



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 25TH DAY OF MARCH, 1992 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Clark, Presiding; Commissioners Blumenauer, Bogle, Kafoury and Lindberg, 5.

OFFICERS IN ATTENDANCE: Cay Kershner, Clerk of the Council; Linda Meng, Deputy City Attorney; and Officer Sheridan Grippen, Sergeant at Arms.

Mayor Clark proclaimed Friday, April 3 as Stem Crisis Day to help build awareness of the Metro Crisis Line.

Agenda Nos. 526 and 567 were pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 525** Cash investment balances for February 13 through March 11, 1992 (Report; Treasurer)

Disposition: Placed on file.

- 527** Accept bid of Oregon Asphaltic Paving Company for Maintenance Oil/Gravel Project-1992 for \$262,297 (Purchasing Report - Bid 74)

Disposition: Accepted; prepare contract.

- 528** Accept bid of Wentworth Chevrolet Company for passenger mini-vans for \$62,795 (Purchasing Report - Bid 78)

Disposition: Accepted; prepare contract.

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529 Accept bid of Moore Excavation, Inc., for Lents Basin Sump, Phase II for \$540,224 (Purchasing Report - Bid 87)

Disposition: Accepted; prepare contract.

530 Accept bid of B L & B Contractors for 13th Avenue Basin Sump No. 2 for \$323,134 (Purchasing Report - Bid 88)

Disposition: Accepted; prepare contract.

531 Accept bid of Hydronix, Inc., for pumps & motors for various pump stations for \$150,708 (Purchasing Report - Bid 92)

Disposition: Accepted; prepare contract.

532 Accept bid of Alumaguard, a Division of Bettinger West, Inc., for handrail and railing materials for \$76,480 (Purchasing Report - Bid 96)

Disposition: Accepted; prepare contract.

533 Vacate a certain portion of an unnamed street lying south of SW Custer Street, under certain conditions (Ordinance by Order of Council; [C-9772])

Disposition: Passed to Second Reading.

Mayor J. E. Bud Clark

***534** Pay claim of Alan Wayne Lynch (Ordinance)

Disposition: Ordinance No. 165216. (Y-5)

***535** Settle claims of Daniel McDonald (Ordinance)

Disposition: Ordinance No. 165217. (Y-5)

***536** Amend contract with Standard Insurance for provision of basic and supplemental life insurance (Ordinance; amend Contract No. 27142)

Disposition: Ordinance No. 165218. (Y-5)

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- *537** Apply for continuation of the "Greater Portland Area Police Activities League" grant from the State Criminal Justice Services Division in the amount of \$40,368 (Ordinance)

Disposition: Ordinance No. 165219. (Y-5)

- *538** Apply to the Oregon Department of Transportation, Traffic Safety Division, for a continuation grant of \$66,837 for the DUII Enforcement Team (Ordinance)

Disposition: Ordinance No. 165220. (Y-5)

- *539** Enter into lease for space at 1001 SW Fifth Avenue to be occupied by a division of the Bureau of Water (Ordinance)

Disposition: Ordinance No. 165221. (Y-5)

- 540** Amend City Code to create Chapter 8.65, prohibiting smoking in City buildings and in City motor pool vehicles (Second Reading Agenda 489)

Disposition: Substitute Ordinance No. 165222. (Y-5)

Commissioner Earl Blumenauer

- *541** Authorize contract with Merrick & Company to provide Aerotriangulation and mapping services for West Side Aerial Mapping Phase II and provide for payment (Ordinance)

Disposition: Ordinance No. 165223. (Y-5)

- *542** Authorize contract with Geonex to provide mapping services for West Side Aerial Mapping Phase II and provide for payment (Ordinance)

Disposition: Ordinance No. 165224. (Y-5)

- *543** Call for bids for SW Barnes Rd. retaining wall replacement and NW 2nd Avenue near NW 107th Avenue Bridge replacement, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 165225. (Y-5)

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- *544** Authorize an agreement with Tri-County Metropolitan Transportation District of Oregon (Tri-Met) for construction, finance and management of Holladay Street Improvements, Phase III Project (Ordinance; C-9747)

Disposition: Ordinance No. 165226. (Y-5)

- *545** Contract with The Forum for Community Transformation to provide technical assistance and training at \$9,950 (Ordinance)

Disposition: Ordinance No. 165227. (Y-5)

