

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LISA KRAGNES,

Plaintiff,

vs.

CITY OF DES MOINES, IOWA,

Defendant.

Equity No. 49273

**PLAINTIFF'S RESISTANCE TO MOTION  
TO ENLARGE AND AMEND FINDINGS  
AND CONCLUSIONS FILED BY THE  
DEFENDANT AS TO THE RULING ON  
SUMMARY JUDGMENT**

COMES NOW the Plaintiff, Lisa Kragnes, on behalf of herself and all others similarly situated, and resists the motion filed by the Defendant on August 8, 2007 to enlarge and amend findings and conclusions as to modifying the ruling on summary judgment relating to refunds, and respectfully state:

1. It is admitted that on or about October 6, 2006, the City of Des Moines made a motion for partial summary judgment on the issue of the refund claimed by the Plaintiff and the Plaintiff's class.

2. It is admitted that as part of the motion, the City requested the Court to assume, for purposes of the motion only, that it would collect more in franchise fees than it was entitled to collect.

3. The Plaintiff agrees that the Defendant's claimed purpose was to determine the legal availability of a refund even if the City was not entitled to collect all of the franchise fees it has collected.

4. The Plaintiff denies that the Court misapprehended the purposes of the motion. Clearly the Court ruling rejected the premise of the Defendant in its motion that, as a matter of law, the Plaintiffs were not entitled to a refund. Accordingly, the Court appropriately overruled

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the Defendant's motion for partial summary judgment and determined that facts exist as to the appropriate portion of the franchise fee that is or may be illegal, if any, that requires trial in this case.

WHEREFORE, Plaintiff and Plaintiff class respectfully resist the Motion to Enlarge and Amend Findings filed by the Defendant and request the Court overrule the motion to enlarge and amend findings.

Respectfully Submitted,



By:

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Bruce H. Stoltze (AT0007521)  
Brick, Gentry, Bowers,  
Swartz, Stoltze & Levis, P.C.  
6701 Westown Parkway, Suite 100  
West Des Moines, Iowa 50266  
Telephone: (515) 274-1450  
Facsimile: (515) 274-1488  
E-mail: [bruce.stoltze@brickgentrylaw.com](mailto:bruce.stoltze@brickgentrylaw.com)  
ONE OF THE ATTORNEYS FOR PLAINTIFF

**ORIGINAL FILED.**

**Copies** of the foregoing have been emailed this 17<sup>th</sup> day of August, 2007, to the following;

Brad Schroeder  
Hartung & Schroeder LLP  
Equitable Building, Suite 100  
608 Locust Street  
Des Moines, Iowa 50309  
ONE OF THE ATTORNEYS  
FOR PLAINTIFF

**via email: [schroeder@handslawfirm.com](mailto:schroeder@handslawfirm.com)**

Mark Godwin  
Deputy City Attorney  
City Hall  
400 East First Street

**via email: [MAGodwin@dmgov.org](mailto:MAGodwin@dmgov.org)**

Judge Don Nickerson  
Polk County Courthouse  
500 Mulberry  
Des Moines, Iowa 50309

**via email: [Don.Nickerson@jb.state.ia.us](mailto:Don.Nickerson@jb.state.ia.us)**



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