

The Oregonian

Court of Appeals says Portland arts tax is legal; city plans to collect back debt

By Brad Schmidt

June 8, 2016

Opponents of Portland's much-maligned arts tax have called it flawed, regressive or just plain unfair.

One thing they can't call it: illegal.

On Wednesday, the Oregon Court of Appeals upheld an earlier ruling and reiterated that the arts tax isn't prohibited by the Oregon Constitution.

Portland resident George Wittermyer argued that the arts tax is a "poll or head tax" that applies to everyone. If true, it would be illegal.

But the Court of Appeals said that's not what Portland's arts tax actually is.

First, judges had to settle on a modern definition of a head tax, the origins of which date back more than 100 years as a mechanism to pay for roads in Oregon.

They decided such a tax was "a single, fixed amount imposed per capita, sometimes subject to limited exclusions, without reference to an individual's income or property."

Portland's arts tax is \$35 per person for anyone 18 or older who earns income. But it offers exemptions based on poverty, the amount of income (less than \$1,000) or the type of income, such as government pensions.

That means it's not assessed per capita, according to the Court of Appeals, and therefore it's legal.

"We are pleased the Court of Appeals agreed with the City of Portland that the Arts Tax is constitutional," Thomas Lannom, director of the city's revenue division, said in a statement.

Next week, the City Council will consider using a collection agency to recoup unpaid taxes. That could represent a big shift for the city, as some commissioners have openly said they don't want to ruin residents' credit histories trying to collect \$35 in unpaid taxes.

City officials originally projected that 85 percent of residents who are required to pay the arts tax would pay. Instead, rates have been significantly less: 72 percent for 2012, 70 percent for 2013 and 68 percent for 2014, as of March.

The city reported gross taxes of \$9.3 million for the 2014 tax year.

Money from the tax helps pay for teachers and non-profit arts programs.

Portland Development Commission to own market-rate apartments

By Brad Schmidt

June 8, 2016

Portland's urban renewal agency is about to enter the apartment business.

The Portland Development Commission plans to resurrect a project in Lents that caters mostly to residents who can afford market-rate rents. It's set to build and own the project after Williams/Dame & Associates – one of the city's most prominent firms – quietly decided to back out a year after proposing it.

"This project has to happen, as far as we're concerned," said Patrick Quinton, the development commission's executive director. "We're willing to step in to make sure it happens."

If approved, the 54-unit apartment project would be a first for the agency, representing the latest entrepreneurial business move by city officials worried about the long-term financial future of the development commission. Urban renewal revenues are projected to dry up after 2025 unless the City Council approved new districts.

While building more apartments isn't necessarily part of their business plan, officials are devising new ways to make money beyond urban renewal – such as owning parking garages near a planned Convention Center hotel or on the Central Eastside.

But the evolution also carries risk, if not financially then politically.

The decision to build market-rate units comes amid the City Council's declared "housing emergency" and surging rental prices citywide.

Portland's only other foray into market-rate housing hasn't gone well, either. The Portland Housing Bureau owns a market-rate apartment complex in Southwest Portland that's been a years-long political headache, including a fight with Multnomah County over taxes. Rent hikes last year at the Headwaters Apartments approached nearly 20 percent before being rescinded amid scrutiny.

Even so, Quinton defended the decision to move forward in Lents.

While 38 of the units will fetch market rents, 16 will be restricted to people who earn up to 60 percent of the region's median income. That means rents of about \$825 for a one-bedroom unit.

"There's zero units if there's not a project," he said.

Despite Portland's white-hot real estate market, Lents residents have spent years pushing for even a hint of redevelopment.

Nearly 9,000 multifamily units were built citywide in 2014 and 2015, although city officials say they don't have neighborhood-level data.

But anecdotally, few new units have been constructed in Lents, a traditionally hardscrabble neighborhood yet to gentrify. As a result, residents have clamored for market-rate apartments, not just city-subsidized affordable units.

Developers haven't been too eager. That's why interest from developers Homer Williams and Dike Dame seemed significant.

Last June, city officials had high hopes when they picked Williams and Dame to help jumpstart Lents with a \$15.7 million project at Southeast 92nd Avenue and Foster Road.

