

**ADDENDUM TO LEGISLATOR REQUEST FOR ATTORNEY GENERAL
INVESTIGATION**

Insert 1¹

The Specific Question Addressed

Are the City of Phoenix (“**City**”) and City officials and employees acting on its behalf (“**City Personnel**”) violating state law or the Arizona constitution (i) by demanding and receiving from Paradise Valley (“**PV**”) residents sewer rates and charges which as compared to the average rates and charges it demands and receives from Phoenix residents are excessive, discriminatory, unjust, unreasonable, prohibited and unlawful, and (ii) by related conduct?

¹ Throughout, unless otherwise noted bold italics have been added. As used herein the term “include” and similar terms are not limiting.

Insert 2

Specific Ordinances and Other Official Actions Taken by the City

City Code Provisions Involved:

The City’s sewer rates and charges and many of its related acts are based on and are purportedly being taken pursuant to provisions of the Phoenix City Code (“PCC”), including Chapters 28 and 35. As applicable to single family residences, those provisions include the following provisions of Chapter 28 and 37 (bold underlining added):

28-39 Sewer service rates and charges within and without the City.

(a) There *shall* be charged the following monthly service rate or charge for customers receiving City of Phoenix sewer service *inside* the limits of the City of Phoenix:

1. **Residential Users:** Rate per hundred cubic feet of *sewage discharged*.

<i>USER CATEGORY</i>	<i>Sewer User Rate March 1, 2016, to February 28, 2017</i>	<i>Sewer Other Rate March 1, 2016, to February 28, 2017</i>	<i>Total Sewer Service Rate March 1, 2016, to February 28, 2017</i>
Single-Family Residence	\$0.8359	\$1.5922	\$2.4281
<i>USER CATEGORY</i>	<i>Sewer User Rate March 1, 2017, to February 28, 2018</i>	<i>Sewer Other Rate March 1, 2017, to February 28, 2018</i>	<i>Total Sewer Service Rate March 1, 2017, to February 28, 2018</i>
Single-Family Residence	\$0.8708	\$1.6026	\$2.4734

(f) All customers served directly by the City and *located outside the City limits* shall pay at a rate of one and one-half times the rate for the same classification of service inside the City. In determining the amount, the Finance Director *shall charge these customers the same user rates as customers inside the City and will add to this amount, as an "other charge," an amount sufficient to make the total charge*

payable by such customers equal to one and one-half times the amount paid for the same classification in the City.

28-34 Method of developing sewer service charges.

The user charge portion of the total sewer service charge shall be developed by the following methodology.

(a) The following formulas shall be used to develop the various elements of the user charge portion of the sewer service charge.

(1) A treatment plant charge (T) will be made to all customers *on the basis of flow and strength of sewage discharged....*

28-35 Determination of sewage quantity.

(a) Calculation of sewage flow shall be *based upon* the following proportion of *metered water consumption* each year.

(1) Eighty percent of the average monthly water billed during the *preceding January, February and March* multiplied by the SFSF described in section 28-35(a)(8) *shall represent sewage flow for single-family residential customers.*

(2) *If* the Director determines that adequate water meter information is not available for billing a residential customer as described above, then the customer *will be charged the average monthly billing for that user class.*

(8) Estimated sewage flow for all customers other than industrial customers will be further adjusted by a sewer flow stabilization factor (SFSF). The SFSF is a factor that adjusts the current billed sewer flows (from the *preceding January, February and March water consumption or monthly water consumption*) to reflect sewer flow used to develop the sewer rates. The SFSF is calculated as follows:

$$\text{SFSF} = \frac{\text{Billed water consumption per account other than industrial customers used for sewer rates}}{\text{Current billed sewer flow per account from water consumption other than industrial customers}}$$

(c) All *users for which the water supply is from other suppliers of water may furnish to the Director either a certified meter reading of water delivered, or a copy of the billings from the water supplier.* The Director shall have the exclusive

authority to determine the adequacy of this information and request additional documentation or tests *if* he finds the information supplied inadequate. If the Director finds the information adequate, the user's charges will be calculated and the same conditions will apply as if the City were the supplier of water to the user.

