

**LEGAL NOTICE  
NOTICE OF CLASS ACTION**

**IN ORDER TO RECEIVE A REFUND AS PART OF THIS CLASS ACTION SETTLEMENT,  
YOU ARE REQUIRED TO SUBMIT A WRITTEN CLAIM.**

**IF YOU PAID THE CITY OF OAK PARK FOR WATER AND SANITARY SEWER SERVICE  
AT ANY TIME BETWEEN OCTOBER 22, 2009 AND AUGUST 31, 2018 AND WISH TO  
RECEIVE A CASH REFUND IF YOU QUALIFY FOR SUCH REFUND, YOU MUST  
SUBMIT THE ATTACHED CLAIM FORM ON OR BEFORE JANUARY 18, 2019 AND MAIL  
IT TO: OAK PARK SETTLEMENT, 1650 ARCH ST., STE. 2210, PHILADELPHIA, PA 19103,  
EMAIL THE COMPLETED FORM TO [INFO@OAKPARKSETTLEMENT.COM](mailto:INFO@OAKPARKSETTLEMENT.COM), OR  
SUBMIT AN ELECTRONIC FORM ONLINE AT [WWW.OAKPARKSETTLEMENT.COM](http://WWW.OAKPARKSETTLEMENT.COM).**

**PLEASE RETAIN THIS NOTICE**

STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT

JUDY KISH and  
JOYCE BANNON,  
individually, and as representatives  
of a class of similarly-situated persons  
and entities,

Plaintiffs,

v.

CITY OF OAK PARK,  
a Michigan municipal corporation,

Defendant.

Case No. 2015-149751-CZ  
Hon. Leo Bowman

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Gregory D. Hanley (P51204)  
Jamie K. Warrow (P61521)  
Edward F. Kickham Jr. (P70332)  
Kickham Hanley PLLC  
32121 Woodward Avenue, Suite 300  
Royal Oak, MI 48073  
(248) 544-1500  
Attorneys for Plaintiffs

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John Gillooly (P41948)  
Garan Lucow Miller PC  
1155 Brewery Park Boulevard, Suite 200  
Detroit, MI 48207  
(313)446-5501  
Attorney for Defendant

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TO: All persons and entities who/which have paid the City of Oak Park (the "City") for water and sanitary sewage disposal services at any time between October 22, 2009 and August 31, 2018

You are hereby notified that a proposed settlement in the amount of \$2,850,000 has been reached with the City in a class action lawsuit pending in Oakland County Circuit Court titled *Kish v. City of Oak Park*, Case No. 2015-149751-CZ, presiding Judge Leo Bowman, challenging two cost components included in the City's water and sewer rates, specifically (1) a mandatory debt service charge (the "Kuhn Facility Debt Charge") and (2) a mandatory stormwater disposal charge (the "Stormwater Charge") (collectively the "Charges") imposed by the City on users of its water and sanitary sewage disposal services.

Plaintiffs are individuals who are water and sanitary sewer customers and who have paid the Charges imposed by the City. Plaintiffs contend that the inclusion of such Charges in the City's water and sewer rates ("Rates") are motivated by a revenue-raising and not a regulatory purpose, that they are disproportionate to the City's actual costs of providing water and sewer services, and that (1) the Charges are therefore unlawful under the Headlee Amendment to the Michigan Constitution and Michigan statutes, and (2) the City is liable for a refund of the Charges under a theory of unjust enrichment.

The Plaintiffs seek a judgment from the court against the City that would order and direct the City to refund all Charges to which plaintiff and the class are entitled and any other appropriate relief.

The City denies that the Charges are improper and therefore, denies the Plaintiff's claims and contends that it should prevail in the Lawsuit.

On April 5, 2016, the Court entered an order certifying the Lawsuit as a class action. You are receiving this Notice because the City's records indicate that you paid for water and/or sanitary sewage disposal services between October 22, 2009 and August 31, 2018 and are therefore a member of the class.

For settlement purposes, the parties have agreed that the Class will consist of all persons or entities who/which paid the City for water and sewer service between October 22, 2009 and August 31, 2018 (the "Class"). This Agreement is intended to settle all of the claims of the Class.

