



City of Tacoma
Hearing Examiner

April 18, 2019

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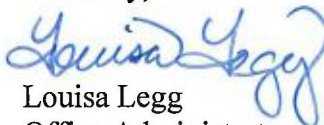
Monique Wells, Customer Accounts Supervisor
Tacoma Public Utilities
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(Electronic & Interoffice Mail Delivery)

Re: *Andrew J. Porrini v. City of Tacoma, Department of Public Utilities*
File No.: HEX2019-005 (CA #100965621)

Dear Parties,

Please find enclosed a copy of the Hearing Examiner's Finding of Fact, Conclusion of Law, and Decision entered on April 18, 2019 as a result of a hearing held on April 11, 2019.

Sincerely,



Louisa Legg
Office Administrator

Enclosure (1): Findings, Conclusions, and Decision

Cc: John Hoffman, Customer Services Assistant Manager, Tacoma Public Utilities
(Electronic Mail Delivery Only)

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

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

DATED April 18, 2019, at Tacoma, WA.

Louisa Legg

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **ANDREW J. PORRINI,**

4 **Appellant,**

5 **v.**

6 **THE CITY OF TACOMA, through**
7 **its Department of Public Utilities,**

8 **Respondent.**

HEX NO. 2019-005
(CA #100965621)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION

9 **THIS MATTER** came on for hearing before JEFF H. CAPELL, Hearing Examiner
10 for the City of Tacoma (the "City"), on April 11, 2019. Appellant Andrew J. Porrini
11 ("Appellant" or "Porrini") appeared at hearing *pro se*. Tacoma Public Utilities ("TPU") was
12 represented by Monique Wells, Customer Accounts Supervisor, and John Hoffman, Customer
13 Services Assistant Manager, also without legal counsel present.

14 Witnesses were placed under oath and testified. Exhibits were admitted and reviewed.
15 Neither party made an opening statement. Appellant made a closing statement.

16 Based upon the evidence submitted, the Hearing Examiner makes the following:

17 **FINDINGS OF FACT**

18 1. This appeal concerns TPU's provision of utility services to Appellant's
19 residential real property located at 317 South Division Lane, in the city of Tacoma,
20 Washington (the "Subject Property"), under TPU Account No. 100965621. *Exhibits R-2*
21 *through R-4.*

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION.

- 1 -

ORIGINAL

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1 2. Appellant purchased the Subject Property in 2007 with the intention of residing
2 there. Not long thereafter, due to a change in employment, Appellant moved to New York
3 City. When attempts to sell the Subject Property were unsuccessful, Appellant decided to rent
4 it out. To facilitate renting the Subject Property, Appellant employed Tacoma Property
5 Management Company (“TPMC”). *Porrini Testimony; Exhibit R-1, Exhibit R-2, Exhibit R-6.*

6 3. At least on several occasions, TPMC made payments to TPU for utilities charges
7 at the Subject Property, and contacted TPU at other times regarding utility service at the
8 Subject Property. *Wells Testimony; Exhibit R-1, Exhibit R-2, Exhibit R-6.*

9 4. Appellant moved back to the Puget Sound area in 2016, at which time he
10 experienced a very trying changeover with his tenant at the Subject Property. *Porrini*
11 *Testimony.* With that tenant’s departure, TPMC contacted TPU on June 28, 2016 asking that
12 utilities at the Subject Property be billed in Appellant’s name as the owner. *Wells Testimony;*
13 *Exhibit R-1, Exhibit R-2.* Shortly thereafter on July 22, 2016, Appellant was able to re-let the
14 Subject Property, and TPMC again contacted TPU to have the utilities switched to the new
15 tenant’s name. *Porrini Testimony, Wells Testimony; Exhibit R-1, Exhibit R-2.*

16 5. On August 1, 2016, TPU sent a final invoice for services billed in Appellant’s
17 name to the Subject Property (the “Final Invoice”). The Final Invoice was for a total of
18 \$199.55, which broke down as a previously unpaid balance of \$146.80 for utility use from
19 “6/29/16 - 7/19/16” that was originally invoiced on July 20, 2016, and an additional \$52.75
20 for utility service to the Subject Property from “7/20/16 - 7/24/16.” *Wells Testimony; Exhibit*
21 *R-1, Exhibit R-3, Exhibit R-4.*

