

NORTH CAROLINA GENERAL COURT OF JUSTICE, SUPERIOR COURT DIVISION

***If you paid Development Fees to the City of Asheville (“City”) on or between October 29, 2015 and June 30, 2018, then you may be eligible to receive benefits from a class action settlement***

*The Superior Court of Buncombe County, North Carolina authorized this notice.*

*This is not a solicitation from a lawyer.*

- This notice informs you of a proposed settlement in a class action lawsuit, based on allegations that the City unlawfully collected water “Development Fees”, as defined in section 2 below, in addition to regular fees, in order to retain funds for use on future projects and development. The settlement resolves the lawsuit. The City denies that it did anything wrong or unlawful and denies any liability to Plaintiffs and to the members of the Settlement Class.
- You will need to file a Claim Form in order to qualify for benefits under the Settlement. You do not need to submit any supporting evidence of proof of payment with your Claim Form; however, all claims are subject to verification.
- Your legal rights are affected whether you act, or don’t act. Read this notice carefully.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<b>SUBMIT A CLAIM FORM BY OCTOBER 6, 2020</b>	This is the only way to receive benefits. You do not need to submit any supporting evidence of proof of payment with your claim form; however, all claims are subject to verification.
<b>EXCLUDE YOURSELF BY MAY 8, 2020</b>	Request to be excluded and get no benefits from the Settlement. This is the only option that allows you to start or continue your own lawsuit against the City for any claims you might have that would otherwise be subject to the Release contained in the Settlement. The City will not have waived any defense it may have to any such lawsuit.
<b>OBJECT BY MAY 8, 2020</b>	Write to the Court about why you do not like the Settlement or why you think the Settlement is unfair, inadequate or unreasonable or should not be approved.
<b>GO TO A HEARING</b>	Ask to speak in Court about the Settlement and whether it should be approved. The Court’s Final Hearing is scheduled for <b>June 8, 2020</b> .
<b>DO NOTHING</b>	Get no benefits from the Settlement. Give up any rights you might have to ever sue the City about the legal claims in this case and resolved by the Settlement.

- The Court in charge of this case still has to decide whether to approve the Settlement. Benefits will be provided to eligible participants only if the Court approves the Settlement and after any appeals are resolved. Please be patient.

- Your rights and options—**and the deadlines to exercise them**—are explained in this Notice. The deadlines may be moved, canceled, or otherwise modified, so please check the settlement website at **[www.ashevilledevelopmentfeesettlement.com](http://www.ashevilledevelopmentfeesettlement.com)** regularly for updates and further details.

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## **BASIC INFORMATION**

### **1. Why is there a notice?**

If you received Notice of the Settlement by mail, then you have been identified as a Settlement Class Member. The Court authorized that you be sent notice because you have a right to know about a proposed Settlement of a class action lawsuit involving the payment of Development Fees, and about your options under the Settlement. This Notice summarizes the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, how those benefits will be provided, and other important information.

However, this Notice is only a summary of the Settlement Agreement, titled “Stipulation of Settlement and Release,” (“Settlement” or “Settlement Agreement”) which is available for review at **[www.ashevilledevelopmentfeesettlement.com](http://www.ashevilledevelopmentfeesettlement.com)**. If there is any conflict between this Notice and the Settlement, the Settlement Agreement governs. You should review the full Settlement Agreement before deciding what to do.

### **2. What is this lawsuit about?**

The case alleges that the City unlawfully collected Development Fees on or between October 29, 2015 and June 30, 2018. Development Fee, as alleged in the above actions, means any fee, alleged by any Claimant or Plaintiff to have been collected improperly by the City as a condition of building a structure in the planning jurisdiction of the City.

The Plaintiff’s Complaint, the Settlement Agreement, and other case-related documents are posted on the website, **[www.ashevilledevelopmentfeesettlement.com](http://www.ashevilledevelopmentfeesettlement.com)**. The Settlement resolves the lawsuit.

The Parties agreed to conduct a court ordered mediation before Judge J. Douglas McCullough (retired) and a mediation was thereafter held by the Parties on November 14, 2019 and December 11, 2019, in an effort to negotiate in good faith and at arms-length to determine if a settlement between the Parties was possible or if protracted litigation would be required.

