

The Oregonian

Mayor Charlie Hales questions judge's authority to order update hearings on Portland police reforms

*By Maxine Bernstein
October 17, 2014*

Mayor Charlie Hales wants to challenge a federal judge's authority to establish the framework for court hearings to track Portland police reforms – a move that baffles federal prosecutors and community members.

Hales, along with Commissioner Amanda Fritz, will ask the full City Council on Wednesday to direct the city attorney's office to appeal part of U.S. District Judge Michael H. Simon's ruling.

The federal judge in late August ordered the city and federal prosecutors, among others, to appear before him at least annually to update him on the status of reforms mandated in a U.S. Department of Justice settlement.

The city plans to question and "clarify" the judge's authority to set "frequency, scope, procedure and evidentiary burdens" for the hearings, according to the mayor's resolution.

The city has long argued that Simon doesn't have the discretion to require city officials to present evidence before him in court on the status of the reforms.

The federal court's involvement stems from a Justice Department investigation in 2012 that found Portland police engaged in a pattern or practice of excessive force against people with mental illness or perceived to have mental illness. The investigation also found that stun gun use by officers was unjustified and excessive at times. The negotiated settlement, approved by the judge on Aug. 29, calls for changes to Portland policies, training and oversight.

City attorneys this year spent months challenging Simon's desire to have all the parties to the case -- the city, Justice Department, Portland police union and Albina Ministerial Alliance's Coalition on Justice and Police Reform -- appear before him at least once a year to provide updates on the reforms.

The alliance's coalition consists of church leaders and community groups working to enhance police accountability.

Oregon's U.S. Attorney Amanda Marshall and the U.S. Department of Justice, as well as the alliance's coalition, have distanced themselves from the city's argument. In their final legal briefs to the judge, they all said that Simon did indeed have the authority to order the hearings and decide who attends them and what the hearings will include.

"A neutral, public hearing to answer questions on the status of compliance is essential to the community's faith in, and hence the public legitimacy of, this very process," wrote J.Ashlee Albies and Shauna Curphey, attorneys for the coalition.

Marshall said Friday she supports the judge's order and that her office is moving forward to ensure compliance with the settlement.

The mayor will argue in his proposal that the city and Police Bureau are still committed to adopting the reforms and don't expect the appeal to delay those.

The mayor said he, retiring Police Chief Mike Reese and the next chief, Larry O'Dea, are committed to the reforms set out in the Justice Department agreement. Among the reforms: Police must audit the bureau's training program and its use-of-force reports and provide increased scenario-based officer training.

"All the parties are committed to this settlement. All parties have agreed to this settlement," Hales said in a prepared statement. "We all want to move forward, get out of court and get to work."

Fritz said she read the judge's order as identifying the City Council as directly responsible for overseeing the settlement reforms.

In legal briefs filed in federal court this summer, city attorneys wrote that their main objection "has always been that ultimate accountability for ensuring the terms of the settlement agreement are implemented rests with the city's elected representatives" and not with the court.

After listening to public comment on the settlement for a day and a half, Simon made it clear in March that he was reluctant to approve the agreement as "fair, adequate and reasonable" without requiring annual updates from all parties.

Simon told city attorneys this spring that the hearings would be held to learn: "How things are going? Are there any problems or obstacles?"

He rejected alternative proposals by the city to have annual hearings before the City Council or to have only the city-hired compliance officer/community liaison appear before him and not the parties to the case.

In a March appearance in Simon's courtroom, Deputy City Attorney Dave Woboril said "reporting to this court would add substantial" consideration to the court's role and "add another audience." Woboril asked the judge what would the periodic hearings look like: "Would there be a testing of evidence?"

Simon assured the city attorneys that he would not have the power to order any specific course of action. "I do not envision an evidentiary hearing. I do not envision cross-examination," he said.

"What I want to prevent is a situation arising several years from now -- in which the U.S. says that there isn't substantial compliance ... and we've heard nothing," Simon said.

But the judge's August order on the settlement says the parties to the case will "present evidence ... as so directed by the Court."

Hales, in a news release, said the city's appeal will specifically question that part of the judge's order.

The Albina Ministerial Alliance's coalition released a statement Friday condemning the mayor's efforts to "dilute oversight" of the police reforms.

"In light of the events in Ferguson, Missouri, which is in an uproar about issues around race and police accountability, this is an attempt to backtrack and dilute and get rid of the limited oversight provided by the judgment entered by Judge Simon in August," said the Rev. Dr. LeRoy Haynes, chair of the alliance's coalition. "This move further reduces the community trust for reform and accountability of the Portland Police Bureau."

