

## PART II - CODE OF ORDINANCES

### Chapter 82 UTILITIES

#### **Chapter 82 UTILITIES** [\[1\]](#)

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**Charter reference**— General powers of city, § 1.01. [\(Back\)](#)

**Cross reference**— Administration, ch. 2; buildings and building regulations, ch. 18; water supply for swimming pools, § 18-96; sewer connection for swimming pools, § 18-97; businesses, ch. 22; community development, ch. 30; environment, ch. 34; floods, ch. 42; solid waste, ch. 54; streets, sidewalks and other public places, ch. 62; utility poles, § 62-6; subdivisions and other divisions of land, ch. 66; subdivision design standards for utility and drainage easements, § 66-62; required improvements of storm drainage in subdivision, § 66-134; required improvements of sewage system in subdivisions, § 66-135; required improvements of water system in subdivisions, § 66-136; telecommunications, ch. 74. [\(Back\)](#)

#### **ARTICLE I. IN GENERAL**

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**Secs. 82-1—82-30. Reserved.**

#### **ARTICLE II. WATER AND SEWER RATES**

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## PART II - CODE OF ORDINANCES

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Sec. 82-43. An ordinance to provide for the acquisition, construction, furnishing and equipping of improvements to the City of Montague's water supply system; to provide for the issuance and sale of revenue bonds to pay the cost thereof; to prescribe the form of the revenue bond; to provide for the collection of revenues from the system sufficient for the purpose of paying the costs of operation and maintenance of the system and to pay the principal of and interest on the bond; to provide an adequate reserve account for the bond; to provide for the segregation and distribution of the revenues; to provide for the rights of the holders of the bonds in enforcement thereof; and to provide for other matters relating to the bond and the system.

Secs. 82-44—82-60. Reserved.

#### **Sec. 82-31. 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:

*Department* means the city department of public works.

*Operation, maintenance and replacement costs (OM&R)* means all costs, direct and indirect, inclusive of all expenditures attributable to administration, replacement, treatment and collection of sewage or waste, necessary to ensure adequate treatment and collection of sewage or waste on a continuing basis in conformance with the National Pollution Discharge Elimination System (NPDES) permit and applicable regulations.

*Person* means any individual, firm, association, public or private corporation or public agency or instrumentality.

*Premises* means each lot or parcel of land, building or premises having any connection to the water distribution system of the city or the sewage disposal system of the city.

*Replacement* means expenditures and costs for obtaining and installing equipment, accessories or appurtenances which are necessary during the service life of the system to maintain the capacity and performance for which the system was designed and constructed.

*Superintendent* means the superintendent of public works.

(Code 1989, § 2.201)

**Cross reference—**Definitions generally, § 1-2.

#### **Sec. 82-32. Basis of charges.**

All water service shall be charged for on the basis of the readiness of the system to serve, debt service requirements of the system, and the amount of water consumed as determined by the meter installed by the department in the premises of water or sewage disposal service customers. All sewage disposal service shall be charged for on the basis of water consumed. No free water service or sewage disposal service shall be furnished to any person. If the premises of a sewage disposal service customer are not served by city water service, water consumption shall be determined by a meter installed in the customer's water system by the department. In the absence of such water meter, sewage disposal service shall be charged for on the basis of city estimates of water consumed. The reasonableness of such estimates may be questioned by appeal to the city council.

(Code 1989, § 2.02)

#### **Sec. 82-33. Schedule of water rates.**

The rates to be charged for water service shall be as follows:

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- (1) *Ready-to-serve charge.* Each premises connected to the system shall pay a ready-to-serve charge as set forth in the annual fee resolution adopted by the city council.
- (2) *Consumption charge.* In addition to the ready-to-serve charge, each premises connected to the system shall pay a consumption charge based on the amount of water used as shown by the water meter installed in each premises as set forth in the annual fee resolution adopted by the city council.
- (3) *Special rates.* For miscellaneous or special services for which a special rate shall be established, such rates shall be set forth in the annual fee resolution adopted by the city council. All water service rendered by the system to premises located outside the corporate limits of the city shall be billed at double the rates applicable inside the city.

(Code 1989, § 2.203)

#### **Sec. 82-34. Sewer charges generally.**

- (a) *System to be operated on public utility rate basis.* It is hereby determined to be desirable and necessary, for the public health, safety and welfare of the city, that the city's sanitary sewage disposal system be operated by the city on a public utility rate basis in accordance with the provisions of Public Act No. 94 of 1933 (MCL 141.101 et seq.).
- (b) *Definitions.* Whenever the words "the system" are used in this section, they shall be understood to mean the complete city sanitary sewage disposal system, including all sewers, pumps, lift stations, and treatment facilities and all other facilities used or useful in the collection, treatment and disposal of domestic, commercial or industrial wastes, including all appurtenances to be acquired. Whenever the words "revenues" and "net revenues" are used in this section, they shall be understood to have the meanings as defined in section 3 of Public Act No. 94 of 1933 (MCL 141.103).
- (c) *Supervision of system.* The operation, maintenance, alteration, repair and management of the system shall be under the supervision and control of the city council. The city may employ such person in such capacity as it deems advisable to carry on the efficient management and operation of the system and may make such rules, orders and regulations as it deems advisable and necessary to ensure the efficient management and operation of the system.
- (d) *Criteria for establishing rates.* The rates fixed in section 82-35 are estimated to be sufficient to provide for the payment of the expenses of administration and operation, and such expenses for maintenance of the system as are necessary to preserve the system in good repair and working order, and to provide for such other expenditures and funds for the system as this section may require. Such rates shall be fixed and revised from time to time as may be necessary to produce these amounts.
- (e) *Application for service; connection charge.* Applications for sewer service shall be filed with the city clerk upon a form to be supplied by the city. The application shall state the name of the applicant and the premises to be served. All applications filed after the commencement of the operation of the system shall be accompanied by a fee as set forth in the annual fee resolution adopted by the city council, payable to the city treasurer, for the connection charge.
- (f) *Operating year.* The system shall be operated on the basis of an operating year commencing on July 1 and ending on June 30 next following.

(Code 1989, § 2.210(1)—(7); Ord. No. 265, § 1, 3-15-2010)

#### **Sec. 82-35. User charge system for sewer service; schedule of sewer rates.**

- (a) *Applicability of charges.* Rates and charges for the use of the wastewater system of the city are hereby established and made against each lot, parcel of land or premises which may have direct or indirect connections to the system or which may otherwise discharge wastewater either directly or indirectly into the system.
- (b) *Basis for rates and charges.* The rates and charges established by this section shall be based upon a methodology which complies with applicable federal and state statutes and regulations. The

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amount of the rates and charges shall be sufficient to provide for debt service and for the expenses of operation, maintenance and replacement of the system as necessary to preserve the system in good repair and working order. The amount of the rates and charges shall be reviewed annually and revised when necessary to ensure that system expenses are met and that all users pay their proportionate share of operation, maintenance and equipment replacement expenses.

- (c) *Establishment of rates and charges.* The amount of such rates and charges and intervals at which users of the wastewater system are billed shall be determined by the city council.
- (d) *Uniformity of rates and charges.* The rates and charges for operation, maintenance and replacement established by this section shall be uniform within the area serviced by the city. No free service shall be allowed for any user of the wastewater system.
- (e) *Notification of components of charges.* Each user of the wastewater system of the city shall receive an annual notification, either printed on the bill or enclosed in a separate letter, which will show the breakdown of the wastewater disposal bill into its components for:
  - (1) Operation, maintenance and replacement costs; and
  - (2) Debt service.
- (f) *Debt service charge.* The monthly charge to each user of the wastewater system of the city for debt service shall be as set forth in the annual fee resolution adopted by the city council.
- (g) *OM&R charge.* The monthly charge to each user of the wastewater system of the city for operation, maintenance and replacement costs shall be as set forth in the annual fee resolution adopted by the city council.

(Code 1989, § 2.204)

#### **Sec. 82-36. Service to city.**

The city shall pay the same water and sewer rates for service to it as would be payable by a private customer for the same service.

(Code 1989, § 2.205; Ord. No. 265, § 2, 3-15-2010)

#### **Sec. 82-37. Rate revision.**

The water and sewer service rates prescribed in this article may be altered by the city council, and when so changed shall be published at least once in a newspaper of general circulation in the city.

(Code 1989, § 2.206)

**Charter reference**— Utility rates to be fixed by ordinance, § 2.11(4).

#### **Sec. 82-38. Billing.**

The superintendent shall have charge of the reading of all meters. The meter shall be read monthly. The superintendent shall keep a record of all meter readings and shall keep account of the charges for water and sewer service furnished to all premises and shall designate a city employee to render bills for such service monthly. All monthly bills shall be due and payable when rendered. Bills not paid by the last working day of the month shall be delinquent and bear interest at five percent of the amount of the bill unpaid by the last working day of the month. If a customer is delinquent 30 days, the city may shut off water to the premises. All water and sewer service charges shall be collected by the department, which shall credit the charges to the proper account.

(Code 1989, § 2.207; Ord. No. 265, § 3, 3-15-2010)

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#### **Sec. 82-39. Collection.**

The department is hereby authorized to enforce the payment of charges for water service to any premises by discontinuing the water service to such premises, and the payment of charges for sewage disposal service to any premises may be enforced by discontinuing either the water service or the sewage disposal service to such premises, or both, and an action may be instituted by the city against the customer. If a customer has more than one water line to any premises, nonpayment of one line may result in shutting off all lines, at the discretion of the city. The charges for water service and sewage disposal service, which, under the provisions of Public Act No. 94 of 1933 (MCL 141.101 et seq.) are made a lien on the premises to which furnished, are hereby recognized to constitute such lien, and the city treasurer shall, annually, on April 1, certify all unpaid charges for such services furnished to any premises which, on March 31 preceding, have remained unpaid for a period of six months, and shall place the unpaid charges plus a ten percent administrative fee on the next tax roll of the city. Such charges so assessed shall be collected in the same manner as general city taxes. In cases where the city is properly notified in accordance with Public Act No. 94 of 1933 (MCL 141.101 et seq.) that a tenant is responsible for water or sewage disposal service charges, no such service shall be commenced or continued to such premises until there has been deposited with the department a sum sufficient to cover six times the average monthly bill for such premises as estimated by the superintendent, such deposit to be in no case less than an amount as set forth in the annual fee resolution adopted by the city council. Where the water service to any premises is turned off at the request of the customer there shall be a water turn-off charge as set forth in the annual fee resolution adopted by the city council. Where the water service is thereafter turned on at the request of the customer there shall be a water turn-on charge as set forth in the annual fee resolution adopted by the city council. Where the water service to any premises is turned off to enforce the payment of water service charges or sewage disposal service charges, the water service shall not be recommenced until all delinquent charges have been paid and a deposit as in the case of tenants is made, and there shall be a water turn-on charge as set forth in the annual fee resolution adopted by the city council. In any other case where, in the discretion of the superintendent, the collection of charges for water or sewage disposal service may be difficult or uncertain, the superintendent may require a similar deposit. Such deposit may be applied against any delinquent water or sewage disposal service charges and the application thereof shall not affect the right of the department to turn off the water service and/or sewer service to any premises for any delinquency thereby satisfied. No such deposit shall bear interest and such deposit, or any remaining balance thereof, shall be returned to the customer making the deposit when he shall discontinue receiving water and sewage disposal service. The city may require payment in cash for all charges incurred to reinstate water service after shut-off.

(Code 1989, § 2.208; Ord. No. 265, § 4, 3-15-2010)

**State Law reference**— Lien for unpaid charges, MCL 141.121.

#### **Sec. 82-40. Applicability of revenue bond ordinances.**

Nothing contained in this article shall be deemed to alter or repeal any of the provisions of Ordinance No. 2, adopted May 5, 1960 (Water Revenue Bonds), as amended, or Ordinance No. 150, adopted June 20, 1977 (Sewage Disposal System Revenue Bonds), as amended, with respect to the obligations of the city and the security of the bondholders thereunder. This article is intended to be in conformity with such ordinances, and should there be any conflict whereby the security of the bondholders or the obligations of the bonds is impaired, then, with respect to such conflict, the provisions of such ordinances shall prevail.

(Code 1989, § 2.209)

#### **Sec. 82-41. Mandatory connection.**

Every owner of property abutting, adjacent to, along the line of, or within 200 feet of a water line now constructed or hereafter constructed shall connect thereto all plumbing facilities for and providing water; provided, however, that the city shall have the right to refuse any person the right to connect if, in the judgment of the city council, it is for the best interest of the city to do so.

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(Ord. No. 263, § 1, 5-4-2009)

#### Sec. 82-42. Utility Rate Schedule

##### Utility Rate Schedule\*

|  |                          |
|--|--------------------------|
| Sewer Connection Fees  |                          |
| Meter Size   | Connection Fee           |
| 1"   | \$750.00                 |
| 2"   | \$2,400.00               |
| 2" Turbo   | \$3,000.00               |
| 4"   | \$7,500.00               |
| 4" Turbo   | \$15,000.00              |
| 6"   | \$15,000.00              |
| 6" Turbo   | \$30,000.00              |
| Fees for meters larger than a 6" Turbo will be based on a calculated capacity. The installation of the service line shall be the responsibility of the applicant from sewer main to building.  |                          |
| Water Connection & Hydrant Fees  |                          |
| Meter Size   | Connection Fee           |
| 1"   | \$500.00                 |
| 2"   | \$1,600.00               |
| 2" Turbo   | \$2,000.00               |
| 4"   | \$5,000.00               |
| 4" Turbo   | \$10,000.00              |
| 6"   | \$10,000.00              |
| 6" Turbo   | \$20,000.00              |
| Fees for meters larger than a 6" Turbo will be based on a calculated capacity. The installation of a stub line, providing of estimates, performing detector checks, providing special meter pits, and providing special installations shall be on a cost basis of time and material. The service line from property boundary to a building shall be the responsibility of the applicant. |                          |
| Water Service Connection Deposit   |                          |
|  | Deposit Amount           |
| 1" water service – same side of road   | \$2,500                  |
| 1" water service – opposite side of road   | \$3,000                  |
| 1" water service + irrigation – same side of road  | \$4,000                  |
| 1" water service + irrigation – opposite side of road  | \$4,500                  |
| Hydrant Rental & Maintenance Fee   |                          |
|  | \$125.00                 |
| Water & Sewer Rate Schedule  |                          |
| Water Commodity Rates  |                          |
| City Water Consumption   | \$3.14 per 1,000 Gallons |
| Township Water Consumption   | \$6.28 per 1,000 Gallons |
| Montague Twp. /Walsh Area New Water Services   | \$25.00 per month        |
| Bill Payment Late Fee  | 5.00%                    |
| Renters Deposit (refunded after full payment of final bill)  |                          |
|  | \$150.00                 |
| Turn On-Off Charge: Weekdays 7am - 3pm   | \$25                     |
| Turn On-Off Charge: After Hours  | \$100                    |
| Shut Off for Non- Payment  | \$50.00                  |
| Leak Test (Customer Requested): Weekdays 7am – 3pm   |                          |
|  | \$25                     |
| Leak Test (Customer Requested): After Hours  | \$100                    |
| Meter Test (Customer Requested)  | \$400                    |
| Water Ready - to - Serve Charge  |                          |
|  | Per Month                |
| .75 - inch meter   | \$5.19                   |
| 1.0 - inch meter   | \$9.34                   |
| 1.5 - inch meter   | \$20.77                  |
| 2 - inch meter   | \$37.38                  |

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|  |                                    |
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| 4 - inch meter   | \$149.46                           |
| Water Capital & Debt   | Per Month                          |
| .75 - inch meter   | \$11.13                            |
| 1.0 - inch meter   | \$20.03                            |
| 1.5 - inch meter   | \$44.52                            |
| 2 - inch meter   | \$80.13                            |
| 4 - inch meter   | \$320.52                           |
| City Fire Line Ready - to - Serve Charge<br>9-year Phase-in of Rate Changes (10% annual increase)                                  | Per Month                          |
| 4 - inch line  | 40% of standard RTS fee - \$59.78  |
| 6 - inch line  | 40% of standard RTS fee - \$89.68  |
| 8 - inch line  | 40% of standard RTS fee - \$119.57 |
| Township Fire Line Ready - to - Serve Charge<br>9-year Phase-in of Rate Changes (10% annual increase)                              | Per Month                          |
| 4 - inch line  | 40% of standard RTS fee - \$119.56 |
| 6 - inch line  | 40% of standard RTS fee - \$179.36 |
| 8 - inch line  | 40% of standard RTS fee - \$239.14 |
| Sewer Commodity Rates  | Per 1,000 Gallons                  |
| City Sewer Use   | \$4.09                             |
| Commercial & Industrial Use  | \$4.09                             |
| Township Sewer Use   | \$4.09                             |
| Grinder Pump User Charge   | \$40.80                            |
| Unmetered  | Per Month                          |
| City Residence   | \$18.21                            |
| Township Service - 9521 US 31  | \$72.82                            |
| Schedule of Residential Equivalent Units   |                                    |
| Premises Use   | Unit and Unit Factor               |
| Single Family Residence  | 1.0 per Residence                  |
| Monthly Charge For Unmetered Customers:  |                                    |
| $\$4.09 / 1,000 \text{ gal} \times 60,000 \text{ Gallons per Year} = \$245.40 / 12 \text{ Months} = \$20.45 \text{ per Month REU}$ |                                    |
| Sewer Ready - to - Serve Charge  | Per Month                          |
| .75 - inch meter   | \$6.24                             |
| 1.0 - inch meter   | \$11.23                            |
| 1.5 - inch meter   | \$24.96                            |
| 2 - inch meter   | \$44.92                            |
| 4 - inch meter   | \$179.68                           |
| Sewer Capital & Debt   | Per Month                          |
| .75 - inch meter   | \$0.00                             |
| 1.0 - inch meter   | \$0.00                             |
| 1.25 - inch meter  | \$0.00                             |
| 1.5 - inch meter   | \$0.00                             |
| 2 - inch meter   | \$0.00                             |
| 4 - inch meter   | \$0.00                             |
| Township Sewer Capital & Debt / RTS  | Per Month                          |
| .75 - inch meter   | \$6.24                             |
| 1.0 - inch meter   | \$11.23                            |
| 1.5 - inch meter   | \$24.96                            |
| 2 - inch meter   | \$44.92                            |
| 4 - inch meter   | \$179.68                           |

\* All rates effective January 1, 2020

**Sec. 82-43. An ordinance to provide for the acquisition, construction, furnishing and equipping of improvements to the City of Montague's water supply system; to provide for the issuance and sale of revenue bonds to pay the cost thereof; to prescribe the form**

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**of the revenue bond; to provide for the collection of revenues from the system sufficient for the purpose of paying the costs of operation and maintenance of the system and to pay the principal of and interest on the bond; to provide an adequate reserve account for the bond; to provide for the segregation and distribution of the revenues; to provide for the rights of the holders of the bonds in enforcement thereof; and to provide for other matters relating to the bond and the system.**

Section 1. **Definitions.** The following words and terms used in this Ordinance shall have the meanings assigned in this Section, unless the context clearly indicates otherwise.

