

STATE OF MICHIGAN
WAYNE COUNTY CIRCUIT COURT

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

Case No. 17-014341-CZ
Hon. Susan L. Hubbard

Plaintiff,

v.

CITY OF HARPER WOODS,
a Michigan municipal corporation,

Defendant.

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

If you paid the City of Harper Woods (the “City”) for stormwater disposal services at any time between September 28, 2011 and April 30, 2022 (the “Class Period”), you could get a payment from a class action settlement (the “Settlement”).

A Michigan court authorized this notice. You are not being sued.

You are hereby notified that a proposed settlement in the amount of \$ 2,000,000 has been reached with the City in a class action lawsuit pending in the Wayne County Circuit Court titled *Gottesman v. City of Harper Woods*, Case No. 17-014341-CZ, presiding Susan L. Hubbard (the “Lawsuit”), challenging stormwater disposal charges the City imposes upon owners of real property.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

Do nothing.	You will receive a credit on your water and sewer billing account in the amount of your pro rata share of the net settlement fund. If you do not have a water and sewer billing account, you will receive a credit on your December 2022 property tax bill in the amount of your pro rata share of the net settlement fund.
Submit a claim.	You will receive a cash payment in the amount of your pro rata share of the net settlement fund. This is the best way to participate in the settlement if you do not own the property for which you paid stormwater disposal charges. Proof of claim forms must be submitted online or received by the claims administrator on or before September 19, 2022. Instructions for submitting a claim are below.
Exclude yourself.	You will receive no cash payment or credit. You will retain your right to bring your own separate lawsuit against the City about the legal claims that were or could have been asserted in this case. Requests for exclusion must be received by the claims administrator on or before October 19, 2022. Instructions for requesting exclusion are below.
Object.	Write to the lawyers for the Plaintiff and the City and file papers with the Court about why you do not like the Settlement. You will still be a member of the Class. Objections must be received by counsel and filed with the Wayne County Circuit Court on or before October 19, 2022. You must timely file and serve an objection in order to speak at the hearing on final approval of the Settlement. Instructions for submitting an objection are below.

BASIC INFORMATION ABOUT THE SETTLEMENT

The amounts Plaintiffs and the Class paid or incurred for stormwater disposal between September 28, 2011 and April 30, 2022 shall be referred to herein as the “Stormwater Charges.”

The Plaintiff is a person who owns property in the City and who has paid the City’s Stormwater Charges. Plaintiff contends that (a) the Stormwater Charges are not proper user fees, but taxes wrongfully imposed by the City to raise revenue in violation of the Headlee Amendment to the Michigan constitution of 1963; (b) the Stormwater Charges violate the Prohibited Taxes By Cities And Villages Act, MCL 141.91 because the Stormwater Charges are not ad valorem taxes, but are taxes imposed, levied, or collected after January 1, 1964; (c) the Stormwater Charges are grossly excessive in violation of the common law; (d) the Stormwater Charges were imposed in violation of the City’s ordinances; (d) the City has been unjustly enriched by the collection and retention of the Stormwater Charges and/or is required to refund the Stormwater Charges under a theory of assumpsit; and (e) that Plaintiff and those similarly situated have been harmed by the City’s collection and retention of the Stormwater Charges.

The Plaintiff sought a judgment from the Court against the City that would order and direct the City to refund all Stormwater Charges to which Plaintiff and the class are entitled and grant any other appropriate relief. The City maintained and continues to maintain that the City’s imposition of the Stormwater Charges is proper and not unlawful, and thus denies the Plaintiffs’ claims and contends that it should prevail in the Lawsuit. The Court ruled that the Stormwater Charges were unlawful under the Headlee Amendment, which has a one-year limitations period, but that they were not unlawful under other claims that have a six-year limitations period. Both parties appealed. The Michigan Court of Appeals ruled that the Stormwater Charges were unlawful under both the Headlee Amendment and other claims, such that Plaintiff and the class were entitled to recover Stormwater Charges the City collected during the entire Class Period. The Michigan Supreme Court vacated the Court of Appeals’ decision and remanded the case to the Court of Appeals for further consideration of specific issues.

On March 22, 2018, Judge Hubbard entered an Opinion and Order certifying the lawsuit as a class action. You are receiving this Notice because the City’s records indicate that you paid for stormwater disposal services between September 28, 2011 and April 30, 2022 and are therefore a member of the class.

For settlement purposes, the parties have agreed that the Class will consist of all persons or entities who/which paid or incurred the Stormwater Charges between September 28, 2011 and April 30, 2022 (the “Class”). The Settlement Agreement is intended to settle all of the claims of the Class.

