

STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

SANDRA HAHN, individually and as
representative of a class of
similarly-situated persons and entities,

Plaintiff,

v.

CITY OF ANN ARBOR,
a municipal corporation,

Defendant.

20-000732-CZ

Case No. 20- -CZ

Hon. JUDGE DAVID S. SWARTZ

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Attorneys for Plaintiff and the Class

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 AND JURY DEMAND

Plaintiff Sandra Hahn ("Plaintiff"), by her attorneys, Kickham Hanley PLLC, individually and on behalf of a class of similarly situated class members, states the following for her Class Action Complaint against the City of Ann Arbor, Michigan (the "City"):

INTRODUCTION

1. The Michigan courts have long recognized that a "municipally-owned utility is built and operated, not for a corporate profit, but for the purpose of providing utility services at a reasonable cost to the citizens of the municipality, who are generally identical with the customers." *Wolgamood v. Village of Constantine*, 302 Mich. 384, 404-405, 4 N.W.2d 697 (1942). The City has

disregarded this fundamental principle for many years, to the detriment of its citizens and inhabitants.

2. This is an action challenging the reasonableness of (a) the City's water and sewer rates (collectively the "W&S Rates") and the resulting water and sewer charges ("the W&S Charges") imposed by the City on citizens who draw water from the City's water supply system and who dispose of their sanitary sewage through the City's sanitary sewer system; and (b) the stormwater sewer system rates (the "Stormwater Rates") and the resulting charges (the "Stormwater Charges") imposed on virtually all property owners in the City.

3. The City's overall W&S Rates and Stormwater Rates have been unreasonable because they were designed to generate, and actually did generate, revenues far in excess of those necessary to supply water and sewer services to the City's inhabitants (the "W&S Rate Overcharges") and to operate, maintain and improve its stormwater sewer system (the "Stormwater Rate Overcharges") (collectively, the "Overcharges"). As the Michigan Supreme Court recently observed, "[i]f the fees for a particular service consistently generate revenue exceeding the costs for the service, the reasonableness of the fee for that service would be suspect." *Mich. Ass'n of Home Builders v. City of Troy*, 504 Mich. 204, 220, 934 N.W.2d 713, 722 (2019) (quoting *Mich. Ass'n of Home Builders v. City of Troy*, No. 331708, 2017 Mich. App. LEXIS 1521 (2017)).

4. The Overcharges are unlawful because (a) the Rates that produced those Overcharges were arbitrary, capricious and/or unreasonable under common law; (b) they violate the Prohibited Taxes by Cities and Villages Act, MCL 141.91; and (c) they violate the City's own Charter, Sec. 15.4, which requires the City to establish "just and reasonable" utility Rates.

JURISDICTION AND VENUE

5. Plaintiff resides in the City and is a property owner and a water and sewer customer of the City who incurs W&S Charges and Stormwater Charges. Plaintiff has paid the Charges at issue and seeks to act as a class representative for all similarly situated persons.

6. Defendant City of Ann Arbor (the “City”) is a municipality located in Washtenaw County, Michigan. The City maintains a Water Supply System Fund (the “Water Fund”) and a Sewage Disposal System Fund (the “Sewer Fund”) and prepares financial statements for those Funds. The City also maintains a separate Stormwater Sewer System Fund (the “Stormwater Fund”) and prepares financial statements for that Fund.

7. 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.

GENERAL ALLEGATIONS

8. The City has a municipal water supply system (the “Water Supply System”) to provide treated water to inhabitants of the City. The Water Supply System supplies approximately 125,000 people with an average daily water volume of 14 million gallons per day. The City’s water supply is sourced primarily from the Huron River (85%) and then mixed with ground water from wells (15%). Once treated, the City distributes the water to its customers through five pressure districts, four remote pump stations, and two elevated storage tanks.

9. The City establishes Water Rates from time to time through the actions of the City Council.

10. Plaintiff has received water service from the City and paid the Water Rates and Water Charges imposed by the City. The City’s ordinances require the structures used by its citizens to be connected to the City’s Water Supply System. City Ordinance, Chapter 27 § 2:21.

11. The City has a sanitary sewer system (the “Sanitary Sewer System”) to provide sanitary sewage disposal services to inhabitants of the City. The City owns and operates two wastewater treatment facilities with a combined treatment capacity of 29.5 million gallons per day, and a collection system consisting of both gravity sewers and force main sewers (which use pumps or compressors to push the sewage from lower to higher elevations) to collect and deliver wastewater to the plants for treatment and disposal.

