Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, 3

FILED
3/27/2026 5:11 PM
Mariyana T. Spyropoulos
CIRCUIT CLERK
COOK COUNTY, IL
2021CH04583
Calendar, 3
37327129

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

KATHRYN FARMER, Individually, as Representative of a Class of Similarly Situated Persons,

Plaintiff,

vs.

CITY OF CHICAGO, an Illinois Municipal Corporation,

Defendant.

Case No. 2021 CH 04583

Judge Allen Price Walker

THE CITY'S RESPONSE TO FARMER'S MOTION FOR PARTIAL SUMMARY JUDGMENT

INTRODUCTION

This is the city of Chicago's ("City") response to Kathryn Farmer's ("Farmer") Motion for Partial Summary Judgment ("Motion"). Farmer refers to the Motion as a "renewed" motion for summary judgment, likely because she filed it after withdrawing an early motion for summary judgment.

Farmer alleges in Count IX of her Fourth Amended Complaint ("Complaint") that the City's water and/or sewer exemptions for not-for-profit organizations, certain governmental bodies, and certain elderly people have caused the putative class members and her to pay "dramatically higher" water and sewer rates. In the Motion, Farmer seeks partial summary judgment on the exemption granted to certain senior citizens for sewer charges (hereafter, the "Senior Citizen Exemption"). Farmer does not seek summary judgment on the sewer charges exemptions for not-for-profit organizations and governmental bodies. Nor does she seek summary judgment on the exemptions for water.

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

The Court should exercise discretion and defer ruling of the Motion until after discovery has closed. The City plans to move for summary judgment on the two still pending counts of the Complaint but only after discovery closes. The Court should enter a case management order that sets a date for closing discovery and for filing motions for summary judgment. Judicial resources should not be wasted on consideration of piecemeal motions for summary judgment. Additionally, the Court should not hear argument or rule on the Motion prior to ruling on class certification and if a class is certified, until after notice has been issued to the class and the time for opting out has passed.

But if the Court decides to hear the case now, Farmer's Motion should be denied because she cannot prove that the Senior Citizen Exemption had any effect on what she paid for sewer service.

The Legal Standard for an Unreasonable Rate Claim

The standard for determining whether a rate is reasonable is stated in *Village of Niles v. City of Chicago*, 201 Ill. App. 3d 651, 672-73 (1st Dist. 1990) ("*Niles II*"): "When the reasonableness of the rate is challenged,...the challengers *must demonstrate convincingly* that they are being charged a discriminatorily high rate or *one that exceeds the cost of service to the point of unreasonableness*." (Emphasis added.) [1] The court further stated: "[W]e believe that if the rates charged... are not excessive, there is no unreasonable discrimination." *Id.* at 680.[2]

---

[1] *Niles II* involved a challenge to the City's water rates. Farmer asserts that the standard applicable to her challenge to the Senior Citizen Exemption is the same standard that applies to her challenge to the City's water rates.

[2] The earlier case of *Austin View Civic Ass'n,* 85 Ill. App. 3d 89 (1st Dist. 1980), does not provide the standard in this case. In that case, on a motion to dismiss, the court found that the plaintiffs had sufficiently alleged that they were entitled to the lower of two water rates because there was no difference in the cost of serving the lower-rate customers. *Id.* at 94. Farmer is not seeking to

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

The Standard for Summary Judgment

Summary judgment is proper only "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c).

ARGUMENT

Farmer argues in her Motion that the Senior Citizen Exemption had the direct effect of increasing the amount she and other non-exempt persons and entities paid for sewer service. Her argument is as follows: (i) it costs a certain amount to provide sewer service; (ii) this cost must be evenly divided amongst everyone; (iii) if some people are exempt from paying, then the cost to everyone else increases. Among other things, Farmer's argument shows her utter ignorance about, indifference to, or misunderstanding of how her sewer charges were determined and the import of it to her claim that she and others paid an unreasonable and discriminatory rate because of the Senior Citizen Exemption.

Chicago Municipal Code § 3-12-020 (a) provides that the charge for sewer service is based on and equal to what the person or entity pays for water.[3] In other words, what Farmer must pay for sewer service will always be 100% of her water bill. And this is true regardless of what another customer pays or does not pay. Because what Farmer and others paid and will pay for sewer service is based on what they did and will pay for water, Farmer and the others did not and will

---

pay nothing or asking to be exempt. Establishing no difference in the cost of serving exempt and non-exempt customers does not establish that the non-exempt rate is unreasonable.

[3] Basing sewer charges on water charges, as Chicago has, is reasonable as a matter of law. *McDonald Mobile Homes, Inc. v. Village of Swansea*, 56 Ill. App. 3d. 759, 763 (5th Dist. 1977) ("we believe there is a substantial correlation between water consumption and sewer use and that the Village's scheme for assessing sewer use charges [based on water charges] is a reasonable exercise of its legislative authority.")

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

not, as a matter of law, pay more because of the Senior Citizen Exemption.[4] This indisputable fact not only means that Farmer's Motion fails as matter of law, but also that her entire Count IX claim based on the sewer charges exemptions fails as a matter of law.[5] For this reason alone, the Court must deny Farmer's Motion.

Farmer cannot show that she and others paid for sewers service based on a rate, let alone on a rate that exceeded the cost of service to the point of unreasonableness because of the Senior Citizen Exemption

Assuming *arguendo* that what Farmer and others paid for sewer service was based on a rate that was at least arguably susceptible to an increase based on the Senior Citizen Exemption, Farmer's Motion would still have to be denied. And that is because to prevail on a rate discrimination claim requires more. As the *Niles II* court held: "[w]hen the reasonableness of [a] rate is challenged, ... the challengers *must demonstrate convincingly* that they are being charged a discriminatorily high rate or *one that exceeds the cost of service to the point of unreasonableness.*" *Niles II at* 672-73. (Emphasis added.) The *Niles II* court further held: "[W]e believe that if the rates charged... are not excessive, there is no unreasonable discrimination." *Id.* at 680.