Under the original proposal, the development commission planned to loan nearly \$4.8 million to Williams and Dame for construction. The Housing Bureau would offer nearly \$1.2 million to provide space for low-income renters. The developers would also secure a \$9.4 million federal housing loan while contributing just \$400,000 in equity.

Notably, the development commission had the option to take control of the project after 10 years – provided the city pay Williams and Dame \$440,000 while also taking over payment on outstanding loans.

But in February, costs began climbing. The development commission authorized increasing its loan from nearly \$4.8 million to \$6.2 million. Total project costs rose to \$16.6 million.

Around that time, both sides started reconsidering.

Williams and Dame questioned the amount of work required to develop a project that might provide only 10 years' worth of rental income, Quinton said. Development commission officials questioned why they shouldn't play a bigger role, considering their substantial investment.

"It become apparent to all that maybe we should be taking on the ownership sooner rather than later," said Quinton, whose final day with the development commission is Wednesday. "That was their interest as well as ours."

Williams and Dame won't have to repay any portion of a \$1.3 million predevelopment loan from the city. In exchange, they'll hand over work product for the project.

"We have always believed in the future of the Lents neighborhood," the company said in a statement. "Upon successful completion by the city, this project will make a major contribution to the area's revitalization. We are proud to have been a partner in that effort."

The development commission's board is scheduled to approve the new plan Wednesday. In another first, officials plan to move forward by creating a limited liability company made up exclusively of the development commission – a move that Quinton said allows the agency to take out non-urban-renewal debt for the project.

The price tag may keep rising. Officials plan to present a new funding plan to the board Aug. 10.

Meanwhile, city officials continue negotiating with Palindrome Communities on a separate, \$52.2 million mixed-use project for Lents, which includes \$20.5 million from the development commission and the Housing Bureau. They're also working on deals for an Asian health and service center and more mixed-income apartments to be developed by ROSE Community Development.

Together, the projects would represent a huge achievement in Lents, an area that Mayor Charlie Hales pledged to redevelop.

Cora Potter, who tracks development issues for the Lents neighborhood association, praised city officials for helping shift perceptions about Lents and sticking with the project.

Their "job is to change the market, not wait for the market to do what it's going to do anyway," she said. "They finally took that to heart, and that's what they're doing now."

Willamette Week

How Amanda Fritz Could Revive Public Campaign Financing in Portland

By Beth Slovic

June 7, 2016

You may be buying the next round of Portland City Council candidates.

If Commissioner Amanda Fritz gets her way, public financing of City Council campaigns could return, possibly as soon as this year, for elections in 2018.

Fritz says she hasn't decided whether to put the question to voters directly or the City Council. Either way, she will have to overcome skepticism to resurrect what was once known as "voter-owned elections."

"We're going to be looking very closely at the details of what she proposes," says Jim Blackwood, senior policy director for Commissioner Nick Fish.

Portland experimented with public financing of city campaigns for five years, beginning in 2005. The system was optional, meaning candidates could raise private funds.

Launched under then-Portland Commissioner Erik Sten, the public financing system gave City Council candidates who collected signatures and \$5 contributions from 1,000 registered voters an additional \$145,000 for the primary. Mayoral candidates could get \$200,000 for the primary, and more for the general election.

The system was marred by scandal early on, when City Council candidate Emilie Boyles was caught having submitted fraudulent signatures to qualify via her campaign manager.

"I'm very popular in the Slavic community," Boyles told WW in 2006, explaining the preponderance of Slavic surnames on her nominating petitions. (She also used campaign funds to pay household bills and her teenage daughter. Boyles has repaid \$145,000 of the \$245,000, including penalties and interest, she owes.) The city spent about \$2 million on public campaigns before 2010, when voters defeated the taxpayer-funded program.

Fritz, who used the program successfully in 2008, says she is undeterred by the 2010 vote and past abuses—public financing lost by just 1,600 out of 210,000 votes. She's vowing stepped-up enforcement, stiffer fines and criminal penalties for cheaters.

She says the fact that the spending measure failed amid a nationwide financial crisis gives her hope that voters could be persuaded to try it again.

"That wasn't a 'Not ever,'" Fritz says of the 2010 vote. "That was a 'No, not now,' in my opinion."

