

STATE OF MICHIGAN  
WAYNE COUNTY CIRCUIT COURT

KELLY GOTTESMAN,  
individually, and as representative  
of a class of similarly-situated persons  
and entities,

Case No.

-CZ

Plaintiff,

Hon.

v.

17-014341-CZ

CITY OF HARPER WOODS,  
a Michigan municipal corporation,

FILED IN MY OFFICE  
WAYNE COUNTY CLERK  
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CATHY M. GARRETT

Defendant.

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There is no other pending or resolved civil action arising out  
of the transaction or occurrence alleged in the complaint.

**PLAINTIFF'S CLASS ACTION COMPLAINT**

Plaintiff Kelly Gottesman ("Plaintiff"), by his attorneys, Kickham Hanley PLLC and Joelson Rosenberg Moss Cohen Warren & Drasnin PLC, individually and on behalf of a class of similarly situated persons and entities, states as follows for his Complaint against Defendant City of Harper Woods (the "City"):

## INTRODUCTION

1. “When virtually every person in a community is a ‘user’ of a public improvement, a municipal government’s tactic of augmenting its budget by purporting to charge a ‘fee’ for the ‘service’ rendered should be seen for what it is; a subterfuge to evade constitutional limitations on its power to raise taxes.” *Bolt v. City of Lansing*, 459 Mich. 152, 166, 587 N.W.2d 264 (1998).

2. This is an action challenging the City’s creative yet impermissible financing of its stormwater management obligations through purported “user fees” foisted upon a particularized subset of its citizenry. Plaintiff challenges a mandatory stormwater service charge (the “Stormwater Charge” or the “Charge”) imposed by the City on all property owners in the City. The City persists in the exaction of these charges even though “the nature of a stormwater management system, which benefits the public without providing any individualized, measurable benefit to individual property owners, does not lend itself to a system of funding based on user fees.” *Dekalb County v. U.S.*, 108 Fed. Cl. 681 (U.S. Court of Claims 2013).

3. The Stormwater Charge – totaling approximately \$2 million per year – constitutes an unlawful tax under the *Bolt* decision because it imposes upon one subset of residents – property owners – the financial burden of a governmental activity – stormwater management – which benefits the community at large. Indeed, through payment of the Stormwater Charges, Plaintiff and the Class are paying the City’s entire cost of stormwater management.

4. The Stormwater Charge is motivated by a revenue-raising and not a regulatory purpose, the charges to Plaintiff and the Class are not proportionate to the City’s actual costs of providing to Plaintiff and the Class the purported benefits for which the Charges are purportedly imposed, and payment of the charges is not voluntary.

5. As a tax, the Stormwater Charge is unlawful because the Charge violates Article 9, Section 31 of the Headlee Amendment to the Michigan Constitution and the Prohibited Taxes By

Cities and Villages Act (MCL 141.91). The City itself admits in its certified annual financial reports (“CAFRs”) that the Charges are “Property Taxes.” *See, e.g.*, 2016 CAFR at p. 11.

6. In addition, the City has imposed unreasonable Stormwater Charges in violation of its own Ordinances and common law municipal rate-making principles because the aggregate amount of those Charges far exceeds the City’s actual stormwater management costs. The City has been unjustly enriched by these overcharges.

7. Plaintiff, individually and on behalf of a class of similarly situated persons and entities, seek, among other remedies, a refund of all Stormwater Charges received by the City in the six years preceding the filing of this action and all such Charges collected during the pendency of this action.

### **JURISDICTION AND VENUE**

8. Plaintiff owns improved real property situated in the City of Harper Woods, Wayne County, Michigan, has paid the Charges at issue in this case at all relevant times, and seeks to act as a class representative for all similarly situated persons.

9. Defendant City of Harper Woods (the “City”) is a municipality located in Wayne County, Michigan.

10. Venue and jurisdiction are proper with this Court because all parties are present here and the actions which give rise to Plaintiff’s claims occurred in this County. Venue and jurisdiction also are proper with this Court under Article 9, § 31 of the Michigan Constitution of 1963, and MCL 600.308a.

### **GENERAL ALLEGATIONS**

11. Pursuant to its statutory authority, MCL 141.104, the City maintains and operates a sewer system (the “Sewer System”) to provide sanitary sewage treatment and disposal services to inhabitants of the City and to collect surface runoff from snowmelt and rainwater (“stormwater”).