The coalition is urging council members to reject the mayor's resolution, and ask that community members come out to oppose it at the council hearing scheduled for 3:30 p.m. on Wednesday.

Officer Daryl Turner, president of the Portland Police Association, declined comment Friday on the mayor's push to appeal part of the judge's order, or whether the police union will do the same.

Jason Renaud of the Mental Health Association of Portland, criticized Hales' effort to appeal what he called a "modest requirement" for annual updates and evidence on the status of the reforms. Renaud urged council members to reject an appeal.

"Mayor Hales has taken every opportunity to delay, diminish and disregard the settlement agreement in *DOJ v. City of Portland*," Renaud said. "Persons with mental illness have been admittedly harmed by Portland's police and after three years of dawdling there is still no independent assurance anything has changed."

Portland Mayor Charlie Hales seeks to appeal federal judge's order requiring city to present evidence of police reforms during annual updates

*By Maxine Bernstein
October 17, 2014*

Portland Mayor Charlie Hales wants the city to appeal part of U.S. District Judge Michael H. Simon's order, questioning his authority governing the annual update hearings the city is required to attend on police reforms mandated in a settlement with the U.S. Department of Justice.

Hales, along with Commissioner Amanda Fritz, will ask the full City Council on Wednesday to direct the city attorney's office to appeal Simon's order, The Oregonian has learned.

The city plans to question and "clarify" the judge's authority on the "frequency, scope, procedure and evidentiary burdens" the court can impose for the reform update hearings, according to the mayor's resolution.

The city has argued that Simon doesn't have the discretion to order city officials to present evidence before him in court regarding the status of the reforms.

The court's involvement stems from a Justice Department investigation in 2012 that found Portland police engaged in a pattern or practice of excessive force against people with mental illness or perceived to have mental illness. The investigation also found that stun gun use by officers was unjustified and excessive at times. The negotiated settlement, approved by the judge on Aug. 29, calls for changes to Portland policies, training and oversight.

City attorneys this year spent months challenging Simon's desire to have all the parties to the case -- the city, Justice Department, Portland police union and Albina Ministerial Alliance's Coalition on Justice and Police Reform -- appear before him at least once a year to provide updates on the reforms in open court. The alliance's coalition consists of church leaders and community groups working to enhance police accountability.

The city's reluctance to accept the judge's demand for the updates has baffled federal prosecutors and community members. In their final legal briefs to the judge, Oregon's U.S. Attorney Amanda Marshall and the U.S. Department of Justice, as well as the alliance's coalition, all distanced themselves from the city, arguing that Simon did indeed have the authority to order the hearings, who attends and what they will include.

"A neutral, public hearing to answer questions on the status of compliance is essential to the community's faith in, and hence the public legitimacy of, this very process," wrote J. Ashlee Albies and Shauna Curphey, attorneys for the alliance's coalition.

The mayor will argue in the proposal scheduled to go before City Council that the city and Police Bureau are still committed to adopting the reforms and don't expect the appeal to delay those.

Hales and city attorneys say their appeal will be narrowed to question and clarify one condition of Judge Simon's order: the judge's request that the parties to the case "present evidence ... as so directed by the Court."

The mayor said he, Police Chief Mike Reese and the next chief Larry O'Dea, who will take over the police bureau on Jan. 2 following Reese's retirement, are committed to the reforms set out in the U.S. Department of Justice agreement.

"All the parties are committed to this settlement. All parties have agreed to this settlement," Hales said in a prepared statement. "We all want to move forward, get out of court and get to work."

Fritz said she read the Judge Simon's order as identifying the City Council as directly responsible for oversight of the settlement reforms.

In legal briefs filed in federal court this summer, city attorneys wrote that their main objection to the judge's desire for annual updates from all parties to the case "has always been that ultimate accountability for ensuring the terms of the settlement agreement are implemented rests with the city's elected representatives" and not with the court.

After listening to public comment for a day and a half in his courtroom about the settlement, Simon made it clear in March that he was reluctant to approve the agreement as "fair, adequate and reasonable" without requiring annual updates from all parties to the case.

Simon told city attorneys this spring that the hearings would be held to learn: "How things are going? Are there any problems or obstacles?"

In a March appearance in Simon's courtroom, Deputy City Attorney Dave Woboril said "reporting to this court would add substantial" consideration to the court's role and "add another audience." Woboril asked the judge what would the periodic hearings look like: "Would there be a testing of evidence?"