Fritz's proposal is still taking shape, with plans for public forums in the wings. As a result, she doesn't yet have an estimate of how much it would cost. Until then, she says she's holding off on figuring out how to pay for it, although she's ruled out tapping revenue from a pot tax aimed at the November ballot.

Fritz says Portland's model would draw inspiration from public financing systems in New York City or Montgomery County, Md., rather than Seattle, where last year Washington voters approved publicly funded "democracy vouchers" to give candidates.

Here's a look at the public financing programs other places developed or maintained while Portland took a break:

Seattle

What it does: In 2015, Seattle voters overwhelmingly approved "democracy vouchers." Voters each get four \$25 vouchers to send to city candidates of their choosing.

How they pay for it: Voters agreed to raise property taxes by \$30 million over 10 years—or \$9 per year for a \$450,000 property, according to estimates in The Seattle Times.

Fritz's take: Seattle hasn't had time to show the system works. In any case, Fritz says she's not convinced. Public campaign financing is supposed to make it easier for lesser-known candidates to spread their message, she says. Seattle's system "still gives incumbents and better-known candidates a head start."

New York City

What it does: The Big Apple matches private donations by city residents with public money at a rate of 6 to 1, meaning every \$100 in private fundraising gets a candidate \$600 in taxpayer money. There's a cap of \$175 on the amount of donation the city will match, providing up to \$1,050 in public money per donor. There's also an overall cap on matching funds, depending on the race. And candidates agree to abide by spending limits. The program has been around since 1988, but the city gradually increased the matching rate up to 6 to 1 and also lowered the cap, to emphasize small donations.

How they pay for it: It comes out of the city's general fund. In the 2013 election, the city spent \$38.2 million on campaigns—a tiny fraction of its \$70 billion annual budget.

Fritz's take: New York City's program also comes with rules that qualifying candidates must follow, including frequent reporting of campaign contributions and audits to thwart fraud. Fritz says she likes those requirements, as well as the concept of matching funds. "We haven't settled on what the numbers would look like for Portland," she says.

Montgomery County, Md.

What it does: The program won approval in 2014, but won't be in place until the 2018 elections. Like the one in New York City, Montgomery County's system will offer matching funds, but it will follow a graduated approach. Smaller donations to candidates for county executive are matched at the highest rate of 6 to 1, meaning a \$50 contribution would get a \$300 match. The next \$50 of a donation to that candidate would be matched at a 4-to-1 rate, and the final \$50 of a donation—there's an overall cap of \$150 on matched contributions—would get a 2-to-1 match. That means three \$50 donations would net a candidate an additional \$900, while one \$150 donation would draw only \$600. By accepting public campaign dollars, a candidate would have to agree to decline contributions from unions, corporations or political action committees.

How they pay for it: The county council appropriated money for the program in each of the past two budget cycles. It now has \$6 million in the fund—out of a \$5.3 billion annual budget.

Fritz's take: She sees value in matching smaller donations at higher rates. "This approach is more favored by community advocates," Fritz says, "as it provides more incentive for less affluent donors to contribute."

The Portland Mercury

Hall Monitor: A Summertime Chaos Grab Bag

By Dirk VanderHart

June 8, 2016

PORTLAND'S ELECTED OFFICIALS get unlimited vacation time, and they like to snatch it up in the sunny summer months. (Commissioner Steve Novick, for instance, is only just returning after a trip he began after the May 17 election, when he found he'd face a November runoff.) Most years, that adds up to some fairly sleepy city council agendas, kept light while officials take time off.

But this year? That won't matter. Chaos seems to be sprouting up all over Portland public officialdom as the weather warms. Look at just some of the news that's unfolded in recent weeks:

- Police Chief Larry O'Dea mistakenly shot a friend on a camping trip, then managed to convince his superiors (namely Mayor Charlie Hales) to keep it buttoned up—until, that is, it eventually leaked out.

O'Dea's conduct is under investigation (including whether he lied to a deputy investigating the shooting), but now we've got a new place to level suspicion: It looks very much like the police bureau's Professional Standards Division—the people charged with making sure cops follow the rules—didn't follow the rules.

The department's head of internal affairs, Captain Derek Rodrigues, learned of O'Dea's mistake on April 25, according to the bureau. But Rodrigues didn't launch an internal investigation into the incident until May 23, after the shooting became public. That's a full week after a formal

criminal investigation into the incident began, and appears to fly in the face of a bureau directive on criminal investigations on police bureau employees.

