

DATE: December 12, 2012
TO: Board of Commissioners
FROM: Patrick Quinton, Executive Director
SUBJECT: Report Number 12-45
Update on the Veterans Memorial Coliseum Renovation

BOARD ACTION REQUESTED

No action is requested, information only.

SUMMARY

On the morning of November 29, 2012, the Board of Commissioners approved three resolutions:

1. Resolution No. 6981 – Authorizing a Veterans Memorial Coliseum Operating Agreement with the City of Portland; Authorizing a Veterans Memorial Coliseum License Agreement with the Portland Winterhawks;
2. Resolution No. 6982 – Authorizing an Option Agreement Granting the Right to Accept Transfer of Certain Real Properties Interests within the Rose Quarter from the City of Portland; and
3. Resolution No. 6983 – Authorizing a Project Funding Agreement to Provide up to \$2 Million in Contingent Funding for the Veterans Memorial Coliseum Renovation.

In the afternoon of November 29, 2012, the Portland City Council received a first briefing and presentation on two ordinances related to the same three items. These ordinances were discussed at a second meeting on December 5, 2012, when responses to questions from the previous week were provided and reviewed (Attachment A).

At the Board meeting on December 12, 2012, staff will provide a verbal status report related to the project, including an update on the status of Western Hockey League sanctions on the Portland Winterhawks, the status of City Council actions on the Veterans Memorial Coliseum, and other relevant updates.

BACKGROUND AND CONTEXT

Three actions were approved last month by the PDC Board in connection with the redevelopment of the Veterans Memorial Coliseum. The three were i) action authorizing an Operating Agreement and a License Agreement with the Portland Winterhawks, ii) action authorizing an Option Agreement granting PDC the right to accept certain real properties interests within the Rose Quarter, and iii) action authorizing a Project Funding Agreement. The Board authorization for the first and third actions do not take effect until thirty (30) days after the Board vote, due to the number of Board members who voted.

On May 23, 2012, the PDC Board had also approved an Amended and Restated Intergovernmental Agreement with the City of Portland (“the IGA”) to provide up to \$23.8 million in funding for the redevelopment of Veterans Memorial Coliseum. Of this amount, \$4.7 million was in the form of a loan; \$17.1 million was in the form of a grant contingent upon the City of Portland (“the City”), Portland Arena Management (“PAM”) and the Portland Winterhawks (“the Winterhawks”) entering into a definitive

Redevelopment Agreement (“RDA”) whereby i) an additional \$10 million in funding was to be provided by the Winterhawks, and ii) PAM was to provide construction management services without charge or fee. The final \$2 million was in the form of a Contingent Grant which would re-prioritize PDC funds currently budgeted for district energy to certain described costs necessary to replace heating and cooling systems. The IGA replaces an Intergovernmental Agreement approved on January 11, 2012, and currently in effect.

In late November, the City, PAM and representatives of the Winterhawks finalized a Redevelopment Agreement and began the approvals process. Pursuant to the proposed Redevelopment Agreement, the Winterhawks are to provide \$10 million in funding for the redevelopment of Veterans Memorial Coliseum. Of this amount, \$2.5 million is to be provided upon execution of the Redevelopment Agreement, an additional \$2.5 million is to be provided upon 25 percent project completion (or no later than July 1, 2013), and the final \$5 million is to be provided upon 50 percent completion, or at 75 percent committed based on contract signed (or no later than July 1, 2013). The Winterhawks obligation to timely provide funding is to be secured by a personal Guaranty of William Gallacher, the owner of the Winterhawks, and by a pledge of the stock in the Winterhawks. The Redevelopment Agreement has not yet been formalized by City Council.

ATTACHMENTS

- A. Consolidated Responses to City Council Questions**

Responses to City Council Questions from Nov 29, 2012 on VMC Items

Separating the Ordinances

- If Council were to take action on 1359 (RDA agreements) but not 1360 (Option Agreement), does the deal still stand?

Proceeding in this fashion presents significant difficulties as the Option Agreement was part of the package approved by the PDC Board on November 29, 2012 along with the conditional Operating Agreement and License Agreement and the back-up \$2 million re-prioritization of district energy resources included in the Project Funding Agreement.