Simon assured the city attorneys he would not have the power to order any specific course of action. "I do not envision an evidentiary hearing. I do not envision cross examination," he said.

"What I want to prevent is a situation arising several years from now -- in which the U.S. says that there isn't substantial compliance ... and we've heard nothing," Simon said.

The city offered an alternative proposal: annual hearings before the City Council, not the court. Simon quickly rejected that. The city then suggested only the city-hired compliance officer/community liaison appear before Simon annually, and not the parties to the case. Simon dismissed that proposal as well.

Marshall said Friday, "We have already said, in our filings, that we believe Judge Simon had the authority to order these annual hearings, and we support the Judge's order." Marshall said her office is moving forward to ensure compliance with the settlement agreement.

Officer Daryl Turner, president of the Portland Police Association, on Friday declined comment on the mayor's push to appeal part of the judge's order, or whether the police union will do the same.

Jason Renaud, of the Mental Health Association of Portland, criticized Hales' effort to appeal what he called Judge Simon's "modest requirement" for annual updates and evidence on the status of the reforms. Renaud urges council members to reject an appeal.

"Mayor Hales has taken every opportunity to delay, diminish and disregard the settlement agreement in DOJ v. City of Portland," Renaud said. "Persons with mental illness have been admittedly harmed by Portland's police and after three years of dawdling there is still no independent assurance anything has changed."

The Portland Tribune

City Council may appeal DOJ settlement update requirement

*By Jim Redden
October 17, 2014*

The City Council will consider appealing a requirement that it present annual updates on the progress of its recent settlement with the U.S. Department of Justice to a federal court judge at next Wednesday's meeting.

Mayor Charlie Hales and Commissioner Amanda Fritz have filed an ordinance authorizing the appeal of the condition imposed by U.S. Circuit Court Judge Michael Simon when he approved the settlement agreement. The ordinance does not challenge any other provision of the settlement, which requires the Portland Police Bureau to reduce its use of excessive force when dealing with the mentally ill and make other changes.

"This appeal does not challenge the settlement that four stakeholders — the U.S. Department of Justice, the City, Portland Police Association, and Albina Ministerial Alliance — agreed to. The City and the Police Bureau are fully committed to the reforms outlined in the settlement agreement. Chief Mike Reese, our next chief Larry O'Dea, and the entire bureau remain dedicated to continually improving the service our police officers deliver to the community. This resolution authorizes a narrow appeal to clarify the judge's role in the implementation. We all want to move forward, get out of court and get to work," Hales said in a Friday morning press release.

But Jason Renaud of the Mental Health Association of Portland says the council should reject the appeal.

"Mayor Hales has taken every opportunity to delay, diminish and disregard the settlement agreement in DOJ v City of Portland. Today's proposal to council to appeal Judge Simon's modest requirement for annual reporting on progress of the settlement to the court should be rejected by Council members. Persons with mental illness have been admittedly harmed by Portland's police and after three years of dawdling there is still no independent assurance anything has changed," Renaud wrote in a Friday morning press release. "Without timely redress, justice is again effectively denied."

The ordinance and the rest of next week's council agenda will be posted on the City Auditor's website between noon and 1 p.m. Friday at www.portlandonline.com/auditor/?c=26997

Portland OKs recreational marijuana sales tax

*By Steve Law
October 15, 2014*

If Oregonians legalize recreational marijuana, the city of Portland hopes to take a 10 percent cut on sales.

The Portland City Council voted unanimously Wednesday on a city ordinance that would levy a 10 percent sales tax on recreational marijuana sold in the city, if Oregon voters pass Ballot Measure 91 in the general election.

City councilors also rejected an alternative version of the ordinance that would have levied a 5 percent tax on medical marijuana as well. A handful of citizens accused the city of a heartless attempt to extract revenue from people using marijuana legally for health maladies. But none of the councilors spoke in favor of taxing medical marijuana.

“Medical marijuana is therapeutic,” said City Commissioner Amanda Fritz, a former nurse. Mayor Charlie Hales said he put both ordinances on the council’s agenda for discussion, but agreed that it’s not appropriate to tax medical marijuana.

The city tax would be levied for the “sale, transfer, mixing, handling or serving of recreational marijuana and marijuana-infused products within the city.”

The marijuana tax still requires a second vote by the council before it gets enacted.

The city estimates that it will raise from \$1.7 million to \$4 million a year from the sales tax. Setting up an apparatus to start taxing marijuana sales would cost an estimated \$150,000 in one-time costs, plus \$280,000 in annual costs.