12. The City establishes Sewer Rates from time to time through the actions of the City Council.

13. Plaintiff has received sewer service from the City and paid the Sewer Rates and Sewer Charges imposed by the City. The City’s ordinances require the structures used by its citizens to be connected to the City’s Sanitary Sewer System. City Ordinance, Chapter 28 § 2:42.2(7).

14. The City maintains a storm sewer system (the “Stormwater Sewer System”) that is separate from its Sanitary Sewer System and which is used to collect stormwater that falls on the City’s land area and to convey that stormwater to nearby waterways.

15. The City assesses Stormwater Charges for the purpose of operating, maintaining and improving the Stormwater Sewer System. Plaintiff has been assessed, and has paid, Stormwater Charges.

16. The City has continuously and systematically violated the common law, MCL 141.91, and its own Charter Section 15.4(a) by imposing W&S Rates that exceed the City’s actual cost of providing water and sewer service by millions of dollars and by imposing Stormwater Rates that exceed the City’s actual costs of operating, maintaining and improving its Stormwater Sewer System by millions of dollars.

THE RATE OVERCHARGES

17. Since at least 2014, the City has set its W&S Rates at a level far in excess of the rates that were necessary to finance the actual costs of providing water and sewage disposal services (the “W&S Rate Overcharge”). The W&S Rates during this period were established in contravention of established water and sewer rate-setting methodologies, and resulted in W&S Charges which allowed the City to accumulate cash reserves far in excess of those necessary to support the City’s water and sewer function. Prior to 2018, the City had not performed a “cost of service” study – i.e., a detailed analysis of the revenue requirements and rate structure of the Water Supply System or the Sanitary Sewer System -- since 2003.

18. Between June 30, 2014 and June 30, 2019, the City increased its cash and investments in the Water and Sewer Funds from an already excessive **\$61.9 million to over \$91 million** through its continuing imposition of the W&S Rate Overcharge.

19. In addition, since at least 2014, the City has set its Stormwater Rates at a level far in excess of the rates that were necessary to finance the actual costs of operating, maintaining and improving its Stormwater Sewer System (the “Stormwater Rate Overcharge”). The Rates during this period were established in contravention of established rate-setting methodologies, and resulted in Stormwater Charges which allowed the City to accumulate cash reserves far in excess of those necessary to support the City’s Stormwater Sewer System. Indeed, between June 30, 2014 and June 30, 2019, the City increased its cash and investments in the Stormwater Fund from an already excessive **\$7.2 million to over \$15 million** through its continuing imposition of the Stormwater Rate Overcharge.

20. This excessive accumulation of cash was not serendipitous but was undertaken pursuant to a plan to dramatically increase the cash in the Water and Sewer Funds and Stormwater

Fund through 2019 after paying all of the expenses of the Water and Sewer Funds and Stormwater Fund, including capital improvements and debt service.

21. The City accumulated an additional \$30 million in its Water and Sewer Funds between June 30, 2014 and June 2019 and accumulated an additional \$7 million in its Stormwater Fund between June 30, 2014 and June 2019 by imposing the Overcharges. As demonstrated below, however, the Overcharges were actually much higher due to the City's practice of diverting monies from the Water and Sewer Funds and/or Stormwater Funds to other, impermissible, uses.

22. The Overcharges are even more excessive and egregious when one considers that the City has included in its W&S Rates and Stormwater Rates amounts designed to generate millions of dollars that the City has transferred to other City funds or otherwise used to finance general governmental obligations wholly or partially unrelated to its water, sewer and stormwater systems.

23. For example, the Stormwater Charges finance the majority of the expenses of the City's Forestry Department, a separate department tasked with managing all aspects of the City's "urban forest." The amounts included in the Stormwater Rates to finance the City's Forestry Department exceed \$1 million per year. The activities of the Forestry Department confer benefits on the entire community, and not just on persons who pay Stormwater Charges. Indeed, prior to July 1, 2012, those expenses were the responsibility of the City's General Fund.

24. In addition, in the six years preceding the filing of this Complaint, the Stormwater Fund transferred almost \$10 million to the City's Street Repair Millage Fund. Those Transfers purportedly were made to pay the costs of various alleged capital improvements to the City's Stormwater System that were undertaken as part of more comprehensive capital improvement projects. If the value of those alleged capital improvements was commensurate with the amount of money transferred, the value of the capital assets of the City's Stormwater System should have

increased by almost \$10 million during that period of time. Instead, there was only a nominal increase in the stated value of the capital assets of the Stormwater System during that time.

