

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>LISA KRAGNES, et al Plaintiff, vs. CITY OF DES MOINES, IOWA, Defendant.</p>	<p>Equity No. 49273 PLAINTIFF'S RESISTANCE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT</p>
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COMES NOW the Plaintiff, on behalf of herself and all others similarly situated, and resists the Motion for Summary Judgment filed by the Defendant City of Des Moines in this case and respectfully states:

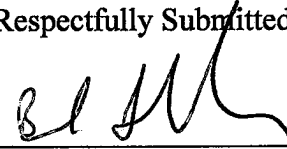
1. Plaintiff has sued the City of Des Moines claiming that the utility franchise fee is an illegal tax.
2. It is admitted that there are no genuine issues of material fact in dispute. It is denied that the Defendant is entitled to summary judgment. Rather, it is asserted that the Plaintiff is entitled to summary judgment.
3. The allegations contained in Paragraph 3 are denied. It is agreed that the Iowa legislature has made provision for municipalities to enter into franchises with utilities for gas and electric. It is denied that the Iowa legislature has made "specific provision" for the charging of franchise fees as alleged by the Defendant herein. Rather, Plaintiff asserts that the franchise fee assessed by the Defendant in this case is a revenue generating measure and constitutes an illegal tax as it is not specifically authorized as an allowable tax by the Iowa legislature.
4. The allegations of Paragraph 4 are denied. The City of Des Moines is not entitled to summary judgment as a matter of law.

5. This resistance is supported by the separate Response to Statement of Material Facts relating to facts in dispute, the Plaintiff's First and Second Motions for Summary Judgment filed on October 11, 2005 and all supporting documents relating to the Plaintiff's Motion for Summary Judgment filed on October 11, 2005, and the Plaintiff's Brief filed in Resistance to the Defendant's Motion for Summary Judgment, filed simultaneously herewith.

WHEREFORE the Plaintiff requests that the Court overrule the summary judgment motion made by the Defendant City of Des Moines and enter summary judgment in this case in favor of the Plaintiff.

Respectfully Submitted,

By:


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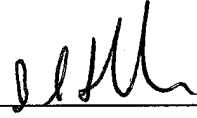
ORIGINAL FILED.

CERTIFICATE OF SERVICE:

A COPY of the foregoing have been mailed this 7th day of November, 2005, to the following;

Mark Godwin
Deputy City Attorney
City Hall
400 East First Street
Des Moines, Iowa 50309-1891
ATTORNEY FOR DEFENDANT

Judge Michael D. Huppert
Polk County Courthouse
500 Mulberry
Des Moines, Iowa 50309

By:  _____