

NO. 35497-7-II

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

FREDERICK E. COOPERRIDER,

Appellant/Plaintiff,

v.

CITY OF OCEAN SHORES, municipal corporation,

Respondent/Defendant.

On Appeal from Grays Harbor County Superior Court
Cause No. 05 2 01463 2

BRIEF OF RESPONDENT

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I. INTRODUCTION

Respondent City of Ocean Shores was granted summary judgment on all claims in Appellant's Amended Complaint. Appellant's claims were predicated on the factual allegation that the City turned on the water service at Appellant's vacant house prior to a flooding incident. This allegation was factually incorrect and was unsupported by any evidence, thereby entitling the City of Ocean Shores to summary judgment.

II. STATEMENT OF FACTS

Appellant Frederick Cooperrider blames the City of Ocean Shores for a flooding incident in his vacation house located at 1267 E. Ocean Shores Boulevard. Appellant's Amended Complaint specifically avers that:

Sometime after August 28, 2002, when the City advised that it would not disconnect the water service, it actually reactivated the water connection contrary to Plaintiff's instructions and without advising Plaintiff.

CP 7 (emphasis added). Appellant produced no evidence to support this central and pivotal contention of the amended complaint.

The water meter is located in a utility box adjacent to the roadway outside the Cooperrider residence. **CP25**. The residential service line connecting Appellant's house to the water main runs through a utility box that contains two valves. **Id.** One is a customer

shut-off valve located between the meter and the residence. ***Id.*** The other valve is for City use and is located between the meter and water main. ***Id.*** The meter box is not locked to allow customer access, and is accessible to anyone capable of removing the lid who might have a monkey wrench to turn the valve. ***Id.***

In 2001, a dispute over water bills arose between Appellant and the City of Ocean Shores. **CP 65.** Cooperrider's service has been frequently disconnected because of his failure to pay current charges. ***Id.*** In October 2001, Cooperrider wrote to complain about his bill, which continued to incur base charges even though the house was vacant and demanded that the City terminate his "contract." **CP 69.** The City responded by explaining the basis for the ongoing charges, including applicable fees if he chose to have the meter removed. **CP 72.** Cooperrider's complaints continued.

In January 2002, the City sent another letter, again enclosing its October 30, 2001 letter and explaining the charges incurred for shutting of water for non-payment. **CP 74.** On March 31, 2002, Mr. Cooperrider filed an action in small claims court claiming that his "contract" with the City had been terminated and that he was not responsible for \$3,525 that he had paid for water service charges. **CP 66.** The City denied liability, asserting that its charges were lawful

under applicable City ordinances. **Id.** In the meantime, Cooperrider did not pay his bill and water service was turned off by closing the water supply valve serving his meter on or about May 21, 2002. **CP 26, 66.**

In the small claims action, the Grays Harbor District Court agreed with the City and on July 1, 2002 entered a decision finding that the City had indeed “dealt with the plaintiff in accordance with the Code.” **CP 76.** Cooperrider filed an untimely appeal of this decision on August 1, 2002, which was dismissed with prejudice by an order signed by Judge Gordon Godfrey on August 19, 2002. **CP 78.**

Following the court’s ruling, Cooperrider still did not pay the accumulated charges, but wrote to the City on August 26, 2002 seeking to disconnect service to the property. **CP 81.** He tendered payment for only a portion of the outstanding charges, paying only his estimate of four months of charges when his account had been in arrears for eight months. **CP 66.** The City responded on August 28, 2002, informing Cooperrider that the payment was applied to the outstanding balance, but that it would cost an additional \$147.90 to cover the amount past due and meter removal fee. **CP 83.**

Cooperrider was also provide with the meter removal request form

containing the language required by City Code.¹ **Id.** The City further informed Cooperrider that under the Uniform Building Code, removal of the water meter would require him to physically sever his sewer connection, at his expense. **Id.** Finally, the City informed Cooperrider that if he chose to remove his meter, his property would be subject to water and sewer system development charges when reconnected. The City informed him that these charges could amount to \$3,000 - \$4,000 per utility. **Id.** The City provided the water meter removal request form and requested that it be returned with additional funds if Cooperrider wanted the meter removed. **Id.**

Cooperrider never responded to the August 28, 2002 letter. **CP 67.** He did not pay the additional fees. **Id.** He did not provide the required request form. **Id.** He did not make any payment on his account after August 2002. **CP 44-48.** Because his account was delinquent, City Code prohibited restoration of his water connection. **CP 26.** His account, therefore, continued to incur base charges and penalties.

The water service remained disconnected until July, 2003, when there was an unauthorized turn-on of water, resulting in substantial usage for the month of July, 2003. **CP 27.** Upon

¹ A copy of Chapter 13.06 OSMC, the City Water Service Administrative Code is attached as Appendix A.

discovery of the illegal turn-on, the City again discontinued service by turning off the supply side valve in Cooperrider's meter box. *Id.* On September 4, 2003, the City assessed a \$59.00 fee against Cooperrider for the unauthorized turn-on of water, as authorized by OSMC 13.12.100(E) and again turned off the water. *Id.*

In the Summer of 2003, when the water service was illegally reconnected, Cooperrider's house was listed for sale through Windemere Real Estate. **CP 63.** In September 2, 2003, the City received a request for an "Escrow Estimate for Utilities" from Pacific Escrow. **CP 58.** Such requests are common when property is being sold in preparation for closing. **CP 28.** The City provided an estimate, but the transaction apparently did not close, as the City did not receive notice that there was a new owner on the account and the transaction was cancelled. **CP 58.**

The City denied that it reactivated the water service after August 28, 2002. **CP 13.** None of the meter readers ordinarily responsible for reconnecting the water turned the service back on. **CP 86-87.** Moreover, the City official who directs reconnection did not direct that it be connected prior to the flooding. **CP 27**

In seeking an explanation of the basis of the Appellant's allegation, the City asked an interrogatory to Appellant to support his

contention that the City reactivated service in Interrogatory No. 18.

CP 62. Appellant's response offered no evidence in support of this

contention. **CP 63.** The interrogatory and response were as follows:

INTERROGATORY NO. 18 CITY ACTIONS

With respect to the contention in Plaintiff's Amended Complaint that sometime after August 28, 2002, the City "actually reactivated the water connection contrary to Plaintiff's instructions and without advising plaintiff," please identify the following:

- a. the name of the person you contend reactivated the water connection;
- b. the exact date when the water connection was reactivated;
- c. the name, address and telephone number of each and every person having information concerning each fact supporting this allegation;
- d. the knowledge possessed by each person;
- e. any and all documents, tapes or other materials containing information concerning each fact supporting this allegation; and
- f. the name, address and telephone number of each person who has custody of said documents, tapes or other materials.

ANSWER:

The billing record obtained in July, 2005 shows that the City used the payment for the meter removal as the basis to restore service, based on the receipt by the City of the funds sent to Ms. Thomas. This written request to disconnect utilities was based on testimony in the Small Claims trial and the municipal code section cited in the letter sent to Ms. Thomas. Clearly the City did not remove the meter, as paid to do, and, clearly there

was and is confusion as to the City's legal right to continue providing service and/or leave utilities connected when the Municipal Code defines the water removal process.

CP 62-63.

The Appellant's answer did not identify who reactivated the service or when that reconnection allegedly took place. Appellant did not identify anyone with knowledge supporting the allegation or provide any documentary support. Appellant cited only to a billing record obtained in July 2005. The City has provided the master file report that summarizes the charges incurred and payments received.

CP 37. That report, however, does not show what the Appellant claimed— that service was reconnected in response to the funds provided with the letter to Ms. Thomas in August 2002.² Instead, this report confirmed that only partial payment was made. **CP 26.** The report did not show that the City restored service or remotely support such an inference. **Id.** Indeed, such a contention is inconsistent with the later unauthorized turn-on charge assessed in September 2003 when the City discovered that someone had begun using water in July 2003 when service was interrupted by the lack of payment.

² Appellant's Answer also incorrectly asserts that Cooperrider paid to remove the meter. As explained in the City's August 28, 2002 letter, Cooperrider never paid sufficient fees for removal of the meter or supplied the required request form that the City provided. CP 54.

In January 2004, there was a cold winter storm that resulted in freezing pipes for many residents. Cooperrider claims that he sent a contractor to the property on January 9, 2004 who discovered flooding in the home from a broken water pipe. **CP 7.** Cooperrider then jumped to the conclusion that the City must have restored his water service and sued the City. **Id.** On October 9, 2006, Judge Foscue of the Grays Harbor Superior Court entered an order granting summary judgment to the City and dismissing Cooperrider's claims. **CP 173.**

III. STANDARD OF REVIEW

A summary judgment may be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The court must consider all facts submitted and all reasonable inferences from the facts in the light most favorable to the nonmoving party. *Weyerhaeuser Co. v. Aetna*, 123 Wn.2d 891, 897, 874 P.2d 142 (1994).

Summary judgment is designed to avoid useless trials where there is no issue of material fact. *Olympic Fish Products v. Lloyd*, 93 Wn.2d 596, 611 P.2d 737 (1980). Summary judgment is proper if reasonable minds could reach but one conclusion from the evidence presented. *Graves v. Department of Game*, 76 Wn. App. 705, 887

P.2d 424 (1994); *Hiatt v. Walker Chevrolet*, 120 Wn.2d 57, 837 P.2d 618 (1992).

The moving party bears an initial burden of demonstrating that there is no genuine issue of material facts. *Ames v. Fircrest*, 71 Wn. App. 284, 857 P.2d 1083 (1993). A defendant can move for summary judgment in one of two ways. *Guile v. Ballard Community Hosp.*, 70 Wn. App. 18, 851 P.2d 689 (1993). First, the defendant can set out its version of the facts and allege that there is no genuine issue as to the facts as set out. *Hash v. Children's Orthopedic Hosp. & Med. Ctr.*, 110 Wn.2d 912, 916, 757 P.2d 507 (1988). Alternatively, a party moving for summary judgment can meet its burden by pointing out to the trial court that the nonmoving party lacks sufficient evidence to support its case. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225 n. 1, 770 P.2d 182 (1989). Once a party seeking summary judgment has made an initial showing that no genuine issues of material fact exist, the non-moving party must set forth specific facts which, if proved, would establish their right to prevail on the merits. CR 56(e). Speculation, argumentative assertions that unresolved factual issues remain, and conclusory affidavits are insufficient, by themselves, to avoid a summary judgment. *Seven Gables v. MGM/UA Entertainment*, 106 Wn.2d 1, 721 P.2d 1 (1986).

Specifically, a defendant is entitled to a summary judgment if he meets his initial burden of showing the absence of an issue of material fact and in response there is a complete failure of proof by the plaintiff concerning an essential element of the plaintiff's claim. *Young v. Key Pharmaceuticals*, 112 Wn.2d 216, 770 P.2d 182 (1989).

Well-settled law in this jurisdiction holds that the facts which can defeat a motion for summary judgment must be "material" to the issues in the action before the court. A "material fact" is one on which the outcome of the litigation depends. *Morris v. McNicol*, 83 Wn.2d 491, 494, 519 P.2d 7 (1974); *Spurrell v. Block*, 41 Wn. App. 854, 860, 701 P.2d 529 (1985). "Materiality" is concerned with whether a fact is of consequence to proof of a claim or a defense in the pending action. *Davidson v. METRO*, 43 Wn. App. 569, 573, 719 P.2d 569 (1986); *Seattle v. Boulanger*, 37 Wn. App. 357, 359, 680 P.2d 67 (1984).