(d) *Upon approval* of the Director, any individual user *may, at his own expense and subject to the regulations of the Department, install a separate meter in order to determine the quantity of water actually entering the sewer system and future sewer charges shall be limited to that water actually entering the sewer system* as so determined by the Director.

(e) If within sixty days of a new sewer charge being established, a customer files *a written complaint with the Director alleging that a significant portion of his water use does not enter the sewer system, the Director, in accordance with written appeals procedure, will provide an opportunity for the customer to present his supporting documentation* to an employee designated by the Director to hear complaints.

(f) The Director shall have the authority to investigate and evaluate customer complaints and appeals from billing decisions of his subordinates and may correct such billing to reflect what in his opinion the correct billing should be, where he finds that a meter has been misread or some other obvious billing error has occurred. *If the Director determines that a significant amount of water was used during the winter months for lawns, shrubbery or other non-sewer purposes, he shall have the authority to make a corresponding reduction in the sewer billing on subsequent billings only.*

28-41 Payment of bills and charges.

(c) All rates and service charges are due and payable when rendered. Payment must be made no later than the due date printed on the bill. *If payment is not received by the due date the account is considered delinquent and subject to a late fee of three percent per month assessed on the delinquent amount. The next monthly billing invoice will indicate the past due amount, all late fees, and the current amount due.* In addition to late fees a delinquent account is subject to having the water services discontinued if the account remains delinquent. A final billing notice of non-payment will be mailed giving the date that the water service will be discontinued. If the total amount identified in the final billing notice is not paid prior to the scheduled disconnection date, the water service will be turned off to the premises. No further notice will be given to the customer. A turnoff fee will be assessed to the customer's account for discontinuance of service. The turnoff fee, in addition to all amounts due and owing must be paid before restoring service. An account may also become

delinquent and subject to disconnection for nonpayment of return check amounts and service charges. ***If a customer disputes the amount of the bill or protests a proposed termination of service as unjustified, the customer may present objections by following the procedures set forth in Phoenix City Code Section 37-95.***

37-95 Administrative hearing.

(a) A customer who disputes the accuracy of a Water Services Department billing ***must first present a written complaint to a Water Services Department customer services representative.*** This complaint must be received by the customer services representative no later than sixty days after the end of the billing period in dispute. The customer services representative shall initially investigate the complaint and mail to the customer his decision on the complaint.

(b) ***If*** an objection to the decision of the customer services representative is not filed within thirty days following the day upon which the decision of the customer services representative is mailed to the customer, ***the decision of the customer services representative shall be final and conclusive as between the customer and the City*** and the customer shall have forfeited any right for a further hearing ***and the amount owing shall become immediately due and payable.***

(c) ***A customer*** who objects to the decision of the customer services representative ***may obtain a review of the customer services representative's decision if the customer files his objections in writing with the City Auditor Department no later than thirty days following the day upon which the decision of the Customer Services Representative was mailed to the customer.*** The written objection shall include the following:

- i. Statement of the amount under protest;
- ii. Statement of the reason why the decision was incorrect and should be adjusted; and
- iii. Request for a hearing if one is desired.

If a hearing is not requested, a decision will be made on the protest based on the written evidence submitted.

(d) The protest ***shall be assigned to and considered by a hearing officer permanently assigned to such position within the office of the City Auditor, or a person ("hearing officer") designated by the City Auditor.*** Such hearing officer or designee shall in no event be an employee of the Water Services Department.

(e) The hearing officer shall provide to the Water Services Department a copy of the customer's protest and shall request from the Water Services Department a response to the issues raised. The Water Services Department shall submit to the hearing officer, and mail to the customer, a written response to the hearing officer's request within thirty days of receipt of such request.

(g) A hearing, if requested, shall be scheduled as soon as practicable after the response in subsection (e) is submitted. The conduct of the hearing will be in accordance with rules and procedures established by the City Auditor. Hearings shall be conducted informally and the rules of evidence shall not apply, except that ***the decision of the hearing officer shall be made solely upon substantial and reliable evidence.*** The customer shall have the opportunity to appear with witnesses and counsel to present information on behalf of the customer. All expenses incurred in the hearing, including counsel fees, witness fees, mileage, reproduction of documents, and other similar costs, shall be borne by the party who incurred them.

