

## The Oregonian

### Dean Marriott's \$200,000 severance tops in Portland program with \$4.7 million in payouts

*By Brad Schmidt  
January 07, 2015*

A nearly \$200,000 severance payment for the ouster of sewer administrator Dean Marriott will be the largest golden parachute awarded by the city of Portland since 2001 under a separation program that's cost the city more than \$4.7 million.

Marriott's exit will become all but official Wednesday, when the City Council is scheduled to approve a separate \$49,000 payment to cover Marriott's legal expenses since he was placed on paid administrative leave in October.

Commissioner Nick Fish forced Marriott out of his job in the wake of a critical city audit over the Columbia Building, an \$11.5 million office project that tripled in price.

Marriott, director of the Bureau of Environmental Services since 1994, threatened to sue Portland and claimed that Fish and then-Auditor LaVonne Griffin-Valade colluded against him to advance their own political goals.

But Marriott has now agreed to drop legal claims and resign in exchange for one year's salary, or \$199,160, plus six months' health benefits and legal fees.

Because of his tenure and responsibilities, Marriott's severance will be significantly more than any of Portland's 92 other separation payments, according to a database of severance records obtained by The Oregonian/OregonLive under the state's public records law. Our review provides the first comprehensive examination of the use and costs tied to Portland's long-standing targeted severance program.

Despite the conflict between Marriott and the city, Mayor Charlie Hales characterized Marriott's severance as a "thank you" for his 20 years of service. Among his accomplishments, Marriott led the bureau through the on-time and on-budget completion of the \$1.4 billion Big Pipe project.

Marriott's severance will be paid by the Bureau of Environmental Services, which is funded by sewer and stormwater ratepayers.

"The targeted severance program is designed to give thanks to an employee for service, and to effect a transition," Hales said in a prepared statement. "That's what we're doing here: Thanking Dean for decades of service to the city, and making a transition to a new director."

#### Top officials frequently targeted

Portland created its targeted severance program in 1997 to "mitigate the impact" of layoffs expected because of changes to the state's property tax system, a key source of revenue for the city.

The policy also noted that severances would be offered for "changes in leadership," with a maximum payout capped at 30 weeks' pay.

Four years later, in October 2001, the City Council tweaked the program into its existing form, which allows up to a year's salary.

Anna Kanwit, director of the Bureau of Human Resources, said targeted severances offer an effective way to encourage employees to resign, force top-level management changes or avoid layoffs and union-mandated bumping rights.

"It provides flexibility," she said. "A one-time expense that can avoid an ongoing cost to the city, or protracted litigation."

Portland frequently uses its severance program to remove top city officials, our review of city severance payments found.

Including Marriott's pending deal, Portland has spent nearly \$1.3 million – more than a quarter of the overall total – ousting 13 directors or top managers of city bureaus and offices.

The next-highest payment was made in 2013 to former Chief Financial Officer Rich Goward. Goward complained that he faced retaliation as a whistle-blower and received \$162,302 – nearly \$40,000 less than Marriott's severance.

Including Marriott, the city has authorized six severance payments of \$100,000 or more.

The short list of recipients includes: Bruce Theurer, who oversaw the city's troubled SAP software system, at \$130,291 in 2012; Mort Anoushiravani, the Water Bureau director until 2005, at \$121,033; and Gil Kelley, the former planning director replaced in 2009 during a bureau merger, at \$113,315.

Our review also found that Portland paid out nearly \$1 million in 2009, more than any other year, just as the recession began to batter city finances.

Half of that money went to 13 employees in the Bureau of Development Services, which faced layoffs when developers halted construction projects and permitting revenues dried up. The development bureau has spent more than any other agency offering severances: nearly \$671,000 to date.

After Marriott's severance payment, the Bureau of Environmental Services will rank fifth among city agencies for the total amount of severances paid, at about \$260,000. Only three other bureau employees received severance packages in the preceding 13 years before Marriott's departure.

### **Best interest of the city?**

In October, Fish said he placed Marriott on paid administrative leave, pending an outside investigation by a law firm, because it was in the "best interest of the bureau."