IV. ARGUMENT

A. APPELLANT LACKS ANY EVIDENCE TO SUPPORT THE CLAIM OF NEGLIGENCE BY THE CITY.

To establish a common law negligence claim, the plaintiff must establish four elements: "(1) the existence of a duty ...; (2) breach of that duty; (3) resulting injury; and (4) proximate cause between the breach and the injury." *Hutchins v. 1001 Fourth Ave. Assocs.*, 116 Wn.2d 217, 220, 802 P.2d 1360 (1991). Here, Appellant claims that

the City acted negligently by restoring water service to his house without notice sometime after August 28, 2002.

Appellant lacks any evidence to prove the critical fact set forth in his pleadings. There is no evidence that the City restored the service to the house after August 28, 2003. Instead, the evidence is that the City terminated Cooperrider's service for failure to pay the bill in May, 2002. Thereafter, Cooperrider never brought the account current, so the City never restored his service.

The only evidence of reconnection after August 2002 was an unauthorized turn-on of water in July 2003. **CP 27, 45.** The evidence is clear that the City did not turn service back on. Indeed, the City imposed a fee because someone else turned on the water in July 2003, which was seven months prior to the flooding incident.

The City does not need to prove who turned the water on. The Appellant bears the burden of proving that the City did so or at least having sufficient evidence to create a material issue of fact. In response to interrogatories, the Appellant pointed to one piece of evidence, the master billing report, to claim that the City turned the water back on. As demonstrated by the declaration of the City Finance Director, that conclusion is not supported by this report. **CP 26.**

The unauthorized resumption of water service also shows that anyone could have been responsible for turning water on, including the real estate agents hired by Cooperrider. The valves controlling water service are in an unlocked utility box by the street, which is intended to be accessible so the customer can shut off the water in an emergency. **CP 25.** Appellant has no evidence to indicate that any City employee turned the water back on. Indeed, City Code forbids restoration of service after termination unless the account is fully paid or special arrangements are made by the City Manager. **CP 27.** Cooperrider never brought his account current. ***Id.*** Therefore, the undisputed evidence confirms that the City did not turn the water on.

The Appellant's complaint relied on the allegation that the City restored service as a critical element of their negligence theory. **CP 7.** Without this fact, there is no breach of any duty. Without this fact, there is no proximate cause. Without this fact, the Appellant's case utterly collapses. Therefore, summary judgment dismissing the Amended Complaint was properly granted to the City.

- 1. Cooperrider failed to properly request removal of the water meter and failed to comply with numerous City Code provisions requiring payment of past due accounts.**

Under the undisputed facts, the City acted reasonably and adhered to its codes to the letter. Under OSMC 13.06.230, a

customer may request “removal of a water meter” in writing. To effectuate OSMC 13.06.230, the City uses a form which specifically requests “that the water meter be removed from the ground.” Contrary to Cooperrider’s assertions, nothing in the August 26, 2002 letter actually requests that the water meter be removed from the ground. **CP 81.** Instead, Cooperrider requests that “water service” be “disconnected immediately,” language that normally refers to turning off the water valve to end the supply of water. *Id.* Cooperrider’s check was issued for “termination of his contract” with the City, and was insufficient to cover the arrearage owed by Cooperrider. **CP 110.**

The City responded immediately asking him to specifically confirm that he wanted the water meter to be removed. In so doing, the City informed Cooperrider of the consequences of that choice, which included substantial future charges and the requirement to disconnect his sewer. **CP 83-84.** Furthermore, the City notified Mr. Cooperrider that his payment was insufficient to cover the past due amounts as needed for additional service to be provided. OSMC 13.06.490. *Id.* Cooperrider did not respond nor did he specifically request that the water meter be removed. **CP 67.** All of these actions are reasonable given Mr. Cooperrider’s litigious background and

understanding that he is a lawyer charged with understanding the City's codes. By contrast, Cooperrider's failure to respond to the City's letter is patently unreasonable. It was perfectly reasonable, and not negligent for the City to await a specific and unambiguous response using the precise language of the City's code, especially given potentially enormous financial consequences that doubtless would have provoked additional litigation with Mr. Cooperrider.

2. Cooperrider failed to provide facts showing that the City caused the flooding by turning the water back on.

Appellant's position also ignores their own pleadings.

Cooperrider's claim that the City caused the flooding event does not hinge on whether or not the City removed the meter. The City did not do so because Cooperrider failed to file the proper request form and did not bring his account current. **Marche Decl. at ¶11.** What is critical to causation here is the allegation in the Complaint that the City was responsible for turning the water valve back on. Amended Complaint at ¶6. Cooperrider has produced no scintilla of evidence to support this pivotal allegation. As such, he cannot prove an essential element of his negligence claim.

Absent a showing that the City was responsible for turning the water back on, there is no causation of the flooding incident. To the

City's knowledge, water service to the Cooperrider house was disconnected and remained so. No one at the City authorized reconnection of any service to the house. Therefore, the City of Ocean Shores is not liable for the flooding resulting from pipes freezing inside Cooperrider's vacant house.

Appellant's claim that the failure to honor Cooperrider's request to disconnect service proximately caused the property damage. **Brief at 3.** This is incorrect because the City did honor his request by disconnecting service. This was true in August 2002 when Cooperrider wrote the City and was true after this request, when the City turned turning off the water supply valve after it was illegally reconnected in July 2003. **Marche Decl., ¶10.** Therefore, at the time of the flooding incident, the water service was fully disconnected. **Id.** The cause of this flooding was not the conduct of the City, but the illegal and unauthorized reconnection of water by third parties.

B. THE DOCTRINE OF *RES IPSA LOQUITUR* DOES NOT APPLY UNDER THE FACTS AT ISSUE HERE.

Appellant can not rely on the doctrine of *res ipsa loquitur* under the facts of this case to support his negligence claim, as the motion attempts at 5. As an initial matter, Appellant's citation to *A.C. v. Bellingham School Dist.*, 125 Wn. App. 511, 516, 105 P.3d 400

(2004) misstates the requirements for the application of the doctrine.

Furthermore, in *A.C v. Bellingham School Dist.*, the Court rejected the request to give a *res ipsa loquitur* instruction. The Court noted that the doctrine is to be used sparingly and only in exceptional cases. Secondly, the court states the criteria are as follows:

Three criteria must be met to apply *res ipsa loquitur*. First, the incident producing the injury must be the kind that ordinarily does not occur in the absence of negligence. Second, the injury must be caused by an agency or instrumentality within the exclusive control of the defendant. Third, the injury-causing incident must not be due to any contribution on the part of the plaintiff.

125 Wn. App. at 517 (emphasis added).

Appellant's brief ignores these critical elements which, upon analysis demonstrate that this is not one of the "exceptional" cases where the doctrine of *res ipsa loquitur* applies.

1. Appellant did not show that the injury ordinarily does not occur in the absence of negligence.

The doctrine of *res ipsa loquitur* recognizes that injurious occurrence may be of such a nature that occurrence is of itself sufficient to establish prima facie the fact of negligence on part of defendant, without further or direct proof thereof. *Tinder v. Nordstrom, Inc.*, 84 Wn. App. 787, 929 P.2d 1209 (1997). *Tinder* identified three situations where the doctrine is appropriate, none of

which are met here.

Three types of situations which result in injury exist which do not normally occur absent negligence, and which will warrant application of doctrine of *res ipsa loquitur*: included are situations where (1) act causing injury is palpably negligent, such as leaving foreign objects in patient, (2) general experience teaches that result would not be expected without negligence, and (3) proof by experts in exotic field creates inference that negligence caused injuries.

Tinder at 793.

In *Tinder*, the Court found that the sudden stopping of an escalator failed to meet the first criteria supporting application of *res ipsa loquitur*. 84 Wn. App. at 793. Likewise, other courts have refused to apply the doctrine in cases where negligence was not inherent in the occurrence itself. *See A.C. v. Bellingham Sch. Dist.*, *supra* (losing grip on bat used to strike piñata); *Pettit v. Dwoskin*, 116 Wn. App. 466, 475, 68 P.3d 1088 (2003), review denied, 151 Wn.2d 1011, 89 P.3d 712 (2004) (plaintiff failed to show that collapse of a deck does not ordinarily happen in the absence of negligence).

Here, a burst water pipe inside a house is not the type of injury that does not happen but for negligence. Such events happen commonly despite due care when winter cold freezes pipes, a fact which Appellant recognized in his discovery responses. **CP 107**. Indeed, Appellant's argument here would render the City an insurer

of all flooding caused by burst water pipes. Such a position is utterly at odds with the well settled law of Washington. *Tinder*, 84 Wn. App. at 795; *Edwards v. A. F. J. Distributors, Inc.*, 58 Wn.2d 789, 792, 364 P.2d 952 (1961) (rejecting *res ipsa loquitur* where stack of 50 pound bags of lime collapsed onto plaintiff).

2. The City did not have exclusive control over the instrumentality causing the flooding.

The valve in the water meter box which was turned back on by an unknown party is not one over which the City has exclusive control. The valve located in a publicly accessible utility box and it can be turned on by unauthorized persons. Indeed, the billing records in this case show that there was an unauthorized reconnection of service in August of 2003, at the same time Cooperrider had his house for sale. **CP 27.** Since the instrumentality is not within the City's exclusive control, the doctrine of *res ipsa loquitur* does not apply. *See Kempter v. City of Soap Lake*, 132 Wn. App. 155, 130 P. 3d 420 (2006) (proof of liability for sewer flooding requires proof of sewer defect, negligent maintenance or that the City had exclusive control over sewer system). *Kempter* involved a claim for negligence due to the backing up of a municipal sewer line. There, the court rejected application of the doctrine noting that such lines are open and accessible to the public. 132 Wn. App. at 160, quoting

Hughes v. King County, 42 Wn. App. 776, 784, 714 P.2d 316 (1986).

3. The injury was caused by a burst pipe in an area under Appellant's exclusive control.

Appellant next cites *Metro Mortgage v. Washington Water Power*, 37 Wn. App. 241, 679 P.2d 943 (1984) in support of applying *res ipsa loquitur* to flooding from a burst city water main. **Brief at 16.** However, this case does not involve a water main, but a leak in a pipe in the kitchen. **CP 107.** That case is distinguishable because the plaintiff there produced evidence that the water main at issue was exclusively under the control of the City of Spokane. 37 Wn. App. at 243 (recognizing that the issue of exclusivity was satisfied).

Appellant submitted no evidence to show any of the requirements for *res ipsa loquitur* in this case. The water valve controlling flow into the Cooperrider residence is in an unlocked utility box that can be accessed by anyone. It is not in the City's exclusive control. Indeed, the fact that the meter box is not exclusively controlled by the City is recognized by the City's water administrative code, which contains a prohibition and penalty for unauthorized reconnections of water service. OSMC 13.06.240. Such a provision would be unnecessary if the City exclusively controlled this connection. Moreover, Appellant cannot satisfy the other elements required before *res ipsa loquitur* applies – that the event is

one that ordinarily does not occur without negligence or that the occurrence is not due to the contributory fault of the plaintiff.

Here, the flooding did not result from a broken water main, but from a pipe that broke inside the house, under the kitchen sink. **CP 107.** This is not in an area within the City's control, but is an area controlled by the Appellant. Moreover, the location of the broken pipe inside the home supports the inference that it was Cooperrider's negligence in failing to maintain his own pipes, keep the home heated and/or have a caretaker present who could take protective measures that caused the flooding. **CP 108.** Indeed, the meter box is required to contain a customer shutoff valve so that the customer can shut the water off if a pipe breaks, or if the hot water heater leaks. OSMC 13.06.110(A). Cooperrider could have easily avoided any flooding by simply making sure that the customer valve was shut. Thus, Appellants failed to establish the third element articulated by *A.C. v. Bellingham School Dist.* – that the injury-causing incident must not be due to any contribution on the part of the plaintiff.