(h) After the hearing on the matter, the hearing officer shall within thirty calendar days, make a written determination on the evidence presented. The determination shall consist of findings of fact and the disposition of the dispute.

(i) ***The hearing officer shall be empowered to make a final decision as to the validity of the customer's complaint.*** If the hearing officer determines the customer's dispute to be valid, the officer shall be empowered to make an appropriate adjustment to the customer's bill. ***The determination of the hearing officer shall be final and conclusive between the City and the customer*** as to the dispute submitted for determination. ***The customer's water service shall not be terminated for failure to pay the amount in dispute, until the hearing officer has made his written determination as provided in subparagraph (h).*** If the hearing officer determines that an amount is due from the customer to the City, the amount ***shall be immediately due and payable upon issuance of the written determination*** provided in subparagraph (h).

Insert 3

Specific Conflicting Arizona Statutes and Constitutional Provisions

The City and/or City officials and employees acting on its behalf (“**City Personnel**”) are or may be violating the following conflicting state laws and provisions of the Arizona constitution (bold underlining added):

I. Arizona Constitution:

Section 2 (Political power; purpose of government): All political power is inherent in the people, and *governments derive their just powers from the consent of the governed*, and are *established to protect and maintain individual rights*.

Section 3 (Supreme law of the land): *The Constitution of the United States is the supreme law of the land*.

Section 4 (Due process of law): *No person shall be deprived of life, liberty, or property without due process of law*.

Section 8 (Right to privacy): *No person shall be disturbed in his private affairs*, or his home invaded, *without authority of law*.

II. Arizona Sewer Rates and Charges Statutes:

A.R.S. § 9-511.01 (Water and wastewater business; rates; procedures; responsibility for payments), which (in addition to other applicable provisions)

E. *Rates and charges demanded or received* by municipalities for water and wastewater service *shall be just and reasonable*. *Every unjust or unreasonable rate or charge demanded or received by a municipality is prohibited and unlawful*.

G. *For residential property of four or fewer units*, a municipality *shall not require payment of* unpaid water and wastewater *service rates and charges by anyone other than the person who the municipality has contracted with to provide the service*, who physically resides or resided at the property and who receives or received the service. A property owner, an immediate family member of the person who does not reside at the property or any other entity, at its sole discretion, may contract for water and wastewater service with a municipality and shall provide payment.

A.R.S. § 9-511.02.G (Utility user fees; lien enforcement; procedures; payment responsibility; definition)

G. For *residential property of four or fewer units*, a city or town *may not require payment* of unpaid utility user fees *by anyone other than the person who has contracted with the city or town to provide the service*, who physically resides or resided at the property and who receives or received the service. The property owner, an immediate family member of the person who does not reside at the property or any other entity, at their sole discretion, may establish service in their name for utility service with a city or town and shall be responsible for payment.

III. Arizona False Document Recording Statute

A.R.S. § 33-420 (False documents; liability; special action; damages; violation; classification)

A. A person purporting to claim an interest in, or a *lien* or encumbrance against, real property, who causes a document asserting such claim to be recorded in the office of the county recorder, knowing or *having reason to know* that the document is forged, groundless, *contains a material misstatement or false claim or is otherwise invalid* is liable to the owner or beneficial title holder of the real property for the sum of not less than five thousand dollars, or for treble the actual damages caused by the recording, whichever is greater, and reasonable attorney fees and costs of the action.

IV. Arizona Illegal Conduct Statutes

Definitions Pertaining to Statutes Below

A.R.S. § 13-2301 (Definitions), which reads in part:

D. For the purposes of sections 13-2312, 13-2313, 13-2314 and 13-2315, unless the context otherwise requires:

1. "Control", in relation to an enterprise, means the possession of sufficient *means to permit substantial direction over the affairs of an enterprise* and, in relation to property, means to acquire or possess.