The word “acquired,” as used in this Ordinance, shall be construed to include acquisition by purchase, construction or by any other method.

“Act 94” shall mean Act 94, Public Acts of Michigan, 1933, as amended.

“Additional Bonds” shall mean additional bonds issued pursuant to Section 17 of this Ordinance.

“Bond” or “Bonds” shall mean the Issuer’s Series 2017 Bond authorized to be issued pursuant to this Ordinance.

“Depository Bank” shall mean Fifth Third Bank, a member of the Federal Deposit Insurance Corporation, or other financial institution qualified to serve as depository bank and designated by resolution of the Issuer.

“Engineer” shall mean Prein & Newhof, Muskegon, Michigan.

“Fiscal Year” shall mean the fiscal year of the Issuer and the operating year of the System, commencing July 1 and ending June 30 of the subsequent year, as such year may be changed from time to time.

“Government” shall mean the government of the United States of America or any agency thereof.

“Issuer” shall mean the City of Montague, County of Muskegon, State of Michigan.

“Bond Reserve Account” shall mean the subaccount in the Bond and Interest Redemption Account established in accordance with Section 12 of this Ordinance.

“Ordinance” shall mean this ordinance and any ordinance or resolution of the Issuer amendatory or supplemental to this ordinance, including ordinances or resolutions authorizing issuance of Additional Bonds.

“Ordinance 254” means Ordinance No. 254, adopted by the Issuer on January 19, 2004, authorizing the issuance of the Series 2004 Bonds.

"Outstanding Bonds" shall mean the Series 2004 Bonds.

“Outstanding Ordinance” shall mean Ordinance No. 254, authorizing the issuance of the Outstanding Bonds.

“Project” shall mean acquiring, constructing, furnishing and equipping additions, extensions and improvements to the City’s water supply system, consisting generally of water



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main replacement, tank improvements including painting, safety and site improvements, well and well house replacement, and construction of an administrative office, together with all necessary sites, structures, equipment, interests in land, appurtenances and attachments thereto.

“Public improvements,” shall be understood to mean the public improvements, as defined in Section 3 of Act 94, which are authorized to be acquired and constructed under the provisions of this Ordinance.

“Reserve Amount” shall mean with respect to the Bond the lesser of (1) the maximum annual debt service due on the Bond in the current or any future year, (2) 125% of the average annual debt service on the Bond, or (3) 10% of the outstanding principal amount of the Bond on the date of issuance of the Bond.

“Revenues” and “Net Revenues” shall mean the revenues and net revenues of the Issuer derived from the operation of the System and shall be construed as defined in Section 3 of Act 94, including with respect to “Revenues”, the earnings derived from the investment of moneys in the various funds and accounts established by this Ordinance.

“Series 2004 Bond” means the Issuer’s Water Supply System Revenue Refunding Bond, Series 2004, dated February 18, 2004, and issued pursuant to Ordinance 254.

“Series 2017 Bond” shall mean the Water Supply System Revenue Bond, Series 2017, in the principal amount of not to exceed Two Million Eight Hundred Four Thousand Dollars (\$2,804,000) authorized to be issued pursuant to this Ordinance.

“System” shall mean the Issuer’s Water Supply System serving the Issuer including such facilities thereof as are now existing, are acquired and constructed as the Project, and all enlargements, extensions, repairs and improvements thereto hereafter made.

“Transfer Agent” shall mean the transfer agent and bond registrar for the Bond as appointed from time to time by the Issuer as provided in Section 6 of this Ordinance and who or which shall carry out the duties and responsibilities as set forth in Section 6 of this Ordinance.

Section 2. Additional Bonds; Necessity; Approval of Plans and Specifications; Conditions of Outstanding Ordinance Satisfied. Except as changed by this Ordinance, all the provisions of the Outstanding Ordinance shall apply to the Bonds issued pursuant to this Ordinance, the same as though each of said provisions were repeated in this Ordinance in detail; the purpose of this Ordinance being to authorize the issuance of revenue bonds to finance the cost of acquiring additions, extensions and improvements to the System; such purpose being authorized by the provisions of the Outstanding Ordinance, upon the conditions therein stated, which conditions have been fully met.

It is hereby determined to be a necessary public purpose of the Issuer to acquire and construct the Project in accordance with the plans and specifications prepared by the Issuer’s Engineer and on file with the Issuer, which plans and specifications are hereby approved.

Section 3. Costs; Useful Life. The total cost of the Project is estimated to be not less than Three Million Six Hundred Sixty-Nine Thousand Dollars (\$3,669,000) including the payment of incidental expenses as specified in Section 4 of this Ordinance, which estimate of cost is hereby approved and confirmed, and the period of usefulness of the Project is estimated to be not less than forty (40) years.

Section 4. Payment of Cost; Bond Authorized. To pay part of the cost of acquiring and constructing the Project, and legal, engineering, financial and other expenses incident to said construction and expenses incident to the issuance and sale of the Bond, it is hereby determined that the Issuer borrow the sum of not to exceed Two Million Eight Hundred Four Thousand Dollars (\$2,804,000) and that

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revenue bonds be issued therefor pursuant to the provisions of Act 94. The Bonds shall be issued as a single issue as provided in Section 5 of this Ordinance. The remaining cost of the Project shall be defrayed from grant funds and Issuer funds on hand and legally available for such use.

Section 5. Series 2017 Bond Details. The Series 2017 Bond shall be designated "WATER SUPPLY SYSTEM REVENUE BOND, SERIES 2017" (or such other designation as may be approved by the City Manager), shall be dated as of the date of delivery of the first delivery installment (hereinafter defined), shall consist of one fully-registered nonconvertible bond of the denomination of not to exceed Two Million Eight Hundred Four Thousand Dollars (\$2,804,000) and shall be payable in principal installments serially on June 1 of each year, as follows:

| <u>Year</u> | <u>Amount</u> | <u>Year</u> | <u>Amount</u> |
|-------------|---------------|-------------|---------------|
| 2018        | \$40,000      | 2038        | \$68,000      |
| 2019        | 42,000        | 2039        | 70,000        |
| 2020        | 43,000        | 2040        | 72,000        |
| 2021        | 44,000        | 2041        | 73,000        |
| 2022        | 45,000        | 2042        | 75,000        |
| 2023        | 46,000        | 2043        | 77,000        |
| 2024        | 47,000        | 2044        | 79,000        |
| 2025        | 49,000        | 2045        | 81,000        |
| 2026        | 50,000        | 2046        | 84,000        |
| 2027        | 51,000        | 2047        | 86,000        |
| 2028        | 52,000        | 2048        | 88,000        |
| 2029        | 54,000        | 2049        | 90,000        |
| 2030        | 55,000        | 2050        | 93,000        |
| 2031        | 57,000        | 2051        | 95,000        |
| 2032        | 58,000        | 2052        | 98,000        |
| 2033        | 60,000        | 2053        | 100,000       |
| 2034        | 61,000        | 2054        | 103,000       |
| 2035        | 63,000        | 2055        | 106,000       |
| 2036        | 65,000        | 2056        | 108,000       |
| 2037        | 66,000        | 2057        | 110,000       |

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The Series 2017 Bond is expected to be delivered to the Government as initial purchaser thereof in installments (the "delivery installments") and each delivery installment shall be noted on the registration grid set forth on the Series 2017 Bond. The delivery installments shall be deemed to correspond to the serial principal installments of the Series 2017 Bond in direct chronological order of said serial principal installments.

The serial principal installments of the Series 2017 Bond will bear interest from the date of delivery of the corresponding delivery installment to the registered holder thereof as shown on the registration grid set forth on the Series 2017 Bond at the rate of two and five-eighths percent (2.625%) per annum or such lower rate as offered by the Government at closing, payable on the first June 1 or December 1 following the date of delivery of said delivery installment, and semiannually thereafter on June 1 and December 1 of each year until maturity or earlier prepayment of said installment. Acceptance of the interest rate on the Series 2017 Bond shall be made by execution of the Series 2017 Bond which so designates the rate specified by the Government and accepted in writing by the Issuer.

The Series 2017 Bond or installments thereof will be subject to prepayment prior to maturity in the manner and at the times as provided in the form of the Series 2017 Bond set forth in Section 9 of this Ordinance.

**Section 6. Bond Registration and Transfer.** The Transfer Agent shall keep or cause to be kept at its principal office sufficient books for the registration and transfer of the Bond, which shall at all times be open to inspection by the Issuer. The Transfer Agent shall transfer or cause to be transferred on said books any Bond presented for transfer, as hereinafter provided and subject to such reasonable regulations as it may prescribe.

Any Bond may be transferred upon the books required to be kept by the Transfer Agent pursuant to this Section, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for transfer, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the Transfer Agent. Whenever any Bond shall be surrendered for transfer, the Transfer Agent shall record such transfer on the registration books and shall register such transfer on the registration grid attached to the Bond. At the time of such transfer the Transfer Agent shall note on the Bond the outstanding principal amount thereof at the time of such transfer. The Transfer Agent shall require the payment by the bondholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer. The Issuer shall not be required (i) to issue, register the transfer of, or exchange any Bond during a period beginning at the opening of business fifteen days before the day of the mailing of a notice of prepayment of the Bond or installments thereof selected for redemption and ending at the close of business on the day of that mailing, or (ii) to register the transfer of or exchange the Bond or portion thereof so selected for prepayment. In the event the Bond is called for prepayment in part, the Transfer Agent upon surrender of the Bond shall note on the Bond the principal amount prepaid and shall return the Bond to the registered owner thereof together with the prepayment amount on the prepayment date.

The Issuer's Treasurer is hereby appointed to act as Transfer Agent with respect to the Bond. If and at such time the Bond is transferred to or held by any registered owner other than the Government, the Issuer by resolution may appoint a bank or trust company qualified under Michigan law to act as transfer agent and bond registrar with respect to the Bond, and the Issuer may thereafter appoint a successor Transfer Agent upon sixty (60) days notice to the registered owner of the Bond.

**Section 7. Payment of the Bonds.** Principal of and interest on the Bonds shall be payable in lawful money of the United States of America by check or draft mailed by the Transfer Agent to the registered owner at the address of the registered owner as shown on the registration books of the Issuer kept by the Transfer Agent. If the Government shall no longer be the registered owner of the Bonds, then the principal of and interest on the Bonds shall be payable to the registered owner of record as of the fifteenth day of the month preceding the payment date by check or draft mailed to the registered owner at

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the registered address. Such date of determination of the registered owner for purposes of payment of principal or interest may be changed by the Issuer to conform to future market practice. The Issuer's Treasurer is hereby authorized to execute an agreement with any successor Transfer Agent.

The Transfer Agent shall record on the registration books the payment by the Issuer of each installment of principal or interest or both on the Bonds when made and the canceled checks or drafts representing such payments shall be returned to and retained by the Issuer's Treasurer, which canceled checks or drafts shall be conclusive evidence of such payments and the obligation of the Issuer with respect to such payments shall be discharged to the extent of such payments.

Upon payment by the Issuer of all outstanding principal of and interest on the Bonds, the registered owners thereof shall deliver the Bond to the Issuer for cancellation.

The sale of the Bonds to the Government at the interest rate authorized herein is hereby approved. The Issuer's Treasurer is hereby authorized to deliver the Bonds in accordance with the delivery instructions of the Government.

Upon payment by the Issuer of all outstanding principal of and interest on a series of the Bonds, the registered owners thereof shall deliver the Bonds to the Issuer for cancellation.

Section 8. Execution and Delivery of the Bonds. The Bonds shall be manually signed by the Mayor and countersigned by the City Clerk and shall have the corporate seal of the Issuer impressed thereon. After execution, the Bonds shall be held by the Issuer's Treasurer for delivery to the Government. No Bond or any installment thereof shall be valid until registered by the Issuer's Treasurer or by another person designated in writing by the Issuer's Treasurer to act as Bond Registrar, or upon transfer by the Government and thereafter, by an authorized representative of the Transfer Agent.

Section 9. Bond Form. The form and tenor of the Bonds shall be substantially as follows, subject to appropriate variation upon issuance of additional bonds:

REGISTERED

UNITED STATES OF AMERICA

STATE OF MICHIGAN

COUNTY OF MUSKEGON

CITY OF MONTAGUE

WATER SUPPLY SYSTEM REVENUE BOND, SERIES 2017

No. R-1

\$\_\_\_\_\_

The City of Montague, County of Muskegon, State of Michigan (the "Issuer"), for value received, hereby promises to pay to the registered owner hereof, but only out of the hereinafter described Net Revenues of the Issuer's water supply system serving the Issuer, including all appurtenances, additions, extensions and improvements thereto (the "System"), the sum of

\_\_\_\_\_ Thousand Dollars

on the dates and in the principal installment amounts set forth in Exhibit A attached hereto and made a part hereof with interest on said installments from the date each installment is delivered to the Issuer and

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as set forth on the registration grid hereon until paid at the rate of \_\_\_\_\_ percent (\_\_\_\_%) per annum, first payable on \_\_\_\_\_ 1, 201\_\_\_\_, and semiannually thereafter; provided that the principal repayments required herein to the registered owner shall not exceed the total of the principal installments set forth on the registration grid attached hereto from time to time hereafter to acknowledge receipt of payment of the purchase price of this bond up to a total of \$\_\_\_\_\_. Both principal of and interest on this bond are payable in lawful money of the United States of America to the registered owner at the address shown on the Issuer's registration books by check or draft mailed to the registered holder at the address shown on the registration books of the Issuer, and for the prompt payment thereof, the revenues of the System, after provision has been made for reasonable and necessary expenses of operation, administration and maintenance thereof (the "Net Revenues"), are hereby irrevocably pledged and a statutory lien thereon is hereby recognized and created which is a lien equal in standing and priority to the statutory lien created by the Issuer's Water Supply System Revenue Refunding Bonds, Series 2004, dated February 18, 2004 (the "Outstanding Bonds") and any bonds issued of equal standing and priority of lien with the Outstanding Bonds.

This bond is a single, fully-registered, non-convertible bond in the principal amount of \$\_\_\_\_\_, issued pursuant to Ordinance No. \_\_\_\_ of the Issuer adopted on \_\_\_\_\_, 2017, and Ordinance No. 254 of the Issuer adopted on January 19, 2004 (collectively, the "Ordinances"), and under and in full compliance with the Constitution and statutes of the State of Michigan, including specifically Act 94, Public Acts of Michigan, 1933, as amended, for the purpose of paying the cost of acquiring, constructing, furnishing and equipping improvements to the Issuer's existing water supply system, consisting generally of water main replacement, tank improvements including painting, safety and site improvements, well and well house replacement, and construction of an administrative office, together with all necessary sites, structures, equipment, interests in land, appurtenances and attachments thereto. For a complete statement of the revenues from which, and the conditions under which, this bond is payable, a statement of the conditions under which additional bonds of equal standing with this bond and the Outstanding Bonds may hereafter be issued, and the general covenants and provisions pursuant to which this bond and the Outstanding Bonds are issued, reference is made to the Ordinance.

This bond is a self-liquidating bond and is not a general obligation of the Issuer and does not constitute an indebtedness of the Issuer within any constitutional or statutory debt limitation, but is payable, both as to principal and interest, solely from the Net Revenues of the System. The principal of and interest on the bond is secured by the statutory lien hereinbefore mentioned.

Principal installments of this bond are subject to prepayment prior to maturity, in inverse chronological order, at the Issuer's option, on any date on or after June 1, 2018, at par and accrued interest to the date fixed for prepayment.

Thirty days notice of the call of any principal installments for prepayment shall be given by mail to the registered owner at the registered address. The principal installments so called for prepayment shall not bear interest after the date fixed for prepayment, provided funds are on hand to prepay said installments.

This bond shall be registered as to principal and interest on the books of the Issuer kept by the Issuer's Treasurer or successor or written designee as bond registrar and transfer agent (the "Transfer Agent") and noted hereon, after which it shall be transferable only upon presentation to the Transfer Agent with a written transfer by the registered owner or his attorney in fact. Such transfer shall be noted hereon and upon the books of the Issuer kept for that purpose by the Transfer Agent.

The Issuer has covenanted and agreed and does hereby covenant and agree to fix and maintain at all times while any bonds including any installments of this bond payable from the Net Revenues of the System shall be outstanding, such rates for service furnished by the System as shall be sufficient to provide for payment of the interest upon and the principal of this bond, the Outstanding Bonds, and any additional bonds of equal standing payable from the Net Revenues of the System as and when the same become due and payable, and to create a Bond and Interest Redemption Fund (including Bond Reserve Account) therefor, to provide for the payment of expenses of administration and operation and such

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expenses for maintenance of the System as are necessary to preserve the same in good repair and working order, and to provide for such other expenditures and funds for the System as are required by the Ordinance.

It is hereby certified and recited that all acts, conditions and things required by law to be done precedent to and in the issuance of this bond have been done and performed in regular and due time and form as required by law.

IN WITNESS WHEREOF, the Issuer, by its City Council, has caused this bond to be signed in its name by its Mayor and to be countersigned by its City Clerk, and its corporate seal to be hereunto affixed, all as of \_\_\_\_\_, 2017.

CITY OF MONTAGUE

By \_\_\_\_\_

Its Mayor

(Seal)

Countersigned:

By \_\_\_\_\_

Its City Clerk

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REGISTRATION

NOTHING TO BE WRITTEN HEREON EXCEPT  
BY THE BOND REGISTRAR/TRANSFER AGENT

| Date of Registration of<br>Delivery | Name of<br>Registered Owner | Principal<br>Installment Delivered | Signature of<br>Bond Registrar/<br>Transfer Agent |
|-------------------------------------|-----------------------------|------------------------------------|---|
|                                     | United States of<br>America |                                    |   |
|                                     | United States of<br>America |                                    |   |
|                                     | United States of<br>America |                                    |   |
|                                     | United States of<br>America |                                    |   |
|                                     | United States of<br>America |                                    |   |
|                                     | United States of<br>America |                                    |   |
|                                     | United States of<br>America |                                    |   |
|                                     | United States of<br>America |                                    |   |
|                                     | United States of<br>America |                                    |   |
|                                     | United States of<br>America |                                    |   |
|                                     | United States of<br>America |                                    |   |
|                                     | United States of<br>America |                                    |   |
|                                     | United States of<br>America |                                    |   |
|                                     | United States of<br>America |                                    |   |
|                                     | United States of<br>America |                                    |   |
|                                     | United States of<br>America |                                    |   |

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EXHIBIT A

SERIES 2017 BOND

| <u>June 1</u> | <u>Amount</u> | <u>June 1</u> | <u>Amount</u> |
|---------------|---------------|---------------|---------------|
| 2018          | \$40,000      | 2038          | \$68,000      |
| 2019          | 42,000        | 2039          | 70,000        |
| 2020          | 43,000        | 2040          | 72,000        |
| 2021          | 44,000        | 2041          | 73,000        |
| 2022          | 45,000        | 2042          | 75,000        |
| 2023          | 46,000        | 2043          | 77,000        |
| 2024          | 47,000        | 2044          | 79,000        |
| 2025          | 49,000        | 2045          | 81,000        |
| 2026          | 50,000        | 2046          | 84,000        |
| 2027          | 51,000        | 2047          | 86,000        |
| 2028          | 52,000        | 2048          | 88,000        |
| 2029          | 54,000        | 2049          | 90,000        |
| 2030          | 55,000        | 2050          | 93,000        |
| 2031          | 57,000        | 2051          | 95,000        |
| 2032          | 58,000        | 2052          | 98,000        |
| 2033          | 60,000        | 2053          | 100,000       |
| 2034          | 61,000        | 2054          | 103,000       |
| 2035          | 63,000        | 2055          | 106,000       |
| 2036          | 65,000        | 2056          | 108,000       |
| 2037          | 66,000        | 2057          | 110,000       |



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Section 10. Security for Bonds. To pay the principal of and interest on the Bond as and when the same shall become due, there is hereby created a statutory lien upon the whole of the Net Revenues of the System, which shall be of equal standing and priority as to the Net Revenues with the Outstanding Bond, to continue until the payment in full of the principal of and interest on the Bond and said Net Revenues shall be set aside for the purpose and identified as the Bond and Interest Redemption Fund, as hereinafter specified.

