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9 COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT, ZONE 7
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12
13 COUNTY OF ALAMEDA, RENE C. DAVIDSON COURTHOUSE
14

15 ALAMEDA COUNTY FLOOD CONTROL
16 AND WATER CONSERVATION
17 DISTRICT, ZONE 7,
18

Petitioner and Plaintiff,

v.

CITY OF PLEASANTON,

Respondent and Defendant.

Case # ~~EN~~ C V 061 595

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR BREACH OF
CONTRACT, DECLARATORY RELIEF,
AND FAILURE TO PERFORM
MANDATORY DUTY UNDER GOV.
CODE § 815**

Action Filed:

20 1. Petitioner and Plaintiff Alameda County Flood Control and Water Conservation
21 District, Zone 7 (“Zone 7”) is the wholesale water supplier for several retail water suppliers in
22 Alameda County, including the City of Pleasanton (“City”). Since 1972, Zone 7 has imposed a
23 fee for each new water service connection to its retailers’ water systems. For over 40 years, the
24 City has collected the fee when it issues a permit for a new connection to its system. The City
25 reports the number, size, and capacity of new connections monthly and remits payment to Zone 7.

26 2. However, from 2015 to 2022, and unbeknownst to Zone 7, the City was collecting
27 fees for one size and capacity meter and installing a different size and capacity meter. The
28 resulting under-collection was massive. But, because the payments Zone 7 received from the City

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Deputy Clerk

1 was consistent with the fees for the size and capacity of the meters the City was (erroneously)
2 reporting to Zone 7, Zone 7 did not find out about the undercharges until June 2022. At that time,
3 a whistleblower from City staff alerted Zone 7 that sizes and capacities of the actual meters being
4 installed since 2015 were significantly larger than those being reported to Zone 7 by the City. The
5 underpayment of connection fees for the installation of new meters is estimated to exceed \$18
6 million.

7 3. At the same time that Zone 7 learned about the City's underpayment for new water
8 connections, Zone 7 also learned that starting in 2015, the City upgraded all existing residential
9 and commercial meters—citywide—without paying the fee required for such upgrades. Zone 7 is
10 still seeking further information on the number, size, and capacity of the upgraded meters, but
11 Zone 7 expects that the total fees that the City failed to pay to install the upgraded meters are
12 significant.

PARTIES

4. Petitioner and Plaintiff Zone 7 is a zone of the Alameda County Flood Control and
Water Conservation District, organized and existing under and by virtue of the laws of the State of
California, and is vested by law to enter into contracts and issue ordinances pursuant to the Water
Code Appendix sections 55-5 and 55-6, as applied to Zone 7 through Water Code Appendix
section 55-36 subsections 3 and 4.

19 5. Defendant City of Pleasanton (“City”) is a municipality existing under the laws of
20 the State of California, located in the County of Alameda, California.

21 6. Zone 7 is ignorant of the true names of defendants Does 1 through 20 (“Doe
22 Defendants”), inclusive, and has therefore sued them by the foregoing names which are fictitious,
23 and is informed and believes and thereon alleges, in accordance with Code of Civil Procedure
24 section 474, that the Doe Defendants are legally responsible in some manner for the occurrences
25 herein alleged and legally and proximately caused damages to Zone 7 as hereafter alleged. Zone 7
26 will amend the Complaint when the Doe Defendants’ true names and capacities are ascertained.
27 Each reference in this Petition and Complaint to “Defendants” or a specifically-named defendant
28 refers to all defendants sued under such fictitious names.

1 7. Zone 7 is informed and believes, and on that basis alleges, that at all times
2 mentioned herein, each of the fictitiously named defendants, were agents, servants, or employees
3 of the City, acting within the purpose and scope of such agency, service, and employment, and are
4 responsible for the acts hereinafter alleged.

VENUE AND JURISDICTION

6 8. Venue for this action properly lies in the Alameda County Superior Court under
7 Code of Civil Procedure section 395 subdivision (a), because Zone 7 contracted with the City to
8 perform obligations under the agreement at issue in Alameda County, California, the agreement at
9 issue was entered into in Alameda County, California, and one or more Defendants resides in
10 Alameda County, California.

11 9. Venue for this action properly lies in the Alameda County Superior Court under
12 Code of Civil Procedure section 393, subdivision (b), because the challenged action or omission
13 by the City occurred in Alameda County and the effect of the challenged action or omission by the
14 City has occurred or will occur in Alameda County.

15 10. The Court has subject matter jurisdiction over this action and personal jurisdiction
16 over each of the Defendants under Code of Civil Procedure sections 410.10, 1085, and 1087.

STANDING

18 11. Zone 7 has a beneficial interest in the subject matter of this proceeding because
19 Zone 7 is a party to the written agreement at issue and is responsible for the enforcement of the
20 ordinance at issue and integrated with the written agreement. The City's breach of the written
21 agreement was to Zone 7's financial detriment. Zone 7 has been personally affected by the City's
22 past failures to pay water connection fees pursuant to the written agreement and the ordinance.
23 Zone 7 has no plain, speedy, and adequate remedy in the ordinary course of law in that it will
24 suffer irreparable harm if the fees are not paid.

25 12. The City is a party to the written agreement and has a mandatory and public duty to
26 comply with the District's ordinances and all other applicable laws. In addition, the issues in this
27 action are issues of public right and Zone 7 brings this action in the public interest to enforce the
28 City's public duties.

1 GENERAL ALLEGATIONS

2 13. Zone 7 is a special district established under the 1949 Alameda County Flood
3 Control and Water Conservation District Act (“District Act”, California Water Code Appendix,
4 Chapter 55), and a zone of the Alameda County Flood Control and Water Conservation District
5 (“District”). Zone 7 is governed by a separately elected Board within the constructs of the District
6 Act.