Farmer does not allege what she thinks her rate is or the cost of service, let alone how much her charges exceeded the cost of service. Her assertion that the sewer exemption added up to "over $110 million" over five years Motion p. 13, does not in any way support the conclusion that the City's rates are excessive to the point of unreasonableness one considers that a municipal utility may charge rates that not only cover its costs but also yield a reasonable reserve, plus a reasonable

---

[4] Because neither Farmer nor anyone else paid more for sewer service because of the Senior Citizen Exemption, that the City purportedly would have collected an additional $110 million over five years had there been no Senior Citizen Exemption is not a basis for a discriminatory "rate" claim.

[5] This will be one the grounds on which the City will seek summary judgment at the appropriate time, *i.e.*, after the close of discovery.

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

return on investment. *See Niles II* at 670. Farmer also fails to acknowledge that the total amount of revenue paid by non-exempt sewer customers in that same period was over $1.8 billion, as shown on the same exhibit that Farmer cites in support of her allegations. (Motion, Exhibit 5.)

But regardless of what "evidence" Farmer could provide, she cannot show that the Senior Citizen Exemptions affected her sewer rate because City sewer charges are based on and equal to what a person or entity pays for water, *see* Code § 3-12-020 (a).

No Illinois court has held that exemptions are illegal or that they produce water and sewer rates that are *per se* unreasonable and discriminatory

Farmer contends that exemptions alone produce water and sewer rates that are unreasonable and discriminatory. Farmer's contention is belied by *City of Chicago v. Univ. of Chicago*, 131 Ill. App. 361, 365–75 (1st Dist. 1907) (holding the City's exemptions were within its power to exempt non-profit academic institutions from its water and sewer rates) aff'd, 228 Ill. 605, 81 N.E. 1138 (1907). It is also belied by the appellate court's decision in *Niles II*; after all, if exemptions alone were enough to produce unreasonable and discriminatory water and sewer rates, the *Niles II* plaintiffs would have prevailed on their challenge to the City's water rates. Farmer's argument that exemptions produce *de facto* discriminatory rates also does not square with the Uniformity Clause of the Illinois Constitution, which expressly authorizes the granting an exemption from any non-property fee provided it is "reasonable." Ill. Const. art. IX, § 2. To the extent an exemption is alleged to be "unreasonable," that sounds in either an equal protection claim or a claim under the Uniformity Clause—neither of which is the case here.

In *Niles II*, fifty-two suburban municipalities that received water from Chicago sought to enjoin Chicago from charging what they alleged were excessive, unreasonable and discriminatory rates. 201 Ill. App. 3d at 658. One of the plaintiff's allegations was that the city provides "free water" to some users. *Id.* at 660. "After a trial consisting of 34 days of testimony over the course

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

of one year," the circuit court found in favor of the City. *Niles II,* 201 Ill. App. 3d at 658. The appellate court affirmed the judgment on the claim that challenged the City's exemptions.[6]

The Appellate Court noted plaintiff's allegations that "[c]ertain water users in Chicago receive free water, including city-owned buildings, churches, hospitals, educational facilities, and State and county facilities" and that "all paying customers, in Chicago as well as outside, pay correspondingly higher prices when some customers pay nothing." 201 Ill. App. 3d at 660. The Court nevertheless affirmed the judgment in favor of the City, writing:

> We believe that if the rates charged to plaintiffs are not excessive, there is no unreasonable discrimination....Plaintiffs did not establish a nexus between their own costs of service and the costs of serving...exempt customers in Chicago. They do assert, in conclusory fashion, that Chicago's internal policies have artificially inflated their costs....Even so, the trial court found that **plaintiffs had failed to credibly identify the costs of providing these services and failed to prove that these practices resulted in excessive and unreasonable rates charged to them.** We hold that the trial court's findings are not against the manifest weight of the evidence.

201 Ill. App. 3d at 680-81 (emphasis added). Having failed to prove their claim that the rates were excessive and unreasonable, the plaintiffs also failed to prove unreasonable discrimination. *Niles II*, 201 Ill. App. 3d at 680. Farmer cannot achieve on summary judgment what the *Niles II* plaintiffs could not achieve after a trial.

The **Senior Citizen Exemption is not arbitrary or unreasonable**

Farmer's argument that the Senior Citizen Exemption is arbitrary is improper and without merit. Farmer has stated she is not seeking relief as a matter of the equal protection provisions in

[6] The issue on which the *Niles II* plaintiffs prevailed on appeal concerned charges for City sewer service that the suburban municipalities did not receive. *Id.* at 658, 681-84. Contrary to what Farmer claims, the court did not find that the sewer charge was unreasonable discrimination. Rather, it found that the sewer charge was for a benefit (sewer service) received only by in-City users and should not have been charged to the suburban users. *Id.* at 682-83. This part of the *Niles II* decision does not bear on this matter.

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

the Illinois Constitution. *See* Motion at 6. Therefore, the reasonableness of or rational basis for the exemption is not at issue here.

In any event, there is nothing arbitrary or unreasonable about exemptions for senior citizens, which are commonly granted. The Illinois Supreme Court in a challenge to an exemption from the property tax, stated, "Initially we find that the classification of individuals on the basis of under and over 65 years of age is rational and reasonable for at this age many persons retire and their sole financial support may be derived from social security or private pensions." *Doran v. Cullerton*, 51 Ill. 2d 553, 559 (1972). Farmer suggests that senior citizens who own their residence are not low-income and are wealthier than renters. *See* Motion at 5. The Supreme Court in *Doran* rejected that argument as well, noting that "various Federal and State exemptions are granted to those over the age of 65 without regard to the individual's personal wealth." 51 Ill. 2d at 559-60.