Bureau spokesperson Sergeant Pete Simpson says the bureau won't conduct an internal investigation into Rodrigues' lack of action, but points out the city's Independent Police Review has launched an inquiry. Two Portland police unions have called for Rodrigues to be transferred from his position.

- Then there's lead. A little more than a week after Portland Public Schools admitted it hadn't taken proper steps to immediately shield kids from water fountains it knew had worrisome lead levels, Portland's parks bureau found itself in the fray.

Portland Parks and Recreation issued a surprising release—on a Sunday—admitting that elevated lead levels were found in Multnomah Arts Center drinking fountains in 2013, but that the fountains weren't given filters until May 31 of this year (after the schools' lead crisis began). The release took pains to shield Parks Commissioner Amanda Fritz from scrutiny, saying she wasn't told by her bureau of the readings. But there are a lot of unanswered questions: Like the fact that parks leadership says it learned of the lead results on a Friday, but that filters had been replaced the previous Tuesday.

- Finally, there's the city's continuous outcry over air toxics. Just as Bullseye Glass appears to have entered into a final, stringent understanding with the Oregon Department of Environmental Quality over its emissions, the US Forest Service is preparing to release data on moss readings—first reported by the Mercury—that reveal even more potential toxics hotspots.

The data might well present concerns about air quality in the Pearl District or around Portland State University, among other places.

And to think, the summer's just getting started.

The Cops Just Caved to a Citizen Oversight Group

By Doug Brown

June 8, 2016

For about 16 HOURS last week, it looked as though Portland City Council would have the final say in a police oversight case for the first time in 13 years.

"This has not happened in my time as a city employee," said Independent Police Review (IPR) Director Constantin Severe last Wednesday night, shortly after the city's volunteer Citizen Review Committee (CRC) voted unanimously not to back down from a finding that an officer deserves punishment for inappropriately grabbing an activist's camera lens in 2015.

Acting Chief Donna Henderson—standing in for Larry O'Dea while he's under investigation for shooting a friend during a camping trip—showed up to the June 1 meeting to relay O'Dea's disagreement with the CRC's March 30 vote, where members sided with activist Robert West. But Henderson also said she agreed the officer, Scott Groshong, should be cleared as the

bureau's Police Review Board initially ruled (though she did say she'd give the officer a "debriefing," essentially a formal talking-to about how the situation could've been handled better).

"The chief felt the officer did not initiate or provoke the incident, nor did he decide the time or place it occurred," Henderson said. She echoed the bureau's line on the encounter—a claim that Groshong never actually grabbed the camera—even though the video clearly shows he hopped out of his SUV, walked up to West, and did just that.

"If he was trying to grab the camera, he would have grabbed the camera," Henderson said. "But there's nothing in that video that says he tried to grab the camera."

CRC members were unswayed, having rejected the same "non-grab" argument two months earlier, and voted 6-0 to send it to city council.

"I really do trust our findings," CRC member Kiosha Ford said. "I don't think there was any misjudgment. We thoroughly discussed whether there was a grabbing of the lens."

That set up a police oversight showdown in front of city council for the first time since 2003, according to Portland Copwatch's Dan Handelman, who's been closely following the bureau for more than two decades. Shortly after the 2003 case—in which cops had been accused of beating the half-brother of the man they were actually looking for—five CRC members resigned in protest after then-IPR Director Richard Rosenthal wouldn't back them up in front of city council by saying that police were in the wrong, Handelman said.

But this time, the prospective city council showdown didn't last long.

Henderson emailed CRC Chair Kristin Malone around noon Thursday, with news of a surprising reversal. The acting chief announced she'd found out she could overrule O'Dea—and she did, agreeing that Groshong acted unprofessionally. That means Groshong will face some discipline in the incident, though it's unclear what it will be.

"After careful consideration of what was said by the CRC Board last night," Henderson wrote, "and determining that I have the authority to make the decision it is my intent to sustain" the CRC's finding.