The City has a “separated” sewer system – i.e., the City has one set of sewer pipes which collects and conveys sanitary sewage for ultimate treatment and another separate set of pipes (i.e., storm drains) that collect stormwater, which is conveyed without treatment to waterways. The Stormwater Charges are purportedly imposed to collect funds to service debt related to the City’s storm drain infrastructure and to repair, maintain and replace that infrastructure.

12. Plaintiff, at all relevant times, has paid the Stormwater Charges imposed by the City. Plaintiff is required by the City’s ordinances to pay the Stormwater Charges. The City collects nearly \$2 million in Stormwater Charges annually.

13. The City establishes the Rates for the Stormwater Charges from time to time through legislative action, and revenues generated by Stormwater Charge are deposited into the City’s Storm Drain Fund. A copy of the City’s Stormwater Utility Ordinance (the “Ordinance”) is attached hereto as **Exhibit A** and incorporated herein by reference.

14. Pursuant to the Ordinance, the owner of each parcel of property is assessed Stormwater Charges annually. *See* Ordinance § 27-130 (“The billing for stormwater service charges shall be included as a user charge on all tax bills issued for the city's annual property taxes.”).

15. The City charges residential and commercial property owners for stormwater management on the basis of Residential Equivalent Units (“REU”). City Ordinance § 27-100, defines “Residential Equivalent Unit” as follows: “That area of residential property defined to be impervious to account for the dwelling unit, garage, storage buildings or sheds, driveways, walks, patios, one-half of the street frontage and other impervious areas as calculated to be an average by randomly sampling fifty (50) residential parcels that area being determined to be three thousand two hundred fifty (3,250) square feet.”

16. The City Council sets the value of an REU through the City’s annual budget process. The FY 2016-17 budget set the value of 1 REU at \$210.

17. The City is required by ordinance to apply the following method to determine the amount of Stormwater Charges to be assessed against each property owner:

The following method shall be used for determining and calculating the stormwater system service charge to be levied upon all real property owners within the city:

- (a) The total cost of the debt retirement and operation and maintenance of the stormwater system shall be calculated annually in conjunction with the city's budget process and shall become an integral part thereof.
- (b) The amount of the total land area of commercially used property shall be determined. That amount shall then be divided by the residential equivalent unit (herein defined as three thousand two hundred fifty (3,250) square feet) to determine the total number of equivalent units for commercial property.
- (c) The amount of total land area of institutionally used property that is impervious shall be determined. That amount shall then be divided by the residential equivalent unit (herein defined as three thousand two hundred fifty (3,250) square feet) to determine the total number of equivalent units for institutional property.
- (d) The amounts determined from (b) and (c) above shall be added to the amount of residential parcels in the city (determined to be five thousand four hundred fifty (5,450) at the time of enactment of this article) to determine total number of equivalent units to be billed. That total shall then be divided into the total estimated amount of debt retirement and operation and maintenance costs, as defined in section 27-100, to determine the billing unit amount.
- (e) Each parcel of real property in the city shall then be charged on the basis of their number of residential equivalent units times the billing unit amount.

18. Thus, each residential property owner pays Stormwater Charges equal to 1 REU, regardless of the size of the subject property or the amounts of impermeable and permeable area on the subject property.

19. Each commercial and institutional property owner pays Stormwater Charges based the subject property's pro rata share of the total number of acres of commercial and institutional property in the City, regardless of the amounts of impermeable and permeable area on the subject property.

20. The above method for determining the amount of a user's Stormwater Charges under the Ordinance is not closely calibrated to the amount of that user's particular use of the City's stormwater disposal services or the cost incurred by the City for disposing of the stormwater that originates on that user's property.

21. The City's Ordinance establishes a similarly arbitrary method of charging owners of vacant property for stormwater disposal. *See* Ordinance § 27-125 (requiring, e.g., owners of vacant residential property with an area greater than 300 square feet but less than 1,000 square feet to pay 1/3 of an REU).

22. The Stormwater Charges are being used to fund costs for services which provide a benefit to the City and all its citizens. The revenues being derived from the Stormwater Charges are clearly in excess of the direct and indirect costs of the current "use" of the stormwater disposal services by the persons paying those exactions.