2. "*Enterprise*" means *any corporation*, partnership, association, labor union *or other legal entity* or any group of persons associated in fact although not a legal entity.

....

4. "*Racketeering*" means *any act*, including any preparatory or completed offense, that is *chargeable or indictable under the laws of the state or country* in which the act occurred and, if the act occurred in a state or country other than this state, that would be chargeable or indictable under the laws of this state if the act had occurred in this state, and that would be punishable by imprisonment for more than one year under the laws of this state and, if the act occurred in a state or country other than this

state, under the laws of the state or country in which the act occurred, regardless of whether the act is charged or indicted, and the act involves either:

....
(b) *Any of the following acts if committed for financial gain:*

....
(iv) *Forgery.*

(v) *Theft.*

....
(ix) *Extortion.*

....
(xx) *A scheme or artifice to defraud.*

Related Statutes

A.R.S. §13-2002 (Forgery; classification)

A. A person commits forgery if, with intent to defraud, the person:

1. Falsely makes, completes or alters a written instrument; or

....

3. Offers or presents, whether accepted or not, a forged instrument or one that contains false information.

A.R.S. § 13-1802 (Theft; classification; definitions)

A. A person commits theft if, *without lawful authority*, the person knowingly:

....

3. *Obtains* services or *property* of another by means of *any material misrepresentation with intent to deprive* the other person of such property or services;

A.R.S. § 1804 (Theft by extortion; classification)

A. A person commits theft by extortion by knowingly *obtaining or seeking to obtain property* or services by means of *a threat to* do in the future any of the following:

....

7. *Take or withhold action as a public servant or cause a public servant to take or withhold action.*

8. *Cause anyone to part with any property.*

A.R.S. § 13-2310 (Fraudulent schemes and artifices; classification; definition), which reads in part:

A. Any person who, pursuant to *a scheme or artifice to defraud*, knowingly obtains any benefit by *means of false* or fraudulent *pretenses, representations, promises or material omissions* is guilty of a class 2 felony.

A.R.S. § 13-2312 (Illegal control of an enterprise; illegally conducting an enterprise; classification)

B. A person commits illegally conducting an enterprise if such person is *employed by or associated with any enterprise and conducts such enterprise's affairs through racketeering or participates directly or indirectly in the conduct of any enterprise that the person knows is being conducted through racketeering.*

V. Arizona Consumer Fraud Laws:

A.R.S. § 44-1521. Definitions

In this article, unless the context otherwise requires:

....

5. "*Merchandise*" means any objects, wares, goods, *commodities, intangibles*, real estate or *services*, including direct primary care provider plans as defined in section 20-123.

6. "*Person*" means any natural person or the person's legal representative, partnership, *domestic* or foreign *corporation*, any company, trust, *business entity*, or *association*, any agent, *employee*, salesman, partner, *officer*, director, member, stockholder, associate or trustee.

7. "*Sale*" means *any sale*, offer for sale or attempt to sell *any merchandise* for any consideration, including sales, leases and rentals of any real estate subject to any form of deed restriction imposed as part of a previous sale.

A.R.S. § 44-1522. Unlawful practices; intended interpretation of provisions

A. The act, use or employment by any person of *any deception, deceptive or unfair act or practice*, fraud, *false pretense*, false promise, *misrepresentation*, or concealment, suppression or *omission of any material fact* with intent that others rely on such concealment, suppression or omission, *in connection with the sale* or advertisement *of any merchandise* whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be *an unlawful practice*.

Insert 4

Relevant Facts of Which I Am Aware

Although requested to do so, the City has not provided comparative water usage and sewer charge information for 590 of its 927 Paradise Valley (“**PV**”) sewer customer as compared with its Phoenix sewer customers and instead has provided such information regarding only 337 of its PV customers. On average, the City has charged just that 36 % of the City’s PV sewer customers in excess of \$1.1 million more than its Phoenix customers during just the years 2014-15, 2015-16 and 2017. If on average the remaining 64% of the City’s PV customers have been charged at least the same amounts more in comparison with the City’s Phoenix customers, the differential in amounts the City has charged PV residents for those three years would total approximately \$ 3.2 million.

