

drussell@cityofbandon.org

From: Bill Nielson <wastewater@ci.bandon.or.us>
Sent: Thursday, September 12, 2019 9:53 AM
To: Denise Russell
Subject: FW: Rob Taylor Suit RE 2019 Water & Sewer Rate Increases
Attachments: Rob Taylor Suit RE 2019 Water & Sewer Rate Increases.pdf

From: M O'Dea [mailto:me_odea@hotmail.com]
Sent: Tuesday, July 30, 2019 10:14 AM
To: Bill Nielson <wastewater@ci.bandon.or.us>
Subject: Fw: Rob Taylor Suit RE 2019 Water & Sewer Rate Increases

From: Matt Winkel <mattwinkel@outlook.com>
Sent: Tuesday, July 9, 2019 12:46 PM
To: Sheryl Bremmer <sherbre@frontier.com>; Mary O'Dea <me_odea@hotmail.com>; Patricia Soltys <patricia318@mac.com>; Joe Kuehner <jkuehner@protonmail.com>; 'Steve Heine' <SRHeine@yahoo.com>; Rod Jackson <rjackson307@gmail.com>; 'Peter Braun' <councilmanbraun@gmail.com>; Madeline Seymour <ausvan@earthlink.net>
Cc: Matt Winkel <mattwinkel@outlook.com>
Subject: Rob Taylor Suit RE 2019 Water & Sewer Rate Increases

Utilities Commissioners:

For your information, attached please find a copy of the suit filed by Rob Taylor regarding the recent water and sewer rate increases enacted by the City Council per the Utilities Commission's recommendation.

Have a great day!

Matt

1
2
3 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR COOS COUNTY

4 ROB TAYLOR,

5 Plaintiff,

6 v.

7 CITY OF BANDON, an Oregon Municipal
8 Corporation,

9 Defendant.

Case No. 19CV28149

COMPLAINT

(Declaratory Relief)

Claim not subject to Mandatory
Arbitration

Filing Fee Amount: \$265

10
11 COMES NOW Plaintiff and alleges as follows:

12
13 **General Allegations**

14 1.

15 This is a complaint seeking declaratory relief and is filed pursuant to ORS 28.010
16 et seq.

17 2.

18 Plaintiff ROB TAYLOR, (hereinafter known as "Plaintiff") is an individual who
19 resides in the city of Bandon, Coos County, Oregon.

20 3.

21 Defendant CITY OF BANDON is a municipal corporation located in Bandon, Coos
22 County, Oregon.

23 4.

24 The city council for the City of Bandon is the legislative branch and policy-
25 making body for the City of Bandon which is legally compelled to follow the City of
26

1 Bandon Charter.

2 5.

3 Sections 46, 47, and 48 of the Bandon City Charter state water, sewer and utility
4 rates may only be increased by consent of the voters:

5
6 "Section 46. Limits on Water Rates Established Except by consent of the voters,
7 any increase in water rates in excess of rates in effect on September 1, 1994, are
8 hereby revoked. (As added by election held September 19, 1995, by a vote of 615
9 Yes to 357 No.)

10 Section 47. Limits on Sewer Rates Established. Except by consent of the voters,
11 any increase in sewer rates in excess of rates in effect on September 1, 1994, are
12 hereby revoked. (As added by election held September 19, 1995, by a vote of 620
13 Yes to 354 No.)

14 Section 48. Voter Approval Required for New Taxes or Fees. Except by consent of
15 the voters, the City Council shall not impose any new tax or new user fee, nor
16 increase any tax, utility rate, user fee or other charge exceeding taxes, rates, fees
17 and charges in effect on February 13, 1995."

18 6.

19 Under Section 49 of the City Charter, the City Council *only* has the power and
20 authority, subject to the provisions, limitations and restrictions contained in this Charter,
21 to establish and regulate the following fees:

22 (a) Planning Application Fees

23 (b) Engineering Review Fees

24 (c) Document Fees

25 (d) Gorse Abatement Fees

26 (e) City Facility Rental Fees

(f) City Equipment Rental Fees

(g) City Project Fees

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(h) Public Works Permit Fees

7.