Section 11. Budget. Immediately upon the effective date of this Ordinance for the remainder of the current Fiscal Year, and thereafter prior to the beginning of each Fiscal Year, the Issuer shall prepare an annual budget for the System for the ensuing Fiscal Year itemized on the basis of monthly requirements. A copy of such budget shall be mailed to the Government without request from the Government for review prior to adoption (as long as the Government is the registered owner of the Bonds), and upon written request to any other registered owners of the Bond.

Section 12. Custodian of Funds; Funds. The Issuer's Treasurer shall be custodian of all funds belonging to or associated with the System and such funds shall be deposited in the Depository Bank. The Issuer's Treasurer shall execute a fidelity bond with a surety company in an amount at least equal to the maximum annual debt service for the Bond.

The Issuer's Treasurer has established, and is hereby directed to continue and maintain, the WATER SUPPLY SYSTEM RECEIVING FUND, with the following accounts, into which the proceeds of the Bond and the Revenues from the System shall be deposited in the manner and at the times provided in this Ordinance, which accounts shall be maintained, except as otherwise provided, so long as the Bond and the Outstanding Bonds remain unpaid.

(A) CONSTRUCTION ACCOUNT. The proceeds of the Bond hereby authorized, and no other funds, shall be deposited in the 2017 WATER SUPPLY SYSTEM CONSTRUCTION ACCOUNT (the "Construction Account"), in the Depository Bank. Moneys in the Construction Account shall be used solely for the purposes of paying all legal, engineering, and financial expenses, and other expenses incident to the acquisition and construction of the Project, including all costs and expenses related to the issuance, sale and delivery of the Bonds. If monies other than proceeds of the Bond are deposited into the Construction Account, then the monies constituting proceeds of the Bond shall be accounted separately from such other funds or monies.

Any unexpended balance of the proceeds of sale of the Bond remaining after completion of the Project herein authorized may in the discretion of the City be used for further improvements, enlargements and extensions to the System, provided that at the time of such expenditure such use be approved by the Department of Treasury (if such approval is then required by law). Any remaining balance after such expenditure shall be paid into the Bond and Interest Redemption Account (hereinafter defined) and used as soon as is practical for the prepayment of installments of the Bond or for the purchase of installments to the Bond at not more than the fair market value thereof.

After completion of the Project and disposition of remaining proceeds, if any, of the Bond pursuant to the provisions of this Section, the Construction Account shall be closed.

(B) WATER SUPPLY SYSTEM RECEIVING FUND. The Revenues of the System shall continue to be set aside in the WATER SUPPLY SYSTEM RECEIVING FUND (the "Receiving Fund"), and moneys so deposited therein shall be transferred, expended and used only in the manner and order as follows:

(1) Operation and Maintenance Account. Revenues shall continue to be transferred each quarter of the Fiscal Year from the Receiving Fund to the OPERATION AND MAINTENANCE ACCOUNT (the "Operation and Maintenance Account"), as provided in the Outstanding Ordinance, to pay the

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reasonable and necessary current expenses of administration and operating and maintaining the System for the ensuing quarter.

(2) Water Supply System Revenue Bond-Bond and Interest Redemption Account. There is hereby continued and maintained a separate account designated as the BOND AND INTEREST REDEMPTION ACCOUNT (the "Bond and Interest Redemption Account"). After the transfer required in (1) above, Revenues shall be transferred each quarter of the Fiscal Year from the Receiving Fund, before any other expenditures or transfer therefrom, and deposited in the Bond and Interest Redemption Account for payment of principal of and interest on the Bond and to fund the Bond Reserve Account, in the amounts and at the times specified below.

Upon any delivery of a delivery installment of the Bond there shall be set aside at the time of delivery and on the first day of each quarter of the Fiscal Year thereafter to the next interest payment date an amount equal to that fraction of the amount of interest due on the next interest payment date on said installment so delivered, the numerator of which is 1 and the denominator of which is the number of full and partial Fiscal Year quarters from the date of said delivery to the next interest payment date. There also shall be set aside each Fiscal Year quarter on or after the delivery of the first principal installment an amount not less than 1/2 of the amount of interest due on the next interest payment date on all outstanding installments of the Bond not delivered during the then current interest payment period.

Commencing upon the delivery of the first delivery installment of the Bond, there shall be set aside at the time of such delivery and on the first day of each quarter of the Fiscal Year thereafter to the next principal payment date an amount equal to that fraction of the amount of principal due on the next principal payment date on said installment so delivered, the numerator of which is 1 and the denominator of which is the number of full and partial Fiscal Year quarters from the date of said delivery to the next principal payment date. There shall also be set aside each Fiscal Year quarter on or after the first day of the Fiscal Year quarter after payment of the first principal installment of the Bond, an amount not less than 1/4 of the amount of principal due on the next principal payment date. Except as hereinafter provided, no further deposits shall be made into the Bond and Interest Redemption Account (excluding the Bond Reserve Account) once the aforesaid sums have been deposited therein. Any amount on deposit in the Bond and Interest Redemption Account (excluding the Bond Reserve Account) in excess of (a) the amount needed for payment of principal installments of the Bond for the then current principal payment period, plus (b) interest on the Bond for the then current interest payment period, shall be used by the Issuer for redemption of principal installments of the Bond in the manner set forth in Section 9 hereof, or if such use is impracticable, shall be deposited in or credited to the Receiving Fund.

If for any reason there is a failure to make such quarterly deposit in the amounts required, then the entire amount of the deficiency shall be set aside and deposited in the Bond and Interest Redemption Account out of the Revenues first received thereafter which are not required by this Ordinance to be deposited in the Operation and Maintenance Account or in the Bond and Interest Redemption Account, which amount shall be in addition to the regular quarterly deposit required during such succeeding quarter or quarters.

There is hereby recognized in the Bond and Interest Redemption Account a separate account designated as the WATER SUPPLY SYSTEM REVENUE BOND RESERVE ACCOUNT (the "Bond Reserve Account"). Commencing October 1, 2017, there shall be withdrawn from the Receiving Fund at the beginning of each Fiscal Year quarter and set aside in and transferred to the Bond Reserve Account, after provision has been made for the Operation and Maintenance Account and the current requirements of the Bond and Interest Redemption Account, the sum of at least \$2,925 per quarter (\$11,700 annually) related to the Series 2017 Bond, until there is accumulated in such account the lesser of the sum of \$117,000 or the Reserve Amount. Except as hereinafter provided, no further deposits shall be made into the Bond and Interest Redemption Account for the purposes of the Bond Reserve Account once the lesser of the sum of \$117,000 or the Reserve Amount has been deposited therein. The moneys in the Bond Reserve Account shall be used solely for the payment of the principal installments of and interest on

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the Bond as to which there would otherwise be default; provided however, that in the event the amount on deposit in the Bond Reserve Account exceeds the Reserve Amount, the moneys in excess of the Reserve Amount shall be used to pay principal installments of and interest on the Bond on the next payment date.

If at any time it shall be necessary to use moneys in the Bond Reserve Account for such payment, then the moneys so used shall be replaced from the Net Revenues first received thereafter which are not required by this Ordinance to be used for operation and maintenance or for current principal and interest requirements for the Bond.

No further payments need be made into the Bond and Interest Redemption Account after enough of the principal installments of the Bond have been retired so that the amount then held in the Bond and Interest Redemption Account (including the Bond Reserve Account), is equal to the entire amount of principal and interest which will be payable at the time of maturity of all the principal installments of the Bond then remaining outstanding.

The moneys in the Bond and Interest Redemption Account and the Bond Reserve Account shall be invested in accordance with Section 13 of this Ordinance, and profit realized or income earned on such investment shall be used or transferred as provided in Section 13 of this Ordinance.

(3) Repair, Replacement and Improvement Account. The Issuer's Treasurer has previously established the REPLACEMENT AND IMPROVEMENT ACCOUNT which is hereby continued, maintained, and redesignated as the REPAIR, REPLACEMENT AND IMPROVEMENT ACCOUNT (the "RRI Account"), continued and maintained. After the transfers required in (1) and (2) above, and so long as any principal installments of the Bonds remain outstanding, commencing on October 1, 2017, revenues shall be transferred each Fiscal Year quarter from the Receiving Fund and deposited in the RRI Account in an amount not less than \$11,208.25 (\$44,833 annually) less the amount, if any, deposited in the Bond Reserve Account at the beginning of the same Fiscal Year quarter. Moneys in the RRI Account shall be used and disbursed only for the purpose of paying the cost of (a) repairing any damage to and emergency maintenance of the System, (b) repairing or replacing obsolete, deteriorating, deteriorated or worn out portions of the System, (c) acquiring and constructing extensions and improvements to the System and (d) when necessary, for the purpose of making payment of principal and interest on the Bond. If the amount in the Bond and Interest Redemption Account and the Bond Reserve Account is not sufficient to pay the principal of and interest on the Bond when due, the moneys in the RRI Account shall be transferred to the Bond and Interest Redemption Account and used for that purpose. Moneys in the RRI Account may be invested in accordance with Section 13 of this Ordinance.

(4) Reverse Flow of Funds; Surplus Money. In the event the moneys in the Receiving Fund are insufficient to provide for the current requirements of the Operation and Maintenance Account, the Bond and Interest Redemption Account (including the Bond Reserve Account) or the RRI Account, any moneys and/or securities in the funds of the System described by this Ordinance shall be transferred, first, to the Operation and Maintenance Account, second, the Bond and Interest Redemption Account, and third, to the RRI Account.

All moneys remaining in the Receiving Fund at the end of any Fiscal Year after satisfying the above requirements for the deposit of moneys into the Operation and Maintenance Account, the Bond and Interest Redemption Account and the RRI Account may be transferred to the Bond and Interest Redemption Account and used to call the Bond or portions thereof for redemption, or at the option of the Issuer, transferred to the RRI Account and used for the purpose for which the account was established; provided, however, that if there should be a deficit in the Operation and Maintenance Account, the Bond and Interest Redemption Account, the Bond Reserve Account or the RRI Account, on account of defaults in setting aside therein the amounts hereinbefore required, then transfers shall be made from such moneys remaining in the Receiving Fund to such accounts in the priority and order named in this Section, to the extent of such deficits.

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Section 13. Investments. Moneys in the funds and accounts established herein and moneys derived from the proceeds of sale of the Bond may be invested by the legislative body of the Issuer on behalf of the Issuer in the obligations and instruments permitted for investment by Section 24 of Act 94, as the same may be amended from time to time; provided, however, that as long as the Bond is held by the Government, then the investment may be limited to the obligations and instruments authorized by the Government. Investment of moneys in the Bond and Interest Redemption Account being accumulated for payment on the next maturing principal or interest payment on the Bond shall be limited to obligations and instruments bearing maturity dates prior to the date of the next maturing principal or interest payment on the Bond. Investment of moneys in the Bond Reserve Account shall be limited to Government obligations and instruments bearing maturity dates or subject to redemption, at the option of the holder thereof, not later than five (5) years from the date of the investment. In the event investments are made, any securities representing the same shall be kept on deposit with the Depository Bank. Interest income earned on investment of funds in the Receiving Fund, the Operation and Maintenance Account and the Bond and Interest Redemption Account (except the Bond Reserve Account), shall be deposited in or credited to the Receiving Fund. Interest income earned on the investment of funds in the Bond Reserve Account shall be deposited in the Bond and Interest Redemption Account.

Section 14. Rates and Charges. Rates and charges for the services of the System have been fixed by ordinance in an amount sufficient to pay the costs of operating, maintaining and administering the System, to pay the principal of and interest on the Bond and the Outstanding Bonds, and to meet the requirements for repair, replacement, reconstruction and improvement and all other requirements provided herein, and otherwise comply with the covenants provided herein. The Issuer hereby covenants and agrees to fix and maintain at all times while the Bond shall be outstanding such rates for service furnished by the System as shall be sufficient to provide for the foregoing expenses, requirements and covenants, and to create a bond and interest redemption account (including a bond reserve account) for such Bond. The rates and charges for all services and facilities rendered by the System shall be reasonable and just, taking into consideration the cost and value of the System and the cost of maintaining, repairing, and operating the same and the amounts necessary for the retirement of all of the Bond, and accruing interest on all of the Bond, and there shall be charged such rates and charges as shall be adequate to meet the requirements of this Section and Section 12 of this Ordinance.

Section 15. No Free Service. No free service shall be furnished by the System to any individual, firm or corporation, public or private or to any public agency or instrumentality.

Section 16. Covenants. The Issuer covenants and agrees, so long as the Bond hereby authorized remains unpaid, as follows:

(a) It will comply with applicable State laws and regulations and continually operate and maintain the System in good condition.

(b)(i) It will maintain complete books and records relating to the operation and financial affairs of the System. If the Government is the holder of the Bond, the Government shall have the right to inspect the System and the records, accounts, and data relating thereto at all reasonable times.

(ii) It will file with the Department of Treasury and the Government each year, as soon as is possible, not later than ninety (90) days after the close of the Fiscal Year, a report, on forms prepared by the Department of Treasury, made in accordance with the accounting method of the Issuer, completely setting forth the financial operation of such Fiscal Year.

(iii) It will cause an annual audit of such books of record and account for the preceding Fiscal Year to be made each year by a recognized independent certified public accountant, and will cause such accountant to mail a copy of such audit to the Government, without request of the Government, or to the manager of the syndicate or account purchasing the Bond. Such audit shall be completed and so made available not later than one hundred eighty (180) days after the close of each Fiscal Year, and said audit may, at the option of the Issuer, be used in lieu of the

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statement on forms prepared by the Department of Treasury and all purposes for which said forms are required to be used by this Ordinance.

(c) It will maintain and carry, for the benefit of the holders of the Bond, insurance on all physical properties of the System, of the kinds and in the amounts normally carried by municipalities engaged in the operation of similar systems. The amount of said insurance shall be approved by the Government. All moneys received for losses under any such insurance policies shall be applied solely to the replacement and restoration of the property damaged or destroyed, and to the extent not so used, shall be used for the purpose of calling the Bond.

(d) It will not borrow any money from any source or enter into any contract or agreement to incur any other liabilities that may in any way be a lien upon the Revenues or otherwise encumber the System so as to impair Revenues therefrom, without obtaining the prior written consent of the Government, nor shall it transfer or use any portion of the Revenues derived in the operation of the System for any purpose not herein specifically authorized.

(e) It will not voluntarily dispose of or transfer its title to the System or any part thereof, including lands and interest in land, sale, mortgage, lease or other encumbrances, without obtaining the prior written consent of the Government.

(f) Any extensions to or improvements of the System shall be made according to sound engineering principles and specifications shall be submitted to the Government for prior review.

Section 17. Additional Bonds. The Issuer may issue additional bonds of equal standing with the Bond for the following purposes and on the conditions set forth in Section 19 of the Outstanding Ordinance.

Section 18. Ordinance Shall Constitute Contract. The provisions of this Ordinance shall constitute a contract between the Issuer and the bondholders and after the issuance of the Bond this Ordinance shall not be repealed or amended in any respect which will adversely affect the rights and interests of the holders nor shall the Issuer adopt any law, ordinance or resolution in any way adversely affecting the rights or the holders so long as the Bond or interest thereon remains unpaid.

Section 19. Refunding of Bond. If at any time it shall appear to the Government that the Issuer is able to refund upon call for redemption or with consent of the Government the then Outstanding Bonds by obtaining a loan for such purposes from responsible cooperative or private credit sources at reasonable rates and terms for loans for similar purposes and periods of time, the Issuer will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government, and will take all such actions as may be required in connection with such loans.

Section 20. Default of Issuer. If there shall be default in the Bond and Interest Redemption Account, provisions of this Ordinance or in the payment of principal of or interest on any of the Bond, upon the filing of a suit by 20 percent of the holders of the Bond, any court having jurisdiction of the action may appoint a receiver to administer the System on behalf of the Issuer with power to charge and collect rates sufficient to provide for the payment of the Bond and for the payment of operation, maintenance and administrative expenses and to apply Revenues in accordance with this Ordinance and the laws of the State of Michigan.

The Issuer hereby agrees to transfer to any bona fide receiver or other subsequent operator of the System, pursuant to any valid court order in a proceeding brought to enforce collection or payment of the Issuer's obligations, all contracts and other rights of the Issuer, conditionally, for such time only as such receiver or operation shall operate by authority of the court.

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The holders of 20 percent of the then outstanding principal amount of the Bond in the event of default may require by mandatory injunction the raising of rates in a reasonable amount.

Section 21. Ordinance Subject to Michigan Law and Government Regulations. The provisions of this Ordinance are subject to the laws of the State of Michigan and to the present and future regulations of the Government not inconsistent with the express provisions hereof and Michigan law.

Section 22. Certain Determinations. The Mayor, City Clerk, City Treasurer and City Manager are each hereby authorized to adjust the final bond details set forth herein to the extent necessary or convenient to complete the transactions authorized herein, and in pursuance of the foregoing each is authorized to exercise the authority and make the determinations authorized pursuant to Section 7a(1)(c) of Act 94, including but not limited to determinations regarding interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights, the place of delivery and payment, and other matters, *provided* that the aggregate principal amount of Bonds issued hereunder shall not exceed \$2,804,000 and the interest rate on the Bonds shall not exceed two and three-quarters percent (2.75%) per annum. The Mayor and City Clerk are authorized to confirm the terms of the sale of the Bonds issued hereunder and final bond specifications with respect to such Bonds by the execution of the form of bond. The Mayor, City Clerk, City Treasurer and City Manager are each authorized to annually file a Qualifying Statement with the Department in accordance with Act 34, Public Acts of Michigan, 2001, as amended. In the event that the City is not granted qualified status by the Department, the Mayor, City Clerk, City Treasurer and City Manager are each hereby authorized to file an application for prior approval of the Bond from the Department and to pay the fees relating thereto. The Mayor, City Clerk, City Treasurer and City Manager are each further authorized to apply for any waivers or other orders from the Department as may be necessary or advisable to issue, sell and deliver the Bond as contemplated herein and to pay any filing fees related thereto

Section 23. Determination Regarding Negotiated Sale. The City has considered selling the Bond through a competitive or negotiated sale and determines to sell the Bond to the Government through a negotiated sale in order to obtain terms not generally available from conventional municipal bond market sources and for the opportunities provided by a negotiated sale to the Government to select and adjust the terms of the Bond.