25. On information and belief, the Transfers were made without adequate consideration and thus had the effect of forcing the City's water and sewer customers and/or property owners who pay Stormwater Charges to finance governmental activities such as road improvements that should have been financed through general taxation or other sources.

26. Moreover, the Transfers were in addition to other monies transferred by the Water and Sewer Funds and Stormwater Fund each year to other City Funds to reimburse those Funds for purported administrative and other services provided to the Water and Sewer Funds and the Stormwater Fund.

27. The excessive cash reserves cannot be justified as being needed for planned or still-unplanned capital improvements to the water, sanitary sewer or storm sewer systems because, among other things, the City has not traditionally funded capital improvements by tapping cash reserves. Instead, as reflected in its annual budgets and financial statements, the City has traditionally planned to fund, and actually funded, its water and sewer capital improvements through a "pay as you go" approach – *i.e.*, including in its Rates on an annual basis the amount needed to fund current period capital improvements – or through the issuance of long-term debt.

28. The City confirmed this policy in its FY 2020 Budget (page 46), where the City stated:

It will be a long-term goal that each utility or enterprise will ensure future capital financing needs are met by using a **combination of current operating revenues and revenue bond financing**. Therefore a goal is established that 15% of total project costs should come from operating funds of the utility or enterprise. [emphasis added].

29. Remarkably, the City continues to accumulate excessive cash reserves in its Water and Sewer Funds and Stormwater Fund even though its professional consultants have counseled against that practice.

30. In 2017, the City retained Stantec Consulting Service Inc. (“Stantec”) to perform a comprehensive “Cost of Service” study of its Water and Sewer Funds, something the City had not done since 2003. After conducting a detailed analysis of the cost structure associated with the City’s Water Supply System and its Sanitary Sewer System, Stantec recognized that the City’s cash and investments in its Water and Sewer Funds were far in excess of appropriate reserve amounts, thus confirming that the City’s prior Charges were unreasonable because they did not reflect the City’s “cost of service.” Stantec determined that, as of June 30, 2016, the Water Fund had at least \$15.8 million more than it needed and the Sewer Fund had at least \$13 million more than it needed.

31. In a report issued in June 2018, Stantec recommended that the City “draw down” those excessive reserves over time by utilizing them to partially or completely finance ongoing and future water and sewer capital improvement projects instead of completely funding those projects through Rates or other sources like long-term debt. For example, Stantec recommended that, for the fiscal year ending June 30, 2019, the City use \$4 million of its excess cash and investments in its Water Fund to pay for Water System capital improvements. Contrary to the recommendation, however, the City financed its Water System capital improvements through Rates and other sources, and actually increased its Water Fund cash and investments by \$2.8 million during the fiscal year ending June 30, 2019.

32. In 2017, the City retained Stantec to perform a comprehensive “Cost of Service” study of its Stormwater Fund. After conducting a detailed analysis of the cost structure associated with the City’s Stormwater System, Stantec recognized that the City’s cash and investments in its Stormwater Fund were far in excess of appropriate reserve amounts, thus confirming that the City’s

prior Stormwater Charges were unreasonable because they did not reflect the City's "cost of service." Stantec determined that, as of June 30, 2016, the Stormwater Fund, which had \$10.1 million in cash and investments at the time, had at least \$8 million more than it needed.

33. In a report issued in May 2018, Stantec recommended that the City "draw down" those excessive reserves over time by utilizing them to partially or completely finance ongoing and future stormwater capital improvement projects instead of completely funding those projects through Rates or other sources like long-term debt. Contrary to the recommendation, however, the City actually increased its Stormwater Fund cash and investments by almost \$5 million between July 1, 2016 and June 30, 2019.

34. By virtue of the Rate Overcharge described above, the City has accumulated cash reserves in the Water and Sewer Fund far beyond those necessary to ensure the continued provision of water and sewage disposal service to its residents and has accumulated cash reserves in the Stormwater Fund far beyond those necessary to ensure the continued provision of storm sewer service to its residents.

35. Because the W&S Rate Overcharges were included in the Water and Sewer Rates imposed by the City, each class member paid the Rate Overcharge when they paid their water and sewer bill.