Ballot Measure 91 explicitly bars local governments from taxing marijuana, reserving that right to the state. However, Portland and several other municipalities are jumping in to create taxes before Measure 91 becomes law. The legality of those local taxes might have to be resolved in court.

Thomas Lannom, director of the city Revenue Bureau, said Measure 91 does require that some of the state marijuana tax proceeds be shared with cities. He estimated Portland’s share would total \$171,000 to \$556,000 a year.

Hales said that won’t be enough to cover the city’s costs.

Though Oregon doesn’t have a state sales tax, many items are taxed based on sales, including gasoline, cigarettes and alcohol. Marijuana may soon be added to the list.

City's growth plan hits the busy streets

*By Steve Law
October 16, 2014*

Eighty-Second Avenue — known more for used-car lots and prostitutes than bicyclists and brewpubs — is not exactly a poster child for Portland’s vaunted land-use planning and quality of life.

But Portland is now plotting where to house a quarter-million additional residents in the next 20 years, and city planners say 82nd Avenue must do its part.

As planners redo the city’s comprehensive land-use plan for the first time in 35 years, they’re trying to channel the bulk of the growth into the central city and established business districts, neighborhood centers and commercial strips, including nearly 5,000 more apartments on 82nd Avenue. By doing that, planners hope to preserve the city’s residential neighborhoods much as they are, without jolting changes.

“We don’t need to plow under Buckman and Eliot with a sea of rowhouses,” says Eric Engstrom, principal planner for the Portland Bureau of Planning and Sustainability. “What’s happening on Division is going to continue to happen on streets like that.”

In the new “comp plan,” planners are trying to accommodate roughly 30 percent of the new housing projected over the next 20 years in the central city, which includes downtown, the Lloyd, Pearl and South

Waterfront districts. Another 50 percent of the residential growth is pegged for outlying neighborhood commercial centers, business districts and corridors like Sandy Boulevard and 82nd Avenue.

Robert McCullough, president of the Southeast Uplift Neighborhood Coalition, is skeptical Portland faces that much population growth, but he likes the city's approach.

"The idea of actually focusing development along transportation corridors makes a lot more sense," McCullough says, and it's in sync with economic reality. "It doesn't destroy the character of the city that people find so attractive."

But guiding growth to existing corridors and neighborhood centers means increased density, and many residents "are going to freak out about that growth," Engstrom says. So he and other city planners are trying to fashion ways to make neighborhood commercial districts — like Lents, Hollywood and Hillsdale — into bustling, inviting centers where residents can find most everything they need within a 20-minute walk or short bike ride — without marring surrounding residential areas.

"It's really our strategy for growth and management of change in the future," says Barry Manning, senior planner. "We also get a double benefit of creating better places there for the community."

Back to the future

In some ways, Portland planners' emphasis on walkable "complete neighborhoods" is turning back the clock to the early 20th century, when some of the city's most charming business districts took shape along streetcar lines. Bustling retail centers that took their current form before the automobile era, such as Southeast Stark Street in the Montavilla neighborhood, now are viewed as models.

As part of the comp plan rewrite, planners created a mockup of what the intersection of Southeast 82nd Avenue and Division might look like in the future. Eighty-second Avenue is depicted with a new streetcar line, street trees and lots of pedestrians.

This isn't all wishful thinking or what conservatives deride as social engineering. Around the nation, people are flocking back to central cities and paying premium housing prices to avoid long commutes to work. "The growth is not in the suburbs now," Engstrom says, referring to trends in Portland and peer cities like Seattle and Minneapolis.

Portland neighborhoods with lively commercial strips — Alberta Street, Mississippi Avenue, Hawthorne Boulevard, Division and Belmont streets — are seeing a surge in new apartment construction.

Portland planners project that 78 percent of the new housing in the city over the next two decades will be apartments, condos and other multifamily units, and only 22 percent will be single-family homes. Some of that shift is due to demographic and lifestyle trends, and some is due to housing affordability issues.

Planners see the recent spate of four-story apartments on Division, Burnside, Hawthorne and other corridors as the wave of the future, eventually expanding to once-neglected corridors like 82nd Avenue.

Tinkering with regulations

A key goal of the city's new comp plan is increasing equity among the neighborhoods.

Of late, though, closer-in centers and corridors are where most of the action has been, Engstrom says. "The market's not necessarily going to Raleigh Hills or Midway, or even Lents."

