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**UNIFORM COVER PAGE**

[To be used when required by Administrative Order No. 2 (g)\*]

COURT: CIRCUIT COURT OF DESHA COUNTY

Docket/Case Number: 21ACV-23-117

CASE NAME:  
PLAINTIFF/  
PETITIONER: C.I.C. ARMS INC

DEFENDANT/  
RESPONDENT: CITY OF MCGEHEE ARK AND MCGEHEE WATER  
AND SEWER SYSTEM

TITLE OF PLEADING OR  
DOCUMENT BEING FILED  
(If a multi-part file,  
the designation "part \_ of \_"  
(example, part 1 of 2))): COMPLAINT

**\*Administrative Order No 2.**

(g) *File Mark.* (1) There shall be a two inch (2") top margin on the first page of each document submitted for filing to accommodate the court's file mark. If the pleading or document must be filed in multi-parts because of size or for other reasons, the first page of each part must include the file name and file mark and shall clearly indicate the part number and number of parts (example, part 1 of 2).

(2) If a document is such that the first page cannot be drafted to provide sufficient space to satisfy the file-mark requirement, the document must include the uniform cover page developed by the Administrative Office of the Courts and found under Forms and Publications at [www.arcourts.gov](http://www.arcourts.gov).

**IN THE CIRCUIT COURT OF DESHA COUNTY, ARKANSAS  
CIVIL DIVISION**

**C.I.C. ARMS, INC.**

**PLAINTIFF**

v.

No. 21ACV-2317

**CITY OF MCGEHEE, ARKANSAS  
AND MCGEHEE WATER AND SEWER SYSTEM**

**DEFENDANTS**

**COMPLAINT**

Comes now the Plaintiff, C.I.C. Arms, Inc. ("C.I.C. Arms") by and through its attorneys, Bequette, Billingsley & Kees, P,A. and for its Complaint against the Defendants, City of McGehee, Arkansas ("City") and McGehee Water and Sewer System ("MWSS"), states and alleges:

1. Plaintiff C.I.C. Arms is a non-profit corporation which provides low-income housing to residents of McGehee, Arkansas. Plaintiff is in good standing with the State of Arkansas and its principal address is 200 Martin Drive, McGehee, Arkansas 71654.
2. Defendant City is a city within the State of Arkansas.
3. Defendant MWSS is a public water authority providing water and sewer services to C.I.C. Arms.
4. Jurisdiction and venue are proper with this Court.
5. C.I.C. Arms has fifty (50) residential units in seven (7) separate buildings, all located in the City. Since as long as current management can remember, all seven buildings have been provided a separate master water meter by MWSS and have been charged for water and sewer services based off the reading of each master meter to each separate building. Thereafter, C.I.C. Arms determines the appropriate charge for water and sewage use by each individual unit within the building, based on the master meter reading to each building. This process works.

6. Unable to leave good enough alone, Defendants altered the way C.I.C. Arms was charged for its water consumption following passage of City Ordinances 843 and 850. City Ordinance 843 is hereto attached as Exhibit 1 and Ordinance 850 as Exhibit 2. The Ordinances were passed by the City, signed by the City Mayor, and has thereafter been applied and enforced by MWSS. Ordinance 850 applies to “retail” users, which is not defined, but presumably applies to C.I.C. Arms.

7. After the passage of City Ordinance 850 in September of 2022, water and sewer charges to C.I.C. Arms by Defendants was changed so that C.I.C. Arms was then charged for water consumption based on usage by each individual housing unit—not by each building—but each individual housing unit was not provided a separate water meter by MWSS. Instead, C.I.C. Arms still only has seven master meters for each of its seven buildings, but Defendants now charge C.I.C. Arms based on each individual unit. Some C.I.C. Arms units are vacant, while some use more or less water and sewer than other units.

8. At bottom, every housing unit at C.I.C. Arms has varying water consumption, some have none, but now C.I.C. Arms is charged a per unit rate when there are no water meters for each individual unit, so no possible way to determine individual unit water consumption. This has resulted in a gross overcharge to C.I.C. Arms for water and sewage consumption, which has resulted in increased overall price of water and sewage, all due to Defendants’ failure to provide individual unit meters or maintain the same billing practices prior to City Ordinance No. 850.

