

The Oregonian

Portland Mayor Ted Wheeler Defends Decision to Invest in Pricy Affordable Housing Complex

By Jessica Floum
January 5, 2018

Portland Mayor Ted Wheeler called his decision to spend public money on a pricey but innovative housing project in the Pearl District a good example of tapping private and federal resources to increase Portland's affordable housing supply.

The mayor released a statement Thursday defending the project and calling the city's \$6 million investment in the \$29 million housing complex "modest." Portland City Council candidate Jo Ann Hardesty, however, told Willamette Week that the investment does not make sense for addressing a housing crisis.

Willamette Week wrote in a Wednesday story that the mayor's decision ignored Portland Housing Bureau cost guidelines and defied his campaign promise to spend less per square foot to produce more units.

Portland Housing Bureau spokeswoman Martha Calhoun told The Oregonian/OregonLive in an email Thursday that the cost guidelines serve as "preference criteria, rather than a requirement." She said the bureau's solicitations have "always" contained preference for leveraging other financial resources.

The building will be the country's first high-rise made from cross laminated timber, a strong but flexible building material made from wooden boards glued together and then heated. It will have 11 stories and include 60 apartments affordable to households making 60 percent or less of the median family income.

Mayor Ted Wheeler on Thursday defended his investment in the innovative housing project.

Last year, the median family income in the Portland metro area was \$74,700 for a family of four or \$52,290 for an individual.

While each unit is expected to cost an average \$480,000 to build, the city's contribution will amount to \$100,000 per apartment. Local housing authority Home Forward will contribute about \$6.5 million, including grant money and tax credits, according to Home Forward spokesman Tim Collier. About \$10.6 million will come from federal tax credits, and building developer Project[^]—pronounced "project"—will spend about \$1.2 million.

"That's like paying for a Toyota and getting a Tesla in return," Wheeler wrote Thursday.

Wheeler wrote that leveraging private and other public resources is "essential" for creating affordable housing that lasts.

Investing in high-quality materials upfront will help ensure that the apartments affordable for 99 years as intended, he wrote.

"Less maintenance and repair over time translates into lower rents throughout the life of the building," Wheeler wrote.

He noted the project's numerous architectural awards including the Portland Design Commission Excellence Award and the U.S. Department of Agriculture's Tall Wood Building Prize.

The project's funds fall about \$2 million short of its \$29 million budget, and it remains unclear how the developer, Home Forward and the city will bridge the gap.

Home Forward said in a project application that Gov. Kate Brown's office would contribute \$2 million from the governor's reserve.

Brown's spokesman, Bryan Hockaday, told The Oregonian/OregonLive Thursday that the governor's office does not plan to invest reserve money on the project.

"I'm not sure where Home Forward got that because that's not a commitment the governor made," Hockaday said.

He noted, however, that Brown does generally support use of cross laminated timber in development because it promotes Oregon's economy.

The governor has appeared at ribbon cuttings and convened a summit on timber to promote cross laminated timber as a way to promote economic stability for rural Oregon and expand opportunity for "communities hit hard by the decline of the natural resource economy."

Collier, Home Forward's spokesman, said on Thursday that the housing authority "overstated" the amount the governor's office would contribute but that the project's private developer is working with staff in the governor's office to find more funding for the project.

The organization's spokeswoman Oonagh Morgan Hurst told The Oregonian/OregonLive in an email Thursday that staff have worked with political consultant Len Bergstein and Brown's staff to find more funding.

"The source is yet to be determined," Collier said.

Appeals Court Upholds Portland Limits on Fossil Fuel Terminals

*By Ted Sickinger
January 4, 2018*

The Oregon Court of Appeals set the stage Thursday for the City of Portland to reinstate its ban on the expansion of bulk fossil fuel terminals.

The Court reversed a decision by the state Land Use Board of Appeals, concluding that the city could ban major expansions of bulk fuel terminals without violating the "dormant" commerce clause of the U.S. Constitution.

The ruling was a win for environmentalists. A spokesman for Mayor Ted Wheeler said he would be meeting with the Bureau of Planning and Sustainability and city attorneys to determine the path forward for re-implementing the policy.

"This is a significant victory for the people of Portland," Wheeler said in a statement. "Much of the hard work remains. I will be working with my Council colleagues, City staff, and the community in the days ahead on next steps."

The 2016 ordinance was the signature legacy of Mayor Charlie Hales, and won major praise from environmental and conservation groups. It was born after the city decided against making zoning changes to accommodate a \$500 million terminal proposed by a Canadian energy company, Pembina Pipeline Corp., to export propane to Asia from the Port of Portland's Terminal 6.