Fish's move came after a city audit found that insufficient design oversight, elaborate design choices and an expanded project scope dramatically increased costs for the bureau's Columbia Building project.

But Marriott, in a tort claim filed in November, contended that Fish wanted to get rid of him since May 23. Marriott alleged that Fish blamed him for making misstatements to reporters about the project, according to Marriott's legal filing.

Even if true, Fish couldn't simply fire Marriott. That's because Marriott was hired with civil service protections, making it difficult to oust a bureau director without cause.

Voters approved changes to the city's hiring rules for top officials beginning in 2001, designating them at-will employees, but Marriott was the last remaining bureau director with grandfathered special protections.

Charese Rohny, an attorney who represents Marriott, said those protections entitled Marriott to due process that he believes he didn't receive.

"It allowed an excellent manager like Dean to remain in place with protections from political motivations," she said. "That's the sad part: He was the last man standing."

As a result of Marriott's agreement to resign, the scope of Fish's outside investigation has now shifted.

Although Fish initially said the review was necessary to determine "whether laws, rules, ethical guidelines have been violated," the report is now expected to focus on "lessons learned" and recommendations for future projects.

Fish, citing the pending City Council vote on Marriott's deal, declined through an aide to comment for this story.

On average, the severance program used to force out Marriott has cost the city about \$350,000 a year. Kanwit, the city's human resources director, said it is working as intended.

"I think it has been used effectively," she said. "I don't see any changes coming."

## **Portland Street Fee: Standoff over residential rates doesn't preclude business vote -- Portland City Hall Roundup**

*By Brad Schmidt  
January 07, 2015*

Just because Portland Commissioner Steve Novick apparently lacks the votes to pass a residential street fee, don't write off the possibility that the City Council might move forward with business fees.

Novick on Tuesday said one option being considered is City Council approval of the business portion of the street fee package – provided he finds the votes for that – but to suspend implementation until a residential fee or tax is approved, presumably by voters in 2016.

The complexities arise after Mayor Charlie Hales and Novick failed to persuade Commissioner Amanda Fritz to support their latest street fee package. Fritz this week said she wouldn't vote in favor of the plan, which included annual residential fees of \$36 to \$144, depending on income, with some exemptions for poor Portlanders.

Commissioners Dan Saltzman and Nick Fish have previously said they want a street fee approved by voters, not by the City Council. Novick and Hales want to raise more than \$40 million a year, roughly half from residents and half from businesses, to pay for transportation maintenance and safety projects.

The business component of the plan -- annual fees of \$36 to \$1,728, depending on the type, size and revenue of the business -- has proved less contentious.

Novick's raised the possibility of approving business fees at the City Council's Jan. 14 meeting in response to questions from The Oregonian/OregonLive.

Asked whether he would pursue business-only approval, Novick responded in a text message: "Complex question, couple options to look at." He then offered the option of approving business fees first but delaying implementation.

Novick has said he wants to refer a progressive income tax to voters in 2016 if the City Council doesn't support his current proposal, which the council will review Thursday.

Asked whether he has a preference about how to move forward, Novick responded:

"I do have a preference but want to check with my colleagues before expressing it."

## **Portland city attorneys seek mediation in city's appeal of federal judge's order regarding oversight of police reforms**

*By Maxine Bernstein  
January 07, 2015*

Portland city attorneys are scheduled to participate in a phone conference Wednesday to determine if the city's appeal of a federal judge's order regarding his continued oversight of federally mandated police reforms is a case appropriate for mediation.

The 9th Circuit U.S. Court of Appeals mediator will start the call at 11 a.m. with attorneys from the city, the U.S. Attorney's Office and the Portland Police Association to determine if the city's concerns can be resolved without a full appeal.

An hour later, a community coalition plans to rally in front of Portland's City Hall to urge the city to rescind its appeal.

In late October, Portland's City Council voted 4-0 to pursue an appeal of U.S. District Judge Michael H. Simon's order that requires city attorneys and federal prosecutors to appear before him at least once a year to update him on the status of a wide range of police reforms mandated in a settlement he approved.