9. Further complications from City Ordinance Nos. 843 and 850 are that it requires a standard of measurement for water and sewer usage based on 5/8” meter size appropriate for residential use to calculate consumption of gallons of water, yet the master meters at C.I.C. Arms have varying meter sizes, including 2” and 1” and 1/2”. Accordingly, there is no way to reconcile

the master meter standard for the measurement of gallons of water consumption with the 5/8" meter assumed to be the standard in Ordinances 843 and 850 and the actual size of meters present at C.I.C. Arms.

10. Upon information and belief, other "retail" users of water and sewage by Defendants have continued to be charged as before—by the master meter—not by individual units. Such "retail" users include the Super 8 Motel and Relax Inn in McGehee, which are no different than C.I.C. Arms in that they have a master meter but have individual units, but no individual meters. Both these other entities have not been charged for units with no individual meter in place, but C.I.C. Arms has, with no legal explanation.

11. C.I.C. Arms is being charged excessively for water and sewage that is not being provided by the Defendants.

12. Upon information and belief, after the passage of City Ordinance Nos. 843 and 850, Defendants have been improperly calculating water and sewage usage by CIC Arms, which has resulted in improper charges to C.I.C. Arms.

13. While the exact amounts of excessive charges to C.I.C. Arms are undetermined at this time, Plaintiff is certain that the existing rate calculation is improper and far exceeds the actual water and sewage consumption by Plaintiff. Despite continued demands, Defendants have refused to reexamine City Ordinance Nos. 843 and 850 and the existing rate calculations and meter size and have instead continued to incorrectly charge C.I.C. Arms.

#### **COUNT I- DECLARATORY JUDGEMENT**

14. C.I.C. Arms seeks declaratory relief pursuant to the Arkansas Declaratory Judgment Act, Ark. Code Ann. §16-111-101.

15. There exists a justiciable issue as to whether Defendants can continue to charge C.I.C. Arms for water and sewer services it is not consuming and whether C.I.C. Arms can be charged by individual units when MWSS has only provided master meters for each building—not individual units.

16. The interests of the parties are adverse and the issue is ripe for judicial determination. C.I.C. Arms has a protectable interest in preventing illegal exactions and not paying for services it did not receive.

17. C.I.C. Arms is entitled to injunctive and declaratory relief, whereby Defendants are enjoined from enforcing City Ordinance Nos. 843 and 850 and are required to either repeal the Ordinance completely or replace the Ordinance with language that would more appropriately and equitably charge C.I.C. Arms for water and sewer services.

#### **COUNT II—PUBLIC FUNDS ILLEGAL EXACTION**

18. Article XVI, §13 of the Arkansas Constitution provides, “Any citizen of any country, city or town may institute suit, on behalf of himself and all others interested, to protect the inhabitants thereof against the enforcement of any illegal exactions whatever.”

19. Defendants improper actions have resulted in an illegal exaction pursuant to Article XVI, §13 of the Arkansas Constitution, as Defendants have improperly charged Plaintiff and thereafter collected payments for services that were not provided.

20. Defendants should be ordered to make restitution to the C.I.C. Arms for charges that it has to pay because of the unlawful actions of Defendants and/or Defendants overcharging for services and not otherwise providing the service.

COUNT III- CONVERSION

21. Defendants actions have resulted in conversion of property, as they have improperly charged CIC Arms and thereafter collected fees for services not provided. Moreover, Defendants have continued on this course of intentional conduct after the errors were brought to their attention.

WHEREFORE, premises considered, Plaintiff prays for judgment against the Defendants as set forth in this Complaint, together with any additional damages sustained herein as shown by the proof, for attorney's fees and costs, and for all other relief to which Plaintiff may be entitled.

