

April 2, 2012

Mr. Terry Thatcher
Portland Office of the City Attorney
1221 SW 4th Ave, Suite 430
Portland, OR 97204

Re: *WATR v. City of Portland*
Multnomah County Circuit Court Case No. 1112-15957

Dear Terry:

We have read with great interest, Agenda item 348 for the City Council's April 4 meeting which authorizes Portland Loo marketing agreements and the coverage of that item this morning in the Portland Tribune. Although we express no opinion as to whether the plan to market the Loos is in the City's best interests, this proposal appears to anticipate that the Water Bureau will expend funds to manufacture Loos which might be marketed to other jurisdictions.

Commissioner Leonard wrote this morning in a post to the Portland Tribune article:

"One Loo has been sold and installed in Victoria, British Columbia. Also, the city general fund, not water bureau rates, funds the manufacture of the Loo."

In your letter to me of March 19, 2012, you said that for the two last fiscal years, the Water Bureau's capital investment for construction of the Loos was \$101,436. O&M expense for that period was \$75,000 and budgeted O&M for the current fiscal year is \$60,000. General fund and PDC contributions added up to \$650,000 for these street toilets. Because the marketing agreements look to the Director of the Water Bureau as the person who will determine the sale price and other details of any sale contract, it appears that the Water Bureau will be integrally involved in the sale and manufacture of any of the Loos that are marketed.

As you know, our lawsuit, in part, challenges all the expenditures from the Water Fund to develop and produce the Portland Loos. The Agenda item raises the Loo enterprise to yet a new level.

As you stated in your June 16, 2010 opinion to the City Auditor:

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“The City Attorney’s office has for decades interpreted the words [of the Charter] to constrain indirect transfers of Water Bureau moneys to serve non-water purposes ...As a consequence, the City Attorney’s Office has repeatedly held that Water Bureau money cannot be spent on matters ‘unrelated’ to the water system. The Office has established the following test to judge such an expenditure:

“Expenditures that are ‘related’ to the water works and system are expenditures: (1) whose primary purpose is to promote the objectives of the water ... services of the City, and (2) are reasonably calculated to promote those objectives.” (City Attorney Opinion 88-615)

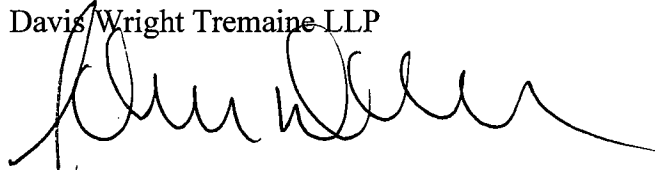
My clients believe it is quite a stretch to forge a nexus between direct operation of the water utility and a business enterprise that manufactures Loos for sale to other jurisdictions.

Therefore, we respectfully request that you inform your clients, including the city commissioners, that if the Water Fund is used to support this enterprise, we will amend our complaint and include in the declaratory relief requested therein a judicial determination that such a use is in violation with the City Charter and, therefore, illegal.

Thank you for your courtesies and time concerning this matter.

Very truly yours

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read "John DiLorenzo, Jr.", written over the printed name.

John DiLorenzo, Jr.
JAD:rmp