1. In disregard and violation of A.R.S. § 9-511.01’s requirement that sewer “rates and charges” be both “just” and “reasonable” and its declaration that if any “rate or charge” “demanded or received” is either “unjust” or “unreasonable” it is “prohibited and unlawful,” citing the PCC as their authority, and stating that it requires them to do so, City officials and employees (“**City Personnel**”) are and have been:
 - a. charging its PV sewer customers for whom it has provided information requested an average of approximately five times the amount the City is and has been charging its Phoenix sewer customers;
 - b. charging its sewer customers based on a percentage of water usage (including water used outside which does not enter the sewer (“**Outside/Non-Sewer Water Usage**”) instead of just for “sewage discharged” despite PCC 28-39(a)1’s direction that sewer charges “shall” be for “sewage discharged”;
 - c. placing the burden of proof on its PV sewer customers to demonstrate and annually re-demonstrate the amount of their Outside/Non-Sewer Water Usage to the satisfaction of the City’s Water Services Department (“**WSD**”);
 - d. despite such demonstrations by its PV customers, still basing their sewer charges in part on Outside/Non-Sewer Water Usage;
 - e. failing to take into account and reduce its sewer charges to PV sewer customers whose water usages for “sewage discharged” purposes seem high in relation to the number of persons discharging sewage from a particular residence;

- f. demanding and receiving discriminatory surcharges from its PV sewer customers pursuant to PCC 28-39(f) without proof of any “just and reasonable” basis for doing so;
 - g. demanding and receiving discriminatory surcharges from its PV sewer customers pursuant to PCC 28-39(f) which exceed the “amount sufficient” “to make the total charge payable by such customers equal to one and one-half times the amount paid for the same classification in the City”;
 - h. demanding and receiving late charges pursuant to PCC 28-41(c) on amounts which have which have not yet become due and payable pursuant to PCC 37-95(b);
 - i. demanding and receiving late charges from non-resident PV sewer customers without a contract which requires their payment; and
 - j. demanding and receiving late charges based on unpaid prior late charges and thereby compounding them.
2. In disregard and violation of other Arizona statutes and of the rights of PV residents to due process of law and other Arizona constitutional rights afforded them, the City and City Personnel are and have been engaging in conduct related to the imposition of, demands for, receipts of, and collection activities regarding the City’s sewer rates and charges to PV customers, including by its preceding conduct and by:
- a. sending letters to its PV sewer customers who receive their water from EPCOR pursuant to PCC 28-41(c) threatening to cut off their water for failure to pay in full all amounts demanded by the City, including amounts which are being or may be disputed pursuant to PCC 28-39(e) or 37-41(c) and have not therefore become “immediately due and payable”;
 - b. sending such letters despite having acknowledged several years ago that the City has neither the power nor the intention to cut off the water of those PV sewer customers;
 - c. sending some such letters despite PCC 28-41(i) which states: *“The customer’s water service shall not be terminated for failure to pay the amount in dispute, until the hearing officer has made his written determination as provided in subparagraph (h)”*;

- d. without a contract, filing or threatening pursuant to PCC 23-41(c) to file liens against the residences of its PV sewer customers which are not located within the City's territorial limits;
- e. doing so for non-payment of amounts which are disputed, contingent or unliquidated;
- f. failing to warn customers in a manner compliant with due process of the consequences of inaction;
- g. failing to provide customers in a manner compliant with due process of the requirements and guidelines for action by them;
- h. failure to provide customers with review and appeal procedures which comply with due process.
- i. failing to act in good faith regarding its PV sewer customers;
- j. failing to deal fairly with its PV sewer customers;
- k. without a contract, failing to have clean hands regarding its PV sewer customers;
- l. without a contract, failing to do equity regarding its PV sewer customers;
- m. jointly engaging with others regarding one or more of the foregoing matters;
- n. engaging in conduct which violates or may violate other Arizona statutes; and
- o. conspiring with one another regarding one of more of the foregoing matters.

