

NOV 06 2018

AT 10:29 (AM/PM)  
BY: LF DEPUTY

This letter is a "Demand for Recall and Discharge" of Cheryl Selby, holding the elected position of Mayor, Position #1, in the municipality of the City of Olympia, of which your office is the elections officer whose duty it is to receive and file a declaration of candidacy for the office concerning the incumbent of which the recall is to be demanded. The process is detailed further under RCW 29A.56.110, of which portions are included, and embolded as to the applicable charges of acts that qualify the elected official to be recalled:

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**RCW 29A.56.110**

"Whenever any legal voter of the state or of any political subdivision thereof, either individually or on behalf of an organization, desires to demand the recall and discharge of any elective public officer of the state or of such political subdivision, as the case may be, under the provisions of sections 33 and 34 of Article 1 of the Constitution, the voter shall prepare a typewritten charge, reciting that such officer, naming him or her and giving the title of the office, has committed an act or acts of **malfeasance**, or an act or acts of **misfeasance** while in office, or has **violated the oath of office**, or has been guilty of any two or more of the acts specified in the Constitution as grounds for recall."

(1) "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;

(a) Additionally, "misfeasance" in office means the performance of a duty in an improper manner; and

(b) Additionally, "malfeasance" in office means the commission of an unlawful act;

(2) "Violation of the oath of office" means the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law.

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The basis for this the charge is;

1. Violation of Oath of Office.
2. Malfeasance.

These charges have been established through the actions and inactions of the named party, in and through the performance of their duty for the position for the office they hold.

As cited on the City of Olympia's website under "City Council & Mayor":

**"The Council-Manager form of government is similar to a business corporate model, with the Council serving as the Board of Directors who sets executive policy."**

The executive policy is then directed to the current City Manager, Steve Hall, whom as stated on the City of Olympia's website under "Executive":

**" As City Manager, it's my responsibility to turn the Council's policy guidance into action."**

The actions of the city employees are thus based upon the policies of the Mayor and Councilmembers.

The city's Mayor and Council have been made aware of the wrongful actions that have been committed and continue to be committed. The failure to act to correct the wrongdoing is prima facie showing, of misfeasance, malfeasance, and/or violation of oath of office. These actions include the use of "Fraud/Forgery" and "Theft" for profit of the city's municipal corporation, through improper/excessive billing of Storm and Surface Water rates and fees. The city also wrongfully reduces its own obligation to pay stormwater fees to 30% of proper rates.

The proper amount to be charged for stormwater is indicated in Olympia Municipal Code 13.16 under subsections 13.16.050 and 13.16.170. Section 13.16.170 Sunset clause provides application of level of rate upon such time that the utility has no bond debt to revert to 1992 rate. The city has no bond debt for the Storm and Surface Water Utility. The following is inserted section of the current version of the O.M.C. 13.16, of which portion in bold print for emphases:

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#### **13.16.170 Sunset clause**

The rates as increased in the ordinance codified in this section **shall revert back to the 1992 (prior to the ordinance codified in this section) level upon payment in full of the bonds issued by the city which are secured by said increase in rates.**

**(Ord. 5350 §6, 1992).**

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It is notable that the city does use the rate from 1992 as the rate schedule for "streets" when calculating stormwater rates and fees for itself, then reduces the amount to 30% of the rate, which in violation of state law (RCW 35.67.025). However when calculating stormwater fees for the vast majority of utility customers it serves, it bills the rates and fees from 2017 schedule currently found in section 4.24.010 of the OMC. Attached below in the "Information" portion of this Demand Letter is a copy of a email from a city manager verifying the city's payment of stormwater fees at 1992 rate and further reduced to only 30% of the rate.

Billing of Stormwater fees in excess of the 1992 rate schedule constitutes forgery/fraud in falsely making a written instrument (RCW 9A.60.020) through the billing for stormwater in amounts higher than the ordinance provides under OMC 13.16.170.

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#### **Charges for Recall of Elected Officer**

The first charge is "**Malfeasance**" as provided in RCW 29A.56.110 (1)(b).

The action or inaction of correcting the policy of fraud/forgery in billing of Stormwater fees, is prima facie showing of an act of acceptance and continuation of a criminal act, Fraud. As provided in RCW 29A.56.110 (1)(b) above which states, malfeasance is "the commission of an unlawful act". The charge of malfeasance is grounds for a charge of Recall and Discharge.

