

Todd A. Hammer  
Marcel A. Quinn  
Thomas A. Hollo  
HAMMER, QUINN & SHAW PLLC  
100 Financial Drive, Suite 100  
P.O. Box 7310  
Kalispell, MT 59904-0310  
Telephone: (406) 755-2225  
toddhammer@attorneysmontana.com  
marcelquinn@attorneysmontana.com  
tomhollo@attorneysmontana.com

Attorneys for Defendant City of Whitefish

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

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JEFF BECK, individually; ROBERT  
ODENWELLER, individually; TERRI  
ODENWELLER, individually; AMY  
WEINBERG, individually, ZAC WEINBERG,  
individually, ALTA VIEWS, LLC;  
RIVERBEND COMPANY, LLC; and on  
behalf of a class similarly situated persons or  
entities,

Plaintiffs,

-vs-

CITY OF WHITEFISH, a Montana  
municipality, and DOES 1-50.

Defendants.

Cause No. CV-22-44-M-DLC-  
KLD

**AMENDED ANSWER**

Defendant City of Whitefish (“the City”) answers Plaintiffs’ Class Action Complaint as follows:

**PARTIES**

1. The City admits the allegations contained in Paragraph 1.

2. The City admits the allegations contained in Paragraph 2.

3. The allegations contained in Paragraph 3 of the Complaint are a statement of claim and therefore do not require a response from the City. To the extent a response may be required, the allegations are denied.

4. The City admits the allegations contained in Paragraph 4 of the Complaint.

5. The allegations contained in Paragraph 5 of the Complaint are a statement of claim and therefore do not require a response from the City. To the extent a response may be required, the allegations are denied.

**JURISDICTION AND VENUE**

6. The City denies the allegations contained in Paragraph 6 of the Complaint.

7. The City admits the allegations contained in Paragraph 7 of the Complaint. However, the City expressly reserves its right to seek relinquishment of Plaintiffs’ claims to state district court under 28 U.S.C. § 1367(c).

## **FACTUAL ALLEGATIONS**

8. Answering the allegations contained in Paragraph 8 of the Complaint, the City states the allegations are a statement of claims and/or legal authority and thus do not require a response. To the extent a response is required, §§ 7-6-1601 through 7-6-1604, MCA, speak for themselves. The City admits it has been charging impact fees on new development, remodels, and renovations within the City limits and conditioning issuance of building permits upon payment of such fees since 2007.

9. Answering the allegations contained in Paragraph 9 of the Complaint, the City admits the Whitefish City Council adopted Resolution No. 18-44 on November 19, 2018. The remainder of allegations in this paragraph are statements of claims and/or legal authority and thus do not require a response. To the extent a response is required, the City states Resolution No. 18-44 speaks for itself. To the extent further response is required, the City admits the allegations in this paragraph to the extent they are reflected in Resolution No. 18-44 but otherwise denies the allegations in this paragraph.

10. Answering the allegations contained in Paragraph 10 of the Complaint, the City admits the Whitefish City Council adopted Resolution No. 19-15 on July 15, 2019. The remainder of allegations in this paragraph are statements of claims and/or legal authority and thus do not require a response. To the extent a

response is required, the City states Resolution No. 19-15 speaks for itself. To the extent further response is required, the City admits the allegations in this paragraph to the extent they are reflected in Resolution No. 19-15 but otherwise denies the allegations in this paragraph.

11. The City denies the allegations contained in Paragraph 11 of the Complaint.

12. Answering the allegations contained in Paragraph 12 of the Complaint, the City admits a building permit is required before certain development and land uses can take place on private property within City limits. The City denies any and all remaining allegations.

13. Answering the allegations contained in Paragraph 13 of the Complaint, the City admits it has not refunded Plaintiffs any impact fees they may have paid as of the commencement of this action. The City denies the allegations in this paragraph to the extent they ignore the City's ongoing efforts to issue refunds to affected property owners. The City denies any and all remaining allegations.

14. The City denies the allegations contained in Paragraph 14 of the Complaint.

15. Answering the allegations contained in Paragraph 15 of the Complaint, the City admits HDR Engineering, Inc., a company retained by

Henderson, Young and Company on behalf of the City to develop impact fees for water, wastewater, and stormwater utility systems, issued a report in July of 2007. The City states HDR Engineering, Inc.'s report speaks for itself. To the extent further response is required, the City admits the allegations in this paragraph to the extent they are reflected in said report but otherwise denies the allegations in this paragraph.

