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RE: Right 2 Dream Too Homeless Camp

Dear Mayor Hales and City Council Members:

If your goal is to destroy the citizens' faith in the integrity and competence of their City government, you are succeeding.

I am a resident of the Pearl District and Chair of the Owners' Association for Park Place Condominiums in the Pearl. I am writing to ask you to quit this divisive and slipshod plan to relocate Right 2 Dreams Too's homeless encampment to the Pearl District.

Let's first be clear what this controversy is about. It is not truly about helping the homeless. Rather, it is about settling a lawsuit and pursuing a settlement that was hastily devised and ill-considered. It starts with a sex shop – Cindy's – located next to the China gate, a revered City landmark. Former Commissioner Randy Leonard did not like the sex shop. So he tore it down. Apparently out of spite, the property owner decided to permit a homeless camp to be established on the now vacant site. In the eyes of the City, the camp was no better than the sex shop. Former Mayor Adams and Commissioner Saltzman encouraged business owners to register complaints, and said that the City would take action, which is exactly what occurred. The City fined the property owner for having an "illegal" camp and for not applying for and obtaining required City permits. A lawsuit ensued.

After two years of litigation, the City decided to give up the fight over fines. But it did not have the political will to shut down the camp or, better yet, to simply transition the camp occupants out of the camp, through the services of Bud Clark Commons or other resources, until the camp was no longer needed. Instead, without seeking any input from affected stakeholders, Commissioner Fritz decided she would just move the Right 2 Dream Too camp to City-owned property located underneath the Lovejoy ramp to the Broadway Bridge in the Pearl District.

Predictably, the residential and commercial property owners of the Pearl District raised objections over both the lack of process, the legality of the proposal and the wisdom of this decision. Now we have a formal report and purported confirmation of the zoning requirements from the Director of the City's Bureau of Development Services (the

“Director’s Report”). In a leap through the looking glass, the Director’s Report concludes that the homeless camp is permitted as of right as a “Community Service” under the Portland Zoning Code, principally because the camp is so ephemeral and provides so little to achieve the legal requirements of habitability that it cannot be considered a structure. Because nothing new will be constructed, there is nothing, in the view of the Director, to consider for design review purposes. These are extraordinary conclusions, and are reached only by stretching the language of the Code beyond credulity.

It is evident reading the Director’s Report as a whole that it is biased and is intended to reach a desired result. On top of being disingenuous, it is ironic that it is this very same Director who determined that the existing Right 2 Dream Too camp required permits and was illegal and should be fined without them – further evidence of the Director’s bias. There is a clear conflict of interest, because moving the camp is now an essential element (perhaps even a contractual requirement) of the City’s objective to settle the lawsuit. Although I do not have access to the settlement agreement, it would surprise me if it did not contain a release of claims against the City for having torn down the sex shop. The Director’s Report is tainted by this conflict and his recommendation should be rejected for that reason alone.

Aside from the bias, the Director’s Report is inherently flawed in many respects.

First and foremost, the Director’s Report only addresses the effects of the Zoning Code, Title 33 of the Portland City Code. Other portions of the Portland City Code apply as well.

Title 24 provides for Building Regulations and establishes minimum building standards for all structures in the City. In this regard, Title 24 has its own, all inclusive definition of “structure”:

**24.15.200 Structure.** A structure is that which is built or constructed, an edifice or building of any kind, or any piece or work artificially built up or composed of parts joined together in some definite manner.

The proposed use of the Lovejoy ramp and parking lot includes both the constructed edifice of the ramp to provide shelter, as well as the erection of tents and other composed parts beneath the ramp for living purposes. Published photos of the existing camp show that pallet foundations have been constructed to keep the tents off the ground, and there are community tents and a newly constructed community room on site. The new camp will similarly be a “structure” for purposes of Title 24 and therefore, to be considered legal, it must conform to all of the fire and life safety protections and habitability requirements of the Building Regulations. The facility should and must have walls. It should and must have plumbing and heating and comply with seismic requirements. It must be designed and constructed to meet all habitation requirements of residential uses under the Code.