As in *Doran*, the Senior Citizen Exemption is a reasonable policy decision that was made by the City Council through the political process.

The Court's July 11 Order does not provide a basis for summary judgment

Farmer asserts that the Court's Order of July 11, 2025 ("July 11 Order") denying the City's motion to dismiss established a legal principle that entitles her to judgment as a matter of law. *See* Motion, Ex. 1. Her assertion is meritless. The July 11 Order found only that Farmer had stated a claim. *See* July 11 Order at 4 - *"[f]or present purposes*, Plaintiff has alleged facts sufficient to survive a motion to dismiss." (emphasis added). This is not enough to entitle her to summary judgment. *See General Motors v. Douglas,* 206 Ill. App. 3d 881, 888 (1st. Dist. 1998) (on a motion for summary judgment, "plaintiff's *affirmative evidence* must establish all essential elements of the claim not admitted in the pleadings") (emphasis added). Indeed, the Court noted that her claim would be judged by *Niles II* standard: "The Illinois Appellate Court...explained that on a

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

discrimination claim, plaintiffs must show that they paid rates that exceeded the City's cost of service 'to the point of unreasonableness.'" *See* Motion, Ex. 1 at 3.

The Court has already rejected Farmer's Public Utilities Act argument

Farmer alleges that the City's water and sewer systems are subject to the Illinois Public Utilities Act, 220 ILCS 5/9 et seq. ("PUA"), a claim this Court has previously rejected:

> [T]he City is not a public utility under the Public Utility Act. 220 ILCS 5/3-105(b)(1) states that public utilities owned by any political subdivision or municipal corporation of the state are not public utilities for purposes of the Public Utility Act.

Order dated September 2, 2022, attached as Ex. A at p. 7.

Here, the Chicago Waterworks System is owned and operated by the City subject to their authority under 65 ILCS 11-139-2. The system falls squarely within the exception of public utilities under Section 3-105(b)(1). If the General Assembly intended utilities owned or operated by a municipality to be subject to the Public Utility Act, they would not have exempted them from the definition. *Springfield Gas & Electric Co.*, 292 Ill. at 257. The Public Utility Act is not applicable here.

Indeed, in its most recent Order, the Court again stated flatly: "municipal utilities are not subject to the Illinois Public Utilities Act." *See* Motion, Ex. 1 at 3 Despite the Court ruling on this issue multiple time, Farmer persists in making this meritless argument. Because she makes this argument despite the Court's early decisions on this issue, the Court will again have to reject this claim.

CONCLUSION

Farmer has not shown that she is entitled to judgment as a matter of law on her claim that her rate for sewer service is unreasonable She completely misses that the senior exemption has no effect on what she pays for sewer service. And even if she was right about the cost of the

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

exemption, she has offered no evidence that the exemption caused her rate exceeded the cost of service to the point of unreasonableness. Her Motion should be denied.

Dated: March 27, 2026

Respectfully submitted by:

/s/ Susan P. Jordan
One of the attorneys for Defendant

Attorney No. 90909
Susan P. Jordan
Steven J. Tomiello
Jason Rubin
Scott M. Crouch
City of Chicago, Department of Law
2 North LaSalle Street, Suite 440
Chicago, Illinois 60602
312-744-7083/6921/7803/4174/8369
susan.jordan@cityofchicago.org
steven.tomiello@cityofchicago.org
Jason.rubin@cityofchicago.org
scott.crouch@cityofchicago.org

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

Exhibit A

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

KATHRYN FARMER, Individually, and as Representative of a Class of Similarly-Situated Persons and Entities,	)	
Plaintiff,	)	
v.	)	Case No. 2021CH04583
CITY OF CHICAGO, an Illinois Municipal Corporation	)	Judge Allen P. Walker
Defendant.	)	

MEMORANDUM AND ORDER

THIS MATTER comes before this Honorable Court on the parties' cross-motions for summary judgment. These matters have been fully briefed before the Court. Plaintiff's motion is denied. Defendant's motion is granted.

BACKGROUND

Defendant, city of Chicago, operates a water and sewer utility under 65 ILCS 5/11-139-1 *et seq*. On September 14, 2016, Defendant approved a tax on water and sewer usage to fund their pension obligations (hereinafter the "Tax"). The Tax states that "payment of the tax is upon the Purchaser." Starting in March 2017, Defendant implemented the water-sewer tax at a total rate of $0.59 per 1000 gallons of water. In 2020, the total tax rate was $2.51 per 1000 gallons of water.

Plaintiff is a water and sewer customer residing in Chicago. On September 9, 2021, Plaintiff filed a twelve-count complaint in this Court claiming the Tax violates Illinois state statutes and general principles of common law.

On February 7, 2022, Defendant filed a Motion for Summary Judgment on Counts I-VI of the complaint. In response, on March 9, 2022, Plaintiff filed a Motion for Partial Summary Judgment on Counts I-II of the complaint. Both of these motions are presently before this Court.

CROSS MOTION FOR SUMMARY JUDGMENT STANDARD

Summary judgment should be granted when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact" and the "moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2018); *Safeway Ins. Co. v. Hister*, 304 Ill. App. 3d 687, 691 (1st Dist. 1999). A party seeking summary judgment bears the burden of making a *prima facie* showing that there are no genuine issues of material fact. *Williams v. Covenant Med. Ctr.*, 316 Ill. App. 3d 682, 689 (4th Dist. 2000). The burden of proof and the initial burden of production in a motion for summary judgment lie with the movant. *Medow v. Flavin*, 336 Ill. App. 3d 20, 28 (1st Dist. 2002). While the non-moving party is not required to prove his case in response to a motion for summary judgment, he must present a factual basis that would arguably entitle him to

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

judgment. *Pielet v. Pielet*, 407 Ill. App. 3d 474, 490 (2d Dist. 2010). A party may obtain summary judgment when the question is purely one of law. *Smith v. Rengel*, 97 Ill. App. 3d 204, 205 (4th Dist. 1981). In ruling on a motion for summary judgment, the court is required to strictly construe all evidentiary material submitted in support of the motion for summary judgment and liberally construe all evidentiary material submitted in opposition. *Kolakowski v. Voris*, 83 Ill. 2d 388, 398 (1980).

