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CITY OF  
**PORTLAND, OREGON**

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**OFFICIAL  
MINUTES**

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A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 16TH DAY OF DECEMBER, 1998 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Kafoury and Sten, 4.

OFFICERS IN ATTENDANCE: Cay Kershner, Clerk of the Council; Harry Auerbach, Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

Agenda Nos. 1809, 1818 and 1819 were pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

**CONSENT AGENDA - NO DISCUSSION**

- 1805** Accept bid of Nielsen Dillingham Builders, Inc. to furnish Mount Scott Community Center new aquatic center and site improvements for \$4,528,000 (Purchasing Report - Bid 99056)

**Disposition:** Accepted; prepare contract.

- 1806** Accept bid of James W. Fowler Co. for Columbia Boulevard Wastewater Treatment Plant outfall project for \$10,047,472 (Purchasing Report - Bid 99059)

**Disposition:** Accepted; prepare contract.

- 1807** Accept bid of Ruffin Enterprises, Inc. dba Ruffin Construction to furnish Overlook House improvements for \$99,950 (Purchasing Report - Bid 99067-SMP)

**Disposition:** Accepted; prepare contract.

- 1808** Accept bid of Albina Fuel Co. to furnish slurry seal emulsion for \$89,000 annually (Purchasing Report - Bid 99080)

**Disposition:** Accepted; prepare contract.

**Mayor Vera Katz**

- 1810** Confirm appointment of Richard Allan to the Adjustment Committee (Report)

**Disposition:** Confirmed.

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**1811** Confirm appointment of Robert Dortignacq to the Historic Landmarks Commission (Report)

**Disposition:** Confirmed.

**1812** Confirm appointment of Chuck Gleason to the Portland Utilities Review Board (Report)

**Disposition:** Confirmed.

**1813** Confirm reappointment of Joe Poracsky to the Urban Forestry Commission (Report)

**Disposition:** Confirmed.

**\*1814** Agreement with Emmanuel Community General Services, Inc. to address crime prevention (Ordinance)

**Disposition:** Ordinance No. 172925. (Y-4)

**\*1815** Authorize Intergovernmental Agreement with the City of Gresham and Multnomah County for urban reserve planning (Ordinance)

**Disposition:** Ordinance No. 172926. (Y-4)

**\*1816** Contract with PricewaterhouseCoopers LLP for auditing Oregon Arena Corporation internal control processes (Ordinance)

**Disposition:** Ordinance No. 172927. (Y-4)

**\*1817** Authorize an agreement with Woodworth International Group for executive recruitment for the Bureau of Purchases (Ordinance)

**Disposition:** Ordinance No. 172928. (Y-4)

**Commissioner Jim Francesconi**

**\*1820** Grant permit to Friendly Transport to provide Specially Attended Transportation services in the City (Ordinance)

**Disposition:** Ordinance No. 172929. (Y-4)

**\*1821** Consent to change of name of Smart Transportation Company LLC (Smart Cab) to Green Transportation Company LLC (Green Cab) (Ordinance)

**Disposition:** Ordinance No. 172930. (Y-4)

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- \*1822** Contract with McBride Architects to provide professional services for two separate weatherization projects for The Portland Building for an aggregate fee of \$60,800 and provide for payment (Ordinance)

**Disposition:** Ordinance No. 172931. (Y-4)

- \*1823** Solicit bids in the Sheltered Market Program to remodel the front desk at Northeast Precinct, enter into a contract with the lowest responsible bidder and provide for payment (Ordinance)

**Disposition:** Ordinance No. 172932. (Y-4)

- \*1824** Contract with AT&T, using State of Oregon Price Agreement, to provide long distance telephone service for the City of Portland (Ordinance)

**Disposition:** Ordinance No. 172933. (Y-4)

- \*1825** Authorize agreement for the conveyance of a donated property to the City for addition to the Eastbank Riverfront Park and authorize acceptance of deed and payment of expenses (Ordinance)

**Disposition:** Ordinance No. 172934. (Y-4)

- \*1826** Authorize an agreement with the Friends of the Children's Museum to provide supplemental services and programs through the Children's Museum during FY 1998-99 (Ordinance)

**Disposition:** Ordinance No. 172935. (Y-4)

- \*1827** Authorize contract with Cumpston Bros., Inc. for concession services at Eastmoreland Golf Course (Ordinance)

**Disposition:** Ordinance No. 172936. (Y-4)

- \*1828** Authorize amendment to contract with Mitchell Nelson Group, Inc. for the preparation of a master plan update for the Portland International Raceway (Ordinance; amend Contract No. 31695)

**Disposition:** Ordinance No. 172937. (Y-4)

**Commissioner Charlie Hales**

- 1829** Accept contract with Nutter Underground Utilities Co. for street improvements in the vicinity of Sabin, Edwards, King and Woodmere schools and SE 52nd Avenue at Lincoln Street as complete, approve Change Order No. 1, make final payment and release retainage (Report; Contract No. 31783)

**Disposition:** Accepted.

- \*1830 Settle claim of K-2 Construction Company (Ordinance)

**Disposition:** Ordinance No. 172938. (Y-4)

- \*1831 Extend Intergovernmental Agreement with the Oregon Department of Transportation for completion of tree planting along NE Martin Luther King Jr. Boulevard to February 28, 1999 (Ordinance; amend Agreement No. 51089)

**Disposition:** Ordinance No. 172939. (Y-4)

**Commissioner Gretchen Miller Kafoury**

- \*1832 Amend contract with Southeast Uplift to increase resources by \$3,000 and provide for payment (Ordinance; amend Contract No. 31498)

**Disposition:** Ordinance No. 172940. (Y-4)

**Commissioner Erik Sten**

- 1833 Accept completion of the Shipyard and Ramsey wastewater pump station, Project No. 5691, and authorize final payment to Triad Mechanical, Inc. (Report; Contract No. 31296)

**Disposition:** Accepted.

- \*1834 Authorize a contract and provide for payment for purchase of Inventory Management System for the Water Bureau (Ordinance)

**Disposition:** Ordinance No. 172941. (Y-4)

- \*1835 Authorize a contract with the lowest responsible bidder for the Linnton wastewater pumping station improvements and provide for payment (Ordinance)

**Disposition:** Ordinance No. 172942. (Y-4)

- \*1836 Authorize the continuance of negotiations for the purchase of two permanent sewer easements and two temporary construction easements required for construction of the mid-County sanitary sewer project, authorize the City Attorney to commence condemnation proceedings and authorize the City Attorney to obtain early possession (Ordinance)

**Disposition:** Ordinance No. 172943. (Y-4)

- \*1837 Authorize a contract and provide for payment for the SE 26th Avenue and Cora Street sewer diversion and repair, Project No. 6330 (Ordinance)

**Disposition:** Ordinance No. 172944. (Y-4)

- \*1838 Authorize agreements for the conveyance of a property from John M. Robertson to the Bureau of Environmental Services, subject to certain conditions being fulfilled and authorize acceptance of deeds and payments of expenses (Ordinance)

**Disposition:** Ordinance No. 172945. (Y-4)

- \*1839 Authorize the Director of the Bureau of Environmental Services (BES) to execute License Agreements with the Burlington Northern and Santa Fe Railway Company for the Hayden Island outfall project and authorize BES to exercise its eminent domain authority if necessary to condemn an easement over the subject property (Ordinance)

**Disposition:** Ordinance No. 172946. (Y-4)

### REGULAR AGENDA

- 1809 Vacate a certain portion of SW Multnomah Boulevard between SW 40th and SW 45th Avenues, under certain conditions (Ordinance by Order of Council; C-9943)

**Discussion:** Maria Gregory, Multnomah Neighborhood Association, questioned whether the property owner would be required to do anything beyond what the City normally requires regarding stormwater treatment. That seems unrealistic even though it is appropriate.

