

The Oregonian

Portland loses again in utility lawsuit, this time for \$3 million

*By Brad Schmidt
December 4, 2015*

The Portland Water Bureau's foray into the parks business came back to haunt city leaders Friday when a Multnomah County judge determined the city improperly spent about \$3 million.

Judge Stephen K. Bushong ruled that the city exceeded its authority by spending about \$2 million to fix up Dodge Park in Clackamas County and about \$1 million creating so-called hydro parks.

Portland's liability from the 2011 lawsuit now stands at about \$4.5 million. Bushong previously ruled that water and sewer spending must be "reasonably related" to providing those services. Under such guidelines, officials misspent about \$1.2 million on outdoor restrooms and political campaigns, and nearly \$300,000 for Hurricane Katrina relief efforts, Bushong determined.

Attorney John DiLorenzo, who filed the lawsuit four years ago, said the city should settle while agreeing to restrictions for how water and sewer money is spent going forward.

"I keep giving them a chance," he said. "Every time they say no, we win again."

City officials, who previously won portions of two mixed-bag rulings, continue to say the judge's adverse rulings are wrong.

"The City is disappointed by the judge's ruling on the issue of maintaining hydroparks and upkeep of Dodge Park," Tracy Reeve, the city's top attorney, said in a statement. "We will continue to defend the City's right to manage water system property to serve the public interest."

Records obtained through the lawsuit show that former city Commissioner Randy Leonard wanted to improve the Water Bureau's image by creating parks on the agency's land.

At Dodge Park in Clackamas County, that meant creating an amphitheater and rebuilding a community hall with a kitchen. The Water Bureau owns the land because its pipelines to the Bull Run cross the property.

The Oregonian/OregonLive reported in 2011 that Dodge Park was a top priority for Leonard, and a crew of Water Bureau employees clocked 5,000 hours working on the project, with work stretching on five months longer than expected. The same group of employees previously fixed up another controversial project, the Portland Rose Festival Foundation's headquarters.

Within city limits, meanwhile, the Water Bureau began opening its property to residents through so-called hydro parks. At properties with a water tank, for instance, officials created dog areas and other park-like amenities.

DiLorenzo successfully argued that park improvements dramatically altered the properties into a different type of public space, beyond the needs of the water system.

Commissioner Nick Fish oversees the Water Bureau and Bureau of Environmental Services, both targeted in the lawsuit. When Bushong first ruled against the city in 2014, Fish said the programs were "yesterday's news" and had already been fixed.

With three more victories in hand, DiLorenzo next year plans to challenge utility spending on the Centennial Mills property in the Pearl District and Superfund analysis.

"I don't know if we're registering with some of these guys," DiLorenzo said. "And I'm beginning to suspect it has more to do with who they are than anything else."

The demolition tax's failure is a Portland success: Editorial Agenda

*By The Oregonian Editorial Board
December 5, 2015*

The Portland City Council showed wise restraint last week in defeating a proposal by Mayor Charlie Hales to establish a \$25,000 tax on home demolitions. Why? Because the proposal, in polite-speak, was uncooked.

The essential question remained unanswered: How do you create more affordable housing by charging more for its creation?

The tax was designed to thwart easy demolitions and to preserve Portland's old housing stock and neighborhoods. But it was pitched as a new source of city revenue that could then subsidize the creation of affordable housing – critically in demand as rents soar and home prices climb.

While most houses constructed in place of a demolished home would not qualify as affordable housing – think apartments and to a far lesser extent design-smart small-footprint houses instead – the core concept was that a tax on developers could be used to help bolster the city's stock of affordable rental units. Lost in the fine print is the fact that most of a \$25,000 tax to the builder of a new structure or structures is passed along to renters and buyers – the ultimate underwriters. The tax is thus punitive to the cohort of people seeking housing, affordable or otherwise, and who likely represents Portland's future. Welcome.

The council took its cue, evidently, from the city's Design Review Advisory Committee, palms-to-sky in befuddlement over the proposal and which wrote a letter Tuesday to Hales and all city commissioners about it.