Here, Appellant's reliance on *res ipsa loquitur* fails because the water line is not under the City's exclusive control. The City's billing history shows that there was an unauthorized reconnection by an unknown third party that resulted in turning on the water in

August 2003. Therefore, someone other than the City must have reconnected the water. As the connection is accessible in the unlocked meter box, it certainly could have been turned back on by anyone, not just the City, prior to the flooding event in January 2004.³

Appellant further relied upon a misunderstanding of the City's billing records to claim that a restoration fee was charged after Cooperrider requested termination of service. This fundamental misreading of the City's billing records undermines the factual underpinnings supporting the "inference of negligence" upon which Appellant relies. **Opening Brief at 12.**

Upon reviewing the declarations filed by both parties, the facts in this matter are clear and not in dispute:

1. Cooperrider did not file the applicable request form for removal of the meter or specifically request removal of the meter when he wrote the City in August 2002.
2. Cooperrider did not bring his account current as required by the City for removal of his meter.
3. Cooperrider's waterline was disconnected at all times relevant hereto by the City and the water was turned on by an unknown third party.
4. The flooding was caused by a burst pipe in the kitchen

³ Since the house was actively being marketed by real estate agents, it is a permissible inference to conclude that an agent of Cooperrider turned the water on to assist in marketing the house.

of Cooperrider's vacant house during a cold snap in January, 2004, over 15 months after the correspondence in August 2002. Cooperrider failed to follow up on the issue or take appropriate steps to secure his vacant house, by turning off the customer shut-off valve, an elementary preventative measure that would have avoided any possibility of flooding.

Given these facts, the doctrine of *res ipsa loquitur* cannot salvage the Appellant's case and dismissal was required as a matter of law.

C. APPELLANT HAS NO BASIS FOR A TRESPASS CLAIM.

The Appellant alleges that the refusal to remove the water meter was a trespass. Appellant offered no proof of an intentional entry by the City onto Appellants' property. Therefore, his claim was subsumed by his negligence allegations.

The City, thus, has every right to have a water meter utility box provided by City Code. *See* OSMC 13.06.140. Cooperrider failed to make the request required by City Code for removal of the water meter. Furthermore, there is no showing that the water meter is located in the City utility easement where the connection to Mr. Cooperrider's water line is located.

Again, Appellant fails to recognize two critical facts in the uncontroverted evidence: 1) Cooperrider's August 26th letter does not request "removal of the water meter" and 2) Cooperrider did not

respond to the City's request for clarification and failed to provide express direction on the matter as requested by the City. As such, the City continued to have the right to maintain its facilities within its utility system at the Cooperrider property.

Moreover, during the 16 month period prior to the flooding, the water service was shut off by the City, initially in May 2002, and again in September 2003 after the unauthorized reconnection while Cooperrider was marketing the house. **CP 27.** Cooperrider took no steps to ensure that his house was secure. Instead, he allowed it to sit vacant and did not have anyone present to check the utility lines to ensure the water, gas, etc. were turned off prior to the winter, when the possibility of freezing pipes is clearly foreseeable. Cooperrider has no one to blame but himself for the flooding incident.

D. APPELLANT HAS NO EXCESSIVE BILLING CLAIM.

Mr. Cooperrider has no excessive billing claim in this matter. First, Cooperrider cannot contest his obligation for the ongoing charges. Such charges were upheld by Judge Copland in the prior litigation between the parties which held that the City properly followed its codes in assessing the charges. **CP 76.** Cooperrider did not and could not challenge the validity of the water charges, and the City lawfully collected the charges due. Cooperrider's excessive

billing claim is, in reality, a claim that he had the right to run up the bill and refuse payment. Such a claim is not in accordance with either law or equity.⁴

Secondly, Cooperrider did not pay for the excessive billings which he alleges. These were paid by the buyer of the property at closing. **CP 27-28.** Cooperrider never presented any evidence that he paid these items. As such, Mr. Cooperrider lacks standing to assert any overbilling claim.

Furthermore, Cooperrider did not take the necessary steps to terminate service at the property because he never made an express request for removal of the water meter. Cooperrider bears sole responsibility for failing to respond to the City's August 28, 2002 letter for 16 months before the flooding incident occurred. He did not call the City. He did not respond, either in writing or any other fashion. At no time is there any express direction to "remove the water meter" in those terms. As such, the service remained connected at the Cooperrider property and assessment of charges was appropriate, as the prior litigation had established.

⁴ It is also clear that despite losing his prior court case against the City, Cooperrider was attempting to avoid his obligation to pay the past due water bills. The lien provisions cited by Appellant in OSMC 13.06.510 do not allow a customer to essentially steal water by refusing to pay his bill for years and then only paying for four months service. The lien created by OSMC 13.06.510 is an additional remedy available to the City and is supplemental to other remedies the City has to collect the delinquent account.

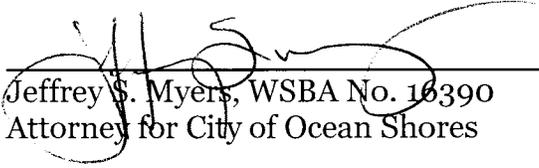
Finally, any claim that the City's charges were unreasonable or violated RCW 80.28.010 were disposed of by the prior litigation between the parties which dismissed Cooperrider's assertion that the charges could not be imposed and that the City had breached its "contract" with him. Because he elected not to specifically request removal of the meter, as provided by City Code, Cooperrider continued to have water service available to the property. As Judge Copland ruled, it was consistent with the City's Code for charges to accrue, even when service was suspended due to Cooperrider's delinquent account. **CP 66, 76.** Cooperrider can not relitigate these claims, which he failed to timely appeal, (**CP 78**) under the doctrines of res judicata and collateral estoppel, which bar piecemeal litigation of claims that were or should have been raised in prior litigation. *Landry v. Luscher*, 95 Wn. App. 779, 976 P.2d 1274 (1999) (claims barred by prior small claims court judgment). Here, the small claims court determined that the City acted properly in assessing fees even after Cooperrider sought to "terminate" his water service contract. This is the same claim between the same parties that is now asserted in this matter. Res judicata and collateral estoppel bar such a claim. *Landry* at 783, citing *Hayes v. City of Seattle*, 131 Wn.2d 706, 711-12, 934 P.2d 1179, 943 P.2d 265 (1997).

V. CONCLUSION

The trial court did not err in its reading of the law and properly granted summary judgment to the City on this claim. The City cannot be blamed for failing to remove a water meter when Cooperrider failed to respond by precisely specifying what he was requesting for over 16 months before the flooding incident. The City cannot be blamed where Cooperrider did not make the request required by City codes, nor pay sufficient fees to cover the amounts due to the City. Given the undisputed facts, the City cannot be held liable as a matter of law for the flooding alleged by the Amended Complaint. The trial court's ruling should be fully affirmed.

Respectfully submitted this 23rd day of April, 2007.

LAW, LYMAN, DANIEL,
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Chapter 13.06

WATER SERVICE ADMINISTRATIVE CODE*

Sections:

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- 13.06.020 Definitions.
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- 13.06.500 Nonpayment of bill—Denial of additional water service.**
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- 13.06.540 Line extensions—Permit—Required.**
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- 13.06.560 Line extensions—Application review.**
- 13.06.570 Line extensions—Construction.**
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- 13.06.590 Hydrants—Operation.**
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- 13.06.610 Pressure reducing valves.**
- 13.06.620 Prohibited uses.**
- 13.06.630 Mailing and receiving city communications.**
- 13.06.640 Revision of regulations.**
- 13.06.650 Conflict with other rate schedules or special contracts.**
- 13.06.660 Disclaimer, exclusion of warranties and limitation and exclusion of damages.**
- 13.06.670 Violation—Penalty.**

* Prior ordinance history: Ords. 70, 77, 95, 191 and 281.

13.06.010 Scope.

In addition to being an administrative code for the city regulating applications and contracts for water service, water use and use of city property, connections and disconnections of water service, use of water meters, billings, adjustments in billings, payment of billings, action taken on delinquent accounts, termination of water service for nonpayment, collection of unpaid accounts, commercial fire protection service, line extensions, hydrant use, operation and installation, and pressure reducing valves use, operation and installation, these regulations are a part of all written contracts for furnishing and receiving water service. A copy of these regulations shall be available for public inspection in the city office during regular business hours. (Ord. 302 § 1.2, 1980)

13.06.020 Definitions.

The following terms wherever used in this chapter, the city's rate schedules, and in any application or contract for water service, shall have the following meanings, unless otherwise clearly stated. Unless some other meaning and intent are apparent from the context, the plurals shall include the singular and the singular shall include the plural, and masculine, feminine and neuter words shall be used interchangeably.

1. "Applicant" means one who makes a written or oral application to the city for city action.
2. "Backflow" shall have the same meaning as given that term by WAC 248-54-830 (3), as it currently reads or is hereafter amended.
3. "Backflow prevention device" shall have the same meaning as given that term by WAC 248-54-830(4), as it currently reads or is hereafter amended.
4. "Back pressure" shall have the same meaning as given that term by WAC 248-54-830(3)(a), as it currently reads or is hereafter amended.
5. "Back siphonage" shall have the same meaning as given that term by WAC 248-54-830(3)(b), as it currently reads or is hereafter amended.
6. "City" means the city of Ocean Shores, Washington, a duly organized noncharter code city.
7. "City manager" means the duly appointed manager of the city.
8. "City office" means City Hall, presently located on Point Brown Avenue, Ocean Shores, Washington, with business hours of eight a.m. to five p.m., Monday through Friday, except holidays.

9. "City standard practices" means those practices set forth in the American Water Works Association Meters, Pipe and Tank Manual of Standards, as amended, or until such time as the city prepares such a manual. After the city has prepared a meters, pipe and tank manual of standards, "city standard practices" means those practices set forth in that manual, as amended.

10. "Commercial water service" means all water service, including the availability of water service, other than residential water service.

11. "Council" means the city council of the city.

12. "Cross-connection" shall have the same meaning as given that term by WAC

248-

54-830(5), as it currently reads or is hereafter amended.

13. "Customer" means any individual, firm, corporation, or organization who is owner or reputed owner, as shown on the tax rolls obtained by the city from the office of the Grays Harbor county treasurer, of a premises, or in the alternative, upon the approval of the city, any individual, firm, corporation, or organization who upon written application therefor, notifies the city and assumes responsibility for the payment of a customer's account.

14. "Customer's account" means any obligation of a customer to the city which is due and payable.

15. "Lot" means a lot as platted or created by subsequent division of a lot or parcel, or an equivalent lot as depicted by the city engineers on the utility lot designation maps of the city on file in the office of the city clerk/treasurer; provided, however, that in cases where a structure physically occupies parts of two or more lots, such lots shall be deemed to be one lot for the purposes of this chapter.

16. "Mains" means water lines owned by the city and designed or used to serve more than one premises.

17. "Point of delivery" means that point, usually on a property line of the customer's premises, on the discharge side of the city's meter (or other agreed point) where the customer's service line is connected to the system.

18. "Premises" means a parcel of real property under the ownership and single control with respect to use or availability of water and responsibility for payment therefor which is receiving or is to receive water service.

19. "Regulations" means the water service regulations set forth in this chapter.

20. "Residential water service" means all water service to residentially zoned property, whether such property is developed or undeveloped.

21. "Service installation" means all city piping and fittings from a main to and including a water meter and meter box.

22. "Customer line" means all piping and fittings on the customer's side of the water meter.

23. "Temporary service" means water service which is of limited duration and not expected to be permanent.

24. "WAC" means the Washington Administrative Code published by the state Statute Law Committee.

25. "Water consumption" means water use as measured by a water meter.

26. "Water service" means water service to connected lots and water service to unconnected lots.