16. Answering the allegations contained in Paragraph 16 of the Complaint, the City states HDR Engineering, Inc.'s report dated July 6, 2007, speaks for itself. To the extent further response is required, the City admits the allegations in this paragraph to the extent they are reflected in said report but otherwise denies the allegations in this paragraph.

17. Answering the allegations contained in Paragraph 17 of the Complaint, the City admits on August 17, 2018, FSC Group submitted a "Impact Fee Update Final Report" to the City. The City states FSC Group's report speaks for itself. To the extent further response is required, the City admits the allegations in this paragraph to the extent they are reflected in said report but otherwise denies the allegations in this paragraph.

18. The City denies the allegations contained in Paragraph 18 of the Complaint. The City states the City official used the tables contained within the 2018 Impact Fee Update final Report authored by FSC Group. The City states the

Report speaks for itself.

19. The City denies the allegations contained in Paragraph 19 of the Complaint.

20. The City denies the allegations contained in Paragraph 20 of the Complaint.

### **Improper Fixture Unit Weighting**

21. The City admits the allegations contained in Paragraph 21 of the Complaint.

22. Answering Paragraph 22 of the Complaint, the City admits a City official added a comment on the City's spreadsheet used to calculate the number of water fixtures in the City's impact fee assessment program. As to the remainder of this paragraph, the grammar in the final clause of the paragraph contains a typographical error such that the City is not certain what the allegation is and, consequently, is not able to respond to it. To the extent further response is required, because of that issue, the City denies the remaining allegations as stated.

23. Answering Paragraph 23 of the Complaint, the City states the allegations in this paragraph are statements of claims and/or legal authority and thus do not require a response. To the extent a response is required, the Rules and Regulations for the City of Whitefish Water, Sewer and Garbage Services speak

for themselves. To the extent further response is required, the City admits the allegations in this paragraph to the extent they are reflected in the Rules and Regulations but otherwise denies the allegations in this paragraph.

24. Answering Paragraph 24 of the Complaint, the City is without sufficient information to either admit or deny whether it assigned the unit weight for single-head standalone showers differently than what is specified by the UPC. The City denies any remaining allegations.

25. Answering Paragraph 25 of the Complaint, the City admits on July 21, 2021, with regard to single head standalone showers only, the Whitefish City Manager stated that the City's method for counting water fixtures is erroneous and that Defendant has overcharged some water and wastewater impact fees based upon water fixture unit counts. The City denies the remaining allegations in this paragraph.

26. The City is without sufficient information to either admit or deny the allegations contained in Paragraph 26 of the Complaint and therefore denies the same.

27. Answering the allegations contained in Paragraph 27 of the Complaint, the City states the FCS Group Impact Fee Update Final Report dated August 27, 2018, speaks for itself. To the extent further response is required regarding the allegations in this paragraph concerning the contents of said report,

the City admits the allegations in this paragraph to the extent they are reflected in the report but otherwise denies them. The City states in the fall of 2018, the South Water Reservoir project was increased to \$8.4 million based upon new estimates for the project and such cost was included in the impact rates adopted by Resolution No. 19-15. The City denies any remaining allegations.

28. Answering the allegations contained in Paragraph 28 of the Complaint, the City admits the \$8.4 million cost of the South Water Reservoir project was included in calculation of water impact fee rates adopted in Resolution No. 19-15. The City denies all remaining allegations in this paragraph.

29. The City denies the allegations contained in Paragraph 29 of the Complaint.

30. Answering the allegations contained in Paragraph 30 of the Complaint, the City states the FCS Group Impact Fee Update Final Report dated August 27, 2018, speaks for itself. To the extent further response is required, the City admits the allegations in this paragraph to the extent they are reflected in said report but otherwise denies the allegations in this paragraph.

31. Answering Paragraph 31 of the Complaint, the City admits the \$4 million Solar Array Project was included in calculation of wastewater impact fee rates. The City denies the remaining allegations.

32. The City denies the allegations contained in Paragraph 32 of the

Complaint.

33. Answering Paragraph 33 of the Complaint, the City states the FCS Group Impact Fee Update Final Report dated August 27, 2018, speaks for itself. To the extent further response is required regarding the allegations in this paragraph concerning the contents of said report, the City admits the allegations in this paragraph to the extent they are reflected in the report but otherwise denies them. The City states the cost estimate of the Water Treatment Expansion was based upon the most recent engineers' estimate available in the fall of 2018. The City admits the increased cost of the Water Treatment Expansion was included in the calculation of water impact fee rates adopted in Resolution 19-15. The City denies all remaining allegations.

