therefore, even though plaintiff prevailed on Count I, he should have been permitted to pursue his claims in Counts II and III and the trial court erred by granting summary disposition in favor of defendant on those counts. [13]

B. INJUNCTIVE RELIEF

***10** Plaintiff also argues that the trial court abused its discretion by denying his request to enjoin defendant from collecting the Storm Water Charge in the future. We disagree.

"Granting injunctive relief is within the sound discretion of the trial court." *Kernen v. Homestead Dev. Co.*, 232 Mich. App. 503, 509; 591 N.W.2d 369 (1998). This Court reviews the trial court's decision for an abuse of discretion. *Id.* "[A]n abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Hammel v. Speaker of House of Representatives*, 297 Mich. App. 641, 647; 825 N.W.2d 616 (2012) (quotation marks and citation omitted; alteration in original).

"Injunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury." *Kernen*, 232 Mich. App. at 509 (quotation marks and citation omitted). In this case, the trial court denied plaintiff's request for an injunction without any explanation, other than noting that this Court had granted defendant's application for leave to appeal regarding the Headlee Amendment issue. By noting that leave had been granted, and denying the motion without prejudice, the trial court suggested that it merely believed injunctive relief was not proper *at that time*, but might be granted at a later date. The decision to deny injunctive relief until the interlocutory appeal regarding the Headlee Amendment issue was resolved was within the trial court's discretion and did not fall outside the range of reasonable and principled outcomes.

IV. CONCLUSION

We affirm the trial court's order granting summary disposition in favor of plaintiff on Count I, reverse the order granting summary disposition in favor of defendant on Counts II and III, and remand to the trial court for further proceedings. We do not retain jurisdiction.

All Citations

Not Reported in N.W. Rptr., 2019 WL 6519142

Footnotes

1 See *Gottesman v. Harper Woods*, unpublished order of the Court of Appeals, entered December 3, 2018 (Docket No. 344568).

2 Plaintiff's cross-appeal also raises a challenge to the trial court's order denying, without prejudice, plaintiff's motion for an order awarding a refund and to enjoin defendant from imposing the Storm Water Charge in the future.

3 Specifically, § 27-125 incorporates the following chart:

Land Area (Square Feet)	Stormwater Service Charge
Residential property equal to or less than 300 sq. ft. and vacant property	No charge
Residential property equal to or less than 1,000 sq. ft. but greater than 300 sq. ft.	One-third billing unit
Residential property less than 3,500 sq. ft. but greater than 1,000 sq. ft.	One-half billing unit
Residential property equal to or greater than 3,500 sq. ft.	One billing unit

4 The trial court certified the plaintiff class on March 22, 2018.

5 MCL 141.91 provides:

> 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.

6 Unpublished opinions are not binding under the rule of stare decisis, but may be considered for their instructive of persuasive value. *Cox v. Hartman*, 322 Mich. App. 292, 307; 911 N.W.2d 219 (2017). We further note that an application for leave to appeal this Court's decision in *Binns* is currently pending before the Supreme Court.

7 Plaintiff also presents a persuasive argument that defendant's ordinance does not allow debt service for the 2016 project. Section 27-150 provides that "[a]ll funds collected for stormwater service shall be placed in a separate fund and shall be used solely for the debt retirement, construction, operation, repair and maintenance of the stormwater system." Section 27-100 defines "debt retirement" as "[t]he annual required payment of principal and interest accrued to the City of Harper Woods by the Milk River Drainage Board for the city's proportionate share of the retirement of capital improvement bonds issued for the Milk River Improvement Project." It also defines the "Milk River Improvement Project" as "[t]hat project undertaken in 1991 by the Milk River Drainage District for increased retention and treatment of stormwater runoff generated primarily by the cities of Harper Woods and Grosse Pointe Woods." Harper Woods Ordinance § 27-100. Although the question of whether defendant violated the ordinance is not before us, the suggestion that the Storm Water Charge violates the ordinance supports the conclusion that it is not a valid user fee.

8 In 2016, a "billing unit" was $210.

9 The ordinance permits a property owner to appeal the Storm Water Charge to the city manager and authorizes the city manager to "adjust such charges as he or she may deem appropriate when unusual or unique situations are presented and an adjustment is justified." Harper Woods Ordinance, § 27-140. The ordinance, however, provides no guidance as to what type of "unusual or unique situations" would warrant an adjustment or the extent of the available adjustment.

10 While a benefit to the public at large does not always negate the regulatory character of a charge, "a charge is not a regulatory fee in the first instance unless it is designed to confer a particularized benefit on the property owners who must pay the fee." *Jackson*, 302 Mich. App. at 108.

11 MCL 280.423(3) authorizes the MDEQ to issue an order of determination identifying unlawful discharge of sewage or waste, the user or users responsible for the unlawful discharge, and the necessity of remedial measures to purify the flow of the drain. In addition,

> [t]he order of determination constitutes a petition calling for the construction of disposal facilities or other appropriate measures by which the unlawful discharge may be abated or purified. The order of determination serving as a petition is in lieu of the determination of necessity by a drainage board pursuant to chapter 20 or 21 or section 122 or 192 or a determination of necessity by a board of determination pursuant to section 72 or 191, whichever is applicable. [MCL 280.423(3).]

