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SALEM LEGAL DEPT

February 26, 2019

SENT VIA CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Salem Mayor, Chuck Bennett
555 Liberty St. SE, Room 220
Salem, OR 97301

Salem City Manager, Steve Powers
555 Liberty St. SE, Room 220
Salem, OR 97301

Salem City Attorney ✓
555 Liberty St. SE, Room 205
Salem, OR 97301

Re: Notice of Class Action pursuant to Oregon Tax Court Rule 32 (H)
Michael Barnes, et al. vs. City of Salem

Dear City of Salem and Officials:

The property owners whom I represent believe that the fees being charged by the City of Salem for rain storm water runoff, street light fees, and franchise fee are in fact taxes; and further, that these tax assessments are in amounts beyond those allowed by Article XI, Section 11 of the Oregon Constitution. Please accept this letter as notice pursuant to the Oregon Tax Court Rules, specifically Rule 32 (H) that plaintiffs, who are residents and property owners in the City of Salem, intend to file a class action suit in the Oregon Tax Court concerning these tax assessments. Pursuant to Rule 32 (H), notice is hereby given that the city has 30 days prior to the filing of this class action suit to rectify this matter. Specific actions requested are set out below.

As you are aware, in 2010 the Salem City Council created a fee for storm water runoff that applied to all property within the city. The storm water utility charge created a new source of revenue for the city providing additional revenue for storm water services. The ordinance establishing the creation of a storm water utility delayed initial implementation until January 1, 2013. The storm water fee was phased in over four rate cycles, which took a total of three years to complete. Since 2016 the fee is at full implementation. The City Council has continued with tax by ordinance since that time.

The City of Salem has also put in place a streetlight fee which is also a tax, not a fee, and also subject to the same limitations mentioned above.

In the 1990s the Oregon Constitution was amended to provide a limitation on property taxes. Article XI, Section 11 (1) (b) of the Oregon Constitution (commonly referred to as the Measure 5 limitation) states that the property's maximum assessed value shall not increase by more than three percent from the previous tax year.

This amendment to the Oregon Constitution also included definitions in Article XI Section 11 (b) (2). This section defines "taxes" and "incurred charges" as these terms are used in Section 11. A "tax" is defined as "any charge imposed by a governmental unit upon property or upon a property owner as a direct consequence of ownership of that property except incurred charges and assessments for local improvements." Government is allowed to charge fees only if they are for "incurred charges." Incurred charges are specifically defined in subsection (c) as:

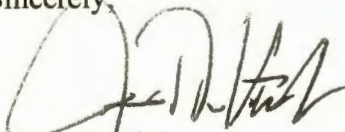
(c) "Incurred charges" include and are specifically limited to those charges by government which can be controlled or avoided by the property owner. The "incurred charges" are charges based on the quantity of the goods or services used and the owner has direct control over the quantity; or goods and services provided only on the specific request of the property owner. Incurred charges are further limited to an amount not exceeding the actual costs of providing the goods or services.

The City of Salem's charges for storm water runoff, street lights and franchise fees do not provide for or allow the property owner to control or avoid these assessments. These so called fees are assessed against all property within the limits of the city.

Based upon the definition of "incurred charges" specifically set out in Section 11 of the Oregon Constitution, it is evident that the City of Salem has imposed a tax that is subject to the Section 11 limitations. The City of Salem cannot exceed the Section 11 limitations by labeling storm water, street light, and franchise charges as "fees."

Plaintiffs demand that the City of Salem immediately cease charging and collecting revenue from these taxes. The City of Salem must also agree to stop future fee charges of this type without a vote of the citizens of Salem, and refund property owners all amounts paid by property owners for these fees with interest. If the city will not agree to these conditions, a class action suit will be filed once this notice period expires.

Sincerely,



James D. Vick
jvick@glantzlawgroup.com

JDV/jk
cc: Clients

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**ICK &
LANTZ** LLP
orneys at Law

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