Commissioner Sten said he honestly does not know but believes the intent was to go beyond what is normally required. He said this is a much better decision with that addition than without it.

Ms. Gregory said Point 6 calls for the conditions to be met within a year of the effective date. She asked what happens after that year is up and how she could track the process.

Jim Peterson, Transportation Chair, Multnomah Neighborhood Association, said the conditions state that within one year of the ordinance it will be subject to repeal by Council. He questioned what that means and also whether the property ownership has yet been determined.

Mayor Katz said this should be continued one week as the Commissioner-in-Charge is not present today and two of those present voted against it last time so there are not enough votes to pass this.

**Disposition:** Continued to December 23, 1998 at 9:30 a.m.

- \*1818 Adopt a new classification and compensation plan for employees in Information Technology classifications and amend City Code (Ordinance; amend City Code 4.08.080)

**Discussion:** Mayor Katz said she understands Tom O'Dea has raised issues regarding some District Council of Trade Unions (DCTU) positions in this classification.

Janice Deardorff, Director, Bureau of Human Resources, gave an overview of classification studies underway to update the present system, which is sorely outdated, particularly in the information technology area where the City has had trouble recruiting and retaining good employees. Because of these problems, they decided to do the IT study before the others. The Information Technology (IT) study began in October, 1997 and has now been completed. Today they are asking for Council approval of this special IT classification and compensation plan. If approved, it will be integrated later into the full non-represented study to be implemented in July, 1999. The Bureau will also look at the wage structures for all the represented groups as well. She noted that part of the Bureau's overall strategic plan is to be up-to-date, offer a fair wage and attract new employees.

Commissioner Francesconi asked why the City should not wait until the other studies are completed.

Ms. Deardorff said waiting another six months means the City will not be able to attract people into positions that are critical to such Bureaus as Emergency Communications. She said the market in the Portland area is very competitive.

Commissioner Francesconi asked if the slowdown in the high tech industries means more people might be available to fill these positions without raising wages. He noted that while the City may not be as competitive on the wage side, it does offer greater security and excellent benefits.

Ms. Deardorff said what the Bureau is asking today is to approve salaries at 60 percent, not 100 percent, level of the median market, which still puts them behind the curve. While there may be a greater availability of workers, the City still has a problem with the wages.

Commissioner Francesconi noted that the Director of the Bureau of General Services, David Kish, had asked that five positions in Communications be pulled out of the IT class.

Ms. Deardorff said she is willing to do that but does not believe it is prudent as their consultant recommended including the telecommunication jobs in General Services, which have not been classified the same as IT positions elsewhere in City. If those people are pulled out they will not have seniority in the classes they are slotted to go into and will not get retroactive pay. She is willing to work with Mr. Kish on this issue.

Mayor Katz asked if Council voted on this would it still be possible to deal with the issues raised by Mr. O'Dea and Mr. Kish.

Ms. Deardorff said by taking action on the study today, the Bureau is obligated by contract to bargain with the DCTU on the positions in question. COPPEA has also asked the Bureau to look at similar issues.

Commissioner Francesconi asked if the additional cost has been included in the budget.

John Worcester, Employment Compensation Manager, said yes, the money has already been set aside.

Tom O'Dea, DCTU representative, said the issues are quite complex but he is confident they can work through them. He said he is now finding out that some DCTU positions may be slipping away into a non-represented status and noted that there has been a net migration away from DCTU positions. While he would have preferred a discussion prior to Council action, he believes both parties can work out a reasonable solution.

**Disposition:** Ordinance No. 172947. (Y-4)

- \*1819** Authorize Intergovernmental Agreement with the Oregon Department of Transportation and with the Portland Development Commission for the purpose of constructing and maintaining Willamette Greenway improvements on ODOT-owned property beneath the Marquam Bridge on the west side of the Willamette River (Previous Agenda 1775)

**Discussion:** Commissioner Sten moved the Substitute. Commissioner Francesconi seconded and, hearing no objections, the Mayor so ordered.

John Southgate, Portland Development Commission (PDC), said the agreement authorizes the completion of South Waterfront Park under the Marquam Bridge on property owned by the Oregon Department of Transportation (ODOT). Some concerns were raised about the environmental identification language and non-profit revenue generating events, such as charitable runs, and the Substitute reflects the fact that the final agreement will be amended from what is currently before Council. form.

**Disposition:** Substitute Ordinance No. 172948. (Y-4)

- 1801** **TIME CERTAIN: 9:30 AM** - Accept report regarding status and achievement of the Bureau of Housing and Community Development's Community Initiatives Small Grant Program (Report introduced by Commissioner Kafoury)

**Discussion:** Commissioner Kafoury said the Bureau of Housing and Community Development (BHCD) has managed about \$1.7 million over seven years in small grants to community groups which have, in turn, almost doubled their economic value by raising other funds. She noted that these grants have also leveraged about 92,000 hours in volunteer time.

Judy Sanders, BHCD, showed a video to indicate the range of projects this program supports by providing small one-time grants to community organizations which provide services to low- and moderate-income people and neighborhoods. She described how the resources are allotted and gave examples of some of the projects, including tree plantings, community gardens, services to victims of domestic violence and homeless youth. She acknowledged members of the selection committee.

Commissioner Kafoury listed the groups that have been awarded grants this time and the projects they will undertake.

Commissioner Francesconi said this is one of his favorite programs because a little bit of money goes such a long way and encourages volunteers to do good things in the neighborhoods. He would like to find additional money to provide more actual leadership development and reach more volunteer groups.

Commissioner Sten said this is an impressive example of how much community groups can do.

Mayor Katz suggested that BHCD consider lobbying Council a little harder about grants in the non-target areas and work a little closer with the Bureaus of Environmental Services and Parks to make linkages that support the work they are doing in the community. Finally, she asked staff to think more broadly about what kind of legacy it could provide the City for the next 100 years.

**Disposition:** Accepted. (Y-4)

**\*1802** **TIME CERTAIN: 9:45 AM** - Accept a grant from the Oregon Tradeswomen Network in the amount of \$42,000 for Fiscal Year 98/99 for a person to staff a 13-month City of Portland involvement in the Portland Steps to Success program to promote the recruitment of underutilized individuals in the City's trade work force and on City-funded construction projects (Ordinance introduced by Mayor Katz)

**Discussion:** Mayor Katz said a lot of quiet work has been done in City offices to respond to the disparity study completed two years ago. She said when Council reviewed the regional disparity study they were concerned not only about disparities in job opportunities for women, minorities and small emergency businesses but also about opportunities for training and apprenticeships. The City also needs to learn how to train people to a level where they can obtain good jobs and benefits within the City itself, especially as large numbers of current employees begin to retire. She said today Council will consider a small but necessary step to provide more apprenticeships.