The PDC Board approved the agreements based on the premise that PDC would be receiving title or development rights to certain properties. The Board would have to take action to approve a restructured deal and it is unlikely that the PDC Board would approve the two actions specific to the RDA ordinance without the Option Agreement ordinance.. Pairing the two agreements makes sense because:

(1) Redevelopment proceeds could be one of the resources used to provide working capital for VMC operations if PAM does not exercise its options in 2023 or 2028

(2) The PDC Board considers the transfer of property to be partly in compensation for the \$17.1 million grant to the VMC.

(3) PDC believes that redevelopment will not occur unless the property is transferred to the redevelopment agency.

(4) PDC is in the best position to expedite the development of sites in its control. Expedited redevelopment will lead to faster increases in assessed value that directly benefit partner taxing jurisdiction because the Oregon Convention Center URA is an Option 3 district.

(5) The City has traditionally not been in the role of real estate developer and does not have the expertise in putting together public-private development partnerships.

(6) The City will need to declare the property surplus to develop it in ways other than for City uses. Transferring to PDC will not require this process. Transfer of the property increases the probability of attracting private investment as it clearly establishes the City's redevelopment agency as the lead.

- What are the pluses and minuses of moving forward with the VMC renovation without the Option Agreement and Event Parking? Does it change the City's risk?

As previously stated, it is unlikely that the PDC Board will approve this transaction if the two agreements are separated. The two actions became "tied together" earlier this year as (1) PDC contemplated potentially taking over as operator for the VMC in 2023 as a means of providing the Hawks certainty about being able to play for 20 years, while providing the City with certainty about the potential costs of an operator 10 years hence; and (2) the Rose Quarter District Plan was incorporated into the Central City 2035 North/Northeast Quadrant Plan and moved forward for Council consideration.

At one point in the discussions, the land was considered as a potential backstop for additional investment if the Winterhawks did not fulfill their funding agreement, however, the VMC deal is now structured so that the City and PAM can reduce the scope of the project to meet the reduced budget of \$26.5 million if the last payment from the Hawks is not received.

It is prudent to include the Event Parking because this action reduces the City's risk to the Spectator Facilities Fund by producing a reserve against potential losses to the SFF as a result of redevelopment and thus lost parking revenue.

- What factors support the idea of requiring subsequent Council action to implement the Event Parking District?

Subsequent Council action on the Event Parking District will allow more time to fine-tune the proposal. The Event Parking District was proposed as a means to have attendees at RQ events contribute toward making up the losses that could arise from loss of parking revenue from the Benton Block and loss of revenues from events that might no longer be able to be accommodated at the VMC in the event that the property was redeveloped. Please note that no development on the Benton Block can occur for five years without the consent from both the City and PAM.

Event Parking District

- How would the Event Parking District treat Oregon Convention Center events? Would it include some, any OCC events?

The Rose Quarter Event Parking District only applies to events at venues within the Rose Quarter. Thus the intent is that it does not apply to events held at the OCC.

- How would the Event Parking District effect parking in the surrounding neighborhood/industrial area and at Portland Public Schools (PPS) Blanchard facility?

The city streets adjacent to the Portland Public Schools 'Blanchard Site' are not metered at this time. On weekdays parking on these streets is typically used by employees of the area. Creating an Event Parking District for the Rose Quarter will likely increase parking demand for these 'free' on-street parking areas during event times. However, competition between uses for this parking would only occur if there is overlap between event times and Blanchard site activities, and this circumstance is likely to be infrequent.

- What happens to the surplus revenue from the Event Parking District not needed to reimburse SFF? Does Council control what happens with the excess or does it automatically go to a specified purpose?

Net meter Revenue from the Lloyd Meter District is shared between the City (PBOT) and the Lloyd District. When the Lloyd Meter district was established, the City agreed to allocate

51% of net meter revenue for priority use in the District. Funds allocated to the District must be used for transportation projects and programs that benefit the district. Funding priorities for the District are recommended by the Lloyd Meter Revenue Allocation Committee.

The City share of revenue would be used to fund the Parking Revenue Reserve. If there is any surplus revenue, it would go to the General Transportation Fund where it is allocated for use on transportation and parking services through the City's budget process.

PDC has an interest that a portion of the incremental revenues are directed towards a reserve that can help offset temporary reductions in SFF revenues during construction of an East West Garage development, for example, or possible permanent reduction in revenues that may result in a Benton Lot redevelopment, the increased property tax benefits of which would go directly to the General Fund. There is a range of projected proceeds from this initiative. Thus, the sooner this is addressed, the more benefits can result in SFF reserves.

- Is it possible for PPS, and other nearby (non-profit) establishments to sell event parking similar to Eugene?