Where cross-motions for summary judgment are filed, the parties acknowledge that only a question of law is at issue and invite the court to decide the issues based on the record. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 309 (2010). However, even where parties file cross-motions for summary judgment, the court is not obligated to grant summary judgment. *Mills v. McDuffa*, 393 Ill. App. 3d 940, 949 (2d Dist. 2009). It is possible that neither party alleged facts, even if undisputed that were sufficient to warrant judgment as a matter of law. *Id.* It is also possible that, despite the parties' invitation to the court to decide the issues as questions of law, a genuine issue of material fact may remain. *Id.*

DISCUSSION

Plaintiff's complaint alleges that, under the legal theories of assumpsit and unjust enrichment, the Tax (1) is preempted by 65 ILCS 5/8-11-6a; (2) violates common law principles of reasonableness; and (3) violates 65 ILCS 5/11-139-8.

Counts I and II

Defendant argues the Tax is "not based on the selling or purchase price or gross receipts from the use, sale, or purchase of tangible personal property," and therefore is not preempted by 65 ILCS 5/8-11-6a. Defendant supports this assertion through the express terms of the ordinance and by comparing the Tax to the "bottle tax" in *American Beverage Ass'n v. City of Chicago*, 404 Ill. App. 3d 68 (1st Dist. 2010) and "Vehicle Fuel tax" in *Illinois Gasoline Dealers Ass'n v. City of Chicago*, 119 Ill. 2d 391 (1988).

The express terms of the Tax state, "[t]he rate of the Tax is as follows . . . during calendar year 2020, and during each calendar year thereafter, $.001255 per gallon of water used or consumed." Defendant argues it is clear that the Tax is based on the number of units purchased, and therefore the Tax only increases the more gallons a customer uses or consumes.

In *American Beverage Ass'n v. City of Chicago*, the Illinois Appellate Court ruled, "[e]xception (7) excepts the bottled water tax from preemption, as it is a flat tax of five cents per bottle and is not based on the selling or purchase price or gross receipts from the use, sale, or purchase of tangible personal property." 404 Ill. App. 3d at 690. Defendant compares the bottle tax to the instant case to emphasize that both taxes are based on the "units" purchased, not on the total price. In *Illinois Gasoline Dealers Ass'n v. City of Chicago*, the Illinois Supreme Court ruled "[t]he Chicago vehicle fuel tax is a tax at a fixed rate of five cents per gallon on vehicle fuel." 119 Ill. 2d at 400. Defendant uses these two cases to show that a home rule municipality may establish a "per unit" tax, and the Tax here is a "per unit" tax.

In response, Plaintiff argues the Tax is based on "the use, sale, or purchase of tangible personal property based on the gross receipts from such sales or the selling or purchase price," and therefore is preempted under 65 ILCS 5/8-11-6a. Plaintiff distinguishes the Tax here from the bottle tax in *American Beverage*. Plaintiff contends that the bottle tax will add a different percentage of tax to the purchase price; therefore, *American Beverage's* five cents per bottle represents a flat tax. For instance, Customer A buys a bottle for $2.00 and Customer B buys a bottle for $1.00. Both customers each pay five cents in tax, but the percentage of tax related to the purchase price is 2.5% and 5% respectively. Plaintiff deems this to be

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

indicative of a true "per unit" tax not preempted by 65 ILCS 5/8-11-6a. Plaintiff argues this tax is not preempted, because the tax paid is not affected by, or dependent upon, the number of bottles or amount paid for them. Plaintiff asserts that the Tax is "based on purchase price" because, unlike in *American Beverage*, the total tax amount for each customer is different but the percentage of tax to purchase price rate is constant at 30.38%.

Plaintiff also contends the practical effect analysis from *Commercial National Bank* is applicable. Plaintiff states it is the "nature of the tax" that determines the substance of the tax. In calculating the Tax, Defendant can place a tax upon the total number of units sold or purchased or can explicitly impose a tax upon a percentage of the total selling or purchase price of the good. Plaintiff argues that since either result in this matter leads to the exact same amount of Tax to the customer, ultimately it is based on a fixed percentage of the purchase price and not per unit of gallons consumed. No matter how many gallons a customer uses, the Tax will be 30.38% of the purchase price. Therefore, the practical effect of the Tax is based on the purchase price which 65 ILCS 5/8-11-6a preempts.

Finally, Plaintiff alleges the statutory language compels a finding that a "tax based upon units purchased or sold is a tax based upon the 'purchase or selling price.'" Plaintiff argues a tenet of statutory interpretation is to avoid "mere surplusage." A tax authorized under 6a(2) would not be authorized under 6a(7) because doing so would be mere surplusage. Because 6a(2) authorizes a tax based on "number of units" and 6a(7) authorizes other taxes "not based on purchase price," then, in order to avoid surplusage, a tax based on number of units must be a tax based on the purchase price.