34. Answering Paragraph 34 of the Complaint, the City admits the increased cost of the Water Treatment Expansion was included in the calculation of water impact fee rates adopted in Resolution 19-15. The City denies the remaining allegations.

**Charges on Developments Not Increasing Service Demand  
on Public Facilities**

35. The City denies the allegations contained in Paragraph 35 of the Complaint.

**CLASS ACTION ALLEGATIONS**

36. Answering Paragraph 36 of the Complaint, the City re-pleads the

information in the paragraphs above as though fully set forth herein.

37. The allegations contained in Paragraph 37 of the Complaint are a statement of claim and thus do not require a response from the City. To the extent the allegations may require a response, they are denied.

38. The City is without sufficient information to either admit or deny the allegations contained in Paragraph 38 of the Complaint and therefore denies the same.

39. The City is without sufficient information to either admit or deny the allegations contained in Paragraph 39 of the Complaint and therefore denies the same.

40. The City is without sufficient information to either admit or deny the allegations contained in Paragraph 40 of the Complaint and therefore denies the same.

41. The City is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 41 of the Complaint and therefore denies the same.

42. The City denies the allegations contained in Paragraph 42 of the Complaint.

43. The City denies the allegations contained in Paragraph 43 of the

Complaint.

44. The City denies the allegations contained in Paragraph 44 of the Complaint.

45. The City denies the allegations contained in Paragraph 45 of the Complaint.

46. The allegations contained in Paragraph 46 of the Complaint are a statement of claim and thus do not require a response from the City. To the extent the allegations may require a response, they are denied.

47. The City is without knowledge or facts sufficient to either admit or deny the allegations contained in Paragraph 47 of the Complaint, and therefore denies the same.

### **FIRST CAUSE OF ACTION**

#### **Deprivation of United States Constitutional Rights (42 U.S.C. § 1983).**

48. Answering the allegations contained in Paragraph 48 of the Complaint, the City re-pleads the information in the paragraphs above as though fully set forth herein.

49. The allegations contained in Paragraph 46 of the Complaint are a statement of claim and thus do not require a response from the City. To the extent the allegations may require a response, they are denied.

50. The City admits the allegations contained in Paragraph 50 of the Complaint.

51. Answering the allegations contained in Paragraph 51 of the Complaint, the City states allegations in this paragraph are statements of claims and/or legal authority and thus do not require a response. To the extent a response is required, the Taking Clause of the Fifth Amendment of the United States Constitution speaks for itself. To the extent further response is required, the City admits the allegations in this paragraph to the extent they are reflected in said clause but otherwise denies the allegations in this paragraph.

52. The allegations contained in Paragraph 52 of the Complaint are a statement of claim and/or legal authority thus do not require a response from the City. To the extent the allegations may require a response, they are denied.

53. The allegations contained in Paragraph 53 of the Complaint are a statement of claim and/or legal authority and thus do not require a response from the City. To the extent the allegations may require a response, they are denied.

54. The City denies the allegations contained in Paragraph 54 of the Complaint.

55. The City denies the allegations contained in Paragraph 55 of the Complaint.

56. The City denies the allegations contained in Paragraph 56 of the

Complaint.

**SECOND CAUSE OF ACTION**

**Breach of Statutory Duties—Negligence *Per Se***

57. Answering the allegations contained in Paragraph 57 of the Complaint, the City re-pleads the information in the paragraphs above as though fully set forth herein.

58. The City denies the allegations contained in Paragraph 58 of the Complaint.

59. The City denies the allegations contained in Paragraph 59 of the Complaint.

60. The City denies the allegations contained in Paragraph 60 of the Complaint.

61. The City denies the allegations contained in Paragraph 61 of the Complaint.

62. The City denies the allegations contained in Paragraph 62 of the Complaint.

63. Answering Paragraph 63 of the Complaint, the City admits it has not yet refunded any impact fees. The City denies the allegations in this paragraph to the extent they ignore the City's ongoing efforts to issue refunds to affected property owners. The City denies the remaining allegations.

64. The City denies the allegations contained in Paragraph 64 of the Complaint.

65. The City denies the allegations contained in Paragraph 65 of the Complaint.

66. The City denies the allegations contained in Paragraph 66 of the Complaint.

67. The City denies the allegations contained in Paragraph 67 of the Complaint.

### **THIRD CAUSE OF ACTION**

#### **Negligence**

68. Answering the allegations contained in Paragraph 68 of the Complaint, the City re-pleads the information in the paragraphs above as though fully set forth herein.

