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7	IN THE CIRCUIT COURT FO	OR THE STATE OF OREGON
8	FOR THE COUNTY	OF MULTNOMAH
9	LLOYD ANDERSON, PAIGE CRAFORD, and MILLARD CHRISTNER,	Case No. 1112-15957
11	Plaintiffs,	SECOND AMENDED COMPLAINT
12	V.	Declaratory Relief, Equitable Accounting, Injunction Ancillary to Declaratory
13	CITY OF PORTLAND, an Oregon Municipal Corporation,	Relief
14	Defendant.	NOT SUBJECT TO ARBITRATION
15		
16	For their complaint, plaintiffs alle	ge:
17	INTROD	UCTION
18		1.
19	This is an action by residents of Portland,	, Oregon against the City of Portland (the
20	"City"), to which plaintiffs have paid fees for wa	ter and sewer services. Plaintiffs bring this
21	action to obtain a declaration that the City is not	authorized under the City Charter to spend or
22	otherwise divert the fees paid by plaintiffs and ot	ther ratepayers for uses that are unrelated to the
23	provision of sewer and water services. In addition	on, plaintiffs seek other relief, including an
24	accounting, a court-appointed independent audito	or to determine the extent of the City's
25	unauthorized expenditures, and an order requirin	g that the City reimburse such amounts to the
26	dedicated water and sewer funds to preserve such	n monies for authorized expenditures.

PARTIES	AND	CENER	AT AT	IFCA	TIONS
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Plaintiff Lloyd Anderson is a Portland resident and a subscriber of water and sewer services from his floating home association which passes along charges imposed by the City by and through the Portland Water Bureau ("PWB") and Bureau of Environmental Services ("BES"). Plaintiff Anderson has paid and continues to pay, through his association, charges for City water and sewer fees which have been increasing significantly in recent years. Plaintiff Anderson is a former Portland City Commissioner and, in such capacity, was previously charged with overseeing water and sewer functions currently undertaken by PWB and BES. Plaintiff Anderson has paid and continues to pay higher water and sewer rates because of the City's unauthorized misappropriation and diversion of water and sewer fees paid by plaintiffs and other ratepayers.

Plaintiff Paige Craford is a Portland resident and subscriber of water and sewer services provided by the City by and through the PWB and BES. Plaintiff Craford has paid and continues to pay directly to the City water and sewer fees, which have been increasing significantly in recent years. Plaintiff Craford has paid and continues to pay higher rates for water and sewer service because of the City's unauthorized misappropriation and diversion of water and sewer fees paid by plaintiffs and other ratepayers.

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20 4.

Plaintiff Millard Christner is a Portland resident and a subscriber of water and sewer services provided by the City by and through the PWB and BES. Plaintiff Christner has paid and continues to pay to the City water and sewer fees for his residence and apartments which he owns. The fees have been increasing significantly in recent years. Plaintiff Christner has paid and continues to pay higher rates for water and sewer service because of the City's unauthorized misappropriation and diversion of water and sewer fees paid by plaintiffs and other ratepayers.

1 5.

2	Defendant City of Portland is an Oregon municipal corporation. The City, by and
3	through PWB, provides water service to residential and commercial customers in the Portland
1	area. The City, by and through BES, provides sewer service to residential and commercial
5	customers in the Portland area. The budgets of PWB and BES are supported primarily by utility
5	rates and fees. The City charges and collects water and sewer fees from its customers, including
7	the plaintiffs who subscribe to these services.

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With respect to monies received by the City for water services:

Money from the sale of water and charges related to water works or service shall be placed in the Water Fund. After deducting [certain sinking fund requirements and operating and maintenance expenses,] the [City] Council may transfer any excess in the Water Fund to the Water Construction Fund. *** [M]oney in the Water Fund or the Water Construction Fund shall not be transferred to the General Fund of the City, nor to special funds unrelated to the water works, water system and the sinking funds for water bond debt service.

Portland City Charter § 11-104 (emphasis added).

16 7.

With respect to monies received by the City for sewer services:

"For all purposes relating to design, construction, acquisition, operation, maintenance and contract requirements of sewage treatment or purification facilities and related facilities, the City may fix fees and charges for connection or use or both of sewers and sewage purification or disposal systems to be paid by property which is served or is capable of being served for use of the sewage disposal system. *** The City may enter into contracts relating to sewage disposal, treatment or purification or all such functions. The City may impose charges for sewage transportation, disposal, treatment or purification or any or all such functions, on property outside the City served through City facilities, at rates no less than those imposed for similar service inside the City to similar classifications. Proceeds of such charges shall be placed in the Sewage Disposal Fund, and may be expended for any matter connected with the sewer or sewage disposal or treatment system of the City, and bonded debt and debt service related thereto."