This will have to be analyzed on a case-by-case basis, given the provisions under the Central City Plan District (Zoning Code Chapter 33.510.261). For example, as it applies to PPS's Blanchard site, existing parking spaces at the Blanchard Site could be used for event parking, with some limitations depending on how we define what the existing use of the Blanchard Site to be. The Blanchard site is either a "headquarter office" or "nonconforming office use." Determining the legal use would require extensive research of building permit and land use history records, which has not been completed. Regardless of the use classification, event parking would be allowed at minimum in the existing parking facilities on the Blanchard site outside of weekday hours between 7 am and 6 pm.

- Are the private lots near the Rose Quarter allowed under the Zoning Code to offer commercial parking? If not, could we allow them to do so, with a portion coming back to the City?

Private lots near the Rose Quarter may be allowed to offer commercial parking under the zoning code based on a couple of conditions. The regulations for existing parking in Lloyd District parking sector state if the parking existed as of 1/8/96, and was accessory to either an office use or accessory to uses other than office, residential or hotel, the parking is considered "Growth Parking" for purposes of the Central City parking regulations (33.510.264.A.2c and 3.c). As "Growth Parking," if such parking was accessory to an office use, the parking can be operated as either accessory (to the office use) or as commercial parking at all times (33.510.265.A.2.c). If such parking was accessory to uses other than office, the parking must be operated as accessory (to the non-office use) on weekdays between the hours of 7 am - 6 pm (33.510.265.A.3.c). Outside these hours, the parking may be used as commercial parking.

If the existing parking on the site is associated with mixed office and other uses, the existing parking may or may not be able to be used outright for event parking. For mixed office and

other uses, if the number of existing parking spaces on the site exceeds a ratio of 2.0 spaces per 1,000 square feet of floor area, or has more than 60 spaces that are associated with a non-office use, a discretionary Central City Parking Review would likely be required in order to use those spaces for event parking (33.510.264.A.4.a-c). If the number of existing parking spaces on the site does not exceed a ratio of 2.0 spaces per 1,000 square feet of floor area, or has 60 or fewer spaces that are associated with a non-office use, the parking could be used as event parking at all times.

In situations where the use of existing parking for event parking was not allowed outright, a Central City Parking Review would be required, A Central City Parking Review if a Type III land use review that requires a hearing before the Hearings Officer. If the findings of the Central City Parking Review were to find that commercial/event parking was feasible for the site, there is the potential for a parking revenue-sharing agreement between the property owner and the City. This agreement, however, could be unique per the property owner's needs and interests. To require the property owner to share revenue with the City would essentially be a commercial parking tax.

- Would a traffic management system – addressing getting into and through the event district – be included with the Event Parking District?

There is a Traffic Management Plan in place for the Rose Quarter. The Event Parking District would complement the existing Plan.

Property Transfers

- How did the RQ land become City land – and not PDC land – in the first place?

Development of the Memorial Coliseum was a City project, pre-dating the existence of PDC. It was financed with a 1954 City bond measure. The deeds transferring this property show the City taking title directly from various individuals and trusts (and one parcel from the Oregon Highway Commission) between 1957 and 1961. Since that time, the Coliseum (land and improvements) has always been in the City's name.

PDC was designated as the lead agency for development of the "Oregon Arena" project (approx 1991-1995), with negotiation and construction oversight responsibilities for which PDC was compensated. PDC did not acquire any land or other assets during or as a result of that project.

- What is the estimated value of the land subject to transfer?

The Financial Impact Analysis prepared by OMF, Financial Planning contained the following information from Multnomah County Assessment and Taxation about the land included in the Option Agreement:

Fee Parcels:

Lot Description	Assessor's Estimate (\$ millions)			Acres
	Land	Improv.	RMV	
Benton Block R156125	\$2.00	\$0.41	\$2.41	0.88
Wheeler Triangle R215959	\$0.19	\$0.23	\$0.42	0.10
Phase II Entertainment Complex R182161	\$0.90	\$0.00	\$0.90	0.44
Total	\$3.09	\$0.64	\$3.73	

Development Rights Parcels:

Lot Description	Assessor's Estimate (\$ millions)			Acres
	Land	Improv.	RMV	
Parking Garage Parcel R215950	\$10.22	\$12.23	\$22.45	4.56
VMC Parcel R215949	\$13.16	\$10.00	\$23.16	5.59
Plaza R215945	\$7.17	\$0.09	\$7.27	4.19
Total	\$30.55	\$22.32	\$52.88	

The only parcels which may be transferred in fee are the Benton Block (R156125), the Wheeler Triangle (R215959), and the Phase II Entertainment Complex (R182161). The City is retaining fee ownership over the remaining parcels. However, a professional appraisal or broker opinion would be needed to better understand the true value of these properties.