Planners hope to lend some momentum to outer-ring centers and corridors, such as 82nd Avenue, by fine-tuning city regulations for mixed-use business districts, so they're more inviting and compatible with multifamily residential projects.

"They need to become more livable places, and in some places that's a challenge," says Bill Cunningham, city planner.

Traditional commercial districts need to evolve to keep pace with rapid changes in the market, such as shopping via the Internet, Engstrom says. "If we don't change dynamics, some of these districts will be in trouble."

Several themes have emerged from city planners' months long look at regulations for mixed-use zones, and are likely to be submitted to the Planning and Sustainability Commission and City Council in coming months, as planners wrap up work on the comp plan.

One likely goal is to make sidewalk life at neighborhood centers more vibrant by requiring that ground floors be designed for retail or other “active uses,” rather than be walled off from the street. Merchants like the idea, planners say, as it keeps people walking down the street if there’s more to do and see.

Mandating ground-floor retail or other active uses has been a successful strategy for decades in downtown Portland, and the city has experimented with it in select districts like St. Johns, Hollywood and on North Interstate Boulevard.

“Now we might want to apply a tool like that more broadly in those center areas,” Manning says.

Planners also are leaning toward recommending new incentives to developers, as a way to foster more affordable housing, public plazas and other open spaces, and preservation of historic buildings. The city’s current incentives were created 30 years ago and are now outdated, Engstrom says.

Portland and other Oregon cities are barred by state law from using “inclusionary zoning,” which requires developers to build a mix of housing for lower and other income levels. Oregon and Texas are the only states that don’t allow it. So city planners hope to entice developers to build more lower-income units by dangling new incentives in mixed-use zones, such as increased height limits.

Planners also may propose new setback rules that dictate how close buildings are to the street, as a way of making, for example, four-story apartments more inviting for tenants. Planners point to Shaver Green, a LEED-certified low-income apartment on Northeast Martin Luther King Jr. Boulevard, as a model. It starts as a two-story building closest to the street, with four floors above that have a smaller footprint, farther from the street. That provides “less sense of enclosure right at the street,” Manning says. “It has a very different character and feel.”

Such a design could make apartments more inviting on 82nd, he says.

Planners also are enthused about new requirements for stepping down the heights of commercial buildings as they get farther from the main street and closer to adjacent single-family homes. For instance, a four-story building on Division might taper down to three stories in the rear, transitioning to be more compatible with adjacent single-family homes, Manning says.

In tandem with city planners’ work on mixed-use zones, the Portland Bureau of Transportation will propose new ideas for parking, a hot-button issue in the Division area and other retail nodes.

Planners also may propose shrinking the number of neighborhood commercial zones from eight to three or four, to simplify the process, Manning says.

82nd Avenue makeover?

The new comp plan will allow for more multifamily and other growth, but developers have long had the leeway to build apartments in commercially zoned parcels, Engstrom says.

Though some Portlanders might see 82nd Avenue as a dead zone, planners figure there are some promising “nodes” that could eventually expand, such as the pan-Asian Jade District between Powell and Division, the newly expanded Portland Community College campus on Division, Fubonn Shopping Center near Woodward Street, the artsy Milepost 5 community near Montavilla Park, and even the Cartlandia food cart pod near the Springwater Corridor.

The city is interested in taking over authority for 82nd from the state, though that may be a longshot. The city would prefer slowing traffic and putting in more opportunities for pedestrians to cross 82nd.

Planners also envision making the corridor more inviting for housing and other development by widening sidewalks, adding street trees, putting in bioswales, and improving transit. They might suggest banning drive-through retail, to improve the pedestrian environment, Cunningham says.

The next big transit line in the Portland area figures to be a rapid bus line along Powell and Division. One possible route could go on Powell from the river to 82nd, then head north on 82nd to Division and then east on Division to Gresham. Planners also have discussed trying to enhance commercial developments along Division and Powell, between 82nd and MAX stops to the east.

Martin Luther King Jr. Boulevard has improved, though it’s taken many years, Manning says.

“Could 82nd develop similarly over the next 20 years?”

The Mercury

Mayor's Office Confirms: Hales, Fritz Hope to "Clarify" Annual Court Hearings on Police Reform

By Denis C. Theriault
October 17, 2014

The legal drama over police reform in Portland isn't quite over yet.

Mayor Charlie Hales and Commissioner Amanda Fritz are going to ask their colleagues to consider pushing back at one of the more contentious elements of a federal judge's decision to accept a package of police reforms negotiated between the city and the federal Department of Justice: an order that the city and feds, along with the Portland Police Association and community advocates return to court for annual updates.

