

Moore-Love, Karla

From: Mills, Michael P. (Ombudsman)
Sent: Monday, November 29, 2010 2:12 PM
To: City Ombudsman
Subject: Dec. 1, Council Hearing: 1549 Allow Bureau of Planning and Sustainability to charge fees to business and/or property owners who apply for extreme economic hardship exemptions

FYI.

I sent the message below to City Commissioner's staff in the hope of having Council provide direction to the Bureau of Planning and Sustainability of their intent to include a definitive date for compliance in their rules for all extreme economic hardship exemptions that will not be extended once agreed upon.

With regards, Michael

Michael P Mills, Ombudsman
 Auditor's Office, City of Portland
 1221 SW 4th Ave, Rm 140
 Portland, OR 97204-1900
 (503) 823-4503
Michael.P.Mills@portlandoregon.gov
www.portlandonline.com/auditor/ombudsman

From: Mills, Michael P. (Ombudsman)
Sent: Monday, November 29, 2010 1:44 PM
To: Libby, Lisa
Cc: Ruiz, Amy; Finn, Brendan; Ames, Betsy; Bizeau, Tom; Kovatch, Ty; Hussein, Sara; Walker, Bruce; Veaudry Casaus, Kevin (OSD); Anderson, Susan
Subject: Dec. 1, Council Hearing: 1549 Allow Bureau of Planning and Sustainability to charge fees to business and/or property owners who apply for extreme economic hardship exemptions

Hi Lisa,

In December 2004, Commissioners Saltzman and Francesconi asked our office to address the ongoing problem of Containers in the Right of Way. The City Council recognized the negative impacts on community livability and launched a multi-year effort directing City bureaus to develop a permanent solution that would bring an end to this unlawful practice. While the Bureau of Planning and Sustainability has worked diligently during the past year to achieve success in a good number of cases, the exemption loop-hole has remained open for continued non-compliance.

The ordinance being proposed should be passed as it will allow the Bureau to establish fees relating to an "extreme economic hardship exemption". However, the specifics of the extreme economic hardship exemption will be discussed at an Administrative Rules Change Hearing held by the Bureau of Planning and Sustainability in the future. These rules may allow exemptions to be renewed. If so, many garbage containers may remain on the public sidewalks indefinitely.

12/1/2010

It is in the public's best interest, and consistent with City Council directives, to include an absolute deadline for the removal of garbage containers from the public sidewalks. I believe that the City Council should make clear to the Bureau of Planning and Sustainability of its intention to include in its Administrative Rules that no extreme economic hardship exemption be granted unless it is accompanied by an approved plan containing a definitive date for achieving compliance, and that these exemptions shall not be allowed to be extended or renewed beyond an agreed upon date.

Thank you, Michael

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REFERENCE: Dec. 1, 2010 City Council Agenda

1549 Allow Bureau of Planning and Sustainability to charge fees to business and/or property owners who apply for extreme economic hardship exemptions to the Containers in the Right of Way rules (Ordinance; amend Code Section 17.102.290)

ECONOMIC HARDSHIP FEES - CONTAINERS IN RIGHT OF WAYIF YOU WISH TO SPEAK TO CITY COUNCIL, **PRINT** YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)	ADDRESS AND ZIP CODE	Email
Daniel		
✓ Daniel Anderson	2144 NW Flanders 97210	
✓ Michael Mills		

FINANCIAL IMPACT STATEMENT For Council Action Items

(Deliver original to Financial Planning Division. Retain copy.)

1. Name of Initiator Kevin Veaudry Casaus		2. Telephone No. 503.823.5545	3. Bureau/Office/Dept. Bureau of Planning and Sustainability
4a. To be filed (date) 11/22/2010	4b. Calendar (Check One) Regular <input checked="" type="checkbox"/> Consent <input type="checkbox"/> 4/5ths <input type="checkbox"/>		5. Date Submitted to FPD Budget Analyst: 11/15/10

1) Legislation Title:

Allow Bureau of Planning and Sustainability to charge fees to business and/or property owners who apply for extreme economic hardship exemptions to the Containers in the Right of Way rules. (Ordinance; amend Code Section 17.102.290)

2) Purpose of the Proposed Legislation:

Amend City Code Chapter 17.102 to allow Bureau of Planning and Sustainability to charge fees to recover costs incurred from initiating an appeal of a BPS decision before the Code Hearings Officer.