69. The City admits the allegations contained in Paragraph 69 of the Complaint.

70. The allegations contained in Paragraph 70 of the Complaint are a statement of legal claim and/or legal authority and thus do not require a response from the City. To the extent the allegations might require a response, they are denied.

71. The City denies the allegations contained in Paragraph 71 of the

Complaint.

72. The City denies the allegations contained in Paragraph 72 of the Complaint.

#### **FOURTH CAUSE OF ACTION**

##### **Negligent Representation**

73. Answering the allegations contained in Paragraph 73 of the Complaint, the City re-pleads the information in the paragraphs above as though fully set forth herein.

74. The City denies the allegations contained in Paragraph 74 of the Complaint.

75. The City denies the allegations contained in Paragraph 75 of the Complaint.

76. The City denies the allegations contained in Paragraph 76 of the Complaint.

77. The City denies the allegations contained in Paragraph 77 of the Complaint.

78. The City denies the allegations contained in Paragraph 78 of the Complaint.

79. The City denies the allegations contained in Paragraph 79 of the Complaint.

**FIFTH CAUSE OF ACTION**

**Declaratory Relief**

80. Answering the allegations contained in Paragraph 80 of the Complaint, the City re-pleads the information in the paragraphs above as though fully set forth herein.

81. The allegations contained in Paragraph 81 of the Complaint are the statement of a legal claim and/or legal authority and thus do not require a response from the City. To the extent they might require a response, they are denied.

82. The allegations contained in Paragraph 82 of the Complaint are the statement of a legal claim and/or legal authority and thus do not require a response from the City. To the extent they might require a response, they are denied.

83. The allegations contained in Paragraph 83 of the Complaint are the statement of a legal claim and/or legal authority and thus do not require a response from the City. To the extent they might require a response, they are denied.

**AFFIRMATIVE DEFENSES**

1. Plaintiffs have failed to state a claim for which relief can be granted.
2. Plaintiffs' claims are unripe and/or moot.
3. This Court lacks subject matter jurisdiction over Plaintiffs' claims.
4. Plaintiffs failed to exhaust their administrative remedies.
5. Plaintiffs' claims are barred by the statute of limitation or laches.

6. Plaintiffs have failed to mitigate their alleged damages.
7. The City is not liable because it acted under the authority of a law and/or duly promulgated Rule or Ordinance. *See* § 2-9-103, MCA.
8. Any recovery herein should be reduced by any and all amounts received by Plaintiffs from any collateral source, or that were otherwise offset.
9. Plaintiffs' class action complaint fails to meet the numerosity requirement.
10. Plaintiffs' class action complaint fails to meet the commonality requirement.
11. It is not impractical for individual plaintiffs to obtain redress.
12. Plaintiffs' class action complaint fails to meet the typicality requirement.
13. The proposed class lacks common questions of law or fact.
14. Plaintiff's declaratory judgment claim, in whole or in part, should be dismissed as moot.
15. Plaintiffs are not entitled to attorney fees, and even if they were otherwise entitled to attorney fees, they are not entitled to any fees that are unreasonable, which some or all of Plaintiffs' are.

#### **APPLICABILITY OF AFFIRMATIVE DEFENSES**

At this time this time, Defendant is uncertain what affirmative defenses may

apply if this case goes to trial. The foregoing affirmative defenses are pleaded to preserve all defenses available to Defendant. Discovery, trial preparation and the facts of this case may make some affirmative defenses applicable and thus they are raised in this Answer to avoid being waived. Any affirmative defenses that do not appear to be reasonably supported by the facts and/or law will be dismissed. The purpose of raising these affirmative defenses is not to create defenses where none exist. Instead, it is recognition that the pleadings, discovery and trial preparation require an examination and evaluation of evolving facts and law. The decision maker, whether judge or jury, should have available for consideration all defenses that may apply. Defendant further reserves the right to amend this answer, if in the course of discovery, further defenses become apparent under the facts and circumstances of this case.

Wherefore, the City prays as follows:

1. That Plaintiffs' Complaint be dismissed with prejudice and that the City be awarded its costs and disbursements expended herein;
2. That the Court rule against Plaintiff and in favor of Defendant.
3. For attorney fees; and
4. For such other and further relief as the Court may deem proper under the circumstances.

**JURY DEMAND**

Defendant demands a trial by jury on all issues so triable.

Dated this 20<sup>th</sup> day of May, 2022.

HAMMER, QUINN & SHAW PLLC

/s/ Marcel A. Quinn

Todd A. Hammer

Marcel A. Quinn

Thomas A. Hollo

*Attorneys for Defendant City of Whitefish*