27. "Water service to connected lots" means the supply of water by the city at a point of delivery for use by the customer, irrespective of whether water is actually used.

28. "Water service to unconnected lots" means the maintenance and operation, including financing, of the water system in such a manner as to make water and the water system available to unconnected lots.

29. "Water superintendent" means the city employee responsible for the water system.

30. "Water system" means all water source and supply facilities, transmission pipelines, storage facilities, pumping plants, distribution mains and appurtenances,

vehicles, materials storage facilities and buildings owned or hereafter acquired by the city.

(Ord. 458 § 1, 1988; Ord. 358 §§ 1, 2, 5 and 6, 1983; Ord. 302 § 1.1, 1980)

13.06.030 Application and contract for water service generally.

A. Any individual, firm, corporation or organization desiring to purchase water from the city shall make application therefor, upon a printed application form to be furnished for the purpose, entitled "Application to and contract with City of Ocean Shores, Washington," signed by the applicant and filed in the city office.

B. Upon the city's acceptance of the application, a contract shall be formed between the customer/applicant and the city. These regulations, as amended, including all provisions concerning the collection of unpaid accounts, and the city's water rate schedules shall be a part of that contract, and as a term of that contract, the customer expressly agrees to be bound by the terms of these regulations and grants to the city the right to amend these regulations and to change the rates set forth in its rate schedule and agrees to pay those rates as they are changed.

(Ord. 302 § 2.1, 1980)

13.06.040 Applications for water service.

All applications for water service shall show, together with such other information as may be prescribed on the form provided by the city:

A. The name and mailing address of the applicant and, if appropriate, the name and mailing address of an individual who is authorized to act on behalf of the applicant;

B. The name and mailing address of the owner of the premises to be served if other than the applicant;

C. A billing address for the customer;

D. The legal description of the premises for which water service is sought;

E. The lot, block, and division, or official house number assigned to the premises, and the name of the street upon which the premises are or are to be located;

F. The purpose of the water service; and

G. The number of units within the premises to be supplied water service.

(Ord. 358 § 7, 1983; Ord. 302 § 2.2, 1980)

13.06.050 Acceptance of application.

Acceptance by the city of a water service application shall create a contract between the city and the applicant/customer which shall incorporate, as terms additional to those general terms set forth in Section 13.06.030, those special conditions and provisions contained in the application which are approved by the city, including, but not limited to a statement that in the event legal action is necessary to collect a water service debt owed to the city, the prevailing party in such action will be entitled to a reasonable attorney fee and his costs. (Ord. 358 § 8, 1983; Ord. 302 § 2.3, 1980)

13.06.060 Customers served by other water sources.

No water service shall be supplied applicants whose premises are served by water from a source other than the water system, except that premises served with irrigation water from a well may be served with domestic water service, provided there are no cross-connections. (Ord. 302 § 2.4, 1980)

13.06.070 Customer's responsibility for city's property.

A. The customer, if requested, shall provide space for and exercise proper care to protect any city property on his premises. This may include meters, meter pits, meter boxes, fittings, pipes and other facilities installed by and remaining the property of the city.

B. In the event of loss of or damage to the city's property because of the customer's negligence or abuse, the customer will be required to pay the cost of repairs or replacement.

(Ord. 302 § 3.1, 1980)

13.06.080 System disturbances and pressure fluctuations.

A. Water service shall not be utilized in such a manner as to cause severe disturbances or pressure fluctuations to other customers.

B. The city reserves the right to refuse to provide water service to any applicant therefor and to terminate, pursuant to the procedures of Sections 13.06.470 through 13.06.490, the water service of any customer when such water service would or does interfere with the city's service to its other customers, cause abnormal demands upon the water system, or result in financial loss to the city, be discriminatory, or when the applicant or customer has not complied with these regulations.

C. Whenever or wherever the city finds that protective devices are necessary to protect a customer's property, the property of other customers, or the property of the city, the city shall require the installation and maintenance of such devices to be paid for by the customer whose water service or water consumption creates the need for such protective devices.

D. Where equipment causing violent fluctuations in water demand is or is to be used by a customer and the city determines that such fluctuations may be detrimental to the water service of other customers, the city may require the customer to provide at his own expense, equipment which will reasonably limit such fluctuations.
(Ord. 302 § 3.2, 1980)

13.06.090 Notice of water service problems.

Each customer shall report immediately and give prompt written notice to the city of any defect, trouble or accident affecting that customer's water service. (Ord. 302 § 3.3, 1980)

13.06.100 Customer's responsibility to prevent backflow.

A. Backflow prevention devices, when required to be installed in the opinion of the water superintendent or a state certified district representative, shall be installed and maintained by the customer on any service line where said backflow prevention devices are necessary for the protection of the system.

B. The entire cost of installing a backflow prevention device shall be borne by the customer, and the installed device shall be owned and maintained by the customer. Inspection of such devices may be made periodically by a city representative, but it shall be the customer's responsibility at all times to maintain his backflow prevention device in a fully functioning condition.
(Ord. 302 § 3.4, 1980)

13.06.110 Customer water supply failure.

A. If the customer's water service fails, he shall endeavor to determine if he has a broken service line or a broken pipe inside or under the structure on the premises occupied by the customer. For the purpose of making such a determination, each customer is required to install a shutoff valve between that customer's service line and the plumbing and piping on the premises occupied by the customer.

B. If a city employee is sent to the customer's premises at the customer's request after regular working hours, and it is determined that the problem is caused by the failure of the customer's service line or plumbing or piping on the customer's side of the meter, a charge as specified in Section 13.12.100(D) shall be made.
(Ord. 358 § 9, 1983; Ord. 302 § 3.5, 1980)

13.06.120 Temporary service.

Customers requiring service classified by the city as temporary service shall be required to pay all costs incurred by the city for connection and disconnection of such service and to pay the rates established for water service by the city's water rate ordinance. (Ord. 302 § 3.6, 1980)

13.06.130 Resale of water.

Water is not to be resold by the customer, except by written permission of the city. In no case may the resale rates charged by a nongovernmental customer exceed the rates charged by the city for similar service. (Ord. 302 § 3.7, 1980)

13.06.140 City right of access.

By applying for and receiving water service from the city, the customer grants the city and its authorized employees and agents the right to install and maintain its water service and service installation facilities on the premises of the customer, to carry out its contract to supply water, to enter upon the premises of the customer at all reasonable times for the purpose of reading, connecting, disconnecting, inspecting, repairing or removing the metering or other service installation facilities of the city, to inspect customer owned backflow prevention devices, and to inspect all customer water and sewer facilities to ensure there are no cross-connections. (Ord. 302 § 3.8, 1980)

13.06.150 Plumbing inspection by city.

By applying for and receiving water service from the city, the customer grants the city and its authorized employees and agents right to inspect the plumbing on the customer's premises before, during and after the time water service is supplied. However, the grant of a right to so inspect does not carry with it an obligation to inspect, and any such inspection, or lack of inspection, shall not be construed as placing upon the city any responsibility for the condition or maintenance of the customer's plumbing, nor does it guarantee the absence of cross-connections in the customer's service line or plumbing. (Ord. 302 § 3.9, 1980)

13.06.160 Interruption of service.

A. The city reserves the right temporarily to suspend water service to make repairs or improvements to the water system, and may do so without notice to the customers. Whenever and wherever practicable, the city will give reasonable public notice of such temporary suspensions of water service to its customers and to make all improvements and repairs at such times as to cause the customer the least inconvenience possible.

B. The city reserves the right to disconnect water service without notice to prevent unauthorized water use, to protect city property, to prevent cross-connections and otherwise to prevent health hazards. Notice of any disconnection of cross-connections shall be given as is provided by Section 13.06.250.

C. In case the supply of water is interrupted or fails by reason of accident or any other cause whatsoever, the city shall not be liable for damage for such interruption or failure, nor shall such failure or interruption be held to constitute a breach of contract on the part of the city or in any way relieve the customer from performing the obligations of his contract. The city does not guarantee its water service and shall not be liable for injury, loss or damage resulting from failure to provide such service. (Ord. 302 § 3.10, 1980)

13.06.170 Relocation of equipment at customer's request.

A customer who desires to have his point of delivery moved to a new location on the premises shall apply in writing at City Hall for such relocation at least fourteen days in advance of the desired relocation date. The city shall relocate the customer's point of delivery as soon as practicable following its receipt of the customer's application therefor on the condition that the customer pays in advance the entire cost of relocating the meter and other service installation facilities. It shall be the customer's responsibility to relocate, at his own expense, the customer service line to the new point of delivery. The city, during one visit to the premises, if possible, will disconnect the old service lines at the old point of delivery and reconnect the new service installation at the new point of delivery. (Ord. 358 § 10, 1983: Ord. 302 § 3.11, 1980)

13.06.180 City corrections of regulations violations.

If a customer takes action in violation of these regulations or fails to take action required

by these regulations, the city may take such action and incur such expense as is necessary to cause that customer to be in compliance with these regulations. Any expense incurred by the city to cause a customer to be in compliance with these regulations shall be billed to and paid by the customer and enforced by the city in the manner provided in Sections 13.06.320 through 13.06.510, inclusive, of these regulations. (Ord. 302 § 3.12, 1980)

13.06.190 Emergency conditions.

In case of shortage of water, the city may give preference in furnishing water to customers in order to safeguard the safety and health of the general public most effectively or to provide for the public convenience; may forbid, restrict, or regulate the use of water for irrigation, cooling, or other uses; and may make such regulations effective throughout the city, in districts thereof or may make such regulations effective as to particular classes of customers. Rationing may be imposed during any shortage of water, either in lieu of or in addition to other measures authorized in this section. (Ord. 302 § 3.13, 1980)

13.06.200 Water service connection.

A. The costs of water service connection and water service are set forth in Chapter 13.12.

B. For premises having a single point of delivery, the water rates of the city are based upon the supply of water service to the entire premises through a single point of delivery and metering. For premises having more than one point of delivery served by the city, each point of delivery will be separately metered and billed. Unless otherwise specified in a special contract, the city will not aggregate the metering of separate points of delivery.

C. Additional costs for water service may be required if the water service will be connected to a main previously constructed under the city's line extension policy.

D. No customer's water service may utilize a meter smaller than five-eighths by three-fourths of an inch, nor shall any customer's service line be longer than three hundred feet from the meter at the customer's point of delivery to his shutoff valve without the written permission of the city. Permission to own a service line which is longer than three hundred feet from the meter at the customer's point of delivery to his shutoff valve may be given only if the customer owning such a service line agrees in writing to release the city from any and all claims the customer may assert or assert in the future against the city or its successors for inadequate water service.

E. The customer's service line must be buried at a depth of twenty-four inches beneath the surface, extend eighteen inches beyond the boundary of the premises served and be located such that termination of the service line will be at the water meter.

F. The city will install the meter and meter box ready for connection to the customer's service line.

G. There shall be no cross-connections.
(Ord. 358 § 12, 1983; Ord. 302 § 4.1, 1980)

13.06.210 Changed service capacity or nonstandard service.

A. A customer desiring a change in the capacity of his water service connection or water meter to increase or decrease water supply (changed service capacity) or the installation of specialized equipment for service at other than standard pressures and pressure regulation (nonstandard service) shall apply in writing at the city office for such changed service capacity or nonstandard service at least fourteen days in advance of that customer's need therefor in order to allow the city to evaluate the application and to provide the facilities necessary to accommodate the customer's request.

B. Each application for changed service capacity or nonstandard service shall be evaluated by the city to determine if the change in service capacity or nonstandard service requested will be detrimental to the city's ability to supply water to its other customers or will be economically feasible.