Section 24. Fiscal Year of System. The fiscal year for operating the System shall be the Fiscal Year.

Section 25. Issuer Subject to Loan Resolution. So long as the Government is holder of any of the Bond, the Issuer shall be subject to the loan resolution (RUS Bulletin 1780-27) and shall comply with all provisions thereof.

Section 26. Covenant Not to Defeas. So long as the Government is the holder of the Bond, the Issuer covenants that it will not defeas the Bond held by the Government.

Section 27. Conflict and Severability. All ordinances, resolutions and orders or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed, and each section of this Ordinance and each subdivision of any section hereof is hereby declared to be independent, and the finding or holding of any section or subdivision thereof to be invalid or void shall not be deemed or held to affect the validity of any other section or subdivision of this Ordinance.

Section 28. Paragraph Headings. The paragraph headings in this Ordinance are furnished for convenience of reference only and shall not be considered to be a part of this Ordinance.

Section 29. Publication and Recordation. This Ordinance shall be published in full in *The White Lake Beacon*, a newspaper of general circulation in the Issuer, qualified under State law to publish legal

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notices, promptly after its adoption, and the same shall be recorded in the Ordinance Book of the Issuer and such recording authenticated by the signatures of the Mayor and the City Clerk.

Section 30. Effective Date. This Ordinance is hereby determined by the City Council to be immediately necessary for the preservation of the peace, health and safety of the Issuer and shall be in full force and effect from and after its passage and publication as required by law.

*Sec. 82-43 amendment effective 82-43.*

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**Secs. 82-44—82-60. Reserved.**

#### **ARTICLE III. WATER SYSTEM**

DIVISION 1. - GENERALLY

DIVISION 2. - CROSS CONNECTIONS

DIVISION 3. - WATER METERS

DIVISION 4. - WATER WELL RESTRICTION

#### ***DIVISION 1. GENERALLY***

[Sec. 82-61. Definitions.](#)

[Sec. 82-62. Unlawful use of water; violations; penalties.](#)

[Sec. 82-63. Service connections.](#)

[Sec. 82-64. Turning on water service.](#)

[Sec. 82-65. Use of hydrants.](#)

[Sec. 82-66. Authority to restrict water use.](#)

[Sec. 82-67. Authority to make additional regulations.](#)

[Sec. 82-68. Damaging or tampering with facilities.](#)

[Sec. 82-69. Pollution of city wells.](#)

[Sec. 82-70. Pollution of water system.](#)

[Secs. 82-71—82-90. Reserved.](#)

#### **Sec. 82-61. 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:

*Backflow* means water of questionable quality, wastes or other contaminants entering a public water supply system due to a reversal of flow.

*Cross connection* means a connection or arrangement of piping or appurtenances through which a backflow could occur.

*Department* means the water department of the city.

*Safe air gap* means the minimum distance of a water inlet or opening above the maximum high-water level or overflow rim in a fixture, device or container to which public water is furnished, which shall be at least two times the inside diameter of the water inlet pipe, but shall not be less than one inch and need not be more than 12 inches.

*Secondary water supply* means a water supply system maintained in addition to a public water supply, including but not limited to water systems from ground or surface sources not meeting the requirements of law, or water from a public water supply which in any way has been treated, processed or exposed to any possible contaminant or stored in other than an approved storage facility. A private water



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storage tank supplied from a public water supply system shall be deemed a secondary water supply unless it is designed and approved for potable water usage.

*Submerged inlet* means a water pipe or extension thereto from a public water supply terminating in a tank, vessel, fixture or appliance which may contain water of questionable quality, wastes or other contaminants and which is unprotected against backflow.

*Water connection* means that part of the water distribution system connecting the water main with the premises served.

*Water main* means that part of the water distribution system located within easement lines or streets designed to supply more than one water connection.

(Code 1989, § 2.21)

**Cross reference**— Definitions generally, § 1-2.

#### **Sec. 82-62. Unlawful use of water; violations; penalties.**

No person shall be granted water service, nor shall water be turned on, until proper written application shall have been made. Any use of water by any means without express written permission of the department of public works, or in violation of any ordinance, shall result in any or all of the following:

- (1) Minimum charge upon discovery: as set forth in the annual fee resolution adopted by the city council.
- (2) Continued use after notice to discontinue: a charge as set forth in the annual fee resolution adopted by the city council.
- (3) Having a water meter which has been bypassed or tampered with: a charge as set forth in the annual fee resolution adopted by the city council.

(Code 1989, § 2.39(1)—(3))

#### **Sec. 82-63. Service connections.**

Applications for water connections shall be made to the department on forms prescribed and furnished by it. Water connections and water meters shall be installed in accordance with rules and regulations of the department and upon payment of the required connection fee and meter installation fee. All meters and water connections shall be the property of the city. Connection fees shall not be less than the cost of materials, installation and overhead attributable to such installations.

(Code 1989, § 2.22)

#### **Sec. 82-64. Turning on water service.**

No person, other than an authorized employee of the department, shall turn on or off any water service, except that a licensed plumber may turn on water service for testing his work (when it must be immediately turned off) or upon receiving a written order from the department; provided that, upon written permit from the department, water may be turned on for construction purposes upon payment of the charges applicable thereto.

(Code 1989, § 2.23)

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#### **Sec. 82-65. Use of hydrants.**

No person, except an employee of the city in the performance of his duties, shall open or use any fire hydrant except in case of emergency, without first securing a written permit from the department and paying such charges as may be prescribed.

(Code 1989, § 2.31)

#### **Sec. 82-66. Authority to restrict water use.**

The city manager, subject to approval by the council, may regulate, limit or prohibit the use of water for any purpose. Such regulations shall restrict less essential water uses to the extent deemed necessary to ensure an adequate supply for essential domestic and commercial needs and for firefighting. No such regulation, limitation or prohibition shall be effective until 24 hours after the publication thereof in a newspaper of general circulation in the city. Any person violating such rule or regulation shall, upon conviction thereof, be punished as prescribed in section 1-7.

(Code 1989, § 2.32)

#### **Sec. 82-67. Authority to make additional regulations.**

The city manager may make and issue additional rules and regulations concerning the water distribution system, connection thereto, meter installation and maintenance, connection and meter installation fees, hydrants and water mains and the appurtenances thereto, not inconsistent with this article. Such rules and regulations shall be effective upon approval by the city council. The rules and regulations now in effect shall continue until changed in accordance with this section.

(Code 1989, § 2.33)

#### **Sec. 82-68. Damaging or tampering with facilities.**

No person, except an employee of the city in the performance of his duties, shall willfully or carelessly break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the city water distribution system.

(Code 1989, § 2.34)

**State Law reference**— Malicious mischief generally, MCL 750.377a et seq.; tampering with utility property, MCL 750.383a.

#### **Sec. 82-69. Pollution of city wells.**

It shall be unlawful for any person to construct or maintain, or permit to be constructed or maintained, within a radius of 200 feet from any of the municipal water wells in the city from which the city draws its water supplies, any source of possible contamination or pollution to such wells.

(Code 1989, § 2.35)

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#### **Sec. 82-70. Pollution of water system.**

It shall be unlawful for any person to do any act, or to allow to be done any act, that may contaminate or pollute or contribute to the contamination or pollution of the water supply wells or water system of the city.

(Code 1989, § 2.36)

#### **Secs. 82-71—82-90. Reserved.**

#### ***DIVISION 2. CROSS CONNECTIONS***

[Sec. 82-91. Prohibited.](#)

[Sec. 82-92. Piping identification.](#)

[Sec. 82-93. Inspections.](#)

[Sec. 82-94. Right of entry.](#)

[Sec. 82-95. Authority to discontinue water service.](#)

[Sec. 82-96. Protection of potable water supply; labeling of water outlets.](#)

[Secs. 82-97—82-120. Reserved.](#)

#### **Sec. 82-91. Prohibited.**

- (a) A cross connection shall not be made between the public water supply system and a secondary water supply.
- (b) A cross connection shall not be made by submerged inlet.
- (c) A cross connection shall not be made between the public water supply and piping which may contain sanitary waste or a chemical contaminant.
- (d) A cross connection shall not be made between the public water supply system and piping immersed in a tank or vessel which may contain a contaminant.

(Code 1989, § 2.37.1)

#### **Sec. 82-92. Piping identification.**

When a secondary water source is used in addition to the public water supply system, exposed public water and secondary water piping shall be identified by distinguishing colors or tags and so maintained that each pipe may be traced readily in its entirety. If piping is so installed that it is impossible to trace it in its entirety, it will be necessary to protect the public water supply at the service connection in a manner acceptable to the department of public health.

(Code 1989, § 2.37.3)

#### **Sec. 82-93. Inspections.**

It shall be the duty of the department of public works and the authorized agents of the city to cause inspections to be made of all properties served by the public water supply where cross connection with the public water supply is deemed possible. The frequency of inspections and reinspections based on

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potential health hazards involved shall be as established by the department of water and as approved by the state department of public health.

(Code 1989, § 2.37.3)

#### **Sec. 82-94. Right of entry.**

The authorized agents of the city shall have the right to enter at any reasonable time any property served by a connection to the public water supply system of the city for the purpose of inspecting the piping system thereof for cross connections. On request, the owner, lessees or occupants of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system on such property. The refusal of such information or refusal of access, when requested, shall be deemed evidence of the presence of cross connections.

(Code 1989, § 2.37.4)

#### **Sec. 82-95. Authority to discontinue water service.**

The department of public works is hereby authorized and directed to discontinue water service after reasonable notice to any property wherein any connection in violation of this division exists, and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water supply system. Water service to such property shall not be restored until the cross connection has been eliminated in compliance with the provisions of this article.

(Code 1989, § 2.37.5)

#### **Sec. 82-96. Protection of potable water supply; labeling of water outlets.**

The potable water supply made available on the properties served by the public water supply shall be protected from possible contamination as specified by this article and by the state and city plumbing code. Any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable system must be labeled in a conspicuous manner as "WATER UNSAFE FOR DRINKING."

(Code 1989, § 2.37.6)

#### **Sec. 82-97. Testing.**

The City shall require that all testable backflow prevention assemblies be tested initially upon installation to ensure that the assembly is working properly. Subsequent testing of assemblies shall be on an annual basis or as required by the City and in accordance with Michigan Department of Environmental Quality requirements. Only individuals that hold an active ASSE 5110 tester's certification shall be qualified to perform such testing. That individual(s) shall certify the results of his/ her testing.

#### **Sec. 82-98 Adoption of State Rules.**

That the City adopts by reference the Water Supply Cross Connection Rules of the Michigan Department of Environmental Quality, being R 325.11401 to R 325.11407 of the Michigan Administrative Code.

#### **Sec. 82-99 Penalty.**

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That any person or customer found guilty of violating any of the provisions of this ordinance or any written order of the City, in pursuance thereof, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable as provided in Section 1.7 of the City of Montague's Code of Ordinances.

**Secs. 82-100—82-120. Reserved.**

#### ***DIVISION 3. WATER METERS***

[Sec. 82-121. Required; interference with meters.](#)

[Sec. 82-122. Access to meters.](#)

[Sec. 82-123. Reimbursement for damage.](#)

[Sec. 82-124. Estimation of consumption in case of meter failure.](#)

[Sec. 82-125. Testing.](#)

[Sec. 82-126. Standards for accuracy.](#)

[Sec. 82-127. Adjustment of bill when meter is found inaccurate.](#)

[Secs. 82-128—82-140. Reserved.](#)

#### **Sec. 82-121. Required; interference with meters.**

All premises using water shall be metered, except as otherwise provided in this Code. No person except a department employee shall break or injure the seal or change the location of, alter or interfere in any way with any water meter.

(Code 1989, § 2.24)

#### **Sec. 82-122. Access to meters.**

The department shall have the right to shut off the supply of water to any premises where the department is not able to obtain access to the meter. Any qualified employee of the department shall, at all reasonable hours, have the right to enter the premises where such meters are installed for the purpose of reading, testing, removing, or inspecting the meter, and no person shall hinder, obstruct, or interfere with such employee in the lawful discharge of his duties in relation to the care and maintenance of such water meter.

(Code 1989, § 2.25)

#### **Sec. 82-123. Reimbursement for damage.**

Any damage which a meter may sustain resulting from carelessness of the owner, agent, or tenant or from neglect of either of them to properly secure and protect the meter, as well as any damage which may be wrought by frost, hot water, or steam backing from a boiler, in the amount of the actual cost of the meter plus time and materials involved, shall be paid by the owner of the property to the city upon presentation of a bill therefor. In cases where the bill is not paid, the water shall be shut off and shall not be turned on until all charges have been paid to the city.

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(Code 1989, § 2.26)

#### **Sec. 82-124. Estimation of consumption in case of meter failure.**

If any meter shall fail to register properly, the department shall estimate the consumption on the basis of former consumption and bill accordingly.

(Code 1989, § 2.27)

#### **Sec. 82-125. Testing.**

A consumer may require that the meter be tested. If the meter is found accurate, a charge as set forth in the annual fee resolution adopted by the city council will be made. If the meter is found defective, it shall be repaired or an accurate meter installed and no charge shall be made.

(Code 1989, § 2.28)

#### **Sec. 82-126. Standards for accuracy.**

A meter shall be considered accurate if, when tested, it registers not to exceed two percent more to two percent less than the actual quantity of water passing through it. If a meter registers in excess of two percent more than the actual quantity of water passing through it, it shall be considered "fast" to that extent. If a meter registers in excess of two percent less than the actual quantity of water passing through it, it shall be considered "slow" to that extent.

(Code 1989, § 2.29)

#### **Sec. 82-127. Adjustment of bill when meter is found inaccurate.**

If a meter has been tested at the request of a consumer and shall have been determined to register "fast," the city shall credit the consumer with a sum equal to the percent "fast" multiplied by the amount of all bills incurred by the consumer within the three months prior to the test. If a meter so tested is determined to register "slow," the department may collect from the consumer a sum equal to the percent "slow" multiplied by the amount of all the bills incurred by the consumer for the prior three months. When the department on its own initiative makes a test of a water meter, it shall be done without cost to the consumer, other than his paying the amount due the city for water used by him as provided in this section if the meter is found to be "slow."

(Code 1989, § 2.30)

#### **Secs. 82-128—82-140. Reserved.**

#### ***DIVISION 4. WATER WELL RESTRICTION***

[Sec. 82-141. Findings.](#)

[Sec. 82-142. Definitions.](#)

[Sec. 82-143. Restricted zone.](#)

[Sec. 82-144. Adding new restrict zones.](#)

[Sec. 82-145. Prohibition.](#)

[Sec. 82-146. Exceptions.](#)

[Sec. 82-147. Sources of water supplied for domestic use and irrigation use.](#)

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[Sec. 82-148. Enforcement.](#)

[Sec. 82-149. Penalty.](#)

[Sec. 82-150. Building and zoning permits.](#)

[Sec. 82-151. Administrative liability.](#)

[Sec. 82-152. Amendment; repeal.](#)

[Sec. 82-153. Notification of lapse, or intent to amend or repeal.](#)

[Sec. 82-154. Severability and captions.](#)

[Sec. 82-155. Repeal.](#)

[Sec. 82-156. Publication and recording.](#)

[Sec. 82-157. Reimbursement of additional city construction costs.](#)

[Secs. 82-158—82-160. Reserved.](#)

#### **Sec. 82-141. Findings.**

The city council has been informed and hereby finds that an aquifer in certain areas of the city has been contaminated or otherwise adversely impacted by hazardous substances and that identified public health, safety and welfare risks may affect drinking water drawn from certain areas of such impacted aquifers. The city council has determined that it is necessary and appropriate to prohibit and/or otherwise restrict the use of wells to supply water in and from the affected areas in order to protect city residents by minimizing the health, safety and welfare risks and minimizing the potential for migration of contaminated groundwater into presently unaffected groundwater.

(Ord. No. 272, 9-21-2015)

#### **Sec. 82-142. Definitions.**

The following definitions shall apply to terms used in this division:

*Affected parcel* means a parcel of land, any part of which is located within a restricted zone.

*Applicant* means a person who applies or applied for the establishment of a restricted zone pursuant to this article.

*City* means the City of Montague.

*City property* means any interest in real property owned or held by the city and shall include but not be limited to the following:

- (i) Real property owned by the city;
- (ii) Real property leased by the city as lessee; and
- (iii) City streets, alleys or other city rights-of-way or easements.

*Contaminated groundwater* means groundwater in which there is present concentrations of materials that exceed drinking water criteria under the Safe Drinking Water Act, 1976 PA 399, as amended, or the residential drinking water criteria established by the MDEQ in operational memoranda or rules promulgated pursuant to Part 201, Environmental Remediation (MCL 324.20101 et seq.).

*Domestic use* means the use of water by humans for drinking, cooking, food preparation and other food-related services, cleaning, washing, bathing and similar household-type water uses in any dwelling, or in any building in which commercial/business, governmental/public or industrial activities are conducted. The term does not include water used solely for closed-loop heat pumps, non-contact cooling, or production and/or processing purposes of commercial or industrial enterprises.

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*Irrigation use* means the use of water for lawn, garden, or landscaping irrigation on a residential parcel of land. The term does not include water used for commercial, agricultural or farm irrigation, except as specifically directed by the MDEQ.

*MDEQ* means the Michigan Department of Environmental Quality, or its successor agency.

*Owner* means the holder of record title for a parcel of land and also the occupant of a parcel of land in possession under a land contract or lease.

*Person* means any individual, partnership, corporation, association, club, joint venture, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit.

*Restricted zone* means an area or areas described within section 82-143 of this division for which the prohibition of wells and the use of groundwater applies and includes parcels of land that are legally described on the attached schedule 1 and that are depicted in the map(s) attached as schedule 2, as amended from time to time as provided in this division.

*Well* means an opening in the surface of the earth for the purpose of removing fresh water through non-mechanical or mechanical means for any purpose other than a public emergency or conducting response actions that are consistent with the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended ("NREPA"), the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, or other applicable statute.

(Ord. No. 272, 9-21-2015)

#### **Sec. 82-143. Restricted zone.**

The following described areas in the city shall be restricted zones under this article. They may be referred to by reference to the names provided in the caption preceding their descriptions. Additional restricted zones, along with a map illustrating the restricted zone, may be added by amending the ordinance in accordance with section 82-144 and all other applicable laws.