Sue Klobertanz, Manager, Contractor Development, Bureau of Purchases, said both Agenda Items 1802 and 1803 address employment issues raised in the disparity study and both are collaborative, multi-bureau strategies. The agreement in Item 1803 has three primary recommendations: 1) expand apprenticeship and training opportunities by filling 19 positions through the development of 10 new training programs; 2) develop a strategic recruitment plan to ensure a diverse applicant pool; and 3) initiate training with the City's trades work crews to ensure that diversity and training are valued in the work place. To implement this plan Purchasing has requested an add package for FY99-00 of \$363,408 to fund the start-up positions. At the end of the training period those funds would all be allocated to the operating bureaus. They expect this training plan to be used as model for other job classifications that have not been included in the scope of this plan.



Janice Deardorff, Director, Bureau of Human Resources, said the Bureau is very supportive of the apprenticeship plan as training of the City's work force is a necessity to address changing skill requirements and emerging shortages of skilled workers.

Tom O'Dea, AFSCME representative, Local 189, said he has long advocated for an expansion similar to the one before Council today and supports full funding for this initiative. AFSCME has consistently supported apprenticeship programs as a way to move more people into family-wage jobs.

Commissioner Sten asked how an individual would go about getting an apprenticeship.

Lita Calligan, Bureau of Purchases, said a recruitment strategy will be part of the plan to ensure a diverse applicant pool. This will involve working with community-based organizations and a team from the Water Bureau, the first Bureau to offer the apprenticeships, will explain what types of jobs there are and how to apply for them. There will also be the standard announcements.

Mayor Katz said one should also consider the parents of Head Start as possible candidates for City employment.

Ms. Calligan said they have an extensive list of organizations they will be working with.

Regarding Item 1802, Ms. Klobertanz said this is an agreement that will provide staff for the Pathways to Success Project. The Oregon Tradeswomen Network (OTN) was recently awarded a grant to provide technical assistance to employers and labor unions seeking to recruit women for non-traditional jobs and prepare the work force for these cultural changes. Donna Hammond has been named project manager, although she is technically an electrical planner in the Bureau of Environmental Services, and will be temporarily reassigned to the Bureau of Purchasing to meet the grant's objectives. OTN will pay the City \$42,000 for her services with the balance of her salary funded with contributions from other bureaus and Multnomah County.

Connie Ashbrook, OTN, said at least 25 City staff have helped move this agreement forward. She affirmed the strong need for the program as, despite Purchasing's efforts to achieve diversity in the construction trades, hours worked by Caucasian women and minorities on such jobs has consistently remained at three percent and one percent respectively. A much more focused approach is needed to solve this program and they believe the Pathways to Success program will significantly increase the participation of women in the trades.

Donna Hammond, project manager, said she has been an electrician for over 20 years, an active union member and volunteer with OTN. She believes her experience will allow a more in-depth level of service to the City and to the construction contractors.

Mayor Katz said the City has taken the regional disparity study very seriously and staff is making it work.

Commissioner Francesconi said this strategy will help the City achieve a diverse work force. He said he is particularly concerned about getting Latinos, Southeast Asians and African-American males into skilled positions. He said he has asked the Parks Bureau to put together an apprenticeship program for recreation positions and make special outreach efforts to people who do not speak English. He thanked the unions for their cooperation as they understand the need to diversify their membership in the future.

Commissioner Sten said he has noted before that half the Water Bureau will be retiring in the next few years. He hopes next year to return with a very specific apprenticeship plan before that expertise is lost.

Mayor Katz said Council has to walk its talk on the regional diversity study if it expects other private employers to hire women and minorities.

**Disposition:** Ordinance No. 172949. (Y-4)

**\*1803** Adopt Internal Apprenticeship and Training Plan (Ordinance introduced by Mayor Katz)

**Disposition:** Ordinance No. 172950. (Y-4)

**1804** **TIME CERTAIN: 10:15 AM** - Accept presentation on Special Needs Grant project "Safety Zone: Cops Talk" (Report introduced by Mayor Katz)

**Discussion:** Police Chief Charles Moose said the goal of this program is to provide personal safety skills to people who have been institutionalized in the past and are prone to become crime victims. He said this would include 12,000 to 15,000 people in Multnomah County that have been ignored in the past.

Mary Otto, Cops Program, described the population this project will help, people with development disabilities, many of whom have limited reading skills and are more likely to be subjected to financial victimization and physical abuse.

Katie Potter, Portland Police, explained how the training classes are structured and described some of the successes they have had in helping people protect themselves by teaching them anger management and other skills that will help keep them from being exploited. She stressed the need to have them attend multiple classes to ensure that the information is retained.

Ken Newman, advocate for ARC, said this is an excellent program which allows this population to become "unstuck" from unsafe patterns of behavior.

Shirley Newman, ARC advocate, described a problem she had with a violent neighbor and how attending these meetings helped her feel safer and better able to handle the situation.

Commissioner Francesconi asked if people in situations where there is financial or

physical abuse are referred to lawyers.

Ms. Otto said if an individual is subject to abuse from an institution, the case is referred to Multnomah County. The police would also be appropriately involved.

Gretchen Host, Executive Director, ARC, said it is very important for people to feel safe in their own community, especially a population that has often been picked on. These classes allow this population to be safer as well as feel safer.

Greg Ruff, Rainbow Coalition, praised the work of the Police Bureau in reaching out to this population. This has been a very cutting edge program which has involved the training of all sworn and unsworn officers.

Mayor Katz said some wonderful things are happening in the Police Bureau but because they do not end up in stories about a hot pursuit or shooting, no one hears about them.

**Disposition:** Accepted. (Y-4)

**Mayor Vera Katz**

- 1840** Support the Five Year Business Plan of the Portland Development Commission for fiscal years beginning July 1, 1998 and ending June 30, 2003 and direct that the plan be reviewed and updated as necessary (Resolution)

**Discussion:** Mayor Katz said the Portland Development Commission sought input from community members about their dreams and vision for the next five years in order to determine how best to allocate its resources within the constraints of the urban renewal districts. This document represents how some of those dreams can be made real.

Marty Brantley, Chair, Portland Development Commission (PDC), said 1,300 individuals and 120 organizations helped put this plan together. He outlined the job goals and redevelopment projects this plan incorporates and noted that it is a hugely ambitious undertaking and even the projected cost, \$611 million, does not cover everything as there are still some unfunded projects. He added that 49 percent of the budget is currently devoted to housing.

Commissioner Kafoury said about 25 percent of tax increment dollars goes to fund housing.

Doug Blomgren, PDC member, said he was concerned about how tax increment money should be spent with regard to housing in each of the urban renewal districts and was most pleased with the process and level of participation. He said the money budgeted for housing inside urban renewal districts is consistent with the actual purposes for which each district was created. In some districts housing is not a particularly high priority.

Felicia Trader, PDC Director, said even with the unprecedented resources available to do

this work, there is almost \$100 million in unfunded needs which clearly meet policy objectives. There are also emerging issues for which no resources have yet been identified. Finally, there are continuing programs outside the urban renewal districts which need additional funding. These include rental housing problems, home ownership, Section 8 preservation housing and planning for North Macadam, Gateway and other areas that do not have urban renewal district status.

