



July 8, 2021

John Stemple
Director of Neighborhood Services and Inspections
1314 South Washington Ave.,
Saginaw, MI 48601

Tim Morales
City Manager
1315 South Washington Ave.,
Saginaw, MI 48601

Saginaw City Council
1315 South Washington Ave.,
Saginaw, MI 48601

Re: Permanent Moratorium on Water Shutoffs and Condemnation of Homes for Unpaid Water Bills

Dear John Stemple, Tim Morales, and Saginaw City Council:

The ACLU of Michigan and partnering coalition members write to you at the behest of Saginaw residents to express strong concern about city officials' decision to pursue water shutoffs in the city of Saginaw. As you are aware, on June 15, 2021 city officials decided to resume water shutoffs for families that have unpaid water bills. These include 750 families at risk for water shutoffs and 250 families that were almost immediately without water. As of June 28, 2021, 96 families still remain without running water in their homes. Although the city has paused shutoffs, city officials announced their plan to resume water shutoffs on July 15, 2021.¹

Though the ACLU of Michigan is not legal counsel for Saginaw's residents, we are nevertheless obligated to point out that, given Saginaw's racial and economic circumstances, these shutoff practices likely violate the Elliott-Larsen Civil Rights Act, Title VI of the federal Civil

¹ *City of Saginaw to Host Utility Payment Assistance Collaborative*, CITY OF SAGINAW, https://www.saginaw-mi.com/news_detail_T5_R334.php (last accessed 7/3/21).

Rights Act, the Fair Housing Act, the Fourteenth Amendment to the U.S. Constitution and various provisions of international law.

As a practical matter, disconnecting water access in a home during the ongoing COVID-19 pandemic creates imminent health risks, exacerbates housing instability, and could threaten parents' rights to keep their children in their homes. Ultimately, mass water shutoffs create a public health emergency that requires state intervention pursuant to MCL 333.2251; and MCL 333.2253.

Shutting off water in the homes of city residents is discretionary. The city does not have a legal obligation to pursue collection using that method. A more effective and more humane approach involves the adoption of a plan to make water affordable for all residents. Instead of shutting off water for 250 families, it was, and remains possible to, with the assistance of experts, institute practices and policies that index the cost of water to income, thereby ensuring a continuing flow of both water and revenue. A good first step in that direction is a permanent moratorium on water shutoffs, and we urge that you impose one forthwith.

The residents of the city of Saginaw, the ACLU of Michigan, and a coalition of partners also urge the city to do the following:

1. End all water shutoffs in the City of Saginaw, and provide free reconnections for all disconnected residents, as well as impose a permanent water shutoff moratorium.
2. Discontinue citations for municipal civil violations, or fees of any kind, to Saginaw residents for matters related to their water utility status.
3. Cessation of use of tax liens as a means of collection and for removal of Saginaw residents because of their water utility status.
4. Commence a City Council investigation of repeated efforts of city staff to deny due process concerning water shutoffs, evictions, municipal civil infractions, etc.

The City of Saginaw is at the epicenter of the COVID-19 pandemic in Saginaw County. We have grave concerns about the lack of notice provided to the approximately 250 families whose water services you shut off in June. The conditions that led to the statewide moratorium on shutoffs because of non-payment during the pandemic have not changed. These arrearages have accumulated over the course of the pandemic. It is impractical to expect complete payment on the past due water bills immediately after the moratorium ends. The pandemic is ongoing. Saginaw has over 5,000 positive COVID-19 cases as of June 20, 2021, far exceeding any other municipality in the county.² Roughly half of the county of Saginaw has not received a single dose of the COVID-19 vaccine.³

² *Cases in Saginaw County*, SAGINAW COUNTY HEALTH DEPARTMENT, <https://www.saginawpublichealth.org/coronavirus/cases-in-saginaw-county/> (last accessed 7/2/21).

³ *COVID-19 Vaccine Dashboard*, MICHIGAN.GOV, https://www.michigan.gov/coronavirus/0,9753,7-406-98178_103214-547150--,00.html (last accessed 7/2/21).

These conditions are exacerbated by the reality that many families continue to lose loved ones to COVID-19. According to a leading public health expert, in Saginaw, 25 people died from COVID-19 between May 28, 2021 and June 28, 2021 alone.⁴ In addition to the emotional toll, the financial burden of health care costs, the loss of livelihoods, and stable housing, remain as threats to many families.