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
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1 6. TPU received a payment via a TPMC check in the amount of \$146.80 on
2 August 3, 2016. *Wells Testimony; Exhibit R-1, Exhibit R-5.* For reasons unknown, the Final
3 Invoice returned to TPU on October 1, 2016 as undeliverable. No other TPU correspondence
4 sent to the Subject Property was returned in this manner. *Wells Testimony; Exhibit R-1.*

5 7. TPU never sent invoices for utility service provided at the Subject Property
6 anywhere else but to the Subject Property. *Id.* Porrini never notified TPU, or otherwise
7 requested, that invoices should be sent anywhere else but to the Subject Property. Porrini
8 appeared instead to argue that TPU should have tracked him down somehow or used an
9 address he had on file with the City Finance Department for his residence that by this time
10 was in Seattle. *Porrini Testimony.* Other than the Final Invoice having been returned, it is
11 unclear how TPU would have had any indication that an alternate address existed or would
12 have been preferred by the Appellant.

13 8. By February 2017, because TPU had still not been paid the outstanding \$52.75
14 from the Final Invoice (the “Unpaid Principal”), it turned that amount over to collection with
15 Municipal Services Bureau (“MSB”). The Unpaid Principal had grown to \$161.42 with late
16 fees and interest (the “Collection Total”). *Wells Testimony; Exhibit R-6.* It appears that Porrini
17 became aware of the Collection Total sometime in 2017. *See Exhibit R-1.*

18 9. By December 2018, Appellant had contacted TPU to discuss the Collection
19 Total now under MSB’s purview. Discussions with TPU (and with MSB) never produced a
20 result satisfactory to Appellant and this appeal resulted. *Porrini Testimony, Wells Testimony;*
21 *Exhibit R-1, Exhibit R-7.*

1 3. The Appellant bears the burden of proof to establish, by a preponderance of the
2 evidence, that his claim is consistent or inconsistent with applicable legal standards and the
3 lower decision should be reversed.¹

4 4. TPU, as a municipal utility, is obligated by law to bill the cost of utility services
5 provided.² The foregoing notwithstanding, “A municipal corporation has inherent power to
6 enter into a compromise settlement of disputed claims, arising out of a subject matter
7 concerning which the municipality has the general power to contract.”³

8 5. Pursuant to RCW 35.63.130, the local “[l]egislative body may vest in a hearing
9 examiner the power to hear and decide those issues it believes should be reviewed and
10 decided by a hearing examiner, including but not limited to: ... (b) Appeals of administrative
11 decisions or determinations; ...”

12 7. As evidenced by the foregoing, hearing examiners are creatures of statute and
13 have only the authority they are given by those same statutes. In the present matter, as stated
14 above, that authority comes from TMC 1.23.050.B.21, which states as follows:

15 B. In regard to the matters set forth below, the Examiner shall conduct
16 adjudicative proceedings, maintain a record thereof, and enter findings of fact,
conclusions of law, and a final decision or other order, as appropriate: ...

17 21. Appeals arising from the imposition of charges for service issued by the
18 Department of Public Utilities, as well as those arising from disputes
19 concerning utility service, use of watershed or other Department property, and
termination of any use; provided, that the Hearing Examiner shall not
adjudicate claims with respect to any rate set by the City Council in a rate

20 ¹ *TMC 1.23.070.C.* Here the lower decision was to charge Appellant the late fees and interest of \$105.67.