The principal terms of the Settlement Agreement are as follows:

For the purposes of the proposed Settlement, the City expressly denies any and all allegations that it acted improperly, but, to avoid litigation costs, the City has agreed to create a settlement fund in the aggregate amount of Two Million Eight Hundred and Fifty Thousand Dollars (**\$2,850,000**) for the benefit of the Class ("Settlement Amount"). The Settlement Amount will be utilized, with Court approval, to pay refunds to the Class, and to pay Class Counsel an award of attorneys' fees, the total amount of which shall not exceed 33% of the Settlement Amount, and expenses for the conduct of the litigation.

Within 7 days after the "Settlement Date" (as defined in Paragraph 7 of the Agreement), the City shall deposit the sum of Five Hundred Thousand Dollars (\$500,000) into the IOLTA Trust Account of

Class Counsel, Kickham Hanley PLLC. The City shall deposit the remainder of the Settlement Fund into the IOLTA Trust Account of Kickham Hanley PLLC in accordance with the following schedule:

\$587,500 on or before the date that is one year after the “Settlement Date”;  
\$587,500 on or before the date that is two years after the “Settlement Date”;  
\$587,500 on or before the date that is three years after the “Settlement Date”; and  
\$587,500 on or before the date that is four years after the “Settlement Date.”

In lieu of the payment schedule set forth above, the City may discharge its payment obligations by depositing a total of \$2,500,000 into the IOLTA Trust Account of Kickham Hanley PLLC on or before the date that is one year after the “Settlement Date.”

The “Net Settlement Fund” is the Settlement Amount less the combined total of: (a) the attorneys’ fees awarded to Class Counsel by the Court; (b) expenses reimbursed pursuant to the terms of the Settlement; (c) out-of-pocket expenses of the Claims-Escrow Administrator, and (d) any incentive award made by the Court to the class representatives in an amount not to exceed \$10,000.

The Net Settlement Fund shall be used to pay Class Members as described below.

All Class Members may participate in the settlement of this case by receiving from the Net Settlement Fund cash distribution payments. To qualify to receive distributions of cash via check (a “Payment”) from the Net Settlement Fund, Class Members will be required to submit sworn claims (the “Claims”) which identify their names, addresses, and the periods of time in which they paid the Charges in order to participate in the Settlement. Class Members who submit Claims will hereafter be referred to as the “Claiming Class Members.” The Claiming Class Members will be required to submit those claims no later than January 18, 2019. A claim form is enclosed with this Notice. Class members may also submit a claim online at [www.OakParkSettlement.com](http://www.OakParkSettlement.com).

The Claims-Escrow Administrator shall calculate each Claiming Class Member’s pro rata share of the Net Settlement Fund (the “Pro Rata Share”). Only those Class Members who paid for water and/or sewer service (the “W&S Charges”) during the Class Period and who submit a timely Claim are entitled to distribution of a Pro Rata Share of the Net Settlement Fund. The size of each Claiming Class Member’s Pro Rata Share shall be determined by (1) calculating the total amount of W&S Charges the Claiming Class Member paid during the Class Period and then (2) dividing that number by the total amount of W&S Charges the City assessed during the Class Period against all Claiming Class Members and then (3) multiplying that fraction by the amount of the Net Settlement Fund.

Claiming Class Members will receive their Pro Rata Shares in a maximum of five payments, each of which will occur within 14 days after the City deposits each installment of the funds into the IOLTA Trust Account of Class Counsel, Kickham Hanley PLLC, pursuant to Paragraph 3 of the Agreement. The

amount of each such payment for each Claiming Class Member will be determined by multiplying the Class Member's Pro Rata Share by the portion of the Net Settlement Fund attributable to the amount of each installment payment by the City.

Plaintiff believes that Oakland County has overcharged the City for the stormwater component of the total flow from the City that enters the Oakland County system for many years (the "Stormwater Overcharge"). As part of the settlement, the City will assign any and all claims it has or may have against Oakland County arising out of or relating to the Stormwater Overcharge to the Class or an entity formed for the benefit of the Class, and Class Counsel will pursue those claims through litigation and/or negotiation (the "Oakland County Action").