They're seeking a vote during next week's council meeting, according to a resolution (pdf) obtained by the Mercury. The announcement was reported this morning by the Oregonian, although it was cast as a move to toss out the requirement for updates. Both elected officials say they're addressing only the requirement for the updates, not the reforms themselves. Hales and Fritz, in an announcement, insist they want to "clarify" what US District Court Judge Michael Simon's role in overseeing the progress of reform might be.

WHEREAS, The City seeks clarification on the authorized frequency, scope, procedure, and evidentiary burdens the court can impose in these hearings; and

WHEREAS, The legal procedure for seeking clarification is through an appeal, writ of mandamus, or writ of prohibition; and

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WHEREAS, The City is not challenging the terms of the Settlement Agreement; and

WHEREAS, The City will comply with all court orders pending appeal; and

WHEREAS, The City is not asking to stay implementation of the Settlement Agreement or the Order; and

"This appeal does not challenge the settlement that four stakeholders—the U.S. Department of Justice, the City, Portland Police Association, and Albina Ministerial Alliance—agreed to," Hales said in comments emailed to the Mercury. "The City and the Police Bureau are fully committed to the reforms outlined in the settlement agreement. Chief Mike Reese, our next chief Larry O'Dea, and the entire bureau remain dedicated to continually improving the service our police officers deliver to the community. This resolution authorizes a narrow appeal to clarify the judge's role in the implementation. We all want to move forward, get out of court and get to work."

"It clearly identifies that the Council is directly responsible for oversight, which ensures that Portlanders know who is responsible and accountable for managing the Police Bureau in conformance with the community's values," Fritz is quoted as saying in the city's announcement. "The settlement emphasizes

community engagement. I believe that public trust in policing in Portland depends on all Council members demonstrating that we are committed to implementing the Agreement fully. I accept that responsibility. I look forward to collaborating with all Portlanders on this crucial work, especially those with lived experience enduring mental illnesses.”

The possibility of an appeal has always loomed over Simon's ruling, issued August 29, as first reported by the Mercury. The city had long chafed at Simon's insistence on regular updates, concerned about the implications of that extra oversight and questioning Simon's authority, even though the feds and the Albina Ministerial Alliance both agreed Simon could order them if he wished.

Hales' office pointedly didn't respond to our questions, after the ruling came down, on whether an appeal might come or if the city would knuckle under to Simon's insistence.

Not everyone sees this as a modest bump on the road to an otherwise cheery acceptance of the reforms, which are meant to answer federal accusations Portland officers have engaged in a pattern or practice of using force against Portlanders with mental illness.

One advocate, Jason Renaud of the Mental Health Association of Portland—who's been critical of Hales' decision not to try funding mental health facilities called for in the federal settlement along with the city's process for hiring a compliance officer/community liaison to oversee reforms—issued a blistering statement this morning. Renaud was responding to the O's reporting.

Mayor Hales has taken every opportunity to delay, diminish and disregard the settlement agreement in DOJ v City of Portland. Today's proposal to council to appeal Judge Simon's modest requirement for annual reporting on progress of the settlement to the court should be rejected by Council members. Persons with mental illness have been admittedly harmed by Portland's police and after three years of dawdling there is still no independent assurance anything has changed.

Without timely redress, justice is again effectively denied.

Hall Monitor **(Dead-)End Game on Street Fee?**

By Denis C. Theriault
October 15, 2014

THE LAST TIME Portland's city commissioners found themselves in the same room talking about a plan to pay down the city's staggering backlog of transportation-related maintenance and safety projects, back in May, things didn't end so well.

Sharp and honest disagreements over policy and political strategy festered into something that felt personal and a little self-aggrandizing, whether that was the point or not. And even after the street fee was tabled—sent to citizen work groups for months of refinement and refashioning—weeks of sore feelings bled into all sorts of other business.

That revenue plan, still sponsored by Commissioner Steve Novick and Mayor Charlie Hales, finally made its way back to city council on Monday, October 13—for a late-afternoon "work session."

And, well, funny thing...

Just like the street fee's gone through some deep changes on its road out of policy purgatory (a new income tax for citizens, hopes the city will spend more of its general fund on transportation, and dramatically reduced fees for businesses), so has much of the rhetoric.

Halos and knives both stayed put during a two-hour session that felt respectful and serious—even as it put a fairly glaring spotlight on several lingering fault lines in the debate over transportation revenues. That was a welcome development for Novick, who still hopes to have a vote on the revenue plan by mid-November.