23. The City's stormwater charges do not correspond to the benefits conferred for at least two reasons. First, stormwater disposal services do not confer a unique benefit upon Plaintiff or the Class based upon their status as property owners. Stormwater collects on land, roads and other physical surfaces, and the runoff enters the combined sewer system through catch-basins and other collection devices. Indeed, the storm waters collected in a separated sewer system are not "used" in any meaningful sense by any particular landowner or user.

24. Any "benefit" of stormwater disposal conferred on the City's water and sanitary sewage disposal customers is no different than the benefit conferred on the general public. Stormwater systems help prevent erosion, collect contaminated water for cleansing, keep roadways from flooding, and prevent the formation of standing pools of stagnant water. The benefits resulting from this management are shared by nearly every member of the public.

25. The City's use of the revenues generated by the Stormwater Charges to pay for stormwater management has the effect of forcing one subset of the citizenry, property owners, to bear all of the costs of a public service, even though there are other "users" of those services and even though the services benefit the general public. Accordingly, the Stormwater Charges do not reflect the actual costs of stormwater disposal services, metered with relative precision in accordance with available technology and including an appropriate capital investment component.

26. Second, imposing the stormwater disposal costs only on property owners also allows other "users" of those facilities and services, including more intensive "users," to receive the benefit of those facilities and services without cost or at a cost that does not reflect the burdens placed upon the storm drain system by those "users." In fact, the City's method of financing these costs fails to distinguish at all between those responsible for greater and lesser levels of runoff, which determine the volume of stormwater which enters the storm sewer system. The City's method of financing these costs also fails to take into account the high volumes of rainwater run-off generated by public and private road surfaces. The City also exempts its own properties from payment of the Stormwater Charges. In addition, there is no "end-of-pipe" treatment of the stormwater, which is merely discharged into adjacent waterways. For these reasons, "the actual use of [stormwater disposal services] by each [water and sanitary sewage disposal user] is not accounted for with the requisite level of precision necessary to support a conclusion that the charge is proportionate to the costs of the services provided." *See County of Jackson v. City of Jackson*, 302 Mich. App. 90, 111; 836 N.W.2d 903 (2013).

27. The Stormwater Charge does not reflect the actual costs of use of the City's storm sewer system, metered with relative precision in accordance with available technology and including an appropriate capital investment component.

28. Moreover, the aggregate amount of the Stormwater Charges collected by the City far exceeds the City's actual expenses of stormwater management. For example, for the fiscal year ending December 31, 2015, the City imposed \$1,911,647 in Stormwater Charges but only incurred \$955,257 in stormwater-related expenses. In the fiscal year ending December 31, 2016, the City imposed \$1,837,110 in Stormwater Charges but only incurred \$965,632 in stormwater-related expenses. Not surprisingly, by the end of 2016, the City had amassed a cash horde of over \$3.3 million in the Storm Drain Fund.

29. The great disparity between revenues and expenses is not serendipitous or the result of actual expenditures being less than planned. To the contrary, the City establishes the amount of the Stormwater Charges with the intent and purpose to generate excessive revenues. Indeed, in the City's budget for the fiscal year ending December 31, 2017, the City planned to impose Stormwater Charges in the aggregate amount of \$1,939,952 even though its planned stormwater-related expenditures were only \$1,082,763.

30. The City's Stormwater Charges were originally imposed to, among other things, pay the City's proportionate share of the outstanding debt issued by the Milk River Inter-County Drainage District related to the Milk River Improvement Project (the "Project"). The Project was undertaken in 1991 by the Drainage District for increased retention and treatment of stormwater runoff generated primarily by the City and Grosse Pointe Woods. The City's proportionate share of the debt was over \$600,000 per year through the fiscal year ending December 31, 2012. Even though the debt was fully paid in 2012 and the City thus stopped incurring debt charges from the Drainage District at that point, the City did not reduce the Stormwater Charges to reflect that fact.

31. The City's method of establishing Stormwater Charges violates the City Ordinance Section 27-120, which requires that the Stormwater Charges be equivalent to the "total costs of the debt retirement and operation and maintenance of the stormwater system." The Ordinance

specifically requires the City to determine the amount of the Stormwater Charges by dividing the total number of REUs by the “total estimated amount of debt retirement and operations and maintenance costs.” The Ordinance further defines “operations and maintenance costs” to include only “[t]he annual required payment of the City’s proportionate share of the costs assessed by the Milk River Drainage Board for the operation and maintenance of the Milk River Pumping Station and Retention Basin, and costs associated with the repair and maintenance of the internal stormwater collection system within” the City.