Commissioner Kafoury said clearly there is not enough money for Section 8 preservation housing. She said she did not push to get more emergency money for the Housing Investment fund right now because of what is happening currently but by next summer there will be a crisis if the Fund does not get additional resources.

John Cofflin, Executive Director, Gateway Business Association, said this is a very good plan which has involved residents and businesses in the Gateway area.

Glen Beltz, Association for Portland Progress (APP), said all the APP committees reviewed the plan and worked extensively with PDC staff. In particular, APP supports the creation of an employment opportunity fund and agrees with the tax increment resources allocation. APP believes it is a good idea to consolidate some of the streetscape money for the extension of the streetcar to Portland State University. By creating more jobs, more people will be able to afford housing and, while APP supports creating affordable housing, it would also like to see more housing in the Central City for those in the 80 to 100 percent of median family income.

Commissioner Kafoury said she is unsure about the downtown development job opportunity piece as it is a lot of money.

Ms. Trader said she feels very strongly about the need to provide some dollars to target jobs. PDC has assigned some numbers which it believes provide an appropriate per job allowance and right now it is designing guidelines for this program. It may provide for property acquisition to leverage business locations in order to get jobs or for retention headquarters programs. This is clearly designated as an opportunity fund as specific uses have not yet been determined.

Commissioner Kafoury agreed that the City's efforts to develop jobs downtown have been insufficient. She said it is a very important piece but the City has not yet found the right combination of resources and inspiration to get them.

Commissioner Sten said he is very glad to see the Endangered Species Act listed in the plan but does not believe extraordinary amounts of new money need to be budgeted for that. Instead, PDC will need to make sure that whatever it does helps the City's efforts to comply. He also hopes that within a year the market-rate housing piece will be solved although he is not convinced that some of the housing currently being built will not be affordable to working folks. Also, he would like to see the City come up with some financing tools for that market without taking money from low-income housing. Another concern is how to include sustainable practices and make long term choices that are good for both the economy and the environment. He said the problem with housing is that there

is no permanent source of funds and the search for that will continue. In the meantime this is a good balancing job.

Commissioner Francesconi asked if the City needed to put more emphasis on creative services and less on biotechnology in the targeted industries strategy.

Ms. Trader said dollars previously identified for biotech were moved into the development opportunity fund as PDC still does not have an investment strategy for biotech. She said they would like to discuss the possibility of expanding biotech to encompass more health services, targeted around an academic environment. They have more certainty about the assistance they want to provide for the creative services side.

Commissioner Francesconi asked if Council will learn more about the downtown development strategy.

Ms. Trader said they are in the process of developing the guidelines and can share them at any time with Council.

Commissioner Francesconi said he had asked the License Bureau to see if some development incentives can be given through Business Income Tax. He asked if PDC can look at this.

Ms. Trader said PDC has been working on that with the License Bureau Manager, Dennis Nelson, and they hope to share their information with Council very shortly.

Commissioner Francesconi asked which of the strategies offer the most promise in helping businesses.

Mr. Brantley said job creation and retention are of prime importance and a healthy debate is going on in the clusters right now about how the money should be used. He said districts out of downtown, such as Airport Way and Lents, are getting a lot of attention. Downtown is a major concern to him because he does not think it should end up being simply a recreational center.

Commissioner Francesconi asked how more private funding could be attained as help is especially needed on job retention and recruitment.

Mr. Brantley said at least four organizations have been involved in job creation and retention but they have not been well coordinated in the past. They are now trying to determine whether it is better to focus their efforts on trying to capture new businesses or on retaining and expanding local businesses.

Ms. Trader said some private participation is already reflected in the budget. PDC focused largely on housing in this plan but now needs to take the same approach to the job side.

Commissioner Kafoury pointed out that different amounts are assigned to the opportunity

fund in several different places in the report.

Chris Scherer, PDC, said in the downtown area, the plan shows a six-year picture because of the expiration of the Downtown Waterfront Urban Renewal Plan. That explains one of the differences.

Mayor Katz said there are no easy answers to job development. Part of the problem has been a lack of funds and part has been due to lack of clarity about exactly who should be targeted. The last thing the City wants is to see existing businesses disappear. The efforts that have to go into retention are enormous and involve major policy conflicts. For instance, businesses that want to stay may only be able to find sufficient space in an industrial sanctuary, where they are not allowed. Or, in the downtown, the rents are too high. Another question is how aggressive the City should be in trying to take headquarters away from other cities. She said PDC needs clarity from Council in the next six months on the direction it should take and the role of incentives. She said the City cannot designate every area as an urban renewal district just because those places need resources. The Civic Stadium and performing arts facilities also need a serious look, as do the expansion of the Convention Center and light rail. As land prices continue to increase downtown, the issue of building over I-405 becomes very real, although she has not asked for any resources there as yet. None of these issues are reflected in the five-year plan but they need to be revisited to see which may be priorities and what tradeoffs might be required. PDC will also ask the private sector to step up on some of these issues.

Commissioner Francesconi said he is glad to see that Council has arrived at a more unified vision for PDC. It makes sense to extend the streetcar to Portland State University but he has been concerned about the lack of priorities for transportation strategies. He also appreciates leaving Eastbank in the budget although the downtown park block can wait. He said while PDC has concentrated on the housing side, the jobs side is tougher because right now citizens fear that more jobs means more growth. Perhaps Council has not done a good job of educating citizens about what the lack of job growth in the Central City means. The private sector also needs to step up more to partner with the City. Finally, Council also needs to say no to some things rather than asking PDC to fix everything.

Commissioner Kafoury said it is interesting that every failed ballot measure turns to PDC for help. She said her battle over the past few years has been to integrate PDC with the rest of the City's business and she now believes that has occurred.

Commissioner Sten said this is an excellent plan and that it is important for Council to argue and work through the important policy points. Despite disagreements about where the money should go, PDC is on the right track and Mayor Katz has done a tremendous job of revamping the Commission so that it is poised to take on these issues.

Mayor Katz said she is very proud of the work that has been done at PDC and congratulated Ms. Trader for her role as director.

**Disposition:** Resolution No. 35749. (Y-4)

**DECEMBER 16, 1998**

- \*1841** Accept a \$5,000 Oregon Association Chiefs of Police, Traffic Safety Section Occupant Protection grant (Ordinance)

**Disposition:** Ordinance No. 172951. (Y-4)  
**Commissioner Jim Francesconi**

- \*1842** Amend Chapter 6.06, Downtown Property Management License, to revise the timing of adjustment of fee amounts payable in relation to management of new and expanded buildings (Ordinance; amend Code Chapter 6.06)

**Discussion:** Mayor Katz asked if everyone understands what this does and if anyone wished to testify. No one responded.

Commissioner Francesconi thanked Dennis Nelson, Manager, Bureau of Licenses, for his work on this.

**Disposition:** Ordinance No. 172952. (Y-4)

**Commissioner Erik Sten**

- \*1843** Accept a grant from the Oregon Department of Land Conservation in the amount of \$1,500 for FY 1998-99 (Ordinance)

**Disposition:** Ordinance No. 172953. (Y-4)

**Communications**

- 1844** Request of Jeffrey Shaffer to address Council about Zest for Life (Previous Agenda 1796)

**Discussion:** Mayor Katz noted that Mr. Shaffer was not in attendance.

**Disposition:** Placed on File.

At 12:15 p.m., Council recessed.