- *546** Authorize an additional billing for sewer construction services with Gelco Insituform, Inc., and provide for payment (Ordinance)

Disposition: Ordinance No. 165228. (Y-5)

- *547** Authorize application to the US Department of Housing and Urban Development for a \$900,000 grant to provide for the design engineering of the Phase I Alignment of the Central City Trolley Project (Ordinance)

Disposition: Ordinance No. 165229. (Y-5)

- *548** Call for bids for the SW Alder Street from SW 15th Avenue to SW 19th Avenue Sewer Reconstruction Project, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 165230. (Y-5)

- *549** Call for bids for the NE Wisteria Drive from NE 42nd Avenue to 480 feet West; NE 41st Avenue from NE Klickitat Street to NE Alameda Street; and NE 54th Avenue from NE Klickitat Street to NE Fremont Street Sewer Reconstruction Project, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 165231. (Y-5)

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- *550** Call for bids for the Columbia Boulevard Wastewater Treatment Plant Pump Station Control Equipment Project, authorize a contract and payment (Ordinance)

Disposition: Ordinance No. 165232. (Y-5)

- *551** Call for bids for Sump Upgrade Project, Phase I (Ordinance)

Disposition: Ordinance No. 165233. (Y-5)

- *552** Call for bids for SE Division Street, SE 39th Avenue to SE 60th Avenue Sewer Reconstruction Project (Ordinance)

Disposition: Ordinance No. 165234. (Y-5)

- *553** Call for bids to construct the Fanno Creek Pump Station by-pass, authorize a contract, transfer funds and provide for payment (Ordinance)

Disposition: Ordinance No. 165235. (Y-5)

- *554** Call for bids for the SW 39th Drive Pilot In-Stream Sedimentation Structure Project, authorize a contract and provide for payment (Ordinance)

Disposition: Ordinance No. 165236. (Y-5)

- 555** Authorize Intergovernmental Agreement with the Metropolitan Service District (Metro) for \$450,975 in Metro matching grant funding to pay for one half the cost of 300,000 recycling bins (Ordinance)

Disposition: Passed to second reading.

Commissioner Dick Bogle

- 556** Appoint Lillie M. Walker to the Fire Study Committee (Report)

Disposition: Confirmed.

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Commissioner Gretchen Kafoury

- *557** Authorize the Director of Planning to sign performance guarantee agreement with Emanuel Hospital & Health Center (Ordinance)

Disposition: Ordinance No. 165237. (Y-5)

- *558** Authorize the Director of Planning to sign a performance guarantee with the Volunteers of America (Ordinance)

Disposition: Ordinance No. 1615238. (Y-5)

- 559** Accept a Willamette Greenway Recreational Trail Easement for the property located at 0609 SW Bancroft Street, at no cost to the City (Previous Agenda 502)

Disposition: Passed to second reading.

- 560** Accept a Willamette Greenway Recreational Trail Easement for the Port of Portland property located at N Going Street and N Center Way, at no cost to the City (Previous Agenda 503)

Disposition: Passed to second reading.

- 561** Accept a Willamette Greenway Recreational Trail Easement for the property located at 815 SE Marion, commonly known as the Salty's-Waverly Yacht Club site, at no cost to the City (Previous Agenda 504)

Disposition: Passed to second reading.

Commissioner Mike Lindberg

- *562** Execute and deliver to the Portland Development Commission a warranty deed, including a permanent slope and utility easement and a temporary construction easement, for road right-of-way purposes on NE Airport Way near NE 165th Avenue, for a total price of \$14,510 (Ordinance)

Disposition: Ordinance No. 165239. (Y-5)

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- *563** Authorize Intergovernmental Agreement with Metropolitan Service District for the creation of a Recreation Master Plan for Smith and Bybee Lakes (Ordinance)

Disposition: Ordinance No. 165240. (Y-5)

- *564** Approve application of Pine Trail Society, a non-profit corporation, for property tax exemption (Ordinance)

Disposition: Ordinance No. 165241. (Y-5)

- *565** Authorize a contract with Multnomah County to hire a full-time Alternative Community Service crew leader and provide for payment in the amount of \$50,000 (Ordinance)

Disposition: Ordinance No. 165242. (Y-5)

- *566** Withdraw territory from Hazelwood Water District, Powell Valley Road Water District and Raleigh Water District effective July 1, 1992 and assume a portion of Powell Valley Road Water District's bonded indebtedness in the amount of \$5,786 (Ordinance)