THE TERMS OF THE SETTLEMENT

The principal terms of the Settlement Agreement are as follows:

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

The “Net Settlement Fund” is the Settlement Fund less the combined total of: (a) attorneys’ fees and any incentive award to the Class representative awarded by the Court; and (b) Class Counsel and Claims-Escrow Administrator expenses reimbursed pursuant to the Settlement Agreement. The Net Settlement Fund shall be used to compensate Class Members as described below.

Each Class Member’s share in the Net Settlement Fund shall be referred to herein as his, her or its “Pro Rata Share,” and each Class Member’s Pro Rata Share of the Net Settlement Fund will be distributed via a refund payment or credit.

HOW TO PARTICIPATE IN THE SETTLEMENT

All Class Members may participate in the Settlement by receiving from the Net Settlement Fund a cash distribution Payment or Credit (as defined in Paragraph 10 of the Settlement Agreement). To qualify to receive a distribution of cash via check (a “Payment”) from the Net Settlement Fund, Class Members are required to submit sworn claims (the “Claims”) which identify their names, addresses, and the periods of time in which they paid the Stormwater Charges in order to participate in the Settlement. Class Members who submit Claims will hereafter be referred to as the “Claiming Class Members.” The Claiming Class Members are required to submit those claims no later than 60 days prior to the hearing on the final approval of this settlement, as described in Paragraph 25 of the Settlement Agreement (the “Claims Period”).

HOW YOUR PRO RATA SHARE WILL BE CALCULATED

The Claims-Escrow Administrator shall calculate each Class Member’s pro rata share of the Net Settlement Fund (the “Pro Rata Share”). Only those Class Members who (1) paid Stormwater Charges during the Class Period and submit a timely Claim, or (2) did not submit a timely claim and own property that does not have a water and sewer billing account are entitled to distribution by a cash Payment of a Pro Rata Share of the Net Settlement Fund. The Pro Rata Shares of the Net Settlement Fund for Class Members who/which do not submit a timely claim and who own property that has a water and sewer billing account will be distributed by the City funding and providing Credits on the water and sewer billing account associated with the Stormwater Charges in the amount of those Class Members’ Pro Rata Shares. Any Credit will attach to the water and sewer billing account associated with the Stormwater Charges and will remain until the water and sewer bills accrued by that account after the Settlement Date exceed the amount of the

Credit. The City shall apply the Credits to water and sewer bills no later than 7 days after the Settlement Date. If your property is not associated with a water and sewer billing account, the City shall prepare an accounts payable check in the amount of your Pro Rata Share, notify you, and deliver the check to you.

For this reason, it is very important for any Class Member who paid Stormwater Charges but no longer owns the subject property to submit a Claim. If a Class Member does not own the subject property, the Class Member may not receive the benefit of any credit applied to the property's water and sewer account or tax bills. The best way for Class Members who do not get a tax bill to receive a portion of the Net Settlement Fund is for them to file Claims.

The size of each Class Member's Pro Rata Share shall be determined by (1) calculating the total amount of Charges the Class Member paid during the Class Period and then (2) dividing that number by the total amount of Charges the City collected from Class Members during the Class Period and then (3) multiplying that fraction by the amount of the Net Settlement Fund.

THE CITY CANNOT RAISE TAXES OR WATER AND SEWER RATES TO PAY THE COST OF THE SETTLEMENT

The City may not levy a tax or other assessment against property owners or water and/or sewer customers to finance, in whole or in part, the Settlement Fund (unless such tax or assessment receives voter approval), nor may the City increase its water and sewer rates to finance, in whole or in part, the Settlement Fund. The Settlement Fund shall be financed solely from current assets of the City's Storm Drain Fund and/or General Fund.

HOW TO REQUEST EXCLUSION FROM THE SETTLEMENT

Class Members who wish to exclude themselves from the Settlement may write to the Administrator, stating that they do not wish to participate in the Settlement and that they wish to retain their right to file an action against the City. This proposed settlement should not be interpreted, in any way, as suggesting that the claims alleged against the City have legal or factual merit. The City has challenged the validity of Plaintiffs' claims. **This request for exclusion must be received no later than October 19, 2022 and mailed to: Kickham Hanley PLLC, 32121 Woodward Avenue, Suite 300, Royal Oak, Michigan 48073 or emailed to khtemp@kickhamhanley.com.**

By remaining a Class Member, you will be bound by the terms of the proposed settlement and will be barred from bringing a separate action against the City for the claims asserted in the Lawsuit at your own expense through your own attorney. You will, however, receive your pro rata share of the Net Settlement Fund via a Refund or Credit. **Again, however, where a Class Member does not own the subject property, he or she may not receive the benefit of any credit applied to the property's tax bill. The**

best way for Class Members who do not own the subject property to receive a portion of the Net Settlement Fund is for them to file Claims.