C. If it is determined by the city that the requested change in service capacity or

nonstandard service will not impair the city's ability to provide full water service to its other customers, and if it is determined by the city that it will be economically feasible to fulfill the customer's request, the city will provide the facilities necessary to accomplish the requested changes in service capacity or nonstandard service on the condition that the customer making the request pay in advance the cost of the facilities to be provided as well as the cost of their installation.
(Ord. 302 § 4.2, 1980)

13.06.220 Notice of change of occupancy.

When a change of occupancy or ownership of a premises or responsibility for payment of water service to any premises or structure on any premises takes place, written notice of such change shall be given to the city at City Hall. (Ord. 358 § 13, 1983; Ord. 302 § 4.3, 1980)

13.06.230 Removal of water meter.

Customer may request removal of the water meter to a connected lot by notifying the city in writing of that request at least five working days in advance of the desired removal date. The city shall read the meter for a final bill on the date of removal. All moneys owing the city for services as of the date of removal shall be due and payable upon presentation of the final billing. (Ord. 358 § 14, 1983; Ord. 302 § 4.4, 1980)

13.06.240 Unauthorized connections.

No person, other than the water superintendent or a duly authorized city employee acting under the authority of the water superintendent, shall tap into or make any connection with the water system. (Ord. 302 § 4.5, 1980)

13.06.250 Cross-connections.

A. Cross-connections and the use of backflow prevention devices shall be regulated in the manner provided by WAC 248-54-820 through 248-54-850, inclusive, as those sections now read or are hereafter amended.

B. Notice of any disconnection of water service because of the existence of a cross-connection causing an immediate hazard to health shall be in substantially the following form and shall be delivered to the customer and posted on the customer's premises:

Water service at (address of Premises) has been discontinued. For information regarding restoration of water service, contact City of Ocean Shores, Washington, at City Hall located on Point Brown Avenue, Ocean Shores, Washington, or by telephone at 289-2486.

(Ord. 302 § 4.6, 1980)

13.06.260 Meter reading.

A. Meters shall be read at monthly or bimonthly intervals at the option of the city. Meter readings shall be made on the same cycle date, as nearly as possible, during each monthly or bimonthly interval; provided, however, that variations in reading periods caused by holidays, Saturdays, Sundays, inclement weather, and differences in lengths of calendar months shall not be construed as a change from a normal monthly or bimonthly interval.

B. The city may alter or reroute its meter reading and billing cycle dates when such alteration or rerouting is in the best interest of the city.

C. The city may estimate meter readings for billing purposes when its meter reader is unable to gain access to the premises on his regularly scheduled meter reading trip, or when the meter has been tampered with or is not functioning properly, or when circumstances beyond the control of the city make reading of meters impracticable or impossible.

(Ord. 302 § 5.1, 1980)

13.06.270 Separate meter for each class of service.

If a customer desires to use water for purposes classified under different rates, separate

meters must be installed by the city at the expense of the customer to measure the water supplied at each rate. The city will designate the rate schedule applicable to each meter and bill each meter at the appropriate rate schedule. Unless otherwise specified in a special contract, the city will not aggregate the metering of separate service or meters. (Ord. 302 § 5.2, 1980)

13.06.280 Water consumption in excess of meter capacity.

The city will not install a water meter to a service line which demands water in excess of the rated capacity of the meter. The city shall have the right to terminate water service to any customer when the demand of the service line exceeds the following meter capacities:

Size of Meter	Capacity (gallons per minute)
5/8" —3/4"	20
3/4"	30
72	50
1-1/2"	100
144	160
216	300
288	500

(Ord. 302 § 5.3, 1980)

13.06.290 Additional meters.

If the customer desires additional meters other than those necessary to measure adequately the water consumption of the customer, such additional meters shall be provided, installed and maintained by the customer at his own expense. (Ord. 302 § 5.4, 1980)

13.06.300 Meter tests.

The city shall at its own expense inspect and test its meters as required to insure a high standard of accuracy. Additional tests at the request of a customer will be made, and if the meter is found to register within two percent of accuracy, the city will charge a test fee as specified in Section 13.12.100. If the meter is found to register in excess of two percent fast, the city will pay for the testing and will adjust the customer's billing for the known or assumed period of error, not to exceed the previous six months. (Ord. 358 § 15, 1983; Ord. 302 § 5.5, 1980)

13.06.310 Meter box covers.

All meter box covers shall be kept free of obstructions and be located at or above the grade of the immediately surrounding land. No dirt, rubbish, building material or other material may be placed on top of meter box covers. No meter shall be removed or in any way disturbed except by the water superintendent or an authorized city employee. (Ord. 302 § 5.6, 1980)

13.06.320 Billing—Procedure.

A. Billings shall be rendered at one-month, two-month, three-month, or four-month intervals at the option of the city. The city shall mail each customer's billing to the billing address furnished on that customer's water service application or as shown on the tax roll obtained by the city from the office of the Grays Harbor county treasurer. The failure to receive a bill shall not release a customer from the obligation to pay his bill when due.

B. Opening or closing bills, which may be for greater or lesser periods than the normal

one-month, two-month, three-month, or four-month interval (as chosen by the city) will be calculated on the basis of the ratio that the actual period billed bears to the normal billing interval.

(Ord. 358 § 16, 1983; Ord. 315 (part), 1981; Ord. 302 § 6.1, 1980)

13.06.330 Billing—Adjustments.

The following billing adjustments may be made by the city manager upon his initiative or upon application therefor by the customer for whose account adjustment is sought:

A. Receipt of Unmetered Water Service. When it has been determined that a customer has received unmetered water service or when the customer has caused the water service furnished to be metered improperly or inaccurately, the city may render bills for such water service based upon its reasonable estimate of the water service actually furnished for the full period during which the water service was unmetered or improperly metered.

B. Retroactive Adjustment of Bills Arising Out of Incorrect Application of Rates, Stuck Meters or Clerical Errors.

1. Residential Water Service. Customers shall be entitled to seek relief in accordance with Sections 13.06.350 through 13.06.460 regarding retroactive adjustments of bills for residential water service arising out of incorrect application of rates, stuck meters or clerical errors, other than adjustment of bills for service through the wrong meter.

2. Commercial Water Service. Customers shall be entitled to seek relief in accordance with Sections 13.06.350 through 13.06.460 regarding retroactive adjustment of bills for commercial water service arising out of incorrect application of rates, stuck meters or clerical errors, other than adjustment of bills for service through the wrong meter.

C. Service Through Wrong Meter. Should one customer be billed for water service actually furnished to another because of misidentification of the meter through which the customer has received service (service through the wrong meter), the improperly billed customer's account will be credited for all water service so billed, and the customer will then be charged for all water service actually furnished.

D. Abnormal Water Loss. Should a customer incur an abnormal water loss caused by a condition deemed by the water superintendent to be undetectable and not a result of lack of normal maintenance by the customer, an adjustment in the customer's account may be made for that period of abnormal water loss. No adjustment shall be allowed for any period of abnormal water loss in excess of ninety days for any twelve-month period.

E. Determination of Adjustment. The adjustments shall consist of a determination by the city manager of the customer's normal water consumption during the period of adjustment. For this estimated normal water consumption, the customer will be charged the city's normal rates. For any excess consumption during the period of adjustment, the customer will be charged fifty percent of the normal rate. The difference between the adjusted charge and the billings to the customer during the period of adjustment shall be credited against that customer's future billings.

F. Frozen Pipes. Adjustments on a customer's account may be made because of water loss resulting from the freezing of the customer's service line, faucets or plumbing.
(Ord. 358 §§ 17 and 18, 1983; Ord. 302 § 6.2, 1980)

13.06.340 Billing—Payments.

A. All waterworks utility bills become due and payable on the date of billing.

B. Unless otherwise specified in the billing, the billing becomes past due and delinquent on the twentieth day following the date of billing.

C. Payment of city bills shall be made at the city office.

D. Payments made to the city by mail after an order of disconnection is made shall not prevent disconnection of the water service to the premises having a delinquent account unless such payments are received at the city office prior to the scheduled date of disconnection as stated on the disconnection order.

E. A service charge as provided in Section 13.12.100(N) shall be charged against any customer's account if that customer pays any billing with a check which is returned by its

payor for any reason.
(Ord. 358 §§ 11, 19 and 20, 1983; Ord. 302 § 7, 1980)

13.06.350 Delinquent accounts—Past due reminder.

A. Delinquency Penalties. If any waterworks utility charges are not paid within twenty days from the date the bill was mailed, the city shall impose a delinquency penalty of six dollars or ten percent of the delinquent amount, whichever is greater. Delinquent charges, including penalties, shall bear interest at the rate of twelve percent per year.

B. Past Due Reminder. No sooner than twenty days after the date the bill was mailed, the city shall send to a customer whose bill has not been paid, a past due reminder notice by first class mail addressed to the customer's billing address. Such notice shall contain substantially the following language:

Our records indicate that we have not received payment for your waterworks utility billing prior to due date. If you already have paid your bill or have made arrangements with the city for its payment, please accept our thanks and disregard this notice. If you are unable to pay the entire amount of the bill in question at this time or if you dispute the amount of the bill, you may request an informal conference. Such request may be made by telephone or in person or in writing at the City Hall: 765 Point Brown Avenue NW, P.O. Box 1539, Ocean Shores, Washington 98569, and telephone (360) 289-2487. Your request for an informal conference must be made within fifteen (15) days from the date of this notice. If you do not make satisfactory payment arrangements or do not pay your bill, your water service will be subject to partial or complete termination in accordance with an order of the city on or after twenty (20) days from the date of this notice. For more information concerning your rights and the city's policies, read the enclosed brochure.

(Ord. 712 § 3, 2001; Ord. 675 § 2, 2000; Ord. 358 § 21, 1983; Ord. 302 § 8.1, 1980)

13.06.360 Delinquent accounts—Brochure.

The city shall send a brochure as an enclosure with each past due reminder. Such brochure shall explain in detail the city's credit and disconnection policies and the customer's rights including:

A. Informal Conference. The customer's right to an informal conference to adjust a disputed bill or to work out a deferred payment agreement;

B. Procedures. The procedures for the informal conference.
(Ord. 358 § 31, 1983; Ord. 302 § 8.2, 1980)

13.06.370 Informal conference—Application.

Upon oral or written application made at City Hall within fifteen days of the past due reminder, a customer who disputes the amount of his bill, or is unable to pay the full amount of his bill, shall be entitled to informal conference with the city manager, or his designee, in City Hall on any business day. The informal conference must be held during regular business hours prior to the cutoff date as shown on the past due reminder. (Ord. 358 § 22, 1983; Ord. 302 § 8.3(A), 1980)

13.06.380 Informal conference—Standards.

A. Disputed Bills. The city manager, or his designee, shall review any disputed bill and shall have authority to adjust that bill.

B. Temporary Financial Difficulties. The city manager, or his designee, shall make every effort to arrange a reasonable and feasible deferred payment program for a customer with a bona fide temporary financial difficulty making it impossible to pay the full amount of the current bill. Such deferred payment program shall be based upon a number of factors, including, but not limited to:

1. The dollar amount of the delinquent account;
2. The time the bill has been owed;
3. The customer's ability to pay;
4. The credit history of the customer;
5. Whether the financial difficulties of a particular customer are temporary, for

example, a customer who has been unable to pay a bill on more than two previous occasions within the past two years may be considered a repetitive credit problem and may not be experiencing financial difficulties which can be considered to be temporary;

6. Other relevant factors presented by the customer.
(Ord. 302 § 8.3(B), 1980)

13.06.390 Informal conference—Procedure.

A. On the date and at the time designated by the city in response to the customer's application for an informal conference, the customer shall appear in person at the city office. The customer may be represented by an attorney or other representative if he so desires.