The Columbia Pacific Building Trades Council, the Western States Petroleum Association and the Portland Business Alliance challenged the policy. They maintained that the zoning rules discriminated against out-of-state companies looking to build terminals to export fuels versus those serving in-state customers because the rules limited bulk fuel tanks to 2 million gallons, too small for an international distribution terminal. At the same time the rules included exceptions allowing users in Oregon to store over 2 million gallons of fuel for local use, including airport storage, agricultural use, and local retail use.

The Land Use Board of Appeals found the policy unconstitutional and struck down the ban. But the Court of Appeals wasn't convinced. "We conclude that that cannot constitute discrimination under the dormant Commerce Clause because it is not discrimination between substantially similar out-of-state and in-state economic entities," its decision said.

The Western States Petroleum Association said it was disappointed with the decision. "The Fossil Fuel Zoning Ordinance is not only a violation of Oregon and Portland City land use laws, but punishes consumers and businesses in the city and throughout Oregon, who rely on affordable fuel to power their homes, their businesses and the economy," said Oyango Snell, the organization's general counsel.

The business and union groups did not say whether they planned to appeal the decision to The Oregon Supreme Court.

The appeals court upheld the Land Use Board's finding that the city did not have an adequate factual basis for one of its findings supporting the zoning changes. The city maintained that the demand for fossil fuels could plateau and decline due to more efficient vehicles, electric vehicles and other carbon reduction strategies. The court found that conclusion was unsupported in the record.

Conservation groups said they were thrilled with Thursday's decision.

"The Court's decision confirms the City's ability to stand up for the health, safety, and environment of its residents by restricting dangerous developments such as new oil train terminals," said Dan Serres, conservation director for Columbia Riverkeeper.

The Portland Tribune

City's Ban on Fossil Fuel Terminal Expansion Upheld on Appeal

By Steve Law

January 4, 2018

Oregon Court of Appeals rules city didn't violate U.S. Constitution's Commerce Clause

The Oregon Court of Appeals ruled Thursday that the city of Portland can ban major expansions of fossil fuel terminals in city limits without violating the Commerce Clause of the U.S. Constitution.

The decision reversed an earlier ruling by the Oregon Land Use Board of Appeals that had overturned Portland's fossil fuel terminal ordinance passed unanimously in late 2016.

"Today's decision allows Portland to continue its internationally recognized work to stop fossil fuels, reduce greenhouse gases, and ensure a justice-based transition to 100% renewable energy," said Mia Reback, lead organizer for 350PDX, in a news release.

Business groups and construction trade unions had contested the ordinance, which will make it difficult to expand provision of fossil fuels to industry and individuals throughout the state.

350PDX and other environmental organizations intervened on behalf of the city in the legal proceedings, represented by Crag Law Center, a public interest environmental law nonprofit.

The court decision is a "significant victory for the people of Portland," said Mayor Ted Wheeler in a news release. "I'm very pleased with the ruling that our Fossil Fuel Terminal Zoning Amendments are constitutional," Wheeler stated.

The Portland City Council also has vowed to transition to 100 percent renewable energy use by the entire city, including the business sector.

"Much of the hard work remains," Wheeler said. "I will be working with my council colleagues, city staff, and the community in the days ahead on next steps. We will continue to work with environmental, energy, and resiliency experts to ensure Portland remains a global leader on climate change and environmental issues."

Willamette Week

Portland's Restrictions on New Fossil Fuel Terminals Poised to Proceed After Appeals Court Ruling

*By Rachel Monahan
January 4, 2018*

Portland environmentalists hailed a decision from the Oregon Court of Appeals that they say will allow the city's zoning aimed at climate change to proceed.

Portland may be able move forward with restricting fossil-fuels terminals after the Oregon Court of Appeals reversed key parts of the Land Use Board of Appeals decision from July.

Under former Mayor Charlie Hales, Portland City Council in December 2015 passed restrictions that prohibit the expansion of fossil fuel infrastructure used to store or transport in excess of 2 million gallons of fuel.

The Portland Business Alliance challenged those restrictions at the Land Use Board of Appeals—and won. The city appealed the LUBA decision last year.

The decision was hailed by environmental activists who championed the zoning as part of the fight against climate change.

"As we feel the effects of climate change, from forest fires to ice storms, the City of Portland and its grassroots climate activists are leading the way on solutions," says Mia Reback, lead organizer for 350PDX, in a statement. "Today's decision allows Portland to continue its internationally recognized work to stop fossil fuels, reduce greenhouse gases, and ensure a justice based transition to 100% renewable energy."