In response to Plaintiff's arguments, Defendant argues the "practical effect" analysis from *Commercial National Bank v. City of Chicago*, 89 Ill. 2d at 67-70 (1982), does not apply here. Defendant claims the practical effect analysis is inappropriate because the Tax is not a tax on occupations. While the 1970 Illinois Constitution denies home rule municipalities to tax occupations without authorization from the General Assembly, the Court in *Commercial National Bank* notes that home rule taxes placed upon a purchaser were allowed. *Id.* at 63. Defendant compares the Tax to the Vehicle Fuel Tax in *Illinois Gasoline Dealers*, where the court found that tax within a home rule's authority. 119 Ill. 2d at 399-400. Additionally, Defendant claims the practical effect of the Tax is not the same as a percentage tax. To support this, Defendant notes that a price increase would decrease the percentage of Tax on the total water bill. While the percentage of Tax is 30.38% today, when the price changes and the tax remain constant, the percentage will change in relation.

Defendant also looks to 65 ILCS 5/8-11-6a(2), which states "a tax based on the number of units of cigarettes or tobacco products (provided, however, that a home rule municipality that has not imposed a tax based on the number of units of cigarettes or tobacco products before July 1, 1993 shall not impose such a tax after that date)." Defendant argues the full text of 6a(2) indicates the legislature's intent in 6a(2) was to only permit the per unit tax of cigarette or tobacco products in effect before July 1, 1993 to stay in effect. Therefore, Defendant claims the limitation restricts 6a(2), and a per unit cigarette tax would be allowed under 6a(7).

Section 6a preempts home rule municipalities from imposing Article VII, Section 6(a) of the 1970 Illinois Constitution defines a home rule unit and confers upon them the power to perform "any function pertaining to its government and affairs," with some limitations. One of those limitations states, "[a] home rule unit shall have only the power that the General Assembly may provide by law . . . to license for revenue or impose taxes upon or measure by income or earnings or upon occupations." Ill. Const. 1970, art. VII, § 6(e). Under 65 ILCS 5/8-11-6a, the General Assembly preempts home rule municipalities from imposing certain taxes with certain exceptions. One of these exceptions does not preempt other taxes not

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

based on the selling or purchase price or gross receipts from the use, sale, or purchase or tangible purchase property." 65 ILCS 5/8-11-6a(7). The issue presented to the Court here is whether the Taxes are preempted by 65 ILCS 5/8-11-6a(7).

In *American Beverage*, the court reviewed a five-cent per bottle of water tax in the city of Chicago. The court in *American Beverage* reviewed the exceptions to section 6a, noting that beyond the exceptions listed, the statute does not preempt taxes based on the selling or purchase price or gross receipts from the sale, use or purchase of tangible personal property. 404 Ill. App. 3d at 690. The ordinance authorizing the tax levied it at $0.05 per bottle. The court in *American Beverage* considered the tax to be sales taxes set at a flat amount on each unit (bottle) sold. *Id.*, at 688. The court noted that the General Assembly intended to exempt other taxes not based on the selling or purchase price of gross receipts from the use, sale, or purchase of tangible personal property. *Id.*, at 690. Because the tax in *American Beverage* was a flat tax based on each individual unit, the court found "[e]xception (7) except[ed] the bottled water tax from preemption. . ." *Id.*

The Tax at issue here is similar to that of the one in *American Beverage*. Here, the Tax established $0.001255 per gallon of water used or consumed ($1.255 per 1000 gallons) for the 2020 calendar year. For the same calendar year, the Water Rate was approximately $4.13 per 1000 gallons used or consumed. Customer A, who uses 1000 gallons, will pay $1.255 in taxes and $4.13 in rates; Customer B, who uses 2000 gallons, will pay $2.51 in taxes and $8.26 in rates. The tax is a flat rate ($0.001255) levied on a single unit (gallon of water used). This is unlike a tax based on gross receipts because it is a fixed percentage of tax regardless of any price fluctuations. The tax-to-rate percentage for the Tax in 2020 was 30.38%. In 2019, the tax was $1.255 per 1000 gallons and the rate was $4.08 per 1000 gallons, for a tax to rate percentage of 30.76%. In 2018, the tax was $1.005 per 1000 gallons and the rate was $3.98 per 1000 gallons, for a tax to rate percentage of 25.25%. Undoubtedly, the rate will increase, but unless authorized by Defendants in the future, the tax rate will stay at $1.255 per 1000 gallons. The higher rate will mean that the tax-to-rate percentage will decrease. It is possible to get a constant percentage of tax to rate because both use the same units of measurement - the number of gallons used or consumed.

The Tax here is unlike a sales tax issued under the Retailers' Occupation Tax Act, which states, "[u]nless otherwise provided in this Section, the tax imposed by this Act is at the rate of 6.25% of gross receipts from sales of tangible personal property made in the course of business." 35 ILCS 120/2-10. Sales taxes issued under Section 2-10 are constant regardless of changes in sales price. Here, the Tax purposefully increased over a 4-year period and the rate increased over the same period. Each year has a different tax-to-rate percentage. As such, the Court finds that similar to the tax in *American Beverage*, the Tax here is "not based on the purchase price from the use of tangible personal property," and falls within Section 6a(7)'s exception.

Plaintiff relies upon *Commercial National Bank* to demonstrate that the practical effect of the Tax at issue is "based on purchase price." Defendant uses *Commercial National Bank* to illustrate that the practical effect analysis is inappropriate because the tax there regarded the practical effect of that tax as an occupational tax, whereas the Tax here is within a home rule unit's power authorized by the Illinois Constitution. Illinois case law supports the assertion that the "practical effect" analysis is inappropriate because the Tax is not limited by the 1970 Illinois Constitution's home rule authority.

The ordinance that authorized the tax in *Commercial National Bank* set the payment obligation on the consumer, but the city collected payment from the seller. 89 Ill. 2d at 66. The court reasoned that there

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

was essentially no difference between the tax and an occupation tax measured by gross receipts, as all the legal obligations imposed on the purchaser were also imposed on the seller. *Id.* at 67. Here, the ordinance authorizing the Tax does not require the Department of Water Management to collect the funds from the customers. Section 3-80-060 of the Tax states that "the Purchaser shall pay the tax to the Department of Finance. Even though the Tax is on the same bill as the water bill, Defendants do not collect the funds from the Department of Water Management, compared to the tax in *Commercial National Bank.* The Tax's legal obligations are solely with the customer, making the practical effect test inapplicable. The Tax is not an occupation tax barred by the General Assembly and lies within the exceptions in Section 6a.