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 negotiated settlement, approved by Simon in late August, calls for changes to Portland policies, training and oversight.

The City Council's vote in October came despite widespread community opposition. More than 20 community members spoke out to oppose an appeal last fall. They questioned why the mayor and council

members -- who repeatedly have said they're committed to transparency and ensuring the police reforms are fully adopted -- are so fearful of having a judge check on their progress.

Simon made it clear he has no power to order further reforms but wrote in his order that the parties might present evidence if requested at the periodic hearings.

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

The city has long argued that Simon doesn't have the authority to require city officials to present evidence before him in court on the status of the reforms. When they voted to support the appeal, Mayor Charlie Hales and Commissioners Amanda Fritz and Steve Novick made it clear they oppose Simon's continuing oversight of the settlement.

In a mediation document filed with the appellate court, deputy city attorney Ellen Osoinach argued that Judge Simon "could not order post-dismissal evidentiary hearings unless the U.S. alleged a material breach of the settlement agreement."

The first hearing to update Judge Simon on the progress of police reforms is scheduled for Sept. 14. If the appeal is not resolved through mediation, city attorneys signaled that the city also intends to petition for what's called a writ of mandamus to compel the federal district court judge not to hold the hearing.

The city has suggested that "annual status conferences" before the judge would be acceptable instead.

The Albina Ministerial Alliance Coalition for Justice and Police Reform is organizing the noon rally outside City Hall on Wednesday.

"While the City claims the appeal is to 'clarify' what kind of evidence can be brought forward by the parties," the coalition said it's clear the city intends to challenge's the judge's authority to monitor the progress of the reforms, the coalition wrote in a press release.

Portland's mayor said at a community meeting last month that he expected the city's concerns to be addressed through mediation by early this year.

"I'm looking forward to having it resolved, hopefully in January," Hales said.

In a document presented to the appellate court, Osoinach wrote that the city welcomes mediation: "The City believes strong that mediation would allow the parties to identify and agree on processes that would provide the district court with the information it needs to monitor the parties' compliance with their settlement agreement while maintaining appropriate procedural safeguards."

At 2 p.m., Wednesday, the City Council is set to approve additional money to help cover the travel expenses for a team of outside consultants selected to serve as compliance officers helping to oversee the status of the police reforms.

The ordinance adds another \$75,000 a year to the city's already-approved \$240,000 annual contract with Rosenbaum & Watson, the Chicago-based team of academics selected to serve as the city's new compliance officer/community liaison. The academics will be paired with former Oregon chief justice Paul J. DeMuniz.

The city also is seeking \$45,000 for an administrative support position to assist a new Community Advisory Oversight Board, and \$250,000 from a city contingency fund to cover costs for office and meeting space, equipment, website development and interpretive services for the new board and its chair, Oregon's retired chief Justice Paul DeMuniz.

## **Portland to pay \$50,000 in pedestrian death on high-crash corridor**

*By Brad Schmidt  
January 06, 2015*

The Portland City Council is scheduled to approve a \$50,000 settlement Wednesday with the estate of a 27-year-old woman who died in 2012 as she crossed one of the city's high-crash corridors at a crosswalk.

Mara Forsythe-Crane was crossing Beaverton-Hillsdale Highway before dawn about 6:30 a.m. Dec. 18, 2012, with the "walk" sign on, en route to her bus stop for work.

A driver turning left from Southwest Shattuck Road hit and killed her when she was about halfway across.

Forsythe-Crane's family threatened to sue the city for negligence, alleging that Portland officials knew the intersection was dangerous but failed to make improvements, such as adjusting the signal timing.

City officials had considered adjusting the signal to give pedestrians a six-second head start crossing the highway before vehicles from Shattuck could turn. The city made the adjustment four months after Forsythe-Crane's death, at a cost of \$300.

"Part of our hope was that in bringing this claim, the city might recognize that when there are inexpensive improvements that have been identified, they need to get done," said Jim Crane, Forsythe-Crane's father.