12 "An action for money received is one of assumpsit. It is, in many cases, a substitute for a bill in equity and is governed by equitable principles." *Lulgjuraj v. Chrysler Corp.*, 185 Mich. App. 539, 545; 463 N.W.2d 152 (1990).

13 The trial court did not otherwise address the elements of plaintiff's claims in Counts II and III. While plaintiff argues that those claims were established on the basis that the Storm Water Charge is a tax, he acknowledges that there could be a question of fact regarding the balance of equities. Therefore, those claims must be considered by the trial court on remand.

End of Document

EXHIBIT H

CITY OF NOVI

COUNTY OF OAKLAND, MICHIGAN

RESOLUTION APPROVING ADVANCEMENT OF FUNDS FROM THE WATER AND SEWER TO THE CAPITAL IMPROVEMENT FUND SUBJECT TO REIMBURSEMENT

Minutes of a Meeting of the City Council of the City of Novi, County of Oakland, Michigan, held in the City Hall of said City on June 19, 2017, at 7:00 o'clock P.M. Prevailing Eastern Time.

PRESENT: Councilmembers Gatt, Staudt, Burke, Casey, Markham, Mutch

ABSENT: Councilmember Wrobel

The following preamble and Resolution were offered by Councilmember Burke and supported by Councilmember Mutch.

WHEREAS, the City Council passed its annual budget for the 2017-2018 fiscal year, which included $25 million in capital improvement expenditures in the Capital Improvement Fund (CIP) and borrowing of $17 million to fund those projects; and

WHEREAS, the City seeks to minimize the overall cost of securing funds to maximize the amount of capital projects that can be completed using the CIP millage; and

WHEREAS, the City has identified long-term capital reserves in the Water and Sewer Fund that would be available for advancement to the Capital Improvement Fund without impacting the operations or rates charged to customers; and

WHEREAS, the advancement would favorably impact both funds by allowing the Water and Sewer fund to realize likely increased interest earnings on their long-term investment reserves and allowing the CIP Fund to save on the significant closing costs associated with an external borrowing and the lower interest costs to be realized by the monthly repayment structure of the reimbursement obligation; and

NOW THEREFORE, IT IS THEREFORE RESOLVED that:

1. The advancement of an amount not to exceed $17 million dollars from the Water and Sewer Fund to the Capital Improvement Fund is hereby authorized, subject to the following:

    a. The amount will be disbursed on an "as needed" basis to fund budgeted capital projects within the CIP Fund beginning June 19, 2017.

b. 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 CIP projects as of the date of this agreement.

c. The reimbursement period will be not more than 10 years, with amounts to be repaid using the proceeds from the voter-approved CIP millage, which begins July 2017 and is approved annually for 10 years through July 2026.

d. Repayments will be made on a monthly basis and will be made via internal transfers recorded by the Finance Department between the two funds.

e. Principal payments on the outstanding loan will be straight line over the 10-year period beginning in July 2017 through June 2027.

f. Early payoff of all or part of the advancement amount is allowable at any time.

g. Payments will have first preference from the annual CIP millage before any other expenditures of the CIP Fund.

BE IT FURTHER RESOLVED, that to the extent the Water and Sewer Fund requires repayment of the outstanding principal at any time during this agreement for operations, capital, or any other need, the CIP shall repay the balance due within 90 days..

AYES: **Gatt, Staudt, Burke, Casey, Markham, Mutch (6)**

NAYS: **None (0)**

RESOLUTION DECLARED ADOPTED.

Cortney Hanson

Cortney Hanson, City Clerk

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Novi, County of Oakland, and State of Michigan, at a regular meeting held this 19th day of June, 2017, and that public notice of said meeting was given pursuant to

and in full compliance with Act No. 267, Public Acts of Michigan, 1976, and that the minutes of said meeting have been kept and made available to the public as required by said Act.

Cortney Hanson

Cortney Hanson, City Clerk
City of Novi

EXHIBIT I

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.308a Action under Const. 1963, Art. 9, § 32; commencement; jurisdiction; limitations; governmental unit as defendant; officer as party; continuation of action against governmental unit and officer's successor; referral of action; findings of fact; costs.

Sec. 308a. (1) An action under section 32 of article 9 of the state constitution of 1963 may be commenced in the court of appeals, or in the circuit court in the county in which venue is proper, at the option of the party commencing the action.

(2) The jurisdiction of the court of appeals shall be invoked by filing an action by a taxpayer as plaintiff according to the court rules governing procedure in the court of appeals.

(3) A taxpayer shall not bring or maintain an action under this section unless the action is commenced within 1 year after the cause of action accrued.

(4) The unit of government shall be named as defendant. An officer of any governmental unit shall be sued in his or her official capacity only and shall be described as a party by his or her official title and not by name. If an officer dies, resigns, or otherwise ceases to hold office during the pendency of the action, the action shall continue against the governmental unit and the officer's successor in office.

(5) The court of appeals may refer an action to the circuit court or to the tax tribunal to determine and report its findings of fact if substantial fact finding is necessary to decide the action.

(6) A plaintiff who prevails in an action commenced under this section shall receive from the defendant the costs incurred by the plaintiff in maintaining the action.

History: Add. 1980, Act 110, Imd. Eff. May 13, 1980.