Plaintiff's argument regarding surplusage is also faulty. Plaintiff notes "[i]t is a fundamental principle of statutory interpretation that statutes are to be construed to give full effect to each word, clause, and sentence, so that no word, clause, or sentence is surplusage or void." *Kennedy v. Community Unit School Dist.*, 23 Ill. App. 3d 382, 385 (4th Dist. 1974). Plaintiff then claims taxes authorized by Section 6a(2) are not authorized by Section 6a(7) because doing so would be mere surplusage. Defendant responds by noting the parenthetical text of 6a(2) indicates the tax must be imposed before July 1, 1993.

Section 6a(2) states in full, "a tax based on the number of units of cigarettes or tobacco products (provided, however, that a home rule municipality that has not imposed a tax based on the number of units of cigarettes or tobacco products before July 1, 1993, shall not imposed such a tax after that date.)" Section 6a(2) unequivocally excepts a per-unit tax on cigarette and tobacco products, as long as it was imposed before July 1, 1993. Section 6a(7) is the generalizing provision that excepts a home rule municipality tax from preemption so long as the tax is "not based on the selling or purchase price or gross receipts from the use, sale or purchase of tangible personal property." This Court finds Section 6a(2) is specific to cigarette and tobacco products. Therefore, Section 6a(2) does not implicate the Tax in question.

The Court finds that there is no genuine issue of material fact regarding Counts I and II. Under 65 ILCS 5/8-11-6a, a home rule municipality cannot impose a tax unless it falls into one of seven exceptions. Because the Tax is a flat rate levied on an individual unit, it is exempt under Section 6a(7). Furthermore, the Tax is not an unauthorized occupation tax because the cost is directly levied on the consumer.

Counts III and IV

Counts III and IV of Plaintiff's Complaint claim that the Tax violates common law principles of reasonable rates. In their motion, Defendant asserts that Plaintiff's argument fails as the Tax is not part of the rate. Defendant notes that the Illinois Supreme Court held there is a "clear cut and definite distinction" between service charges and taxes. *Northern Illinois Home Builders Ass'n, Inc. v. County of DuPage*, 165 Ill. 2d 25, 42 (1995). The distinction is that a tax is a tool used to support the government revenue and a rate is based on compensation for the use and improvement of one's property. The City applies the funds from the Tax to the City's state-mandated pension liabilities. The water rate compensates the Department of Water Management for providing water to the customers, such as operating costs.

Defendant points to the language of the Illinois Public Utility Act to further show this distinction. The Act states, "such utility may charge its customers . . . in addition to any rate authorized by this Act, an additional charge. . ." 220 ILCS 5/9-221. Defendant notes the language "in addition to" and "additional" to emphasize the rate and the tax are separate charges and should not be combined. Defendant uses the definition of "rate" in 220 ILCS 5/3-116 to illuminate its position. Defendant emphasizes the phrase "or other compensation of any public utility" to emphasize that rate is to compensate. Defendant reasserts that the Tax does not compensate the Department of Water Management, and therefore is not part of the definition of "rate."

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

Plaintiff responds by claiming there are genuine issues of material fact and therefore summary judgment is inappropriate. Plaintiff contends: (1) the Tax is a necessary component of Defendant's rates because a customer needs to pay the full balance to receive the water and sewer services; (2) the Public Utility Act defines "rates" broadly; and (3) even if taxes and rates are separate, both are subject to a reasonableness standard.

Plaintiff highlights that Defendant requires payment of both the water rate and taxes to receive water and sewage services. Plaintiff points to section 11-2-480(c) of the Municipal Code of Chicago, which says "the term 'charges' shall include the Chicago Water and Sewer Tax imposed by Chapter 3-80 of this Code." Due to Defendant using a pro-rata payment system to allocate a partial bill payment, a customer can't pay either the full rate or full tax unless the customer pays the bill in full. Plaintiff claims this destroys Defendant's argument that rates and taxes are legally separate because a customer must pay the bill in full to receive the services, and non-payment of the tax portion would expose the customer to penalties that are only legally authorized for non-payment of water and sewer service charges.

A municipal utility is authorized to establish rates for "the use and service of the combined waterworks and sewerage system," and prescribe remedies available for nonpayment of rates and charges under 65 ILCS 5/11-139-8. Plaintiff states statutory remedies can only be utilized when a customer fails to pay the municipality's rates. Therefore, because failure to pay the Tax will result in penalties like foreclosure, this Court must deem the Tax as incorporated into the rate.

Plaintiff disputes Defendant's contention that 220 ILCS 5/9-221 is applicable. Plaintiff reasons that Defendant's reliance upon the statute is misguided because the section applies to municipal taxes imposed on the utility, not the end user. Plaintiff points to 220 ILCS 5/3-116 of the Public Utility Act which broadly defines "rates." This broad definition of rates includes "every individual or joint rate, fare, toll, charge, rental or other compensation of any public utility . . . and any rule, regulation, charge, practice or contract relating thereto."