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 16TH DAY OF DECEMBER, 1998 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi and Kafoury, 3.

OFFICERS IN ATTENDANCE: Cay Kershner, Clerk of the Council; Kathryn Beaumont, Senior Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

- 1847** Amend Goal 4, Housing, of the Comprehensive Plan, by replacing the Goal and Policies 4.1 through 4.9 with a new Goal and Policies 4.1 through 4.15 (Second Reading Agenda 1798)

**Disposition:** Ordinance No. 172954. (Y-3)

- 1845** **TIME CERTAIN: 2:00 PM** - Accept the City's FY 1997-98 comprehensive annual financial report and related audit report by KPMG Peat Marwick LLP (Report introduced by Auditor Clark; Contract No. 31762)

**Discussion:** Barbara Clark, City Auditor, said this audit is done annually and is contracted out to an independent CPA firm. It provides a snapshot of the City's condition at the end of its fiscal year and an analysis of the resources that came in and went out. However, the audit does not comment on efficiency or effectiveness, issues her Audit Services division address. The financial records produced by Office of Finance and Administration (OFA) are exceptionally accurate and clean.

Ken Rust, Budget Director, said this tells the story of the City's financial operation at one point in time. These reports are submitted to the Government Finance Officers Association each year and have routinely received awards for excellence of financial reporting. The document describes the City's \$3.2 billion in assets and while it shows \$1.6 billion in equity, there are unresolved issues, such as the unfunded liability of the Fire and Policy Disability and Retirement Fund. This report also provides an important yardstick for the financial institutions which buy City bonds. He thanked the accounting and general ledger staff for its excellent work in a stressful environment.

Joe Hoffman, Vice President, KPMG, explained the auditing standards that apply and how they arrive at their opinion. He said the last two pages of the audit comment on specific compliance and matters that need to be reported to State.

Commissioner Francesconi said this reflects the high quality of the workforce and particularly OFA.



Mayor Katz said it is good for OFA to come to Council and tell it what we should not be doing and directing it to act responsibly.

**Disposition:** Accepted. (Y-3)

**Commissioner Jim Francesconi**

**1846** Liquor license application for P. W. Etc. II, Inc., dba Patty's Retreat, 1102 SW Washington Street, Dispenser Class A (DA), liquor license (renewal); Unfavorable recommendation (Report)

**Discussion:** Judy Ritt, License Bureau, said both the License and Police Bureaus have forwarded an unfavorable recommendation because of serious and persistent problems and failure of the establishment to operate within Code requirements. An intervention meeting was held with the OLCC, the licensee and City staff members but since that meeting there have been even more problems.

Officer Bill Calder, Police Drug and Vice Division, said this licensee has been a problem for years. Recent police reports record a string of drug arrests and several officers reported hearing that this was a place to buy drugs and drink too much. He said the operator, Mrs. Patty Williams, has not shown either the willingness or ability to control the problems in her bar.

Officer Dave Turner, Police Bureau, said he has received many complaints about drug activity, drunkenness, noise and general disorder at Patty's Retreat. After meeting with Mrs. Williams and her son, the manager, the situation improved for awhile but then the pattern of illegal activities resumed, resulting in constant complaints from neighbors. He said even though there are five to six taverns a block away, the Police hear far fewer complaints about them.

Lt. Greg Hendrix, Central Precinct, said Patty's Retreat is one of a handful of establishments in the area that have a reputation for causing problems for Police, the neighborhood and downtown.

Commissioner Francesconi asked what steps such establishments should take.

Officer Turner said since Patty's has been known for years as a place to get drugs, the managers should have "trespassed" anyone arrested for drug use.

Lt. Hendrix said the licensees set the tone for what will be allowed on the premises. Some get a reputation for being poorly run while others are known for their "no nonsense" approach.

Patricia Williams, applicant, said she has no knowledge of anyone who has been arrested being allowed back in. She said they have tried to comply with everything in the intervention agreement, including locking the restrooms, taking out the phone, disallowing spoons in the bar, adding no loitering signs and hiring several new bartenders. She said

her fight with breast cancer has forced her to be less actively involved but the neighborhood itself has turned into an undesirable one, due to the housing of people nearby who have just gotten out of jail and have nowhere else to go. She said she is unable to sink any money into improvements because she is on a month-to-month lease. However, she has an interested buyer who wants to make this into a gay bar and asked Council for 30 days to allow her to complete the transfer of the license.

Individuals speaking in opposition to a favorable recommendation for this licensee included:

David Dentel, Fitness Creators Studio, 1100 SW Washington, 97205  
Paul Haggerty, Manager, Mark Spencer Hotel, 409 SW 11th, 97205  
Alix Nathan, Owner, Mark Spencer Hotel, 409 SW 11th, 97205  
Beth Cluff, Barry Menashe Properties, owners of the Portland Medical Building

Opponents said the activities of Patty's clients threaten the safety of the neighborhood and other businesses. They cited incidents of drug sales and prostitution, yelling, altercations (some involving guns and knives), public urination and littering as reasons to support an unfavorable recommendation.

Mayor Katz asked about the transfer of ownership.

Ms. Ritt said there is a potential buyer but if the change of ownership came through, the OLCC process would still go forward and the existing licensee, if no longer in place, would still have letter of reprimand in file.

Lt. Calder said this is only a recommendation and it will probably take 60 to 90 days before the OLCC takes action on it. If a sale is made in the meantime, that can be considered.

Commissioner Kafoury asked if the buyer would be eligible to apply for a new license.

Lt. Calder said the Police will expect a lot out of anyone who goes into this difficult neighborhood and he is not sure a new applicant could meet those requirements.

Commissioner Kafoury moved to forward an unfavorable recommendation.  
Commissioner Francesconi seconded.  
Commissioner Francesconi said the applicant has not demonstrated an ability to contain the problems.

Commissioner Kafoury said while she is not unsympathetic to the applicant's health problems, this has been a very troublesome operation for a long time.

Mayor Katz asked for a study of service calls to this area, including the parole and probation offices which look like they will be moving. She said she wants to make sure that is not one of the problem areas.

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**Disposition:** Unfavorably recommended. (Y-3)

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

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 17TH DAY OF DECEMBER, 1998 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Hales, Kafoury and Sten, 5.

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

## REGULAR AGENDA

### Commissioner Charlie Hales

- \*1850** Amend Section 34.30.030.B.7 of Title 34, Subdivision and Partitioning Regulations to be consistent with Title 33 to allow land divisions creating lots less than 50 feet wide (Previous Agenda 1800; amend Title 34)

**Discussion:** Mayor Katz said if there are no objections, she would like to continue this another week.

Commissioner Kafoury objected. She said people have been waiting to subdivide their lots for two months and she believes Council is really jacking them around.