Disposition: Ordinance No. 165243. (Y-5)

- *568** Authorize a contract with Network Computing Corporation for the Bureau of Water Works, without advertising for bids, and provide for payment (Ordinance)

Disposition: Ordinance No. 165244. (Y-5)

REGULAR AGENDA

- 526** Accept bid of Bill L. Bowers for Fire Training Center Phase II for \$307,140 (Purchasing Report - Bid 68)

Discussion: Bill Harden, (NAMCO) National Association of Minority Contractors of Oregon, said his organization opposes the awarding of this bid because Minority Business Enterprise participation (MBE) falls far short of the ten per cent goal. He called for Council review.

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Jill Bowers, half owner of Bill Bowers Construction, said they bent over backwards to get minority contractors but were unable to because they were not low bidders. She said the minority bids ranged from 25 percent to 1000 percent above the other bidders, adding that if her company had accepted those bids it would not have been the low bidder. She said it would be unethical to renegotiate bids after the bid closing date. Mrs. Bowers outlined the amount of minority and female participation as well as company plans to hire two workers through the First Source program plus a black electrical superintendent.

Carleton Chayer, Purchasing Agent, reviewed the process that led to this recommendation. He said Bowers requested quotes from 15 subcontractors, six of which were MBE firms and three FBE. Bowers awarded contracts to the lowest bidders and reached a total MBE and FBE rate of 1.27 percent. He said he suggested that Bowers work with the second highest bidder, who happened to be a minority, on one project to see if an agreeable price could be reached but that Bowers had chosen to stay with the "low quote" process because of concern with its reputation in the industry. Mr. Chayer recommended award of the contract to Bowers Construction based on the fact that it is a cooperative company which made an effort to involve FBE and MBEs and that it is the lowest responsible bidder.

Commissioner Bogle noted that on the subcontract which Mr. Chayer had suggested might be negotiated, a \$300 difference in the bids would have resulted in an \$8,000 contract to a minority contractor.

Gloria McMurtry, Commercial Interior Specialities, said the Bowers could have made a better effort to involve more minorities through the negotiation process and asked the City to pursue this.

Commissioner Kafoury said she understood that the City was going forward with a disparity study. She said after that it might be legal to require minority participation.

Commissioner Bogle said a number of governmental entities are interested in such a study and that the first step would be a feasibility study. He said this contract presents a Catch 22, particularly as Bowers has a good reputation with many minority contractors, and Council does not have the teeth to enforce participation even though the 1.27 percent is unacceptable. He said he recognizes the frustration and lack of opportunities for minority contractors and will vote against this

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contract, even though he knows his vote is symbolic. He said the Contracting Equity Committee report should be out next week with some recommendations for short term relief and he will continue to pursue a long term solution, which relates to the disparity study and documentation of discrimination. Council should also implement as soon as possible the addition of a staff person in Purchasing to work with minority and majority contractors to increase participation.

Commissioner Blumenauer said he was willing to reject it too if Commissioner Bogle, who heads both the Fire Bureau and the Purchasing Office, feels that it should not be approved. He asked what the impact would be if the lowest bid was not accepted.

Mayor Clark agreed with Commissioner Blumenauer, noting that the recommendation had come from Commissioner Bogle's office.

Commissioner Bogle said while the Bureau is making a recommendation based on its usual criteria, he was taking a personal position that he believes is appropriate.

Regarding the impact of delay, Mr. Chayer said they have been working on the evaluation of this project for three weeks and encouraged adoption so they can proceed with project.

Commissioner Bogle asked if most contractors believed, as Mrs. Bowers does, that it is unethical for contractors to negotiate with subcontractors.

Mr. Chayer said he believes many contractors do negotiate and had suggested that Mrs. Bowers talk to one of those who did. She later indicated that she and her husband would stay with their original approach.

Commissioner Bogle asked if the Bowers would have remained the low bidder if they had negotiated the subcontract mentioned earlier where there was a \$300 difference in the non-minority and minority bids.

Mr. Chayer said yes.

Commissioner Kafoury said she is confused about the appropriateness of negotiating. She suggested holding this over until this afternoon to allow Commissioner Bogle to work out something more favorable with

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the Fire Bureau and the Purchasing Agent. She said she does not think it is fair to change the rules now.