### **3. Why is this a class action?**

In a class action, one or more people, called “Class Representatives” (in this case Mayfair Partners, LLC and Ed Holland Builders, Inc) sue on behalf of people who have similar claims. Together, all these people with similar claims (except for those who exclude themselves) are members of the Settlement Class.

### **4. Why is there a settlement?**

The Parties agreed to a settlement to avoid the costs and risks of further litigation and provide benefits to Settlement Class Members. The Class Representative and the lawyers representing him (called “Class Counsel”) believe that the Settlement is in the best interests of all Settlement Class Members.

## **WHO IS PART OF THE SETTLEMENT?**

### **5. How do I know if I am in the settlement?**

You are in the Settlement Class if on or between October 29, 2015 and June 30, 2018, you paid Development Fees to the City of Asheville as a condition of building a structure in the planning jurisdiction of the City.

**QUESTIONS? VISIT [WWW.ASHEVILLEDEVELOPMENTFEESETTLEMENT.COM](http://WWW.ASHEVILLEDEVELOPMENTFEESETTLEMENT.COM)**

**6. What if I am still not sure if I am included in the settlement?**

If you are not sure whether you are a Settlement Class Member, or have any other questions about the Settlement Agreement, visit the settlement website at [www.ashevilledevelopmentfeesettlement.com](http://www.ashevilledevelopmentfeesettlement.com), or contact the Settlement Administrator. You can send questions by mail to: Asheville Development Fee Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103; by emailing [info@ashevilledevelopmentfeesettlement.com](mailto:info@ashevilledevelopmentfeesettlement.com); or calling toll-free 1-844-974-2440.

**SETTLEMENT BENEFITS**

**7. What does the settlement provide?**

If the Settlement is approved, the City will provide payments to Settlement Class Members who file a complete and timely claim form, for paid Development Fees. The City will establish a Settlement Fund equal to one million and eight hundred and fifty thousand dollars (\$1,850,000.00).

**What Settlement Class Members who paid Development Fees can get:**

Payments to Settlement Class Members who file a timely and valid claim for Settlement Claims (Settlement Claimants), including attorneys' fees and fees for the Settlement Administrator, are subject to a maximum payout, or maximum settlement value of \$1,850,000 ("Fund"). The Final Settlement amount shall be determined after receipt of all claim forms within the prescribed claim form filing period. Payments for Settlement Claims will be disbursed as follows:

- The City will pay from the Fund to all Settlement Claimants, 90 days from the Effective Date, an amount equal to up to 54% of the Development Fees paid to the City by Settlement Claimants, less awarded attorneys' fees, expenses, and service awards.
- In the event the Fund is oversubscribed, attorneys' fees, service awards and expenses will reduce the percentage of payouts to Claimants to an appreciable percentage lower than the 54%.
- As long as the Fund is undersubscribed, in no way shall attorneys' fees, expenses service awards or any other cost reduce a Claimant's refund percentage from 54%.

The Parties agree, that with the consent of the Court, that any remaining funds in the Settlement Fund shall revert to the charitable organization the parties have mutually selected.

**8. What am I giving up to stay in the Class?**

Unless you exclude yourself from the Settlement, you can't sue the City, continue to sue, or be part of any other lawsuit against the City about the legal issues in this case. It also means that all of the decisions by the Court will bind you. The claims you will release are referred to as the "Released Claims", which are fully described in the Settlement Agreement. The Settlement Agreement is available at [www.ashevilledevelopmentfeesettlement.com](http://www.ashevilledevelopmentfeesettlement.com).

**HOW TO GET BENEFITS**

**9. How can I receive benefits?**

To receive benefits, each Settlement Class Member must timely complete and submit a valid Claim Form. A Claim Form should have been mailed to you. Your completed Claim Form must be mailed so that it is postmarked no later than **October 6, 2020**. Mail your Claim Form to:

Asheville Development Fee Settlement Administrator  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103

You can also submit an electronic Claim Form online at [www.ashevilledevelopmentfeesettlement.com](http://www.ashevilledevelopmentfeesettlement.com) or submit it by email to [info@ashevilledevelopmentfeesettlement.com](mailto:info@ashevilledevelopmentfeesettlement.com). Electronic and emailed claims must be **received** no later than **October 6, 2020**.