Although the City Council is scheduled to vote on the settlement Wednesday without discussion, documents indicate that risk management officials believe the city "may be found liable" in a lawsuit. While those officials dispute that the city is responsible for the collision, they recommended the \$50,000 settlement to avoid costly legal expenses or the risk of a larger jury award.

Beaverton-Hillsdale Highway is one of 10 high-crash corridors designated by the Portland Bureau of Transportation. The label helps city officials prioritize which busy roads should be first for safety improvements.

Diane Dulken, a spokeswoman for the Transportation Bureau, emphasized that the signal changes were made in response to recommendations for the corridor, not because of any particular accident.

At the Shattuck crossing, Dulken said, the signal changes serve as a way to shorten the amount of time pedestrians and vehicles could cross paths.

"It gives pedestrians a head start," she said. "It allows them to cross the street, or have more of the street crossed, before a vehicle comes into play."

In all, safety upgrades along Beaverton-Hillsdale Highway included buffered bike lanes, a rapid-flash beacon and a new median at specific intersections or portions of the road.

Total costs are estimated at just under \$1 million, Dulken said.

Commissioner Steve Novick, who oversees the Transportation Bureau, said he doesn't believe the settlement will open up the city to future claims for injuries or deaths in high-crash corridors.

Between 2008 and 2012, 48 pedestrians died in Portland accidents, according to an Oregonian/OregonLive analysis of crash fatality data kept by the federal government. Of those, 24 deaths were in the city's designated high-crash corridors.

"Because each settlement reflects the unique circumstances surrounding a particular incident," Novick said in a statement, "settlements do not create a precedent for liability."

Crane, who is an attorney at the law firm representing the family, said he and his wife chose to settle for the same reasons that many people do: Suing can be long, expensive, risky and emotionally trying.

But while the city did not admit liability, Crane said he's satisfied with outcome.

"It signifies some recognition by the city of the events," he said. "To obtain that recognition would have been the main purpose of the lawsuit, so the settlement accomplishes that."

Crane also said he hopes the settlement -- and attention -- will push the city to make more fixes that could save lives. Novick, for one, has been championing a controversial street fee that would dedicate money for safety improvements, with an emphasis on high-crash corridors.

Crane said his daughter went to Bridlemile Elementary School and the Northwest Academy, left town for her undergraduate degree, then returned to Portland and took a job at Café Voila downtown.

A poet and writer, she planned to return to school and earn a master's degree so she could teach others to write. The family submitted, and The Oregonian/OregonLive published, one of Forsythe-Crane's poems after her death.

"My wife and I are glad that the city of Portland agreed to settle. We really appreciate that," Crane said. "We just hope that this reminds drivers and pedestrians that you have to take care. You really do."

Clarification: This post originally stated that the signal changes were made one month after Forsythe-Crane's death, based on information contained in the family's tort claim. The Portland Bureau of Transportation later clarified that the signal changes were not made until April 26, 2013, four months after her death.

## **Portland orders owners of 2 buildings to make repairs after parts fall to street**

*By Tony Hernandez  
January 06, 2015*

Portland officials Tuesday gave the owners of an office building/parking garage and an apartment building 60 days to make repairs and get final inspections after parts fell onto sidewalks and streets.

No one was injured in either incident, both last month.

Dec. 19, the driver of a Mercedes E320 lost control and rolled into a outer wall of a parking garage at downtown's Columbia Square Building. The wall tumbled five stories onto the sidewalk and Southwest Jefferson Street.

Dec. 11, city fire crews responded to the partial collapse of a parapet at the Zenabe Court apartments. Bricks and other materials damaged cars parked near Northwest 20th Avenue and Irving Street.

Notices issued under the city's "dangerous building" code gave the owners 15 days to submit permit applications and professionally engineered design plans. They have 30 days to begin repairs.

"We are pursuing this as fast as we can," said David W. Zier, a partner and principal with Melvin Mark Cos., which owns Columbia Square. "The building is safe and in full use, other than the two parking spaces."

KBC Management Co., owner of the other building, did not respond to a message left Tuesday.