**Discussion:** Continued to December 23, 1998 at 9:30 a.m.

- \*1848** **TIME CERTAIN: 2:00 PM** - Change in control of TCI cable franchises (west Portland, Hayden Island) to AT&T Corporation (Ordinance introduced by Commissioner Sten)

**Discussion:** Commissioner Sten said AT&T is in the process of merging with TCI, which has some very good potential upsides for the City, with possible major upgrades of lines and new services. It also raises a lot of policy issues and the focus today is on how the proposed service for internet access from the new cable modem technology should be handled.

David Olson, Office of Cable Communications and Franchise Management, introduced the three members of the Mt. Hood Cable Regulatory Commission (MHCRC) present today.

Sue Dicile, MHCRC Commissioner, said in September the Commission received notification that ownership of TCI would be transferring to AT&T. Pursuant to a transfer of ownership, MHCRC has the ability to require some considerations relative to the ownership transfer. At the same time they became aware that TCI would be deploying their cable modem technology, which provides high speed data links to homes and will also have their proprietary Internet access product via that modem. They indicated to MHCRC that they did not intend to open that architecture to any other Internet service providers. Basically, their proprietary product would be the only one that would be seen.

Mayor Katz asked if theirs would be the one to pop up first at home.

Ms. Dicile said yes, but one would not be able to have any other Internet Service Provider (ISP) on that network. The Commission felt that was not acceptable from several standpoints. First, they felt it was poor public policy. Six months prior to this, although done under another regulatory scheme, Telecommunications/US West proposed a similar scheme to the Public Utilities Commission for their DSL network and was required to open their architecture. Although at the time US West felt this would be onerous, it now believes that it can allow competition on its networks and make a profit doing it. The MHCRC believes the same public policy principle, even though under a different regulatory scheme, should apply here and that there is a compelling public interest in having the high speed data links that people have access to in their homes and that there be open access to competitive providers on those networks. Therefore, the MHCRC recommends that a condition be placed on the approval of the transfer of ownership, calling for open architecture on the cable modem.

Norman Thomas, Chair, MHCRC, said as a representative from Troutdale he expects it to be facing these same issues soon. He asked Council to consider these options carefully. He noted that the MHCRC has barely had a chance to look at them as a Commission although he is hearing from his constituents that they really want open access.

Bob Cranberg, Portland appointee, MHCRC, said he believes whoever controls access to this technology will have a very advantageous competitive position. The ability to build this kind of infrastructure costs billions of dollars and the number of companies in the United States with the ability to do this are few and far between. Without a policy statement on the part of the Commission and the City, they are basically giving the nod to creation of a monopoly. He favors coming out with a very affirmative point of view about how they should move forward on open access issues.

Debbie Luppold, TCI Northwest, Inc. said they would divide this issue into two categories: 1) the importance of the City and County making a policy statement with respect to opening up the platform; and 2) the legal issues that surround the requirement to open up that platform. This transfer is a snapshot in time and all they are doing is requesting that consent be granted regarding the cable television franchise. The deployment of the at home product is at this point characterized as a cable service and they do not believe it opens up the platform for ISP providers in the same way that US West is required to open its platform. US West is a telecommunications carrier; TCI is not and the requirements differ for the two different types of service providers. She said they have attempted to agree on compromise language with the MHCRC regarding this matter so that the City can make a policy statement while neither party waives its legal rights. They have also expressed willingness to offer an extension at virtually every meeting they have participated in, in hopes of resolving this issue in the best interests of all parties. They have not gotten there yet and ideally would like to resolve this without having some other party resolve it for them.

Rick Thayer, representing AT&T, said AT&T does want to bring local competition to the local market and this is the best chance for local phone competition to take place. Some characterize this as a David and Goliath situation but the real Davids in this story are US West, a monopoly, and American On Line, the largest Internet provider in the country. They believe the issue is the legal rights of AT&T and what is actually right. He said if Council adopts this ordinance as recommended it is saying that if a company builds a better mousetrap, Portland will try to take it. This action thwarts competition. While the cable network is the highest speed network access there is today, that may not always be the case and, before casting its vote, Council should think hard about the message it is sending to the business community and to consumers.

Duane Bosworth, attorney with Davis Wright Tremaine, representing TCI and AT&T, said Mr. Crinberg has asked Council to make a policy statement with regard to open access. But that is not what this ordinance would do. The ordinance would be an outright breach of the City's existing franchise agreement with TCI. That is a contract the City entered into with TCI and renewed just last summer. It has very specific provisions. He said paragraphs 15.1 and 15.2, the Consent to Change and Control (or arguably a transfer of control) govern precisely this situation. He said 15.2, the Change in Control, does not authorize Council to impose any conditions upon the occasion of a change in control. Even if the City argues that 15.1 controls, which is a Transfer of Control (and legally not what this is), there is very specific language which limits what the City can do under its contract with TCI. It says the City may condition any transfer upon such conditions relating to the technical, legal and financial qualifications of the prospective party (AT&T) to perform according to the terms of the franchise. It would be willfully self deceptive to argue that a new condition of open access has any relationship to the legal, technical and financial qualifications of AT&T to perform the conditions and terms of the contract the City entered into with TCI last summer. While the City can argue that, it is not responsible to believe that any objective person would say that open access, which the City would like as a public policy, is a condition it is authorized to impose under that contract. The City can make such a public policy statement but that is not the ordinance before Council. The analogy about a level playing field, mainly that US West was required to provide open access, has only a superficial logic. US West is regulated by the PUC and has a guaranteed rate of return while TCI has created on its own investment something that is guaranteed protection under the City's contract with it. The City is now proposing to take that away to make a statement. The City can make a statement in any variety of ways, including participating at the FCC level, but the contract the City entered into with TCI does not permit the condition being proposed today.

Ms. Luppold said one reason the MHCRC believes TCI/AT&T should be providing access to its platform is because of federal commercial leased access requirements. The federal law is very clear as to what commercial leased access requirements are. Essentially they say that access should be provided to any entity willing to pay a fee for carriage of video programming. Video programming is defined as programming similar in nature to programming that is provided by a broadcast television provider. The gray area is whether, if TCI deploys the at home product in this market, that product is something different than video programming, thus opening it up under leased access requirements to ISP providers

with respect to service on their system. They are unclear about that and believe any decision regarding that must conform with national rules, which are set appropriately by the FCC.

Commissioner Hales asked why the City cannot make a decision on the local level, if it believes it has local franchise authority for the purpose of regulating the transmission of television signals to peoples' homes and businesses, and the FCC is not crystal clear about the regulatory framework that ought to exist.

Ms. Luppold said they believe they have a franchise to provide cable services and that is what they have provided. At this point a white paper has been prepared by FCC staff which characterizes the at home product as cable service. In the compromise language they worked on with staff, and which was proposed to the MHCRC, they attempted to state that the City and County believe that an open platform is important as public policy but that such a requirement should conform with federal, state and local legal requirements. That language was added in anticipation of the fact that the FCC could decide either to open or not open the platform, or might not say anything at all. In the absence of a decision by the FCC, they agreed to leave local legal requirements in the agreement. That would allow the City or County to pass an ordinance requiring them and then TCI/AT&T would have the opportunity, because they have agreed not to waive their rights, to challenge that. In no way was their goal not to provide the means for the City or Country to make a policy statement. Rather, it was to protect both the City's and the company's rights to ensure that creation of such a rule is lawful.

Commissioner Francesconi asked Ms. Luppold if she agreed with the policy about opening up the local access.