B. At the informal conference, the customer shall advise the city manager, or his designee, of the customer's position and shall present whatever facts or evidence he deems supportive of his application for an adjustment in his billing. Following a reasonable discussion at the informal conference, the city manager, or his designee, shall determine the disposition of the customer's application for a billing adjustment.

C. Should an arrangement concerning a disputed bill or temporary financial difficulties be made, that arrangement shall be reduced to writing and signed by the customer who requested the informal conference.

(Ord. 358 § 23, 1983; Ord. 302 § 8.3(C), 1980)

13.06.460 Informal conference—Failure to utilize procedure.

The city manager or his designee shall order the partial or complete termination of water service for each customer with an account past due and delinquent, who has been sent a past due reminder and who has not made satisfactory arrangement for payment at an informal conference. The date upon which the customer's water service shall be ordered partially or completely terminated shall be no earlier than twenty days after the date of that customer's past due reminder. (Ord. 358 § 24, 1983; Ord. 302 § 8.5, 1980)

13.06.465 Informal conference—Unconnected lots exempted.

Sections 13.06.350 through 13.06.460 shall not apply to those customers who have water service to unconnected lots as defined in subsection 28 of Section 13.06.020. (Ord. 339 § 3 (part), 1982; Ord. 302 § 8.6, 1980)

13.06.470 Nonpayment of bill—Notice of termination of water service.

In the event a customer has not paid his bill or has not made satisfactory arrangements with the city at an informal conference in accordance with the procedures set forth in Sections 13.06.370 through 13.06.460, the city shall mail a termination notice to that customer at the customer's billing address by first class mail and post a termination notice on the premises served at least seventy-two hours prior to the termination of that customer's water service. The termination notice shall contain substantially the following language:

You are hereby advised that partial/complete termination of your water service has been ordered effective _____, 19_____, for the nonpayment of your _____, 19_____, past due and delinquent city billing in the amount of \$_____ plus interest and penalties. Should your water service be partially or completely terminated, your water service will be restored in full following your payment to the city at its office of your above-mentioned past due account plus penalties and interest and a restoration charge of \$_____ during regular business hours of the city or \$_____ during other hours.

(Ord. 358 § 25, 1983; Ord. 302 § 9.1, 1980)

13.06.480 Nonpayment of bill—Termination of service.

On or after the date set forth in the termination notice, the customer's water service shall be terminated in accordance with the order of the city. Upon partial or complete termination, there shall be left with the customer, either personally or by posting on the

premises, a notice containing substantially the following language:

Water service to these premises has been partially/completely terminated. For further information regarding restoration of water service, contact City of Ocean Shores, Washington, at City Hall located on Point Brown Avenue, Ocean Shores, Washington, or by telephone at 289-2486.

(Ord. 302 § 9.2, 1980)

13.06.490 Nonpayment of bill—Restoration of water service.

Whenever water service has been partially or completely terminated, the city shall not restore that water service in full until the account is paid in full or an arrangement, acceptable to the city manager, for its payment has been made and the restoration fee as required by Section 13.12.100(F) has been paid. (Ord. 358 § 26, 1983; Ord. 302 § 9.3, 1980)

13.06.495 Nonpayment of bill—Unconnected lots exempted.

Sections 13.06.470 through 13.06.490 shall not apply to those customers who have water service to unconnected lots as defined in subsection 28 of Section 13.06.020. (Ord. 339 § 3 (part), 1982; Ord. 302 § 9.4, 1980)

13.06.500 Nonpayment of bill—Denial of additional water service.

All outstanding charges for water service to a premises must be paid in full prior to connection of a service line for a premises to the water system. Failure to pay all outstanding charges, penalties and interest or to enter into an agreement with the city providing for such payment, or to satisfy all outstanding liens for water service to a premises shall be grounds for the city to deny permission for the connection of a service line for the premises to the water system. (Ord. 302 § 10, 1980)

13.06.510 Collection of unpaid accounts.

A. The city shall have a lien against the premises to which water services were furnished for four months' charges therefor due or to become due, but not for any charges more than four months past due. However, the owner of the premises, or the owner of a delinquent mortgage thereon, may give written notice to the city manager or his designee to cut off services to said premises accompanied by payment or tender of the then unpaid charges for such service to the premises together with the cutoff charge, whereupon the city shall have no lien against the premises for charges for such service thereafter furnished, nor shall the owner of the premises or the owner of a delinquent mortgage thereon be held liable for the payment thereof.

B. The lien for charges for service by the city waterworks may be enforced only by cutting off the service until the unpaid charges are paid.

C. The remedies set forth in this section are alternative and supplemental to all other remedies available to the city.

(Ord. 358 §§ 27 and 28, 1983; Ord. 302 § 11, 1980)

13.06.520 Commercial fire protection service—Application.

An application for commercial fire protection service must be made by completing and returning to the city at the city office an application provided therefor by the city. (Ord. 302 § 12.1, 1980)

13.06.530 Commercial fire protection service—Installation charges.

Upon acceptance by the city of the customer's application for commercial fire protection service:

A. The customer must pay the total installation cost of all service lines from the customer's premises to an existing main of adequate capacity to provide the required fire flows; and

B. The customer must pay the cost of the detector check meter, plus the cost of its installation.

(Ord. 302 § 12.2, 1980)

13.06.540 Line extensions—Permit—Required.

Any owner of real property located in the city may request the extension of a main. Such extensions will be allowed provided the owner obtains a permit from the city prior to commencing construction of the proposed line extension and completes the construction in accordance with the provisions of these regulations. (Ord. 302 § 13, 1980)

13.06.550 Line extensions—Permit—Application requirements.

A. All applications for line extensions shall be submitted in writing at the city office at least thirty days in advance of the proposed commencement date of construction.

B. Each line extension application shall be accompanied by:

1. A plot plan and plans and specifications showing the location of all lots and details relating to the proposed construction; and
2. As-built drawings showing the locations, sizes and types of all mains, valves, hydrants and fittings as installed and exact distances from property lines; and
3. A surety bond in a form and with a surety licensed to do business as a surety by the state and in an amount acceptable to the city, which bond shall guarantee the faithful performance of the work on the line extension, payment of all individuals or entities, including state and municipal entities and agencies, who are empowered to create a lien upon the line extension for nonpayment of obligations to those individuals or entities and the replacement of all defective material and workmanship within one year after acceptance of the line extension by the city. In some cases, a two-year bond may be required because of city requirements on road restoration; and
4. An agreement by the applicant, on a form issued by the city, to indemnify, defend and save harmless the city from any and all claims or liability for damages arising from acts done during or in preparation for construction of the line extension; and
5. Certificates of the applicant's comprehensive general and automobile liability and property damage insurance, before commencing work, in limits of one million dollars bodily injury including death, and one million dollars property damage protection against all claims for personal injury or property damage, including coverage for underground collapse and explosion damage, arising during or in preparation for construction of the line extension; and
6. A completed environmental checklist on a form provided by the city; and
7. An agreement by the applicant to pay the city's engineers' and attorneys' costs and fees incurred in the course of reviewing and processing the line extension application, enforcing obligations of the line extension applicant, and otherwise incurred as a result of the line extension application and installation; and
8. A nonrefundable fee in the amount of two hundred fifty dollars. Such fee will be applied toward the costs of the city's engineer, attorney or personnel incurred as a result of the line extension application and installation. The customer shall pay all such costs in full, plus fifteen percent to defray the city's overhead expenses.

(Ord. 302 § 13.1, 1980)

13.06.560 Line extensions—Application review.

A. Each application for a line extension shall be reviewed initially by the water superintendent, who shall ascertain whether the proposed line extension will meet city construction standards and will not impair the city's ability to provide full water service to its other customers, and by the city's SEPA responsible official, who shall comply with the city's SEPA Guidelines.

B. Each application will then be forwarded to the city manager who will prepare a recommendation to the council. The council will then consider the city manager's recommendations, make the necessary environmental decisions and either order the issuance of the applicant's line extension permit or reject the application. The issuance of a line extension permit may be made contingent upon any reasonable conditions.

(Ord. 302 § 13.2, 1980)

13.06.570 Line extensions—Construction.

A. Upon receipt of the city's line extension permit, the applicant may commence construction of the proposed line extension.

B. In addition to being subject to any conditions placed upon the line extension permit, construction of the line extension shall be subject to the following conditions:

1. Review and approval by the city of plans and specifications for the line extension;
2. The applicant shall be responsible for paying all costs of the line extension, including inspection of the line extension by the city; and

3. The applicant shall procure and pay for all permits, licenses, easements, environmental notices, reports, impact statements and for the review thereof, shoreline permits, railroad and highway crossing permits and other permits or exemptions necessary for construction of the line extension.

C. All taps of a line to an existing city main shall be made by the city crews or under direct supervision of the city personnel, with material supplied by the owner, contractor or the city. A deposit for the estimated cost of the work must be made in advance for this work and for any material required, if done by the city, and the difference between the deposit and the actual cost plus fifteen percent will either be refunded or billed by the city.

D. A hydrostatic test shall be made by the applicant under the supervision of the city. The city will obtain water samples and send them to an appropriate health department agency.

(Ord. 302 § 13.3, 1980)

13.06.580 Line extensions—Acceptance.

A. Upon completion of the line extension construction, the applicant therefor shall convey and transfer to the city on forms approved by the city, including but not limited to warranty bill of sale, the line extension and all easements, permits and rights necessary to run, operate and maintain the line extension.

B. The line extension shall not be accepted by the city until receipts of all materials used, labor utilized and the cost thereof are provided the city along with receipts indicating the payment of those costs.

C. Upon acceptance of the line extension, the city will assume ownership of the line extension and the responsibility for its operation and maintenance.

(Ord. 302 § 13.4, 1980)

13.06.590 Hydrants—Operation.

Only authorized city personnel or firemen in the performance of their duties shall operate fire hydrants connected to the city's water system. (Ord. 302 § 14.1, 1980)

13.06.600 Hydrants—Installation.

A. The city will install hydrants upon the written request of one or more customers on mains large enough to provide adequate fire protection. The type of hydrant and location shall be as specified by the city, which shall include the requirements established by regulations of the county.

B. Upon request, the city will prepare an estimate for the total cost of the installation of a hydrant. Upon deposit of this estimated amount, the city will make the installation. On completion of the work, the customer will either be refunded or billed the difference between the estimated amount and the actual cost plus fifteen percent. At the city's option, this work can be done at a contract price to be paid in advance.

(Ord. 302 § 14.2, 1980)

13.06.610 Pressure reducing valves.

At the customer's request, the city will measure the water pressure at the customer's point of delivery as an aid to determining whether a reducing valve is required. Pressure reducing valves, when required, must be installed and owned by the customer. Pressure

reducing valves will be required when pressures exceed one hundred psi. It is recommended that a shutoff valve be installed by the customer on the meter side of the pressure reducing valve. (Ord. 302 § 15, 1980)

13.06.620 Prohibited uses.

No person, firm or corporation shall:

A. Use water from the water system for irrigating when requested by a police officer, fireman or representative of the city to cease such use during a fire which the fire department is seeking to control, or when use of water for irrigation is forbidden by the city; or

B. Bathe in, fish in, or throw any substance into any reservoir or water tank or standpipe or into any pipe or connection of the water system, or upon the premises where any reservoir, water tank or standpipe is located; or

C. Obstruct the access to any fire hydrant, or place material upon a public right-of-way or city owned property within twenty feet of a fire hydrant; or to open or operate a fire hydrant, except by a member of a fire department or an employee of the city in pursuance of his employment or duty; or

D. Break, deface, tamper with, damage, obstruct or alter a water meter; or

E. Make any connection by means of a pipe or otherwise with a main or water pipe for delivery of water from the water system in such a manner that the water is not first measured by a water meter prior to consumption; or

F. Turn on or turn off a water service at the meter or at any place between the water meter and the main; or

G. Interfere with, obstruct, or prevent free or safe access to any water meter or water service for purposes of reading, inspecting, repairing, removing, or installing the water meter by any employee or agent of the city in pursuit of his employment; or

H. Tamper with, destroy, break, or interfere with any part of the water system.
(Ord. 302 § 16, 1980)

13.06.630 Mailing and receiving city communications.

A. All correspondence, bills and notices relating to items covered by these regulations shall be sent by mail except where specifically provided otherwise.