The second charge is "**Malfeasance**" as provided in RCW 29A.56.110 (1)(b). Upon receiving the stormwater payment of utility customers, the crime of Theft (RCW 9A.56) occurs in varying degrees by the City of Olympia. The current rates billed and collected are typically 265% more than authorized by OMC 13.16.170 Sunset Clause which sets rates. As provided in RCW 29A.56.110 (1)(b) above which states, "the commission of an unlawful act" is malfeasance is grounds for a charge of Recall and Discharge.

The third charge is "**violation of oath of office**". Upon taking office, the above named elected officer took an oath of office which states:

**"I will support the Constitution of the United States and the Constitution and Laws of the State of Washington, and I will faithfully and impartially perform and discharge the duties of the office.."**

The maintaining of a policy to commit fraud/forgery upon the citizens of the City of Olympia, and to collect excess fees above those according to city code is not faithfully and impartially performing the duties of the office. The breaking of state law by maintaining a policy to commit fraud and theft, for the city government is a violation of the oath of office.

The fourth charge is **malfeasance** in violation of **RCW 35.67.025 Public property subject to rates for stormwater control facilities**. The city mayor and council has been made aware and failed to make correction to city policy. The action or inaction of the council to act to correct the wrongdoing is prima facie showing, of misfeasance, malfeasance, and/or violation of oath of office.

**Summary Request for and Demand for Recall and Discharge**

Additional documentation is attached hereto (beyond certify oath) for consideration and evidence as to the stated charges.

I am a legal voter in the state of Washington.

I request that a recall and discharge action be commenced immediately upon above named public officer according to the laws of the state of Washington.

I certify under oath, subject to the laws of Washington state, that I have knowledge of the foregoing alleged facts to be true.

  
Jon S. Pettit

Dated

11/6/2018

**Attached information for reference purposes of above charges.**

The following is an insertion of RCW 9A.60 Fraud, section 9A.60.020 which defines the element of law related to intentional billing of improper/excessive billing.

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## Chapter 9A.60 RCW

### FRAUD

#### 9A.60.020

#### Forgery.

- (1) A person is guilty of forgery if, with intent to injure or defraud:
- (a) He or she falsely makes, completes, or alters a written instrument or;
  - (b) He or she possesses, utters, offers, disposes of, or puts off as true a written instrument which he or she knows to be forged.
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The following is an inserted email from the city of Olympia Water Resources Director Andy Haub, P.E., stating rate and determination of amount for stormwater fees of and for the City of Olympia.

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**Subject:** City of Olympia - Stormwater Rates  
**From:** "Andy Haub" <a~~h~~aub@ci.olympia.wa.us>  
**Date:** Thu, September 6, 2018 1:34 pm  
**To:** "jon@jonpettit.us" <jon@jonpettit.us>  
**Priority:** Normal

**Options** [View Full Header](#) | [View Printable Version](#) | [Download this as a file](#) | [Add to Address Book](#) | [View Message Details](#) | [View as plain text](#)

Hello Mr. Pettit,

I apologize for not getting back to you sooner. I received both of your phone messages, but have been in and out of the office the past two weeks-----and too busy when I am here.

As you know single family residence accounts are charged a flat rate for storm and surface water. Non-single family accounts including City streets are charged based on the quantity of impervious on the parcel, or in the case of streets, in the right-of-way.

The calculation for streets is as follows:

Impervious surface, square feet / 2,528 square feet \* stormwater charge per 2,528 \* 0.30 =  
monthly charge

The 2,528 square feet is defined as our single family equivalent. It is the quantity of impervious surface typical of a single family residence. Using it helps provide financial equivalency between residential and non-residential charges. The .30 multiplier is the set by the State as appropriate for highways, and by association City streets.

For the case of City streets, the calculations is

$38,664,500 / 2,528 * 4.44 * 0.30 = \$20,372$  Or \$244,467 annually. As we have provided to you previously, our annual charge to City streets is \$244,000.

