

STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

JOSEPH G. GRIFFIN, and
CHRISTINA GRIFFIN, individually and
as representatives of a class of similarly-
situated persons and entities,

Case No. -CZ
Hon.

2020-181196-CZ

Plaintiffs,

JUDGE HALA JARBOU

v.

CITY OF MADISON HEIGHTS,
a Michigan municipal corporation,

Defendant.

Gregory D. Hanley (P51204)
Edward F. Kickham Jr. (P70332)
Kickham Hanley PLLC
32121 Woodward Avenue, Suite 300
Royal Oak, MI 48073
(248) 544-1500
Attorneys for Plaintiff and the Class

Christopher Olson (P58780)
Olson PLLC
32121 Woodward Avenue, Suite 300
Royal Oak, MI 48073
(248) 672-7368
Attorney for Plaintiff and the Class

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

PLAINTIFFS' CLASS ACTION COMPLAINT

Plaintiffs Joseph G. Griffin and Christina Griffin ("Plaintiffs"), by their attorneys, Kickham Hanley PLLC and Olson PLLC, individually and on behalf of a class of similarly situated persons and entities, state as follows for their Complaint against Defendant City of Madison Heights (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. Plaintiffs challenge the mandatory stormwater service charge (hereinafter, the “Stormwater Charge”) the City imposes on all owners of real property in the City. The City persists in the exaction of this charge 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 generates over \$1.6 million in annual revenues for the City.

4. The Stormwater Charge constitutes an unlawful tax under the *Bolt* decision because it imposes upon one subset of residents (i.e., property owners) the financial burden of a governmental activity which benefits the community at large (i.e., stormwater management).

5. Indeed, through payment of the Stormwater Charge, Plaintiffs and the Class are paying the City’s entire cost of stormwater management.

6. This action challenges the Stormwater Charge the City has imposed on Plaintiffs and the Class beginning in Fiscal Year 2017, which is based on a parcel of property’s average impermeable area.

7. In Fiscal Year 2017 and later, upon information and belief, the City financed the cost of stormwater management through a Stormwater Charge that is apportioned according to the **average** impermeable area present on each parcel of property (the “Land-Based Charges”). As

discussed in detail below, this methodology is not closely calibrated to an individual parcel's contribution to the stormwater management system.

8. Under this methodology, the Stormwater Charge is motivated by a revenue-raising and not a regulatory purpose; the charges to Plaintiffs and the Class are not proportionate to the City's actual costs of providing to Plaintiffs and the Class the purported benefits for which the Charges are purportedly imposed; and payment of the charges is not voluntary. These are relevant indicia of a tax under *Bolt v. City of Lansing*.

9. 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).

10. Plaintiffs, 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 during the six years prior to the filing of this action, and all such Charges collected during the pendency of this action.

JURISDICTION AND VENUE

11. During relevant times, Plaintiffs owned improved real property situated in the City of Madison Heights, Oakland County, Michigan; have incurred and paid the Charges at issue in this case at all relevant times; and seek to act as class representatives for all similarly situated persons and entities.

12. Defendant City of Madison Heights (the "City") is a municipality located in Oakland County, Michigan.

13. Venue and jurisdiction are proper with this Court because all parties are present here and the actions which give rise to Plaintiffs' 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

14. The City maintains and operates a sanitary sewer system to provide sanitary sewage treatment and disposal services to inhabitants of the City.

15. The City maintains a partially-separated stormwater disposal system to collect surface runoff from snowmelt and rainwater (“stormwater”). In some areas, the City has one set of sewer pipes which collects and conveys sanitary sewage for ultimate treatment and a separate set of pipes (i.e., storm drains) that collect stormwater, which is known as a separated stormwater system. In other areas, the City collects sanitary sewage and stormwater in the same pipe, which is known as a combined system. The City therefore has a partially-separated stormwater disposal system.

16. The Stormwater Charges are purportedly imposed to collect funds to pay stormwater management expenses incurred from Oakland County and to pay for the City’s share of improvements to the George W. Kuhn Retention Treatment Basin.

17. Plaintiffs, at all relevant times, have paid the Stormwater Charges imposed by the City. The City’s Charter and ordinances require Plaintiffs to pay the Stormwater Charges.

18. The City establishes the Rates for the Stormwater Charges from time to time through legislative action.

19. The owner of each parcel of property is assessed Stormwater Charges along with the owner’s other utility bills.

20. Under the billing methodology the City used before FY 2017, “stormwater discharge [was] treated as a component of the regular sewage bill and [was] tied to the amount of water consumed.” City Council Meeting Minutes 4/20/16, Exhibit A hereto, p. 7 (describing statements by City Manager Marsh).