The court ruled that Portland had not violated the commerce clause of the U.S. Constitution in passing the restriction, but had technical violations of land use policy.

Environmental advocates believe the city can address those technicalities and proceed with the restrictions that limits the size of any future fossil-fuel infrastructure.

PBA President and CEO Sandra McDonough called for City Council to make changes to the zoning while making those technical fixes.

"This presents an opportunity to bring parties back to the table to revisit elements of the ordinance which, as originally adopted, significantly impact fuel access and affordability not only for residents and businesses in the city of Portland but also those throughout the state of Oregon and Southwest Washington," she says. "We hope the mayor and other city leaders will take advantage of this opportunity."

The Portland Mercury

Portland's Unique Ban on New Fuel Terminals Isn't Unconstitutional, After All

By Dirk Vanderhart

January 4, 2018

But the City Still Needs to Do Work Before It Goes Into Place

Portland's push to ban new fossil fuel terminals within city limits isn't unconstitutional after all, the Oregon Court of Appeals says.

In a decision that's warmed the hearts of environmental groups, the court today swatted aside conclusions of a state board that helped put Portland's innovative and strict policy on ice. Proponents say that could mean that not only Portland will outlaw new fossil fuel terminals in coming days, but that other port cities might be free to follow suit.

"It's big for Portland and it's also big for other communities around the country because they can also think about doing this," says Nick Caleb, a staff attorney at the Center for Sustainable Economy, which argued in favor of the ban in court. "They've had reservations about starting a process where they're going to lose on a constitutional issue."

Meanwhile, city attorneys this morning are looking at exactly what the court ruling means, and how to proceed.

But let's back up. In late 2016, Portland City Council passed the strongest strictures on "bulk fossil fuel terminals" in the country. Not only did the new rules prohibit new large terminals (those with a capacity of more than 2 million gallons), they prohibited the city's 11 existing fossil fuel terminals from expanding.

In some ways it was a symbolic step—no one was planning to build a new terminal—but former Mayor Charlie Hales and others argued it sent a strong message about city priorities.

The Portland Business Alliance and others were furious. So the PBA teamed up with the Columbia Pacific Building Trades Council and Western States Petroleum Association to appeal the city's decision to the state's Land Use Board of Appeals (LUBA).

Two of LUBA's commissioners recused themselves, and the remaining commissioner found that Portland's policy was unconstitutional, because it restricted interstate commerce of fossil fuels. LUBA also decided that the policy ran afoul of state planning goals.

Today's decision says LUBA was mostly wrong. In a 31-page opinion [PDF], three appeals judges say that the city's policy does not violate the interstate commerce clause of the constitution, and does not run afoul of state land use planning goals around transportation, as LUBA concluded. However, the court didn't overturn LUBA's finding that Portland's law ran afoul of a state land use planning policy known as Goal 2.

Nevertheless, a host of groups who'd argued in favor of the fossil fuels policy say the ruling is a huge win. In a joint press release, the Audubon Society of Portland, Center for Sustainable Economy, 350PDX, Columbia Riverkeeper, Oregon Physicians for Social Responsibility, and Crag Law Center (which represented all of them in court), said that the city can address the remaining land use violation "through additional procedure and reinstate the Fossil Fuel Terminal Zoning Amendments."

"We're thrilled," Regna Merritt of Oregon Physicians for Social Responsibility said in the release. "Today's decision affirms that Portland and other communities can implement innovative protections to counter threats to human health and safety from dangerous fossil fuel infrastructure."

Commissioner Amanda Fritz, who along with Hales championed the fossil fuels regulations, tells the Mercury she's "very pleased with the ruling."

Mayor Ted Wheeler, in a noon statement, called the ruling "a significant victory for the people of Portland."

"I will be working with my Council colleagues, City staff, and the community in the days ahead on next steps," Wheeler said.

But precisely how the city moves forward isn't quite clear. City Attorney Tracy Reeve says the city's currently looking at next steps.

The Portland Business Journal

Portland's Ban on New Fuel Terminals Ruled Constitutional

*By Pete Danko
January 5, 2018*

The Oregon Court of Appeals found Thursday that Portland's ban on new fossil fuel infrastructure doesn't violate the U.S. Constitution.

The ruling largely reverses a decision by the state Land Use Board of Appeals.

LUBA had overturned the zoning ordinance — lauded by climate-change activists around the nation as a landmark achievement — as an unconstitutional restraint on interstate commerce.