7 14. Zone 7 is the wholesale water supplier to five retailers, including the City of
8 Pleasanton, collectively serving more than 250,000 residents in eastern Alameda County.

9 15. On or around January 18, 1972, the Alameda County Board of Supervisors, sitting
10 as the Board of Directors for the Alameda County Flood Control and Water Conservation District
11 (“District”), adopted Ordinance 72-1 (the “Ordinance”) pursuant to section 12.1 of the District
12 Act.

13 16. In first adopting the Ordinance in 1972, the Board of the Alameda County Flood
14 Control and Water Conservation District found that: “continual improvement to the Zone No. 7
15 water supply system would be for the benefit of Zone No. 7 residents and property owners to meet
16 increasing demands on the water supply system, to enhance the quality of water, to minimize harm
17 from water shortages, to improve operational flexibility of the system, and to improve the
18 reliability of water service, and that the public interest, necessity, convenience and general welfare
19 of the residents and property owners of Zone No. 7 require the institution, construction and
20 maintenance of said improvements.” (Ordinance No. F.C. 72-1, § 1.)

21 17. The Board further found that implementation of these fees were necessary “in order
22 to apportion more fairly the costs of new facilities on the basis of benefits conferred upon the
23 property within the area,” and should therefore “be utilized to accomplish proposed improvement
24 in the water treatment and delivery system.” (*Ibid.*)

25 18. To accomplish those ends, the Ordinance sets a basic charge for new water
26 connections based on a standard meter size and capacity and further provides for variation of that
27 charge for meters of different sizes and capacities.

28 / / /

1 19. The Ordinance further provides that “water connection fee provided for herein, its
2 manner of collection and disposition shall be subject to periodic review and modification at the
3 discretion of the Zone Board.” (Ordinance No. F.C. 72-1, § 7.)

4 20. Under the Ordinance, Zone 7, the Alameda County Building Official, or a City
5 Building Official will collect water connection fees under the schedule adopted by the Zone 7
6 Board and pay the fees to Zone 7. (Ordinance No. F.C. No. 72-1.) Fees collected by a City
7 Building Official under the Ordinance are to be authorized pursuant to an agreement between
8 Zone 7 and the associated city. (*Ibid.*)

9 21. On or around June 13, 1972, Zone 7 and the City entered into an Agreement (the
10 “Agreement”) pursuant to the Ordinance providing for the City’s collection of connection fees and
11 remittance of those charges to Zone 7. A true and correct copy of the Agreement is attached
12 hereto as Exhibit A.

13 22. Section I of the Agreement states: “City agrees to collect said water service
14 connection charge at such time as City issues a building permit or use permit for construction or
15 improvement of properties lying within the boundaries of Zone No. 7 and within the boundaries of
16 City, for which a new water connection will be required.” This obligation applies to both
17 residential and commercial properties within Zone 7’s geographical area.

18 23. For all fees collected, the Agreement provides that City retains 1% as
19 reimbursement for its cost of collecting the fees, and that this amount shall be the final and
20 conclusive costs to Zone 7 for the City’s collection of those charges.

21 24. In 1977, the District amended Section 3 of the Ordinance to add: “The
22 determination of fee factors is based upon the rated safe maximum operating capacities in
23 accordance with the American Water Works Association (AWWA) Standard C700-71 for Cold
24 Water Meters, Displacement Type. Fee factors for meters of special capacities and sizes other
25 than those indicated in the above schedule shall be determined by the Zone.” (Ordinance No. F.C.
26 No. 77-2, § 3.) The Ordinance was again amended in 1986 to set the basic charge for 5/8-inch
27 meters; other sizes would be charged fees in accordance with the fee factor set forth in the
28 Ordinance. (Ordinance No. F.C. No. 86-136, § 3.)

1 25. In 1992, the Ordinance was amended to address technological advances in meter
2 construction, which had resulted in a scenario in which larger meters were capable of supplying
3 substantially more water while being levied fees that were not reflective of that increased impact on
4 system capacity. The Ordinance required that “new fee factors for meters of special capacities and
5 sizes using a method that utilizes the recommended maximum rate for continuous operations shall go
6 into effect” on July 1, 1992. (Ordinance No. O-91-68, § 3.) A true and correct copy of the
7 Ordinance, as amended, is attached hereto as Exhibit B.¹ This applies to meters associated with
8 both residential and commercial properties within Zone 7’s geographical area.

9 26. Section 3 of the Ordinance, as amended, provides: “For increasing the meter size
10 on any existing connection, a charge equal to the product of the basic charge in effect at the time
11 of the initial connection and the difference in the fee factor between the existing and new meter
12 size shall be imposed.” (Ordinance No. O-91-68, § 3.)

13 27. Fees collected through these charges are designated to the Zone 7 Water Facilities
14 Fund. This fund supports the continued operation and capacity-building of the Zone 7 water
15 supply system, with expenditures on items including, but not limited to, construction, engineering,
16 repair, and administration.

17 28. Fees imposed under the Ordinance are reviewed at regular intervals to ensure that
18 the fees imposed represent the reasonable costs of providing service to new or upgraded
19 customers. This review includes a consideration of projected population growth, system demands,
20 and new connections in the Zone 7 service area, and the projected necessary water system
21 expansion projects to meet the needs of future customers.