21. The City's Fiscal Year 2017 Budget (attached in part as Exhibit B hereto), p. 5, described the transition from the tap water-based fee structure to the present "Equivalent Residential Unit" structure as follows:

Under the City's current billing methodology, stormwater discharge is treated as a component of the regular sewage bill and is tied to the amount of water consumed. **To more accurately bill this charge and to bring Madison Heights in line with a number of other municipalities in Southeast Michigan, stormwater will now be billed based on the individual parcel's amount of pervious and impervious surface which directly correlates to the stormwater runoff.** The City Engineer has calculated an Equivalent Residential Unit (ERU) equal to 2,600 square feet. Parcels containing a higher amount of impervious surface will have a higher amount of ERUs and hence, a higher bill for stormwater. The total amount billed for stormwater will continue to cover all of the city's stormwater expenses charged for the Oakland County Water Resources Commissioner, but as a consequence of the rate restructuring, the sewer rate will decrease by approximately 25% from \$5.10 to \$3.83 per unit effective with billings on or after July 1st, and there will be a new stormwater charge of \$5.17 per ERU on each bill. [emphasis added]

22. This methodology is still improper.

23. At present, the City charges property owners for stormwater management on the basis of Equivalent Residential Units ("ERU"). *See* City's FY 2016-17 Budget, Exhibit B hereto, p. 5; City Council Meeting Minutes 4/20/16, Exhibit A hereto, p. 7.

24. The City does not appear to publish detailed information about its calculation of ERUs. Upon information and belief, the City deems each ERU to contribute a certain amount of stormwater runoff to the system based on the average impermeable area that is present on parcels of property in the City, and then assigns each parcel of property a number of ERUs based on that parcel's overall surface area, without assessing the amount of pervious and impervious square footage on that unique parcel, the parcel's elevation, or other relevant factors.

25. So, for example, an owner of a 2,600 square foot parcel is assigned 1 ERU, **regardless of the amount of impervious area that is actually present on that particular parcel.**

26. The City Council sets the value of an ERU in each year's budget. At present, the City charges a residential property owner \$11.37 per ERU per quarter, and a commercial property owner \$3.79 per ERU per month. *See* FY 2019-20 Budget, attached hereto in part as Exhibit C, p. 263.

27. The City's method for determining the amount of each property's Stormwater Charges 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.

28. The Michigan Court of Appeals recently upheld the Wayne County Circuit Court's determination that the City of Harper Woods had violated the Headlee Amendment when it imposed similarly-imprecise stormwater management charges. *See Gottesman v. City of Harper Woods*, No. 344568, 2019 Mich. App. LEXIS 7657, at *18-19 (Dec. 3, 2019) ("The ordinance does not consider the individual characteristics of the property, such as pollutants, the type or extent of improvements thereon, or how said improvements affect the amount of runoff flowing from the property. Indeed, all residential properties that are not exempt from the Charge pay either one-third, one-half, or a full billing unit based strictly on the square footage of the property, regardless of how much of the property is actually impervious or pervious. . . . Although mathematical precision is not required . . . defendant's inflexible approximation approach is a far cry from the more particularized method involving individual measurements of impervious areas this Court found acceptable . . .") (citations omitted).

29. The Stormwater Charges are being used to fund costs for services which provide a benefit to the City and all its citizens, and the general public.

30. 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 Plaintiffs

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 portion of the partially-separated sewer system through catch-basins and other collection devices. Indeed, the storm waters collected in a separated or combined sewer system are not “used” in any meaningful sense by any particular landowner or user.

31. Any “benefit” of stormwater disposal conferred on the City’s water and sanitary sewage disposal customers and/or property owners 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.

32. 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.

33. 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 sewer 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. 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).

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

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

35. Payment of the Stormwater Charges is not voluntary because the City’s Charter requires property owners to pay the Stormwater Charges. *See* Charter, § 13.4 (“The Council shall provide by ordinance for the collection of all public utility rates and charges of the city. Such ordinances shall provide at least: (a) That the city shall have a security for the collection of such utility rates and charges [and] a lien upon the real property supplied by such utility, which lien shall become effective immediately upon the supplying of such utility service and shall be enforced in the manner provided in such ordinance . . .”); Ordinance § 29-50 provides: (“The city shall have, as security for the collection of any water rates or any assessments, charges, cost of repairs or rentals due or to become due for the use or consumption of water supplied under this article to any house or other building or any premises, lot or parcel of land, a lien upon such house or other building and upon the premises, lot or parcel upon which such house or other building shall be situated or to which such water was supplied. Such lien shall become effective immediately upon the distribution of the water to the premises or property supplied; and such lien may be enforced by the city in the manner prescribed by the general laws of this state providing for the enforcement of tax liens, provided that the provisions of this section shall not be construed as preventing the city from suing such owner by action in the name of the city for the amount so due to it, or from preventing the city

from disconnecting and discontinuing such water services from the premises at any time such water charges have not been paid.”).

36. In addition, the City Council each year adopts a budget that functions as an ordinance or resolution requiring Plaintiffs and the Class to pay the Stormwater Charges. *See, e.g.*, FY 2019-20 Budget, Exhibit C hereto, p. 263 (“Stormwater fees shall be charged to all properties within the city based on Equivalent Residential Units (ERUs) calculated for each property.”).