The Assessor's estimated value for these parcels is not consistently stated on the City's books and may or may not accurately reflect the value of the properties in an arms length real property transaction.

- What options does the City have to develop this land and capture those funds for General Fund purposes as opposed to taking it out of the City's portfolio and making them available to PDC?

Through the prior transfer of development rights to PAM the City retained an active role in the discussions and decisions leading to a development proposal. Implementation of that proposal would have included negotiating an appropriate mechanism to convey the land and financial agreements. However, those rights were not exercised and expired.

Typically, the City develops property only for City needs and purposes (e.g. Water Bureau Interstate Ave facility; Emergency Communications Center, etc). PDC, as the City's development agency, pursues development projects that are not for City operational purposes but advance City goals and policies. The City and PDC have occasionally partnered in development of a building that combines City and non-City uses (e.g. 1900 Building). At this time, there are no plans to develop or acquire space for City purposes in the vicinity of the Rose Quarter.

While it is difficult to discuss this topic in generalities, under a "typical" scenario where the City determines property is surplus, it will usually be made available first to City bureaus for

purchase at market value. If no City bureau chooses to acquire it, the property is marketed appropriately. Sometimes, the City will make a property available at less than market value, typically to non-profit organizations that fulfill City goals or policies (e.g. Southeast Uplift acquired their building for significantly less than market value) but these transfers are often restricted (e.g. future sale or encumbrance of the property) to assure the public's interest is protected.

The use of proceeds of the sale of the property is also a somewhat complicated topic. Typically, the bureau and/or fund holding the property will influence the options available but within those limitations, Council has discretion to direct the use of the proceeds. If an enterprise or internal service fund is involved, the fund obligations will be the first factor to consider in the use of property sale proceeds (e.g. bond repayment). After that, the potential to reimburse fund contributors will be considered. Proceeds beyond those levels would be up to the discretion of Council as would be circumstances involving properties held by a General Fund bureau.

- If the City retained and developed the land, would that generate revenue into the General Fund that could be used for any purpose?

The Rose Quarter land is currently held by City of Portland-Spectator Facilities Fund, which is an enterprise fund. City Council would have discretion on the use of the sales proceeds not needed to support obligations of the SFF. Additionally, the East/West Parking Garages were financed by outstanding bonds that are scheduled to mature on June 1, 2017. Any sale or change in use of the Parking Garage Parcel prior to that date would require additional due diligence and would be accompanied by conditions to ensure compliance with existing bond covenants.

- Does the Council need to declare this property surplus in order to approve the Option Agreement?

No; in a memo to the Mayor's staff dated October 29, 2012, City Attorney James Van Dyke indicates that the Benton Lot can be transferred to PDC without a declaration that it is "not needed for public use." He goes on to explain the relevant City Charter section (1-104 – Alienability of Public Places and Property and Limitations Thereon), Oregon Revised Statutes and procedural requirements to achieve a transfer under these circumstances. A copy of the City Attorney's memo is attached.

- Can PDC sell the land after it has possession?

Yes, with some restrictions, the Option Agreement allows PDC full control of the future use of the property including transfer or sale to a third party.

Urban Renewal Funds

- If the renovation project doesn't go forward, what happens to the urban renewal funds allocated for this project? What were the conditions under which the bonds were sold and does that limit our options moving forward?

The final date to issue OCC URA debt was June 30, 2013. OCC URA Bonds were issued in May 2012 so that the City/PDC could benefit from a borrowing market that provided favorable interest rates and eliminated the requirement for a bond reserve. Elimination of the bond reserve requirement allowed approximately \$4.7MM in additional TIF funding resources to become available for expenditure on TIF-eligible projects in the OCC URA (including RQ/VMC redevelopment) in the current fiscal year. An additional benefit of issuing the Bonds in May 2012 was that providing an “up front” funding source allowed VMC negotiations to advance by eliminating a then-requirement for a City line of credit to support the VMC redevelopment project.

If Bond proceeds are not applied towards the VMC redevelopment project, those proceeds could be allocated towards other eligible projects in the OCC UR Plan. If no such projects are identified, the Bond proceeds must be used to pay debt service on the outstanding Bonds.