BEQUETTE, BILLINGSLEY & KEES, P.A.  
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By: 

W. Cody Kees, Ark. Bar No. 2012118

*Attorneys for Plaintiff*

ORDINANCE NO. 850

## AN ORDINANCE INCREASING MONTHLY WATER AND SEWER RATES

WHEREAS, it has become necessary due to rising costs of materials and labor and other factors to increase water and sewer rates for the McGehee Water and Sewer System.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCGEHEE, ARKANSAS:

Minimum monthly water rates for the first 2,000 gallons of water consumption per month, or portion thereof, for retail users, is increased to \$16.00 per month. For the next 3,000 gallons of water consumption per month, or portion thereof, \$2.99 per 1,000 gallons. For the next 8,000 gallons of water consumption per month, or portion thereof, \$1.83 per 1,000 gallons. For the next 17,000 gallons of water consumption per month, or portion thereof, \$1.57 per 1,000 gallons. For the next 20,000 gallons of water consumption per month, or portion thereof, \$1.15 per 1,000 gallons. All water consumption per month, or portion thereof, exceeding 50,000 gallons, \$.78 per 1,000 gallons.

Minimum monthly sewer rates for the first 2,000 gallons of water consumption per month, or portion thereof, for retail users, is increased to \$16.00 per month. For the next 3,000 gallons of water consumption per month, or portion thereof, \$2.99 per 1,000 gallons. For the next 8,000 gallons of water consumption per month, or portion thereof, \$1.83 per 1,000 gallons. For the next 17,000 gallons of water consumption per month, or portion thereof, \$1.57 per 1,000 gallons. For the next 20,000 gallons of water consumption per month, or portion thereof, \$1.15 per 1,000 gallons. All water consumption per month, or portion thereof, exceeding 50,000 gallons, \$.78 per 1,000 gallons.

In every case where two or more consumer units are supplied with water through a single meter of less than 3" size, the total gallonage metered each month will be divided by the total number of such consumer units and the quotient thus obtained will be considered as a quantity of water consumed by each of such consumer unit. The minimum monthly charges and rates as described above will be applied to each consumer unit.

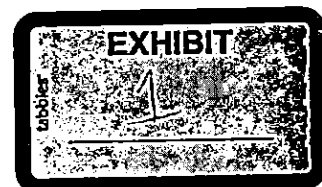
## RATES FOR WHOLSALE CUSTOMERS ARE AS FOLLOWS:

CUSTOMER	# OF UNITS	METER SIZE	MIN GALS	CHG FOR MIN	CHG OVER MIN
Wolfe Kelly Masonville	25	4"	50,000	\$240	\$3/1,000 gals
Wolfe Kelly McArthur	135	3"	270,000	\$1296	\$3/1,000 gals

Minimum usage based on number of meters may be adjusted on a yearly bases upon request.

Minimum monthly base water rated based upon a 6-inch fire protection meter is \$75. In the event of a fire, no additional fees will be assessed.

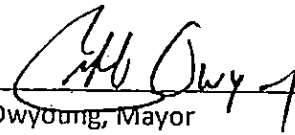
The monthly water and sewer rates may increase up to 3% per year, subject to council approval, for all users on the anniversary date of this ordinance.



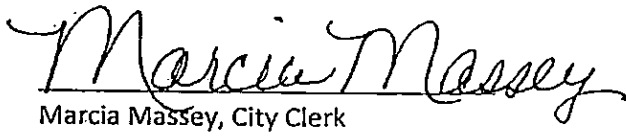
This ordinance being necessary for the preservation of the public peace, health and safety shall be effective immediately upon its passage and publication.