CLASS ALLEGATIONS

37. Plaintiffs bring this action as a class action, pursuant to MCR 3.501, individually and on behalf of the following proposed classes:

- a. The Headlee Class: A proposed class consisting of all persons or entities which have paid or incurred the Stormwater Charges during the one year prior to the filing of this action, including Stormwater Charges paid or incurred during the pendency of this action..
- b. The MCL 141.91 Class: A proposed subclass consisting of all persons and entities which have paid or incurred the Stormwater Charges during the period of time commencing when the City implemented the Land-Based Charges through the present, including Stormwater Charges paid or incurred during the pendency of this action.

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

39. Plaintiffs’ claims are typical of the claims of members of the Class. Plaintiffs are members of the Class they seek to represent, and Plaintiffs were injured by the same wrongful conduct that injured the other members of the Class.

40. The City has acted wrongfully in the same basic manner as to the entire Class.

41. 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; and
- f. Whether the Stormwater Charges are prohibited by MCL 141.91.

42. Plaintiffs will fairly and adequately protect the interests of the Class, and Plaintiffs have no interests antagonistic to those of the Class. Plaintiffs are committed to the vigorous prosecution of this action, and have retained competent and experienced counsel to prosecute this action.

43. 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. Plaintiffs anticipate no difficulty in the management of this action as a class action.

COUNT I VIOLATION OF THE HEADLEE AMENDMENT

44. Plaintiffs incorporate each of the preceding allegations as if fully set forth herein.

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

46. 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.]

47. 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. The Stormwater Charges were not “authorized by law or charter” when the Headlee Amendment was ratified in 1978.

48. 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.¹

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

50. Plaintiffs seeks their attorneys' fees and costs as allowed by Article 9, § 32 of the Michigan Constitution of 1963 and MCL 600.308a.

51. Plaintiffs seek a refund of all amounts to which they and the Class are entitled, including all Stormwater Charges they paid to the City during the 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

52. Plaintiffs incorporate each of the preceding allegations as if fully set forth herein.

53. 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."

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

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

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

57. 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.

¹ Pursuant to MCR 2.1112(M), Plaintiffs identify subparts (a) through (f) of Paragraph 46 as "factual questions that are anticipated to require resolution by the Court."

58. 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.

59. 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, Plaintiffs 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).

60. 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, Plaintiffs and the Class have conferred a benefit upon on the City.

61. 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

62. Plaintiffs incorporate each of the preceding allegations as if fully set forth herein.

63. 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."

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

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

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

67. 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.

68. 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, Plaintiffs and the Class have conferred a benefit upon the City and it would be inequitable for the City to retain that benefit.

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

PRAYER FOR RELIEF

Plaintiffs requests that the Court grant the following relief:

A. Certify this action to be a proper class action with Plaintiffs certified as Class Representatives and Kickham Hanley PLLC and Olson PLLC designated Class Counsel;

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

C. With respect to Counts II and III, define the MCL 141.91 Class to include all persons or entities who have paid or incurred the Stormwater Charge on or after the date on which the City implemented the Land-Based Charges and/or at any time during the pendency of this action (the "MCL 141.91 Class Period").

D. With respect to Counts I through III, 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 from the Class during the Class Periods, 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;

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

F. 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;

G. Award Plaintiffs and the Class the costs and expenses incurred in this action, including reasonable attorneys', accountants', and experts' fees; and

H. Grant any other appropriate relief.

KICKHAM HANLEY PLLC

By: /s/ Gregory D. Hanley
Gregory D. Hanley (P51204)
Edward F. Kickham Jr. (P70332)
Kickham Hanley PLLC
32121 Woodward Avenue, Suite 300
Royal Oak, Michigan 48073
Attorneys for Plaintiffs and the Class

OLSON PLLC

/s/ Christopher S. Olson
Christopher S. Olson (P58780)
32121 Woodward Avenue, Suite 300
Royal Oak, Michigan 48073
(248) 672-9368
Co-Counsel for Plaintiff and the Class

Date: May 12, 2020

EXHIBIT A

Special Council Meeting
Madison Heights City Council
Madison Heights, Michigan
April 20, 2016

A Special Meeting of the Madison Heights City Council was held on Wednesday, April 20, 2016, at 7:00 p.m. in the Council Chambers of the Municipal Building at 300 W. 13 Mile Road, Madison Heights, Michigan.

Present: Mayor Hartwell, Mayor Pro Tem Bliss, Councilmembers Corbett, Clark, Gettings, Scott and Soltis. City Manager Myers, Deputy City Manager Marsh and City Clerk Printz.

Also Present: City Attorney Sherman, Fire Chief Lelito, Human Resources Director Misczak, Police Chief Haines, Deputy Police Chief Pawlowski, Community Development Director Schafer, Department of Public Services Director Vitali, Library Director Yerman, 43rd District Judge Hunt, and Court Administrator Arseneault.

CM-16-95. Meeting Open to the Public.

No members of the public were present to speak.

CM-16-96. Presentation and Review of Proposed FY 2016-17 Budget.

Mayor Hartwell welcomed everyone to the Special Council Meeting to review the Proposed Fiscal Year (FY) 2016-2017 Budget.