With the assumption that the resources would be redirected to other redevelopment opportunities in the Oregon Convention Center URA, the following is a list of possible projects/programs:

- *Convention Center Hotel*
 - *Redevelopment of properties owned by PDC but not incorporated into a Convention Center Hotel project, as it is likely that some portion of the PDC-owned land would not be part of the Hotel. PDC owns Blocks 49 (vacant), 43 (Inn at the Convention Center) and 26 (OCC Plaza).*
 - *Redevelopment at the Rose Quarter – PDC is still interested in the Option Agreement and would pursue redevelopment regardless. However, PDC’s option period may require extension as uncertainty about the future of the VMC would reinsert unknowns into the Rose Quarter’s future.*
 - *District Energy – if VMC doesn’t move forward, PDC is still committed to implement a district energy system.*
 - *Other Lloyd Eco-District initiatives including commercial energy retro-fits to improve the performance of existing buildings.*
 - *Programs that support the Economic Development strategy including loans to cluster or traded-sector high-growth industries or real estate projects that directly benefit those same industries.*
- *Moving into the future, how will urban renewal funds collected in area be used to benefit the district in ways specific to the businesses and people who live there and not just for the wider community?*

A Community Benefits Framework developed during this process is attached as an exhibit to the Option Agreement. It covers issues such as: construction contracting and workforce returns, local business returns and other economic and sustainability returns.

The renovation of VMC benefits many community groups regionally that utilize the facility. Though these events don’t necessarily bring additional profits to the building operations,

visitors to and participants in these events, such as OSAA events, stay at hotels in the district and eat at local restaurants. It is expected that a renovated VMC will bolster the businesses that currently rely on all event business at the Rose Quarter. It is also hoped that this renovation will result in the first phase of a district-wide energy system that would benefit all connected buildings as the system scales up.

Implementation of the announced project will build on other announced projects such as the Lloyd 700 Superblock, resulting in stronger utilization of this well-located and accessible district within the Central City.

It is also expected that the VMC renovation and further Rose Quarter development will stimulate redevelopment to the north and west, including properties north of Broadway including Blanchard. Further development and economic development activity will more fully leverage the public investment made to date, include the recent Streetcar addition and the regional light rail lines which all pass through the district.

Spectator Facilities Fund

- What are the projections for the Spectator Facilities Fund?

The attached projections indicate the estimated annual ending fund balance in the Spectator Facilities Fund based upon historical performance of the Fund and OMF's current expectations regarding revenues and expenditures. The revenue projections were recently adjusted downward to reflect the current year trends, which are approximately 15% below prior revenue projections, and are being driven by reduced attendance at Blazers' games.

The projections reflect anticipated impacts of the proposed RDA, but do not include speculative impacts that could result from implementation of the proposed Option Agreement. The SFF balance is projected to remain significantly below the targeted minimum fund balance (to a low of approximately \$400K in FY2016-17); however, unanticipated revenue increases, or decreases in projected operating losses, could help reduce the risk of a low SFF balance.

OMF's direct control over many of the factors that contribute to the SFF's health is very limited. Market and economic conditions, team performance and operating costs are largely outside of the City's control but are significant drivers in whether the fund's reserve remains positive.

- How will the new professional women's soccer team impact the SFF?

Estimating the net revenues for new events is difficult for a number of reasons. First, the sources of revenue vary depending on the facility. The SFF receives revenue from user fees at the Rose Garden, VMC and JELD-WEN Field. For Rose Quarter facilities, the SFF also receives parking revenues from the City owned garages and Benton Lot. For the Veterans Memorial Coliseum, the SFF can also receive a portion of Net Operating Profits (NOP). Whether any given event increases NOP depends on factors such as the rent, concessions

and event costs. In some cases, discounts or other cost concessions are agreed to in order to "land" the event with the assumption that ancillary revenue through spending on travel, entertainment and food will benefit the City's revenue streams in other ways.

Projecting the impact on the SFF from the new professional women's soccer team is difficult at this point because many of the details, such as the number of home games, the venue for those games and expected ticket price, have not been established. Based on the information currently available, OMF is assuming that only a portion of the games will be played at JELD-WEN Field; the others will be played at the University of Portland. Using an assumed average ticket price of around \$20 and assumed ticket sales of 3,000-5,000 per game, would provide estimated net annual revenue of approximately \$35,000. This would continue for next five years under the existing operation agreement and could increase during that time depending on various factors.