- (1) Anderson Road Restricted Zone—Legally described as the area bounded by Wilcox Street on the north, Whitbeck Road on the West to the junction of Old Channel Trail, then along southerly line to White Lake. Cook Street on the east to the junction of Old Channel Trail, then along southerly line to White Lake. Bounded on the south by White Lake; and as depicted on the Anderson Road Restricted Zone map on file in the office of the Zoning Administrator at the City of Montague.

(Ord. No. 272, 9-21-2015)

#### **Sec. 82-144. Adding new restrict zones.**

The City of Montague may amend restrictive zone areas or add new restrictive zones in coordination and in accordance with MDEQ's approval of the proposed restricted zone and proposed groundwater use restrictions. Applicant must comply with city's procedures to file a request to amend, add, or delete restrictive areas. Procedures shall be kept on file in the office of the Zoning Administrator at the City of Montague.

(Ord. No. 272, 9-21-2015)

#### **Sec. 82-145. Prohibition.**

Except as provided in section 82-146 no person shall install or utilize, or allow, permit, or provide for the installation or utilization of a well on any affected parcel; or use any groundwater from an affected parcel. Any existing well at the time of the enactment of a restricted zone on any affected parcel within that restricted zone shall be plugged/abandoned at the expense of the applicant in accordance with applicable laws, regulations and ordinances, unless such existing well falls within one of the exceptions listed in section 81-146.



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(Ord. No. 272, 9-21-2015)

#### **Sec. 82-146. Exceptions.**

A person may install or utilize, or allow, permit, or provide for the installation or utilization of a well in a restricted zone if any of the following exceptions apply and the requirements of the exception are complied with. The party proposing an exception to the well prohibition shall conduct all appropriate inquiry and prepare a due care analysis pursuant to Part 201 of NREPA.

- (1) *Proof of no influence.* If the MDEQ determines based on information provided to it by the person seeking this exception that the use of a well in a restricted zone will not exacerbate existing groundwater contamination, and that water from the proposed well will not be affected by contaminated groundwater, and proof of those determinations is delivered to the city, the well may be so used.
- (2) *Groundwater monitoring/remediation.* A well may be used for groundwater monitoring and/or remediation as part of a response activity approved by the MDEQ or the United States Environmental Protection Agency.
- (3) *Construction de-watering.* A well may be used for construction de-watering if the following conditions are satisfied: (i) the use of the de-watering well will not result in unacceptable exposure to contaminated groundwater, possible cross-contamination between restricted zones and unaffected areas, or exacerbation of contaminated groundwater, as defined in Part 201 of the NREPA; and (ii) the water generated by that activity is properly handled and disposed of in compliance with all applicable laws, rules, regulations, permit and license requirements, orders and directives or any governmental entity or agency of competent jurisdiction. Any exacerbation caused by the use of the well under this exception shall be the responsibility of the person operating the de-watering well, as provided in Part 201 of NREPA.
- (4) *Processing activities.* If the MDEQ determines that the use of a well for non-contact heating, cooling, production, or processing involved in industrial or commercial activities will not cause migration or exacerbation of contaminated groundwater, and proof of that determination is delivered to the city, such use of the well under terms and conditions specified by the MDEQ will be allowed.
- (5) *Public emergencies.* A well may be used in the event of a public emergency. Notice of such use shall be provided to the MDEQ within a reasonable time thereafter.

(Ord. No. 272, 9-21-2015)

#### **Sec. 82-147. Sources of water supplied for domestic use and irrigation use.**

- (1) For affected parcels that are not already connected to the city water system for domestic use and/or irrigation use on the day of enactment of a restricted zone, the applicant of the restricted zone shall be responsible for the costs to connect those affected parcels within that restricted zone to the city water system.
- (2) This section shall not be deemed as affecting the rights and remedies of an owner, or any other person or entity and/or of any federal, state or local government that may exist under any law, regulation, rule, ordinance, order, agreement and/or remedial action plan addressing groundwater within the city.
- (3) In no event shall the city be required to incur any expense or cost under this article, except as may otherwise be approved by the city council for a public works project or by a separate agreement with the applicant, owner, other person or entity, or a governmental body or agency.

(Ord. No. 272, 9-21-2015)

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#### **Sec. 82-148. Enforcement.**

The city manager, or manager's designee, shall be the official having the authority to enforce this division. After the effective date of this division, the enforcement official shall contact all owners of affected parcels within 180 days, who have not previously had their non-compliant well abandoned/plugged by the owner and owners who appear to have wells prohibited under this division, giving written notice of the need to cease using such wells and of the need for establishment of a domestic use and/or irrigation use water source as prescribed under section 82-145, or to obtain approval of acknowledgment of an exception under section 82-146. The owner shall immediately take steps so as to comply with the provisions of this division with regard to provision of domestic use water within 365 days from the date of such notice. Any existing well in violation of this division shall then be plugged or abandoned in conformance with applicable legal requirements. Where, upon information available to the enforcement official, it is suspected that a well is being used on an affected parcel in violation of this division, the enforcement official may inspect such affected parcel and serve an appropriate notice and order of such violation requiring that action be taken promptly by the owner to bring the affected parcel into compliance. If the owner fails to act in accordance with such order, the enforcement official may seek remedies and penalties as provided in section 82-149.

(Ord. No. 272, 9-21-2015)

#### **Sec. 82-149. Penalty.**

Any person who violates any provision of this division shall be liable for a municipal civil infraction under the provisions of City Code. In addition, the city may seek an order from a court of appropriate jurisdiction requiring compliance with this division and may also seek collection of costs and attorney fees associated with such enforcement action. Any violation of this division is a public nuisance, subject to abatement, and any well in violation of this division shall be immediately taken out of service and lawfully abandoned in compliance with applicable legal requirements. A court of competent jurisdiction may order any person violating any provision of this division to properly and lawfully remove or abandon a well.

(Ord. No. 272, 9-21-2015)

#### **Sec. 82-150. Building and zoning permits.**

Neither permit for the construction or alteration of a building or structure nor any permit for any zoning approval shall be issued by the building official, or zoning administrator, for any improvement on an affected parcel, which has or proposes a water supply from a well in violation of this division.

(Ord. No. 272, 9-21-2015)

#### **Sec. 82-151. Administrative liability.**

No officer, agent or employee of the city or member of the city council shall render himself or herself personally liable for any damage, which may occur to any person or entity as the result of any act or decision performed in the discharge of his or her duties and responsibilities pursuant to the division.

(Ord. No. 272, 9-21-2015)

#### **Sec. 82-152. Amendment; repeal.**

The MDEQ, an applicant, an owner, an entity involved in a response activity plan, remedial action plan or no further action report under Part 201 or in performing corrective actions in order to seek approval of a closure report under Part 213 or any other interested party may request in writing to add parcels to or delete parcels from a restricted zone or to establish an additional restricted zone or to otherwise amend or repeal this division, and shall provide advance notice to the MDEQ and any applicant

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for such restricted zone of any proposed change hereunder, including the reasons supporting such request. The city on its own motion and upon advance notice to the MDEQ and any applicant for such restricted zone, may also take action to amend or repeal this division as it deems appropriate. The amendment or repeal of this division shall be by an appropriate ordinance adopted in the same manner as this division, and any such action shall be in the sole legislative discretion of the city council.

(Ord. No. 272, 9-21-2015)

#### **Sec. 82-153. Notification of lapse, or intent to amend or repeal.**

At least 30 days prior to any action regarding a proposed amendment or repeal in whole or in part of this division, the city shall notify the MDEQ and any applicant of its intent to so act. The city shall notify the MDEQ and any applicant that this division may lapse at least 30 days prior to the division being allowed to lapse.

(Ord. No. 272, 9-21-2015)

#### **Sec. 82-154. Severability and captions.**

If any article, section, subsection, sentence, clause, phrase, or portion of this division is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of remaining portions of the division, it being the intent of the city that this division shall be fully severable. The city shall promptly notify the MDEQ and any applicant upon the occurrence of any event described in this section. The captions included at the beginning of each section are for convenience only and shall not be considered a part of this division.

(Ord. No. 272, 9-21-2015)

#### **Sec. 82-155. Repeal.**

All resolutions, ordinances, orders or parts thereof in conflict in whole or in part with any or the provisions of this division are, to the extent of such conflict, hereby repealed.

(Ord. No. 272, 9-21-2015)

#### **Sec. 82-156. Publication and recording.**

- (1) The local unit of government shall publish a notice of adoption of this ordinance in a newspaper of general circulation.
- (2) If the release for which this ordinance or amendment to this ordinance is sought, is regulated pursuant to Part 201, then this ordinance or amendment to this ordinance shall be published and maintained in the same manner as zoning ordinances.
- (3) If the release for which this ordinance or amendment to this ordinance is sought, is regulated pursuant to Part 213, then this ordinance or amendment to this ordinance shall be filed by the applicant with the register of deed as an ordinance affecting multiple parcels, including the property description of all affected parcels.

(Ord. No. 272, 9-21-2015)

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#### **Sec. 82-157. Reimbursement of additional city construction costs.**

The applicant of a restricted zone shall reimburse the city for the reasonable additional costs the city incurs for dewatering the contaminated groundwater or disposing of soils impacted by contaminated groundwater in connection with construction activity undertaken by the city on city property in that restricted zone, provided that the city supplies the applicant with documentation confirming the amount and necessity of such additional costs, including the extent to which they exceeded the cost of dewatering or disposing of materials not impacted by contaminated groundwater.

(Ord. No. 272, 9-21-2015)

#### **Secs. 82-158—82-160. Reserved.**

### **ARTICLE IV. SEWER SYSTEM**

#### **DIVISION 1. - GENERALLY**

#### **DIVISION 2. - ADMINISTRATION AND ENFORCEMENT**

#### **DIVISION 3. - WASTEWATER DISCHARGE**

#### ***DIVISION 1. GENERALLY***

[Sec. 82-161. Definitions.](#)

[Sec. 82-162. Purpose of article.](#)

[Sec. 82-163. Penalties and remedies.](#)

[Sec. 82-164. Upsets.](#)

[Sec. 82-165. Use of public sewers required.](#)

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[Sec. 82-167. Building sewers and connections.](#)

[Sec. 82-168. Containment facilities.](#)

[Sec. 82-169. Control manholes.](#)

[Sec. 82-170. Confidentiality of information.](#)

[Sec. 82-171. Damaging or tampering with system.](#)

[Secs. 82-172—82-190. Reserved.](#)

#### **Sec. 82-161. 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:

*Act* means the Federal Water Pollution Control Act, as amended (PL 92-500, 86 Stat. 816 et seq., 33 USC 1251 et seq.). Specific reference to sections within the Act will be according to PL 92-500 notation.

*Administrator* means the administrator of the Environmental Protection Agency or any employee of the agency to whom the administrator may by order delegate the authority to carry out his functions, or any person who shall by operation of law be authorized to carry out such functions.

*Analytical methodology* means the Guidelines Establishing Test Procedures for the Analysis of Pollutants, 40 CFR part 136, as amended, or procedures described in section 82-225(b).

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*BOD (biochemical oxygen demand)* means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five days at 20 degrees Celsius, expressed in milligrams per liter.

*Building drain* means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.

*Cesspool, septic tank and privy* mean, for the purpose of this article, an individual system for the disposal of sanitary sewage other than to a public sewer.

*Class of users* means the division of sanitary sewer dischargers into classes by similar process or discharge flow characteristics as follows:

*Domestic user* means a user that discharges only segregated domestic wastes or wastes from sanitary conveniences.

*Major user* means any nondomestic user that discharges more than 25,000 gallons per average workday to the public sewer or the POTW.

*Nondomestic user* means any user other than domestic.

*COD* means the total demand or quantity of oxygen required by the sewage as specified in the current edition of Standard Methods for the Examination of Water and Wastewater, expressed in milligrams per liter.

*Collection system* means all of the common sanitary sewers of a municipality which are primarily installed to receive wastewater directly from point sources, for transmission to the POTW.

*Compatible pollutant* means any pollutant that is not an incompatible pollutant.

*Construction* means any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

*Contractee* means a party to a service agreement with the DPW board.

*County board* means the board of commissioners of the county.

*County director* means the director of the wastewater management system of the county or the authorized deputy, agent or representative, as appointed by the county board of public works.

*Daily average* means the sum of the concentrations of a constituent for the measurement period divided by the number of days in such period.

*Director/manager* means the person designated by the municipality or its authorized agency to exercise control over its municipal sewers and collection and transmission system.

*DPW board* means the board of public works of the county.

*Effluent limitation* means any restriction promulgated by federal, state or local government on quantities, rates and concentrations of chemical, physical, biological or other constituents which are discharged from point sources into navigable waters.

*Effluent standard* means any restriction established pursuant to this article on quantities, rates and concentrations of chemical, physical, biological or other constituents which are discharged to the public sewer or the POTW.

*Existing source* means any source which is not a new source as defined in this section.

*FCPS* means federal categorical pretreatment standard.

*Garbage* means solid wastes from domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

*Incompatible pollutant* means any pollutant in amounts which cause interference.

*Industrial wastes* means the liquid or gaseous wastes resulting from industrial or manufacturing processes, trade or business or from the development, recovery or processing of resources or containers, as distinct from segregated domestic strength wastes and wastes from sanitary conveniences.

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*Infiltration* means any water entering the system from the ground through such means as, but not limited to, defective pipes, pipe joints, connections or manhole walls, but shall not include, and is distinguished from, inflow.

*Infiltration/inflow (I/I)* means the total quantity of water from both infiltration and inflow.

*Inflow* means any water entering the system through such sources as, but not limited to, building downspouts, footing or yard drains, cooling water discharges, seepage lines from springs and swampy areas, and storm drain cross connections.

*Inspector* means any person authorized by the municipality to inspect and approve the installation of building sewers and their connection to the public sewer system.

*Interference* means inhibition or disruption of the public sewer or the POTW sewer system or the POTW's treatment processes or operation which causes or significantly contributes to a violation of any requirement of the POTW's NPDES permits. The term also includes prevention of sewage sludge use or disposal by the POTW in accordance with published promulgated regulations under section 405 of the Act or any regulations promulgated pursuant to the Solid Waste Disposal Act (42 USC 3251 et seq.), the Clean Air Act (42 USC 7401 et seq.), the Toxic Substances Control Act (15 USC 2601 et seq.), or more stringent state promulgated rules (including those contained in any state sludge management plan prepared pursuant to title IV of the Solid Waste Disposal Act) applicable to the method of disposal or use employed by the POTW. Pollutants in the effluent of a user shall not be considered to cause interference where the user is in compliance with specific prohibitions, standards, effluent standards or effluent limitations developed by the federal government, the state, the local government or the POTW. Where the user is in compliance with such specific prohibitions, standards or limitations, and pollutants in the sewage from the user nevertheless caused or significantly contributed to a violation of any requirement of the POTW's NPDES permits, and are likely to cause such a violation in the future, the POTW must take appropriate action under 40 CFR 403.5(c).

*Manufacturer* means any establishment engaged in the mechanical, physical or chemical transformation of materials or substances into new products, including but not limited to the blending of materials such as pesticidal products, resins, or liquors.

*MDNR* means the Michigan Department of Natural Resources or its successor.

*mg/l* means milligrams per liter.

*Municipality* means a city, village, township

*Muskegon County Wastewater Management System (MCWWMS) and county wastewater management system* mean the Muskegon County Wastewater Management System Number 1, which includes the facilities commonly referred to as the Whitehall-Montague site. or other public body (excluding the county) created under state law, having jurisdiction over disposal of sewage, industrial waste or other waste.

*Natural outlet* means any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

*New source* means any source, the construction of which is commenced after the publication of proposed regulations prescribing a categorical pretreatment standard under section 307(c) of the Act which will be applicable to such source, if such standard is thereafter promulgated within 120 days of proposal in the Federal Register. Where the standard is promulgated later than 120 days after proposal, a new source means any source, the construction of which is commenced after the date of promulgation of the standard.

*Normal strength sewage* means a sanitary wastewater flow containing an average daily BOD of not more than 250 mg/l or an average daily SS concentration of not more than 250 mg/l, and phosphorus of not more than ten mg/l.

*NPDES permit* means a permit issued pursuant to the National Pollution Discharge Elimination System for the discharge of wastewater into the waters of the state.

*Organic chemicals* means compounds composed of carbon and hydrogen or their derivatives which are manmade or byproducts of manmade or natural substances, which include but are not limited to synthetic fibers, plastics, rubber, medicinals, solvents, surface active agents, pesticides, and other agricultural chemicals and lubricating oil additives or other petroleum derivatives.

*Person* means any individual, firm, company, association, society, corporation, partnership or group, including a contractee.

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*pH* means the negative logarithm of the concentration of hydrogen ions in grams per liter of solution.

*POTW* means the treatment works, as defined by section 212 of the Act, which are owned by the county. The term also means the DPW board or its authorized representative.

*Pretreatment* means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in sewage to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the public sewer or the POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, process changes or other means, except as prohibited by 40 CFR 403.6(d) and (4) as amended.

*Process wastes* means liquid or water-carried wastes which are inherent to or result from any manufacturing operation, including that which comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product, or results from cleaning operations.

*Replacement* means expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary to maintain the capacity and performance during the service life of the treatment works for which such works were designed and constructed.

*Sanitary sewage* means the liquid, gaseous or water-carried waste discharged from sanitary conveniences.

*Sewage* means a combination of water-carried liquid and gaseous wastes from any source, including domestic and nondomestic sources, as well as such groundwater, surface water and stormwater as may be present.

*Sewer* means a pipe or conduit that carries wastewater or drainage water. The following definitions modify the term "sewer":

*Building sewer* means the extension from the building drain to a lateral sewer, private sewer, public sewer or other place of disposal.

*Combined sewer* means a sewer intended to receive both wastewater and stormwater or surface water.

*Common sewer* means a sewer in which all owners of abutting properties have equal rights.

*County sewer* means a public sewer controlled by the county.

*Intercepting sewer* means a sewer that receives dry weather flow from a number of transverse sewers or outlets and frequently additional predetermined quantities of stormwater (if from a combined system), and conducts such water to a point for treatment or disposal.

*Lateral sewer* means a sewer which is designed to receive a building sewer.

*Private sewer* means that section of a sewer owned by a nondomestic user which connects that user to the public sewer and which typically extends from such point of connection upstream to the user's lateral sewers or to a lift station or other outlet owned by the user.

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

*Sanitary sewer* means a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with minor quantities of groundwater, stormwater, and surface water that are not admitted intentionally.

*Storm sewer* means a sewer that carries stormwater and surface water, street wash and other wash waters, or drainage, but excludes domestic wastewater and industrial waste, also called a storm drain.

*Trunk sewer* means a sewer which connects the lateral sewer to the intercepting sewer and to which building sewers may be connected.

*Slug* and *shockload* mean any discharge of sewage or industrial waste which, in concentration of any given constituent or in quantity of flow, causes interference.

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*Source* means any building, structure, facility, vehicle or installation from which there is or may be discharge to the public sewer or the POTW.

*SS (suspended solids)* means solids that either float on the surface of, or are in suspension in, sewage and which can be removed by the procedures specified in the current edition of Standard Methods for the Examination of Water and Wastewater.