City Manager Myers and Deputy City Manager Marsh provided the Council with an overview presentation of the Proposed FY 2016-2017 Budget.

City Manager Myers began the presentation by commending the Deputy City Manager, Department Heads, and staff for their work in preparing a proposed budget that maintains existing services with limited revenues. He thanked the City Council for their feedback and direction as part of the Financial Outlook, goal setting process, and Capital Improvement plan which are important parts of the budget development process.

Mr. Myers stated that the Proposed Budget is presented in accordance with a detailed calendar that is contained in the Policy Document. Last Fall, the annual budget process for 2017 formally began with the development of the Long Range Financial Outlook presented to Council in

November. Major capital items over \$30,000 are included in the City's Five Year Capital Improvement Plan, or CIP, which was presented to Council in January. Following the CIP, the City Manager, Deputy City Manager, and staff began development of the proposed budget which was submitted to Council on April 7th. The remaining highlights of the budget calendar include today's Council Budget Presentation and Workshop, and the adoption of the Budget and Tax Levy scheduled to take place on the second Monday in May, which is May 9th.

He summarized the budget presentation this evening stating that it will include: the guiding principles used in developing the budget, the financial challenges we continue to face, the overall Proposed FY 2017 Budget, and the goals and priorities that were taken into account in balancing the General Fund budget, and discussion of other funds including the proposed water and sewer rates for 2017.

Mr. Myers continued by stating that in preparing the budget, the goals and financial policies adopted by City Council guided our process. First, staff has conservatively estimated revenues and expenditures, including a thorough review of each department with the respective department head, and a careful and updated analysis of projected revenues. Second, we balanced each special millage with the applicable expenses, focusing on millage reserves and prioritized, needed projects. Third, we analyzed projected fund balance levels and avoided the use of fund balance for ongoing expenditures such as salaries, allowing us to maintain the updated target fund balance. Fourth, we reviewed taxes and fees being charged to the residents and businesses to make sure they remain reasonable.

Deputy City Manager Marsh indicated the number one financial challenge facing Madison Heights and most municipalities in the State of Michigan is the current State tax structure. . Under the State Headlee Amendment and Proposal "A", growth in property tax values is limited to 5% or the rate of inflation, whichever is less. This forces the City to share in the financial burden during tough times, but it doesn't allow for local governments to share in the prosperity of good times. To illustrate this point, in FY 2017, Madison Heights's residential real property values increased by 13.7%, and overall residential, commercial and industrial values increased by 10.3% from the prior year. However, since the inflation factor was calculated to be 0.3%, the City's revenues can only increase by 0.3% plus additions, forcing the City's tax revenues to remain artificially low. This hampers our ability to provide services and create new initiatives to make our City a better place to live.

Ms. Marsh continued that the second major financial issue also relates to City taxes and State law. In 2012, legislation was passed providing personal property (PPT) exemptions for small taxpayers and eligible

manufacturing personal property. This legislation also provided local units of government with 100% reimbursement for all lost PPT revenue through a new Local Community Stabilization Authority. Beginning in Fiscal Year 2017, County equalization directors will report the personal property exemption loss amounts to Treasury. In October, the City received the initial distribution of \$113,000. However, based on direction from Oakland County Equalization, we have only budgeted the minimum amount of \$80,500 in potential reimbursement amounts. We expect updated information from Oakland County in the next several months.

Ms. Marsh stated there are 10,082 single-family homes and condominiums in Madison Heights. For Fiscal Year 2017, the average home market value is \$90,215 with a taxable value of \$32,891 and an average tax bill of \$757 for City services.

Ms. Marsh stated that the City millage is proposed to increase slightly by just over five hundredths of a mill in FY 2017. Only one of the City's ten millages, the Fire Stations bond millage, is changing rates for FY 2017, and that is in order to match the bond payment schedule. The average home with a taxable value of \$32,891 will see an additional \$1.75 in City taxes in the summer as a result of this Fire Stations bond millage increase.

Human Resources Director Mischak stated addressing the issue of legacy cost for pensions and retiree health care remains a third central financial challenge for the City. The current unfunded liabilities for pension and retiree health care stand at \$46.7 million and \$57.2 million, respectively, for a total unfunded liability of \$103.9 million. While the City continues to make its actuarially required contributions to pensions in FY 2017, as well as a planned contribution to Other Post-Employment Benefits (OPEB) in the amount of \$6.6 million, City Council has taken an additional important step by approving the issuance of \$15.25 million in Pension Obligation Bonds (POBs) to convert 95% of the unfunded liability for General Employees Pension to a 16-year debt service amortization. In addition to offering a projected \$4.0 million in savings over the 16-year period, the POB financing also provides budget relief through a constant fixed payment over the term of the bonds. The sale of bonds is planned for June 2016, with the City to receive the bond proceeds prior to June 30, 2016.