21 ² *See, e.g., RCW 35.92.010, RCW 80.28.080; TMC 12.06.110, and .160; Housing Auth. v. Sewer and Water District, 56 Wn. App. 589, 784 P.2d 1284 (1990).*

³ *Warburton v. Tacoma Sch. Dist., 55 Wn.2d 746, 752, 350 P.2d 161 (1960), citing Abrams v. Seattle, 173 Wash. 495, 502, 23 P.2) 869 (1933), and Christie v. Port of Olympia, 27 Wn.2d 534, 179 P.2d 294 (1947). See also Eugster v. City of Spokane, 139 Wn. App. 21, 31-32, 156 P.3d 912, 918 (2007) (A good faith settlement of a dispute is sufficient consideration, absent any actual donative intent, to not be a violation of the constitutional prohibition on gifting public funds.).*

**FINDINGS OF FACT,
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1 ordinance nor hear any challenge to the rate-making process (Chapters 12.06
2 and 12.10);

3 8. Porrini's arguments here (*See FFs 7 and 10 above*) essentially result in a request
4 for relief either through waiver of the Late Fees, or through equitable estoppel against TPU's
5 collecting them. Porrini did not dispute the utility charges, or that the Late Fees had accrued.
6 *See Porrini Testimony*. He contends rather that it is unfair to make him pay them when he
7 never got notification of the Unpaid Principal to which they attached due to non-payment,
8 insinuating that he would have paid it all in a timely manner had he only known of the Final
9 Invoice.

10 9. Waiver and estoppel are equitable remedies.⁴ Washington courts generally are in
11 agreement that hearing examiners do not have the discretion to grant equitable remedies
12 unless the ability to do so is expressly granted in authorizing legislation.⁵ Although the City of
13 Tacoma and its Department of Public Utilities have the power to compromise (settle) claims
14 under the authority cited in Conclusion 4 above, the Hearing Examiner does not.

15 10. RCW 35.63.130 and TMC 1.23, the Tacoma Hearing Examiner's authorizing
16 legislation, do not grant the authority to fashion equitable remedies, but rather limit the
17 Hearing Examiner to applying the Tacoma Municipal Code and applicable Washington State
18 law only.

19
20 ⁴ See e.g. *Go2Net, Inc. v. FreeYellow.com, Inc.*, 158 Wn.2d 247, 254, 143 P.3d 590, 593 (2006).

21 ⁵ *Chaussee v. Snohomish County Council*, 38 Wn. App. 630, 638 689 P.2d 1084 (1984); see also *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 843, 899 P.2d 1290, (1995) (*The scope and nature of an administrative appeal or review must be determined by the provisions of the statutes and ordinances which authorize them*). *Skagit Surveyors & Eng'rs, L.L.C. v. Friends of Skagit County*, 135 Wn.2d 542, 558, 958 P.2d 962 (1998) (*The power of an administrative tribunal to fashion a remedy is strictly limited by statute.*).

1 **NOTICE**

2 **RECONSIDERATION/APPEAL OF EXAMINER'S DECISION**

3 **RECONSIDERATION:**

4 Any aggrieved person or entity having standing under the ordinance governing the matter, or
5 as otherwise provided by law, may file a motion with the Office of the Hearing Examiner
6 requesting reconsideration of a decision or recommendation entered by the Examiner. A
7 motion for reconsideration must be in writing and must set forth the alleged errors of
8 procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14
9 calendar days of the issuance of the Examiner's decision/recommendation, not counting the
10 day of issuance of the decision/recommendation. If the last day for filing the motion for
11 reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next
12 working day. The requirements set forth herein regarding the time limits for filing of motions
13 for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for
14 reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set
15 forth the alleged errors shall be dismissed by the Examiner. It shall be within the sole
16 discretion of the Examiner to determine whether an opportunity shall be given to other parties
17 for response to a motion for reconsideration. The Examiner, after a review of the matter, shall
18 take such further action as he/she deems appropriate, which may include the issuance of a
19 revised decision/recommendation. (*Tacoma Municipal Code 1.23.140*)

20 **APPEAL OF EXAMINER'S DECISION TO MUNICIPAL COURT:**

21 **NOTICE**

Pursuant to the Official Code of the City of Tacoma, Section 1.23.160 and applicable state
law, the Hearing Examiner's decision may be appealable to Tacoma Municipal Court. Any
court action to set aside, enjoin, review, or otherwise challenge the decision of the Hearing
Examiner will likely need to be commenced within 21 days of the entering of the decision by
the Examiner, unless otherwise provided by statute.