

## **Whitefish Refund Policy Rejected By Court**

### **Judge Overturns City's Attempt To Deny Refunds in Class Action**

In the middle of a Feb, 2022 Federal Class Action lawsuit filed against Whitefish, City officials attempted to deny refunds to many property owners or limit the amount of refunds due these residents. In 2021, the City admitted it overcharged impact fees imposed on hundreds of property owners, as reported by **NBC Montana** and **Whitefish Pilot**. This overcharge was but one small part of the Federal Class Action lawsuit.

In Nov, 2022, Public Works Supervisor Rose Elliott sent letters to hundreds of Whitefish residents threatening them that their refunds were now contingent upon allowing City employees to inspect their dwellings for "violations". Under this intimidation, a small number of owners responded to this letter and allowed the inspection of their homes. Some even signed waivers disavowing any claim of a refund rather than allowing a home inspection. In an effort to limit its refund obligation, Elliott and the City created a report that was submitted to the Federal court the day before the Class Action Certification hearing. This report claimed that most Whitefish homeowners who agreed to these inspections were in "violation" of City policy and were therefore limited or ineligible for refunds.

***The presiding Federal Judge rejected this claim in her order Certifying the Class Action lawsuit.***

The Judge ruled that ALL homeowners who paid impact fees since 2019 were eligible to receive full refunds in the Class Action. She ordered that Whitefish homes **do not need to be inspected** in order to receive this refund. The initial building plans submitted to the City were sufficient to determine each homeowner's refund.

"Violations", as defined by Whitefish, include the addition of sinks, icemakers, water filters, hose bibs, or other water fixtures to a residence by homeowners without notifying the City and paying new fees. These "violations" occurred either during construction or after a home was built. It was Elliott's responsibility to count these fixtures, not the homeowner's, during the permit application and final inspection.

Whitefish is the ONLY city in Montana that imposes fees in this manner. Whitefish is also the ONLY city that charges impact fees based on the number and type of water fixtures. Most cities in Montana use the water meter size to calculate impact fees. Virtually all cities in Montana allow homeowners and licensed plumbers to determine their water meter size using the Uniform Plumbing Code (UPC). This standard was adopted by the state of Montana. As required by state law, MCA 50-60-301, cities in Montana must adopt the same building code standards as the state. Whitefish is the ONLY city in Montana that does not use the UPC when determining meter sizes and an unlicensed Whitefish employee dictates meter size to builders. In practice, Whitefish does not use ANY standard when it determines a home's meter size.

***The City claims it is exempt from state law.*** Whitefish at times forces homeowners and builders to install larger meters than necessary, in an apparent attempt to collect higher fees. The City imposes arbitrary and more stringent standards on its own residents than does the state. This is an apparent violation of the new state law enacted by the legislators, SB 406, that was signed into law by the governor in May 2023.

On September 29<sup>th</sup>, the Missoula Federal Judge issued an order Certifying the Class Action lawsuit against the City of Whitefish. Trial is set for July, 2024. The suit was brought by property owners that claim the

City grossly overcharged water and sewer impact fees dating back to Jan, 2019. As part of the judge's order, the Rose Elliot claim, along with numerous other objections by the City, were rejected.