On June 3, 2019, the city council for the City of Bandon met for their monthly city council meeting in Bandon, Coos County, Oregon wherein the Council agreed and voted to increase the rates charged for water and wastewater utility services, according to Resolution No. 19-08 Amending the Water Rate Schedule, *Exhibit 1*, and Resolution 19-09 Amending the Wastewater Utility Rate Schedule, *Exhibit 2*, notwithstanding the Charter prohibitions on fee increases without the consent of the City voters.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment)

8.

Plaintiff refers to Paragraphs 1 – 7 above and incorporate them by reference as though fully set forth herein.

9.

An actual controversy has arisen and now exists between Plaintiff and Defendant concerning whether Defendant has authority to increase the rate for water and wastewater utility.

10.

The City of Bandon misused their authority by basing their decision to increase the rates for water and wastewater utility on a request by the Bandon Utilities Commission. However, the Utilities Commission does not have the power to declare an emergency and neither is there grounds for official declaration of emergency under the Bandon City Municipal Code 1.06.020 that would justify a water and sewer rate increase in violation of Sections 46-48 of the City Charter.

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11.

The Utilities Commission's defined the emergency as a "projected venue shortfall." This is not an emergency according to the City of Bandon Municipal Ordinance 1.06.010(A).

12.

The decision to increase the utility rates for water and wastewater utility is void because it violates with the City of Bandon Charter at Sections 46 and 47.

13.

Plaintiff seeks a declaration by the Court that the City Council of Bandon cannot increase the rates for water and wastewater utility without consent by the voters and that Resolutions 19-08 and 19-09 must be declared void as a matter of law.

14.

Plaintiff has no adequate remedy at law.

15.

Plaintiff may be entitled to reasonable costs, attorney fees and disbursements against Defendant according to ORS 20.105.

* * * *

WHEREFORE, Plaintiff prays for judgment as follows:

- a. Declaring that Plaintiff seeks a declaration by the Court that the City Council of Bandon cannot increase the rates for water and wastewater utility without consent by the voters;
- b. Declaring that Resolutions 19-08 and 19-09 are void as a matter of law.
- c. Awarding Plaintiff its reasonable costs, attorney fees and disbursements against Defendant incurred herein according to ORS 20.105 and

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d. Granting such other and further relief as the Court may deem just and equitable.

DATED: June 25, 2019.

HUTCHINSON COX



By: _____
William H. Sherlock, OSB #903816
Email: lsherlock@eugenelaw.com
Of Attorneys for Plaintiffs
Trial Attorney: William H. Sherlock

19CV28149

RESOLUTION NO. 1908

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY
OF BANDON, OREGON, AMENDING THE WATER RATE SCHEDULE.

WHEREAS, the City Council has determined that retail water rates must be increased by twenty-one percent (21%) to provide adequate revenue funds for FY 2019-2020 maintenance and operation expenses of the water utility; and

WHEREAS, the Mayor and City Council have determined that the new water rates should become effective for all water utility customers beginning July 1, 2019.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council that the charges for water rate shall be in accordance with the "City of Bandon Water Utility Rates" schedule, dated "July 1, 2019," which is attached hereto and incorporated herein by reference; and

BE IT FURTHER RESOLVED that these water rates shall be effective for all water customers, beginning July 1, 2019; and

BE IT FURTHER RESOLVED that all previous water rates in conflict herewith are hereby repealed, and all other water service fees and policies shall remain as existing.

ADOPTED by the City Council of the City of Bandon, this 3rd day of June, 2019.