### **PAYMENT OF THE CHARGES IS MANDATED BY THE CITY’S ORDINANCES**

32. Payment of the Stormwater Charges is not voluntary because Plaintiff and the Class are required by the Ordinance to pay the charges at issue in this case. *See* City Ordinance § 27-110 (“All owners of real property within the city, other than the city itself, shall be charged for the use of the stormwater system . . . Except as provided below, all real property shall be subject to the stormwater service charges regardless of whether privately or publicly owned.”)

33. City Ordinance § 27-135 provides: “Unpaid stormwater service charges shall constitute a lien against the property affected. They shall be collected and treated in the same fashion as other tax liens against real property as provided by the City Code of Ordinances and state law.”

### **CLASS ALLEGATIONS**

34. Plaintiff brings this action as a class action, pursuant to MCR 3.501, individually and on behalf of a proposed class consisting of all persons or entities which have paid or incurred the Stormwater Charges during the relevant class periods.

35. The members of the Class are so numerous that joinder of all members is impracticable.

36. Plaintiff's claims are typical of the claims of members of the Class. Plaintiff is a member of the Class he seeks to represent, and Plaintiff was injured by the same wrongful conduct that injured the other members of the Class.

37. The City has acted wrongfully in the same basic manner as to the entire class.

38. There are questions of law and fact common to all Class Members that predominate over any questions, which, if they exist, affect only individual Class Members, including:

- a. whether the Stormwater Charges imposed by the City are taxes;
- b. whether the Stormwater Charges imposed by the City violate the Headlee Amendment;
- c. whether the Stormwater Charges have a revenue-raising purpose;
- d. whether the Stormwater Charges are disproportionate to the benefits conferred upon the payers of those charges;
- e. Whether the Stormwater Charges are voluntary;
- f. Whether the Stormwater Charges are prohibited by MCL 141.91;
- g. Whether the Stormwater Charges have been imposed in violation of City Ordinance Section 27-120; and
- h. Whether the Stormwater Charges are arbitrary, capricious, and/or unreasonable.

39. Plaintiff will fairly and adequately protect the interests of the Class, and Plaintiff have no interests antagonistic to those of the Class. Plaintiff is committed to the vigorous prosecution of this action, and has retained competent and experienced counsel to prosecute this action.

40. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The prosecution of separate actions would create a risk of inconsistent or varying adjudications. Furthermore, the

prosecution of separate actions would substantially impair and impede the ability of individual class members to protect their interests. In addition, since individual refunds may be relatively small for most members of the class, the burden and expense of prosecuting litigation of this nature makes it unlikely that members of the class would prosecute individual actions. Plaintiff anticipates no difficulty in the management of this action as a class action.

**COUNT I  
VIOLATION OF THE HEADLEE AMENDMENT**

41. Plaintiff incorporates each of the preceding allegations as if fully set forth herein.

42. The City is bound by the Michigan Constitution of 1963, including those portions commonly known as the Headlee Amendment.

43. In particular, the City may not disguise a tax as a fee under Article 9, § 31 of the Michigan Constitution of 1963, which provides:

Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon. [Const. 1963, art. 9, § 31.]

44. The Stormwater Charges are disguised taxes and intended to avoid the obligations of the Headlee Amendment, including the requirement that the Stormwater Charges, as taxes, be approved by a majority of the electorate.

45. The Stormwater Charges have all relevant indicia of a tax:

- a. They have no relation to any service or benefit actually received by the taxpayer;
- b. The amount of the Stormwater Charges is disproportionate to the cost incurred by the City in providing water and sewage disposal services;
- c. The Stormwater Charges are designed to generate revenue;

- d. The payers of the Stormwater Charges benefit in no manner distinct from any other taxpayer or the general public;
- e. Payment of the Stormwater Charges are not discretionary, but actually or effectively mandatory;
- f. Various other indicia of a tax described in *Bolt v. City of Lansing* are present.<sup>1</sup>

46. As a direct and proximate result of the City's implementation of the Stormwater Charges, Plaintiff and the Class have been harmed.