Mitch Nickolds, manager of the city Bureau of Development Services, has said opening a "dangerous building" case does not necessarily mean a building is unsafe. It's simply the process the city uses to notify owners of needed repairs and to make sure they get done, he said.

Last week, he said the Columbia Square owners will have to submit a structural engineer's review of the parking garage walls and steel brackets to ensure they comply with the 1976 codes in effect when the building was constructed.

The owners of Zenabe Court, in the Alphabet Historic District, will need to comply with regulations for city historic zones.

## **Time for mayoral leadership on street funding: Editorial Agenda 2015**

*By The Oregonian Editorial Board  
January 06, 2015*

Calling it too burdensome for poor and middle-income Portlanders, Commissioner Amanda Fritz on Monday expressed her opposition to colleague Steve Novick's latest street-funding proposal. Instead, she urged her fellow commissioners to send a progressive income tax to the ballot.

There's good news here and bad news, too.

The good news: The odds that City Council will send a funding proposal straight to the ballot, which Novick and Mayor Charlie Hales wanted to avoid, just got better.

The bad news: Serving voters an income tax would be an admission of failure and further evidence that Portland has a powerful leadership vacuum. If Hales and his colleagues want to convince their constituents to pony up for streets, they need to offer a more serious proposal than this.

Novick, a progressive-taxation purist, oversees the city's transportation bureau and is leading the funding effort. He and Hales floated a tiered income tax for street maintenance last year, which Novick followed up in December with a very similar proposal dressed up to resemble a user fee. If his colleagues wouldn't support this, he said of his latest proposal, he'd ask them to put a truly progressive income tax on the ballot in 2016. On Monday, Fritz said she'd like to see an income tax on the November 2016 ballot.

Let's hope their colleagues aren't so eager to abandon the pursuit of responsible policy.

We understand the preference of Novick and Fritz for progressive taxation, but adopting an income tax to pay for street repairs is a bad idea. An income tax would, as we've noted on numerous occasions, exempt thousands of Portlanders who derive very comfortable incomes from public pensions. It would require

residential taxpayers to submit income tax returns to the city, which would incur substantial costs in processing them. It would face fierce opposition from local businesses, which would remind voters about the consequences of handing the city the keys to a shiny, new vehicle of taxation. Finally, it would have to be approved by Portlanders themselves. Don't hold your breath.

Rather than allowing the street-funding effort to slide hopelessly into progressive paralysis, Hales should exhibit some timely leadership. Colleagues Nick Fish and Dan Saltzman have insisted upon putting any street-funding mechanism before voters, a condition to which Hales ought to agree. After all, both Novick and Fritz are now eyeing the ballot. Instead of offering voters an unfair and administratively costly income tax, though, Hales should seek a residential funding option that is simple, modest and temporary. Asking for a property tax bond to fund significant repairs, as Eugene does periodically, is one option.

Many of the simpler alternatives to an income tax, including a household fee, will be criticized as too regressive. But, then, so is the standard method of generating road revenue, the gas tax, which state lawmakers may include in an anticipated funding package this year. How many of the leading voices of progressive taxation, including those on City Council, will urge the Legislature not to raise the gas tax, vehicle registration fees and so on to pay for roads? Precious few, we suspect. City Council, like the Legislature, should allow pragmatism rather than ideology to drive this debate.

Even as it offers voters a reasonable funding mechanism, however, City Council can strike a blow against regressive taxation. In her announcement this week, in fact, Fritz points an accusatory finger at the city's arts tax, which "is also regressive." Novick, too, has blasted the arts tax, which collects \$35 per year from all income earners except for the truly destitute – and a lot of public pension recipients. Why not put the arts tax on the same ballot as a responsible street-funding package? Call it a good faith gesture.

City Council won't get from here to there with Novick leading the effort, however. It's time for Hales to demonstrate the sort of leadership the city expects from its mayor.

## **Willamette Week**

### **Portland Considering Permits for 377 New Taxis**

#### **Competition for Uber could include EcoCab and Rainbow Cab**

*By Aaron Mesh  
January 7, 2015*

When Uber returns to Portland in April, it could face new competition.