*State director* means the executive secretary of the state water resources commission.

*Storm drain* and *storm sewer* mean a sewer intended to carry only stormwater, surface runoff, street wash water, and drainage.

*30-day average concentration* means, for other than fecal or total coliform bacteria, the sum of the concentrations of the individual samples divided by the number of samples taken during a calendar month. The 30-day average concentration for fecal or total coliform bacteria is the geometric mean of the samples collected in a calendar month.

*Toxic* or *toxic pollutant* means chemicals described in section 82-223(6)p.

*Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards or the county discharge limits because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, lack of preventive maintenance or careless or improper operation.

*U.S. EPA* means the United States Environmental Protection Agency or its successor.

*User* means a source (including a section 307 source) and the municipality whose collection system discharges into the POTW.

*Waste component* means any constituent of sewage other than water, including, but not limited to, BOD, SS, other soluble and insoluble matter and phosphate concentrates.

*Working day* means the hours during a calendar day in which a user discharges effluents subject to this article.

*WRC* means the state water resources commission or its successor.

(Code 1989, § 2.41)

**Cross reference**— Definitions generally, § 1-2.

#### **Sec. 82-162. Purpose of article.**

It is the declared purpose of this article to establish standards to:

- (1) Prevent the pollution of the public waters.
- (2) Preserve and maintain the sewage collection and treatment facilities of Muskegon County Wastewater Management System Number 1 (the "system"), municipalities and users.
- (3) Preserve the public health, safety and welfare.
- (4) Comply with all applicable state and federal laws, regulations and standards pertaining to water quality.
- (5) Provide for the prohibition of the discharge of incompatible pollutants to the system.
- (6) Provide for the control of pollutants discharged to the system.
- (7) Provide for the enforcement of standards relating to the acceptability of wastewater to be discharged to the system.

(Code 1989, § 2.40)



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#### **Sec. 82-163. Penalties and remedies.**

- (a) *Criminal penalties.* Any user, contractee or person (other than an employee of a user while acting as an employee) knowingly violating any provision of this article or a final order shall be guilty of a misdemeanor. Each and every day of any such violation shall constitute a separate and new offense and shall be punishable as such as provided in this section.
- (b) *Surcharges.* In addition to prosecution and the imposition of civil penalties for violating this article, a user or contractee violating the regulations established by or pursuant to this article shall be subject to one or more surcharges in accordance with section 82-231.
- (c) *Civil penalties.* Any user or contractee violating this article may also be subject to a penalty, to be initially determined and assessed by the county director, not to exceed \$500.00 per day, subject to appeal to the board and circuit court. The board may also adopt and publish a schedule of monetary civil penalties for various types of violations of this article. No such penalty shall be imposed where the violation was not caused by such user.
- (d) *Violations declared nuisance.* Violations of this article are hereby declared to constitute a public nuisance.
- (e) *Civil injunctive relief.* The county director is hereby empowered to institute legal proceedings for the abatement of any nuisance, including injunctive actions or other remedies, including damages. Any continued violation, after due notice as provided in section 82-194(a), shall be deemed a public nuisance, and may be abated by suit in equity by the city in any court of competent jurisdiction. This remedy shall be in addition to those otherwise provided for in this section.
- (f) *Prima facie presumption.* There shall be a prima facie presumption that the owner, or occupant, if not owner occupied, of the premises upon or from which a violation of this article is determined to exist had knowledge of the unauthorized discharge or other violation. Such presumption shall be rebuttable by competent evidence showing the absence of such knowledge if actual or constructive knowledge is a necessary element of the proof of such violation.
- (g) *Civil liability for damages caused by violation.* Any person violating any of the provisions of this article shall be liable to the city for any expense, loss, or damage occasioned to the city by reason of such violation, and recovery therefor may be had in an appropriate action in any court of competent jurisdiction.

(Code 1989, §§ 2.118—2.124, 2.157, 2.158)

#### **Sec. 82-164. Upsets.**

- (a) *Generally.* In the event of an upset the user shall not be liable for the fines, imprisonment or civil penalties provided for in this article. For purposes of this section, the term "upset" shall mean a noncompliance with this article which is unintentional and temporary and is caused by factors beyond the reasonable control of the user.
- (b) *Upsets involving FCPS.* To the extent an upset involves a FCPS the provisions of 40 CFR 403.16, as amended, shall be met in order for the fines, imprisonment and civil penalties of this article not to apply and in order for the upset to constitute an affirmative defense as provided in 40 CFR 403.16, as amended.
- (c) *Adjustments to FCPS.* A user may apply to the U.S. EPA for an adjustment in a FCPS to reflect the presence of pollutants in the user's intake water in accordance with 40 CFR 403.15, as amended. If such an adjustment is made the, adjusted FCPS shall apply, provided the adjustment does not result in interference.

(Code 1989, §§ 2.128—2.130)

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#### **Sec. 82-165. Use of public sewers required.**

- (a) *Deposit of unsanitary waste.* It shall be unlawful for any person to place or deposit or permit to be deposited in an unsanitary manner upon any public or private property within the city any human or animal excrement, garbage, or other objectionable waste.
- (b) *Water pollution.* It shall be unlawful to discharge into any natural watercourse or any storm sewer within the city any sanitary sewage, industrial waste, or other polluted water, except where suitable treatment has been provided in accordance with the standards established by the WRC.
- (c) *Privies and septic tanks.* Except as provided in this article, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.
- (d) *Sewer connection required.*
  - (1) The owners of all dwellings, buildings, structures or properties used for human occupancy, employment, recreation or other purposes, situated within the city and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the city, are hereby required at their own expense to install suitable toilet facilities therein, and to connect such facilities directly to the public sewer in accordance with the provisions of this article. The city council may require any such owner to make such installation or connection.
  - (2) Notwithstanding the provisions of subsection (d)(1) of this section, a single-family residential property may continue using a private sewage disposal system which is completely in place prior to the public sewer system becoming available to the property until:
    - a. Change in ownership of the single-family residential property;
    - b. The private sewage disposal system requires replacement; or
    - c. Ten years have elapsed from the time access to the public sewer system first becomes available.

(Code 1989, §§ 2.42—2.45, 2.10(8), 2.211)

#### **Sec. 82-166. Private sewage disposal systems.**

- (a) *Generally.* Where a public sanitary sewer or combined sewer is not available under the provisions of section 82-165(d), the building sewer shall be connected with a private disposal system complying with the regulations and orders of the WRC and the city council.
- (b) *Discontinuance of use.* At such times as a public sewer becomes available to a property served by a private sewage disposal system, as provided in section 82-165(d)(1), a direct connection shall be made to the public sewer in compliance with the provisions of this article, unless exempted by section 82-165(d)(2), and any septic tank, privy, privy vault, cesspool or similar private sewage disposal facility shall be abandoned and filled with suitable material.
- (c) *Operation and maintenance.* The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times at no expense to the city.
- (d) *Additional requirements.* No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the city council or the WRC with respect to private sewage disposal.

(Code 1989, §§ 2.47—2.50)

#### **Sec. 82-167. Building sewers and connections.**

- (a) *Permit.* No unauthorized person shall uncover, make any connection with or opening into, use, alter or disturb any public sewer or any appurtenance thereof without first obtaining a written permit from the city manager or from such official as he may designate. All connections with the sanitary or

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combined sewers of the city shall be made only on written authorization and permits issued by the city on such forms and on payment of such fees as shall be established from time to time by annual resolution of the city council.

- (b) *Payment of installation costs.* All costs and expenses incident to the installation and connection of the building sewer shall be borne by the owner of the property. The owner shall indemnify the city from all loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
- (c) *Plans and specifications.* All applicants for sewer connection permits shall first submit plans and specifications of all plumbing construction within such building or premises and such plans and specifications shall meet the requirements of the plumbing regulations of the city and all orders, rules and regulations of the WRC or the state department of public health. When such plans and specifications have been approved by the city manager or by such official as he may designate, a temporary construction permit shall be issued, subject to final inspection and approval when construction is completed and ready for connection with the city sewer system.
- (d) *Inspection.* The applicant for a building sewer permit shall notify the city manager when the building is ready for inspection and connection to the public sewer. The city manager or his designated representative shall then inspect the building and plumbing construction therein and, if such construction meets the previous requirements as approved in the construction permit, a sewer connection permit shall be issued, subject to the applicable provisions of this article.
- (e) *Repairs.* The cost of all repairs, maintenance and replacements of existing building sewers and their connections to public sewers shall be borne by the property owner. Such owner shall make application to perform such work to the city manager or his designated representative.

(Code 1989, §§ 2.52—2.57)

#### **Sec. 82-168. Containment facilities.**

- (a) *Required for certain users.* Each nondomestic user that uses or stores liquid material on its facilities shall provide a storage or use area on its facilities which is capable of containing the liquid material so that, in the event of an accident, liquid material cannot escape therefrom by gravity through private sewers or otherwise into any public sewer or the POTW in an amount which would result in a prohibited discharge. The county director may issue an order to such a user to comply with the preceding sentence and to first submit plans for compliance to the county director.
- (b) *Filing of plan.* Each nondomestic user so ordered shall submit its plan for compliance within the time specified in such order.
- (c) *Approval of plan.* The timetable for implementation shall be subject to the approval of the county director.
- (d) *Time limit for construction.* The containment measures shall be operational within such reasonable period of time as the county director shall order.
- (e) *Interim measures.* The county director may order the nondomestic user to take reasonable and feasible interim measures for emergency containment if circumstances so require.
- (f) *Applicability of WRC rules.* In no event shall a nondomestic user be required by county order issued under subsection (a) of this section to provide facilities which are more extensive or inconsistent with facilities such user has provided or will provide in compliance with the WRC rules where applicable.

(Code 1989, §§ 2.91—2.96)

#### **Sec. 82-169. Control manholes.**

When required by the city council or the WRC, the owner of any property served by a building sewer carrying industrial wastes shall install a suitable control manhole in the building sewer to facilitate observation, sampling and measurement of wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the city council. The

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manhole shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.

(Code 1989, § 2.151)

#### **Sec. 82-170. Confidentiality of information.**

- (a) *Generally.* All information and data submitted to the county pursuant to this article by the user or obtained by the county through inspections and monitoring shall be protected by and held by the county as confidential if it relates to trade secrets or is information which, if disclosed, would tend to injure the competitive position of the user. The following data is not entitled to confidential treatment:
  - (1) Data which directly expresses effluent characteristics at or after a point of discharge to the public sewer or the POTW.
  - (2) Data which has previously been disclosed to the public generally.
- (b) *Request for confidentiality.* With respect to information and data submitted to the county by the user, the user must submit a cover sheet, or indicate on individual sheets, that such information is to be held as confidential information, in order for the information and data to be entitled to confidential treatment.
- (c) *Request for release of confidentiality.* If any person or governmental agency requests from the county information or data which is to be treated confidentially or is marked "confidential" pursuant to this section, the county shall notify the user before any release of such information and data. The user may agree to or object to the release of all or part of the requested information and data. If the user objects and the requesting person or agency continues its request then the information and data at issue shall not be released by the county without an order of a court of competent jurisdiction.

(Code 1989, §§ 2.125—2.127)

#### **Sec. 82-171. Damaging or tampering with system.**

No unauthorized person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the municipal sewage system or treatment plant. Any person violating this section shall be punished as provided in section 1-7.

(Code 1989, § 2.153)

**State Law reference**— Malicious mischief generally, MCL 750.377a et seq.; tampering with utility property, MCL 750.383a.

#### **Secs. 82-172—82-190. Reserved.**

#### ***DIVISION 2. ADMINISTRATION AND ENFORCEMENT*** <sup>[2]</sup>

[Sec. 82-191. Responsibilities and authority of county and city.](#)

[Sec. 82-192. Powers of county director.](#)

[Sec. 82-193. Right of entry of inspectors.](#)

[Sec. 82-194. Notice to cease violation; continued violations.](#)

[Sec. 82-195. Measurements and tests.](#)

[Sec. 82-196. Orders.](#)

[Sec. 82-197. Citations.](#)

[Sec. 82-198. Administrative appeals.](#)

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[Sec. 82-199. Procedure for conduct of hearings.](#)

[Secs. 82-200—82-220. Reserved.](#)

#### **Sec. 82-191. Responsibilities and authority of county and city.**

The county is charged with the duty of investigating, preventing and abating violations of this article and enforcing the provisions of this article. The responsibility for enforcement of this article shall be upon the county director; provided that the right of enforcing this article is reserved to the municipality with respect to its collection system and the protection of its inhabitants and employees. If the municipality determines its intent to enforce this article, it shall notify the county of the intended enforcement action in specific cases. In such event, if the county determines that it does not intend to initiate enforcement action on behalf of the POTW within a period of ten days from the service of the notice of intent or immediately in the event of an emergency, the municipality may initiate enforcement action. In such event the county shall provide, without charge, the municipality with all available technical assistance it would have provided had the county undertaken such enforcement action. If the county determines after such notice period that it intends to initiate enforcement action, it shall notify the municipality of its intended action and such enforcement action shall include intended relief for the municipality as to its concerns as well as for the protection of the POTW. In the latter case, the damages, surcharges and civil penalties shall be allocated between the county and the municipality as their interests shall appear. Further, in such case, the county shall assume and pay the attorney fees and costs incurred by the county as a result of such enforcement action, but such expenses shall be includable in the allocation of costs.

(Code 1989, § 2.81)

#### **Sec. 82-192. Powers of county director.**

The county director is hereby empowered to:

- (1) Supervise the implementation of this article.
- (2) Institute actions against all users violating this article and institute necessary legal proceedings to prosecute violations of this article and compel the prevention and abatement of violations of this article or nuisances arising therefrom.
- (3) Review the plans for pretreatment equipment submitted by users.
- (4) Make inspections and tests of existing and newly installed, constructed, reconstructed, or altered pretreatment equipment, to determine compliance with the provisions of this article.
- (5) Investigate complaints of violations of this article and make inspections and observations of discharges, and record such investigations, complaints, inspections and observations.
- (6) Issue orders requiring compliance with this article.
- (7) Propose the imposition of civil penalties for violations of this article.
- (8) Determine surcharges to be levied pursuant to this article.
- (9) Make recommendations for amendments to this article.
- (10) Encourage voluntary cooperation by persons or affected groups in water pollution control.
- (11) Collect and disseminate information on water pollution control.
- (12) Work with planning and zoning agencies for the purpose of coordinating activities under provisions of this article and fostering the best possible management of the water resources of the county.
- (13) Cooperate with federal, interstate, state, county, district, municipal, and other agencies concerned with water pollution with regard to studies, abatement programs, public complaints,

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and other matters to the end that the natural resources of the county shall be best conserved and improved.

- (14) Subject to applicable law and with the approval of the county board of commissioners, accept, receive and give receipt for monies, for and in behalf of the county, granted or made available by federal or state law for water pollution activities, surveys, investigations, research or programs.
- (15) Recommend the institution of proceedings in a court of competent jurisdiction to compel compliance with the provisions of this article or any determination or order which may be promulgated or issued pursuant thereto.

(Code 1989, § 2.82)

#### **Sec. 82-193. Right of entry of inspectors.**

The city council and duly authorized officials or employees of the city and agents of the WRC bearing proper credentials and identification shall be permitted to enter upon all properties for the purpose of inspection, observation, measurement, sampling, and testing, in accordance with the provisions of this article, at any time during reasonable or usual business hours. Any person guilty of refusing or obstructing such entry shall be guilty of a misdemeanor.

(Code 1989, § 2.154)

#### **Sec. 82-194. Notice to cease violation; continued violations.**

- (a) Any person found to be violating any provision of this article except sections 82-171 and 82-193 shall be served by the city manager with written notice stating the nature of such violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, take such corrective action as may be necessary.
- (b) Any person who shall continue any violation beyond the time limit provided for in subsection (a) of this section shall, upon conviction thereof, be guilty of a misdemeanor. Any officer, agent, or employee guilty of aiding or abetting such violation, or who, being responsible therefor, refuses or neglects to take corrective action, shall be guilty as a principal.

(Code 1989, §§ 2.155, 2.156)

#### **Sec. 82-195. Measurements and tests.**

All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this article shall be determined in accordance with Standard Methods for the Examination of Water and Wastewater and shall be determined at the control manhole provided for in section 82-169 or upon suitable samples taken at the control manhole. If no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected.

(Code 1989, § 2.152)

#### **Sec. 82-196. Orders.**

- (a) *Generally.* Whenever the county director has determined that any user has violated this article or the regulations referenced in this article, the director may issue an order to take action deemed appropriate under the circumstances.
- (b) *Types of orders.* The following orders may be issued by the county director:

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- (1) *Immediate cease and desist order.* An order to cease and desist from discharging any sewage or an illegal discharge, with immediate effect, in the case of actual or threatened discharge of pollutants to the public sewer or POTW which presents or may present imminent or substantial endangerment to the health or welfare of persons, or to the environment, or causes interference with the operation of the public sewers or POTW. Such order shall be in effect until a hearing is conducted pursuant to section 82-198. Such order shall contain a date and time for such hearing, as soon as reasonably possible, but not to exceed ten days from the date of the order.
- (2) *Order to cease discharge within a time certain.* The county director may issue an order to show cause why an order to cease discharge of an incompatible pollutant by a certain time and date, in cases other than those defined in subsection (b)(1) of this section, should not be issued. The proposed time for remedial action shall be specified in the order to show cause. Such order may also contain such conditions deemed appropriate by the director.
- (3) *Order to effect pretreatment.* The county director may issue an order to show cause why a user should not be required to pretreat in accordance with section 82-230. A user shall not, however, be ordered to pretreat where a compatible pollutant is discharged which the POTW has the capability to treat adequately. (See Comment to 40 CFR 403.5(c) in 44 Fed. Register 62266.)
- (4) *Other orders.* The county director may also issue an order to users subject to this article to require such user to perform any action required of it under this article, including but not limited to the following:
  - a. Submit samples.
  - b. Install sampling or monitoring equipment.
  - c. Submit reports.
  - d. Permit access for inspection, sampling, tests, monitoring and investigations.
- (c) *Contents.* Any order issued by the county director shall contain the facts and reasons and grounds for its issuance, and the remedial action ordered, as well as the time within which such action shall be taken. No such order shall be deemed insufficient, however, for inconsequential errors and omissions in the facts and reasons and grounds for the order. If any user deems the content of the order to contain insufficient information, it may request additional information from the county director.
- (d) *Noncompliance due to factors beyond reasonable control of user.* If any noncompliance with any order is due to factors beyond the reasonable control of the user then such noncompliance shall not be a violation of such order and such order shall be modified to take account of such factors. To the extent section 82-164(a) conflicts with this section, section 82-164(a) shall control.