22 29. In 2002, the Board adopted Resolution No. 02-2450, providing that the water
23 connection fee be updated based on the Engineering News Record Construction Cost Index, or
24 other appropriate index, on a yearly basis or as otherwise warranted. Zone 7’s basic connection
25 fee is based on a standard 5/8-inch meter with ten gallon-per-minute maximum continuous flow
26

27 ¹ All references hereinafter to the Ordinance are to the current version as amended unless
28 otherwise stated.

1 capacity. The fees for larger meters increase proportionately, based on the relative increase in the
 2 meter's capacity. The Ordinance directs that Zone 7 rely on the AWWA Maximum Rate for
 3 Continuous Operation to determine fee factors for those meters.

4 30. The annual fee by size and meter type for commonly used meters from 2015 to
 5 2022 was as follows:

Size	2015	2016	2017	2018	2019	2020	2021	2022
5/8-inch (displacement)	\$ 24,830	\$ 25,320	\$ 27,180	\$ 28,170	\$ 29,070	\$ 29,440	\$ 29,440	\$ 31,910
3/4-inch (displacement)	\$ 37,245	\$ 37,980	\$ 40,770	\$ 42,255	\$ 43,605	\$ 44,160	\$ 44,160	\$ 47,865
1-inch (displacement)	\$ 62,075	\$ 63,300	\$ 67,950	\$ 70,425	\$ 72,675	\$ 73,600	\$ 73,600	\$ 79,775
1 1/2-inch (displacement)	\$ 124,150	\$ 126,600	\$ 135,900	\$ 140,850	\$ 145,350	\$ 147,200	\$ 147,200	\$ 159,550
1 1/2-inch (Omni C2)	\$ 397,280	\$ 405,120	\$ 434,880	\$ 450,720	\$ 465,120	\$ 471,040	\$ 471,040	\$ 510,560
1 1/2-inch (Omni T2)	\$ 397,280	\$ 405,120	\$ 434,880	\$ 450,720	\$ 465,120	\$ 471,040	\$ 471,040	\$ 510,560
2-inch (Omni 50 GPM)	-	-	-	-	-	\$ 147,200	\$ 147,200	\$ 159,550
2-inch (displacement)	\$ 198,640	\$ 202,560	\$ 217,440	\$ 225,360	\$ 232,560	\$ 235,520	\$ 235,520	\$ 255,280
2-inch (Omni 80 GPM)	-	-	-	-	-	-	\$ 235,520	\$ 255,280
2-inch (Muller MVR)	-	\$ 291,180	\$ 312,570	\$ 323,955	\$ 334,305	\$ 338,560	\$ 235,520	\$ 366,965
2-inch (Omni 120 GPM)	-	-	-	-	-	\$ 353,280	\$ 353,280	\$ 382,920
2-inch (Omni C2)	\$ 397,280	\$ 405,120	\$ 434,880	\$ 450,720	\$ 465,120	\$ 471,040	\$ 471,040	\$ 510,560
2-inch (Omni turbo)	\$ 496,600	\$ 506,400	\$ 543,600	\$ 563,400	\$ 581,400	\$ 588,800	\$ 588,800	\$ 638,200

16 31. Zone 7's practice has been to adopt the fee, update the fee table for various meter
 17 sizes and types, and then send that fee table to its retailers. The fee table and subsequent
 18 communications to retailers advise that fees for meters other than those listed above will be
 19 determined based upon the AWWA maximum continuous flow rating for the brand, type, and size
 20 of meter.

21 32. When a retailer notifies Zone 7 that it has begun using a new meter that has not
 22 previously been identified in the schedule, Zone 7 calculates the appropriate fee under the
 23 Ordinance based on the then-current basic connection fee and the AWWA maximum continuous
 24 flow rating for the brand, type, and size of meter. That new meter type is incorporated into
 25 subsequent schedules, based on the appropriate fee factor under the AWWA Standard.

26 33. The Agreement states fees "are to be collected in accordance with District's
 27 Ordinance No. 72-1." The Ordinance in turn states "the water connection charge provided" in the
 28 Ordinance, "its manner of collection and disposition shall be subject to periodic review and

1 modification at the discretion of the Zone Board.” (Ordinance No. O-91-68, § 7.) As such, the
2 City is obligated under the Agreement to update and collect fees pursuant to any of Zone 7’s
3 periodic modifications to the water connection charges.

4 34. Pursuant to the Agreement and integrated Ordinance, the City was also to collect
5 fees from entities increasing or upgrading the size of an existing meter and remit amounts due to
6 Zone 7. Again, this obligation applies to both residential and commercial properties within Zone
7’s geographical area.

8 35. Zone 7 is informed and believes that until 2015, the City charged each meter size
9 based on that updated Ordinance fee schedule at the time the fee was incurred.

10 36. The most recent increase to the basic connection fee was adopted in 2021, pursuant
11 to Resolution No. 21-78. On December 16, 2021, Zone 7 informed the City of this fee increase,
12 which would be effective on January 1, 2022.

13 37. On or about June 14, 2022, City staff informed Zone 7 that the City had been
14 reporting incorrect meter sizes and collecting the incorrect fees since 2015 through June 2022 for
15 all new meters installed on commercial and residential properties.

16 38. On or about June 14, 2022, City staff also informed Zone 7 that the City began
17 upgrading all of its customer’s meters around 2015 or 2016 with larger meters. As part of the
18 upgrade process, the City replaced all existing customers’ 5/8-inch meters with 3/4-inch meters or
19 one-inch meters. The City did not pay any fees for increasing the meter size on existing meters for
20 any commercial or residential properties.

21 39. Zone 7 is still working to ascertain the actual number of new meters installed and
22 the amount of fees that the City failed to collect as part of the upgrade process. Zone 7 is
23 informed and believes, and thereon alleges, that this amount would significantly increase the total
24 damages suffered by Zone 7.