47. Plaintiff seeks his attorneys' fees and costs as allowed by Article 9, § 32 of the Michigan Constitution of 1963 and MCL 600.308a.

48. Plaintiff seeks damages in the form of a refund of all amounts to which they and the Class are entitled, including all Stormwater Charges he paid to the City during the Headlee Class Period, as defined below.

**COUNT II  
ASSUMPSIT FOR MONEY HAD AND RECEIVED –  
VIOLATION OF THE PROHIBITED TAXES BY  
CITIES AND VILLAGES ACT, MCL 141.91**

49. Plaintiff incorporates each of the preceding allegations as if fully set forth herein.

50. The Prohibited Taxes by Cities and Villages Act, MCL 141.91, provides: "Except as otherwise provided by law and notwithstanding any provision of its charter, a city or village shall not impose, levy or collect a tax, other than an ad valorem property tax, on any subject of taxation, unless the tax was being imposed by the city or village on January 1, 1964."

51. The City did not impose the Stormwater Charges on or before January 1, 1964.

52. In fact, the City did not begin to impose the Stormwater Charges until 1992.

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<sup>1</sup> Pursuant to MCR 2.1112(M), Plaintiffs identify subparts (a) through (f) of Paragraph 45 as "factual questions that are anticipated to require resolution by the Court."

53. The Stormwater Charges are not ad valorem property taxes.

54. Because the Stormwater Charges are taxes that were not being imposed on January 1, 1964, they are unlawful under MCL 141.91.

55. As a direct and proximate result of the City's unlawful and improper conduct in collecting the Stormwater Charges, the City has collected millions of dollars to which it is not entitled.

56. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

57. By virtue of the City's imposition of the Stormwater Charges, the City has collected amounts in excess of the amounts it was legally entitled to collect. Therefore, Plaintiff is entitled to maintain an equitable action of assumpsit to recover back the amount of the illegal exaction. *See, e.g., Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

58. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the Charges, Plaintiff and the Class have conferred a benefit upon on the City.

59. Under equitable principles, the City should be required to disgorge the amounts it unlawfully collected.

**COUNT III  
UNJUST ENRICHMENT –  
VIOLATION OF THE PROHIBITED TAXES BY  
CITIES AND VILLAGES ACT, MCL 141.91**

60. Plaintiff incorporates each of the preceding allegations as if fully set forth herein.

61. The Prohibited Taxes by Cities and Villages Act, MCL 141.91, provides: "Except as otherwise provided by law and notwithstanding any provision of its charter, a city or village shall not impose, levy or collect a tax, other than an ad valorem property tax, on any subject of taxation, unless the tax was being imposed by the city or village on January 1, 1964."

62. The City did not impose the Stormwater Charges on or before January 1, 1964.

63. In fact, the City did not begin to impose the Stormwater Charges until 1992.

64. The Stormwater Charges are not ad valorem property taxes.

65. Because the Stormwater Charges are taxes that were not being imposed on January 1, 1964, they are unlawful under MCL 141.91.

66. As a direct and proximate result of the City's unlawful and improper conduct in collecting the Stormwater Charges, the City has collected millions of dollars to which it is not entitled.

67. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the Charges, Plaintiff and the Class have conferred a benefit upon the City and it would be inequitable for the City to retain that benefit.

68. Under equitable principles, the City should be required to disgorge the amounts it unlawfully collected.

**COUNT IV**  
**ASSUMPSIT/MONEY HAD AND RECEIVED**  
**UNREASONABLE WATER AND SEWER RATES**

69. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

70. Even if the Stormwater Charges are not taxes, the City's Stormwater Charges must still be reasonable. *Mapleview Estates v. Township of Brown Township*, 258 Mich. App. 412 (2003).

71. Because the Stormwater Charges were grossly in excess of the City's actual stormwater management expenses, the Charges are arbitrary, capricious, and unreasonable. *See, e.g., Trahey v. Inkster*, 2015 Mich. App. Lexis 1609 (August 18, 2015) (observing that "clear evidence of illegal or improper expenses included in a municipal utility's rates" is sufficient for a court to conclude that a utility rate is unreasonable).

72. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

73. The City has collected amounts in excess of the amounts it was legally entitled to collect. Therefore, Plaintiff is entitled to maintain an equitable action of assumpsit to recover back the amount of the illegal exaction. *See, e.g., Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

74. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the Charges, Plaintiff and the Class have conferred a benefit upon on the City.

75. Under equitable principles, the City should be required to disgorge the amounts it unlawfully collected.

**COUNT V**  
**UNJUST ENRICHMENT**  
**UNREASONABLE WATER AND SEWER RATES**

76. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

77. Even if the Stormwater Charges are not taxes, the City's Stormwater Charges must still be reasonable. *Mapleview Estates v. Township of Brown Township*, 258 Mich. App. 412 (2003).

78. Because the Stormwater Charges were grossly in excess of the City's actual stormwater management expenses, the Charges are arbitrary, capricious, and unreasonable. *See, e.g., Trahey v. Inkester*, 2015 Mich. App. Lexis 1609 (August 18, 2015) (observing that "clear evidence of illegal or improper expenses included in a municipal utility's rates" is sufficient for a court to conclude that a utility rate is unreasonable).

79. The City has collected amounts in excess of the amounts it was legally entitled to collect.

80. As a direct and proximate result of the City's improper conduct, the City has

collected millions of dollars to which it is not entitled. By paying the Charges, Plaintiff and the Class have conferred a benefit upon the City and it would be inequitable for the City to retain that benefit.

81. Under equitable principles, the City should be required to disgorge the amounts it unlawfully collected.

**COUNT VI**  
**ASSUMPSIT/MONEY HAD AND RECEIVED**  
**CHARGES IMPOSED IN VIOLATION OF CITY ORDINANCE**

82. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

83. Even if the Stormwater Charges are not taxes, the City's Stormwater Charges must still comply with applicable law.

84. Because the Stormwater Charges were imposed in violation of City Ordinance Section 27-120, the Charges constitute unlawful exactions.

85. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

86. The City has collected amounts in excess of the amounts it was legally entitled to collect. Therefore, Plaintiff is entitled to maintain an equitable action of assumpsit to recover back the amount of the illegal exaction. *See, e.g., Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

87. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the Charges, Plaintiff and the Class have conferred a benefit upon on the City.

88. Under equitable principles, the City should be required to disgorge the amounts it unlawfully collected.

**COUNT VII  
UNJUST ENRICHMENT  
VIOLATION OF CITY ORDINANCE**

89. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

90. Even if the Stormwater Charges are not taxes, the City's Stormwater Charges must still comply with applicable law.

91. Because the Stormwater Charges were imposed in violation of City Ordinance Section 27-120, the Charges constitute unlawful exactions.

92. The City has collected amounts in excess of the amounts it was legally entitled to collect.

93. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the Charges, Plaintiff and the Class have conferred a benefit upon the City and it would be inequitable for the City to retain that benefit. Under equitable principles, the City should be required to disgorge the amounts it unlawfully collected.

**PRAYER FOR RELIEF**

Plaintiff requests that the Court grant the following relief:

A. Certify this action to be a proper class action with Plaintiff certified as Class Representatives and Kickham Hanley PLLC and Joelson Rosenberg Moss Cohen Warren & Drasnin PLC designated Class Counsel;

B. With respect to Count I, define the Class to include all persons or entities which have paid or incurred the Stormwater Charge at any time in the one year preceding the filing of this lawsuit and/or at any time during the pendency of this action (the "Headlee Class Period");

C. With respect to Count I, enter judgment in favor of Plaintiff and the Class and against the City, and order and direct the City to disgorge and refund all Stormwater Charges

collected during the Headlee Class Period, and order the City to pay into a common fund for the benefit of Plaintiffs and all other members of the Class the total amount of Stormwater Charges to which Plaintiffs and the Class are entitled;

D. With respect to Count II through VII, inclusive, define the Class to include all persons or entities which have paid or incurred the Stormwater Charge at any time in the six years preceding the filing of this lawsuit and/or at any time during the pendency of this action (the “Assumpsit/Unjust Enrichment Class Period”);

E. With respect to Count II, enter judgment in favor of Plaintiffs and the Class and against the City, and order and direct the City to disgorge and refund all Stormwater Charges collected during the Assumpsit/Unjust Enrichment Class Period, and order the City to pay into a common fund for the benefit of Plaintiff and all other members of the Class the total amount of Stormwater Charges to which Plaintiff and the Class are entitled;