Ms. Mischak continued that the City is allowed by statute to issue debt to provide for the acquisition and construction of major capital facilities. As of June 30, 2016, the City will be at 33.87% of the City's debt limit of \$75.7 million, which is based on 10% of assessed valuation. The City has general obligation bonds outstanding in the amount of \$2.8 million of an original \$5.9 million Fire Station Bond issue, and \$1.1 million of the original \$1.5 million water and sewer bonds. The City is also responsible

for our share of eight bonds related to the GWK Drain Project for a total of \$7.0 million. Also, as explained earlier, the balance at June 30, 2016 will include the bonds for pension obligations in the amount of \$15.1 million.

Ms. Misczak stated the City's Bond ratings were reevaluated in December 2013 when S&P upgraded the City's rating from A+/Stable to AA- due to continued strong financial management. The bond rating will be re-evaluated again as part of the Pension Obligation Bonding process.

Ms. Misczak noted that throughout the economic downturn, City Council and staff responded to this challenge by reducing expenditures and enhancing revenues to close a gap of over \$13.4 million as the City successfully controlled the impact of the financial crisis. The most significant changes during this period were the decreases in full-time staff of over 27% and a case-by-case review of vacant positions that continues into FY 2017.

Ms. Misczak then commented that Personnel services comprise almost 18.7 million or 70% of the General Fund Budget. The FY 2017 Budget includes a net reduction of 1.3 full-time equivalencies, including the elimination of the vacant, outsourced Building Official position and the elimination of a full-time vacant Equipment Operator position in Parks as a result of contracted grass cutting. The budget also includes the addition of a dedicated part-time clerical employee for the DPS, which in the past has been split between the City Clerk's office and DPS.

Regarding Other Funds, City Manager Myers noted the City and the entire southeast Michigan region continue to face the major financial challenge of how to fund the major repairs and ongoing maintenance that are needed for the area's road system. In an effort to address the deteriorating road and bridge network state-wide, in November 2015, Governor Snyder signed nine bills into law which will raise \$1.2 billion for the new transportation revenue package. This includes a Registration Fee and Fuel Tax increase as well as a dedication of State General Fund to the Michigan Transportation Fund or MTF among other changes. This is the largest state investment in transportation in Michigan history.

Mr. Myers stated the FY 2017 budget includes an increase in the Major Street Fund for \$192,000 and Local Street Fund for \$106,000 based on MDOT's projections of revenues from fuel tax increases and vehicle registration fees included in this State Restricted Revenue Package. It is estimated in the first year after full phase-in, Madison Heights will receive \$427,700 in additional MTF monies. This estimate is conditional on the Legislature passing a concurrent resolution in FY 2017 for \$100 million in Roads Innovation Funds (RIF).

Mr. Myers stated the total budget equates to \$47.9 million and includes funding of operating and capital purposes for 11 appropriated funds. This amount represents a \$97,600 or 0.2% increase from the prior year amended budget. The operating budget is projected to increase by \$926,000 or 2.3%, while the capital budget decreases by \$828,000 or 10.4%.

Mr. Myers continued that last fall, staff and City Council focused on the development of City-wide goals which were adopted by Council in December for FY 2017. These adopted goals were considered by department heads and city management when formulating the proposed budget. There are a total of 20 goals divided into four major categories. He illustrated a summary of the goals, noting that some items have funding included in the Proposed Budget in order to achieve the goal. Noteworthy goal examples include an analysis of our roads, infrastructure and service fleet toward a recommendation for a Proposal "R-3" Road Improvement Program and "V-3" Vehicle Replacement Program, the reestablishment of the police special investigations function, and an upgrade to the Next Generation 9-1-1 system.

Deputy City Manager Marsh noted Capital Outlay purchases total \$7.2 million for all funds including \$973,000 for the General Fund. The majority of purchases are funded through dedicated millages such as Proposals "V-2" and "L". General Fund projects include waterproofing of the City Hall elevator pit and the Library exterior walls, election tabulation equipment, a tandem Axle Dump Truck with a V-Box, a trail overlay at Civic and Ambassador Park trails, and replacing the totscape, swings and surfacing at Wildwood Park. Other purchases funded for Fire and Police include a Police Department upgrade to the Next Generation 911 Telephone Answering System, the first phase of funding for the underground fuel storage tank located behind the Police Department building, parking lot improvements to Fire Station #2, and the purchase of a Power Load Stretcher Lifting System, and V-TAC equipment for the Reserve Fire Engine.

Ms. Marsh stated that other funds include a capital outlay of \$6.2 million. The majority of this amount, \$3.3 million, is budgeted for road rehabilitation and reconstruction projects including R-2 dedicated millage projects, major roads sectional work, and the sidewalk repair and gap program. As Council is aware, the R-2 road millage is scheduled to expire in FY 2017. On August 2, 2016, Madison Heights voters will be asked to consider millage renewals for the City's long-range neighborhood roads and vehicle replacement program.