Commissioner Lindberg suggested a one week delay.

Mayor Clark said renegotiating at this point is unfair but asked why he should vote for something if the Commissioner in Charge who brought it before Council is not going to vote for it.

Commissioner Bogle said his recommendation is that Council turn it down. He said it is the Bowers' personal choice not to renegotiate.

Mayor Clark said it did not sound like a matter of choice to him but of company policy, one he believes most companies share.

Mrs. Bowers clarified that, regardless of whether they get the bid or not, they cannot damage their company's reputation by negotiating bids after they have notified contractors as to who the lowest bidder was. She said to do so is very bad business.

Mayor Clark asked about the effect of the First Source employees and the black electrical superintendent.

Ms. Bowers said their combined wages would represent \$18,000-\$19,000 in addition to the subcontracts so it would work out to between five and seven percent.

Commissioner Blumenauer said it is inappropriate at this point to penalize people who are acting in good faith. He said he would be receptive to making changes and identifying circumstances where there may be some flexibility to negotiate. He requested that Commissioner Bogle not submit such contracts in the future if he does not feel it is good City business. However, in this case, he said he does not believe delay will resolve anything.

Commissioner Bogle said all Commissioners have the same information as he does about minority participation and believes this issue deserves an airing.

Commissioner Kafoury said she agreed with Commissioner Blumenauer that our goals need to be clearer so that contractors are not put in the position of jeopardizing their reputations.

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Commissioner Lindberg said the reality is that the system is not working. The City was up over 12 percent minority participation before the Supreme Court ruling but is now down to about two percent. He said even if private contractors operate in good faiths, if they do not produce jobs for minority community they have not been successful.

Mayor Clark said he believes Bowers Construction has been doing a very good job but would go along with Commissioner Bogle's symbolic vote and vote no.

Disposition: Rejected (Y-2, Blumenauer and Kafoury; N-3)

Mayor Clark said he had not meant for the bid to be rejected and would like to have a revote.

Commissioner Lindberg moved reconsideration. Commissioner Bogle seconded. The vote to reconsider carried. (Y-3; N-2, Bogle and Lindberg)

Disposition: Accepted. (Y-3; N-2, Bogle and Lindberg). Prepare Contract

***567**

Grant temporary permit to Festival Services, Inc., to provide additional concession services at Portland International Raceway (Ordinance)

Discussion: Commissioner Lindberg said there is a dispute about the bidder on this permit.

Fontaine Hagedorn, Parks Bureau, said this is an interim concession permit at PIR for the month of April. He said seven bids were received in response to an informal RFP sent to all interested parties. He recommended granting the permit to Festival Services, noting that the long term concessionaire will be selected in a separate process, based on the recommendations of an independent consultant and panel.

Terry Slominski, Attorney for Koldkist - Beverage Ice Inc., questioned the creditworthiness and performance ability of John Vincent, majority owner and operator of Festival Services. He said while Festival Services was only formed in November and therefore has no real references, Mr. Vincent, operating as Event Services, owes substantial sums of money to Koldkist and other purveyors. He said his clients were threatened with law suits if they objected to this award.

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Maria Corvallis, Special Events Company, Peter Corvallis Productions, said Events Services owes them money and is paying it off slowly and is asking them to forgive late service charges and interest. She said she believes this is unfair.

Gary Georgeff, attorney for Festival Services and Events Services, said Koldkist's bill was disputed by Events Services because of its poor performance. He said he has not threatened Koldkist but has informed the company that false statements are actionable. He said a distinction must be made between Festival Services Inc. and Event Services Inc., noting that Festival Services, with four shareholders, has a broader base of resources and expertise.

Commissioner Blumenauer asked who was going to manage the company and how the new company's performance could be evaluated if it was not based on Mr. Vincent's record.

Mr. Georgeff said he believes it will be Mr. Vincent.

Ed Roski, long time Portland concessionaire, said he did not see how a corporation formed four months ago could have the experience needed to run PIR or the upcoming swap meet.

John Vincent, Festival Services Inc. submitted letters of recommendation from various suppliers who have agreed to continue to work with him. He said Festival Services, Inc. has the necessary expertise to handle large events such as the swap meet at the PIR and the State Fair. He said Event Services did have some financial problems but has made arrangements to take care of creditors. He said Festival Services management is being split up between the various shareholders.

Mayor Clark asked if Mr. Roski had been eliminated because of his lack of experience.

