

## The Oregonian

### Uber vs. Portland: City has hit company with \$67,750 in fines; federal court hearing date set

*By Joseph Rose  
December 15, 2014*

A federal judge on Monday rejected the city of Portland's motion to move its lawsuit against Uber back to Multnomah County Circuit Court.

U.S. District Court Judge Michael H. Simon ruled that the controversial car-sharing startup had "proven by a preponderance of the evidence" that it is an out-of-state company at risk of losing significant profits because of enforcement of local regulations.

"Federal district courts have jurisdiction over civil actions in which the litigants are citizens of different states and the amount in controversy exceeds \$75,000," Simon wrote in his 4-page Opinion and Order.

Simon scheduled a Dec. 23 hearing in his courtroom on the city's request for a restraining order to force Uber to stop operating in Portland.

After issuing a cease-and-desist order against Uber, which launched in Portland without permission on the night of Dec. 5, city transportation officials have hit Uber with \$67,750 in fines.

So far, code enforcement officers have gone after only Uber for operating an unlicensed taxi service. No drivers have been cited yet, said Bryan Hockaday, a policy advisor to Commissioner Steve Novick, who oversees the transportation bureau.

The grace period for drivers is about to end. "After receiving two warnings, drivers will now be issued penalties," Hockaday said.

In many cases, Bureau of Transportation code enforcers have issued fines to Uber after simply ordering a ride from the company's smartphone app, which provide the license plates, photos and drivers' first names.

"But we have also successfully taken some rides," said Frank Dufay, the city's private for-hire transportation manager.

Portland sued Uber in Multnomah County court last week, seeking a judge's injunction to block the company from operating within the city limits.

The complaint contends the app-based ride service UberX violates city regulations governing private for-hire transportation.

However, Uber requested a change of venue to federal court, arguing in court documents that the company stood to lose more than \$100,000 in profits if required to follow the city's regulation process for taxis.

"If Uber is prohibited from operating its business in the city of Portland, Uber would suffer significant lost profits," Brooke Steger, Uber regional general manager, said in court documents.

Why does jurisdiction matter?

Portland officials say a local judge would be quicker to rule on their requested injunction against Uber, preventing the company from establishing its service and building additional public support. Such proceedings typically move much slower in federal court, they said.

In its request to remand the case to county courts, the city argued that a company that has just begun operating illegally isn't in a position to claim significant financial losses. City attorneys also argued that lost profits must mean net profits rather than lost revenue.

Simon disagreed on both counts.

"Both lost profits and the cost of compliance (with the city's strict taxi regulations) are permissible ways to measure the cost of an injunction to a defendant," the judge wrote in his ruling.

"The City also argues that a business may not profit from illegal activity, but whether Uber's activity is illegal is a question reserved for the merits in this case," Simon wrote, adding that Portland can't prevail by "putting the cart before the horse."

In his denial of the city's motion for remand, Simon said the city failed to submit any evidence to disprove Uber's arguments about the cost of compliance.

Federal court documents filed by the city show that transportation officials have hired at least one private investigator to help its officers hail Uber drivers using their private vehicles as de facto taxis.

In a declaration to the court, Nena Baker said she was employed by the city to take five cross-town Uber rides last Tuesday.

Uber has vowed to keep operating, saying the city's "antiquated" taxi laws don't apply to its services, and has promised its contracted drivers that it will pay any fines they receive.

Still, it appears that some drivers aren't eager to announce their presence on the city's streets just yet.

Baker testified that a driver who picked her up in a Dodge Charger in Southeast Portland "told me that Uber sent him a large 'U' decal, but he said it was optional and he did not see a reason to put it on his vehicle."

## **Portland delays Joint Terrorism Task Force vote to January: Portland City Hall Roundup**

*By Brad Schmidt  
December 15, 2014*

A scheduled City Council vote to decide Portland's involvement with the FBI-led Joint Terrorism Task Force has been delayed until Jan. 15.

Portland Mayor Charlie Hales initially scheduled the hearing – titled "Withdrawal from JTTF Involvement" – for Dec. 18.

Hales said he hasn't made up his mind about withdrawing, although he voted against involvement as a city commissioner in 2001 and believes the existing arrangement is "pretty unsatisfactory."

Spokespeople for Hales didn't immediately respond to questions Monday about the reason for the delay. This post will be updated when they respond.

UPDATE: "JTTF was delayed because there are a lot of other things going on, both on the Council calendar and in scheduling community meetings; recently community outreach has been focused on other topics, such as protests. Commissioners want to hear from stakeholders, so the agenda item was delayed to allow more time for them to do so," Sara Hottman, a spokeswoman for Hales, said in an email. "While commissioners are still working on outreach, Mayor Hales is aware of various community groups' stances. He has also recently heard from the ACLU and Dwight Holton, former federal prosecutor, about their views."

In 2011, City Council assigned police officers to the anti-terrorism task force on an "as-needed" basis under a deal worked out by then-Mayor Sam Adams and Dwight Holton, the U.S. Attorney for Oregon at the time.