Alternatively, Plaintiff claims that, even if the Tax is legally distinct from the rate, all utility charges must be reasonable. Under 220 ILCS 5/9-101, "[a]ll rates or other charges made . . . shall be just and reasonable." Plaintiff raises *Village of Roselle v. Commonwealth Edison Co.*, 368 Ill. App. 3d 1097 (2006) is the controlling case in this matter. In *Roselle*, the Illinois Appellate Court ruled that a municipal utility tax may become a "charge" to a utility's customers if the utility opts to pass on the tax to the customers. 368 Ill. App. 3d at 1106. In *Roselle*, the court noted that the tax in question was authorized by a municipal code and charged to the utility, which was passed to the customers. *Id.* Plaintiff asserts that the court in *Roselle* found that where a tax is imposed on end-users of a utility's service, it is part of the utility's charges, and subject to the reasonableness standard in section 9-101.

Defendant responds by noting Section 220 ILCS 5/9-101 of the Public Utility Act states public utilities' "other charges must be just and reasonable." Defendant argues this does not apply to the Tax because the Tax is not an "other charge." It claims, that "other charge" means "any product or commodity furnished" or "any service rendered." Even though Chicago Municipal Code § 11-12-480(c) says "[f]or purposes of this Section, the term 'charges' shall include the Chicago Water and Sewer Tax imposed by Chapter 3-80 of this Code," Defendant maintains this is purely a billing procedure for the "unified statement" for water, sewer and garbage pick-up under Chicago Municipal Code § 11-12-010.

Defendant also notes that merely because the Tax is billed with the charges does not mean the Tax is part of the rate. Defendant uses the real-world experience of buying a computer to further this point. To buy a computer, one must pay a grand total, which includes separate taxes. The retail price of the computer

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

goes to the company and the sales tax goes to the State, yet the tax is not considered part of the retail price. Also, a customer who does not pay the grand total in full is subject to penalties, namely not getting the computer. Similarly, failure to pay the full amount of the total water bill subjects the customer to discontinued service. Yet even though the retail price and taxes create a grand total, they are separate charges; even though the price for water and sewage services are on the same bill as the Tax, they are separate charges.

Furthermore, Defendant distinguishes *Village of Roselle v. Commonwealth Edison*, 368 Ill. App. 3d 1097 (2d Dist. 2006) to reinforce the argument that the Tax is not a charge. Defendant points out that the issue in *Roselle* is one of jurisdiction between the Circuit Court or the Illinois Commerce Commission regarding an occupation tax on electricity. Defendant maintains the court's comment that a tax imposed on a utility but passed on to the utility's customer "may" be a "charge" is *dicta* and has no bearing on this case.

Plaintiff points to the Public Utility Act to highlight their positions on whether the Tax is separate from the rate. When the General Assembly passed and the Governor approved the Public Utility Act, it created the Public Utilities Commission, which has the power to supervise and regulate public utilities. The purpose of the Public Utility Act was to prevent extortionate charges and unjust discriminations by public utilities. *See Springfield Gas & Electric Co. v. Springfield*, 292 Ill. 236, 256-57 (1920).

However, the City is not a public utility under the Public Utility Act. 220 ILCS 5/3-105(b)(1) states that public utilities owned by any political subdivision or municipal corporation of the state are not public utilities for purposes of the Public Utility Act. Here, the Chicago Waterworks System is owned and operated by the City subject to their authority under 65 ILCS 11-139-2. The system falls squarely within the exception of public utilities under Section 3-105(b)(1). If the General Assembly intended utilities owned or operated by a municipality to be subject to the Public Utility Act, they would not have exempted them from the definition. *Springfield Gas & Electric Co.*, 292 Ill. at 257. The Public Utility Act is not applicable here.

Under the Illinois Municipal Code, a municipality has the authority to own and operate a combined waterworks and sewage system and may impose and collect charges or rates for use of that system. 65 ILCS 5/11-139-2. The municipality may charge reasonable compensation for the use and service of the combined system, and establish rates for that purpose under 65 ILCS 5/11-139-8. The Illinois Supreme Court recognized the distinction between taxes and rates in *Wagner v. Rock Island*, 146 Ill. 139, 152–53 (1893). In *Wagner*, the Court stated,

> "[t]axes are enforced proportional contribution from persons and property, levied by the State by virtue of its sovereignty, for the support of government, and for all public needs, and they are therefore justly and properly subjected to the rule of uniformity. But water rates are imposed and collected merely as the compensation or equivalent to be paid by those who choose to receive and use the water, for the commodity thus furnished them by the city." *Id.*

The Court finds that there is no genuine issue of material fact regarding Counts III and IV. The Public Utility Act does not apply to the Tax because the Chicago Waterworks System is not a public utility under the Public Utility Act. While the Illinois Municipal Code requires municipalities to establish rates for reasonable compensation for use of the waterworks system, the *Wagner* court separates the Tax from the rate as the Tax supports the government. *Id.*, at 153. There is no dispute by the parties that the Tax contributes to Defendant's pension obligations, and does not compensate Defendant for furnishing water

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

and sewage services. As such, the Tax is separate from the rate and is not subject to the reasonableness requirement under 65 ILCS 5/11-139-8(3). Plaintiff has not cited any additional authority for the proposition that the Tax has to be reasonable.

Counts V and VI

Counts V and VI allege Defendant violated 65 ILCS 5/11-139-8, which requires they only "charge the inhabitants thereof a reasonable compensation for the use and service of the combined waterworks and sewage system and to establish rates for that purpose." Defendant asserts the statute does not impose an express limit that they "only charge the inhabitants thereof a reasonable compensation." Defendant asserts that they "may . . . charge the inhabitants thereof a reasonable compensation" and therefore there is no express limitation imposed by the statute. Alternatively, Defendant argues, that even if there is an express limitation, the rates and taxes are separate and distinct and the same analysis from Counts III and IV applies. Furthermore, Defendant argues this statute does not limit Defendant's home rule authority. Defendant supports this for two reasons. First, the restrictive language of 65 ILCS 5/11-139-8 was enacted in 1961, and statutory restrictions placed on municipalities before the 1970 Illinois Constitution may not be used as authority to limit home rule powers. Second, there is no express statement by the General Assembly in the statute stating that they intended to limit the powers of home rule municipalities.