The DRAC asked easy but basic questions such as: "Will this tax be in effect forever?" More pointedly, though, it reduced the plan to pure whim by asking: "While the proposal identifies the Housing Investment Fund as the recipient of the new revenue, and that the money will be used in developing 'affordable housing', how will the money be used to do that?" And then, the clocker: "How will the funds be leveraged to make housing in the city more affordable?"

The DRAC's membership has a vested interest. It comprises leaders in the building and contracting industries as well as design professionals and neighborhood advocates. But it performed a public service by helping city commissioners do their jobs: namely, to address a housing challenge systemically and avoid knee-jerk opportunities that could pave the road ahead with unintended consequences.

Commissioner Steve Novick, Brad Schmidt of The Oregonian/OregonLive reported, told Hales he wanted to offer rebates on demolitions that help meet city density goals or otherwise reduce the tax depending upon the price of a new home – or both. Commissioner Amanda Fritz correctly and politely said it didn't seem reasonable to pay for affordable apartments "by making single-family housing even more unaffordable." Indeed.

The affordable housing challenge is real. Nobody wants Portland to become another San Francisco, whose stratospheric prices are punishing to all but some among the poor, who increasingly find subsidy; and the wealthy, who own much of the city's apartment, condominium and housing stock. San Francisco, surrounded by water on three sides, is landlocked. But Portland, less constrained by natural limits, is contained by an Urban Growth Boundary that in part fuels the drive to create in-fill housing and greater housing density. The UGB and the city's goals, then, while attracting many from around the country, also account in some measure for the rising prices.

Any efforts to help folks afford to call Portland home will need better integration and thought than tacking on a new fee here, another tax there. The council last week showed it understands as much. It should proceed cautiously in its efforts to expand affordable housing with the understanding that an observer's error attends even the best-intended of its efforts: Whatever action it takes can alter the problem itself and create unseen others.

Good move from Portland City Hall; Oregon's personal-freedom divide: Editorial Peaks and Valleys

*By The Oregonian Editorial Board
December 4, 2015*

Peak

A city that works together: Portland City Auditor Mary Hull Caballero and her chief deputy, Sarah Landis, were disappointed last year when Landis was abruptly disinvited from the weekly meetings of city commissioners' chiefs of staff. The longstanding gathering was a convenient way for the top staffers for the city's six elected officials to discuss upcoming council agenda items, hear about proposals in the works and coordinate on issues such as security for the building.

Worse, Landis didn't really understand why she was being shunned. But about a year ago, Mayor Charlie Hales' then chief of staff, Gail Shibley, told Landis that there was a

communications problem. How exactly that would be resolved by cutting Landis out was never clear. Regardless, Landis was excluded. To keep up on city business, particularly matters for which the auditor's office is responsible, Landis and Hull Caballero relied on conversations with each office individually. Hardly a model of efficiency.

But since then, Shibley has flown the coop, making way for a new chief of staff to take her place. Josh Alpert, who formerly served as Hales' director of strategic initiatives, told The Oregonian/OregonLive editorial board last month that he had no objection to including Landis on the weekly meetings again and would ask the other chiefs of staff – two of whom are also newcomers – if they objected.

Alpert was true to his word and recently invited Landis back. She will be attending the next one, he said.

Valley

The personal-freedom divide: The evolution of marijuana policy has highlighted at least two divides in Oregon over the past year. There is, of course, the urban-rural divide. People in Oregon's cities, put simply, are more comfortable with casual marijuana use than those in rural areas. Perhaps more interesting, though, is the divide that has formed between Oregon's voters, who favor increased personal freedom, and the people who regulate and govern them, who don't.

One case in point is a recent visit by a Multnomah County tobacco program specialist to the World Famous Cannabis Café in Southeast Portland. The specialist told café owner Madeline Martinez that, as of Jan. 1, smoking and vaping in her club would have to stop, The Oregonian/OregonLive's Noelle Crombie reported. Never mind that only a year ago, Oregonians had determined by a 184,000-vote margin that adults should be free to smoke pot, just as they are to drink alcohol. More freedom, more hassles – there's a state motto in there somewhere.