If you do not submit a timely and valid Claim Form by the deadline, you will not receive any settlement benefit.

**10. When will I get my benefits?**

Settlement Class Members who submit timely, complete, and valid claim forms will receive the benefits for which they qualify after the Court grants “final approval” to the Settlement and after any appeals are resolved. If the Court approves the Settlement after a hearing on **June 8, 2020** there may be appeals. It’s always uncertain whether these appeals can be resolved, and resolving them can take time.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

**11. How do I get out of the settlement?**

If you want to keep the right to sue the City over the legal issues in this case, then you must take steps to get out of this Settlement and give up your right to benefits under this Settlement. This is called asking to be excluded from—or sometimes “opting out” of—the Settlement Class. To exclude yourself from the Settlement, you must complete and mail to the Settlement Administrator a letter that includes the following:

- A caption or title that identifies it as “Request for Exclusion in *Mayfair Partners, LLC and Ed Holland Builders, Inc. vs City of Asheville, 18-CVS-04870*; (Superior Court Division of Buncombe County, North Carolina)”;
- Your name, business address, and address of the property where the alleged Development Fees were paid and date of payment;
- A statement that you wish to be excluded from the Settlement.

You must mail your exclusion request, postmarked no later than **May 8, 2020** to the following address, and mail copies to Class Counsel and the City’s Counsel:

<b><u>Administrator</u></b>	<b><u>Class Counsel</u></b>	<b><u>The City’s Counsel</u></b>
Asheville Development Fee Settlement Administrator Attn Exclusions PO Box 58220 Philadelphia, PA 19102	Daniel Bryson Hunter Bryson Whitfield Bryson & Mason LLP 900 W. Morgan St. Raleigh, NC 27603	Charles C. Meeker Stephen V. Carey Parker Poe Adams & Bernstein LLP 301 Fayetteville Street, Ste. #1400 Raleigh, NC 27601

If you don’t submit your request for exclusion on time or if it is incomplete, you will remain a Settlement Class Member and will not be able to sue the City about the claims in this lawsuit. You may opt out of the Settlement Class only for yourself. So-called “mass” or “class” opt outs, whether filed by third parties on behalf of a

“mass” or “class” of Settlement Class Members or multiple Settlement Class members where no personal statement has been signed by each and every individual Settlement Class Member, are not allowed.

**12. If I don’t exclude myself, can I sue the City for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue the City for the claims that this Settlement resolves. The claims that this Settlement resolves are fully described in the Settlement Agreement. The Settlement Agreement is available at [www.ashevilledevelopmentfeesettlement.com](http://www.ashevilledevelopmentfeesettlement.com). If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Class to continue your own lawsuit.

**13. If I exclude myself, can I still get benefits?**

No. You will not receive any benefits from the Settlement if you exclude yourself. If you exclude yourself from the Settlement, do not send in a Claim Form asking for benefits.

**OBJECTING TO THE SETTLEMENT**

**14. How can I tell the Court if I do not like the settlement?**

If you are a Settlement Class Member, you can object to the Settlement or to Class Counsel’s request for attorneys’ fees and expenses. To object, you must send a notarized letter that includes the following:

- A caption or title that identifies it as “Objection to Class Settlement in *Mayfair Partners, LLC and Ed Holland Builders, Inc. vs City of Asheville, 18-CVS-04870*; (Superior Court Division of Buncombe County, North Carolina)”;
- Identify whether the objection is to the Settlement Class;
- Set forth the specific reason(s), if any, for each objection, including all legal support the Settlement Class Member wishes to bring to the Court’s attention and all factual evidence the Settlement Class Member wishes to introduce in support of the objection;
- Include the name and address of the Settlement Class Member; Include the personal signature of the Settlement Class Member;
- Include an identification, by case style and number, of any other class settlements the objector or the objector’s attorney(s) have asserted an objection; and
- Include an identification of all attorneys having a financial interest or stake in the objection.
- Include three different dates within the next two weeks from the date in which you are submitting the objection in which you will make yourself available for a deposition.