Since Hales took over in 2013, some members of the City Council have expressed concern about the arrangement and the skimpy reports delivered to elected leaders on an annual basis.

Hales was scheduled to meet with Holton on Dec. 9.

Federal justice officials haven't made a big deal out of Portland's possible withdrawal.

"The city is not in the JTTF, so there's really nothing to pull out of," Oregon U.S. Attorney Amanda Marshall said earlier this month.

## The Portland Tribune

### City hands out \$100,000 to area service groups

*By Doug Burkhardt  
December 12, 2014*

The city of Hillsboro had the opportunity to take on the role of Santa Claus last week, and 30 community service organizations were the beneficiaries.

At the Dec. 2 meeting of the Hillsboro City Council, Mayor Jerry Willey handed out checks to a variety of groups as part of the Community Services Grant Program, which has been an annual tradition in Hillsboro since the mid-1990s. A total of \$100,000 was distributed.

The individual grants to the different organizations ranged from \$1,000 to \$7,500.

Willey said the city was proud to help support the organizations because of the positive impact the groups are making across the region.

"We as a community want to say thank you for your commitment," Willey told the representatives who came to the Civic Center auditorium last week to receive their contribution. "We're very, very proud of you and your commitment to your organizations. You are all deserving organizations, and there is a tremendous need for your services in our community."

"The grant monies come from the city's general fund," said Patrick Preston, the city's public affairs manager. "The Finance Committee determines the amounts of the awards, and which agencies receive funding."

Linda Miles, grants coordinator for the Dougy Center, said the city's contribution of \$3,000 this year is very important.

"We operate a satellite location in Hillsboro, at the Linklater Commons," Miles said. "It's really important to our participants who are unable to get to our southeast Portland location."

The Dougy Center provides a support structure for grieving children and teens who have lost a close family member.

"We have a grief support group for ages 6 to 12 and for teens as well," Miles said. "It's really a lifeline for families. We serve about 70 families in Hillsboro at this location."

Miles pointed out that virtually all the funding for the Dougy Center is through individual donations, corporate donations and foundation grants. There is no government funding.

"The funds the city provides are incredibly helpful," Miles explained. "It costs about \$1,500 for one child and one adult family member to attend for a full year, so this grant can help two families go through the program for a full year."

The Shelter at Orenco Station ("SOS") was also among the organizations receiving a Community Services Grant — \$3,000 — from the city of Hillsboro. The shelter, located at Sonrise Church at 6701 N.E. Campus Way in Hillsboro, provides hot meals, showers, a warm and secure place to sleep and employment services for those who are homeless. The shelter operates during the three coldest months of the year — December, January and February — and can house as many as 45 people on a given night.

The mission statement of Shelter at Orenco Station notes that the shelter is geared to meet "our guests' physical and spiritual needs in an atmosphere that reflects God's boundless love."

Another organization that earned the city's financial support this year was Chess for Success, which uses games of chess as an educational program to teach children high level thinking and social skills. The city of Hillsboro donated \$1,500 to the innovative organization this time around.

According to Julie Young, executive director of Chess for Success, it costs \$150 to provide chess for an entire year for each child.

"Our program is really cost-effective," Young said. "There are a number of kids whose lives have been changed by learning creative thinking skills through chess, and they love it. It's a wonderful game for teaching because they have to constantly be thinking ahead about the consequences of their moves, and it gives them self-esteem."

Across the Portland metropolitan area, Chess for Success serves 78 schools and approximately 3,100 students, and the program is active in eight elementary schools within the Hillsboro School District: Butternut Creek, Eastwood, Lincoln Street, Minter Bridge, Mooberry, Tobias, Witch Hazel and W.L. Henry.

Young said the money from the city of Hillsboro is very important to her organization.

"It really means a lot," Young said. "It gives us credibility with other funders, plus the fact that it's funding all of those kids. It really does change lives."

## **Street fee critics blast last minute changes**

*By Jim Redden  
December 16, 2014*

The numerous amendments to the proposed street fee are shining a light on an obscure but important City Hall communique known as the Tuesday Memo.

Street fee critics are angry that at City Council hearings, amendments are not handed out until the start of the meeting. Nor have amendments been included in the online council agendas posted by the City Auditor's Office the Friday before each week's hearings, which are held on Wednesdays and Thursdays.

When the council considered the most recent amendment last Wednesday, local economist Eric Fruits accused the council of playing "hide and seek" with the public.

"It's like you're only going to reveal stuff at the last minute," Fruits said.

Small business owner Ann Sanderson complained she didn't have enough time to study the amendment before it was time to testify. She said such disregard for the public process is one reason she is committed to referring the proposal to the ballot if the council ever passes it.

In fact, the amendment had been distributed Tuesday afternoon — but only to those people on a little-known email list maintained by the City Auditor's Office. For years, those on the list have received a weekly Tuesday update that includes all revisions to the agendas. The email memo includes such information as which council members will be absent, which items have been pulled or rescheduled, when hearings are expected to start on numerous items, and which upcoming hearings have been canceled for lack of a quorum.