36. Because the Stormwater Rate Overcharges were included in the Stormwater Rates, each property owner paid the Stormwater Rate Overcharges when they paid the Stormwater Charges.

37. Payment of the Overcharges was not voluntary. In this regard, City Charter Section 15.5 provides:

SECTION 15.5.

- (a) The Council shall provide by ordinance for the collection of rates and charges for public utility services furnished by the City. When any person fails or refuses

to pay to the City any sums due on utility bills, the service upon which such delinquency exists may be discontinued and suit may be brought for the collection thereof.

- (b) Except as otherwise provided by law, the City shall have as security for the collection of all charges for utility services furnished by it a lien upon the premises to which such utility services were supplied and, for such purposes, shall have all the powers granted to cities by law. Such lien shall become effective immediately on the distribution or supplying of such utility services to such premises.

- (c) Except as otherwise provided by law, all unpaid charges for utility services furnished to any such premises, which, on the thirty-first day of March of each year, have remained unpaid for a period of three months or more, shall be reported by the Controller to the Council at the first meeting thereof in the month of April. The Council thereupon shall order the publication in a newspaper of general circulation in the City of notice that all such unpaid utility charges not paid by the thirtieth day of April will be assessed upon the City's tax roll against the premises to which such utility services were supplied or furnished, and such charges shall then be spread upon the City's tax roll and shall be collected in the same manner as the city taxes.

- (d) As further security for the payment of charges for utility services, the Council may require meter deposits of occupants of premises to which such services are supplied.

CLASS ALLEGATIONS

38. 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 the City for water and sanitary sewer service and/or paid the Stormwater Charges during the relevant class periods.

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

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

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

42. 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 Rate Overcharges imposed by the City are taxes;
- b. whether the Rate Overcharges violate MCL 141.91;
- c. Whether the City has been unjustly enriched by collecting the Rate Overcharges;
- d. Whether the Rate Overcharges violate Section 15.4 of the City's Charter; and
- e. Whether the City should be forced to disgorge the improperly collected Rate Overcharges.

43. Plaintiff will fairly and adequately protect the interests of the Class, and Plaintiff has 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.

44. 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

UNJUST ENRICHMENT UNREASONABLE WATER AND SEWER RATES AND CHARGES

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

46. Water and Sewer Rates must be reasonable. *Mapleview Estates v. City of Brown City*, 258 Mich. App. 412 (2003).

47. The City's overall W&S Rates have been, and are, arbitrary, capricious, and unreasonable.

48. 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 W&S Rate Overcharges, Plaintiff and the Class have conferred a benefit upon on the City.

49. The City has been unjustly enriched because it received Overcharges to which it was not entitled, and it would be unfair for the City to retain the Overcharges under the circumstances.

50. The City should be required to disgorge the amounts by which it has been unjustly enriched.

COUNT II

UNJUST ENRICHMENT – VIOLATION OF MCL 141.91 WATER AND SEWER RATES AND CHARGES

51. Plaintiff incorporates each of its preceding allegations as if fully set forth herein.

52. The Michigan Prohibited Taxes by Cities and Villages Act, MCL 141.91 provides:

Sec. 1. 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.

53. The City has violated MCL 141.91 by imposing and collecting the W&S Rate Overcharges, which are disguised taxes that are not ad valorem property taxes, and were first imposed after January 1, 1964.

54. The W&S Rate Overcharges are motivated by a revenue-raising purpose, the W&S Rate Overcharges render the W&S Rates disproportionate to the City's actual costs of providing water and sewer service, and payment of the Rate Overcharges is not voluntary.

55. 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 W&S Rate Overcharges, Plaintiff and the Class have conferred a benefit upon on the City.

56. The City has been unjustly enriched because it received Overcharges to which it was not entitled, and it would be unfair for the City to retain the Overcharges under the circumstances.

57. The City should be required to disgorge the amounts by which it has been unjustly enriched.

COUNT III

UNJUST ENRICHMENT – CHARTER VIOLATION WATER AND SEWER RATES AND CHARGES

58. Plaintiff incorporates each of its preceding allegations as if fully set forth herein.

59. City Charter § 15.4(a), entitled "Rates" provides in pertinent part that:

The Council shall fix just and reasonable rates and such other charges as may be deemed advisable for supplying municipal utility services to the inhabitants of the City and others. ...

60. The City has contravened Charter Section § 15.4(a) by setting and imposing W&S Rates that are not "just and reasonable."