Mary Schamehorn, Mayor

Attest

Denise Russell, City Recorder

CITY OF BANDON
WATER UTILITY RATES
1-Jul-19

WA 01 Residential, inside city	1st2000Gal	\$28.44 \$1.57
WA 02 Commercial/industrial, Inside city	1st 2000 Gal	\$40.54 \$1.57
WA 03 Residential, outside city	1st 2000 Gal	\$38.88 \$2.63
WA 04 Commercial/industrial, outside city	1st 2000 Gal	\$50.98 \$2.63
WA 05 Additional unit rate-inside city-attached/detached residence (Duplex, triplex, etc.), apartment		\$7.91
WA 06 Additional unit rate-inside city, mobile home park, boat slip, berth, or dock space		\$3.96
WA 07 Additional unit rate-inside city-RV park, motel, bed & breakfast		\$1.22
WA 08 Additional unit rate-outside city-attached/detached residence {duplex, triplex, etc.}, apartment		\$11.85
WA 09 Additional unit rate-outside city-motel, bed & breakfast, RV Park		\$2.03
WA 10 Additional unit rate-inside city-commercial business, commercial office building, Industry, common food service facility, common laundry facility		\$7.91
WA 11 Additional unit rate-outside city-commercial business, commercial office building, industry, common food service facility, common laundry facility		\$11.85
WA 12 Additional unit rate-inside city-health/elderly care facility		\$3.51
WA 13 Additional unit rate-outside city-health/elderly care facility		\$5.86
WA 14 Outside City Water Bond		\$20.18
WA 15 2006 Clarifier & UV System Bonds		\$5.99
WA S8 City use only--no charge		\$0.00
WA 59 City use only-charge-Inside/outside city	1st2000Gal	\$11.64 \$1.39
-----Water hauling-inside city use	1st 2000Gal	\$16.34 \$1.57
-----Water hauling-outside city use	1st 2000 Gal	\$26.78 \$2.63

RESOLUTION NO. 19-09

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF BANDON, OREGON, AMENDING THE WASTEWATER RATE SCHEDULE.

WHEREAS, the City Council has determined that retail water rates must be increased by twenty-eight percent (28%) to provide adequate revenue funds for FY 2019-2020 maintenance and operation expenses of the wastewater utility; and

WHEREAS, the Mayor and City Council have determined that the new water rates should become effective for all wastewater utility customers beginning July 1, 2019.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council that the charges for water rate shall be in accordance with the "City of Bandon Wastewater Utility Rates" schedule, dated "July 1, 2019," which is attached hereto and incorporated herein by reference; and

BE IT FURTHER RESOLVED that these water rates shall be effective for all wastewater customers, beginning July 1, 2019; and

BE IT FURTHER RESOLVED that all previous water rates in conflict herewith are hereby repealed, and all other wastewater service fees and policies shall remain as existing.

ADOPTED by the City Council of the City of Bandon, this 3rd day of June, 2019.

Mary Schamehorn, Mayor

Attest:

Denise Russell, City Recorder

CITY OF BANDON
WASTEWATER UTILITY RATES
1-Jul-19

SW 01 Residential, inside city	1st 2000 Gal	\$29.08
	Winter (11)	\$4.81
	Summer (6)	\$3.14
SW 02 Commercial/Industrial, inside city	1st 2000 Gal	\$29.08
		\$4.81
SW 03 Residential, outside city	1st 2000 Gal	\$45.85
	Winter (11)	\$7.21
	Summer (6)	\$4.70
SW 04 Commercial/Industrial, outside city	1st 2000 Gal	\$45.85
		\$7.21
SW 05 Residential fixed--No water, inside city		\$58.11
SW 06 Residential fixed--No water, outside city		\$80.64
SW 07 Additional unit rate-inside city-attached/detached residence (per unit in a Duplex, Triplex, etc.), apartment (per rental unit to which the tenant has key access, and which has a bathroom(s) and full cooking facilities; plus per washer in a common laundry facility), commercial business (per unit, attached or detached, operating as an independent business), commercial office building (per office or suite of offices operating as an independent business), boat slip, berth, or dock space (per space, when utilized as a residence), common food service facility (per kitchen when functioning as a common food preparation facility for another use), common laundry facility (per facility when functioning as common laundry facility for another use, except as otherwise specified), industry (per unit, attached or detached)		\$11.94
SW 08 Additional unit rate-Inside city-mobile home park (plus per washer in a common laundry facility)		\$11.94
SW 09 Additional unit rate-inside city-motel, bed & breakfast (plus per washer in a common laundry facility)		\$5.88
SW 10 Additional unit rate-inside city-RV park (per space, plus per washer in a common laundry facility)		\$7.51
SW 11 Additional unit rate-inside city-health/elderly care facility (per rental unit to which the tenant has key access, and which has a Bathroom and minimal, or no, cooking facilities)		\$9.70
SW 20 Special strength customer-inside city (restaurant, laundromat, special)	1st 2000 Gal	\$19.42
		\$5.81
SW 68 City use only - no charge		\$0.00
SW 69 City use only--Charge--inside/outside city	1st 2000 Gal	\$29.08
		\$4.81