Your objection, along with any supporting material you wish to submit, must be filed with the Court, with a copy delivered to Class Counsel, and the City’s Counsel no later than **May 8, 2020** at the following addresses:

<u>Class Counsel</u>	<u>The City’s Counsel</u>	<u>City</u>	<u>Court</u>
Daniel . Bryson Hunter Bryson Whitfield Bryson & Mason LLP 900 W. Morgan St. Raleigh, NC 27603	Charles C. Meeker Stephen V. Carey Parker Poe Adams & Bernstein LLP 301 Fayetteville Street, Ste. #1400 Raleigh, NC 27601	Bradley Branham City of Asheville 70 Court Plaza Asheville, NC 28801	Clerk of Superior Court Buncombe County Superior Court 60 Court Plaza Asheville, NC 28801

**15. What is the difference between objecting and excluding?**

Objecting is simply telling the Court that you don't like something about the Settlement. You can object to the settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you don't want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

**THE LAWYERS REPRESENTING YOU**

**16. Do I have a lawyer in this case?**

Yes. The Court has appointed the following lawyers, called "Class Counsel," to represent all Class Members: Daniel Bryson and Hunter Bryson of Whitfield Bryson & Mason LLP. You will not be personally charged for these lawyers. They will be paid under the terms of the Settlement. If you want to be represented by your own lawyer, you may hire one at your own expense.

**17. How will the lawyers be paid?**

Class Counsel will ask the Court to approve attorneys' fees and reimbursement of expenses not to exceed one third the value of the Settlement fund. The Court will determine the amount of fees and expenses to award. Class Counsel will also request that up to \$10,000 be paid to each of the Class Representatives who helped the lawyers on behalf of the whole Class.

**THE COURT'S FINAL APPROVAL HEARING**

**18. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing on June 8, 2020. at the Buncombe County Civil Courthouse, 60 Court Plaza, Asheville, North Carolina 28801.

The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.ashevilledevelopmentfeesettlement.com](http://www.ashevilledevelopmentfeesettlement.com) for updates. At the Final Approval Hearing, the Court will consider whether the Settlement Agreement is fair, reasonable, and adequate. The Court will also consider how much to pay Class Counsel and the Settlement Class Representative. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

**19. Do I have to come to the hearing?**

No. Class Counsel is willing to answer any questions that the Court may have. But you may come to the hearing at your own expense if you wish. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time to the proper addresses, the Court will consider it. You may also pay your own lawyer to attend the hearing, but it's not required that your own attorney attend.

**20. May I speak at the hearing?**

Yes. You may ask the Court for permission to speak at the Final Approval Hearing. If you are represented by an attorney, the attorney must file a notice of appearance by **May 8, 2020** and serve a copy of the notice to Class Counsel and the City's Counsel. The Settlement Agreement which is available at

[www.ashevilledevelopmentfeesettlement.com](http://www.ashevilledevelopmentfeesettlement.com) contains the requirements for notices of appearance by attorneys.

### **IF YOU DO NOTHING**

#### **21. What happens if I do nothing at all?**

If you do nothing, you will not get any benefits from the settlement. Unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the City about the legal issues in this case, ever again.

### **GETTING MORE INFORMATION**

#### **22. How do I get more information?**

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a complete copy of the Settlement Agreement and other information at [www.ashevilledevelopmentfeesettlement.com](http://www.ashevilledevelopmentfeesettlement.com). If you have additional questions or want to request a Claim Form, you can visit the settlement website at [www.ashevilledevelopmentfeesettlement.com](http://www.ashevilledevelopmentfeesettlement.com); by emailing [info@ashevilledevelopmentfeesettlement.com](mailto:info@ashevilledevelopmentfeesettlement.com); calling toll-free 1-844-974-2440, or writing to the Settlement Administrator at:

Asheville Development Fee Settlement Administrator  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE CONCERNING THIS CASE.**