The smoking crackdown has its roots in a 2009 law, the state's Indoor Clean Air Act, which initially focused on tobacco. While few would quibble with a legal prohibition on smoking in most indoor public spaces and workplaces, the law also applies to bars and taverns, where adults have traditionally congregated to indulge their appetites for legal "sins," including drinking, smoking and, ahem, pumping money into the state's Lottery gizmos. The clean-air law does exempt two kinds of businesses, which must be certified by the state: cigar bars and smoke shops.

This year, the Legislature included marijuana smoking on its list of Indoor Clean Air Act no-nos, and there is no exemption, the county determined, that would allow pot smoking in establishments like the World Famous Cannabis Café to continue past Jan. 1. Because Measure 91 places tight limits on outdoor pot use, Indoor Clean Air Act restrictions are particularly frustrating for people who expected last year's strong demonstration of support for personal liberty to produce adequate options for exercising it.

You could, of course, lay the blame for this disconnect on the 2009 law that Multnomah County is simply doing its best to enforce. It can take time for state statutes to reflect the values of

voters on rapidly evolving issues like marijuana legalization. But blaming a six-year-old law wouldn't account for the eagerness of today's elected officials to restrict the public use of marijuana's puff partner, tobacco, even when restricted uses pose no harm to anyone but tobacco users themselves. Portland, for instance, recently prohibited tobacco use in all parks. It's as if elected officials even in places where marijuana legalization enjoys strong support willfully ignore the message embedded in Measure 91's passage: Adults deserve more freedom to decide what to consume as long as doing so doesn't endanger others.

But perhaps elected officials, like aging statutes, need time to catch up with voters. If so – and if the passage of Measure 91 does, in fact, indicate a laudable live-and-let-live trend among Oregonians – perhaps it's not unreasonable to hope for a sensible easing someday of the law that is now giving the World Famous Cannabis Café fits. There is no compelling reason, other than intolerance, to prohibit tobacco use (and in willing establishments marijuana use) in bars and taverns. Adults can decide for themselves whether to frequent such places, just as they can decide for themselves whether to work in them. For those who'd rather not, plenty of non-smoking establishments will continue to exist.

Such a move toward greater liberty may seem unlikely. Then again, the legalization of recreational marijuana might have seemed far-fetched back in 2009.

Willamette Week

Uber to Portland Auditor: We're Not Giving You Mark Wiener's Contract

*By Beth Slovic
December 4, 2015*

Uber responded Friday to a demand by the city of Portland's auditor that the ride-hailing giant turn over its contract with lobbyist Mark Wiener, sending a five-page letter that can be summed up in one word:

No.

But Uber did acknowledge violating Portland's lobbying regulations by not reporting until April 10 that Wiener had acted on behalf of Uber—almost three months after accurate lobbying statements for 2014 were due. The company also admitted failing to report the activity of two other lobbyists.

"We recognize that we erred," Uber's Dec. 4 letter to the city reads.

Uber's letter also contains other disclosures that could prove troublesome for the company and elected officials as Auditor Mary Hull Cabellero continues her investigation of Uber's compliance with the city's lobbying regulations.

Her investigation—into the timing of Wiener's work and the exact nature of the services he provided Uber—could result in fines for Uber.

Hull Cabellero declined to comment Friday, saying through an aide that the investigation is still underway.

To the public, a larger issue is at stake: Did Wiener, a political consultant who has helped elect Mayor Charlie Hales and Commissioners Steve Novick and Dan Saltzman, trade on his access at City Hall to get Uber a better deal? Hales and Novick tried to block Uber from launching in Portland before Wiener intervened, going so far as to file an injunctive lawsuit against Uber last year.

Wednesday, the Portland City Council voted 3-2 to permanently authorize the operation of Uber and other ride-sharing companies such as Lyft. Wiener's former clients, Hales, Novick and Saltzman, provided the "yes" votes.

In interviews with WW, which first started investigating Wiener's relationship with Uber in August, Wiener has maintained that he didn't sign a lobbying contract with Uber until Dec. 19.