In response, Plaintiff contends that 65 ILCS 5/11-139-8 imposes the express limitation that Defendants may only "charge the inhabitants thereof a reasonable compensation." Plaintiff points to *Norwick v. Village of Winfield*, 81 Ill. App. 2d 197, 199 (1967), to support their point. *Norwick* deals with the predecessor statute to 65 ILCS 5/11-139-8 which allowed a utility to receive a "reasonable compensation." *Norwick*, 81 Ill. App. 2d at 199–200. The municipal utility in *Norwick* charged additional fees for future sewer improvements and extensions. The court ruled the municipal utility charge was unreasonable because it is "a charge for construction of a sewer at some future time to serve someone else." Based on *Norwick*, Plaintiff argues that because the Tax is used to provide funds for Defendant's pension obligations, it is not related to the "use" of the water and sewage services and is unreasonable.

Plaintiff rebuts Defendant's claim that pre-1970 statutory authority cannot be used as authority to limit home rule powers. They state Defendant does not identify the home rule power they seek to limit. Plaintiff claims Defendant never had the power to impose unreasonable water and sewer charges. Plaintiff brings up *Bobrowicz v. City of Chicago*, 168 Ill. App. 3d 227 (1st Dist. 1988) where the court held "[t]his common law duty . . . still operates to prevent public utilities from acting in an unreasonable or discriminatory manner." 168 Ill. App. 3d at 233–34. Plaintiff suggests *Bobrowicz* shows that Defendant was still bound by common law limits after the 1970 Illinois Constitution.

65 ILCS 5/11-139-8 states, "The corporate authorities of any municipality availing itself of this [statute] may . . . (3) charge the inhabitants thereof a reasonable compensation for the use and service of the combined waterworks and sewerage system and to establish rates for that purpose." The term "may" allows the municipality to charge the inhabitants at their discretion, and set rates for that purpose. Yet if they do, the word "reasonable" modifies the word "compensation." Under the plain meaning of the statute, if a municipality charges for the use of its waterworks and sewage system, it may only charge reasonable compensation in the form of an established rate. As noted in the section *supra*, the Court concluded that "rates" and "taxes" are separate, as the rate is merely compensation for water services and not to support the government. *Wagner*, 146 Ill. at 153. This statute does not impose a reasonableness requirement upon the Tax.

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

The Court agrees with Defendant's argument regarding pre-1970 statutory restrictions. Article VII, Section 6(a) of the 1970 Illinois Constitution granted home rule municipalities broad powers to tax and regulate for the protection of public health, safety, morals, and welfare. The Illinois Constitution gives Defendant the power to establish a municipal utility for water and sewer services for public health and welfare and the power to tax. 65 ILCS 5/11-139-8(3) only limits the municipality's ability to use reasonable rates to compensate for usage. Yet the statute does not prevent a municipality from applying other charges outside of this. Furthermore, Plaintiff's reliance on *Norwick* is misplaced. The charges in *Norwick* were collected to establish a fund to build sewers at an undetermined future time and place. *Norwick*, 81 Ill. App. 2d at 201. The court relied upon *Mathews v. Chicago*, 342 Ill. 120, 138 (1930), which stated that funds cannot be collected for the remote future. *Norwick*, 81 Ill. App. 2d at 202. Yet the *Matthews* court also stated that taxes are levied to defray the expenses of the government. *Mathews*, 342 Ill. at 138. Defendant collects the Tax is for the municipal pension obligations, which is a current expense for the government, and not to collect funds for a remote future. *Norwick* does not apply here.

There is no genuine issue of material fact regarding Counts V and VI. The 1970 Illinois Constitution permits home rule municipalities the authority to tax municipal utilities. The Tax is inapplicable to 65 ILCS 5/11-139-8(3), as it is separate from the rate used to compensate for use of Defendant's waterworks and sewage system.

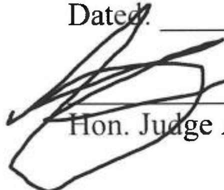
CONCLUSION

Plaintiff's motion is denied. Defendant's motion is granted on Counts I-VI of the Complaint. This matter is set for status on October 5, 2022, at 10 am via ZOOM (Meeting ID: 955-0046-1687 | Password: 640378)

ENTERED:

Allen Price Walker
Associate Judge

Dated: Sep. 02, 2022



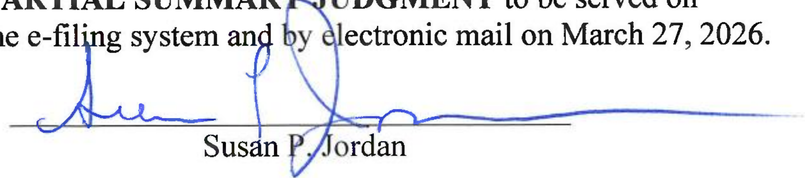
Hon. Judge Allen P. Walker

Circuit Court - 2071

FILED DATE: 3/27/2026 5:11 PM 2021CH04583

CERTIFICATE OF SERVICE

I, Susan P. Jordan, an attorney, certify that I caused the foregoing **CITY'S RESPONSE TO FARMER'S MOTION FOR PARTIAL SUMMARY JUDGMENT** to be served on Plaintiff, through her attorneys, by the e-filing system and by electronic mail on March 27, 2026.



Susan P. Jordan

Service List:

Gregory D. Hanley
Kickham Hanley PLLC
32121 Woodward Ave., Ste. 300
Royal Oak, MI 48073
ghanley@kickhamhanley.com

Alex Moskivic
Moskovic & Assoc., Ltd.
3233 N. Arlington Heights Rd., Ste. 303
Arlington Heights, IL 60004
amoskovic@moskoviclaw.com