Ms. Luppold said conceptually she understands why the Commission has made this request but believes it is inaccurate to create the illusion that TCI/AT&T has the only pipe going into the home. As a cable subscriber, she can pay \$40 for "at home" over her cable system or she can continue paying AOL \$19.95 to get the service over the phone line. She does not agree with the policy statement as it relates to the cable platform so long as what they are functioning under is a cable television franchise with rules under Title 6 of the communications act.

Commissioner Francesconi said it appears that there will be a legal fight sooner or later, depending on what the City does. He asked why not do it now?

Ms. Luppold said it is hard to predict what the FCC will do as an immense amount of dialogue is going on about this issue at the federal level. Also, their goal is to resolve this without a legal dispute that is costly to all parties. She thinks the policy statement can be made without involving a legal dispute and that is what they attempted to craft in the compromise language they worked on with staff and legal counsel.

Commissioner Francesconi asked if it is likely, even with the compromise language, that there will be litigation. It will just be later.

Ms. Luppold said no, not in Portland.

Mr. Bosworth said if he were advising someone about the legal battle, he would not advise them to do it based on the contract agreement with TCI. That is a different legal battle.

Commissioner Francesconi said as he understands the argument, there would have to be some other language besides technical, legal and financial qualifications of the prospective party. What would the language have to be?

Mr. Bosworth said if the City had the authority to require open access, this would not be the occasion. There could easily be some language, however, that would say the City does not consent to any transfer unless the franchise is renewed or the franchise automatically ends. The City can also add any conditions it wants.

Commissioner Francesconi quoted from the contract language where it states: "as it deems appropriate" which seems to give the City broad authority.

Mr. Bosworth said "appropriate" is only the add on to the most important phrase which states that these are conditions that are related to technical, legal and financial qualifications. As a matter of statutory construction, there is no argument that "as it deems appropriate" is the controlling language. The controlling language is that you can have only conditions that relate to the technical, legal and financial qualifications.

Commissioner Sten said it is his expectation, as the Cable Commissioner, that were open access provided, it would come with a cost to the companies and would not be a free service. The City would not be trying to take what is due TCI/AT&T in terms of its investment but would expect that it be paid fairly. He said he does not know what fairly would be but does not expect it would be a free donation from AT&T to whoever gets that access.

Mr. Thayer said the investment was not made upon the assumption that they would be providing open access. One makes investments based on some framework, i.e. the contract, of what type of market you are going to enter into once that investment is realized. This changes that market.

Commissioner Sten said he wanted to be clear that would give the company a very strong argument as to how much access is worth and it would not be up to this Council to decide that. There is no thought in his head that it would be a freebie.

Mr. Bosworth said that will raise a whole series of other long potential litigation disputes over what that cost is. He knows those issues are not easily resolved, having spent three years with US West in the telecommunications area over those very issues.

Commissioner Sten complimented TCI and AT&T on trying to work through this issue although essentially there is a difference of opinion about open access. Council has



considered two things -- the Cable Commission's language, which was ultimately adopted, and the compromise which says the City and County would make the policy statement in support of open access but would not try to enforce that until the FCC had given more clarification. The idea behind the compromise is that eventually it would be in the FCC's hands, although one of the problems he has is the lack of any certainty about when the FCC would provide any clarification. He asked the TCI and AT&T representatives if they had any idea when a definitive ruling might be expected from the FCC on this issue.

Mr. Bosworth said there is no way to predict that although those conversations are well underway and this is an incredibly hot topic. The idea that it will linger forever is wrong. Portland can join in that conversation as that is the appropriate place to make a strong statement.

Mr. Thayer said he believes the FCC will act very quickly since a huge amount of investment awaits that determination. Investments go to where the market rules are established and capital does not get allocated until those rules are clear.

As a point of clarification, Ms. Luppold said the compromise language they crafted with staff basically refers to federal, state and local legal requirements. TCI started out with a proposal that it would be in compliance with federal legal requirements and then City staff requested that it be inclusive of state and local legal requirements, assuming that the FCC may not act and that the City may be in a position to make a ruling in the absence of a decision at the federal level. The compromise language, as they interpret it, is not limited exclusively to action taken by the FCC.

Commissioner Sten said but if there is an action taken by the FCC, then the City is in the position it is in today.

Mr. Thayer said if there is an action by the FCC, they will be in compliance. If the FCC says tomorrow that open access is the rule of the land for cable network, then the issue is decided.

Commissioner Sten said he understands that.

Mr. Bosworth said the FCC could mandate open access, deny it or say "you make up your own mind."

Steve Kafoury, representing the Oregon Internet Service Providers Association (OISPA), said today is the last step in a long process that has seen an immense amount of work and careful evaluation by a large number of highly knowledgeable people. At the November meeting of the MHCRC the Commission voted 5 to 2 to pass on the recommendation of David Olson, who is nationally recognized as an expert in cable regulation. Both City and County counsel agreed with him that there was sound legal basis for local government regulation in the area requiring open access to cable internet services. The two no votes were made not on the basis of objections to the resolution but purely on the basis of a procedural issue as they thought AT&T ought to have a little more time to work out some

kind of compromise. After a month of analysis and proposed compromise language, they came up with a compromise solution which did not receive the support of even one member of the eight person Commission. At that point the Commission unanimously supported the proposal in front of Council today. He said he has been overwhelmed by the depth and breadth of knowledge of the MHCRC, which has voted twice to support this proposal. He said the Multnomah County Board of Commissioners voted four to one today to support this proposal and he urged Council to do likewise.

Richard Horswell, President, OISPA, said his organization represents 44 ISPs in Oregon and are also advocating on behalf of 300 others today. He said while they expect the FCC to approve the merger within six months, open access is not expected to be a part of that decision. Open access to the cable modem network will be addressed separately in an 18- to 24-month time frame. During that period, however, there is a real possibility that TCI's at home service will be deployed in this market, driving local providers out of business and severely affecting consumer choice, price of service and technology innovation. He said clearly OISPA along with US West has a vested interest in this. He said there are economic benefits in voting for this, both for AT&T and the local providers. Many ISPs will be able to stay in business, many jobs will be saved, over \$20 million will continue to flow into the local economy and many ISP businesses located downtown will remain close to fiber pipes to upstream providers. He said he cannot imagine a more qualified band of foot soldiers for TCI and AT&T than the ISPs in developing a sales channel for selling the underlying cable to deploy high speed internet services. It just makes good economic business and technical sense for everyone, especially with only 20 percent of the local market connected. The local ISPs believe Council has solid grounds to vote for the condition.