Mr. Hagedorn said the fact that Mr. Roski was not awarded the bid did not mean he did not have sufficient experience.

Commissioner Lindberg said there were five different criteria, of which experience was one. He said this is an interim 30-day contract and the

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awarding of this bid is not intended in any way to indicate a preference in bidders for the long term five-year contract.

Disposition: Ordinance No. 165245. (Y-5)

523 **TIME CERTAIN: 9:30 AM** - Transmit report from the Metropolitan Arts Commission on the status of current Public Arts Projects administered by the Commission (Report)

Discussion: Eloise McMurray, Public Art Program Manager, updated the Council on current activities in the public art department. She said the commitment to public art in Portland is stronger than ever and increasing. She showed slides to illustrate various art forms that may be used the upcoming transit project.

Disposition: Placed on File.

***524** Contract with Tri-County Metropolitan Transportation District of Oregon (Tri-Met) in the amount of \$55,200 for the Metropolitan Arts Commission to administer a Westside MAX public art program (Ordinance)

Discussion: Ms. McMurray said Tri-Met should be congratulated for voluntarily agreeing to set aside \$1,500,000 for public art work and hiring a public art staff person for the duration of the Westside MAX project. She said this represents the first regional program in the history of the State.

Disposition: Ordinance No. 165246. (Y-5)

Mayor J. E. Bud Clark

569 Support and co-sponsor a "Stand Up Portland" celebration to affirm the diversity of Portland's citizenry (Resolution)

Discussion: Gail Shibley, State representative, 615 SW Moss, said this is a way for the community to celebrate and live up to its values.

Tom Potter, Police Chief, said the resolution calls for the City to contribute up to \$20,000, only a small portion of the estimated total cost. Contributions will be sought from businesses and others in the community for the balance.

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Other individuals speaking in support of the Stand Up for Portland celebration included:

Eric Fishman, 1504 SE Ash
Ed Washington, President, Portland Chapter NAACP
McKinley Williams, 7 Oriole Lane, Lake Oswego
Jose Gonzalez, Artistic Director, Miracle Theatre Group
Glenda Durham, Director of the American Indian Assn. and YWCA
Ghisao Hata, 534 NE Graham

Supporters said this will give the majority of Portland residents a chance to affirm its commitment to diversity and to make a unified statement against racism.

Commissioner Kafoury moved to use salary savings in the Metropolitan Human Relations Commission budget to provide the funding.
Commissioner Lindberg seconded and the motion carried. (Y-5)

Disposition: Resolution No. 34972 as amended. (Y-5)

570 Authorize application for amendment to the boundaries of the North/Northeast Portland Enterprise Zone (Previous Agenda 513)

Discussion: Mayor Clark said this is good for neighborhood development and affirmative action.

Commissioner Bogle said this will impact a lot of people in a very positive way in terms of job training and jobs.

Disposition: Resolution No. 34973. (Y-4)

***571** Authorize an Intergovernmental Agreement with Multnomah County to provide staff assistance to the Regional Drug Initiative (Ordinance)

Disposition: Ordinance No. 165247. (Y-4)

Commissioner Earl Blumenauer

***572** Authorize renaming of 48th Avenue between SW Baird and SW Brugger Streets as SW Wood Parkway (Ordinance)

Disposition: Ordinance No. 165248. (Y-4)

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Commissioner Gretchen Kafoury

Commissioner Blumenauer asked that Item 573 be heard last since Commissioner Kafoury had left Council for a few moments.

- *574** Authorize application for a grant under the HOME Investment Partnership Program of the US Department of Housing and Urban Development for the Multnomah County Consortium in the amount of \$4,297,000 for fiscal year 1992-93 (Ordinance)

Disposition: Ordinance No. 165249. (Y-4)

Commissioner Mike Lindberg

- 575** Amend City Code Chapter 3.112, Energy Commission, to establish the objectives of the Energy Commission, relating to the 1990 adopted Energy Policy (Ordinance; amend Chapter 3.112)

Disposition: Passed to second reading.

- 576** Amend City Code Chapter 3.111, Energy Office, to clarify duties of the Energy Office relating to the 1990 adopted Energy Policy (Ordinance; amend Chapter 3.111)

Disposition: Passed to second reading.