Insert 5:

Relevant Legal Authority of Which I Am Aware

A. General Comments

Even a city must comply with the Arizona constitution and laws. That is particularly true of Arizona laws such as A.R.S. 9-511.01 which expressly regulate conduct by “municipalities.” A municipality, the City is also an “enterprise” acting pursuant to the PCC by and through City Personnel.²

Likewise, entities acting for a governmental entity,³ including City Personnel are not free to conduct themselves in ways that others can’t simply because they are City officials or employees.⁴

The Arizona Attorney General describes his mission as including

To protect the public from consumer fraud.... To provide legal representation in judicial and administrative cases and legal advice and assistance in legislative and rule-making matter to state agencies.

Consumer fraud, as defined by Arizona law, is any deception, unfair act or practice, false statement, false pretense, false promise or misrepresentation

² For purposes of 18 U.S. Code § 1962, a government agency may serve as the enterprise through which a defendant engages in a pattern of racketeering. *See, e.g., United States v. Warner*, 498 F.3d 666, 696-97 (7th Cir. 2007) (“because governmental or public entities fit within the definition of ‘enterprise’ for purposes of RICO, this court has often rejected objections to jury instructions that a governmental entity is an ‘enterprise.’ *See United States v. Hocking*, 860 F.2d 769, 778 (7th Cir.1988) (“In light of our clear precedent, appellant's claim that the district court erred in instructing the jury that the IDOT is an ‘enterprise’ within the reach of § 1962(c) is rejected.”);... We conclude, therefore, that the district court did not err when it accurately informed the jury that the State of Illinois is a legal entity.”)

³ See, for example, <https://www.ftc.gov/news-events/blogs/business-blog/2017/03/debt-collector-governments-made-false-threats>, which is a March 24, 2017 Federal Trade Commission report regarding the FTC’s cessation of a municipal debt collector’s “illegally coerced payments by badgering people with bogus threats” in violation of the FTC Act and the Federal Debt Collection Practices Act.

⁴ Public officials can be held individually liable for actions taken while holding public office or misuse of their public office. *See, e.g., United States v. Warner*, 498 F.3d 666, *supra* (affirming RICO conviction of former Illinois governor based on activities while defendant was serving as Illinois Secretary of State and Governor). Thus, a governmental employee who extorts persons “under color of authority” might be participating in the conduct of the governmental entity’s affairs through a pattern of racketeering activity. *See, United States v. Emond*, 935 F.2d 1511, 1512 (7th Cir. 1991) (affirming RICO conviction of village manager who “used his official position as Streamwood’s village manager to extort money from persons with business before the village government.”). In *Emond*, the Court stated: “When Edward Emond was hired to manage the Village of Streamwood it was an ordinary Illinois municipal corporation. When he left, it was a RICO enterprise.” *Id.*

made by a seller ... of merchandise. In addition, concealment, suppression or failure to disclose a material fact may be consumer fraud if it is done with the intent that others rely on such concealment, suppression or nondisclosure. Merchandise may include any ... services.⁵

In May 2013, Issue 121 of the League of Arizona Cities and Towns' *Connection*, the League's General Counsel warned that a city's "charter has to be consistent, and not in conflict with, the Arizona Constitution or the laws of the state." He wrote:

The only limitation on the powers that can be granted by a charter is that *they cannot be in conflict with either the state Constitution, or state laws adopted by the legislature. The charter laws should be limited to those items of local concern that have not been addressed by the Legislature, or which are not matters of statewide concern....* It has been said that the purpose of allowing cities to become charter cities is:

to render cities independent of state legislation *as to all subjects of strictly municipal concern.*" *City of Tucson v. Walker*, (1943) 60 Ariz. 232, 985 P.2d 1025. Charter cities may exercise all powers authorized by its charter, *except for such exercises inconsistent with the state Constitution or general laws.* In *Luhrs v. City of Phoenix* (1938) 52 Ariz. 438, 83 P.2d 283, it was stated that a charter adopted by a city under the Constitution gives the city freedom from interference by the legislature *in matters of local concern.*