1	Portland City Charter § 11-302 (emphasis added).	
2	8.	
3	In its memorandum to the City Auditor of June 16, 2010, the City Attorney's office stated	
4	that "Water Bureau money cannot be spend on matters 'unrelated' to the Water System" and	
5	further said that expenditures were "related" if the primary purpose was to promote the	
6	objectives of the water services and if the expenditures were reasonably calculated to promote	
7	those objectives. In addition, the City Attorney made clear that the City Charter authorized the	
8	collection and expenditure of sewer fees for purposes directly related to the operation of the	
9	sewer utility.	
10	Based, in part on this advice, the Portland City Auditor conducted an audit of PWB and	
11	BES and examined whether utility ratepayer money has been used for non-utility purposes. The	
12	audit revealed "that some spending of ratepayer money is not consistent with the planning,	
13	budget, and rate setting process, and it is not always clear how these items are directly related to	
14	providing water and sewer services."	
15	9.	
16	In contravention of the Portland City Charter, the City has used Water Fund monies	
17	(and/or other monies paid to the City by water ratepayers) for numerous purposes not related to	
18	water services. Such unauthorized expenditures include, but are not necessarily limited to, the	
19	following:	
20	a. Public financing of political campaigns.	
21	b. Portland Loo Projects and maintenance.	
22	c. Purchase of and renovation of Rose Festival building.	
23	d. Hiring of additional staff including former Bureau of Development Services	
24	employees to perform work unrelated to the water system (e.g. Rose Festival building	
25	renovations, Dodge Park renovations, etc.).	
26	e. Dodge Park master plan and park projects.	

1	f.	Construction, staffing and operation of a so-called "Water House."
2	g.	Development and maintenance of hydro parks.
3	h.	Powell Butte II project non-water related park amenities (new caretaker residence,
4		amphitheater, etc.).
5	i.	Green Streets and other transfer payments to BES and other agencies.
6	j.	Park Bureau decorative fountain modifications and maintenance.
7	k.	Costs associated with Rose Festival ships.
8	l.	Utility relocation costs (normally paid for by project sponsors) for Street Car and
9		light rail projects.
10	m.	Costs associated with publishing books.
11	n.	Bear Creek House Repairs.
12	0.	Bull Run Lake Cabin Rehabilitation expenses.
13	p.	Bull Run Tour Bus and Tour Operation
14	q.	Domestic travel expenses for City Commissioners and staff unrelated to City water
15		services.
16	r.	International travel expenses for staff unrelated to City water services.
17	s.	Concert and community event sponsorships.
18	t.	Public opinion surveys.
19	u.	Low income system development charge exemptions for developers of low-income
20		housing.
21	v.	Water Bureau contributions to Hurricane Katrina relief.
22	w.	Charitable donations and grants.
23	x.	Professional memberships and conferences unrelated to City water services.
24		10.
25	` Dı	ne at least in part to the unauthorized expenditures referenced in paragraph 9, above, the
26	PWB has	increased water rates by approximately 55% since June 2008 and anticipates raising

1	rates another 14% in 2012. Such unauthorized expenditures have significantly diminished the
2	Water Fund.
3	11.
4	In contravention of the Portland City Charter, the City has used Sewage Disposal Fund
5	monies (and/or other monies paid to the City by sewer ratepayers) for numerous purposes not
6	connected to sewer services. Such unauthorized expenditures include, but are not necessarily
7	limited to, the following:
8	a. Public financing of political campaigns.
9	b. Park arborists and invasive species control expenses.
10	c. Greenspace land acquisitions under the pretext of stormwater management.
11	d. Centennial Mills acquisition led by Portland Development Commission.
12	e. River planning activities.
13	f. A significant portion of Portland Harbor Superfund Investigation costs.
14	g. Charitable giving, professional association memberships and conference registration.
15	h. Travel expenses unrelated to City sewer services.
16	i. Event and project sponsorships.
17	j. "Green Street" expenses associated with bike boulevards.
18	k. Art and bike racks.
19	1. "Gray to Green" program expenditures.
20	12.
21	Due at least in part to the unauthorized expenditures referenced in paragraph 11, above,
22	the BES has and will substantially increase sewer rates. Such unauthorized expenditures have
23	significantly diminished the Sewage Disposal Fund.
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1	13.
2	Counsel for plaintiffs previously made written demand upon the City to take immediate
3	action to discontinue and provide redress for these unauthorized expenditures. The City has
4	failed and refused to respond to such written demand or take corrective actions.
5	First Claim for Relief (Declaratory Relief)
6	14.
7	Plaintiffs reallege paragraphs 1 through 13 as if fully set forth herein.
8	15.
9	An actual controversy exists over whether the City has improperly expended sewer and
10	water fees received by plaintiffs and other ratepayers on projects unrelated to providing water
11	and sewer services.
12	16.
13	
14	Plaintiffs are entitled to a declaration that the City has improperly expended monies from
15	the Water Fund and Sewage Disposal Fund (and/or other monies received by plaintiffs and other
16	ratepayers) and that any such future expenditures by the City are not authorized under the
17	Portland City Charter.
18	Second Claim for Relief
19	(Equitable Accounting)
	17.
20	Plaintiffs reallege paragraphs 1 through 16 as if fully set forth herein.
21	18.
22	The City receives and holds water and sewer fees for the benefit of plaintiffs and other
23	ratepayers. The City has diverted and expended water and sewer fees paid by plaintiffs and other
24	ratepayers for unauthorized purposes not related to the provision of water and sewer services.
25	The City should be required to provide an accounting as to all monies expended from the Water
26	E 1 10 D' 15 that has failed and infrared to amoraide that some despite demand

Fund and Sewage Disposal Fund but has failed and refused to provide that same despite demand.