Miscellaneous

- Is it still possible to complete renovation deal in light of Western Hockey League sanctions against the Portland Winterhawks? Concerns about both the time available for decision-making and potential impacts to the team's financial situation were raised.

From OMF's perspective, execution of the RDA is possible despite the sanctions that are currently under review. The RDA (and associated Project Funding Agreement) lays out that the Project scope would be reduced if the Portland Winterhawks were unable to meet their funding obligation for any reason. PDC, however, is not currently willing to proceed with the Project Funding Agreement if the Winterhawks do not fulfill any part of their ten million dollar obligation. If the Winterhawks fulfill their funding but the sanctions remain, this would increase the risk, but PDC may be willing to proceed if the other signatories to the RDA are comfortable with this situation.

- Can City maximize the % for Art going to the Memorial Garden restoration by waiving the RACC administrative portion?

The Percent for Art funds can be spent on art located in the memorial gardens. However, renovation or restoration of the memorial garden elements (landscaping, fountain, seating, etc) would not qualify for the use of these funds. With regard to RACC's administration fees, these funds are governed by 5.74.040 of the City Code which specifically designates how the percent for art funds must be allocated:

- 1. 63 percent shall be used by the Regional Arts & Culture Council for costs associated with Public Art including, but not limited to the acquisition, fabrication, and installation of Public Art.*
- 2. 27 percent shall be used by the Regional Arts & Culture Council for costs associated with Public Art, including, but not limited to costs of selection, project management, community education and registration of Public Art.*

3. 10 percent shall be used by the Regional Arts & Culture Council for the maintenance, conservation and deaccessioning of Public Art.

Consequently, in order to reduce or waive the RACC administrative fee, Council would have to waive these requirements.

- Why would PDC be the fall back operator and not some other entity such as MERC?

MERC has managed the VMC in the past and could be a future operator. The parties chose not to approach MERC at this time given the timing of the VMC renovation project and the complications of bringing in a fifth project partner; the timing of when an alternate operator would potentially be needed (in 2023); and the requirement that a potential operator be willing to negotiate the terms of the Sublicense with the Hawks for 2023-33 at this time. PDC was willing to consider agreeing to the City/PDC OA and was willing to negotiate with the Winterhawks, despite the conditional nature of the agreements and the time horizon.

In the event that PAM does not continue as the operator in 2023, PDC could under the City/PDC OA determine that MERC would be the best choice for an operator at that time. We anticipate that if PDC takes over operational responsibility for the VMC that they would likely conduct an RFP process to get a professional operator for the facility, and MERC could participate in that process.

- Why are we moving away from the City's green building standards for the renovation project? Can that be quantified in financial terms?

Information obtained earlier this year indicated additional costs in excess of \$800,000 would be required to achieve LEED Gold, the City's Green Building standard. These costs were derived from the Schematic Design estimates from February, 2012. It was believed that the balance of public and private investment and the balance between needed building systems upgrades (mechanical, electrical, plumbing) and upgrades visible to visitors such as seats, scoreboard, concessions and an expanded ice floor was already utilizing significant private investment for basic building improvements.

- What has this process revealed to Mr. Andrews in light of PDC's evolution and need to find new revenue sources to support its economic development work?

Chair Andrews stated that he would be happy to address these matters at a future date.

Spectator Fund Cash Flow Projection
\$31.5MM VMC Redevelopment Project (excluding impacts of proposed Option Agreements)
Estimated as of November 28, 2012