3) Revenue:

Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If new revenue is generated please identify the source.

The fees are expected to collect less than \$5,000 per year.

4) Expense:

What are the costs to the City as a result of this legislation? What is the source of funding for the expense?

There are no costs to the City.

Staffing Requirements:

5) Will any positions be created, eliminated or re-classified in the current year as a result of this legislation?

No positions will be created, eliminated or re-classified.

6) Will positions be created or eliminated in *future years* as a result of this legislation?

No.

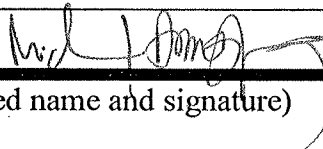
Complete the following section only if an amendment to the budget is proposed.

7) Change in Appropriations

None at this time.

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Amount

Susan Anderson/Michael Armstrong



APPROPRIATION UNIT HEAD (Typed name and signature)



City of Portland
Bureau of

Planning and Sustainability

Sam Adams, Mayor
Susan Anderson, Director

Planning

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1. **Ordinance Title:** Allow Bureau of Planning and Sustainability to charge fees to business and/or property owners who apply for extreme economic hardship exemptions to the Containers in the Right of Way rules.
2. **Contact Name, Department, & Phone Number:** Kevin Veaudry Casaus, Bureau of Planning and Sustainability, Solid Waste & Recycling, 503-823-5545
3. **Requested Council Date:** December 1, 2010

Consent Agenda Item: ☐ **or** **Regular Agenda Item:** ☒

Explain why this DOES or does not require a presentation or Council discussion:

Emergency Item (answer below): ☐ **or** **Non- Emergency Item:** ☒

If emergency, why does this need to take effect immediately:

4. **History of Agenda Item/Background:**
In 2008, Council passed City Code Section 17.102.290, which forbids the storage of containers of solid waste, recycling or compostables in the public right of way. It also directed the Bureau of Planning and Sustainability to provide for exceptions from the rule for extreme economic hardship.
5. **Purpose of Agenda Item:**
This Ordinance will allow the Bureau of Planning and Sustainability to charge fees to business and/or property owners who apply for an extreme economic hardship exemption in order to recover costs of administering the exemption program.
6. **Legal Issues:**
None
7. **What individuals or groups are or would be opposed to this ordinance? Supportive?**
Opposed: Some individual business and property owners and business associations may feel that the fees are an added hardship. Some community members and neighborhood associations may be opposed because they believe the fees are too low to act as a deterrent and/or to fairly compensate for the business's use of the public right of way.
Supportive: Some community members and neighborhood associations may believe that the charging of fees will discourage business or property owners from applying for an exemption and, therefore, lead to quicker compliance. Many business and property owners and neighborhood associations are strongly

supportive of having the possibility of an exemption from the CROW requirements.

8 How Does This Relate to Current City Policies?

The Bureau of Planning and Sustainability has developed a process by which business or property owners may apply for an exemption from the prohibition against storage of containers in the public right of way. These rules allow the Bureau to charge fees to recover costs incurred by administering the program.

9. Community Participation:

In 2005 the Portland City Council established a public / private work group to solve the problem of waste and recyclable containers that were stored in the public right of way. This work group had representatives from multiple City bureaus as well as from various business associations, the solid waste hauling industry and citizen representatives. The report created by this work group served as the basis for the City's passage of a prohibition against storing containers in the right of way.

10. Other Government Participation:

None

11. Financial Impact:

Business and property owners who apply for an exemption will have to pay a fee to the Bureau of Planning and Sustainability when they submit their application. Business and/or property owners who are denied an exemption may appeal to the City's Code Hearings Office. This appeal will require the appellant to pay a fee to the Bureau. This fee is refunded if the Code Hearings Officer rules in favor of the appellant. The fees are intended to recover Bureau costs incurred by administering the program.