25 40. Upon receiving this information, Zone 7 staff promptly requested that the City
26 provide a complete accounting of all meters installed, including meter size and type and the
27 corresponding connection fees charged from 2015 to 2022. |

28 / / /

1 41. In reviewing the preliminary information provided by City staff, Zone 7
 2 subsequently learned that the City misreported the meter sizes for both residential and commercial
 3 properties for meters on newly permitted properties and upgraded meters on existing properties for
 4 all meter sizes ranging from 5/8-inch to one-inch from 2015 to present.

5 42. Between 2015 and 2022, the difference between the new connection fees and
 6 upgrade connection fees that were collected and paid to Zone 7 and the amounts due under the
 7 Agreement and incorporated Ordinance are substantial. Based on the preliminary information that
 8 Zone 7 has received from the City regarding meter sizes actually installed and those reported to
 9 Zone 7, and assuming that specific meter sizes were exempt fire sprinklers, Zone 7 has
 10 conservatively calculated the City's underpayment of fees as follows:

Year	Fees Collected	Fees Incurred	Underpayment
2015	\$ 8,919,320.00	\$ 10,577,580.00	\$ 1,658,260.00
2016	\$ 3,632,930.00	\$ 3,189,830.00	\$ (443,100.00)
2017	\$ 1,220,520.00	\$ 5,260,680.00	\$ 4,040,160.00
2018	\$ 1,352,160.00	\$ 1,647,945.00	\$ 295,785.00
2019	\$ 3,493,920.00	\$ 10,342,575.00	\$ 6,848,655.00
2020	\$ 1,338,600.00	\$ 4,943,480.00	\$ 3,604,880.00
2021	\$ 814,640.00	\$ 1,004,800.00	\$ 190,160.00
2022	\$ 525,045.00	\$ 2,871,900.00	\$ 2,346,855.00
Total			\$ 18,541,655.00

19 43. The total preliminary estimate of additional collections required based on the
 20 capacities of the meters actually installed from January 2015 to July 2022 is \$18,541,655.

21 44. Zone 7's preliminary estimate only reflects new meter installations; the estimate
 22 does not include meters that were replaced by the City pursuant to its city-wide meter upgrade
 23 project. The upgraded meters were not types that were listed on the existing schedule of fees for
 24 known meters, so the fees for each unlisted meter type should have been based on the "fee factor
 25 for Maximum Rate for Continuous Operation, as defined by AWWA."

26 45. For example, in 2017, the City approved the installation of 28 one-inch ultrasonic
 27 meters with a capacity of 55 gallons per minute. Such meter type is not listed on the Water Fee
 28 Connection Schedule, so the fee for such meter is appropriately based on the fee factor for

1 Maximum Rate for Continuous Operation, as defined by AWWA, which result in a connection fee
2 of \$149,490 per meter. But for each of those meters, the City only collected the new meter
3 connection fee for 5/8-inch displacement meters, with a capacity of ten gallons per minute, and
4 have a corresponding fee of \$27,180 per meter. This resulted in an under-collection by the City of
5 \$3,476,760 for the installation of those 28 meters.

TIMELINESS OF ACTION

7 46. The Agreement and integrated Ordinance required the City to perform a service by
8 collecting and remitting a fee that corresponded to the size of the meter actually installed on a
9 property. Because the connection fees are incurred and must be paid when the City issues a permit
10 or performs an upgrade to a meter, only the City holds the information about what size meter was
11 installed or upgraded, and only the City can correctly calculate and collect the correct connection
12 fee from the property owner.

13 47. The City is the party in the best position to accurately report to Zone 7 what it has
14 done every month for water connections. Zone 7 reasonably relied on the City to accurately report
15 every month what size meters it installed and to collect the associated fee from the property owner
16 and remit it to Zone 7.

17 48. Zone 7 and the City have a four-decade business relationship where the City
18 performed under the Agreement and integrated Ordinance by accurately reporting the correct
19 meter sizes and remitting the appropriate fees without any issues. Based on this approximate 40-
20 year course of conduct between the parties, Zone 7 had every reason to believe that the City would
21 continue to perform accordingly from 2015 through June 2022.

22 49. On June 14, 2022, City staff person Mr. Daniel Repp and Zone 7 employee Mr.
23 Steve Ellis participated in a telephone conversation. During this conversation, Mr. Repp informed
24 Mr. Ellis that City staff had recently discovered that the City had been incorrectly reporting to
25 Zone 7 the size of the meters it had installed and upgraded on commercial and residential
26 properties. Mr. Repp further informed Mr. Ellis that this incorrect reporting dates back to 2015,
27 when the City changed to an automatic metering system. This telephone conversation was the
28 first time Zone 7 became aware that the City's monthly reports were inaccurate and contained

1 misrepresentations about the size of the meters installed and that there was a significant under-
2 collection issue.

3 50. As soon as Zone 7 became aware of these claims on or around June 14, 2022, it
4 asked City staff for a full accounting of the errors and an explanation as to why and how this could
5 have occurred.

6 51. Zone 7 is informed and believes that from 2015 to 2022, the City's monthly reports
7 incorrectly reported smaller connections with a significantly lower fee charged and remitted when,
8 in fact, the City was installing or upgrading larger connections.

9 52. As one example, the City's monthly reports consistently state that the City was
10 installing 5/8-inch meters and showed the City was making appropriate payments for that size
11 meter. Following the June 2022 call from City staff and subsequent supplemental requests for
12 information, Zone 7 discovered that in certain months, the actual meters being installed were one-
13 inch meters that required the City to collect a significantly higher fee.