F. Appoint a Trustee to seize, manage and distribute in an orderly manner the common fund thus established;

G. Find and declare that the Stormwater Charges violate the Headlee Amendment and the Prohibited Taxes By Cities and Villages Act and enjoin the City from imposing the Stormwater Charges in the future;

H. Award Plaintiff and the Class the costs and expenses incurred in this action, including reasonable attorneys’, accountants’, and experts’ fees; and

I. Grant any other appropriate relief.

KICKHAM HANLEY PLLC

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Date: September 27, 2017

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CATHY M. GARRETT

# EXHIBIT A

## ARTICLE V. - STORMWATER SYSTEM

## Sec. 27-100. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Commercial property:* The land area of that property within the city that is not defined as residential or institutional property customarily defined as commercial property.

*Debt retirement:* The annual required payment of principal and interest accrued to the City of Harper Woods by the Milk River Drainage Board for the city's proportionate share of the retirement of capital improvement bonds issued for the Milk River Improvement Project.

*Flat rate residential equivalent unit:* That amount determined in the definition of "residential equivalent unit" below to be three thousand two hundred fifty (3,250) square feet to be applied as a flat rate for all residential parcels within the city in excess of three thousand five hundred (3,500) square feet of total land area and the amount to be used in calculating the area of commercial and institutional property to determine the stormwater system utility charge.

*Impervious area:* Land area covered by buildings, pavement or other material that prevents stormwater from penetrating the soil.

*Institutional property:* The land area of that property within the city that is exempt from ad valorem property taxes except that property municipally owned.

*Milk River Improvement Project:* That project undertaken in 1991 by the Milk River Drainage District for increased retention and treatment of stormwater runoff generated primarily by the cities of Harper Woods and Grosse Pointe Woods.

*Operation and maintenance:* The annual required payment of the city's proportionate share of the costs assessed by the Milk River Drainage Board for the operation and maintenance of the Milk River Pumping Station and Retention Basin, and costs associated with the repair and maintenance of the internal stormwater collection system within the City of Harper Woods.

*Pervious area:* Land area that is not impervious.

*Residential equivalent unit (REU):* That area of residential property defined to be impervious to account for the dwelling unit, garage, storage buildings or sheds, driveways, walks, patios, one-half of the street frontage and other impervious areas as calculated to be an average by randomly sampling fifty (50) residential parcels that area being determined to be three thousand two hundred fifty (3,250) square feet.

*Residential property:* The land area of that property within the city used for residential purposes including single-family dwelling units, duplexes, condominiums and cooperatives, but excluding multi-family dwellings in excess of two (2) units.

*Stormwater:* Water generated by atmospheric precipitation that becomes surface water or ground water runoff.

*Stormwater system:* Public storm sewers, drains, ditches, retention ponds, dams, rivers, streams, river impoundments and flood control facilities used for collecting and transporting stormwater.

(Ord. No. 92-11, § 1, 10-19-92)

Secs. 27-101—27-109. - Reserved.

Sec. 27-110. - Stormwater service charges.

All owners of real property within the city, other than the city itself, shall be charged for the use of the stormwater system based on the amount of impervious area which is estimated and determined to be contributory to the stormwater system. The impact of the stormwater from the property on the system shall be determined on the basis of the flat rates contained in this article.

Except as provided hereinafter below, all real property shall be subject to the stormwater service charge regardless of whether privately or publicly owned. Publicly owned land open to the general public for recreation or operated for municipal purposes shall not be subject to stormwater service charges.

(Ord. No. 92-11, § 1, 10-19-92)

Secs. 27-111—27-119. - Reserved.

Sec. 27-120. - Method for determining and calculating rates.

The following method shall be used for determining and calculating the stormwater system service charge to be levied upon all real property owners within the city:

- (a) The total cost of the debt retirement and operation and maintenance of the stormwater system shall be calculated annually in conjunction with the city's budget process and shall become an integral part thereof.
- (b) The amount of the total land area of commercially used property shall be determined. That amount shall then be divided by the residential equivalent unit (herein defined at three thousand two hundred fifty (3,250) square feet) to determine the total number of equivalent units for commercial property.
- (c)

The amount of total land area of institutionally used property that is impervious shall be determined. That amount shall then be divided by the residential equivalent unit (herein defined as three thousand two hundred fifty (3,250) square feet) to determine the total number of equivalent units for institutional property.