Title 29 of the Portland City Code provides Property Maintenance Standards for all properties in the City. It contains the same definition of “structure” as is found in title 24. Additionally, Title 29 clearly provides that it is illegal to inhabit tents for residential use. Section 29.50.050 proscribes illegal residential occupancies and provides:

**29.50.050 Illegal Residential Occupancy.** When a property has an *illegal residential occupancy, including but not limited to occupancy of tents, campers, motor homes, recreational vehicles, or other structures or spaces not intended for permanent residential use* or occupancy of spaces constructed or converted without permit, the use shall be abated or the structure brought into compliance with the present regulations for a building of the same occupancy.

Not only does this Code section further support the conclusion that tents are structures (and therefore must comply with all requirements applicable to structures), it also clearly states that temporary occupancy of tents for residential purposes is illegal, whether the tents are structures or simply occupied “spaces.”

Clearly, this proposed temporary camp is illegal and, if established, it “shall be abated.”

I could end the discussion there, but the Director’s Report is flawed in other significant respects.

First, consider the logical extension of the Director’s Report. The Director’s Report concludes that any temporary Community Service is allowed outright, and, as long as the service provided is so minimal as to not include the occupancy of a structure, it will not be considered and subject to the requirements of Short Term Living or Mass Shelter uses under the Zoning Code and does not require *any* approval or permit from the City whatsoever. The most apparent extension of this logic is that, if this use is permitted in the Employment and Industrial zones, it is also permitted in the Commercial zones, including where the camp is currently located. Community Services are allowed as of right in the Commercial zones as long as they do not involve Short Term Living or a Mass Shelter. PCC 33.130.100B.8. As a result, based on the Director’s reasoning, the Right 2 Dream Too camp would be perfectly legal where it currently is located and does not need any City permits to continue in place. It can stay right where it is. Interestingly, this also means that the City was wrong to have fined Right 2 Dream Too and the property owner in the first place, they in turn were right to sue the City, and the City would have and should have lost the lawsuit. Maybe the City was wrong to have torn down the sex shop as well and should be held liable for destruction of private property – but the City undoubtedly received a release in the settlement agreement for that rush to judgment.

The Director conveniently distinguishes the camp from Short Term Living or Mass Shelter uses by calling the camp an “overnight rest area” and noting that it provides occupancy of “one day or more” and has no constructed “structure.” In truth, the camp is the place of residence for the population it serves, and there is no requirement that its residents cannot continue occupancy for more than a month. The camp furthermore does incorporate the structure of the bridge ramp to provide shelter. The location was selected precisely for this sheltering feature. If the zoning code is going to be interpreted, its use of the term structure should be consistent with the definitions found in Title 24 and 29. The camp is a structure for purposes of Title 33 and does provide Short Term Living; it is a Mass Shelter.

The Director’s Report also fails to consider that Community Services are “Institutional” uses. PPC 33.920. Institutions, by their nature, are permanent and long standing, as is shown by the examples of the various uses that are considered institutional uses under the Code. The City and R2DToo have represented that the camp will exist for no more

than one year. It defies all logic to say that this temporary, one-year camp is an institutional use, unless the City's true goal is to turn the camp into an institution. The Pearl District neighborhood rightly fears that is the unstated agenda. Why should we believe that Commissioner Fritz is telling us the truth when she has been hiding the ball all along? Whether it is an agenda or not, we are justified in concluding that, if the City does not have the political will to end the encampment where it currently is located, it will not have the will to end it when the City has actively aided and supported the camp's move to the City's own property.

The City knows how to provide services to the homeless in an institutional setting. Bud Clark Commons is the example and the epitome of this effort. At a cost of \$47 million and with a "Platinum" LEED certification, the City has created the gold (or platinum) standard for homeless shelters, financed and made possible by the tax base of the Pearl District. In doing so, the City involved all stakeholders, including the neighborhood, and vetted the project in every way and at all levels. It complied with the zoning code and design review requirements, and it complied with the building code. It engaged the city's most experienced homeless and affordable housing service providers – Home Forward, Central City Concern and Transition Projects – in the creation and operation of the center.