- *577** Authorize agreement with PacificCorp dba Pacific Power and Light Company to augment the Sustainable Business Development Program (Ordinance)

Disposition: Ordinance No. 165250. (Y-5)

- *578** Authorize agreement with Portland Electric Company to augment the Sustainable Business Development Program (Ordinance)

Disposition: Ordinance No. 165251. (Y-5)

- 573** Recommend action to seek a commitment of Federal money to replace, with specific conditions, 194 units of low-income housing in Downtown to be lost through the proposed demolition of the Hamilton and Lownsdale Hotels (Resolution)

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Discussion: Commissioner Kafoury said there has been a lot of community concern about the replacement housing.

Blanche Schroeder, representing the Portland Chamber of Commerce, an active participant in the Funders Advisory Committee, said the Committee supports community efforts to seek replacement housing. She said over \$14,000,000 has been spent in the last four years to add 340 low income housing units and if the 194 units scheduled for demolition are not replaced it will set the City back to where it was three or four years ago.

Bill Muir, Multnomah County Community Action Commission, said a number of groups are rapidly reaching consensus calling for replacement of these units with new federal money not already targeted for this community.

Norman Wenzel, 218 SW Salmon and a resident of the Lownsdale Hotel, described the need for low income housing, noting the decline in number of available units. He said all residents are getting worried about where they will go.

Debbie Wood, Central City Concern, said the implication that replacement housing is on its way makes it seem too easy, adding that it will take a lot of work to make this happen as there is currently no special appropriation to pay for it. She said it is very important for Council to take a leadership position to make sure the housing is produced before the destruction of the Hamilton & Lownsdale Hotels, if at all possible.

Lee Lacey, Downtown Community Association, said this is in the best interests of the his organization, which supports diversified housing downtown for all income levels.

Susan Emmans, Northwest Pilot Project Executive Director, said Northwest Pilot Project has handled every relocation project since 1978 and have come to believe that it is no longer possible to provide relocation services without a firm commitment to replace the housing being lost. She said she believed the Downtown Housing Preservation Program will continue to meet its goal, which is to have 5,183 low cost units by 1998.

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Dick Baldwin, Multnomah County Legal Aid, said this represents the single largest loss of SRO housing units in the City's history and if the federal government does not come up with the housing, the City should not approve the development of the site.

Commissioner Kafoury said the City has no legal authority to compel replacement housing.

Disposition: Resolution No. 34974. (Y-5)

At 11:40 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 25TH DAY OF MARCH, 1992 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Clark, Presiding; Commissioners Blumenauer, Bogle, Kafoury and Lindberg, 5.

OFFICERS IN ATTENDANCE: Cay Kershner, Clerk of the Council; Ruth Spetter, Senior Deputy City Attorney; and Officer Sheridan Grippen, Sergeant at Arms.

579 Appeal of Goose Hollow Foothills League against Hearings Officer's decision to allow, based on Section 33.510 and 33.510.240 of the City Code, a car wash at 1730 SW Jefferson Street at the request of Charles Kaady (Hearing; 91-00765 CL)

Discussion: Mayor Clark noted that he owned property within 400 feet of the site in question and would abstain if Council or the people participating felt he had a conflict of interest.

Commissioner Bogle said he believed the Mayor could participate and make an impartial decision and other Council members concurred.

Tim Barnes, Planning Bureau staff, said this case calls for a clarification of ambiguous regulations in the Central City Plan District. The case originated when the applicant sought to establish a carwash facility at this location, zoned Central Commercial with a design overlay.

Mr. Barnes said there is a conflict between 33.510.100, which prohibits quick vehicle service uses in the Downtown Subdistrict but not specifically in the Goose Hollow subdistrict, and 33.510.240, which prohibits drive-through facilities in the Downtown and Goose Hollow subdistricts. The Hearings Officer noted in her decision that the rules of statutory construction must apply and, when two statutes conflict, the most prohibitive must be applied. The Hearings Officer concluded that 33.510.100 is more specific than 33.510.240 and is the only reasonable interpretation available that gives effect to both Code provisions. If 33.510.240 were followed, it would render 33.510.100 meaningless and thus overturn the intent of statutory construction.

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Mr. Barnes noted that a commercial use already exists at this site so that commercial uses will not be expanded. He said the appellant maintains that the decision does not accurately reflect the intent and threatens the primacy of the Portland Comprehensive Plan and the Central City Plan. He said the Planning Bureau believes the ambiguity may reflect a mistake made during the Code rewrite process and is preparing a Code amendment to rectify this problem. He noted that Design Review approval of the car wash has already been issued.