14 53. The City's monthly reports obscured this discrepancy, and Zone 7 could not detect
15 or correct the City's errors.

16 54. Zone 7 had no way of knowing or discovering that the City had misreported meter
17 sizes to it for seven years, or that it was being consistently underpaid by the City based on those
18 misrepresentations.

19 55. Zone 7 did not, and does not, have the ability, duty, or contractual obligation to
20 police what the City was doing in terms of installing new meter connections, upgrading existing
21 meter connections, the size of the connection, or whether the correct fee was being charged and
22 reported to Zone 7.

23 56. The City has yet to explain how it under-collected over \$18 million in fees for
24 approximately seven years.

25 57. The City has likewise yet to explain why the reports it provided to Zone 7 reported
26 different meters than those actually installed.

27 58. The City has yet to provide any explanation that would otherwise explain the
28 discrepancy between the amounts required by the Ordinance and Agreement for the meters

1 installed and the amounts actually collected by the City during this period.

2 59. The claims at issue in this action arose on or around June 14, 2022. Upon
3 discovering these claims at that time, Zone 7 has taken all requisite steps to preserve its claims and
4 has timely pursued them in this venue after exhaustion of all administrative remedies.

5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES AND COMPLIANCE WITH**
6 **GOVERNMENT CLAIMS ACT**

7 60. Zone 7 has performed or is excused from performing any and all conditions
8 precedent to filing this action. In an abundance of caution and without conceding that the
9 Government Claims Act claim presentation procedures apply to their causes of action alleged
10 below, Zone 7 presented timely claims to the City under Government Code section 900, *et seq.*,
11 and Pleasanton Municipal Code section 1.04.090.

12 61. Zone 7 submitted its claims on November 18, 2022. On December 3, 2022, the
13 City sent a letter to counsel for Zone 7, returning Zone 7's claim on the stated ground that the
14 claim was not presented "within one year of the event(s) or occurrence(s) as required by law."
15 The City's letter did not comply with the claim rejection requirements of Government Code
16 section 913, subdivision (b).

17 62. On May 31, 2023, Zone 7 and the City entered into an agreement that tolled the
18 statute of limitations on all claims referenced in this action for 120 days. The parties agreed to
19 several extensions of the tolling agreement, and the most recent extension expires on February 15,
20 2024. Zone 7 is timely bringing this action prior to the expiration of the most recent extension of
21 the tolling agreement.

22 63. Zone 7's claim was timely because it did not become aware of the potential claim
23 until June 14, 2022, when City staff first informed Zone 7 that the City was charging the incorrect
24 fee for meter sizes and was not reporting accurate meter data in its monthly reports to Zone 7.
25 Zone 7 did not learn that the City had replaced existing meters with higher-capacity meters
26 without paying the required charges until City staff informed Zone 7 on June 14, 2022.

27 64. Although the Agreement between the City and Zone 7 regarding the collection of
28 meter fees provides that the City will provide Zone 7 a statement each month indicating all fee

1 collections made during the previous calendar month, the information provided by the City in its
2 monthly statements was not sufficient to give Zone 7 enough information to discover with
3 reasonable diligence that the City was charging the incorrect amount.

4 **ATTORNEYS' FEES**

5 65. In seeking to enforce the Agreement and compel the City to proceed in a manner
6 according to law, Zone 7 is acting in its capacity as private attorney general in the interest and for
7 the benefit of the public under Code of Civil Procedure section 1021.5, and any other applicable
8 legal theory, to enforce essential rights affecting the public interest. Issuing the relief requested in
9 this Petition will constitute a significant public benefit by requiring the City to carry out its duties
10 under the Agreement and Ordinance.

11 66. Further, Zone 7 brings this action on the basis, among other things, that the City's
12 failure to collect meter fees was not in a manner according to law. The City's conduct in this
13 respect continues to be arbitrary and capricious. Under Government Code section 800, Zone 7 is
14 entitled to reasonable attorneys' fees for bringing this action to redress the City's arbitrary and
15 capricious actions concerning the City's violation of the Agreement and Ordinance.

16 67. Zone 7 has incurred and will continue to incur attorneys' and experts' fees and
17 other costs and expenses due to this proceeding in amounts not yet ascertained, and which
18 amounts are recoverable in this action under all applicable provisions of law, including Code of
19 Civil Procedure sections 1021.5 and Government Code section 800.

20 **FIRST CAUSE OF ACTION**

21 **(Breach of Contract Against the City and Does 1-20)**

22 68. Zone 7 incorporates herein by reference paragraphs 1 through 67 of this Petition
23 and Complaint as though fully set forth herein.

24 69. Zone 7 entered into the Agreement and integrated Ordinance with the City.

25 70. The City breached the Agreement by failing to pay Zone 7 the correct and full
26 amounts due for new meter connections for residential and commercial properties.

27 71. The City also breached the Agreement by failing to pay Zone 7 all amounts due for
28 increasing the meter size and capacity on existing connections for residential and commercial

1 properties.

2 72. Zone 7 has performed and duly completed all obligations it was required to
3 perform, except those obligations it was prevented or excused from performing.

4 73. As a proximate result of the City's actions, Zone 7 has been damaged. Zone 7 will
5 face a significant financial burden as a result of the substantial increase in the potential peak
6 demand on Zone 7's infrastructure caused by the City's failure to collect fees for the correct meter
7 size and capacity and failure to pay the required charge for installing meters with increased
8 capacity.

9 74. Although the full measure of harm caused by the City's breach is not yet known,
10 Zone 7 will demonstrate any quantifiable compensatory damages according to proof at trial.