- (d) The amounts determined from (b) and (c) above shall be added to the amount of residential parcels in the city (determined to be five thousand four hundred fifty (5,450) at the time of enactment of this article) to determine total number of equivalent units to be billed. That total shall then be divided into the total estimated amount of debt retirement and operation and maintenance costs, as defined in section 27-100, to determine the billing unit amount.
- (e) Each parcel of real property in the city shall then be charged on the basis of their number of residential equivalent units times the billing unit amount.

(Ord. No. 92-11, § 1, 10-19-92)

Secs. 27-121—27-124. - Reserved.

Sec. 27-125. - Vacant property and residential parcels with less than three thousand five hundred (3,500) square feet in total land area.

The following special provisions shall apply to vacant property and residential parcels with less than three thousand five hundred (3,500) square feet in total land area:

Land Area (Square Feet)	Stormwater Service Charge
Residential property equal to or less than 300 sq. ft. and vacant property	No charge
Residential property equal to or less than 1,000 sq. ft. but greater than 300 sq. ft.	One-third billing unit
Residential property less than 3,500 sq. ft. but greater than 1,000 sq. ft.	One-half billing unit
Residential property equal to or greater than 3,500 sq. ft.	One billing unit

(Ord. No. 92-11, § 1, 10-19-92)

Sec. 27-126. - Stormwater provisions for residential property lying partially in Harper Woods and partially in Grosse Pointe Woods.

For residential property lying partially in Harper Woods and partially in Grosse Pointe Woods having less than one thousand (1,000) square feet of impervious area but greater than three hundred (300) square feet of impervious area, the stormwater service charge shall be one-third billing unit. Said property having three hundred (300) square feet or less of impervious area, including no impervious area, shall have no charge levied.

(Ord. No. 93-12, § 1, 6-7-93)

Secs. 27-127—27-129. - Reserved.

Sec. 27-130. - Billing for stormwater service charges.

The billing for stormwater service charges shall be included as a user charge on all tax bills issued for the city's annual property taxes. For institutional and other property not recipients of tax bills, a special billing shall be issued concurrently with the city's annual property tax billing.

(Ord. No. 92-11, § 1, 10-19-92)

Secs. 27-131—27-134. - Reserved.

Sec. 27-135. - Collection.

Unpaid stormwater service charges shall constitute a lien against the property affected. They shall be collected and treated in the same fashion as other tax liens against real property as provided by the City Code of Ordinances and state law.

(Ord. No. 92-11, § 1, 10-19-92)

Secs. 27-136—27-139. - Reserved.

Sec. 27-140. - Appeals.

Property owners who dispute or are aggrieved by the determination of a stormwater service charge may appeal their charges to the city manager within thirty (30) days after mailing of bills. The city manager is authorized to adjust such charges as he or she may deem appropriate when unusual or unique situations are presented and an adjustment is justified.

(Ord. No. 92-11, § 1, 10-19-92)

Secs. 27-141—27-149. - Reserved.

Sec. 27-150. - Use of funds.

All funds collected for stormwater service shall be placed in a separate fund and shall be used solely for the debt retirement, construction, operation, repair and maintenance of the stormwater system. This fund shall be subject to annual review of the city council for the determination of the adequacy of reserves, the amount of appropriations and establishment of rates in accordance with the city's annual budget preparation process.

(Ord. No. 92-11, § 1, 10-19-92)

Secs. 27-151—27-159. - Reserved.

Sec. 27-160. - Use of stormwater system.

The use of the stormwater system shall be for the purpose of the collection and transmission of stormwater only. No person shall place or cause to be placed any substance into the stormwater system other than stormwater. Those discharges prohibited by section 27-56(b) into the sanitary sewer system shall equally apply for discharges into the storm sewer system.

(Ord. No. 92-11, § 1, 10-19-92)

Secs. 27-161—27-179. - Reserved.

Sec. 27-180. - Rules and regulations.

The city manager is authorized to promulgate rules and regulations necessary to implement the provisions of this article. Such rules and regulations shall take effect upon approval of the city council.

(Ord. No. 92-11, § 1, 10-19-92)