(Code 1989, §§ 2.83—2.86)

#### **Sec. 82-197. Citations.**

- (a) *Generally.* The county director shall issue a citation with or without an order against any user deemed to be in violation of this article, and determine the penalty, if any, to be imposed.
- (b) *Service.* The citation shall be served upon each user either by personal delivery or by certified mail addressed to such user.
- (c) *Contents.* The citation shall specify the following:
  - (1) The date and time of issuance.
  - (2) The date, time and place of violation, the nature of the violation, the substances discharged, where ascertainable, and the volume of such discharge, where applicable.
  - (3) Reference to the pertinent section of this article under which the violation is charged.
  - (4) Reference to the pertinent section of the Code establishing penalties for the violation.
  - (5) The amount of the penalty, if any.
  - (6) The right of the alleged violator to present to the county director written explanations, information, or other materials in answer to the citation, including any defenses.

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- (7) The right to request an informal and formal hearing on the violation within the time limits specified in section 82-198.
- (d) *Notice to municipality.* Any citation issued pursuant to this section upon any user within the corporate limits of any municipal contractee shall be served upon the contractee in the manner provided in subsection (b) of this section, and such contractee shall be given notice, also in the manner provided in subsection (b) of this section, of all meetings, hearings and proceedings subsequently conducted pursuant to such citation, and such contractee is hereby granted the full and complete right to participate therein as an amicus curiae. The right as an amicus curiae provided for in this subsection is also afforded the contractee throughout any appeal or judicial proceedings undertaken by either the county or the affected user.

(Code 1989, §§ 2.105—2.108)

#### **Sec. 82-198. Administrative appeals.**

- (a) *Scope.* This section shall govern appeals from all administrative citations, orders, surcharges, penalties, exemptions and variances.
- (b) *Informal hearings.*
- (1) *Right to hearing.* An informal hearing may be requested by any user, including contractees, deeming itself aggrieved by any citation, order, surcharge, penalty or action on exemptions and variances before the county director, by requesting an informal hearing within ten days after the citation, order, penalty or other action has been served upon such user or contractee.
  - (2) *Scheduling of hearing.* The informal hearing shall be promptly scheduled at the earliest practicable date, which shall not exceed five days after receipt of the request unless extended by mutual written agreement.
  - (3) *Conduct of hearing.* The hearing shall be conducted on an informal basis without recording or transcribing the hearing.
- (c) *Formal hearings.*
- (1) *Right to hearing.* Any user or contractee deeming itself aggrieved by any citation, order, surcharge, penalty or other action shall have the right to a formal hearing on the county director's action by filing a written demand for such hearing within a period of 20 days from the date service thereof is effected upon such user, unless extended by written mutual agreement.
  - (2) *Contents of request for hearing.* Such written request, signed by such user or contractee or on behalf of such user or contractee by a duly authorized officer, agent or attorney, to the county director shall contain the following:
    - a. The request shall state the name and address of the user or contractee requesting the hearing.
    - b. A copy of the citation, order, surcharge, penalty or action shall be attached.
    - c. The request shall state with particularity the defenses and issues to be raised by such person at the hearing, provided, however, additional defenses and issues may be raised at the hearing.
  - (3) *Scheduling of hearing.* A hearing shall be promptly scheduled at the earliest practicable time and date, but not to exceed 15 days from the date of receipt of the request unless otherwise extended by written agreement.
- (d) *Failure to request hearing; effect of request for hearing.* If an informal or formal hearing is not demanded within the periods specified in subsections (b) and (c) of this section, such action shall be deemed final. If either or both of such hearings are demanded, the action shall be suspended until a final determination has been made, except for immediate cease and desist orders issued pursuant to section 82-196(b)(1).

(Code 1989, §§ 2.109—2.111)



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#### **Sec. 82-199. Procedure for conduct of hearings.**

- (a) *Scope.* Hearings on any notice, order, citation, surcharge or any other action of the county director shall be conducted under the procedure set forth in this section.
- (b) *Hearing board.*
  - (1) *Designated.* The board is hereby designated as the hearing board to schedule, hear and decide administrative appeals arising under this article.
  - (2) *Powers.* A majority of the board is hereby vested with the power, jurisdiction and authority to:
    - a. Schedule, hear and decide appeals from any administrative determination made by the county director.
    - b. Schedule, hear and decide applications for extensions of time for compliance or for exemptions or variances in the manner set forth in this article.
    - c. Decide all matters referred to it by the director or upon which it is required to decide under this article.
  - (3) *Proceedings.* The board shall keep minutes of its proceedings and comply with the Open Meetings Act (MCL 15.261 et seq.) and shall electronically record or authorize stenographic recording of the proceedings.
  - (4) *Adoption of rules by board; appearance before board.* The board shall have the right to adopt reasonable rules and regulations governing the conduct of its hearings. Any person may appear and testify at a hearing and be represented by an authorized agent or attorney.
- (c) *General procedures.*
  - (1) *Hearing examiners.* The board may appoint one or more hearing examiners or designate one or more of its members to serve as hearing examiners to conduct the hearings. The examiner hearing the case shall exercise all powers relating to the conduct of hearings until it is submitted by him to the board for decision.
  - (2) *Record.* A record of the entire proceedings shall be made by tape recording, or by any other means of permanent recording determined to be appropriate by the board.
  - (3) *Reporting.* The proceedings at the hearing shall also be reported by a stenographic reporter if requested by any party thereto. A transcript of the proceedings shall be made available to all parties upon request and upon payment by the requesting party.
  - (4) *Continuances.* The board may grant continuances for good cause shown; however, when a hearing examiner has been assigned to such hearing, no continuances may be granted except by him for good cause shown so long as the matter remains before such examiner.
  - (5) *Oaths; certification of official acts.* In any proceedings under this section, the board, any board member, or the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.
  - (6) *Board to act with reasonable dispatch.* The board and its representatives shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.
- (d) *Form of notice of hearing.* The notice to the appellant shall be substantially in the following form, but may include other information:

You are hereby notified that a hearing will be held before (the board or name of hearing examiner) at \_\_\_\_\_ on the \_\_\_\_\_ day of 20\_\_\_\_\_, at the hour \_\_\_\_\_, upon the hearing requested by you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross examine all witnesses testifying against you. You may request the attendance of public witnesses and the production of books, documents or other things by filing a request therefor with (board or name of hearing examiner).
- (e) *Evidence and witnesses.*
  - (1) *Rules.* Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

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- (2) *Oral evidence.* Oral evidence shall be taken only on oath or affirmation.
- (3) *Hearsay evidence.* Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.
- (4) *Admissibility of evidence.* Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.
- (5) *Exclusion of evidence.* Irrelevant and unduly repetitious evidence shall be excluded.
- (6) *Rights of parties.* Each party shall have these rights, among others:
  - a. To call and examine witnesses on any matter relevant to the issues of the hearing.
  - b. To introduce documentary and physical evidence.
  - c. To cross examine opposing witnesses on any matter relevant to the issues of the hearing.
  - d. To impeach any witness regardless of which party first called him to testify.
  - e. To rebut the evidence against him.
  - f. To represent himself or to be represented by anyone of his choice who is lawfully permitted to do so.
- (7) *Official notice.*
  - a. *Facts that may be noticed.* In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state.
  - b. *Parties to be notified.* Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.
  - c. *Opportunity to refute.* Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the board or hearing examiner.
  - d. *Inspection of premises.* The board or the hearing examiner may inspect any building or premises involved in the appeal during the course of the hearing, provided that:
    - 1. Notice of such inspection shall be given to the parties before the inspection is made;
    - 2. The parties shall be given an opportunity to be present during the inspection; and
    - 3. The board or the hearing examiner shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the board or hearing examiner.
- (f) *Method and form of decision.*
  - (1) *Participation in decision by board.* Where a contested case is heard before the board itself, no member thereof who did not hear the evidence or has not read the entire record of the proceedings shall vote on or take part in the decision.
  - (2) *Report and recommendation by hearing examiner.* If a contested case is heard by a hearing examiner alone, he shall within a reasonable time (not to exceed 30 days from the date the hearing is closed) submit a written report to the board. Such report shall contain a brief summary of the evidence considered and state the examiner's findings, conclusions and recommendations, subject to section 82-170 on confidentiality. The report also shall contain a proposed decision in such form that it may be adopted by the board as its decision in the case. All examiner's reports filed with the board shall be matters of public record. A copy of each such report and proposed decision shall be mailed to each party on the date they are filed with the board.

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- (3) *Consideration of report by board.* The board shall fix a time, date, and place to consider the hearing examiner's report and proposed decision, within 15 days from the filing thereof. Notice thereof shall be mailed to each interested party not less than five days prior to the date fixed, unless it is otherwise stipulated by all of the parties.
- (4) *Filing of exceptions to report.* Not later than two days before the date set to consider the report, any party may file written exceptions to any part or all of the examiner's report and may attach thereto a proposed decision together with written argument in support of such decision. By leave of the board, any party may present oral argument to the board.
- (5) *Action by board on proposed decision.* The board may adopt or reject the proposed decision in its entirety, or may modify the proposed decision.
- (6) *Procedure when proposed decision not adopted.* If the proposed decision is not adopted as provided in subsection (f)(5) of this section, the board may decide the case upon the entire record before it, with or without taking additional evidence, or may refer the case to the same or another hearing examiner to take additional evidence. If the case is reassigned to a hearing examiner, he shall prepare a report and proposed decision as provided in subsection (f)(2) of this section after any additional evidence is submitted. Consideration of such proposed decision by the board shall comply with the provisions of this section.
- (7) *Form of decision.* The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered personally or sent by certified mail, postage prepaid, return receipt requested, to the appellant.
- (8) *Effective date of decision.* The effective date of the decision shall be as stated therein or pursuant to a stay order from a court of competent jurisdiction.
- (g) *Judicial review.* Appeals from the determinations of the board may be made to the circuit court for the county as provided by law. Such appeals shall be governed procedurally by the Administrative Procedures Act of 1969 (MCL 24.201 et seq.). All findings of fact, if supported by the evidence, made by the board shall be conclusive upon the court.

(Code 1989, §§ 2.112—2.117)

**Secs. 82-200—82-220. Reserved.**

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FOOTNOTE(S):

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**Cross reference**— Administration, ch. 2. ([Back](#))

#### ***DIVISION 3. WASTEWATER DISCHARGE***

[Sec. 82-221. Intent of division.](#)

[Sec. 82-222. Transition provisions; exemptions.](#)

[Sec. 82-223. Prohibited discharges.](#)

[Sec. 82-224. Effect of future state and federal standards.](#)

[Sec. 82-225. Wastewater analyses.](#)

[Sec. 82-226. Acceptance of restricted waste.](#)

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[Sec. 82-227. Authority of inspectors; protection of property owner during inspections.](#)

[Sec. 82-228. Monitoring and sampling.](#)

[Sec. 82-229. Reporting.](#)

[Sec. 82-230. Pretreatment.](#)

[Sec. 82-231. Surcharges.](#)

#### **Sec. 82-221. Intent of division.**

The regulations contained in this division are generally intended to:

- (1) Prohibit the discharge to public sewer facilities of sewage which causes interference with or could have detrimental effects on the physical structures or operating personnel of the system, or on the general public; and
- (2) Restrict the discharge to public sewers of technically unpolluted water.

(Code 1989, § 2.61)

#### **Sec. 82-222. Transition provisions; exemptions.**

- (a) *Authorized current discharges.* Nondomestic users with respect to whom there exists authorization to discharge sewage within parameters specified for that particular user (whether by service agreement, permit, letter authorization or otherwise), which authorization existed prior to the effective date of the ordinance from which this article is derived, shall continue to have such authority until the earlier of the following:
  - (1) Such authority is renewed or confirmed by the county director; or
  - (2) Such authority is modified or revoked by order of the county director pursuant to and consistent with this article.
- (b) *Effective date.* With respect to a user which has a discharge, which discharge existed prior to the effective date of the ordinance from which this article is derived, this article, to the extent it is different or more restrictive than the exhibit D to the Access Rights Agreement, shall take effect with respect to such user's discharge 60 days after the effective date of the ordinance from which this article is derived. Such time may be extended by the DPW board for a reasonable period if such user applies for a variance or exemption. This subsection shall not prevent the county director from issuing orders pursuant to section 82-192(1) prior to the expiration of such 60-day period.
- (c) *Exemptions authorized.*
  - (1) To the extent there is no conflict with an applicable state or federal statute or promulgated rule, the DPW board may issue an exemption order to a user with respect to:
    - a. Effluent standards, effluent limitations, or effluent criteria contained in this article.
    - b. Any other requirement of this article applicable to the user.
  - (2) In granting an exemption order, the DPW board:
    - a. May establish a new or modified standard, limitation, criteria or requirement in the exemption order.
    - b. May not authorize a discharge which will result in interference.
    - c. May, as the sole or partial function of the order, determine that a discharge which exceeds one or more of the numerical limitations and criteria in section 82-223(6) does not cause interference.

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- (d) *Notice to municipality of proposed exemption.* The municipality in which a user who is requesting an exemption order is located shall be notified in advance of the date, place and subject matter of the exemption order hearing. Such notice shall be given to the municipality as soon as practicable after the request is made. If the municipality states its opposition to the request at the hearing before the DPW board, and if the opposition reasonably involves the prohibitions contained in section 82-223(1) through (5), inclusive, then such request shall not be granted without the concurrence of the governing body of the municipality.

(Code 1989, §§ 2.101—2.104)

#### **Sec. 82-223. Prohibited discharges.**

No person shall discharge or cause to be discharged into any public sewer or to the POTW any of the following:

- (1) Sewage in an amount which creates or may create a fire or explosion hazard in the POTW or the collection system.
  - (2) Sewage in an amount which causes or may cause corrosive structural damage to the collection system or the POTW.
  - (3) Solid or viscous sewage in amounts which could cause or do cause either obstruction to flow or interference in the collection system or the POTW.
  - (4) Any pollutant, including oxygen-demanding pollutants, released in a discharge at a flow rate and/or pollution concentration which a user knows or has reason to know will cause interference in the collection system and the POTW.
  - (5) Sewage which may cause or does cause:
    - a. Impairment of the strength or durability of structures in the collection system or the POTW.
    - b. Restriction of hydraulic capacity of structures in the collection system or the POTW.
    - c. Unsafe conditions to personnel in the inspection or maintenance of structures of the collection system or the POTW or unsafe conditions to the general public with respect to the collection system.
  - (6) Discharges which exceed the following criteria by an amount which may cause or does cause interference:
    - a. Five-day biochemical oxygen demand (BOD) in excess of a daily average of 250 mg/l.
    - b. Chemical oxygen demand (COD) in excess of a daily average of 450 mg/l.
    - c. Chlorine demand of greater than 20 mg/l.
    - d. Total suspended matter in excess of a daily average of 250 mg/l.
    - e. Residue (total on evaporation) in excess of a daily average of 750 mg/l.
    - f. Solvent extractables (grease, fat, oil or other freon-soluble materials) in excess of a daily average of 50 mg/l.
    - g. Grease, oil or other substances that will become solid or viscous at temperatures between 32 degrees and 120 degrees Fahrenheit in concentrations that will increase the viscosity of the sewage to greater than 1.1 specific viscosity.
- \_\_\_\_\_
- h. Sewage flow or batch discharge containing concentrations in excess of the following:  
pH: 9.5 to 6

|  | Daily Average<br>Concentration | 30-Day Average<br>Concentration |
|--|--------------------------------|---------------------------------|
|  |                                |                                 |

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|                                       |   |                      |
|---------------------------------------|---|----------------------|
| Iron                                  | 10 mg/l as Fe   | 10 mg/l as Fe        |
| Copper                                | 4.5 mg/l as Cu  | 1.8 mg/l as Cu       |
| Nickel                                | 4.1 mg/l as Ni  | 1.8 mg/l as Ni       |
| Chromium                              | 7.0 mg/l as Total Cr  | 2.5 mg/l as Total Cr |
| Cyanide, T.                           | 0.8 mg/l as CN  | 0.23 mg/l as CN      |
| Zinc                                  | 4.2 mg/l as Zn  | 1.8 mg/l as Zn       |
| Cadmium                               | 1.2 mg/l as Cd  | 0.5 mg/l as Cd       |
| Lead                                  | 0.6 mg/l as Pb  | 0.3 mg/l as Pb       |
| Aluminum                              | 5.0 mg/l as Al  | —                    |
| Silver                                | 1.2 mg/l as Ag  | 0.5 mg/l as Ag       |
| Phenols                               | 150 ug/l as C <sub>6</sub> H <sub>5</sub> OH by 4 AAP method or 200 ug/l total by approved GC methodology |                      |
| Total chrome, copper, nickel and zinc | 10.5 mg/l   | 5.0 mg/l             |
| Nuclear                               | As per state and national regulations   |                      |

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- i. Temperature below 32 degrees Fahrenheit (zero degrees Celsius) or above 150 degrees Fahrenheit (65.6 degrees Celsius).
  - j. Material in sufficient amounts which may cause or do cause excessive coloration or light absorbency, including, but not limited to, dye wastes and vegetable tanning solutions.
  - k. An insoluble substance retained by a standard no. 8 sieve or having any dimension greater than one-half inch (1.27 cm).
  - l. Insoluble substances having a specific gravity greater than 2.65.
  - m. Improperly shredded garbage.
  - n. Sludge which results from a treatment process, unless the county director has determined that it is amenable to treatment by the POTW without application of unusual means or expense. Septic tank sludge will be accepted from licensed operators when delivered to designated disposal sites.

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- o. Any stormwater, surface water, groundwater, roof runoff, footing drainage or non-contact cooling waters.
- p. The following toxic pollutants:
  - 1. Those pollutants listed pursuant to section 307(a)(1) of the Act;
  - 2. Those pollutants listed on the current critical materials register prepared by the state; and
  - 3. Those pollutants specifically identified as a toxic pollutant by amendment to this article.

(Code 1989, § 2.62)

#### **Sec. 82-224. Effect of future state and federal standards.**

Future conditions imposed on the county by jurisdictional government agencies may require subsequent amendment of this article. Where federal or state promulgated pretreatment standards require limits on parameters not covered by this article or limits more stringent than those specified in this article, the state or federal limits shall have precedence and take effect with respect to the applicable user on the later of:

- (1) Their promulgation date; or
- (2) The date specified for compliance with such standards.

(Code 1989, § 2.63)

#### **Sec. 82-225. Wastewater analyses.**

- (a) All the specific conditions and quantities set forth in this division shall apply at the point where sewage is discharged or caused to be discharged into a public sewer or the POTW (whichever is reached first), and required pretreatment shall be effected before such point is reached.
- (b) All measurements, tests, and analyses of the characteristics of sewage to which reference is made in this article shall be determined in accordance with the current edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, the most current American Society for Testing Materials (ASTM) and EPA-approved procedures contained in 40 CFR part 136, or any validated methods from recognized authority in cases where the procedures referenced in this subsection are not available or do not apply to the characteristic involved.
- (c) Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the collection system and the POTW and to determine potential interference. The county will determine the method of sampling to be used in accordance with applicable federal regulations.