She noted that the FY 2017 budget includes a continuation of water main replacements associated with Proposal "R-2" road projects at \$415,000 and Non-R-2 watermain for \$426,000. The Non-R-2 water mains have

been determined to be in serious need of replacement and are being funded through a use of fund reserves. Other capital purchases that are included in the budget are replacement of a 1996 trailer air compressor at \$25,000, a sewer vactor at \$410,000, a sewer camera trailer at \$75,000, one 4x4 pickup truck at \$34,000, and Phase 2 of 2 for a box van at \$30,000 for a total purchase of \$60,000, and updates to the collectors for the automated meter reading system at \$9,000. The budget also includes several improvements to the Department of Public Services facilities located on Ajax Drive. These improvements are detailed in the Capital Outlay chapter and include items such as Phase 2 of 3 for the salt containment structure and Phase 1 of 3 for the replacement of the underground fuel storage tanks.

Ms. Marsh continued that the FY 2017 budget also includes Phase one of a four-year water meter replacement program based on the age of the current meters. Money has been reserved to fund this project with the first phase budgeted at \$1 million with a total project cost estimated at \$3.875 million. Staff analyzed the performance of our water meters through the Automated Meter Reading system and proposed to begin this project in FY 2017 starting with District 1 which is located between 10 and 11 Mile Roads. Madison Heights's water meters were last replaced City-wide in 1995-97. Water meters are given a service expectation of approximately twenty years. Given the age of these meters, it is prudent to start planning for the replacement of the meter system as they near the end of their functional life. As meters age, they begin to under-register due to wear of internal components, and buildup of sediment and debris in the meter chamber. District 1 was identified as the starting point because it has the oldest meters in the City, and was the first district to be changed out.

Ms. Marsh indicated that the City's successful management of our financial constraints has presented us with both new challenges and opportunities. As of June 30, 2015, the General Fund unreserved fund balance was \$7.1 million. Based on the budgeted use of fund balance, the City projects this fund balance will be \$5.3 million at the end of FY 2017, or 19.8% of FY 2017 projected expenditures. City Council policy directs staff to keep fund balance equal to or above a minimum of two months of regular operating expenditures plus one year of debt payments, which is roughly equivalent to 16%. Staff was mindful of this policy as we worked to propose the FY 2017 budget for Council's consideration. She then reviewed the City's General Fund expenditures, revenues, and levels of fund balance required to meet Council's policy.

City Manager Myers continued the presentation by noting the Major Street Fund is projected to be down by \$445,000, or 21% in FY 2017. This is directly related to available revenues and road projects that are included in the budget from one year to the next. Rehabilitation work is being budgeted in FY 2016-17 for a total of \$570,000. This includes a National

Highway Performance Project on Thirteen Mile Road, additional work on Thirteen Mile, and sectional concrete replacement on Whitcomb from Barrington to Dequindre; East Lincoln from Wolverine to Dequindre; southbound Stephenson Highway from Girard to 12 Mile; Stephenson Highway turnarounds; Edward from Mandoline to Whitcomb; and 11 Mile from John R to Dequindre.

He stated the Local Street Fund accounts for expenditures associated with the construction and maintenance needs of our local street network and can be divided into the Proposal “R-2” road construction and the non-“R-2” related expenditures. Proposal “R-2” tax revenue expires after FY 2017. He noted that voters will be asked to consider 10-year renewals of the roads and vehicles programs on August 2nd. The Proposal “R-2” road construction projects scheduled for this year include Madison from Millard to 31605 Madison at \$328,000; Meadows from Whitcomb to 31608 Meadows at \$321,000; Dorchester from 13 Mile to Windemere at \$87,000; Windemere from Dorchester to Edgeworth at \$295,000; Kenwood from Millard to 31601 Kenwood at \$286,000; and Moulin from Dulong to 1353 Moulin at \$450,000. In an effort to address the failing major and local commercial and industrial roads, sectional repair projects have been programmed for Harlo at \$275,000. He briefly noted the other Non-R-2 sectional projects on Sherman, Kempar, Research Park, Tech Row, Montpelier, Horace Brown, and Whitcomb sectional- west of Mally.

Regarding the Water and Sewer Fund, Mr. Myers noted revenues are generated through user charges to residential and commercial customers. Given the current strong financial position of the Fund, the FY 2017 Budget absorbs the 5.6% GLWA wholesale rate increase without a pass-through to Madison Heights residential and commercial water customers; however, a new sewer rate structure is being proposed in FY 2017 and customers will see a change in the calculation of their stormwater charge, effective with billings on or after July 1st.

He stated that under the City’s current billing methodology, stormwater discharge is treated as a component of the regular sewage bill and is tied to the amount of water consumed. To more accurately bill this charge and to bring Madison Heights in line with a number of other municipalities in Southeast Michigan, stormwater will now be billed based on the individual parcel’s amount of pervious and impervious surface which directly correlates to stormwater runoff. Starting with billing dates on or after July 1, 2016, the City will operate under a new rate structure designed to split out stormwater from the existing sewer charge by establishing a new stormwater charge that is based on the customer’s Equivalent Residential Unit or ERU. In order to complete this rate calculation, the City Engineer calculated the ERUs for each parcel in the City. An ERU is a standard engineering calculation designed to determine stormwater runoff based on pervious and impervious areas, and has been calculated as 2,600 square

feet for one ERU. While a parcel's ERU is a fairly static number, it may change in the future based on permitted changes in pervious and impervious areas such as a major addition, parking lot, or driveway construction. Parcels containing a higher amount of impervious surface will have a higher amount of ERUs and hence, a higher bill for stormwater. The total amount billed for stormwater and sanitary sewer will continue to cover all of the City's expenses charged by the Oakland County Water Resources Commissioner, which are estimated to increase by 3%. But as a consequence of the rate restructuring, the sewer rate, if approved, will decrease by approximately 25% from \$5.10 to \$3.83 per unit effective with billings on or after July 1st, and there will be a new stormwater charge of \$5.17 per ERU on each bill.