It was an odd turn of events, but not wholly unique. Handelman notes that a similar situation occurred six years ago, when the CRC and then-Police Chief Rosie Sizer were at an impasse over what should happen to Officer Ronald Frashour, who used a Taser on a man filming police in 2006. (Frashour, infamously, shot and killed the unarmed Aaron Campbell about six weeks before this 2010 meeting.) Two weeks after the CRC voted to send the Taser case to city council, Sizer, like Henderson last week, reversed course. The case "was a rather close call," Sizer told the Oregonian at the time, "and I decided not to prolong the acrimony around this case by having it heard before city council."

The Groshong case has plenty of its own acrimony. A March hearing on the matter featured raucous audience outbursts and a cup of water thrown on one CRC member. That led to a cancelled meeting, new audience rules, a brief police boycott of the CRC, and a CRC vote to legally compel the cops to show up the next time.

With Henderson's change of heart, it's now over (she declined to be interviewed for this story).

"Although this case took a long path to resolution," Malone told the Mercury in an email, "I think the extended dialogue between the bureau, the CRC, and the public led us to the right result. I appreciate Acting Chief Henderson's willingness to engage with the committee and to reconsider the bureau's findings."

Portland Might Have Found a Site for Its Next Homeless Camp

By Dirk VanderHart

June 8, 2016

PETE OWENS lights another cigarette, happy to be feeling well enough to enjoy it.

Not long ago, Owens was sick. He's been homeless on and off for the last seven years, and knows the ailments that can come with that difficult lifestyle. He says this was different.

"It was bronchitis," Owens said last week, sitting on a bed raised off the ground by plastic milk cartons, in a little cluster of tents connected by a series of tarps. "I couldn't shake it."

Then he says: "It's because I was using the fill dirt."

See, Owens recently found a new plot of land to call home.

Until early May, he'd been one of the many people sleeping each night off the Springwater Corridor—"the bike path" as he calls it—accustomed to regular hassles and an ever-present fear of having his stuff stolen. Then, just before authorities carried out a massive sweep near where the path crosses SE 82nd last month, Owens says he got word of a better property.

Advocates, at the city's behest, steered him north and a little east, to a five-acre plot of public land near SE 105th and Reedway long used as a dumping ground for soil removed from around Johnson Creek.

It was filthy when Owens arrived, he says: festooned with needles and trash, and smelling "like human shit." But Mayor Charlie Hales' office sent along a dumpster and portable toilet. A mayoral intern brought water. Owens and other homeless residents cleaned up the property, and even set about filling in uneven patches of ground with soil piled up at the site.

Which is about when Owens and one of his fellow campers began feeling unwell.

"I thought it was just concrete," he says of prominent, pale mounds of earth that have sat on the property for years. "They told us to stop spreading it. Everywhere we spread it, they said they're going to have to decontaminate."

Public documents show why that might be the case. The quiet site where Owens has been thankful to stay for the past five weeks or so is piled high with contaminated soil—some of it potentially threatening to human health.

Among more than a dozen small piles that the city says have been illegally dumped there over the years, there are mounds containing enough of some carcinogens (chemicals with unwieldy

names like Benzo[a]pyrene and Indeno[1,2,3-cd]pyrene) to exceed state safety standards for residential soil. Far larger piles of earth—placed by the city over the years—don't qualify for use as fill in residential construction because of elevated lead (though it's likely not enough to affect human health).

In total, a 2014 environmental assessment of the site found, a little less than half of the 22,000-plus cubic yards of dirt piled at the property is considered contaminated.

What's more, a study from 2000 found soil on the site contained arsenic levels above state and federal safety standards for residential sites.

Those findings have some advocates fuming.

"Maybe they should have gotten an informed consent signature from the campers" before placing them there, says Trena Sutton, who works with homeless people along the Springwater through the Clackamas Service Center.

The situation at the plot of land—called the "Kalbrenner Property" in city documents—reflects a central difficulty of Hales' ambitions to set up a system of organized camps throughout Portland: Namely, it's really hard to find workable real estate.

That's especially true near the Springwater, the single most complex area officials working to ease the city's homelessness crisis are dealing with. A good amount of city-owned land along the trail belongs to the Portland Bureau of Environmental Services (BES), which is run by Commissioner Nick Fish. And Fish, a former housing commissioner, has made plain his qualms with Hales' homelessness strategy, and his reservations about opening up environmentally sensitive land to campers.