61. 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 W&S Rate Overcharges, Plaintiff and the Class have conferred a benefit upon on the City.

62. The City has been unjustly enriched because it received Overcharges to which it was not entitled, and it would be unfair for the City to retain the Overcharges under the circumstances.

63. The City should be required to disgorge the amounts by which it has been unjustly enriched.

COUNT IV

**ASSUMPSIT – MONEY HAD AND RECEIVED
UNREASONABLE WATER AND SEWER RATES AND CHARGES**

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

65. Water and Sewer Rates must be reasonable. *Mapleview Estates v. City of Brown City*, 258 Mich. App. 412 (2003).

66. The City's overall Rates have been, and are, arbitrary, capricious, and unreasonable.

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 W&S Rate Overcharges, Plaintiff and the Class have conferred a benefit upon on the City.

68. 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.

69. By virtue of the City's inclusion of the W&S Rate Overcharges in the W&S Rates, 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).

COUNT V

**ASSUMPSIT – MONEY HAD AND RECEIVED
VIOLATION OF MCL 141.91
WATER AND SEWER RATES AND CHARGES**

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

59. The Michigan Prohibited Taxes by Cities and Villages Act, MCL 141.91 provides:

Sec. 1. 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.

60. The City has violated MCL 141.91 by imposing and collecting the W&S Rate Overcharges., which are disguised taxes that are not ad valorem property taxes, and were first imposed after January 1, 1964.

61. The Rate Overcharges are motivated by a revenue-raising purpose, the Rate Overcharges render the Rates disproportionate to the City's actual costs of providing water and sewer service, and payment of the W&S Rate Overcharges is not voluntary.

62. As a direct and proximate result of the City's improper conduct, the City has collected tens of millions of dollars to which it is not entitled. By paying the W&S Rate Overcharges, Plaintiff and the Class have conferred a benefit upon on the City.

63. 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.

64. By virtue of the City's inclusion of the W&S Rate Overcharges in the Rates, 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).

COUNT VI

ASSUMPSIT – MONEY HAD AND RECEIVED CHARTER VIOLATIONS WATER AND SEWER RATES AND CHARGES

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

66. City Charter § 15.4(a), entitled "Rates" provides in pertinent part that:

The Council shall fix just and reasonable rates and such other charges as may be deemed advisable for supplying municipal utility services to the inhabitants of the City and others. ...

67. The City has contravened Charter Section § 15.4(a) by setting and imposing W&S Rates that are not "just and reasonable."

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 W&S Rate Overcharges, Plaintiff and the Class have conferred a benefit upon on the City.

69. 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.

70. By virtue of the City's inclusion of the W&S Rate Overcharges in the W&S Rates, 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).

COUNT VII

UNJUST ENRICHMENT UNREASONABLE STORMWATER RATES AND CHARGES

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

72. Municipal utility rates must be reasonable. *Mapleview Estates v. City of Brown City*, 258 Mich. App. 412 (2003).

73. The City's overall Stormwater Rates have been, and are, arbitrary, capricious, and unreasonable.

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 Stormwater Rate Overcharges, Plaintiff and the Class have conferred a benefit upon on the City.

75. The City has been unjustly enriched because it received Stormwater Rate Overcharges to which it was not entitled, and it would be unfair for the City to retain the Overcharges under the circumstances.

76. The City should be required to disgorge the amounts by which it has been unjustly enriched.

COUNT VIII

UNJUST ENRICHMENT – VIOLATION OF MCL 141.91 STORMWATER RATES AND CHARGES

77. Plaintiff incorporates each of its preceding allegations as if fully set forth herein.

78. The Michigan Prohibited Taxes by Cities and Villages Act, MCL 141.91 provides:

Sec. 1. 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.

79. The City has violated MCL 141.91 by imposing and collecting the Stormwater Rate Overcharges, which are disguised taxes that are not ad valorem property taxes, and were first imposed after January 1, 1964.

80. The Stormwater Rate Overcharges are motivated by a revenue-raising purpose, the Stormwater Rate Overcharges render the Stormwater Rates disproportionate to the City's actual costs of providing stormwater disposal services, and payment of the Stormwater Rate Overcharges is not voluntary.

81. 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 Stormwater Rate Overcharges, Plaintiff and the Class have conferred a benefit upon on the City.

82. The City has been unjustly enriched because it received Overcharges to which it was not entitled, and it would be unfair for the City to retain the Overcharges under the circumstances.