"This is a significant victory for the people of Portland," Mayor Ted Wheeler said in a statement Thursday. "Portland's fossil fuel infrastructure policies align with our climate, health, safety, and air quality goals, and will help us achieve a transition to 100 percent renewable energy community-wide."

The ban, which Portland's City Council passed in December 2016, was fought by the Western States Petroleum Association, Columbia Pacific Building Trades Council and Portland Business Alliance.

The appeals court didn't overturn every aspect of the LUBA ruling, so the city will need to readdress some issues to enact the ban. But Maura Fahey, who represented environmental groups that joined in the case on the city's side, said the ruling cleared away the "major hurdles" standing in the way of a revived ban.

The Portland Business Alliance, in a statement to Willamette Week, said it hopes the city sees the ruling as "an opportunity to bring parties back to the table to revisit elements of the ordinance which, as originally adopted, significantly impact fuel access and affordability" throughout the region.

The Western States Petroleum Association, asked via email if it would appeal the new ruling, sent this statement from Oyango Snell, its general counsel:

The Columbia Pacific Building Trades Council and the Western States Petroleum Association and its members are disappointed with the Oregon Court of Appeals' decision to allow an unconstitutional ban on new fossil fuel infrastructure in Portland. The Fossil Fuel Zoning Ordinance is not only a violation of Oregon and Portland City land use laws, but punishes consumers and businesses in the city and throughout Oregon, who rely on affordable fuel to power their homes, their businesses and the economy.

OPB

Appeals Court Rules Portland Ban On Fossil Fuel Terminals Is Constitutional

By Amelia Templeton

January 4, 2018

The Oregon Court of Appeals ruled Thursday that the Portland City Council did not violate the U.S. Constitution with a 2015 resolution that banned new fossil fuel terminals.

The court reversed a significant portion of an Oregon Land Use Board of Appeals ruling, which found the ban unconstitutional.

Portland's use of zoning laws to ban the construction and expansion of fossil fuel terminals matters for a couple reasons.

In Oregon, tanks located in North Portland supply about 90 percent of the fossil fuels used statewide.

Nationally, the ordinance also tested a new strategy for left-leaning cities that want to limit fossil fuel use as a way to combat climate change.

"Other cities were looking to the city of Portland and what they had done as a potential model for other ordinances," said attorney Maura Fahey with the Crag Law Center.

The Crag Law Center helped defend the ordinance on behalf of local environmental groups that supported it, including Oregon Physicians for Social Responsibility, the Center for Sustainable Economy, Columbia Riverkeeper and the Audubon Society of Portland.

The groups welcomed the Oregon appeals court ruling, which held that Portland's fossil fuel terminal ban does not violate the constitution's protection of interstate commerce.

“This big federal issue could have been potentially damaging to efforts against climate change throughout the country,” Fahey said.

Industry groups, including the Columbia Pacific Building Trades Council and the Western States Petroleum Association had sued to block the ordinance, with initial success before the Oregon Land Use Board of Appeals.

Their attorneys argued that the ordinance in effect discriminated against out-of-state fossil fuel refineries and distributors in favor of in-state purchasers of fossil fuel. Attorneys for the industry groups said the rule violated the so-called “dormant commerce clause” of the Constitution.

But the appeals court rejected that argument, noting that violations of the dormant commerce clause require discrimination “between substantially similar out-of-state and in-state economic entities.” Oregon has no in-state fossil fuel refineries or distributors that benefit from Portland’s zoning code amendments.

Industry groups said in a statement they were disappointed in the appeals court decision.

“The fossil fuel zoning ordinance is not only a violation of Oregon and Portland city land use laws, but punishes consumers and businesses in the city and throughout Oregon, who rely on affordable fuel to power their homes, their businesses and the economy,” said Oyango Snell, general counsel for the Western States Petroleum Association.

The industry groups have not said whether they will seek a review of the decision by the Oregon Supreme Court.

On a separate legal issue, the appeals court found the fossil fuel ban failed to comply with a state land use regulation, and upheld the LUBA’s ruling.

The court held that the city council did not have adequate factual support for one of the key findings it cited in creating the ban: that fossil fuel use “may plateau and decline.” The appeals court noted that trend-based forecasts cited by the city actually predicted flat or moderately increasing demand for fossil fuels.

Portland Mayor Ted Wheeler has expressed his support for the fuel terminal ban, and the City Council could potentially address the state-level problems with the ordinance through new legislation.

“Portland’s fossil fuel infrastructure policies align with our climate, health, safety, and air quality goals, and will help us achieve a transition to 100 percent renewable energy community-wide,” Wheeler said in a statement.