The one possible exception is the Kalbrenner Property, with its contaminated dirt heaps.

Fish has authorized BES to enter into an agreement with the Portland Office of Management and Finance. Signed June 2, the memorandum outlines a path for the bureaus to study how feasible an organized camp might be.

"We saw this was a possibility and the commissioner authorized the beginning of a due diligence on it," says Jim Blackwood, a policy director for Fish. "This is the only [property] that we're giving any active consideration to."

Paramount for BES, which is grappling with a lawsuit over how it's spent ratepayer money in the past, is that it won't pay a dime for any improvements or work associated with housing people on the site, Blackwood says. Prior to talking to the Mercury, he hadn't heard about campers feeling sick after using contaminated soil.

"If everything else works for us and them and they have to remove that soil," he says of the office of management and finance, "they have to figure out how to get rid of it."

According to their new agreement, the bureaus "will jointly investigate the risks and possibilities of using the property as a site to shelter temporarily persons who may be homeless." The document references "potential environmental and human health risks due to contaminated soil."

"The only material on site that is considered a threat to human health is from some of the illegal dump piles," says Linc Mann, spokesperson for the BES.

Of course, the possible problem is that there are humans living there, among those dump piles, with tacit city approval. Owens and other campers on the plot—there are roughly nine—say Hale's office has given them the green light to stay. They're supposed to keep out of sight, and won't let anyone else set up on the land while studies are carried out.

Mike Davis, who's worked with homeless people along the trail, confirms he steered Owens and others there, at the instruction of the mayor's office. Hales' employees, though, downplay that.

To be clear, Owens and his campmates aren't complaining. They like living on the Kalbrenner Property, for the most part—at least more so than they liked the bike path.

"The path, that was a hassle," Owens says, as a campmate begins playing music on a cell phone. "It's nice and quiet here."

And in Portland—at least right now—there aren't many better options.

"The people would live inside a nuclear reactor to avoid being swept," says Sutton, the advocate with Clackamas Service Center. "They should have been informed."

The Daily Journal of Commerce

Without developer, PDC set to take over in Lents

By Chuck Slothower

June 8, 2016

For the first time, the Portland Development Commission is forming its own limited liability company and considering the possibility of acting as developer after Williams & Dame backed away from a project in Lents. The PDC had planned on taking ownership of the project at some point, spokesman Shawn Uhlman said.

"It was always contemplated there was the potential for PDC to step back in and take ownership of this property and this project, and this was always contemplated by both parties," he said. "I don't know if there was ever a clear delineation of when that would happen."

The project calls for a 65,504-square-foot mixed-use building. It would include 54 apartment units, including 16 affordable units pegged at 60 percent of median income, nearly 9,000 square feet of ground-floor retail space and 32 parking spaces.

Uhlman acknowledged that the PDC's planned role in the Lents project is unprecedented.

"This is the first time we've gone down this path of forming our own LLC and acting as developer," he said.

The PDC's staff has the expertise to carry the project to completion, Uhlman added.

The PDC's own documents suggest that the agency did not plan to complete the development on its own.

"As the project financial returns, public benefits and time commitments were refined and better understood, (Williams/Dame & Associates) decided not to proceed with the development beyond the design and permitting phase," a board report prepared for Wednesday's meeting says. "There was no intent, nor any reasonable ability to foresee that responsibility for project completion would be transferred to PDC. As such, no contracts between WDA and their consultants or contractors were entered into or had terms arranged that premeditated a transfer of project responsibility."

Homer Williams, chairman of Williams & Dame, did not reply to a message seeking comment.

Williams & Dame's decision to forgo developing the Lents project has placed the PDC in an awkward spot. Instead of reopening bids to develop the project, PDC staff will ask the board today to approve a no-bid process to allow the PDC to act as developer.

The board report merely lays out the reasons for going forward with a no-bid process to complete the project, Uhlman said.

The plan is designed to allow the PDC to keep together the firms already engaged on the project: Bremik Construction and Hacker.

"That's one of the key advantages, assuming that the board does approve these two actions," Uhlman said.

The PDC has long sought to redevelop the Lents Town Center Urban Renewal Area. The 0.63-acre vacant parcel targeted for the building is at 9101 S.E. Foster Road, at the northwest corner of Southeast 92nd Avenue and Foster Road.