Public health experts and our state government have underscored the importance of access to clean water to promote handwashing as a public health necessity to protect against the spread of the virus.⁵ Yet, the city's efforts to deprive water to hundreds of families in Saginaw threaten the safety of not only these families but the entire county of Saginaw – and perhaps even, the entire state of Michigan. Governor Whitmer has recognized the importance of access to clean water for all persons. In her most recent Executive Order (“EO”) 2020-144, she noted “it is crucial that all Michiganders can access clean water in their homes and wash their hands thoroughly and regularly. Now more than ever, the provision of clean water to residences is essential to human health and hygiene, and to the public health and safety of this state.”⁶

Michigan courts have also observed that water is a necessity, and its provision is a public service.⁷ Additionally, the Michigan State Constitution provides that “[t]he public health and general welfare of the people of the state are hereby declared to be matters of primary public concern.”⁸ Lack of access to water is indisputably a public health concern. Courts have held that state laws similar to those cited here create a property interest in water that entitles citizens to due process, i.e., before water can be shut off, citizens have a right to notice of the proposed action against them and a meaningful opportunity to be heard.⁹ Yet, many Saginaw residents were not afforded notice nor an opportunity to be meaningfully heard. Furthermore, Saginaw's deprivation of water increases the risk of individuals to contracting the COVID-19 virus and thus violates their fundamental right to bodily integrity, a right recognized by Michigan state courts in the post-Flint water crisis litigation.

As municipalities move towards reopening the state, a just and equitable recovery is essential. Shutting off water from some of the communities that have already been hard hit by the

⁴ Press Conference, Saginaw Community Alliance for the People, Saginaw No Shutoffs Presser, (Jul. 1, 2021) <https://fb.watch/6ve-uKZjV3/>.

⁵ Center for Disease Control and Prevention, *Hand Hygiene Recommendations* (May 2020) <https://www.cdc.gov/coronavirus/2019-ncov/hcp/hand-hygiene.html> (last accessed 7/2/21).

⁶ Executive Order 2020-144: Restoring Water Services to Occupied Residences During the COVID-19 Pandemic, MICHIGAN.GOV, https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-534157--,00.html.

⁷ *Ten Broek v. Miller*, 240 Mich. 667 (Mich. 1927); *Mitchell v. Negaunee*, 113 Mich. 359, 366 (Mich. 1897) (“Every inhabitant [of a city] needs water . . . and therefore the furnishing of water has been considered a public service.”) (internal citations omitted).

⁸ Mich. Const. Art. IV § 51.

⁹ See, e.g., *Memphis Light, Gas & Water Div. v. Craft*, 463 U.S. 1, 11, 13 (1978) (finding that Tennessee law “does not permit a public utility to terminate service ‘at will’” and, therefore, due process is required).

global pandemic and economic instability surely offends this very principle. It is dangerous and a violation of both U.S. and international human rights law.

Water shutoffs disproportionately impact Saginaw's Black and low-income residents. Saginaw's Black residents' make up 43.5% of the city's population and 35% of Saginaw residents live below the poverty line.¹⁰ It is apparent that those most impacted come from these communities. The City's choice to shut off water and place liens on homes and/or issue civil infractions will deprive Black homeowners of housing. Such systemic deprivation of housing will have a disparate impact on African Americans and could potentially violate the Fair Housing Act.

Water shutoffs are a symptom of structural racism highlighted through housing segregation, neglect of infrastructure, and lack of water affordability in the city of Saginaw. Locally, statements made by the Director of Inspections John Stemple, highlight how Saginaw's policies perpetuate discrimination in the system. In a press conference held by city officials on June 28, 2021, Mr. Stemple reiterated his plan to cite families for code violations for not having running water in the home. He stated, "[w]e're going to work with people to get them help. But the failure of the city to react [to homes without water service] is problematic because, if we ignore it and something bad happens, that would be neglect of duty on our end. We're not going to put the city in that position."¹¹ Families who do not have running water are cited with a violation to city code 151.031.¹² According to Mr. Stemple, if that violation is not remedied within 48 hours, the families will be cited for a civil infraction that could ultimately lead to having their home condemned.¹³ Rather than acknowledge the direct role the city has played in facilitating the city of Saginaw's code violation by families whose water has been shut off, he seeks to further destabilize the residents.

We recognize the city's need to maintain the water infrastructure and the finances to operate the system. However, it is imperative that city officials recognize that there are alternatives to addressing their needs that do not involve threatening the health and safety of Saginaw's residents. Chief among them, is the availability of government funding. The city should be able to redirect those funds and use them to pay back the arrearages without the need to cut off the water source from their residents.

With this letter we are providing you with an opportunity to voluntarily and immediately end water shutoffs and threats of citations for civil infractions. Further we provide you with the opportunity to instead apply federal recovery funds to delinquent accounts. However, if we see no

¹⁰ Census Reporter, <https://censusreporter.org/profiles/16000US2670520-saginaw-mi/> (last accessed 7/6/21).

¹¹ Justin Engel, *As Saginaw Water Shutoffs Continue, Residents Face Dangers of Costly Fines and Condemned Homes*, MLIVE.COM, Jun. 24, 2021, https://www.mlive.com/news/saginaw-bay-city/2021/06/as-saginaw-water-shutoffs-continueresidentsfacedangersofcostlyfinesandcondemnedhomes.html?fbclid=IwAR2zoY0YziWvGrpKeAyC7YIzG05jOyQlpkvmTgjm1dlBauACaBFwukh_1qY (last accessed 7/2/21).

¹² SAGINAW, MICH. CODE § 151.031(H) (2020).

¹³ *Supra* note 13.

evidence of these actions within the next ten days we will be left with no alternative to pursuit of needed relief by other means.

Very truly yours,

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