B. The placing of any item in the mail with postage prepaid shall constitute that item's delivery to its addressee as of the date of so placing that item in the mail. Also, such communications may be delivered personally.

(Ord. 302 § 1.3, 1980)

13.06.640 Revision of regulations.

These regulations may be revised, supplemented or otherwise modified only by action of the council, except that where these regulations require approval by, permission or decision of, or instructions from the city manager. In such cases, the city manager shall be guided solely by city standard practices, generally recognized engineering standards and practices, operational demands and requirements of the water system, the peculiarities of construction, topography, soil conditions, or other relevant special factors affecting the specific decision to be made by the manager and the specific requirements of these regulations. (Ord. 302 § 1.4, 1980)

13.06.650 Conflict with other rate schedules or special contracts.

In case of conflict between the provisions of any rate schedule or special contract and these regulations, the provisions of the rate schedule or special contract shall apply. (Ord. 302 § 1.5, 1980)

13.06.660 Disclaimer, exclusion of warranties and limitation and exclusion of damages.

A. The city cannot and does not guarantee any minimum quantities of water or pressure of the water to be furnished to any point of delivery, hydrant, or other outlet, nor to any

customer or other user of the water system or consumer of water supplied by the city. In case water service is interrupted or fails by reason of accident or other cause whatsoever, the city shall not be liable for damage for such interruption or failure, nor shall such interruption or failure be held to constitute a breach of contract on the part of the city or in any way relieve the customer from performing the obligations of his contract with the city.

B. The quantity and pressure of water supplied by the city are supplied as-is and with all faults. There are no warranties of fitness or merchantability, express or implied, with respect to the quantity and pressure of water supplied by the city.

C. All incidental damages incurred by a customer as a result of the interruption or failure of the quantity, quality or pressure of water service furnished by the city are limited to fifty dollars and all consequential damages so incurred are excluded.
(Ord. 302 § 1.7, 1980)

13.06.670 Violation—Penalty.

Any violation of the provisions of these regulations shall be a Class C offense as defined by Section 7.01.050(3). (Ord. 315 (part), 1981; Ord. 302 § 1.6, 1980)

Chapter 13.12 WATERWORKS UTILITY RATES AND CHARGES

Sections:

- 13.12.010 Definitions.**
- 13.12.020 Findings of fact—Water system.**
- 13.12.030 Findings of fact—Sewer system.**
- 13.12.040 Finding of fact—Waterworks utility and revenue bonds.**
- 13.12.050 Rates and charges.**
- 13.12.060 Water rates for lots connected to the water system.**
- 13.12.080 Water service connection charges.**
- 13.12.085 Water system development charges.**
- 13.12.090 System development charge administration.**
- 13.12.100 Other charges, fees, penalties, deposits and credits.**
- 13.12.105 Water rates and charges, other charges, fees, penalties, deposits and credits for customers located outside of the existing city limits.**
- 13.12.110 Water conservation plan.**
- 13.12.115 Reduction in residential water rates and charges for low-income customers.**

13.12.010 Definitions.

For the purposes of this chapter, the following words shall be defined as follows:

A. "City" means the city of Ocean Shores, Washington, a duly organized noncharter code city.

B. "Lot" means a lot as platted or created by subsequent division of a lot or parcel, or an equivalent lot as depicted by the city engineers on the utility lot designation maps of the city on file in the office of the city clerk/treasurer; provided, however, that in cases where a structure physically occupies parts of two or more lots, such lots shall be deemed to be one lot for the purposes of this chapter.

C. "Maintenance and operation costs" means all reasonable costs incurred by the city in causing the water system or sewer system of the city to be operated and maintained in good repair, working order and condition, including payments of premiums for insurance, all costs and expenses relating to labor, employment benefits, power, light, heat, chemicals, equipment, repair of equipment and facilities due to normal wear, tools, supplies, materials, contract services, inspection, administration, billing and collection of charges, fees and assessments, and any state imposed taxes but excluding any city imposed utility taxes or payments in lieu of taxes payable from revenue of the waterworks utility and also excluding any reserves for depreciation.

D. "Sewer system" means the existing sanitary sewage collection and treatment system serving the city consisting of pressure lines to the treatment plant, a treatment plant, two pump stations, and some gravity collector lines.

E. "Water system" means the water supply and distribution system of the city which includes a deep well supply, an iron removal treatment plant, an elevated steel tank, two groundlevel storage tanks and a gravity distribution system which is being converted to a constant pressure system regulated by two pumps, complete with all necessary hydrants, valves, fittings and appurtenances.

F. "Waterworks utility" means the combined water system and sewer system of the city, as combined by Ordinance No. 259, together with all additions thereto and betterments and extensions thereof hereafter made, and including any storm and surface water system of

the city hereafter combined with or made a part of such municipal water and sewage utility, and also including plants, facilities and equipment for refuse collection and disposal should they later be combined with or made a part of such municipal water and sewage utility.

(Ord. 458 § 2, 1988; Ord. 358 § 3, 1983; Ord. 304 § 1, 1981; Ord. 300 § 1, 1980)

13.12.020 Findings of fact—Water system.

The city council makes the following findings of fact concerning the water system:

A. Nearly all areas of the city are served by the water system which includes ninety-three miles of water mains.

B. There are approximately twelve thousand lots within the city, all of which lots front upon, abut, or have access to a public water main or service line.

C. There are approximately one thousand five hundred lots connected to the water system.

D. The city currently allows the placement of recreational vehicles on lots for a period not to exceed sixty days per calendar year without requiring such recreational vehicles to be connected to the water system during such period of location.

E. The city provides fire protection at all times to all property located within the city, including recreational vehicles situated on lots which are not connected to the water system.

F. The design and engineering integrity of the water system require that the entire water system be maintained on an ongoing basis, with all components of the water distribution system receiving essentially equivalent maintenance regardless of the presence or absence of connections along segments of the water distribution system.

G. The cost of ongoing, system-wide maintenance is the same throughout the water system.

H. Approximately eighty-eight percent of the lots fronting upon the water distribution system currently pay no charge for water service.

I. From September, 1976, to January, 1978, the city formed a local improvement district (LID) and four utility local improvement districts (ULID's) for the purpose of constructing additions and betterments to the water system with a combined approximate total construction cost of three million seventy-eight thousand two hundred eighty-five dollars.

J. The number of written protests received from property owners by the city on the formation of the LID and ULID's mentioned in subsection I of this section was one percent to two percent of the affected property owners who had been given both mailed and published notice of the city council's intention to create such special benefit assessment districts, as required by law.

K. Adequate fire protection service requires larger mains, higher pressure and greater reserve capacity than would be required by a system limited to the provision of water for domestic consumption. The rate at which water must be supplied to a fire is so great that fire flow is the largest variable imposed on the water system.

L. The water system is principally a looped system, which design aids in insuring adequate fire protection for the entire city and, through the circulation of water, aids in limiting staleness of the water.

M. Due to the quality of the water system, the city has improved its fire rating from eight to six as determined by the state Survey and Rating Bureau.

N. The current population of the city is one thousand seven hundred eighty persons, and population projections indicate that it will triple to five thousand to six thousand people by the year 2000.

O. Actual housing starts within the city during 1979 doubled or tripled earlier projections, which housing starts do not include placement of mobile homes.

P. The city's average peak daily water demands are projected to double by 1990.

Q. Growth projections indicate that an additional source to supply water for the water system will be required by 1981-82.

R. Additional in-system storage will be required for the water system by about 1985.

S. The city must construct certain short-term improvements to the water distribution system.

T. The city must research the feasibility of future development of the Humptulips River as an alternative long-term source of water.

U. The implementation schedule for the short-term improvements to the water system and the required studies, all of which should be completed by 1985, will cost, based upon 1980 dollars, in excess of one million three hundred sixty thousand dollars.

V. In the absence of completion of the short-term improvements and, assuming the level of projected growth, it may become necessary by 1982 for the city to impose a moratorium on new construction and new connections to the water system due to an inadequate supply of water.

W. Water rates within the city have not been raised since 1972.

X. The city's approximate current annual maintenance and operation costs for the water system are one hundred thousand dollars, which figure presently is being impacted sharply due to the effect of inflation on the cost of materials and labor.

(Ord. 304 § 2, 1981; Ord. 300 § 2, 1980)

13.12.030 Findings of fact—Sewer system.

The city council makes the following findings of fact concerning the sewer system:

A. The sewer system primarily serves the commercial area at the northwest corner of the city and marina facility at the south end of the city.

B. Sewer rates within the city have not been raised since 1986.

C. The city's annual maintenance and operation costs for the sewer system is being impacted sharply due to the effect of inflation, cost of materials and labor, and demands on the system.

D. There are approximately four hundred forty-five lots within the city which access to the sanitary sewer system, but only approximately forty-five percent of those lots are connected to the system.

E. The design and engineering integrity of the sanitary sewer system require that the entire system be maintained on an ongoing basis, with all components of the distribution system receiving essentially equivalent maintenance regardless of the presence or absence of connections along segments of the sanitary sewer distribution system.

F. Approximately fifty-five percent of the lots having access to the sanitary sewer system currently pay no charge for the availability of service and the maintenance and operation of the system.

G. Growth projections suggest that additional improvements to the sanitary sewer system will be required to handle anticipated loads and the system does not presently generate sufficient income to pay for the anticipated costs of those improvements and projected maintenance and operation costs.

(Ord. 490 § 1, 1989; Ord. 300 § 3, 1980)

13.12.040 Finding of fact—Waterworks utility and revenue bonds.

Revenues from the waterworks utility are insufficient to meet the combined financial requirements of maintenance and operation, short-term and long-term improvements, and the coverage requirements, parity conditions and other covenants contained in the city's outstanding water and sewer revenue bonds heretofore issued in 1978 and 1979 in the respective aggregate principal amounts of one million eight hundred eighty thousand dollars and five hundred thousand dollars, which insufficiency will continue and become greater if the water and sewer rates are not increased. Such insufficiency of revenues, if not corrected, also would prevent the issuance on a parity of lien with the city's outstanding revenue bonds of its contemplated "Water and Sewer Revenue Bonds, 1980" required to be issued as soon as reasonably possible to provide the funds needed to pay, redeem and retire the approximately one million dollar principal amount of interim warrants heretofore issued to finance the installation of water facilities in ULID No. 5, which warrants now are becoming due and payable. (Ord. 300 § 4, 1980)

13.12.050 Rates and charges.

The rates and charges set forth in this chapter shall be considered rates and charges for the waterworks utility. It is found and declared that the classifications, rates and charges set forth in Sections 13.12.060 through 13.12.100 are fair and equitable. (Ord. 300 § 5, 1980)

13.12.060 Water rates for lots connected to the water system.

The rates and charges for water service to lots connected to the water system within the corporate limits of the city are fixed and established as follows:

A. The minimum monthly rate charge is based on meter size per the following schedule:

Meter Size	Minimum Monthly Charge
5/8"—3/4"	\$ 13.92 effective March 1, 2005
72	18.43 effective March 1, 2005
1-1/2"	22.94 effective March 1, 2005
144	35.32 effective March 1, 2005
216	126.58 effective March 1, 2005
288	160.38 effective March 1, 2005
432	239.25 effective March 1, 2005
576	329.39 effective March 1, 2005
720	430.78 effective March 1, 2005

B. Commodity Charge. The monthly commodity charge is charged per the following schedule regardless of water meter size:

Commodity Charge - \$/CF/MO.	Amount
Residential	\$.05235 effective March 1, 2005
Multiple Family	.05235 effective March 1, 2005
Commercial	.05235 effective March 1, 2005
Bulk Water	.08921 effective March 1, 2005

C. Contracts Authorized. The city council may enter into contracts with water users deviating from such rates where special circumstances dictate; provided that such rates shall not be discriminatory.