Let me know if you need anything else. I'll be more prompt with my reply-----

Thanks, Andy

Andy Haub, P.E., Water Resources Director, City of Olympia Public Works, P.O. Box 1967, Olympia. WA  
98507-1967, 360-753-8475, ahaub@ci.olympia.wa.us

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The city of Olympia falsely makes written instruments they present as "utility bills", to utility customers for payment. An example is hereby presented:



**Account information**

Account number 132706-28871  
 Service address 2400 Morse Rd SE  
 Due date 9/27/2018  
 Current billing date 9/7/2018  
 Previous billing date 07/06/2018  
 Billing cycle 11-78

OPW0907A AUTO MIXED AADC 926  
 7000002027 00.0007.0121 1995/1



TERRY BALLARD  
 PO BOX 5961  
 LACEY WA 98509-5961

**Service Charge**

Ready To Serve .75" \$51.92  
 Storm and Surface Water \$51.92  
 Strmwtr Duplex Bi-Mo \$53.48  
 Total Storm and Surface Water \$53.48  
 State Refuse Tax \$0.00  
**Total current charges \$105.40**  
 Last bill amount \$105.40  
 Previous payment recv'd 07/24/18 -\$106.00  
 Total adjustments \$0.00  
**Balance forward: -\$0.60**  
**Total amount due: \$104.80**  
 Your rates include applicable state taxes.

**Water usage**

Graph displays your metered water consumption in cubic feet. cubic foot (cf) = 7.48 gallons.

Your average water use for this billing period was 0.00 cubic feet a day; one year ago it was 0.00 cubic feet a day.

Meter Number	Previous Reading (cf)	Current Reading (cf)	Usage (cf)

**Timely topics**

Our billing system just got an upgrade and now is a great time to consider signing up for automatic payments. You can access your account or sign up anytime at [olympiawa.gov/utilitybilling](http://olympiawa.gov/utilitybilling)

- Do NOT write or staple notes to bill
- Payment options and glossary on back
- Questions? Call 360.753.8340, M - F; 8 - 5



**Payment coupon**

Account number 132706-28871  
 Name Terry Ballard  
 Service address 2400 Morse Rd SE  
 Service billing date 9/7/2018  
 Current charges due date 9/27/2018  
**Total amount due \$104.80**  
 Amount Enclosed \$ \_\_\_\_\_

1992 Rate..... Set by Ordinance # 5125 with adjustment as indicated on Ordinance # 5350, hereto attached:

ORDINANCE NO. 5350

AN ORDINANCE relating to storm drainage services charges; amending subsection 4.24.010(4) of Chapter 4.24 of the Olympia Municipal Code and adding a NEW SECTION to, amending and repealing sections of Chapter 13.16 of the Olympia Municipal Code

THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. That Subsection 4.24.010(4) of the Olympia Municipal Code and ordinances pertaining thereto are hereby amended to read as follows:

4.24.010 Computation and assessment of charges.

4. Storm and Surface Water.

At the time of issuance of clearing,  
filling, excavating or grading  
permit \$20.00/1,000 SF

At the time of issuance of a building  
permit \$20.00/1,000 SF

a. Storm Drainage Service Charges.

i. Residential Parcel. All parcels in the city shall be subject to a monthly charge for storm drainage service in accordance with the following schedule:

Single-family Parcels \$4.50 6.00/Utility account  
(Regardless of date approved)

Plats approved after 1990  
with signed maintenance  
agreement \$5.00/Utility Account

Duplex Parcels \$9.00 12.00/Utility Account  
(Regardless of date approved)

ii. Nonresidential Parcel. A charge per utility account will be assessed monthly as follows:

Administrative Fee \$8.44 8.50 plus  
(Regardless of date approved)  
For-Runoff-Quantity 1.49-



<u>For parcels developed after January 1990 (Category I)</u>	\$2.40 per billing unit plus or
For-Runoff-Quality	4.13 per 2,528 square feet of impervious area except all roof area
<u>For parcels developed between January 1980 and January 1990 (Category II)</u>	\$4.44 per billing unit or
<u>For parcels developed before January 1980 (Category III)</u>	\$6.60 per billing unit.

iii. For developed parcels without structural impervious areas, the following monthly charge shall be assessed:

Single-family and Duplex Zoned	\$2.25 per parcel
Commercial/Industrial Zoned	2.25 per billing unit based on a total parcel area

iv. Undeveloped parcels No Charge

b. State Highway Charge.

Monthly fee for state highway right-of-way 30% of the storm drainage service charges

c. Other Roadway Charges.