If you were to successfully pursue such a separate action to conclusion, recovery might be available to you which is not available in this class action settlement. Whether to remain a member of this class or to request exclusion from this class action to attempt to pursue a separate action at your own expense without the assistance of the City in this Action is a question you should ask your own attorney. Class Counsel cannot and will not advise you on this issue.

THE SETTLEMENT HEARING

Pursuant to the Order of the Court dated July 13, 2022, a Settlement Hearing will be held in the Wayne County Circuit Court, 2 Woodward Ave., Detroit, MI 48226 at 8:30 a.m. on November 18, 2022, to determine whether the proposed Settlement as set forth in the Settlement Agreement dated June 28, 2022, is fair, reasonable, and adequate and should be approved by the Court, whether the Lawsuit should be dismissed pursuant to the Settlement, whether counsel for Plaintiffs and the Class should be awarded fees and expenses, and whether the Class Representatives should receive an incentive award.

OBJECTIONS TO THE SETTLEMENT

At the Settlement Hearing, any member of the Class may appear in person or through counsel and be heard to the extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness and adequacy of the proposed Settlement. However, no Class member will be heard in opposition to the proposed Settlement and no papers or briefs submitted by any such Class member will be accepted or considered by the Court unless on or before October 19, 2022, such Class member serves by first class mail written objections that set forth the name of this matter as defined in the Notice, the objector's full name, address and telephone number, an explanation of the basis upon which the objector claims to be a Class Member, all grounds for the objection including any known legal support for the objection, the number of times in which the objector has objected to a class action settlement in the past five years and a caption of each case in which an objection was filed, the identity of all counsel representing the objector at the hearing, a statement confirming whether the objector intends to appear and/or testify at the hearing (along with a disclosure of all testifying witnesses) and the signature of the objector (not just the objector's attorney) upon each of the following attorneys:

Counsel for the Plaintiff

Gregory D. Hanley (P51204)
Edward F. Kickham Jr. (P70332)
Jamie K. Warrow
KICKHAM HANLEY PLLC
32121 Woodward Ave., Suite 300
Royal Oak, MI 48073

Counsel for the Defendant

Joseph W. Colaianne (P72419)
Ronald A. King (P45088)
Bethany G. Stawasz (P75578)
Clark Hill PLC
212 East Grand River Ave.
Lansing, MI 48096

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

THE RELEASE OF THE CITY BY THE CLASS

On the Settlement Date, each Class Member who has not timely requested exclusion therefrom shall be deemed to have individually executed, on behalf of the Class Member and his or her heirs, successors and assigns, if any, the following Release and Covenant Not To Sue, and the Final Order and Judgment to be entered by the Court in connection with the approval of this Settlement shall so provide:

In executing the Release and Covenant Not To Sue, each Class Member, on behalf of himself, herself or itself, and his, her or its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person the Class Member represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the City, and each of its successors and assigns, present and former agents, representatives, employees, insurers, affiliated entities, attorneys and administrators, of and from any and all manner of actions, causes of action, suits, debts, accounts, understandings, contracts, agreements, controversies, judgments, consequential damages, compensatory damages, punitive damages, claims, liabilities, and demands of any kind or nature whatsoever, known or unknown, which arise from the beginning of time through the date of this Final Order and Judgment concerning (1) the City's calculation or assessment of the Stormwater Charges; (2) the components of costs included in the Stormwater Charges; and/or (3) the City's efforts to charge and/or collect Stormwater Charges. In executing the Release and Covenant Not to Sue, each Class Member also covenants that: (a) except for actions or suits based upon breaches of the terms of this Agreement or to enforce rights provided for in this Agreement, he, she or it will refrain from commencing any action or suit, or prosecuting any pending action or suit, in law or in equity, against the City on account of any action or cause of action released hereby; (b) none of the claims released under the Release and Covenant Not To Sue has been assigned to any other party; and (c) he, she or it accepts and assumes the risk that if any fact or circumstance is found, suspected, or claimed hereinafter to be other than or different from the facts or circumstances now believed to be true, the Release and Covenant Not To Sue shall be and remain effective notwithstanding any such difference in any such facts or circumstances.

HOW TO FIND ADDITIONAL INFORMATION

For a more detailed statement of the matters involved in the Lawsuit, including the terms of the proposed Settlement, you are referred to papers on file in the Lawsuit, which may be inspected during regular business hours at the Office of the Clerk of Circuit Court for Wayne County, Michigan. You may also view the Settlement Agreement and other important court documents at www.kickhamhanley.com.

Should you have any questions with respect to this Notice of the proposed settlement of the Lawsuit generally, you should raise them with your own attorney or direct them to counsel for the Class, in writing

or by email to khtemp@kickhamhanley.com, not by telephone. **Do not contact the Court, the Clerk of the Court, the City, or the attorneys for the City.**