Passed September 20<sup>th</sup>, 2022

APPROVED:

  
\_\_\_\_\_  
Jeff Owyang, Mayor

ATTEST:

  
\_\_\_\_\_  
Marcia Massey, City Clerk



ORDINANCE NO. 843

## AN ORDINANCE INCREASING MONTHLY WATER AND SEWER RATES

WHEREAS, it has become necessary due to rising costs of materials and labor and other ~~factors to increase water and sewer rates for the McGehee Water and Sewer System.~~

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCGEHEE, ARKANSAS:

Minimum monthly water rates for the first 3,000 gallons of water consumption per month, or portion thereof, based on a 5/8 inch meter size is increased to \$14.40 per month. For the next 2,000 gallons of water consumption per month, or portion thereof, \$2.99 per 1,000 gallons. For the next 8,000 gallons of water consumption per month, or portion thereof, \$1.83 per 1,000 gallons. For the next 17,000 gallons of water consumption per month, or portion thereof, \$1.57 per 1,000 gallons. For the next 20,000 gallons of water consumption per month, or portion thereof, \$1.15 per 1,000 gallons. All water consumption per month, or portion thereof, exceeding 50,000 gallons, \$0.78 per 1,000 gallons.

Minimum monthly sewer rates for the first 3,000 gallons of water consumption per month, or portion thereof, based on a 5/8 inch meter size is increased to \$14.15 per month. For the next 2,000 gallons of water consumption per month, or portion thereof, \$2.88 per 1,000 gallons. For the next 8,000 gallons of water consumption per month, or portion thereof, \$1.83 per 1,000 gallons. For the next 17,000 gallons of water consumption, or portion thereof, \$1.57 per 1,000 gallons. For the next 20,000 gallons of water consumption, or portion thereof, \$1.15 per 1,000 gallons. All water consumption per month, or portion thereof, exceeding 50,000 gallons, \$0.78 per 1000 gallons.

The minimum monthly water and sewer rates for the first 3,000 gallons of water consumption per month, or portion thereof, based on a 5/8 inch meter size may increase up to \$0.50 per year on the anniversary date of this ordinance.

Minimum monthly water rates for the first 117,000 gallons of water consumption per month, or portion thereof, based on a 3 inch meter size is \$135.97. For the next 30,000 gallons of water consumption per month, or portion thereof, \$2.99 per 1,000 gallons. For the next 50,000 gallons of water consumption per month, or portion thereof, \$1.83 per 1,000 gallons. For the



next 130,000 gallons of water consumption per month, or portion thereof, \$1.57 per 1,000 gallons. For the next 300,000 gallons of water consumption per month, or portion thereof, \$1.15 per 1,000 gallons. All water consumption er month, or portion thereof, exceeding 300,000 gallons, \$0.78 per 1,000 gallons.

Minimum monthly water rates for the first 142,000 gallons of water consumption per month, or portion thereof, based on a 4 inch meter size is \$244.50. For the next 30,000 gallons of water consumption per month, or portion thereof, \$2.99 per 1,000 gallons. For the next 50,000 gallons of water consumption per month, or portion thereof, \$1.83 per 1,000 gallons. For the next 130,000 gallons of water consumption, or portion thereof, \$1.57 per 1,000 gallons. For the next 300,000 gallons of water consumption per month, or portion thereof, \$1.15 per 1,000 gallons. All water consumption per month, or portion thereof, exceeding 300,000 gallons, \$0.78 per 1,000 gallons.

In addition to the monthly water rates for 3 and 4 inch meter sizes there is a \$2.00 sur-charge for 3 and 4 inch meter sizes attached to the McGehee sewer system, per occupiable unit, and a \$1.00 per month sur-charge for 3 and 4 inch meter sizes not attached to the McGehee sewer system, per user.

Minimum monthly base water rate based on a 6 inch meter size is \$35.00. In the event of usage above 7,300 gallons charges will be same as rates for 3 and 4 inch meter size water rates.

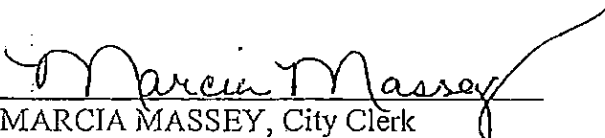
This ordinance being necessary for the preservation of the public peace, health and safety shall be effective immediately upon its passage and publication.

Passed December 21<sup>st</sup>, 2021.

APPROVED:

  
 \_\_\_\_\_  
 JEFF OWYONG, Mayor

ATTEST:

  
 \_\_\_\_\_  
 MARCIA MASSEY, City Clerk