Uber's letter indicates, however, that it first reached out to Wiener to see if he would work as a consultant two weeks earlier, "on or about" Dec. 5, 2014. That's the same day that The New York Times quoted Novick calling Uber "a bunch of thugs."

Uber also writes in its letter that a "review of internal correspondence and documentation suggests that Mr. Wiener may have begun to represent Uber as early as December 11, 2014."

Uber's letter to the auditor also says that Wiener called Hales on Dec. 12, 2014 regarding a potential meeting about Uber.

On Dec. 13, 2014, Wiener hosted a meeting between Uber representatives and city officials, including Hales and Novick, at his Eastmoreland home. Five days later, Portland and Uber announced a deal to ease Uber's entrance into Portland.

Uber, however, declined to make a definitive statement about when it authorized Wiener to lobby for the company.

"Individuals involved recall Mr. Wiener not agreeing to represent Uber until after the December 13, 2014 meeting at his home," Uber writes in its letter.

It's now up to the auditor to decide exactly when Wiener started acting as an Uber lobbyist—and whether the company should be subject to fines.

And that could further embarrass Hales and Novick, whom the auditor dinged in September for failing to publicly report the meeting at Wiener's house. That violation could have resulted in fines of up to \$500 for both the mayor and the commissioner. The auditor let them off with warnings, however, because they had committed first-time offenses, she wrote in September.

In an Aug. 18 email to WW, Hales denied ever having been lobbied by Wiener. "Mark Wiener has never lobbied me on this or any issue," Hales wrote.

Hales spokeswoman Sara Hottman said the mayor would not be able to explain until Monday how Hales' previous statement squared with Uber's disclosure that Wiener called Hales about Uber on Dec. 12, 2014. The mayor is in Paris, attending an international climate summit.

Wiener, for his part, says he didn't agree to work for Uber until after the Dec. 13, 2014 meeting at his house and that the Dec. 12, 2014 call to the mayor "was to provide logistics."

"Personally," he wrote in a text, "I would not consider that lobbying."

Initially, Uber didn't report to the city that Wiener had acted as its lobbyist until April 10—almost three months after accurate lobbying statements for 2014 were due. The rules are designed to bring greater transparency to City Hall.

Eleven days later, Hales joined Novick and Saltzman in a contentious 3-2 vote to temporarily legalize Uber.

Uber's refusal to turn over Wiener's contract means it's still not clear how much Uber paid Wiener — or what, specifically, it asked him to do.

Wiener has refused to say how much he was paid. Uber says he gave the company "strategic advice."

Wiener said Friday in a second text message to WW that he was glad Uber had corrected the record regarding his contacts with the city on behalf of Uber.

"Some contacts I reported to them were not passed on to the auditor's office due to an administrative error on their part," he wrote.

The Portland Mercury

PBOT Wants to Build a \$6 Million Bike/Pedestrian Bridge Over I-405

*By Dirk VanderHart
December 4, 2015*

As it casts about for new funding to maintain the city's roads, the Portland Bureau of Transportation's also setting its sights on bridge-building. Not metaphorically, either. PBOT wants to build a new steel bike and pedestrian bridge over I-405.

In a grant application filed with the Oregon Department of Transportation in October, the bureau asked for \$3 million to help erect a 24-foot-wide span over the highway at NW Flanders. If the money's approved, PBOT would chip an additional \$3 million in transportation funds toward the project, and plan on having a bridge complete by 2019.

The proposed span would be the city's only car-free crossing over I-405. But it also would sit squarely between two other crossings—at NW Everett and NW Glisan—with bike lanes and sidewalks. PBOT, in its application, notes those streets "lack sidewalks on one side and require negotiation on and off ramps for vehicles entering and exiting I-405.

"These high-stress crossings," PBOT argues, "are enough to dissuade large segments of the population from choosing to walk or bike to work or other destinations in the Central City." The "population" PBOT's talking about are the residents of the Northwest District, the state's

densest neighborhood, who the city says bike and walk less than people in parts of northeast and southeast Portland.

So needed is the bridge, PBOT says, that 20 years from now the span could see more than 9,000 users a day—about on par with current usage on the Hawthorne Bridge (which sees something like 8,000 bikes a day during the height of summer).