Mr. Myers concluded the presentation by stating that for the balance of today's meeting, the Deputy City Manager and he would like to answer any questions on the presentation, and make use of the line item budget to walk through the General Fund Revenues and Expenditures and Other Funds. He noted for Council that if expenditures are increased or revenues decreased, staff will need Council's direction to rebalance the Proposed Budget to compensate for those Council-requested changes. After today's Budget Workshop, the plan would be to move forward with the May 9th Public Hearing and the Adoption of the Budget.

In response to Councilman Corbett's question, Deputy City Manager Marsh confirmed that the debt balance increase in 2016 is due to the Pension Obligation Bonding, as the City will receive bond proceeds by June 30th of this year.

In response to Mayor Hartwell's question, Ms. Marsh stated that Pension Obligation Bonds are a useful tool because they provide stabilization to the budget by making the payment amount the same every year. In addition, they are projected to provide a savings to the City over the life of the bonds.

In response to Councilman Soltis' question, Ms. Marsh stated the phase out of the Personal Property Tax has financially hurt the City. At issue is the phase in of the local reimbursement. The City is still waiting to be made whole. Currently, the City is annually losing approximately \$200,000 and that amount increases yearly due to the increase in eligibility of the number of businesses that become exempt from Personal Property Tax. She stated that at this time, there has been no ability to correlate the reduction in Personal Property Tax with an increase in economic activity with the City.

In response to Councilman Soltis' question, City Manager Myers stated that the Great Lakes Water Authority (GLWA) used the same methodology as the Detroit Water and Sewer Department to calculate this year's 5.6%

rate increase. He continued that the City does not have an increase for residents in the proposed budget due to the strong financial position of Water and Sewer Fund; however, the zero increase will not likely continue on an annual basis. He added that for the coming fiscal year, the City also wanted to implement GLWA's new storm water sewer rates and give the residents an opportunity to become familiar with this new billing process.

In response to Mayor Hartwell's question, Mr. Myers answered that staff will work hard to implement all the Council goals this fiscal year; however, he could not guarantee that they would all be implemented in their entirety.

Deputy Chief Pawlowski responded to Mayor Hartwell's question by stating that although the Special Investigations Unit will not be re-established this fiscal year, it has been proposed that an officer become part of the FBI's Violent Crimes Task Force. He noted that there are other communities in the area that contribute officers to this unit, and that our proposal is to contribute one officer. He continued that the Violent Crimes Task Force would focus on issues that may occur in our City, such as prostitution, drugs, larcenies and items of that nature. Mr. Myers noted that Task Force participation will require the budgeting of ½ an officer position, and that is reflected in this proposed budget. Councilman Soltis congratulated the Crime Commission for their participation in the budget item and noted that they concurred with Chief Haines' recommendation and approved the proposal.

Mayor Hartwell reviewed the Proposed FY 2016-2017 Line-Item Budget document page-by-page. During the review of the document, the City Manager and Department Heads addressed Council's questions on a department-by-department basis.

Council discussed the DPS Municipal Building amount earmarked for chair replacement and the alternative suggestion of reallocating these funds to be used for a paid internship to serve as a brand manager and grant writer for the City. DPS Supervisor Vitali noted that the item was included in the budget due to the functionality of the chairs coming to an end. After discussion on the merits of the proposal and the budget goal ranking process, it was the consensus to keep the line item in the budget; however, staff is to obtain quotes for the chairs and report back to Council so that the matter can be revisited, if desired by Council.

CM-16-97. Council Comments.

Councilman Corbett had no comments.

Mayor Pro Tem Bliss thanked the Department Heads for all the work that they do. He stated that because of their leadership, the City is moving forward and in the right direction.

Councilman Gettings thanked the leadership team for putting together a comprehensive budget and making Council's job easier.

Councilman Clark thanked all the Department Heads and Supervisors for their work on the budget. He noted that he understands that it is difficult to see things that you want to do, but not have funding available to do it.

Councilwoman Scott thanked the staff for all their expertise. She stated that she sees a trend of working on behalf of the citizens, recognizing what are limitations are, and looking for ways to assist the residents. She thanked the volunteers in the City for working to financially sponsor their own projects because the City cannot fund some of the things that we used to. She stated that she is glad the City is working towards improvement and not always accepting the status quo.