"There was less rhetoric and less contentiousness than I expected," he told me. "People took it very seriously and weren't taking any opportunities to grandstand about anything."

Real peace, however, will require a bit more work.

Something that hadn't been mentioned much before—whether the new money would help pay for improving some of the city's miles of unpaved streets—now appears to be front and center, thanks to Hales. Hales mentioned using a few million bucks explicitly to help slightly ease the burden on residents who'd still have to mostly front that work themselves.

Novick says that had always been a quiet idea, covered by the minuscule "other" category when officials were describing how the money might be spent.

"He's putting it back on the table," he says of Hales.

One of the biggest remaining rifts is the degree to which Portland's wealthiest residents—the lucky and hardworking stiffs making more than \$500,000 a year—might have to pay up.

City staff, helping the citizen work groups by crunching numbers, came up with a \$200 monthly cap as a way to buy lower rates for middle- and lower-income Portlanders. Novick supports that cap, even if he'd like to refine the tax brackets below \$500,000 just a bit. And he's been joined by transportation and poverty advocates, and groups like AARP, all of whom have written letters correctly demanding as progressive a tax as possible.

Business groups and others, meanwhile, aren't big fans. Neither is the Oregonian's editorial board. Which all says plenty.

Hales, curiously enough, declared he'd prefer a \$50 cap, seemingly a way to keep the rich from rebelling and trying to put the new street tax proposal on the ballot next spring.

"There may be a point where the rich go into armed revolt," says Novick. "I'm not convinced it's \$200 a month."

And then there's the ballot question itself. Should any or all of this go before voters, now or ever?

Hales suggested it might be enough to stick in a sunset clause requiring a future city council, in six years, to weigh that question.

Before the hearing, as Willamette Week first reported, Nick Fish suggested splitting the ballot issue and revenue plan into separate votes. Novick pooh-poohed that. Fish could simply cast a principled vote against a combined ordinance, Novick says, and explain himself.

"I'm not a big fan," says Novick. Diplomatically, of course.

I'm told an actual draft could emerge before the next council meeting.

A Clog in the Pipe

Environmental Rules Snare Plans for Propane Terminal on the Columbia

*By Denis C. Theriault
October 15, 2014*

THE PROMISES built into a ballyhooed new proposal for a \$500 million propane export terminal on the Columbia River are substantial:

Millions in annual property taxes for Portland, Multnomah County, and Portland Public Schools! Hundreds of construction jobs and dozens of permanent postings! Tens of millions more dollars every year in local trade!

The Port of Portland, which hopes to place the propane terminal near Kelley Point Park on the east end of Terminal 6, even issued a statement last month calling the facility, pitched by Canadian firm Pembina, "one of the largest single private capital investments in the city's history."

That lure was enough to win a warm embrace from Mayor Charlie Hales, even though some might argue a propane terminal runs counter to the spirit of the city's 2009 Climate Action Plan, which urges working toward reduced carbon emissions in a bid to stanch the tide of global warming.

And yet, the Mercury has learned, the fate of those big promises—indeed, the fate of the propane terminal itself—is already in doubt. Ironically, thanks to something quite small.

The project, as currently envisioned, runs afoul of the city's zoning code—specifically, the city's rules for safeguarding sensitive wildlife along the Columbia. And unless Portland City Council is willing to slightly tweak those rules, at a hearing as soon as next spring, then the project would be impossible to build.

"It's a fairly minor change," insists Jackie Dingfelder, the policy director for Hales who's been tracking this issue. "But regardless, there will be a fully public process."

Dingfelder's correct. The technical change in the zoning code really would be minor—just a few sentences, officials say. But the consequences of that change might not be.

The issue, which came up after Pembina announced its intentions, involves a thin strip of riverfront protected by some of the city's strongest conservation rules. Pembina has talked about running a pipe across the beach, sending propane from two inland storage tanks out to a floating dock already on the river. But the code covering that beach bans the transportation of hazardous materials, like propane, unless it's done by rail or motor vehicle.

Planning and code enforcement officials have been weighing what seems like a fairly clean revision: adding pipes and pipelines to that short list of exemptions. Except that's not as easy as it seems. That kind of change in the zoning code, without limits, could apply to land with similar protections elsewhere in the city, farther up the Columbia and around places like Balch and Johnson Creeks.

"This is a code change that applies to more than this project," says Tom Armstrong, a supervising planner in the Portland Bureau of Planning and Sustainability.