Exhibit A. Fee Schedule - Waiver for Extreme Economic Hardship

Description	Fee
Application for waiver – non-refundable	\$250
Appeal of denial of waiver to Code Hearings Officer - refunded if Code Hearings Officer rules in favor of applicant	\$500

ORDINANCE No.

Allow Bureau of Planning and Sustainability to charge fees to business and/or property owners who apply for extreme economic hardship exemptions to the Containers in the Right of Way rules. (Ordinance; amend Code Section 17.102.290)

The City of Portland Ordains:

Section 1. The Council Finds:

1. PCC 17.102.290 grants the Bureau of Planning and Sustainability the authority to enforce violations related to the prohibition of storing solid waste, recycling or compostable containers in the public right-of-way.
2. PCC 17.102.290 directs the Bureau of Planning and Sustainability to develop administrative rules and procedures, using the process under Section 17.102.030, for determining whether to grant an exemption from this prohibition to a property or business owner based on if compliance would result in an extreme economic hardship for the applicant as described in Section 17.102.290.B.
3. PCC 17.102.290 needs to be revised to allow for the collection of fees by the Bureau of Planning and Sustainability from a property or business owner who applies for an exemption from this prohibition based on a claim that compliance would result in an extreme economic hardship for the applicant. The assessed fees shall seek to recover the Bureau's programmatic costs of administering the exemption program, including processing and evaluating applications for exemptions, monitoring and overseeing granted exemptions, and handling appeals of rejected applications.
4. The fee schedule is as shown in Exhibit A.

NOW, THEREFORE, the Council directs:

- a. Portland City Code 17.102.90 is amended to read as follows:

17.102.290 Storing Solid Waste, Recycling or Compostable Containers in the Right of Way Prohibited.

Subsections A, B and C remain unchanged.

D. The Bureau of Planning and Sustainability may charge fees to business and property owners who apply for an extreme economic hardship exemption to recover costs of administering the exemption program. All fees are stated in the Fee Schedule adopted by City Council. Fees will be updated on an as needed basis. The approved Fee Schedule is available through the Bureau of Planning and Sustainability.

DE. Denial of a request for exemption for extreme economic hardship may be appealed to the Code Hearings Officer in accordance with procedures set forth in Chapter 22.10.

Passed by the Council,

Mayor Sam Adams
Kevin Veaudry Casuas
November 3, 2010

LaVonne Griffin-Valade
Auditor of the City of Portland
By

Deputy

Agenda No.
ORDINANCE NO.
 Title

Allow Bureau of Planning and Sustainability to charge fees to business and/or property owners who apply for extreme economic hardship exemptions to the Containers in the Right of Way rules. (Ordinance; amend Code Section 17.102.290)

INTRODUCED BY Commissioner/Auditor: Mayor Sam Adams	CLERK USE: DATE FILED <u>NOV 23 2010</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Adams <i>[Signature]</i> Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Leonard	LaVonne Griffin-Valade Auditor of the City of Portland By: <i>[Signature]</i> Deputy
BUREAU APPROVAL Bureau: Planning and Sustainability Bureau Head: Susan Anderson <i>[Signature]</i> Prepared by: Kevin Veaudry Casaus Date Prepared: 11/3/10	ACTION TAKEN: DEC 01 2010 <i>Referred to Commissioner of Finance & Administration</i>
Financial Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Council Meeting Date 12/01/10	
City Attorney Approval <i>[Signature]</i>	

AGENDA TIME CERTAIN <input type="checkbox"/> Start time: _____ Total amount of time needed: _____ (for presentation, testimony and discussion)
CONSENT <input type="checkbox"/>
REGULAR <input checked="" type="checkbox"/> Total amount of time needed: 5 Min (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz	
2. Fish	2. Fish	
3. Saltzman	3. Saltzman	
4. Leonard	4. Leonard	
Adams	Adams	