The Arizona Supreme Court's recent decision in *State of Arizona v. City of Tucson*, (August 17, 2017), has confirmed that. Striking down a Tucson gun sale ordinance which conflicted with Arizona law, *the Court termed the pivotal issue to be whether the city ordinance involved a matter "of statewide or purely local interest."* The Court stated: "*This Court has narrowly limited the concept of 'purely municipal affairs,' or 'local interest or concern.'*" The Court cited authority that *a charter city does not have "carte blanche authority or plenary power to adopt any legislation it might desire."* The Court cited a case stating: "The purpose of an Act, promulgated under the State's police power, is to protect the public health, safety or welfare". It stated: "*unlike municipalities, which have 'no inherent police power,' the state has broad police power,*" including "[t]he protection of life, liberty, and property ... in every part, division, and subdivision of the state."

Unsuccessfully, Tucson claimed there was *no evidence that its ordinance "impacts anyone or anything outside of Tucson."* *Phoenix, however, can't claim even that. It contends instead that its sewer fee ordinance is binding on and obligates its non-*

⁵ <https://www.azag.gov/consumer/home>.

resident PV customers, as well as other non-residents; and it threatens to cut off water to and to lien their properties which are not within the City's territorial limits.

B. Violations of A.R.S. § 9-511.01

Pursuant to the PCC, the City and City Personnel are violating A.R.S. § 9-511.01 by demanding and by receiving rates and charges from sewer customers, including PV residents and perhaps other sewer customers whose outdoor (non-sewer) water usage is higher than that of the average Phoenix resident which are both “unjust” and “unreasonable” and by related conduct that is either “unjust” or “unreasonable” and is therefore declared by that statute to be “prohibited and unlawful.”

That statute is of statewide interest and falls well within the State's police power. Sewers are essential to the general public health, safety and welfare of all Arizona residents, not just those who reside in Phoenix. It is not purely a matter of purely local concern for the City to subsidize its sewer charges to its own residents by charging PV residents substantially more than it charges its own residents. PV residents can't vote in Phoenix; and their property is not within its boundaries. The charges to PV customers bear no relationship to the number of residents discharging sewage at the residence or the amount of “sewage discharged” from the residence. The City is instead knowingly and intentionally basing its sewer charges to them in part on water being used outside on large lots which does not enter the City's sewer.

Regardless of whether or under what circumstances the City or City Personnel may engage in conduct which violates one of more other provisions of Arizona law or of the Arizona constitution, that conduct must nevertheless be both “just” and “reasonable” regarding the “rates and charges demanded or received by the City.” Conduct which, if other than by a City or by City Personnel, would violate fair debt collection procedures, anti-racketeering laws or other such laws does not become conduct which is either “fair” or “reasonable” simply because it is that of a city or of city personnel.

C. Other Statutory Violations

As respects PV sewer customers, and likely others, the City's ordinances regarding sewer charges, the City's conduct in both demanding and receiving rates and charges which are unjust and unreasonable, and the City's other conduct regarding its sewer charges and their collection may also violate other Arizona laws, including those set forth in Insert 2.

D. Violations of the Arizona Constitution

In the context of facts which include those set forth in Insert 4, the City and City Personnel have been and are, or may have been and be, violating the following provisions of the Arizona Constitution:

- Section 4 by depriving its PV sewer customers of their property “without due process of law”;
- Section 8 by disturbing its PV customers in their “private affairs ... without authority of law”;
- Section 2 by making demands for payment of the sewer charges it claims to be owed by PV residents which do not “derive” from their “consent”;
- Section 2 by extracting payments from PV residents for the sewer charges it claims to be owed by them which do not “derive” from their “consent”;
- Section 2 by failing to “protect and maintain” and instead violating the “individual rights” of its PV sewer customers by its demands and receipt of payments of the sewer charges it claims they owe and by its related conduct; and
- Section 3 by depriving its PV customers of rights and protections afforded them by the Constitution of the United States, which that section declares to be the “supreme law of the land.”

Due process, both substantive and procedural, is one of our most fundamental rights. Procedural due process is based on the concept of fundamental fairness. An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the consequences of inaction and to afford them a fair opportunity to present their objections. The City’s sewer charge methodology, including its appeal procedures, do not provide that and instead violate each of the above Arizona constitutional provisions.