"We want new residents to be biking or walking, and existing residents to be biking and walking more," says PBOT spokesman Dylan Rivera. "To do that we need to connect jobs and housing."

The proposal has a lot of fans. With its application, PBOT submitted letters of support [pdf] from representatives of the Pearl District, Northwest District, and Old Town, along with local employers and advocates for better bicycling and walking facilities. All of the of them speak of a need for a comfortable route over I-405.

"Currently there is no safe East-West route for people to walk and bike from the River to the West Hills," reads a letter from Legacy Good Samaritan Hospital.

The bridge is part of a project that's been an aspiration for years: Transforming NW Flanders into one of Portland's neighborhood greenways, which prioritize biking and walking safety over car access. It's also part of the city's Bike Plan for 2030, which has seen many of its most ambitious proposals languish since passing five years ago.

And PBOT is pitching the span as an "emergency lifeline route" in case an earthquake topples other bridges over the highway. According to Rivera the bridge would feature a 12-foot-wide, two-way bike path that could ferry ambulances and other emergency vehicles across 405.

So where would cash-strapped PBOT find its half of the \$6 million price tag? It's planning to use system development charges, fees that developers pay when they're increasing the density of a neighborhood, and will therefore be increasing use on the transportation system. Those aren't available to address most of the maintenance issues Portland has, Rivera says.

The Flanders bridge is one of a laundry list of applications PBOT's lodged with the state as part of its ConnectOregon grant process, which each year awards millions in lottery revenue to projects that don't involved car or truck traffic.

PBOT's also requesting \$3.5 million to help buy three used streetcars from the City of Seattle (Portland would add another \$1.5 million to that cost), \$500,000 to build a better bike/pedestrian crossing at NW Naito near the Steel Bridge (Portland would add \$630,000 to that), and \$570,000 to build a trail along an old tram line in SW Portland (city would kick in \$300,000). Rivera said most of the money for those projects—if not all—is ineligible to pay for streets maintenance.

Of course, just asking isn't going to get Portland the money for these things, This year, ODOT received more than \$90 million in requests, with just \$45 million to go around. It'll be competitive. (We reported on PBOT's questionable application for ConnectOregon money last year to pay for expansion of a bike share system that didn't exist.)

And if PBOT doesn't get the nod for the bridge money? Rivera says it'll keep trying. "We intend to pursue other funding," he says. "We think it's got potential to provide transformative bike and pedestrian access in NW Portland."

An Update on Four Illegal Airbnbs We Reported On Last Month

*By Shelby R. King
December 3, 2015*

The Portland Office of Management and Finance this week followed up with the Mercury about a recent inquiry into possible Airbnb misuse at four single-family homes, including flouting rules around purchasing permits, paying transient taxes, and the amount of time a home can be offered as an Airbnb.

The follow up is in response to this story, published a few weeks ago, about Kurt Morris and his family, who sold their Sellwood/Moreland home to a family under the premise that the four-bedroom home would be well loved, and, well, actually lived in by the new owners, Ryan and Kristina Brown, and their young daughter.

What happened, though, was the Browns never moved in, instead remaining in the San Francisco area and renting their home out as a full-time Airbnb that was being hosted by a local property manager named Sydney Mead.

When the Mercury first learned of the situation, Mead was listed as the host of four additional Airbnb sites, three of which were locatable thanks to online photos of the outside of the homes and a general location on Airbnb's map.

A little background: When Airbnb started to do business in Portland, city council passed an ordinance regulating their operations. First, in order to offer an entire home as a part-time vacation rental, the owners must be the primary residents. They're only allowed to rent the home for about three months per year. Second, each homeowner is supposed to purchase a \$180 permit from the city and pay transient lodging taxes.

The Mercury contacted Jen Clodius with Portland's Office of Management and Finance and gave her the addresses of the four Airbnbs being hosted by Mead. Clodius, at the time, said the city had no record of the four homes as registered with the city—meaning they hadn't applied for the proper permits.

Clodius says the city is following up on the addresses the Mercury provided. She says the city's enforcement person called the Morris' to let them know and "they were quite pleased to get the call."