Any monetary recovery in the Oakland County Action will be distributed, after counsel fees and costs, to the Class based upon the same methodology for distributing the Settlement Fund. In the event the Oakland County Action is resolved through a settlement, that settlement, and any request by Class Counsel for an award of fees and expenses, will be subject to the same Court approval processes as those applied to the Settlement Fund. In the event that there is a monetary recovery in Oakland County Action by way of a litigated judgment, any request by Class Counsel for an award of fees and expenses will be subject to the same Court approval processes as those applied to the Settlement Fund

In addition to the refund and assignment of claims described above, the parties have agreed that the City will change the method by which it charges for water and sanitary sewage disposal. The City shall utilize its current methodology for setting Rates charged by the City through June 30, 2020 (the "FY 2019-20 Period"). Beginning July 1, 2020, and ending June 30, 2025 (the "Prospective Relief Period"), the City shall adjust its Rates so that the Kuhn Facility Debt Charge is not a component of cost that is included in the Rates. During the Prospective Relief Period, but not before July 1, 2020, the Parties agree that the City otherwise retains its discretion to adjust the Rates in accordance with Michigan law.

The City may not levy a tax or other assessment against property owners or water or sewer customers to finance, in whole or in part, the Settlement Fund (unless such tax or assessment receives voter approval), nor may the City increase its Rates to finance, in whole or in part, the Settlement Fund. Regardless of the source of the funds the City uses to establish the Settlement Fund, the City shall not include as a recoverable cost in the setting of the Rates any amounts that it has contributed to the Settlement Fund.

The Class Members shall release the City as provided below. In addition to the release set forth below, if the if the City complies with the prospective relief described above for the duration of the FY 2019-20 Period and the Prospective Relief Period, the Class Members who do not timely request exclusion from the Class shall be deemed to have released and waived any and all claims that could be brought

which (a) arise during the FY 2019-20 Period challenging the inclusion of the Stormwater Charges and the Kuhn Facility Drainage Charges in the Rates for the FY 2019-20 Period (the “FY 2019-20 Period Claims”) and (b) arise during the Prospective Relief Period challenging the inclusion of the Stormwater Charges in the City’s Rates during the Prospective Relief Period (the “Prospective Relief Period Claims”).

Class Members who wish to exclude themselves from the Settlement may write to the Administrator, stating that they do not wish to participate in the Settlement and that they wish to retain their right to file an action against the City. This proposed settlement should not be interpreted, in any way, as suggesting that the claims alleged against the City have legal or factual merit. The City has challenged the validity of Plaintiff’s claims and many of the substantive legal and factual issues have not been resolved. **This request for exclusion must be postmarked no later than December 29, 2018 and mailed to: Kickham Hanley PLLC, 32121 Woodward Avenue, Suite 300, Royal Oak, Michigan 48073.**

By remaining a Class Member, you will be bound by the terms of the proposed settlement and will be barred from bringing a separate action against the City for the claims asserted in the Lawsuit at your own expense through your own attorney. You will, however, receive your pro rata share of the Net Settlement Fund if submit a timely claim and you do not request exclusion from the Class. If you were to successfully pursue such a separate action to conclusion, recovery might be available to you which is not available in this class action settlement. Whether to remain a member of this class or to request exclusion from this class action to attempt to pursue a separate action at your own expense without the assistance of the City in this Action is a question you should ask your own attorney. Class Counsel cannot and will not advise you on this issue.

Pursuant to the Order of the Court dated October 18, 2018, a Settlement Hearing will be held in the Oakland County Circuit Court, 1200 Telegraph Road, Pontiac, Michigan 48341 at 8:30 a.m., on February 6, 2019, to determine whether the proposed Settlement as set forth in the Settlement Agreement dated October 17, 2018, is fair, reasonable, and adequate and should be approved by the Court, whether the Lawsuit should be dismissed pursuant to the Settlement and whether counsel for Plaintiffs and the Class should be awarded counsel fees and expenses. At the Settlement Hearing, any member of the Class may appear in person or through counsel and be heard to the extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness and adequacy of the proposed Settlement. However, no Class member will be heard in opposition to the proposed Settlement and no papers or briefs submitted by any such Class member will be accepted or considered by the Court unless on or before January 23, 2019, such Class member serves by first class mail written objections that set forth the name of this matter as defined in the Notice, the objector’s full name, address and telephone number, an explanation of the basis upon which the objector claims to be a Class Member, all grounds for the objection including any

known legal support for the objection, the number of times in which the objector has objected to a class action settlement in the past five years and a caption of each case in which an objection was filed, the identity of all counsel representing the objector at the hearing, a statement confirming whether the objector intends to appear and/or testify at the hearing (along with a disclosure of all testifying witnesses) and the signature of the objector (not just the objector's attorney) upon each of the following attorneys:

Gregory D. Hanley  
Kickham Hanley PLLC  
300 Balmoral Centre  
32121 Woodward Avenue  
Royal Oak, Michigan 48073

Counsel for Plaintiff

And

John Gillooly (P41948)  
Garan Lucow Miller PC  
1155 Brewery Park Boulevard, Suite 200  
Detroit, MI 48207  
(313)446-5501

Counsel for Defendant

and has filed said notice, objections, papers and briefs, as to the settlement with the Clerk of the Oakland County Circuit Court. Any Class member who does not make and serve written objections in the manner provided above shall be deemed to have waived such objections and shall be forever foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement.