Councilman Soltis concurred with Councilwoman Scott's comments. He thanked the City Manager and staff, commenting that he thinks they do a great job and he appreciates all that they do. He added that he also appreciates the stable water rates for this fiscal year.

Mayor Hartwell recognized the City Manager and Deputy City Manager and thanked them for being advocates for their employees. The City has had tough budgets, and he is glad to see that we can reinvest in our employees. Our employees have always done their jobs second to none and even in the hardest times. Our employees' integrity has never lacked.

CM-16-98. Adjournment.

There being no further business, the Special Meeting was adjourned 8:20 p.m.

Brian C. Hartwell
Mayor

Cheryl Printz
City Clerk

EXHIBIT B

ADOPTED ANNUAL BUDGET

FISCAL YEAR
2016 - 2017



CITY OF MADISON HEIGHTS
MICHIGAN

the 5.6% GLWA wholesale rate increase without a pass-through to Madison Heights residential and commercial water customers; however, those customers will see a change in the calculation of their stormwater charge, effective July 1st.

Under the City's current billing methodology, stormwater discharge is treated as a component of the regular sewage bill and is tied to the amount of water consumed. To more accurately bill this charge and to bring Madison Heights in line with a number of other municipalities in Southeast Michigan, stormwater will now be billed based on the individual parcel's amount of pervious and impervious surface which directly correlates to the stormwater runoff. The City Engineer has calculated an Equivalent Residential Unit (ERU) equal to 2,600 square feet. Parcels containing a higher amount of impervious surface will have a higher amount of ERUs and hence, a higher bill for stormwater. The total amount billed for stormwater will continue to cover all of the city's stormwater expenses charged for the Oakland County Water Resources Commissioner, but as a consequence of the rate restructuring, the sewer rate will decrease by approximately 25% from \$5.10 to \$3.83 per unit effective with billings on or after July 1st, and there will be a new stormwater charge of \$5.17 per ERU on each bill.

Expenditures

When compared to the FY 2016 Amended Budget, all fund expenditures are up \$97,600 or 0.2% as detailed below. The majority of this increase is due to operational related employee benefits such as pension and retiree health care, offset by decreases in watermain replacements and road projects.

The most significant changes in the operational budget are related to Personal Services. Although the budget includes a reduction of 1.2 full-time equivalencies (FTEs) in FY 2017, Personal Services are still proposed to increase by \$710,000. Other Services and Charges are also projected to increase by \$390,950 with supplies increasing by \$139,000. The offset to these increases are in Capital Outlay and depreciation, which is decreasing by \$1.1 million. For more details about these increases, please see the Appropriations Chapter which discusses each category in detail.

Also planned is a use of reserves of \$1,841,000 in the Water and Sewer Fund to fund watermain replacements and Phase 1 of a water meter replacement program.

EXHIBIT C

**Blueprint for the Future.
Purpose by design.**



City of Madison Heights, Michigan

2019-2020

Adopted Annual Budget

Section 3. WATER AND SEWER OPERATION SERVICE FEES**Utility Rates****1.0 Water and Sewer Rates***Residential water receipted into 590-010-6430-000**Commercial/industrial water receipted into 590-010-6440-000**Sewer receipted into 590-020-6115-000*

Residential customers of the City are billed quarterly depending on what district or area of the City they live. All residential customers that are connected to the City water/sewer system is subject to a minimum bill of 10 units per quarter.

Commercial customers of the City are billed monthly. All commercial customers that are connected to the City water/sewer system are subject to a minimum bill of 3.33 units per month.

Water and Sewer is billed in units. 1 unit = 100 cubic feet = approximate 748 gallons.

Water \$3.14 per unit

Sewer \$3.55 per unit

2.0 Stormwater*Receipted into 590-020-6118-000*

Stormwater fees shall be charged to all properties within the city based on Equivalent Residential Units (ERUs) calculated for each property.

ERUs are a subunit of measurement that related the volume of storm water discharge from the parcel based on the amount of total and impervious lot area. One ERU equaling 2,600 square feet with runoff factor.

Single Family Residential \$11.37 per ERU per quarter

Commercial/Industrial \$ 3.79 per ERU per month

Service Fees**1.0 Service Tapping Fees***Meter & Materials receipted into 590-000-2735-000**Service Connection receipted into 590-000-2736-000**Transmission receipted into 590-000-6113-000**Paving receipted into 590-010-6111-000**Sewer Privilege Fee receipted into 590-020-6117*

If the service requires crossing a five (5) lane highway, additional charges will apply.

Description	Supply/ Meter Size					
	1"	1 ½"	2"	3"	4"	6"
Meter & Materials	\$1,080	\$1,460	\$1,980	\$3,190	\$4,070	\$6,050
Service Connection	\$825	\$1,045	\$1,238	-	-	-
Transmission	\$72	\$72	\$72	-	-	-
Paving	\$275	\$275	\$275	-	-	-
Sewer Privilege Fee	\$622	\$897	\$1,183	\$2,310	\$3,493	\$3,575
Total	\$2,874	\$3,749	\$4,748	\$5,550	\$7,563	\$9,625