

**HIGHLAND HILLS**  
**A PRIVATE COMMUNITY**  
**P O Box 2198**  
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August 11, 2009

Ms. Linda Herzog  
Interim City Manager  
City of Sequim  
City Hall  
152 West Cedar Street  
Sequim. WA 98382

Dear Ms. Herzog:

It has come to the attention of the Highland Hills Maintenance Commission's Board of Directors (HHMC) that the members of the HHMC have been overcharged, and continue to be overcharged, for sewer user fees by the City of Sequim (Sequim). The total amount of the overcharges since 2003 is in excess of \$120,000. The monthly overcharge is averaging approximately \$2,000 per month. On behalf of HHMC members we demand that the overcharges cease and that the HHMC members who paid these overcharges be reimbursed.

This Board after a detailed investigation, due deliberation and consultation with legal counsel has determined that the overcharges began in 1999 and are continuing through the present.

The relevant facts upon which we base our determination are as follows:

1. A 1983 agreement between HHMC's predecessor, Highland Hills Development Company (HHDC), and Sequim provided, *inter alia*, that HHDC would construct a sewer collection system and would pay to Sequim a monthly sewer charge for sewer treatment of 1½ times the normal amount charged to Sequim city residents for each Highland Hills sewer hookup. (A copy of the 1983 Agreement is attached as Exhibit 1.)
2. In 1992, HHDC transferred the sewer collection system to Sequim, which assumed responsibility for it. (A copy of the 1992 Agreement is attached as Exhibit 2.) The 1983 Agreement was confirmed in the 1992 Agreement (Exhibit 2) which provided, *inter alia*, "This Agreement is intended to transfer rights and responsibilities between the parties as previously agreed in ...a sewer connection agreement entered into on the 4th day of

- August, 1983 between the City of Sequim and Highland Hills Development Company...” (See Section III (A) of the 1992 Agreement.)
3. From January 1, 1993 through June 30, 1999, the City of Sequim charged all of the members of the HHMC a monthly sewer user’s fee of 1½ times the base rate charged to residential sewer users inside the City limits. This was in accordance with Section 6(c) of the 1983 agreement.
  4. In June 1999, by city ordinance #99-009, Sequim amended Chapter 13.80 of the Sequim Municipal Code (SMC) to adopt new sewer rates for city residents (City Rate) and users outside the city (Rural Rate). (A copy of ordinance #99-009 is attached as Exhibit 3.) “City Rates ... shall be charged to all properties connected to the sewer system located in the City limits of Sequim ... and Rural Rates ... shall be charged to all properties located outside the city limits of Sequim.” SMC 13.80.020 (B)(1) and (4).
  5. Both the City and the Rural Rates were and are two-tiered. The lower tier is based on consumption of less than 801 cubic feet of water per month; the other higher tier is based on consumption of more than 800 cubic feet of water per month. SMC 13.84.030 (A). Sequim does not meter its sewage effluent, but uses water consumption as a basis for measuring the amount of sewage effluent produced at a residence. SMC 13.80.030 (A)(3).
  6. Rural rates are two times higher than City Rates “*unless addressed under separate contract.*” SMC 13.80.050 (emphasis added).
  7. The 1983 Agreement is a separate contract that addresses sewer rates. The 1983 Agreement provides that the HHDC rate would be “[A]n amount that is equivalent to 1½ times the amount charged for a residential hook-up within the corporate limits of the City of Sequim.” See Para. 6(c) of the 1983 Agreement.
  8. Since 1999 Sequim has charged all HHMC members who are provided with sewer service 1½ times the *higher tier* of the City Rate. However, the City made no effort to determine that the actual amount of water used by HHMC members would place them in the higher tier.

As we view these charges, there are several reasons why Sequim is in error in applying the higher tier of the City Rate to HHMC:

*First*, Sequim had no authority to abrogate by ordinance the express contractual provision that “HHDC shall pay . . . Sequim, as a monthly utility charge for each hook-up, an amount that is equivalent to 1½ times the amount for a residential hook-up within the corporate limits of the City of Sequim. (Exhibits 1, 2.)

*Second*, the 1999 ordinance (SMC 13.80.050) specifically requires that “unless addressed under separate contract” the fee for customers outside current city limits shall be two times higher than the usage fee charged inside the city. HHMC’s charges are pursuant to an express contract first made in 1983 and expressly confirmed in 1992. That contract fixed the HHMC rate at 1½ times the amount charged for a residential hook-up within the corporate limits of the City of Sequim and did not tie the rate to any fee for customers outside Sequim or to water consumption.

*Third*, since at least 2003, Sequim has been charging HHMC members 1½ times the higher tier rate applicable to customers inside the city limits who use *more than* 800 cubic feet of water (an average of over 800 cubic feet per month) during the winter months (November through April). This practice is contrary to the express provisions of the agreements, which limit the sewer rate to 1½ times the basic, or normal, rate charged to users within the city limits. Moreover, our analysis of the members’ PUD records demonstrates that HHMC members on average use substantially less than 800 cubic feet of water per hook-up during the relevant months.

The chart below depicts the normal, or basic, sewer fee charged in the City of Sequim from 2003 through 2009 for: in-city-limits users who have a winter water usage of less than an average of 800 cubic feet per month, in-city-limits users who have a winter water usage of more than an average of 800 cubic feet per month, the HHMC users rate for each of these user categories, and the difference between the monthly rates.

Year	Base Rate	>800 cf Rate	HHMC Base Rate	HHMC >800 cf Rate	Difference in HHMC rate
2003	\$33.62	\$38.88	\$50.43	\$58.32	\$7.89
2004	\$33.62	\$38.88	\$50.43	\$58.32	\$7.89
2005	\$33.62	\$38.88	\$50.43	\$58.32	\$7.89
2006 (3 mo)	\$34.46	\$39.85	\$51.69	\$59.78	\$8.09
2006 (9 mo)	\$35.53	\$41.09	\$53.30	\$61.64	\$8.34
2007	\$37.31	\$43.14	\$55.97	\$64.71	\$8.75
2008	\$39.18	\$45.30	\$58.77	\$67.95	\$9.18
2009	\$45.06	\$52.10	\$67.59	\$78.15	\$10.56

During the 2003 - 2009 period (which is within the applicable statute of limitations), the number of HHMC members with sewer hook-ups averaged approximately 200. Based upon an average of 200 hook-ups, the total overcharges from 2003 through 2008 amount to \$119,691.

We would appreciate your immediate attention to this matter and request that Sequim's bills for HHMC members henceforth be computed in accordance with the existing contract, that the overcharges to each of our members immediately cease, and that the members who paid these overcharges be reimbursed with interest as prescribed by law.

Sincerely,

Don Smaltz, President  
Highland Hills Maintenance Commission