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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ANITA YU, JOHN BOYER, and
MARY RAAB,

Plaintiff,

Donald E Shelton

Hon:

Case No. 14-181 CC

vs.

THE CITY OF ANN ARBOR,
Defendant.

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Pro Hac Vice application pending
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MOTION FOR PRELIMINARY

INJUNCTION

Now come the Plaintiffs Anita Yu, John Boyer, Mary Raab, by and through their attorneys, Irvin A. Mermelstein, M. Michael Koroï, and Donald W. O'Brien, Jr. and move this Honorable Court as follows:

1. Plaintiffs are homeowners in the City of Ann Arbor who had purchased their homes prior to 1982, the year the Michigan State Building Code (plumbing section) was amended by the Michigan Legislature to prohibit the connection of footing drains; Plaintiffs, as such, had "vested rights" to their existing homesteads

prior to those 1982 legislative amendments and could not be divested of those rights by what has become known as Ann Arbor's FDDP Ordinance; see City of Lansing vs. Dawley, 247 Mich 394, 225 NW 500 (1929) and Expert Steel Treating Co vs. City of Clawson, 368 Mich 619, 118 NW2d 815 (1962).

2. On August 20, 2001, the City of Ann Arbor passed an ordinance implementing the Footing Drain Disconnection Program ("FDDP").
3. The ordinance served four main functions:
 - (A) it determined that pre-existing, legally-permitted and long-standing footing drain disconnections were "improper" and authorized the Director of the Utility Department to establish target areas and to require homeowners residing therein to "correct improper stormwater flows" or face a monthly fine of \$100.00 per month;
 - (B) it allowed the Director to establish a list of private contractors approved to do work under the program and established a protocol pursuant to which the homeowner would purportedly enter into a direct contractual relationship with the contractor;
 - (C) the ordinance authorized the city to pay for some or all of the approved work subject to the Director's discretion; and
 - (D) the ordinance made it clear that the responsibility for maintaining any improvements constructed under the FDDP, including the maintenance of sump pumps and other equipment, the furnishing of water and electricity, the purchase and installation of any back-up systems and all necessary repairs would reside with the homeowner, and not the City nor contractor.

4. It is believed that over 2,000 FDDs have been installed on an involuntary basis upon Ann Arbor households within designated “target areas” imposed by the Director.
5. The Plaintiffs had had imposition of severe financial and personal service burdens by the invasions created by the FDD ordinance (see attached affidavits).
6. This action has been commenced under MCL 213.13, Article X, Section II of the Constitution of the State of Michigan of 1963, the Federal Civil Rights Act of 1871 (42 USC 1983), and the Fifth Amendment to the United States Constitution; the Plaintiffs herein seek compensatory damages, injunctive relief, and a declaration that the Ann Arbor ordinance 2:51.1 is unconstitutional and has resulted in a taking of Plaintiffs’ property for public use without due process of law or just compensation.
7. That Plaintiffs are entitled to preliminary injunctive relief for the reasons set forth in the accompanying brief.
8. Plaintiffs seek a preliminary injunction in accordance with MCR 3.310 pursuant to the general equity jurisdiction of the circuit court and the Federal Civil Rights Act of 1871.

WHEREFORE, Plaintiffs Anita Yu, John Boyer, and Mary Jean Raab respectfully pray that the following relief be granted:

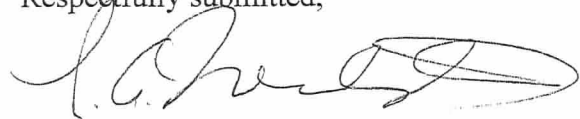
(A) entry of a preliminary injunction barring the Defendant City of Ann Arbor from implementing and/or enforcing the FDD ordinance against any Plaintiff during the pendency of these proceedings;

(B) in the alternative, issuance of a preliminary injunction barring the Defendant City of Ann Arbor from implementing and/or enforcing the FDD ordinance against any person within a designated "target area" of City of Ann Arbor;

(C) order any evidentiary hearings the Court may deem necessary;

(C) any other relief deemed just and equitable.

Respectfully submitted,



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Dated: February 27, 2014
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