The memo also includes all amendments as attachments.

Only people who have requested to be on the email list receive the memo. The list currently includes some, but not all, city employees, some, but not all, members of the press, and a number of citizens.

Told of the memo by the Portland Tribune, Sanderson expressed amazement. No one ever told her she needed to sign up to receive the street fee amendments in advance, even though she has been following the street fee since it was first proposed in May and served on one of the work groups that helped develop the current proposal.

"Don't you think having to be on a special email list to get information is a poor way to do democracy? I am always impressed by the wide variety of people who take time out of their day to come down and testify in front of council on all kinds of issues. Should they all have to be on a special email list to get what should be readily accessible information?" Sanderson asks.

Fruits says he hadn't heard of the memo, either, even though he frequently testifies on issues before the council.

Next steps unclear

Mayor Charlie Hales and Commissioner Steve Novick proposed the street fee to raise \$46 million a year for maintenance and safety projects, after administrative expenses. The proposal includes a progressive personal income tax and a sliding scale for businesses, governments and nonprofit organizations. The current version was first considered by the council on Oct. 13, and the final vote originally was scheduled for Nov. 13. It has been delayed repeatedly to consider amendments submitted by Novick to address issues raised at the hearings or by people who have contacted Novick directly.

The amendments have caused delays because each one requires the final vote be postponed at least one week. Under council rules, all new measures must receive a public hearing and cannot be scheduled for a vote until the next week, at the earliest. Exceptions include noncontroversial items on the council's Consent Agenda and items with emergency clauses that take effect immediately, but those conditions don't apply to the street fee.

It is unclear what amendments will be included in this week's Tuesday Memo. At last week's hearing, the council accepted an amendment that creates exceptions for very micro businesses, defined as those that gross less than \$50,000 a year. Those based in homes will be exempt from the nonresidential portion of the fee. Those based outside homes will only be charged \$3 a month.

During the hearing, Commissioner Nick Fish expressed interest in exempting some or all new businesses from the fee during their first year. He said that is when businesses struggle the hardest to stay afloat. Fish did not say he would introduce such an amendment, however.

Novick also has said he believes people who work in Portland but live outside the city can be subjected to the progressive income tax. He is considering asking the city Revenue Bureau to study the question and says he does not yet know whether it would require an additional amendment.

"My personal inclination, if we can do it, would be to base it on statistics about what percentage of commuters' road use is in their work city as opposed to their home city. So, say, if commuting is 40 percent of the driving most people do, the fee should be 40 percent of the resident fee. I actually don't know the real figures," Novick says.

Neighborhood leaders in Southeast Portland have repeatedly charged that the tables for the business fees let many large transportation users off the hook, including trucking companies. Southeast Uplift, the coalition office representing 20 inner Southeast neighborhoods, has filed suit in Multnomah County Circuit Court to compel the Portland Bureau of Transportation to release internal documents on the development of the tables. Novick has not yet said whether he thinks this is a problem that requires another amendment to resolve.

## **Willamette Week**

### **Uber Has Been Hit With \$67,750 In Fines by the City of Portland After 10 Days of Operating Here**

*By Aaron Mesh  
December 15, 2014*

City of Portland transportation officials have issued \$67,750 in fines to the ride-sharing company Uber, but have yet to penalize a single driver.

Uber has been operating its service in Portland for 10 days, defying city rules for taxis and town cars. The city, led by Mayor Charlie Hales and Commissioner Steve Novick, has sued Uber, seeking a judge's injunction to block the company from operating.

City code enforcement officials have in those 10 days issued eight penalties to Uber, a San Francisco company valued at \$40 billion. The city has issued a fine to Uber each time city code enforcement officers with the city's Bureau of Transportation have successfully ordered a ride from the company's phone app. The fines started at \$1,500, but have since gone up to \$10,000 for each violation—\$5,000 for operating a cab without a permit, and another \$5,000 for not displaying a valid taxi decal on the vehicle.

Frank Dufay, the city's private for-hire transportation manager, says officials have chosen to not fine any of the drivers caught so far. Instead, the city has sent drivers warning letters. But he warns the grace period is ending.

"We wanted to give them a warning before we started hitting the drivers with the big penalties," Dufay says. "We're going to start that this week."

Meanwhile, a federal judge today rejected an effort by city officials to move its lawsuit against Uber back to Multnomah County Circuit Court, where the city first filed it. Uber got the case moved to in U.S. District Court last week, arguing it would lose more than \$75,000 by complying with city rules.

The city had tried to remand it back, arguing the money Uber was losing was made illegally. U.S. District Judge Michael Simon rejected that attempt today, and scheduled oral arguments for Dec. 23. "The city also argues that a business may not profit from illegal activity, but whether Uber's activity is illegal is a question reserved for the merits in this case," Simon wrote in a ruling first reported by Courthouse News.

The jurisdiction matters to the city and Uber because local courts typically hear cases faster than federal courts. Moving the case to federal court gives Uber more time to establish its service.