(Code 1989, § 2.64)

#### **Sec. 82-226. Acceptance of restricted waste.**

- (a) If any sewage or water described in section 82-223(6)p is discharged or is proposed for discharge to the public sewers or the POTW which exceeds the limitations enumerated in sections 82-223 and 82-224, the DPW board may, by order, take the following actions:
  - (1) Prohibit the discharge to the public sewer or the POTW; or
  - (2) Temporarily permit the discharge to the public sewer or the POTW subject to any reasonable conditions that the DPW board may recommend based on its review of such factors as quantity of the discharge in relation to flows and velocities in the sewers, materials of construction of

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sewers, nature of the treatment process, capacity of the treatment works, degree of treatability of the discharge, and any other pertinent factors; or

- (3) Require pretreatment, in accordance with section 82-230; or
- (4) Require control over the quality, quantities and rates of discharge to the public sewer or the POTW; or

In all cases, the DPW board may require payment to cover any additional costs it may incur in connection with inspecting, sampling, testing, and determining the treatability of the sewage not covered by existing charges and the industrial surveillance fee outlined in this article.

- (b) When the pretreatment of sewage or flow equalization is required under subsection (a)(3) of this section, the design of the equipment shall be subject to the review by the county director and subject to the requirements of all applicable codes, ordinances, and laws. Where sewage pretreatment or flow equalization facilities are provided, they shall be continuously maintained for satisfactory and effective operation by the user, at its expense, in order to meet applicable pretreatment requirements.

(Code 1989, § 2.65)

#### **Sec. 82-227. Authority of inspectors; protection of property owner during inspections.**

*(a) Authority of inspectors.*

- (1) Authorized representatives of the county exhibiting proper credentials and identification shall be permitted at all reasonable times to enter all users' properties and the property of municipalities for the purpose of inspection, observation, measurement, sampling, and testing in connection with the administration of and in accordance with the provisions of this article. The representatives shall have no authority to inquire into any processes, including metallurgical, chemical, oil, refining, ceramic, paper, or other industries, beyond that point having a direct bearing on the kind and source of discharge to the public sewer or the POTW.
- (2) Authorized representatives of the county exhibiting proper credentials and identification shall be permitted to enter all private properties through which the county or local municipality holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the public sewer or POTW lying within the easement. All entry and subsequent work, if any, on the easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

- (b) *Protection of property owner.* While on the property of the user as provided in subsection (a) of this section, the authorized representatives of the county shall observe all reasonable safety rules applicable to the premises established by the user, and the user shall be held harmless for injury or death to the county employees, and the county shall further indemnify the user against loss or damage to its property by county employees and against liability claims and demands for personal injury or property damage asserted against the user and growing out of such activity, except to the extent caused by negligent failure of the user to maintain safe conditions.

- (c) *State and federal inspections.* Inspection by state or federal representatives pursuant to law shall not relieve a user from inspection by county representatives and inspection by the county representatives shall not relieve any user from compliance with lawful inspection by state and federal representatives.

(Code 1989, §§ 2.66—2.68)

#### **Sec. 82-228. Monitoring and sampling.**

- (a) *Sampling devices.* The county director may require a user to install a suitable control structure and necessary measuring and sampling devices to facilitate the observation, sampling and measurement of the quantity, composition and concentrations of discharges to the public sewer or the POTW. Such structure and devices shall be constructed and installed at the user's expense in accordance with



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plans submitted to the county director, and shall be maintained by the user so as to be safe and accessible during all reasonable times.

- (b) *Removal of samples and data.* The county director or his authorized representative shall have the right to take and remove samples of sewage discharged into the public sewer or POTW and make copies of other data and materials concerning such discharge inspected during an entry upon the user's property. At the written request of such user, split samples will be provided.
- (c) *Authority to require submission of samples.* The county director may require any user to submit one or more representative samples of the sewage discharged or which it proposes to discharge into the public sewer or POTW.
- (d) *Failure to permit access or removal of samples and other data.* If a user shall refuse to permit access to an authorized county representative or permit such representative to obtain, take and remove samples and make copies of other data pursuant to subsection (b) of this section, the county shall have the right to:
  - (1) Order the termination of the discharge of sewage to the public sewer or the POTW.
  - (2) Order the user to permit access within a time certain.
  - (3) Issue a citation for a violation of this article.
- (e) *New installations of pretreatment facilities.*
  - (1) *Notification of director.* The user or its authorized agent shall notify the county director in writing after the completion of a new installation of pretreatment facilities of the time it intends to commence operation thereof. Where applicable, the user shall notify the county director of the agreed-upon time and the person who will conduct the tests required to be performed. Where applicable, the pretreatment facilities shall not be placed in regular operation until such tests have been conducted.
  - (2) *Tests by user.* A representative of the county shall be permitted to witness the tests upon prior written request. The cost of tests shall be paid by the user of the installation.

(Code 1989, §§ 2.69—2.73)

#### **Sec. 82-229. Reporting.**

- (a) *Industrial surveillance reports.*
  - (1) *Order to submit reports.* The county director, by written order, may require any nondomestic user of the public sewer and POTW to submit periodic reports on forms provided by the county, which shall include known information on the quality and quantity of sewage introduced into the public sewer and POTW, together with an inventory of known intermediate end-product and byproduct chemicals present or likely to be present in sewage discharged or to be discharged to the public sewers and POTW. The report shall include the volume, loadings and concentration of constituents, and be related to effluent standards as shall be required by the county director. The county director may also require additional information from such users as to materials or substances which may cause interference.
  - (2) *Reports required for certain users.* The county director shall notify forthwith each major user known to discharge organic chemicals and metals into the county system that it is required to file industrial surveillance reports.
  - (3) *Initial report.* Each nondomestic user which has been notified of its obligation to file industrial surveillance reports shall file an initial report within 60 days from the date such notice is served upon the user.
  - (4) *Monthly reports.* Each nondomestic user so notified by the county director may be required to file monthly reports within 15 days from the last day of the preceding month.
  - (5) *Quarterly reports.* Each user required to submit quarterly reports shall submit the reports on January 31, April 30, July 31, and October 31 of each year for the quarter ending on the last day of the preceding month.

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- (6) *Annual reports.* Annual reports shall be submitted on or before April 1 of each year, for the preceding calendar year.
- (7) *Signature on reports.* The reports referred to in this article shall be signed by an authorized representative designated by the nondomestic user. An authorized representative may be:
  - a. If a corporation, a principal executive officer of at least the level of vice-president;
  - b. If a partnership or proprietor, a general partner or the sole proprietor; or
  - c. In any case, a person responsible for the overall operation of the facility from which the discharge originates.
- (b) *Waivers.* After filing of the initial report required pursuant to this section, the county director may waive other periodic reports; provided, however, that if the character, nature or general composition of the discharge from the nondomestic user is substantially altered or changed from that contained in the original report, such user shall notify the county director of such change prior to such discharge or as soon as reasonably possible after becoming aware that such alteration or change has occurred or is likely to occur, and file a revised report containing all of the information set forth in subsection (a) of this section.
- (c) *Reports of emergency or accidental discharges.*
  - (1) *Required.* All nondomestic users shall report to the county director, as soon as reasonably possible, any discharges of sewage which are known to exceed the limits established by this article.
  - (2) *Advance notice of discharge.* Such notice shall be given in advance whenever reasonably possible and contain available information regarding the intended or accidental discharge, volume, duration, constituents, loading and concentrations and such other information as may be necessary to determine whether such discharge is compatible, is incompatible, is prohibited, or may cause interference.
- (d) *Notice to users affected by FCPS.* The county director shall notify all nondomestic users that might be subject to FCPS of such fact and of any applicable requirements under sections 204(b) and 405 of the Act and sections 3001, 3004 and 4004 of the Solid Waste Disposal Act.
- (e) *Reports by users subject to FCPS.* Within 180 days after the promulgation of a FCPS, existing nondomestic users subject to such FCPS which currently discharge or are scheduled to discharge into the public sewer or the POTW shall submit the reports required by 40 CFR 403.12(b), as amended. Within 90 days following the date for final compliance with applicable FCPS or, in the case of a new source, following commencement of the introduction of sewage into the POTW, any nondomestic user subject to a FCPS shall submit the reports required by 40 CFR 403.12(4), as amended. In addition, any nondomestic user subject to a FCPS, after the compliance date of such FCPS, or, in the case of a new source, after commencement of the discharge into the public sewer or POTW, shall submit the periodic reports required by 40 CFR 403.12(e), as amended.
- (f) *Reports by DPW board regarding FCPS.* The DPW board shall submit the reports required by 40 CFR 403.12(h), (i) and (j), as amended.
- (g) *Maintenance of records regarding FCPS.* Any nondomestic user and the DPW board subject to the reporting requirements in subsections (e) and (f) of this section shall maintain records of all information in accordance with and resulting from any monitoring required by 40 CFR 403.12, as amended. Such records shall be retained by such user or the DPW board, as the case may be, for at least three years.
- (h) *Falsification.* Any person who knowingly makes a false statement, representation or certification on any application, record, report, plan or other document filed with the county director or who falsifies or knowingly renders inaccurate any monitoring device or method required under this article shall be deemed to have violated this article.

(Code 1989, §§ 2.74—2.80.1)

#### **Sec. 82-230. Pretreatment.**

- (a) *Generally.*

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- (1) If a user discharges or proposes to discharge sewage to the public sewers or the POTW which is prohibited by this article, the county director may take any or all of the following steps:
  - a. Issue an order pursuant to section 82-196.
  - b. Impose surcharges as specified in section 82-231.
- (2) The obligations of a user under subsections (b) and (c) of this section, and any order concerning such obligations, shall be subject to the terms of subsection (d) of this section.
- (b) *Plan.* Any user subject to a final order to pretreat shall prepare a plan to effect and achieve the pretreatment of its sewage so that the sewage shall comply with its final order. The plan shall be prepared in accordance with good engineering practice and shall state whether construction is necessary, as well as identify the measures which may be implemented without necessitating construction. The plan shall contain a schedule of compliance for the completion of each of the various phases necessary to implement full pretreatment, which schedule shall be approved by an order of the county director.
- (c) *Compliance.*
  - (1) *Schedule of compliance.* The schedule of compliance shall consist of one or more remedial measures, including enforceable timetables for a sequence of actions or operations leading to compliance with an effluent standard or other limitation, prohibition or standard.
  - (2) *Steps and phases.*
    - a. The following steps or phases shall be included in the schedule of compliance, where applicable and appropriate:
      1. Retention of a qualified engineer and/or consultant.
      2. Obtaining any engineering or scientific investigations or surveys deemed necessary.
      3. Preparation and submission of a preliminary plan to achieve pretreatment.
      4. Preparation of plans and specifications, working drawings or other engineering or architectural documents which may be necessary to effect pretreatment.
    - b. A time shall be established to let any contract necessary for any construction.
    - c. Completion times shall be established for any construction necessary.
    - d. A time limit shall be established to complete full pretreatment pursuant to the final order.
    - e. If a phase or unit of construction or implementation may be effected independently of another phase or unit, separate timetables shall be established for such phase or unit.
  - (3) *Amendment of order.* The order shall be subject to amendment, change or revocation, provided notice of such action shall be served upon the user in the same manner as in the original order and subject to the same procedure for review and appeal.
  - (4) *Modification of order.* If a nondomestic user subject to an order anticipates that it will be unable to comply with the schedule of compliance, or any portion thereof, for the completion of a specific step or phase, such nondomestic user shall notify the county director as soon as it determines it is unable to comply. Such nondomestic user shall state the reasons therefor and submit a request for an extension of time or modification or amendment of such order together with supporting documents or data. If the user's inability to comply is due to factors beyond the reasonable control of the user, then the failure to comply shall not be a violation of the order and the schedule of compliance shall be adjusted forward in time to account for such factors.
- (d) *Applicability of FCPS.*
  - (1) *Certification regarding inclusion in standard.* If a FCPS is promulgated for a subcategory under which a user believes itself to be included, the user or the county director may request, within 30 days after the promulgation date, of the appropriate state or federal official a written certification to the effect that the user does or does not fall within that particular subcategory. Such request shall be made and reviewed in accordance with the procedures set forth in 40 CFR 403.6(a), as amended.

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- (2) *Compliance date.* A user to which a promulgated FCPS applies shall achieve compliance with such standard within the time period provided for in 40 CFR 403.6(b), as amended, and 40 CFR 403.7, whichever is later.
- (3) *Revision of standards.*
  - a. *Authorized.* The DPW board may, on its own, and will, if requested by a user, revise discharge limits for specific pollutants covered in a FCPS consistent with 40 CFR 403.7, as amended, and consistent with this article. The preceding sentence shall not apply if the requirements of 40 CFR 403.7 for such revision cannot be met or the discharge pursuant to such revision would cause interference.
  - b. *Conditional revision.* Whether or not the DPW board has a pretreatment program approved in accordance with 40 CFR 403.8, 403.9 and 403.11, as amended, the DPW board may, on its own, and will, if requested by a user, conditionally revise the discharge limits for specific pollutants consistent with 40 CFR 403.7, as amended, and consistent with this article. The preceding sentence shall not apply if the requirements of 40 CFR 403.7 for such revision cannot be met or the discharge pursuant to such revision would cause interference.
  - c. *Provisional revision.* With respect to pollutants which are not currently being discharged, and whether or not the DPW board has a pretreatment program approved in accordance with 40 CFR 403.8, 403.9 and 403.11, as amended, the DPW board may, on its own, and will, if requested by a user, provisionally revise the applicable FCPS prior to initial discharge of the pollutant consistent with 40 CFR 403.7, as amended, and consistent with this article. The preceding sentence shall not apply if the requirements of 40 CFR 403.7 for such revision cannot be met or the discharge pursuant to such revision would cause interference.
  - d. *Preparation of information in support of revision.* In connection with any revision described in this subsection (3), the DPW board, in accordance with subsection (c) of this section, shall prepare and submit such data, reports, certifications, pretreatment programs and other information and shall establish such compliance schedules with users as are required by 40 CFR 403, as amended, to support such revisions. Any user with respect to whom such revisions are made shall accept compliance schedules established in accordance with subsection (c) of this section by the DPW board and shall submit to the DPW board such data, reports and other information required to be submitted by the user to the DPW board or accepted by the user by 40 CFR 403, as amended, to support such revisions. If the request for such revision was initiated by the user or a category of users then such user or users shall reimburse the DPW board for the reasonable costs incurred and expenditures made by the DPW board in connection with the first sentence of this subsection d (exclusive of the pretreatment program). Such costs and expenditures shall not include amounts expended by the DPW board in connection with such data, reports, certifications and other information which are required by sections 82-227, 82-228 and 82-229, or the county's NPDES permits, or under any applicable law or regulation, whether or not such revision is made. The county director may request a deposit from such users to cover the estimated costs. Nothing shall prevent a user from voluntarily providing additional information, reimbursements and support to the DPW board in connection with any revision.
- (4) *Variances.* Any user or interested person or the U.S. EPA ("requestor") may request a variance (based upon fundamentally different factors) from the limits specified in a FCPS by submitting a written request to the state director. Such requests are to be submitted within the time and shall include the information required by 40 CFR 403.13, as amended. If a variance is granted, then the terms of the variance shall apply to the affected user.
- (5) *Notification to municipality of revision or variance.* If a revision is made or applied for or a variance request is made, the DPW board in the case of a revision, and the requestor in the case of a variance, shall notify the municipality in which users are located who are, or whose discharge is, the subject to the revision or variance that the revision has been made or applied for or that a variance request has been made and the proposed effective date thereof, where applicable.
- (6) *Publication of names of users having significant violations.* In compliance with the public participation requirements of 40 CFR part 25, in the enforcement of national pretreatment standards as specified in 40 CFR 403.8, the director shall provide public notification, in the

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largest daily newspaper published in the municipality in which the POTW is located, of industrial users which during the previous 12 months were significantly violating applicable pretreatment standards or other pretreatment requirements. For the purpose of this subsection, a significant violation is a violation which remains uncorrected 45 days after notification of noncompliance, which is part of a pattern of noncompliance over a 12-month period, which involves a failure to accurately report noncompliance, or which resulted in the POTW exercising its emergency authority under 40 CFR 403.8(F)(1)(IV)(B).

(Code 1989, §§ 2.87—2.90)

#### **Sec. 82-231. Surcharges.**

- (a) *Generally.* Users shall be subject to imposition of surcharges as provided by this section for exceeding:
- (1) The limitations established by section 82-223(1) through (5); or
  - (2) The specific criteria limitations identified in section 82-223(6), or the limits contained in an applicable pretreatment order issued pursuant to this article, to an extent which would require additional cost of treatment by the POTW in order to prevent:
    - a. Interference (present or future).
    - b. A substantial detrimental effect upon the public health or welfare, a substantial detrimental effect upon the environment, or a substantial detrimental effect upon the physical structure of the POTW.
- (b) *Liability.* Any such user shall be liable for the imposition of a surcharge to reimburse the county for any incremental costs or expenses (direct or indirect) it may incur in handling or treating such wastes (or which may be imposed upon the county) as a result of exceeding such limits.
- (c) *Determination.* The county director shall calculate the amount of the surcharge to be assessed against such user.
- (d) *Criteria.* The amount of the surcharge may be based upon and include the following:
- (1) The volume of the discharge;
  - (2) The length of time such discharge occurred;
  - (3) The composition of such discharge;
  - (4) The nature, extent and degree of success the county may achieve in minimizing or mitigating the effect of such discharge;
  - (5) The toxicity, degradability, treatability and dispersal characteristics of such discharges;
  - (6) Schedule A set forth in subsection (e) of this section; and
  - (7) Such other factors as the director deems appropriate under the circumstances.
- (e) *Schedule of surcharges.*

#### **SCHEDULE A**

- (1) *Surcharge for BOD.* Surcharge provisions for five-day biochemical oxygen demand are hereby established. A contractee or party served by a contractee may discharge wastewater containing BOD concentrations in excess of 250 mg/l but not to exceed 400 mg/l into the system under the following provisions:
  - a. The number of pounds of BOD in excess of 250 mg/l will be calculated by the following equation:

$$\text{BOD} = Q \times 8.345 (Y - 250)$$

In this equation, "Q" is the total million gallons of wastewater discharged during the billing period by the contractee or such party, and "Y" is the average BOD concentration of the wastewater of the contractee or such party during the billing period.

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- b. The surcharge to the contractee or such party will be at the rate per pound of BOD as set forth in the annual fee resolution adopted by the city council.
- (2) *Surcharge for suspended solids.* Surcharge provisions for suspended solids (SS) are hereby established. A contractee or party served by a contractee may discharge wastewater containing suspended solids concentrations in excess of 250 mg/l but not to exceed 750 mg/l into the system under the following provisions:
  - a. The number of pounds of suspended solids in excess of 250 mg/l will be calculated by the following equation:
$$SS = Q \times 8.345 (M - 250)$$

In this equation, "Q" is the total million gallons of wastewater discharged during the billing period by the contractee or such party, and "M" is the average SS concentration of the wastewater of the contractee or such party during the billing period.
  - b. The surcharge to the contractee or such party will be at the rate per pound of SS as set forth in the annual fee resolution adopted by the city council.

(Code 1989, §§ 2.97—2.100)