2	Plaintiffs have no adequate remedy at law. The accounts maintained by the City are
3	particularly complex, and the amounts held (and improperly expended) by the City were
4	supposed to be held in dedicated funds and used exclusively for the benefit of ratepayers and in
5	furtherance of the provision of water and sewer services.
6	20.
7	The Court should require that the City provide an accounting of all monies expended
8	from the Water Fund and Sewage Disposal Fund from January 1, 2000 to present. The Court
9	should also appoint an independent auditor and/or referee to conduct (at the City's expense) an
10	examination of all expenditures from the Water Fund and Sewage Disposal Fund to determine all
11	expenditures not related to the provision of water and sewer services (and the amounts thereof).
12	Plaintiffs also seek an order requiring the return to the Water Fund and Sewage Disposal Fund of
13	all monies wrongfully expended therefrom by the City, and imposing a constructive trust on all
14	monies improperly transferred or expended by the City from the Water Fund and Sewage
15	Disposal Fund.
16	21.
17	Plaintiffs seek to preserve and recover amounts previously paid to the City by not only
18	plaintiffs, but also by all other water and sewer ratepayers. Plaintiffs are therefore also entitled
19	to an award against the City of all attorney fees and costs incurred herein under the common
20	fund (and any related) doctrine.
21	Third Claim for Relief
22	(Ancillary Equitable Relief)
23	22.
24	Plaintiffs reallege paragraphs 1-21 as set forth herein.
25	ODS 28 080
26	ORS 28.080 provides that further relief based on a declaratory judgment may be granted

whenever necessary or proper.

1	1	24.

If plaintiffs prevail on their first claim for relief, a declaratory judgment entered in
accordance therewith would be inadequate in the absence of further and additional relief. Such
declaratory relief, without more, would leave the plaintiffs, and those on behalf of whom this
lawsuit is filed, without complete relief.
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6 25.

Plaintiffs are entitled to a mandatory injunction, ancillary to the claim of declaratory relief, requiring the defendant to return to the Water Fund and Sewage Disposal Fund all of the monies wrongfully expended therefrom by the City from January 1, 2000 to the present.

10 26.

Plaintiffs are further entitled to an accounting and other forms of relief as referenced in paragraphs 17-21 herein.

13 27.

Because plaintiffs also seek to preserve and recover amounts previously paid to the City by not only plaintiffs, but by all water and sewer ratepayers, plaintiffs are also entitled to an award against the City of all attorneys' fees and costs incurred herein under the common fund (and any related) doctrine.

WHEREFORE, plaintiffs pray for order and judgment as follows:

- 1. Declaring that the City's past and future expenditures of monies from the Water Fund and Sewage Disposal Fund (and/or other monies received by plaintiffs and other ratepayers) for purposes not related to the provision of water and sewer services are improper and unauthorized under the Portland City Charter;
 - 2. Requiring that the City provide an accounting of all monies expended from the Water Fund and Sewage Disposal Fund from January 1, 2000 to present, and appointing an independent auditor and/or referee to conduct (at the City's expense) an examination of all

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1	expenditures from the water Fund and Sewage Disposal Fund to determine which expenditures	
2	are not related to the provision of water and sewer services (and the amounts thereof);	
3	3.	Requiring that the City reimburse and pay to the Water Fund and Sewage
4	Disposal Fun	d all monies wrongfully expended therefrom, and imposing a constructive trust on
5	all monies im	aproperly transferred or expended by the City from the Water Fund and Sewage
6	Disposal Fun	d;
7	4.	Awarding plaintiffs their reasonable attorney fees, costs and disbursements
8	incurred herein; and	
9	5.	Granting to plaintiffs such other, different or ancillary relief as the Court deems
10	just and equitable.	
11		
12		DATED this 11 th day of June, 2012.
13		DAVIS WRIGHT TREMAINE LEP
14 15		By By
16		John DiLorenzo, Jr., OSB #802040 Email: johndilorenzo@dwt.com
17		Aaron K. Stuckey, OSB #954322 Email: aaronstuckey@dwt.com
18		Telephone: 503-241-2300 Facsimile: 503-778-5299
19		Of Attorneys for Plaintiffs
20		Of Attorneys for Figure 1
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CERTIFICATE OF SERVICE

I hereby certify that, on June 11th 2012, I served one copy of the foregoing **SECOND AMENDED COMPLAINT** by causing a copy thereof to be mailed by US mail, and served by electronic mail to the following:

Terence L Thatcher Deputy City Attorney Portland Office of City Attorney 1221 SW 4th Ave, Ste 430 Portland, OR 97204

DATED this 11th day of June, 2012.

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