83. The City should be required to disgorge the amounts by which it has been unjustly enriched.

COUNT IX

**UNJUST ENRICHMENT – CHARTER VIOLATION
STORMWATER RATES AND CHARGES**

84. Plaintiff incorporates each of its preceding allegations as if fully set forth herein.

85. City Charter § 15.4(a), entitled “Rates” provides in pertinent part that:

The Council shall fix just and reasonable rates and such other charges as may be deemed advisable for supplying municipal utility services to the inhabitants of the City and others. ...

86. The City has contravened Charter Section § 15.4(a) by setting and imposing Stormwater Rates that are not “just and reasonable.”

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 Stormwater Rate Overcharges, Plaintiff and the Class have conferred a benefit upon on the City.

88. The City has been unjustly enriched because it received Overcharges to which it was not entitled, and it would be unfair for the City to retain the Overcharges under the circumstances.

89. The City should be required to disgorge the amounts by which it has been unjustly enriched.

COUNT X

**ASSUMPSIT – MONEY HAD AND RECEIVED
UNREASONABLE STORMWATER RATES AND CHARGES**

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

91. Municipal utility rates must be reasonable. *Mapleview Estates v. City of Brown City*, 258 Mich. App. 412 (2003).

92. The City’s overall Stormwater Rates have been, and are, arbitrary, capricious, and unreasonable.

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 Stormwater Rate Overcharges, Plaintiff and the Class have conferred a benefit upon on the City.

94. 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.

95. By virtue of the City's inclusion of the Stormwater Rate Overcharges in the Stormwater Rates, 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).

COUNT XI

ASSUMPSIT – MONEY HAD AND RECEIVED VIOLATION OF MCL 141.91 STORMWATER RATES AND CHARGES

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

97. The Michigan Prohibited Taxes by Cities and Villages Act, MCL 141.91 provides:

Sec. 1. 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.

98. The City has violated MCL 141.91 by imposing and collecting the Stormwater Rate Overcharges, which are disguised taxes that are not ad valorem property taxes, and were first imposed after January 1, 1964.

99. The Stormwater Rate Overcharges are motivated by a revenue-raising purpose, the Stormwater Rate Overcharges render the Stormwater Rates disproportionate to the City's actual costs of providing stormwater disposal services, and payment of the Stormwater Rate Overcharges is not voluntary.

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

101. 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.

102. By virtue of the City's inclusion of the Stormwater Rate Overcharges in the Stormwater Rates, 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).

COUNT XII

ASSUMPSIT – MONEY HAD AND RECEIVED CHARTER VIOLATIONS STORMWATER RATES AND CHARGES

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

104. City Charter § 15.4(a), entitled "Rates" provides in pertinent part that:

The Council shall fix just and reasonable rates and such other charges as may be deemed advisable for supplying municipal utility services to the inhabitants of the City and others. ...

105. The City has contravened Charter Section § 15.4(a) by setting and imposing Stormwater Rates that are not "just and reasonable."

106. 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 Stormwater Rate Overcharges, Plaintiff and the Class have conferred a benefit upon on the City.

107. 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.

108. By virtue of the City's inclusion of the Stormwater Rate Overcharges in the Stormwater Rates, 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).

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 Representative and Kickham Hanley PLLC designated Class Counsel;
- B. Define the Class to include all persons or entities who/which have paid the City for Water Service or Sewer Service and/or have paid Stormwater Charges to the City at any time in the six years preceding the filing of this lawsuit and/or who/which pay the City for Water Service or Sewer Service and/or pay Stormwater Charges during the pendency of this action (the "Class Period");
- C. With regard to Counts I through XII, enter judgment in favor of Plaintiff and the Class and against the City;
- D. Order and direct the City to disgorge and refund all Rate Overcharges collected during the Class Period and to pay into a common fund for the benefit of Plaintiff and all other members of the Class the total amount of Rate Overcharges to which Plaintiff 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 Rate Overcharges violate MCL 141.91, the City's Charter, as well as find that the Rate Overcharges are arbitrary, capricious, and unreasonable under common law principles;

G. Permanently enjoin the City from imposing or collecting Rates which exceed the City's actual costs of providing water and sewer service or storm sewer service;

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.

JURY DEMAND

Plaintiff, individually and on behalf of the Class, demands a trial by jury on all issues so triable.

KICKHAM HANLEY PLLC

/s/ Gregory D. Hanley

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