**AGAIN, IN ORDER TO RECEIVE A REFUND AS PART OF THIS CLASS ACTION SETTLEMENT, YOU ARE REQUIRED TO SUBMIT A WRITTEN CLAIM.**

**IF YOU PAID THE CITY OF OAK PARK FOR WATER AND SEWER SERVICE AT ANY TIME BETWEEN OCTOBER 22, 2009 AND AUGUST 31, 2018 AND WISH TO RECEIVE A CASH REFUND IF YOU QUALIFY FOR SUCH REFUND, YOU MUST SUBMIT THE ATTACHED CLAIM FORM ON OR BEFORE JANUARY 18, 2019 AND MAIL IT TO: OAK PARK SETTLEMENT 1650 ARCH ST., STE. 2210, PHILADELPHIA, PA 19103, EMAIL THE COMPLETED FORM TO: [INFO@OAKPARKSETTLEMENT.COM](mailto:INFO@OAKPARKSETTLEMENT.COM) OR SUBMIT AN ELECTRONIC FORM ONLINE AT: [WWW.OAKPARKSETTLEMENT.COM](http://WWW.OAKPARKSETTLEMENT.COM).**

For a more detailed statement of the matters involved in the Lawsuit, including the terms of the proposed Settlement, you are referred to papers on file in the Lawsuit, which may be inspected during regular business hours at the Office of the Clerk of Circuit Court for Oakland County, Michigan. You

may also view the Settlement Agreement and other important court documents at [www.kickhamhanley.com](http://www.kickhamhanley.com).

Should you have any questions with respect to this Notice of the proposed settlement of the Lawsuit generally, you should raise them with your own attorney or direct them to counsel for the Class, **IN WRITING OR BY EMAIL TO KHTEMP@KICKHAMHANLEY.COM, NOT BY TELEPHONE**, identified as Attorneys for Plaintiffs, above. **DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, THE DEFENDANT OR THE ATTORNEYS FOR DEFENDANT.**

On the Settlement Date, each member of the Class who has not timely requested exclusion therefrom shall be deemed to have individually executed, on behalf of the Class Member and his or her heirs, successors and assigns, if any, the following Release and Covenant Not To Sue:

In executing the Release and Covenant Not To Sue, each Class Member, on behalf of himself, herself or itself, and his, her or its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person the Class Member represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the City, and each of its successors and assigns, present and former agents, elected and appointed officials, representatives, employees, insurers, affiliated entities, attorneys and administrators, of and from any and all manner of actions, causes of action, suits, debts, accounts, understandings, contracts, agreements, controversies, judgments, consequential damages, compensatory damages, punitive damages, claims, liabilities, and demands of any kind or nature whatsoever, known or unknown, which arise from the beginning of time through the date of this Final Order and Judgment concerning (a) the City's calculation or assessment of Water and Sewer Rates or Charges; (b) the components of costs included in the Water and Sewer Rates; and (c) the City's Water and Sewer Fund balance. This release is intended to include all claims that were asserted or could have been asserted in the Lawsuit concerning the City's Rates and/or Charges. In executing the Release and Covenant Not to Sue, each Class Member also covenants that: (a) except for actions or suits based upon breaches of the terms of this Agreement or to enforce rights provided for in this Agreement, he, she or it will refrain from commencing any action or suit, or prosecuting any pending action or suit, in law or in equity, against the City on account of any action or cause of action released hereby; (b) none of the claims released under this Release and Covenant Not To Sue has been assigned to any other party; and (c) he, she or it accepts and assumes the risk that if any fact or circumstance is found, suspected, or claimed hereinafter to be other than or different from the facts or circumstances now believed to be true, the Release and Covenant Not To Sue shall be and remain effective notwithstanding any such difference in any such facts or circumstances. The foregoing shall not affect the claims of any Class Member whose individual water and sewer bills were calculated in error on the basis of facts or circumstances unique to such class member and not based on the claims that were or could have been asserted by the Class in the Lawsuit.