11 SECOND CAUSE OF ACTION

12 (Declaratory Relief Against the City and Does 1-20)

13 75. Zone 7 incorporates herein by reference Paragraphs 1 through 74 of this Petition
14 and Complaint as though fully set forth herein.

15 76. A dispute and actual controversy has arisen and now exists between Zone 7 and the
16 City regarding the City's duty to pay amounts due under the Agreement and the Ordinance.

17 77. Zone 7 contends that the City must pay Zone 7 all amounts due under the
18 Agreement, including new water connection fees and charges incurred by installing upgraded
19 meters under the Agreement and the Ordinance.

20 78. Zone 7 desires a judicial determination that it is entitled to full payment of amounts
21 due and on all subsequent fees for new and upgraded meters within Zone 7's boundaries under the
22 Agreement and the Ordinance.

23 79. Such a declaration is necessary and appropriate at this time so that Zone 7 may
24 ascertain its rights with respect to the City's obligation to pay Zone 7's fees at present and in the
25 future due to its ongoing relationship under the Agreement and integrated Ordinance.

26 ///

27 ///

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THIRD CAUSE OF ACTION

(Writ of Mandate Against the City and Does 1-20)

80. Zone 7 incorporates herein by reference Paragraphs 1 through 79 of this Petition and Complaint as though fully set forth herein.

81. As a third, separate, and distinct cause of action, Zone 7 petitions this Court for a writ of mandate under California Code of Civil Procedure section 1085 to compel the City to remit the required new and replacement connection fees under the Ordinance.

82. The City has a ministerial duty under the Ordinance to collect and remit payment
9 for new meters and to pay for increasing meter sizes and capacities.

10 83. Zone 7 is beneficially interested in the City's performance of its duty under the
11 Ordinance to collect and remit appropriate fees because the collection of fees consistent with the
12 Agreement and Ordinance is directly related to Zone 7's ability to maintain water infrastructure
13 and make system improvements for the benefit of all users, including the City.

14 84. Zone 7 has no other plain, speedy, or adequate remedy at law to compel the City to
15 pay the fees.

16 85. Zone 7 therefore requests a writ of mandate compelling the City to pay all amounts
17 due under the Ordinance and Agreement.

FOURTH CAUSE OF ACTION

(Failure to Discharge Mandatory Duties—Government Code § 815.6)

20 86. Zone 7 incorporates herein by reference Paragraphs 1 through 85 of this Petition
21 and Complaint as though fully set forth herein.

22 87. The Ordinance is mandatory and requires the City to (1) collect and pay fees for
23 new connections to the Zone 7 water system, and (2) to pay for increasing the meter size and
24 capacity on existing connections. The City failed to (1) collect the correct amount for new
25 connections and (2) pay any fees for increasing the meter size and capacity on existing
26 connections.

27 88. The duty the City is obligated to complete was designed to prevent the injury that
28 Zone 7 has suffered. The City's violation deprived Zone 7 of the full amount of funds necessary

1 to support the demands of a higher capacity water system, and unfairly allocated the burden of
2 those costs to other users in the system. Without those funds, Zone 7 cannot adequately construct
3 and maintain the facilities necessary to accommodate higher demands.

4 89. The City's breach of the obligations under the Ordinance is a proximate cause of
5 Zone 7's injury.

PRAYER FOR RELIEF

7 WHEREFORE, Zone 7 prays that judgment be entered in its favor against the City and
8 Does 1 to 20 as follows:

9 1. For judgment in Zone 7's favor and against the City;

10 2. For damages in the amount an amount according to proof at trial;

11 3. For interest in an amount according to proof at the time of trial;

12 4. For a judicial declaration that the City must collect and remit fees for new water

13 meter connections and increasing the size and capacity of existing meters under the Agreement;

14 5. For the issuance of a writ of mandate directing and compelling the City to

15 immediately pay Zone 7 all amounts due under the Agreement;

16 6. For Zone 7's costs of suit; and.

17 7. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and

18 Government Code section 800, and any other applicable provisions of law; and

19 8. For such other and further relief as the Court deems necessary and proper.

20 | DATED: January 26, 2024

DOWNNEY BRAND LLP

By:

REBECCA R.A. SMITH
Attorneys for Petitioner and Plaintiff ALAMEDA
COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT, ZONE 7

Exhibit A

Approved as to form
RICHARD V. MOORE, County Counsel

By *Ben F. Far*
Deputy County Counsel

A G R E E M E N T

This agreement, made and entered into this 13th day of June, 1972, by and between the Alameda County Flood Control and Water Conservation District, acting by and through the Board of Supervisors of said District in behalf of Zone No. 7 thereof, hereinafter referred to as District and the City of Pleasanton, hereinafter referred to as City,

W I T N E S S E T H:

WHEREAS, District has, under the provisions of its Act, adopted Ordinance No. 72-1 establishing a connection charge for all new connections to the Zone No. 7 water supply system; and

WHEREAS, said Ordinance No. 72-1 provides that Zone No. 7 or the appropriate city or county building official ^{? here?} ~~of the water retailer~~ within Zone No. 7 of the District ~~may collect for~~ District any fees required by said Ordinance prior to the issuance of any building or use permit for construction or improvement within the boundaries of said official's jurisdiction; and

WHEREAS, an arrangement is necessary whereby City will collect and remit aforesaid fees to District and District will reimburse City for expense incurred by City in the collection of such fees;

NOW, THEREFORE, in consideration of the premises herein and the covenants hereinafter set forth, the parties hereby agree as follows:

I

City agrees to collect said water service connection charge at such time as City issues a building permit or use permit for construction or improvement of properties lying within the boundaries of Zone No. 7 and within the boundaries of City, for which a new water connection will be required. Said fees are to be collected in accordance with District's Ordinance No. 72-1.