To hedge against that, planning officials say they're looking at an exemption that focuses solely on shipping terminals. But even that might bring some wrinkles.

Any change allowing hazmat pipelines for Pembina, Armstrong says, would likely apply to the rest of the Port of Portland's Terminal 6—removing one more hurdle if the Port ever decided to seek a terminal for something more controversial than propane: liquefied natural gas. The Port already has that capability, in the zoning code, along the Willamette River.

"There is no intent to open the door for prospective future uses at Terminal 6 beyond the containers, autos, and bulk that are already handled there," says Josh Thomas, a spokesman for the Port. "That kind of addition is not something we are pursuing or contemplating. It is more about consistency with various other existing Portland Harbor activities/uses."

Another idea initially discussed, sources say, would have exempted the Pembina site from the environmental rules along the Columbia altogether. While that might have avoided unintended consequences at other spots in Portland, Pembina also would've been sprung from provisions requiring it to mitigate or pay for any environmental disturbance its piping causes.

Pembina officials didn't return messages seeking comment.

But Thomas continually stressed the "embryonic" nature of the Pembina proposal—making clear that the Canadian company had planned all along to do some "due diligence" before breaking ground.

Thomas did say, however, that the environmental issue came up "more recently" in discussions about the terminal.

Details about what Pembina might do with a pipeline, the storage tanks, and the floating dock have so far come from informal conversations with city and Port officials. Some of those details were also reported by the Oregonian, which ran an interview with Pembina's CEO last month.

The company's working on details at the same time as the city's pushing through its code change. Pembina has said it hopes to have the terminal open in 2018.

"I don't have a site plan," says Rebecca Esau of the Portland Bureau of Development Services. "We haven't seen anything."

Armstrong, the supervising planner, says a proposed code change could be out for public review by December, followed by a Planning and Sustainability Commission hearing in January. That would put a city council discussion on the change in March or April, he says.

Those hearings could open a window for environmentalists and critics of fossil fuel shipping to weigh in. Representatives of one advocacy group, Columbia Riverkeeper, declined to comment when asked by the Mercury if they'd seize on such an opportunity.

"The more [Pembina] can define this project," Armstrong says, "it will help people get comfortable with what the implications of this change might be. The onus is kind of on them to help put this change in context."

In Other News

*By Mercury Staff
October 15, 2014*

PRETTY MUCH everyone's telling Mayor Charlie Hales to end the weekend street closures in Old Town/Chinatown's "Entertainment District" ["Cork in the Road," News, Sept 17]. The mayor's response? Asking his colleagues to extend them.

On Wednesday, October 15, city council is slated to take up an ordinance that will keep the closures enshrined in law through next October. And, despite their reticence, the neighborhood's business owners and residents are lining up behind the effort. That's because Hales' ordinance, as first reported on Blogtown, makes it clear that the city is open to experimenting with the project—which could include desired changes like shrinking the closures or opening up certain lanes to cars.

"Gotta start somewhere," says Dan Lenzen, co-owner of Dixie Tavern, who has helped organize bar and restaurant owners who oppose the closures.

DVH

PORTLAND CITY COUNCIL is scrambling to proactively pass a sales tax on medical and recreational marijuana before the end of October—in case voters pass a legalization measure next month that would preempt local revenue collection mechanisms.

The proposed tax is headed for its first hearing in front of the council on Wednesday, October 15, and could be up for a vote as soon as October 22. Revenue estimates released by the city suggest the tax might raise between \$1.7 million and \$4 million annually, assuming Oregon approves Measure 91, legalizing recreational marijuana sales, on November 4.

City officials argue legalization will bring regulatory and police costs much like those associated with bars and liquor stores—and it wants some cash, it says, to help defray that expense. Under the mechanism up for discussion, sales associated with recreational pot would be taxed at 10 percent, while medical pot would be taxed at five percent.

Taxing medical pot hasn't been without controversy, in that it raises a hurdle for patients who might be disabled or living on fixed incomes. But officials at a council work session have argued it's necessary to keep people from registering with the Oregon Medical Marijuana Program to avoid paying the recreational tax.

Portland would join several other Oregon cities in taxing pot—and all of them could face some kind of lawsuit over their tax plans. It's yet to be determined whether Measure 91, if it passes, would not only ban future tax levies, but also cancel out current ones.

(UPDATE! During its meeting Wednesday, October 15, the council agreed to drop plans to tax medical marijuana—deciding, instead, to first ask the Legislature to pass tighter controls on medical pot.)

DENIS C. THERIAULT