That is not to say that there is no room for others or that Right 2 Dream Too does not do good work. However, we know little about Right 2 Dream Too. Its filings with the Attorney General show that it has no funding whatsoever – zero revenues, zero assets. The R2DToo homeless camp is proposed to be constructed at nearly no cost, as compared to the \$47 million spent to create Bud Clark Commons, yet both operations will house nearly the same number of people. The R2DToo camp will be infinitely more difficult to manage – it will have no running water, it will have no showers or bathroom facilities other than portable toilets, it will have no heat or electricity, it will have no assurances of sanitation, it will have no required security. It will have no security whatsoever, because it will have no walls, doors or windows. It will be operated by an organization that has no employees and no assets, that undoubtedly has no insurance to pay claims of persons who may be injured or harmed at the site or by its occupants, and that has no history other than operating the existing camp that the City spent two years trying to shut down as illegal.

Moreover, as the Director's Report points out, the camp will have no requirements for admission or occupancy. It will be open to anyone. The city of Portland has a large population of chronically homeless individuals living outside – larger than most cities of its size or even larger cities. Now is not the time to examine the reasons for that, but Portland also has a large and swelling population of younger marauding street people, who travel in packs, hang out on the sidewalks and live on the streets by choice. They are panhandlers and engage in various forms of aggressive and intimidating, not to mention violent, behavior. The Mayor and other Council members are on record as recognizing the need to eliminate this freeloading, street population from our city. *The Oregonian* just last week commended the Mayor for this effort. Yet what is to keep this group from taking over the R2DToo camp? What is to prevent them from forming their own non-profit organization, staffing it within their own population as "volunteers" and establishing camps anywhere they can find land in the Commercial or Employment/Industrial zones without having to obtain any permission or approval from the City? According to the Director's Report, all of this would be allowed.

Commissioner Fritz's hasty and ill-conceived plan to force this camp on the Pearl District is not the way to address homelessness in the city. The Director's Report is a disingenuous about face. The path that Commissioner Fritz has pursued not only violates the City Code and land use requirements, it violates the high standards that Portland has for establishing and implementing public policy, and it violates the public trust by being conceived and rammed through behind closed doors and without public involvement or consideration of the long-term and collateral effects of the action.

Based on the Director's analysis, a camp would be permissible in any commercial zone, and even in a residential neighborhood as a conditional use. As an alternative, the City could ask its workers to walk to work or ride a bike or take public transportation and turn the parking garage of The Portland Building over to R2DToo. I was going to suggest that, if Commissioner Fritz is so enamored with the idea, she can put the camp literally in her own back yard, and we can see if she has the persuasive skills to convince even her own neighbors to allow it to exist in their neighborhood. But even she has already admitted that she does not want it in her neighborhood and would fight to prevent it from being located there. So let's be honest. No one is going to want a homeless camp established in their neighborhood. It's not because we don't care about the homeless; it's because we do care about our neighborhoods. What Commissioner Fritz has done is take a city-wide issue of people living on the streets and moved it to and corralled it in the Pearl District, so that it will now be just the problem of the Pearl District. The rest of the community need not be concerned because it will not be in their neighborhood, the Chinese community can have their gate (free of both the camp and the sex shop), and the City can move the camp off its main thoroughfare and resolve a messy little lawsuit.

This is not the way to create policy or establish long-term solutions. It is not the way to run a respected and responsible city government. The entire process to date has lacked openness, truthfulness and integrity. The Pearl District Neighborhood does not pretend to have right or power to "forbid" this action, as Commissioner Fritz claims. What we want is for the camp to be subjected to the legitimate and true standards and requirements of the City Code, as is the case for all developments and land uses. You should disapprove this plan and go back to the drawing board.

Sincerely yours,

**David A. Lokting**

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