Jerry Powell, Goose Hollow Foothills League, disputed the Hearings Officer's decision. He said the two allegedly conflicting Code sections do not conflict because they regulate two different kinds of things, site development and land use. He said site development is always more restrictive than land use. Mr. Powell added that they do not believe that the more restrictive section of the Code could be the one that "gives away the farm" and counters the intent of the Comprehensive Plan. He said the intent of the Central City Plan District is to encourage new housing and commercial development which will enhance the development of Goose Hollow as a pedestrian-oriented "urban village." An auto-oriented use is not compatible. Finally, Mr. Powell said, this use is not allowable under the Code because it is adjacent to a light rail street. A light rail street is identified in 33.910 as a street where there is a light rail line, which would apply to 18th and Jefferson, and is further defined as a street identified in the ASCP as a regional transitway, which would apply to SW Columbia.

Bob Thompson, architect employed by Charles Kaady, showed slides of the proposed carwash facility.

Richard J. Brownstein, attorney for Charles Kaady, said Mr. Kaady applied for the permit to build this facility and informally approached the Planning Bureau and received approval prior to the time he purchased the property. It was only later that there was perceived to be a problem and it was referred to the Hearings Officer for an interpretation. He said the conclusions of the Design Review are that the proposed remodel is compatible with the surrounding area and will enhance the site with the addition of street trees and landscaping.

Commissioner Blumenauer asked about Mr. Powell's contention that the proposed development is not allowable because SW Jefferson is

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identified as a light rail street and SW Columbia as a regional transitway in the ASCP, both of which prohibit quick service and drive through uses.

Mr. Brownstein said the light rail designation has not been established to the point where the Code provides protection. Contemplated uses are not to be considered for current applications.

Commissioner Bogle asked the City Attorney when a street could be considered a light rail street.

Ruth Spetter, Senior Deputy City Attorney, said she understood there had been no designation at this time and the applicant has the right to rely on the regulations in effect at the time of the application.

Mr. Barnes said this application came in October 10, 1991. He said he has been informed that the regulation prohibiting drive-through development and quick vehicle service uses from locating within 100 feet of a light rail line does not go into effect until the West Side Light Rail project goes into the design development phase. He said he is not familiar with anything in the ASCP that says a major City transit street is a light rail street.

Mr. Powell cited Code Section 33.910 which says a light rail street is a street where there is a light rail line and which is identified in the arterial streets classification plan as a regional transitway. Therefore the designation in the ASCP makes it a light rail street.

Commissioner Kafoury asked Ms. Spetter what happens when the Planning Bureau gives the go ahead to an individual who then proceeds to make plans for what is assumed to be a permitted use only to find out later that it is prohibited.

Ms. Spetter said sometimes a zoning confirmation letter is provided in advance which includes a statement that the Bureau review is not a guarantee and people are responsible for making their own determination. Referring to the light rail street definition, she said the Code defines it as "a street which has a light rail in it". She said the street in question does not have a light rail in it today.

Commissioner Blumenauer said he would reluctantly vote against the appeal although he believes the Neighborhood Association argument is

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the best public policy. He said he hopes the City can soon get on top of activity in the rail corridor, adding that he does not believe this is a good location for a carwash even though the applicant has a right under the current Code to place one here.

Commissioner Bogle agreed with the Hearings Officer that 33.510.100 was more specific than 33.510.240.

Commissioner Kafoury said she will work with the Planning Bureau to see if they can set up some prospective rules regarding the transit corridors.

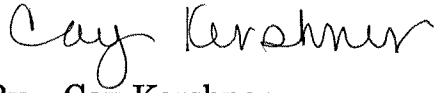
Commissioner Lindberg voted in favor of the appeal because the site is "smack-dab" in the middle of a primarily residential area which could be a pivotal point in the future of the neighborhood.

Mayor Clark said this is a street in transition from auto-oriented uses to more of a pedestrian-oriented village.

Disposition: Appeal denied. (Y-1, Lindberg; N-4)

At 2:50 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland


By Cay Kershner
Clerk of the Council

March 26, 1992

THURSDAY, 2:00 PM, March 26, 1992

**DUE TO LACK OF AN AGENDA
THE MEETING WAS CANCELED**