II

City agrees to submit to District by the 15th of each month, on forms furnished by District, a statement indicating all fee collections made during the

previous calendar month. Said statement shall include, but not be limited to, fees collected, percentage withheld for City's cost of collecting said fees, and amount due District.

III

District agrees that City shall retain one percent (1%) of all said fees collected for District as reimbursement for City's cost of said collections, and City agrees that said retention shall be final and conclusive costs to District for all services rendered to District in making said collections.

IV

District shall defend, on behalf of the City, any claim or claims against the City for the refund of any funds or fees collected by the City pursuant to this agreement and in the event that the said Ordinance No. 72-1 is held invalid by a court of competent jurisdiction and/or the District or the City is ordered or required to refund any funds collected pursuant to said Ordinance and this agreement, District shall make no claim against the City for any amount or amounts retained by City as compensation for its services hereunder.

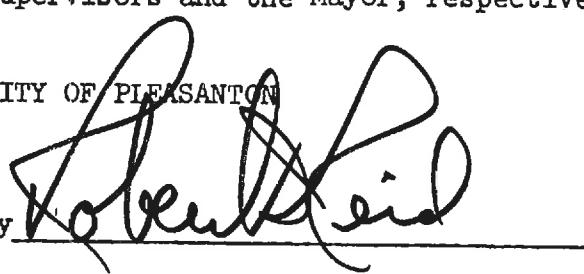
V

City agrees to pay District amounts due District by the 15th of the month following the month in which any said fees may be collected.

IN WITNESS WHEREOF, District and City have executed these presents by and through the Chairmen of the Zone No. 7 Board of Directors and the District Board of Supervisors and the Mayor, respectively.

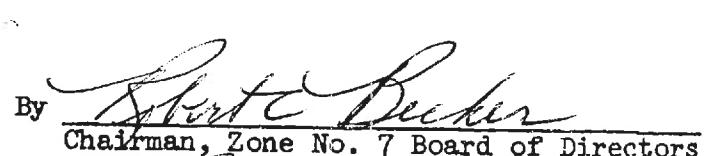
CITY OF PLEASANTON

By



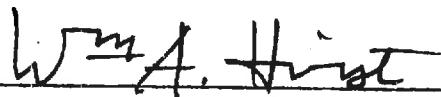
ALAMEDA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT

By



Bert Becker
Chairman, Zone No. 7 Board of Directors

APPROVED AS TO FORM



APPROVED AS TO FORM
RICHARD J. MOORE, COUNTY COUNSEL

By

Deputy

Exhibit B

ORDINANCE NO. FC 72-1, AS AMENDED BY
ORDINANCES FC 77-2; FC 86-136; AND FC O-91-68

AN ORDINANCE ADOPTED PURSUANT TO SECTION 12.1 OF THE
ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT ACT
IMPOSING A WATER CONNECTION CHARGE IN ZONE NO. 7

The Board of Supervisors of the Alameda County Flood Control and Water Conservation District do ordain as follows:

SECTION I

Declaration of Findings. The Board of Supervisors of Alameda County Flood Control and Water Conservation District has determined the necessity to make improvements to the Zone No. 7 water supply system. The District is empowered, pursuant to Section 12.1 of the Alameda County Flood Control and Water Conservation District Act, to prescribe and collect charges for water delivery and treatment facilities furnished or to be furnished within a zone of the District.

This Board does hereby find that continual improvement to the Zone No. 7 water supply system would be for the benefit of Zone No. 7 residents and property owners to meet increasing demands on the water supply system, to enhance the quality of water, to minimize harm from water shortages, to improve operational flexibility of the system, and to improve the reliability of water service, and that the public interest, necessity, convenience and general welfare of the residents and property owners of Zone No. 7 require the institution, construction and maintenance of said improvements. Revenues now available to the Zone will not be fully adequate to construct and maintain additional required facilities without substantial water or tax rate increases. In order to apportion more fairly the costs of new facilities on the basis of benefits conferred upon the property within the area, the charges hereinbelow indicated are hereby established on all new connections to any water system which is directly connected to the Zone No. 7 water supply system, to be utilized to accomplish proposed improvement in the water treatment and delivery system.

(Amended by Ord. FC 77-2)

SECTION II

Definitions. The definitions contained in this article shall govern the construction of this Ordinance unless required otherwise by context.

1. "District" means the Alameda County Flood Control and Water Conservation District.
2. "Board" means the Board of Supervisors of Alameda County Flood Control and Water Conservation District.
3. "Zone" means the Zone No. 7 of the Alameda County Flood Control and Water Conservation District.
4. "Zone Board" means the Board of Directors of Zone No. 7 of Alameda County Flood Control and Water Conservation District.
5. "Water supply system" means any combination of facilities that is capable of furnishing treated water service.
6. "New connection" means any new metered water service that will furnish water from a water supply system that is directly connected to the Zone No. 7 water supply system, including but not limited to water services that are part of any new development to be constructed.
7. "New development" means any improvement, building or buildings constructed subsequent to the effective date of this Ordinance.

(Amended by Ord. FC O-91-68)

SECTION III

Water Service Connection Charge Schedule. A basic charge of \$830.00 shall be multiplied by the fee factor indicated in the following schedule for each new connection to the water supply system subject to this Ordinance.