D. Fire Protection Services.

1. The city provides fire protection services and facilities through the water system to all property, improved or unimproved, in the city. Those services and facilities include maintenance of fire flows and the systems of mains and hydrants throughout the city. In addition, the city provides for maintenance and the availability of water for certain properties improved with private hydrants and fire protection systems. Additional rates for these systems are set forth in subsection (D)(2) of this section.

2. The following monthly fire protection charge is imposed, based on hydrant size maintained by individual properties within the city. Beginning on the first day of January 2000 and for each and every succeeding year after 2000, the rate per hydrant shall be as follows:

Hydrant Size	Amount
144	\$ 4.26
216	12.78
288	25.56
432	70.99
576	\$149.08
720	255.56

(Ord. 789 § 2, 2005; Ord. 768 § 2.1, 2003; Ord. 750 § 2.1, 2002; Ord. 740 § 2.1, 2002; Ord. 725 § 2.1, 2001; Ord. 705 § 2.1, 2000; Ord. 666 § 2.1, 1999; Ord. 627 § 1, 1997; Ord. 552 § 1, 1993; Ord. 300 § 6, 1980)

13.12.080 Water service connection charges.

A. Any property owner within the corporate limits of the city and within water utility local improvement districts Nos. 3A, 3B, 3C, 3D, 3F, Division 10 extension and Mount Olympus extension applying for meter installation and not requiring a main tap shall pay the minimum charge as follows:

Meter Size	Minimum Charge
5/8"—3/4"	\$295.00
72	415.00
Over 1"	The minimum charge shall be the actual cost of the meter and installation plus fifteen percent.

B. Any property owner within the corporate limits of the city and within water local improvement district No. 1, or water utility local improvement districts Nos. 2, 3, 4 and 5, or otherwise requiring a main tap, applying for a new water service shall pay a service, material and connection charge. This charge will include the cost of connection, meter and laying of pipe from the city water main to the property. The minimum charge so established is as follows:

Meter Size	Minimum Charge
5/8"—3/4"	\$710.00
72	945.00
Over 1"	The minimum charge shall be the actual cost of the meter and installation plus fifteen percent.

C. Cost shall be the cost to the city of the pipe, valves, connections, meters and appurtenances necessary to the installation of the service line and of the labor required to do the work. All service material including the water meter shall remain the property of the city.

(Ord. 705 § 2.3, 2000; Ord. 666 § 2.3, 1999; Ord. 627 § 3, 1997; Ord. 552 § 5, 1993; Ord. 304 § 3, 1981; Ord. 300 § 8, 1980)

13.12.085 Water system development charges.

A. Effective on and after October 1, 2003, any property owner within the corporate limits of the city applying for meter installation shall pay the following system development charge for the use of the water system:

Water Meter Size	ERU's	SDC
5/8"—3/4"	1	\$ 1,549.00
3/4"	1.5	2,324.00
72	2.5	3,873.00
1-1/2"	5	7,745.00
144	8	12,392.00
216	16	24,785.00
288	25	38,726.00

For water meter sizes larger than four inches, charges will be proportional to established charges.

B. The water system development charge for all residential and commercial customers located outside the corporate limits of the city shall be one hundred fifteen percent of the applicable charge established under this section.

(Ord. 757 § 1 (part), 2003)

13.12.090 System development charge administration.

A. Revenues from water system development charges shall be accounted for separately from other funds. System development charges and interest earned thereon may be expended only for capital costs, including interest expense, for which the system development charges were imposed.

B. The following situations shall be exempted from payment of the system development charges as outlined in 13.12.085:

1. Alterations or expansion of an existing building where no additional or larger water meter connections are requested.
2. The replacement of a building or structure with a new building or structure of the same size and use where no additional or larger water connections are requested.
3. A change in water meter size shall not be exempted from payment of the system development charge; however, a credit shall be given for the current system development charge on the old meter size.
4. No system development charge shall be required, nor credited for a change in water meter size that results in a decrease in meter size.
5. Upon city council approval, an exemption from or a reduction in the amount of the system development charge on land development that provides low-cost housing may be made.

(Ord. 757 § 1 (part), 2003)

13.12.100 Other charges, fees, penalties, deposits and credits.

Other charges, fees, penalties, deposits and credits are fixed and established as follows:

- A. Meter test deposit, forty-one dollars and fifty cents;
- B. Service rendered for less than a month, prorated by the day;
- C. Emergency service calls during regular business hours, no charge; nonemergency service calls during regular business hours, thirty dollars;
- D. Service calls during other than regular business hours, where it is determined that the problem is caused by failure of the customer's service line or plumbing or piping, fifty-three

dollars and fifty cents;

E. Unauthorized water turn-on charge, fifty-nine dollars;

F. Restoration of service after water service has been discontinued by the city for violation of ordinance or for failure to pay water charges:

1. During regular business hours, fifty-three dollars and fifty cents;

2. During other than regular business hours, seventy-one dollars;

G. Penalty for delinquency, if water charges are not paid within twenty days from the date of billing, shall be imposed in accordance with Section 13.06.350;

H. Temporary water supply, one hundred eighteen dollars and fifty cents plus water used at the current excess water rate per one hundred feet or fraction thereof;

I. Meter exchange credit, based on a depreciation schedule of twenty percent per year for the number of years the meter has been in service, but in no event shall the credit exceed the charge for the change;

J. There shall be no exchange credit for a change in water line size, except that a meter credit as provided in subsection I of this section will be allowed;

K. Return check charge (for any reason), twenty-three dollars and fifty cents;

L. Charge to remove a water meter at the request of property owner, forty-one dollars and fifty cents;

M. Charge for reinstallation of water meter which was pulled at the request of the property owner shall be one hundred fifty dollars and shall be charged whether reinstallation is for the same owner or a new owner;

N. Any contractor who wishes to regularly use water supplied by the city in the conduct of his/her business and due to the nature of his/her work relocates frequently may contract with the city for the use of water under the following terms and conditions:

1. The contractor must register with the city's water department,

2. The contractor must supply a city-approved water meter, transfer hoses and the equipment necessary to connect to the city's water system together with such other equipment as may be required by the city's water department,

3. The contractor shall present at time of registration his/her water meter(s) for registration, reading and scheduling of future meter readings,

4. The contractor shall pay the sum of one hundred dollars per month per water meter in addition to paying for all water used at the then current bulk rate per one hundred cubic feet (or fraction thereof),

5. The contractor shall present his/her registered water meter(s) for reading at the city's water department at least one time each month as scheduled regardless of whether such meter has been used by the contractor or not.

Any contractor who fails to conform to the above shall have his/her water drawing privileges suspended immediately. Delinquent accounts shall result in loss of water drawing privileges and shall bear interest at the rate of twelve percent per year. Such water drawing privileges shall only be reinstated upon compliance with the above terms and conditions and/or payment of any delinquency and upon paying a reinstatement fee of fifty dollars per meter.

(Ord. 736 § 2, 2002; Ord. 705 § 2.4, 2000; Ord. 675 § 3, 2000; Ord. 666 § 2.4, 1999; Ord. 627 § 4, 1997; Ord. 614, 1997; Ord. 552 § 8, 1993; Ord. 490 § 3, 1989; Ord. 358 § 30, 1983; Ord. 339 § 1, 1982; Ord. 304 § 5, 1981; Ord. 300 § 11, 1980)

13.12.100 13.12.105 Water rates and charges, other charges, fees, penalties, deposits and credits for customers located outside of the existing city limits.

A. The water rates and charges for all residential and commercial customers located outside of the corporate limits of the city shall be one hundred fifty percent of the applicable rates established under Section 13.12.060.

B. The other charges, fees, penalties, deposits and credits for all residential and commercial customers located outside of the corporate limits of the city shall be one hundred fifty percent of the applicable rates established under Section 13.12.100.

C. Water rates and charges as well as other charges, fees, penalties, deposits and

credits for other classes of customers located outside of the corporate limits of the city shall be fixed by the city council and written agreements shall be made between the city and each of these users.

(Ord. 705 § 2.5, 2000: Ord. 666 § 2.5, 1999: Ord. 552 § 9, 1993)

13.12.105 13.12.110 Water conservation plan.

The city manager or his designee shall develop and implement a water conservation plan on or before July 1, 1993. This water conservation plan shall be adopted by the city council by resolution and may include provisions such as public information and education, customer technical assistance, residential and commercial showerhead and faucet retrofit, residential and commercial toilet retrofits and the development of alternative residential and commercial irrigation systems. (Ord. 705 § 2.6, 2000: Ord. 666 § 2.6, 1999: Ord. 552 § 10, 1993)

13.12.115 Reduction in residential water rates and charges for low-income customers.

A. Residential customers whose qualifying income is at or below one hundred twenty-five percent of the currently available national poverty guideline as established by the U.S. Department of Health and Human Services will be entitled to a reduction in the rates and charges established in Section 13.12.060(A) ("base rate").

B. Residential customers whose qualifying income is at or below one hundred twenty-five of the currently available national poverty guideline as established by the U.S. Department of Health and Human Services will be entitled to a reduction in the rates and charges established in Section 13.12.060(B) ("commodity charge").

C. Qualifying income shall be the total adjusted gross income (AGI) of all people living in the residence for the calendar year immediately preceding the year the reduction is applied for.

D. For those customers who qualify under the provisions of subsections A, B, and C of this section, the water base rates shall be fixed at an amount equal to one-half of the rate established in Section 13.12.060(A), and the commodity charge shall be fixed at an amount equal to one-half of the applicable rate established in 13.12.060(B).

E. Such a reduction in water rates and charges shall take effect on the first day of the month following the receipt of a written request from the residential customer together with copies of their Internal Revenue Tax Forms as detailed in subsection C of this section.

F. An approved application for reduction in water rates under the provisions of this section shall be valid for a term of twelve months. No sooner than thirty days before, nor later than thirty days after the expiration of that term, the residential customer may reapply for an additional twelve-month term. The process for the submission, review and approval of that renewal shall be the same as for the initial application.

G. The reduction in rates contemplated under this section shall only be available to single-family residential customers and shall not be valid for other multifamily structures, such as apartments, boardinghouses, or other similar commercial customers.

(Ord. 773 § 1, 2004; Ord. 733 § 2, 2002; Ord. 705 § 2.7, 2000: Ord. 666 § 2.7, 1999: Ord. 627 § 5, 1997: Ord. 552 § 11, 1993)

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

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STATE OF WA
BY *mm*

FREDERICK E. COOPERRIDER,

Appellant,

vs.

THE CITY OF OCEAN SHORES, a
municipal corporation,

Respondent.

NO. 35497-7-II

**DECLARATION OF FILING
AND SERVICE**

PURSUANT TO RCW 9A.72.085, Linda L. Olsen declares as follows:

On April 23, 2007, I caused to be filed and served originals and/or copies of the Brief of Respondent City of Ocean Shores and this Declaration of Filing and Service by mailing, postage pre-paid, to the Clerk of this Court and to Joseph Scuderi and Nate Cushman, Cushman Law Office, 924 Capitol Way S., Olympia, WA 98501-8239.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 23rd day of April, 2007, at Tumwater, Washington.

Linda L. Olsen
Linda L. Olsen