	1	2	3	4	5	6	7
Fiscal Year	Net Income Before D/S & Capital (1)	Existing Debt Service	VMC Operating Loss Responsibility (2)	Major Capital Expenses (3)	\$4,400,000 PDC Loan Repayment (4)	Income After Debt & Capital	Projected Year-End Fund Balance (5) (6)
2012.13	4,402,273	5,329,487	200,000	50,000	-	(1,177,214)	5,733,211
2013.14	4,315,690	5,460,725	200,000	-	-	(1,345,035)	4,388,176
2014.15	4,643,471	5,638,125	200,000	500,000	-	(1,694,654)	2,693,522
2015.16	4,768,893	5,824,350	200,000	-	-	(1,255,458)	1,438,064
2016.17	4,892,362	3,988,495	200,000	1,800,000	-	(1,096,133)	341,931
2017.18	3,573,642	2,106,155	200,000	700,000	337,969	229,518	571,449
2018.19	3,665,407	2,174,182	200,000	-	337,969	953,257	1,524,706
2019.20	3,755,155	2,244,929	200,000	-	337,969	972,257	2,496,963
2020.21	3,837,822	2,318,507	200,000	-	337,969	981,346	3,478,309
2021.22	3,923,343	2,395,028	200,000	-	337,969	990,346	4,468,655
2022.23	4,006,651	2,474,609	200,000	-	337,969	994,073	5,462,728
2023.24	4,103,656	3,260,488	250,000	-	337,969	255,200	5,717,928
2024.25	4,179,159	3,262,700	250,000	800,000	337,969	(471,510)	5,246,418
2025.26	4,252,199	3,261,825	250,000	-	337,969	402,406	5,648,824
2026.27	4,322,701	3,260,250	250,000	-	337,969	474,483	6,123,307
2027.28	4,390,585	-	250,000	-	337,969	3,802,616	9,925,923
2028.29	4,450,768	-	250,000	-	337,969	3,862,800	13,788,723
2029.30	4,508,167	-	250,000	-	337,969	3,920,199	17,708,922
2030.31	4,562,694	-	250,000	-	337,969	3,974,726	21,683,647
2031.32	4,614,260	-	250,000	900,000	337,969	3,126,292	24,809,939
2032.33	4,662,772	-	250,000	-	-	4,412,772	29,222,710

(1) Includes Rose Quarter and JELD-WEN Field revenues and parking revenues from City-owned Rose Quarter garages. Reflects adjusted revenue projections resulting from reduced revenues for 2012-13 NBA season through November 9, 2012. FY2013-14 Includes annual City contribution of \$250K (base-year) for VMC improvements as required per the City/PAM Operating Agreement.

(2) Assumes City is responsible for maximum \$200K operating loss in FY2012-13 through FY2022-23 and maximum operating loss of up to \$250K annually beginning in FY2023-24 under City/PAM OA.

(3) Includes known/required roof replacement at VMC and capital requirements (roof & turf) at JELD-WEN Field. All costs are estimated. Assumes no additional City capital investment at VMC, JWF or City-owned RQ parking garages.

(4) Assumes ice floor costs are paid as project expense.

(5) Projected FY2012-13 fund balance increased from versions prior to August 2012 due to higher-than-expected FY2011-12 ending fund balance. FY2011-12 balance increased primarily due to the following one-time events: receipt of legal settlement proceeds; decrease in interest payments due to early conversion of line of credit to long-term bonds; and withholding of certain VMC repair costs due to anticipated redevelopment project.

(6) GREEN highlights reflect years in which the projected fund balance is lower than the targeted minimum fund balance. No resources for additional capital expenditures are expected to be available in these years. Years highlighted in YELLOW are considered to be at high risk for requiring General Fund support. Does not reflect any potential cost increases due to implementation of District Energy or City Directed wages.



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY ATTORNEY

James H. Van Dyke, City Attorney
1221 S.W. 4th Avenue, Suite 430
Portland, Oregon 97204
Telephone: (503) 823-4047
Fax No.: (503) 823-3089

October 29, 2012

INTEROFFICE MEMORANDUM

TO: Peter Parisot
Economic Development Director
Office of Mayor Sam Adams

FROM: James H. Van Dyke *JVD*
City Attorney

SUBJECT: Transfer of Benton Lot

Question: May the Benton Lot be transferred to PDC without a declaration that it is "not needed for public use"?

Answer: Yes, see Discussion.

Discussion

The City proposes to transfer ownership of a piece of real property known as the "Benton Lot" to the Portland Development Commission (PDC) as part of a more complex transaction involving the Veterans' Memorial Coliseum. I am informed that ownership of the Benton Lot is currently held in the name of the City of Portland. A question has arisen whether the City must declare the Lot "not needed for public use" as required by City Charter § 1-104.

City Charter § 1-104 ("Alienability of Public Places and Property and Limitations Thereon") provides, in relevant part:

The City of Portland may not divest itself of title it has or may acquire in any * * * park or public place, or like property that it may now own or hereafter may acquire, except as set forth in this Charter or provided by statute.

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The City may sell, dispose of or exchange any buildings, structures or property, real or personal, which it owns or may acquire not needed for public use.¹ Favorable vote of at least four-fifths of all members of the Council shall be necessary for any ordinance authorizing such sale, disposal or exchange. (Emphasis added.)

