



May 16, 2017

Mayor Karen Weaver
Flint City Council
Flint City Hall
1101 S. Saginaw Street
Flint, MI 48502

VIA EMAIL AND
HAND DELIVERY

Re: Moratorium on Placement of Liens on Homes for Unpaid Water Bills

Dear Mayor Weaver and City Council Members:

On behalf of the ACLU of Michigan and the NAACP Legal Defense & Educational Fund, Inc., I write to express our strong support for the proposed ordinance that imposes a moratorium on the City of Flint's ("City" or "Flint") practice of putting liens on homes for unpaid water bills. Without this ordinance, more than 8,000 Flint families are at risk of losing their homes because they are unable to pay exorbitantly high water bills. Because we believe that placing these family homes in such jeopardy would be unjust and illegal, we urge you to pass the proposed ordinance.

Earlier this year, a federal court deemed Flint's water unsafe to drink unless it is run through a filter. Despite this ruling, the City not only charges Flint residents – forty percent of whom live below the federal poverty line – the highest water rates in the country, it has also threatened to place liens on homes to secure payment of outstanding water bills. As a result, thousands of Flint residents may lose their homes for failure to pay exorbitant bills for unclean water.

Flint's elected officials are well aware that the mistakes made by government-appointed emergency managers have caused immense harm and suffering to the City's residents. For more than three years, residents of Flint have been forced to purchase water contaminated by E. coli; TTHMs – a carcinogenic byproduct of chlorine; lead; and bacteria that causes Legionnaires disease. The impact on the residents of Flint has been devastating: exposure to this unsafe water has been linked to the deaths of at least 12 people; it has caused miscarriages, hair loss and skin rashes; and it has contributed to the development of learning disabilities. This is not to mention the financial costs, in terms of damaged plumbing, ruined appliances, and the dramatic decrease in property values in the City.

The already significant trauma experienced by Flint residents is only compounded by the City's issuance of notices about property liens on their homes for delinquent water bills. The moral and ethical issues are clear. No one should be expected to pay for water that is not safe, and has caused so much physical, psychological and financial damage. In a city where residents have been crying out for justice, even more injustice is being proposed.

Not only is placing liens for unpaid water bills on Flint homeowners' properties unjust, but it raises serious legal concerns. The City's provision of water to residents in return for payment is governed by an "implied warranty of merchantability," which requires the water to be fit to drink. As the lawsuit against the state and the City that was filed by the Natural Resources Defense Council and the ACLU of Michigan documents, the water that came out of the faucets during the billing period was so unfit to drink that it required water filters. And, indeed, a federal judge held that Flint was in violation of the federal Safe Drinking Water Act. *See, e.g., Concerned Pastors for Social Action v. Khouri*, __ F. Supp. 3d __; 2016 WL 6647349 *4 (E.D.Mich. Nov. 10, 2016) ("It appears beyond dispute that the City of Flint failed to meet its responsibilities under the corrosion control regulations of the Lead and Copper Rule."). Since the City did not fulfill its duty to provide water fit for drinking, Flint residents should not have to pay for such water – much less lose their homes over it.

Additionally, liens placed on properties for unpaid water bills over the past few years violate a court order. On August 17, 2015, Genesee County Circuit Court Judge Archie Hayman entered an injunction preventing Flint from collecting water service charges (or "readiness to serve" charges) imposed between Sept. 16, 2011 and July 1, 2015. The judge held that such charges were illegal because the City had not filed a water service charge rate table with Flint City Clerk's office, as required by a separate Flint ordinance. While former Emergency Manager Jerry Ambrose later filed a water service charge rate table for the period starting July 1, 2015, the judge's ruling still applies to earlier water service charges. Thus, placing a lien on the property for any water service charges before July 1, 2015 is not permitted by law. Further, it is far from clear that the new water service rate chart Mr. Ambrose filed in response to the court order had any basis in fact or was consistent with applicable law.

Finally, contrary to representations made to the public, the City is *not* legally required to place water liens on properties with overdue water bills. Rather, it is a discretionary matter. Michigan law provides that if utility charges are delinquent for six months or more, a municipality "may" certify the lien to be entered on the next tax roll. *See MCL 141.121(3)*.

Given the unjust and illegal nature of the water bills outlined above, we strongly urge the City to exercise its discretion and refrain from placing water liens on homes of residents who are still recovering from the water crisis.

Very truly yours,



Kary L. Moss, Director
ACLU of Michigan



Sherrilyn Ifill, President and Director-Counsel
NAACP Legal Defense and Educational Fund, Inc.

cc: Receivership Transition Advisory Board