<u>Fee Factor</u>	<u>Meter Size</u>
5/8"	1.0
3/4"	1.5
1" (See Section VI. 1 below)	2.5
1-1/2"	5.0
2"	8.0

The determination of fee factors is based upon the recommended maximum rate for continuous operations in accordance with the American Water Works Association Standard C700-90

for Cold Water Meters-Displacement Type, Bronze Main Case. Fee factors for meters of special capacities and sizes other than those indicated in the above schedule shall be determined by the Zone. The administrative method for setting fee factors for meters of special capacities and sizes in effect on July 17, 1991, shall remain in effect through June 30, 1992. On July 1, 1992, new fee factors for meters of special capacities and sizes using a method that utilizes the recommended maximum rate for continuous operations shall go into effect.

For increasing the meter size or capacity on any existing connection, a charge shall be imposed equal to the product of the basic charge in effect at the time the meter exchange is requested and the difference in the fee factor between the new meter and the existing meter.

There shall be no refund of charges paid for decreasing the meter size or capacity.

(Amended by Ord. FC 0-91-68)

SECTION IV

Disposition of Charges. All charges collected under the provision of this Ordinance, and a portion of water sales revenues as deemed appropriate by the Zone Board, shall be deposited with the Treasurer of the District, said funds to be designated "Zone 7 Water Facilities Fund." Said funds shall be utilized for the accomplishment of proposed improvements to the Zone No. 7 water supply system, and shall be expended for administration, land acquisition, construction, engineering, repair, maintenance and operation, or reimbursement or retirement of bonded indebtedness incurred for same, in whole or in part, of the water supply facilities within Zone No. 7. Provided, however, that said funds shall not be utilized for the retirement of bonded indebtedness on Zone No. 7 projects incurred prior to January 18, 1972.

(Amended by Ord. FC 77-2)

SECTION V

Collection of Charges. Charges provided for herein shall be collected by the Zone, or the appropriate City Building Official if the improvement is located within an incorporated city, prior to the issuance of a building permit or a use permit for such improvement. In cases where permits are not required, payment of charges shall be made to the Zone or appropriate City Building Official prior to installation of a new connection. Collection by the appropriate City Building Official shall be

authorized by agreement between the affected city and District, said agreement to be approved by Zone Board and forwarded to Board for execution, following execution of said agreement by city.
(Amended by Ord. FC 77-2)

SECTION VI

Exemptions.

1. No charge shall be collected for separate private fire service connections. Combined domestic and fire service connections shall be subject to the connection charge based on the meter size for the combined system, except the basic charge shall be collected for combined systems, up to a maximum one-inch (1") meter size, for single family and duplex housing units with fire sprinkler systems approved by the appropriate fire department and installed in accordance with applicable building requirements.

2. No charge shall be collected for future connections of any existing building or buildings to a water supply system that is directly connected to the Zone No. 7 water supply system if the building or buildings are occupied and supplied by an independent water supply system on or before January 18, 1972. This exemption shall become null and void effective July 1, 1992.

(Amended by Ord. FC O-91-68)

SECTION VII

Review of Water Connection Charge. The water connection charge provided for hereinabove, its manner of collection and disposition shall be subject to periodic review and modification at the discretion of the Zone Board.

SECTION VIII

Severability. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance; and the Board declares that this Ordinance and each section, sub-section, paragraph,

sub-paragraph, sentence, clause and phrase thereof would have been adopted irrespective of the fact that one or more of such section, sub-section, paragraph, sub-paragraph, sentence clause or phrase be declared invalid or unconstitutional.

SECTION IX

Opinions and Determinations. Where this Ordinance provides for action to be based upon the opinion, judgment, approval, review or determination of the Zone Board, it is not intended to be and shall never be construed as permitting such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable.

SECTION X

Payment Before Effective Date. Nothing in this Ordinance shall prohibit payment of charges provided for herein prior to the effective date of this Ordinance. The funds so collected shall be applied in the same manner and for the same purposes as those required for collections after the effective date of this Ordinance.

SECTION XI

Contest of Charges. For purposes of this Ordinance, the Zone Board shall act as hearing Board in any contest of charges imposed under this Ordinance, and said Zone Board shall notice and conduct full and fair hearings consistent with due process and base its decision upon competent evidence. Said Zone Board shall adopt reasonable rules and regulations for the conduct of its affairs under this Ordinance. Appeals from the decision of the Zone Board shall be to the Board of Supervisors of Alameda County Flood Control and Water Conservation District, and shall be a hearing de novo upon the issues of the appeal. Notice of appeal from the decision of the Zone Board shall be made within 30 days of any final determination by Zone Board.

SECTION XII

Effective Date. This Ordinance is an urgency ordinance necessary for the preservation of the public peace, health, safety and welfare and shall go into effect immediately upon the date of adoption thereof, to wit January 18, 1972. The facts constituting such necessity are that failure of a recent bond election and resultant shortage of funds for improvement or expansion of necessary water treatment and delivery facilities has resulted in a projected need for water rationing in the Livermore-Amador Valley Area due to an increasingly heavy burden on existing facilities following a steady increase in population and residential construction in that Area. The proposed charges to be imposed pursuant to this Ordinance will be applied toward the construction of the needed facilities. Before the expiration of fifteen (15) days after the passage of this Ordinance it shall be published once with the names of members voting for and against the same in The Inter-City Express, a newspaper published in the said County of Alameda.

Adopted by the Board of Supervisors of the Alameda County Flood Control and Water Conservation District on this 18th day of January, 1972, by the following called vote:

AYES: Supervisors Bort, Cooper, Murphy, Razeto and Chairman Hannon - 5

NOES: Supervisors None

EXCUSED: Supervisors None

Chairman of the Board of Supervisors of the
Alameda County Flood Control and Water
Conservation District

ATTEST:

Clerk of the Board of Supervisors of
the Alameda County Flood Control and
Water Conservation District