Under this provision the City must follow the procedures outlined in City Charter § 1-104 or state law if the City is going to “divest itself of title.” The question is whether the transfer of the Benton Lot from the City to PDC divests the City of title.

The Charter provides the following in regard to PDC. Charter § 15-101 provides: There is an agency of the City of Portland known as the “Portland Development Commission.” In addition, Charter § 15-104(5) provides: “All property acquired [by PDC] shall be acquired in the name of the City of Portland.”

Because the Benton Lot is currently held in the name of the City of Portland and because after the transfer to PDC the property will be held in the name of the City of Portland, the City will not “divest itself of title” by transferring ownership of the property from the City to PDC. Because the City is not divesting itself of title by transferring the Benton Lot to PDC the procedures in Charter § 1-104 are not applicable. For the same reason, a declaration that the property is “not needed for public use” is not required. In essence the City is simply transferring management of the Benton Lot from one agency of the City to another.

I have been informed that this interpretation of Charter § 1-104 may not be consistent with past practice or legal opinions of this office. I have checked our City Attorney opinion database, but have not been able confirm that this office’s opinions have been different in the past.

It is, of course, possible that past practice has been different. Nonetheless I understand that title to property owned by PDC has always stated “the City of Portland, by and through the Portland Development Commission.” I recommend that this practice continue and that title be altered to show PDC’s control of the property in order to assist future dispositions of the property.

In any event, if there has been a change from past practice, the fact that the City has changed course may constitute a legal risk of which you should be aware. That risk likely would arise, if at all, if PDC transferred ownership of the Benton Lot to a third party and the

¹ The term “surplus” property is sometimes used in this situation. Technically, only “tangible personal property,” not real property, is defined by City Code as “surplus.” PCC 5.36.010A.1

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third party was concerned about whether it had valid title. Of course, if PDC did not think it was getting clear legal title then that is another risk of this approach.

To eliminate this particular risk, the City could go through the same process as when the City "sells property." As noted above, the City may divest itself of property either by following the Charter or as provided by statute. There are two statutes that permit the City to sell property. First, ORS 221.725 permits a sale of City property when "necessary or convenient." That statute has never been interpreted by a Court, however, and there is some risk that a Court could hold that this statute is "procedural" in nature, in that it concerns the method of sale, and not whether it is authorized.

Second, ORS 271.310 permits transfer whenever the property is "not needed for public use" OR "whenever the public interest may be furthered." However, ORS 271.330 says that if the property is transferred when not needed for public use by one government body to another government body the transferee must hold the property for 20 years. It may be that ORS 271.330 is not applicable here when the City sells the property because the public interest is being furthered. However, it is unclear whether the requirement to hold the property for 20 years applies when the City declares that the "public interest may be furthered." Thus, this approach also presents some risk.

It could be argued that Charter § 1-104 is ambiguous in regard to the transfer of property, particularly since PDC often holds itself out as an independent agency and requires the City to execute Intergovernmental Agreements (IGAs) with the City, a practice usually followed by separate public agencies. In my view, IGAs with PDC are not legally required; this is just a formality that typically has been requested by PDC. This formality at least has the benefit of making sure that both parties are clear as to the terms of any deal.

Nonetheless, the City could enter other kinds of agreements with PDC, including interagency agreements, that are commonly executed between units of the City. Even if Charter § 1-104 is ambiguous, I note that Charter § 3-201 of the Charter provides that limitations in the Charter apply "only as its language explicitly and necessarily requires." The limitation on the transfer of property only applies when the City is "diverting" itself of title. The Charter, which requires four Council votes when title is "divested," does not require four votes when title is not divested simply because PDC "acts" like an independent agency.

Finally, it has been suggested that a transfer to PDC permits the Council to avoid the requirements of four votes. In other words, a transfer to a third party could be made with only three Council votes provided the property was first sent to PDC. That may or may not be true; I have not researched that issue. If so, it only applies in the limited case of a transfer to PDC, because only PDC holds property "in the name of the City." But even if it is true, the Charter appears to permit it. In interpreting the Charter, the general rule of construction

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is not to insert what has been omitted or omit what has been inserted. In other words, I cannot read the Charter to say other than what its provisions require or permit, even if the result may not be what might be desired.

As you can see, all of the methods I have outlined above present some legal risk. It appears to me, however, that the interpretation that Charter § 1-104 is inapplicable to a transfer of the Benton Lot to PDC is not only defensible and sound, but presents the least legal risk in this circumstance.

Please let me know if you have additional questions.

JVD/ks