City Commissioner Steve Novick has told the city's taxi board to tackle its backlog of 377 permit applications from 10 cab companies. (Portland now has just 460 licensed cabs.)

The Private-for-Hire Transportation Board of Review has been accused of protecting the interests of existing taxi companies. But the board's manager, Frank Dufay, tells WW he wants new cabs on the road.

"The commissioner has been pretty clear he'd like to see the market opened up," Dufay says. "I totally agree there aren't enough cabs out there, and there need to be more. But they need to be regulated." As WW reported in last week's cover story, that regulation is being temporarily ditched in April: The city will for two allow an unlimited number of taxis, charging any price they want.

But the move forward suggests the city is seeking to add licensed cabs before Uber floods the market. (The San Francisco company recruits drivers to turn their own cars into de facto taxis.)

Six of the cab companies asking for licenses are newcomers to Portland, including Rainbow Cab, serving LGBTQ passengers, and EcoCab, which uses Tesla electric cars.

The other four are familiar contenders for taxi licenses: Broadway Cab, Green Cab, Portland Taxi Cab and Union Cab.

Stephen Kafoury, a lobbyist for Broadway Cab, says the city's biggest taxi company is eager for an expanded cab market.

"Many people have been accusing the taxi industry of not wanting more licenses," Kafoury says. "That's not the case. But we want to assure that any new taxi licenses be required to meet the same safety and service regs that the existing industry meets."

## The Portland Mercury

### Portland's Threatened Pabst Lawsuit Fizzes Out For Now

By Denis C. Theriault  
January 7, 2015

Seems Portland City Hall's plan to sue Pabst for copyright infringement—on account of how closely its unicorn-bedecked Project Pabst logo resembled the city's famed "Portland, Oregon" sign—has gone flat for the time being.

After the city attorney's office sent word it wanted to pull a resolution on the current city council agenda authorizing the lawsuit, to let settlement negotiations continue, the council this morning followed suit in an almost-perfunctory unanimous vote. Almost perfunctory, because Commissioner Steve Novick and Mayor Charlie Hales couldn't resist cracking wise.

"I'm relieved," Novick said, mostly because he hoped negotiations with Pabst would lead to an agreement without the acrimony of a court fight, but also because he feared upsetting "the ghost of Dennis Hopper."

"I thought you were going to talk about a 'blue ribbon' committee," Hales said. (Hales' spokesman, Dana Haynes, for the record, said in a message this week that he made the same pun as his boss and was told, presumably jokingly, by the city attorney's office to never say it again.)

Documents from the city attorney's office, first posted Friday, offer some hints as to why the city wanted to sue: Money, among a handful of reasons.

#### **Purpose of proposed legislation and background information:**

The City of Portland owns right, title and interest in the Portland, Oregon sign, including intellectual property rights. The City holds a State of Oregon registered trademark as well as common law rights based on extensive commercial use and licensing of the mark by the City and its predecessors in interest. Parties seeking commercial use of the Portland, Oregon sign must first seek license from the City. The City has an interest in protecting its trademark.

Pabst Brewing Company sought license to use the Portland, Oregon sign to advertise and promote its 2014 Project Pabst music festival. Negotiations took place, but ultimately the parties were unable to reach agreement and the City declined to authorize such use, as the event did not comply with the City's Acceptable Use Policy. (The City's current policy does not allow use of the mark to be depicted or used on products and services that are not available to persons of all ages). Pabst instead created a "knock off" and used a confusingly similar version of the Portland, Oregon sign in its marketing and promotion of Project Pabst, in violation of the City's registered trademark:



City Mark



Pabst Mark

The City hired outside counsel to send a Cease and Desist letter to Pabst, as well as negotiate a settlement for Pabst's unauthorized use of the City trademark. Pabst did not respond favorably, and in fact has continued to violate the City's intellectual property and already announced another Project Pabst music festival in Portland in 2015. The City Attorney seeks to institute legal proceedings to seek damages and enjoin any future unauthorized use of the City's trademark.

The Oregonian last night quoted Hales' spokesman as saying that the lawsuit could reappear in a couple of weeks, January 28.