She also explained that, by default, all Airbnb hosts are paying their transient taxes.

"Airbnb assesses [transient taxes] on each rental and remits them to us," Clodius wrote in an email. "If the host is using another website/platform that is not collecting and remitting taxes, the host is sent a warning letter followed by a \$500 penalty assessment two weeks later if they fail to cure the violation."

Clodius says hosts can be assessed a \$500 penalty for each violation of the city code, though she declined to say how many penalties have been leveled on non-compliant hosts.

"The City doesn't actually keep track of how many calls it receives about possible violations, but anecdotally, the team says they haven't noticed an increase recently," Clodius wrote.

"Community members who suspect someone might be operating an Airbnb without a permit should call 503-823-2495."

See something fishy in your neighborhood?

Daily Journal of Commerce

Downtown Portland park's canopy repaired

By Beverly Corbell

December 7, 2015

Repairs to the large glass canopy at Director Park in downtown Portland are now finished – a week ahead of schedule.

Workers in September began to refurbish the 26-foot-high canopy, which covers about one-quarter of the half-acre park. The city learned last year that the wood beams supporting the canopy had moisture damage. Steel beams were chosen as replacements.

Portland Parks and Recreation spokesman Mark Ross said "notable achievements" of the project include improved durability and safety as well as preservation of "architectural integrity and look of the structure."

The cost of replacing the canopy's wood beams was \$790,000. The city paid \$188,000 for the work and ZGF Architects paid \$602,000. The park was designed by ZGF and landscape architect Laurie Olin of OLIN.

Reid Blanchard, construction manager for the parks department, said that KPFF Consulting Engineers performed structural engineering for the project. ZGF was the architect and collaborated closely with general contractor R&H Construction.

"R&H did an amazing job of coordinating everything and had a great plan in place to complete the work," Blanchard said. "We had the area (under the canopy) closed off, but outside the fence line the rest of the park remained open."

Elephants in the Park, a restaurant that operates in the park, closed when construction began and will reopen Dec. 14, according to www.elephantsdeli.com.

Director Park was built in 2009 at a cost of about \$9.5 million. The Portland Development Commission contributed \$4.5 million and the city gave \$1.9 million. Developer Tom Moyer contributed \$1 million and developer Jordan Schnitzer donated \$1.97 million.

The park is named for Schnitzer's grandparents, Simon and Helen Director, who came to Portland in the early 1900s, from Russia and Poland, respectively. Schnitzer wrote on the parks department's website that his grandparents "were part of a generation of immigrants whose hard work helped build this city."

Director Park has been recognized as a successful downtown public park that connects Portland's Park Blocks. The Sustainable Cities Collection website has an article titled, "21 Reasons Portland's Director Park is One of the Most Successful Public Spaces in the World."

The last reason listed points to the park's inclusivity: "Parents, kids, old people, young people, people of different ethnicities, tourists, locals, business people, the unemployed, people on bikes, people who are alone, people in groups, couples, singles and anyone else you can think of," the article states. "This is the measure of a great public space."

Portland City Council approves ADU rule changes

By Garrett Andrews

December 4, 2015

Despite a late objection by Commissioner Amanda Fritz, the Portland City Council on Wednesday approved a package of zoning changes intended to streamline and simplify the land use process for builders of accessory dwelling units.

Fritz first raised concerns about ADUs being allowed too close to neighboring property lines when the code update – part of a larger effort to modernize the city's scattershot zoning policies – went before the council for a second time on Nov. 18. The body allowed time for the issue to be studied, and Fritz returned Wednesday after attending public forums the two evenings prior. She said that many people agreed with her that the code changes would crowd homeowners and facilitate Portland operations of short-term rental companies like Airbnb.

Since January, the city's Bureau of Planning and Sustainability and its Bureau of Development Services have worked to address issues that most frequently drew appeals from builders of ADUs and other accessory structures. A set of changes intended to loosen restrictions was forwarded by a citizen focus group to the Planning and Sustainability Commission, which voted in favor of their approval.

The council voted 4-1, with Fritz opposing.