Monthly fee for roadway right-of-way, other than state highways, within the city boundary 30% of the storm drainage service charges

Section 2. That Section 13.16.080 of the Olympia Municipal Code and ordinances pertaining thereto are hereby amended to read as follows:

13.16.080 Interim storm drainage system general facilities charge.

In recognition of the city's investment in the storm drainage system each applicant for a development permit shall pay an ~~interim~~ general facilities charge computed as follows:

A. At the time of issuance of a clearing, filling, excavating, or grading permit, an amount as set forth in Title 4 of this code.

B. At the time of issuance of a building permit an amount as set forth in Title 4 of this code.

All moneys collected from the ~~interim~~ general facilities charge will be deposited in an account to be used for the capital improvements program of this utility.

~~The interim charge will be re-evaluated following a complete inventory assessment of the storm drainage system.~~

Section 3. That a NEW SECTION is hereby added to Chapter 13.16 of the Olympia Municipal Code to read as follows:

NEW SECTION. Credit for additional storm drainage detention/retention or water quality treatment.

A. Nonresidential parcels.

Upon application to the department of public works and submittal of proof that an approved stormwater system is providing detention/retention or water quality treatment in excess of the policies and standards that existed at the time of development, the director may approve a reduction in the applicable service charges indicated in Section 4.24.010(4) of this code. That reduction will be accomplished by adjusting the development category of the affected parcel to the next highest category (e.g., from Category III to Category II) and calculating stormwater charges accordingly.

B. Residential plats.

Upon application to the department of public works, the director may approve a reduction in the service charge assessed under OMC 4.24.010(4), for parcels in a plat approved prior to 1990, to that rate provided for plats approved after 1990, if it can be shown that said plat has a stormwater system that meets or exceeds the standards enacted in 1990 and the entity/person responsible therefore executes an approved maintenance agreement with the City.

Section 4. That Sections OMC 13.16.090, OMC 13.16.100 and OMC 13.16.110 of the Olympia Municipal Code and ordinances pertaining thereto are hereby repealed.

Section 5. Default in Maintenance. Should a responsible party under a stormwater maintenance agreement fail to comply with the terms thereof, the city, through

its public works department, shall have the authority to enter upon the stormwater facility(ies) and repair or maintain same. The cost therefore shall be assessed against the defaulting responsible party.

Section 6. That a NEW SECTION is added to Chapter 13.16 of the Olympia Municipal Code to read as follows:

NEW SECTION. Sunset Clause.

The rates as increased in this ordinance shall revert back to the 1992 (prior to this ordinance) level upon payment in full of the bonds issued by the City which are secured by said increase in rates.

Section 7. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance, or application of the provision to other persons or circumstances, shall be unaffected.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PASSED: *December 15, 1992*

APPROVED: *December 15, 1992*

PUBLISHED: *December 19, 1992*

The proper rate to be charged should be \$ 9.00/month. The amount charged by the city (as shown on billing) is \$ 26.74/month.

When paid by customer, the fraudulent instrument becomes theft. The varying degrees of theft, is based upon the cumulative total of excess fees collected from each individual utility customer. If the cumulative amount is less than \$ 750.00 it is considered Theft in the third degree, a gross misdemeanor. If more than \$ 750.00 but less than \$ 5,000.00 it is considered Theft in the second degree, a class C Felony. If greater than \$ 5,000.00 it is considered a class B Felony.

In the example bill provided, the excess cumulative total increases by \$ 17.74/month or \$212.88/year. If this parcel accumulated an excess for 4 years of time, the theft level would be considered a class C Felony.

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#### **13.16.050 Charges for use of the storm drainage system**

- A. Any and all use of the storm drainage system shall be subject to the payment of all fees, costs and charges specified herein.
- B. Residential and nonresidential developed parcels that are vacant shall be subject to full payment of all fees, costs and charges for use of the storm drainage system as specified herein, in accordance with the schedule in Section 4.24.010.

**(Ord. 5312 §1, 1992; Ord. 5123 §1(part), 1990).**

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Additionally, the city in and through the direction and policies of the Mayor and Council, have violated RCW 35.67.025 by failing to pay proper fees to the Storm and Surface Water Utility through discounting the rate and paying only 30% of proper rate as charged to private persons and private property. RCW 35.67.025 is hereby inserted as follows:

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**RCW 35.67.025**

**Public property subject to rates and charges for stormwater control facilities.**

Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for stormwater control facilities to the same extent private persons and private property are subject to such rates and charges that are imposed by cities and towns pursuant to RCW 35.67.020. In setting these rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property.

[ 1986 c 278 § 55; 1983 c 315 § 1. ]

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