Lisa Rackner, Lindsay, Hart, Neil and Weigler, attorney representing OISPA, said AT&T and TCI have testified that it is the FCC and not local jurisdictions that should decide who and how cable networks should be opened to access. They have also said that the local franchise agreement defines the outer limits of the City's authority. Congress gave local franchise authorities the authority to place conditions on transfers of franchises in order to protect the public interest. That authority gives the City both a unique opportunity and a unique responsibility. Section 6.13 (d) of the Communications Act gives local franchise authorities the right to impose conditions on the transfer of control of a cable system "in circumstances in which the franchising authority determines that the acquisition of such a cable system may eliminate or reduce competition in the delivery of cable service in such jurisdiction." Thus the local franchising authority is specifically allowed to take into account the effect of the transfer on competition in this jurisdiction and it may prohibit or condition that transfer on those grounds. She said neither AT&T or TCI or anyone has or could argue that the transfer of these franchise agreements to the merged company without the imposition of the conditions suggested by the MHCRC would not reduce or harm competition in this jurisdiction. She said she believes it is a surety that it would. That is exactly why Congress gave local jurisdictions the ability to transfer and why she believes Council should exercise that ability today. She disagreed with Mr. Bosworth's construction of the franchise agreement although she will not go into all the details. The language in Section 2 states that the City may look at technical capability, reliability and

the legal issues. This is not exclusive language and certainly not strong enough to overcome Congress' statement, as noted above. In Section 2 there are policy statements in the franchise agreement regarding diversity and flexibility in cable services. Those are part of the City's intent in entering into the agreement. Again, she believes TCI and AT&T's construction of the franchise agreement is unduly narrow. Council has the authority to impose these conditions and it ought to.

Greg Peden, Portland/Metropolitan Area Public Policy Manager, U.S. West, said the issue here regarding whether or not the FCC has jurisdiction is obviously central. First, if the FCC failed to say anything about the authority of local jurisdictions and the City can come back and pass an ordinance, there is nothing to stop AT&T from suing City at that time. Second, on Monday night, an AT&T representative testified before the FCC that if this issue is considered at all it should not be part of this merger discussion but on a separate docket because of the industry-wide concern. That would put it off indefinitely so the opportunity for Council to address concerns about consumer protection or business competition is now.

Commissioner Sten said he worked hard with Mr. Olson and the City's legal counsel on the compromise and has concluded that there is a real disagreement about whether open access should be provided. He said he cannot with any certainty say that by compromising and waiting for the FCC that the City will get clarity at any particular time. That has to be weighed against his agreement with the MHCRC that some harm could be done to other Portland companies and therefore it makes more sense to him to use the stronger language and be clear about what the dispute is about. He said it is unclear to him now what legal actions will follow on either side but there will always be time to work through them as they develop. Because he does not see the compromise leading to resolution at any time certain, he believes it best to support the stronger recommendation proposed by the Cable Commission. Imposing the open access requirement now will allow the City to move ahead and see what actually happens in terms of its authority and the FCC's, and finding answers to the remaining questions.

Commissioner Hales said when he first reviewed this, it appeared there may have been a difference of opinion between the two sides about whether programming under the franchise included internet access. At this point it appears that there may be an agreement that programming does include internet access. Is the argument about where the authority to act comes from, either from federal law or the text of the City's own franchise?

Mr. Olson said that is correct. For purposes of this transfer and until there is absolute clarification both sides agreed to treat the internet service as a cable service. The Commission has recommended that it follow those rules as a subset of cable service.

Commissioner Francesconi asked Mr. Olson if this is his personal recommendation.

Mr. Olson said he is on record as supporting both the original recommendation of the MHCRC and has been working very hard on a compromise everyone could live with. Monday night he recommended a compromise to the Cable Commission but the

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Commission unanimously chose to go with his original recommendation of November 16 as the stronger version, for the reasons they have stated today. He said his primary job is to honor and proceed with what they recommended originally.

Commissioner Francesconi asked the City Attorney to comment on why the City's franchise agreement allows Council to do this.

Ben Walters, Deputy City Attorney, said this is not the first cable franchise transfer to come before Council and not the first time the City has had an opportunity to act under that language in regard to a franchise transfer. There was one as recently as 1995 involving the acquisition of Paragon by Time Warner in which conditions were imposed. The City Attorney's office has taken the position that the City could impose conditions under these kinds of circumstances. TCI negotiated with the City and entered into this franchise with that knowledge. He disagreed with Mr. Bosworth's characterization that this language is limiting and does not allow the City to address this particular issue, given that background.

Commissioner Francesconi said in prior conversations Mr. Walters told him there was no clear legal precedent on that. Is that correct?

Mr. Walters said in this particular area there is no precedent.

Commissioner Francesconi said Mr. Walters also informed him it would not be frivolous to proceed as there was a body of law that would allow the Council to follow Commissioner Sten's recommendation.

Mr. Walters said he believes there is legal authority to proceed.

Mayor Katz asked that roll be called.

Commissioner Francesconi voted aye.

Commissioner Hales said this sounds like a very close call because of the thorny legal issues but it is not such a close call on the policy side. This represents a substantial change in the relationship between the cable provider and the citizens and that is grounds for Council to exercise the authority it has been told the City has. Whether the City has that authority may ultimately be for a court of law to determine but it is reasonable to assume that it has the authority at this point. He voted aye.

Commissioner Kafoury said this is clearly an area where Council has to depend on its citizen advisors, the Commissioner-in-Charge and the very capable staff. She said it has not been that close a call for her and voted aye.

Commissioner Sten said Council is making an important policy statement today. It is an unclear playing field and this will not be the last discussion Council will have on these issues. The exciting thing is that the telecommunications industry is alive and there are lots of new possibilities coming to Portland. He believes this issue will arise in a whole

host of different companies and franchises in the years to come so it is important to get Council's principle on record and then work through what comes next. He thanked the Commission and also TCI and AT&T for their cooperation as they have made a clear point that is justifiable from their standpoint.

Mayor Katz thanked the Commission for its work and for taking a very strong position to protect the consumer. She said it was the right position as confirmed by staff and the City Attorney. She said she hopes TCI and AT&T do not end up suing the City.

**Disposition:** Ordinance No. 172955. (Y-5)

**1849**     **TIME CERTAIN: 3:00 PM** - Amend Title 33, Planning and Zoning, to establish the Portland International Raceway Plan District (Ordinance introduced by Commissioner Hales)

**Discussion:** Mayor Katz said today everyone will have an opportunity to put aside the sound bites and shrill noise from many sides and hear the vision Aegean has for an amphitheatre. They will also hear from stakeholders at the Portland International Raceway

Commissioner Francesconi said before Council approves an amphitheater, it must, as stewards of public land, conclude that there is a substantial and prolonged public benefit. It must also weigh the consequences to the neighborhoods and consider any undue hardships that may be imposed on existing uses. Finally, the City must have partners it can rely on. He described how the idea for an amphitheater arose and the extensive efforts that he and others have made to work with Aegean and the Trail Blazers, which has a non-competing agreement with the City for an amphitheater in the 12,000-seat range, to reach an agreement that satisfied all parties and mitigated some of the concerns. However, he finally concluded that, based on the size, impact, scale, and number of events, he could not support the current proposal. He was hoping that another proposal would be made but that has not happened thus far.

Rick Michaelson, Portland Planning Commission, said the Commission voted against inclusion of an amphitheater within the Plan District. He said the Commission felt that proper planning for an amphitheater should have begun with a study of all sites in the region, not just the City. He said, personally, that he found the process that occurred here very disturbing.

Cary Pinard, Planning Bureau, explained what uses the proposed Plan District would allow. She noted that the proposal before Council does not include an amphitheater as the Portland Planning Commission recommended against it.

Charles Jordan, Director, Bureau of Parks and Recreation, said he doubts if the basic proposal will ever change enough to alleviate concerns about the cumulative effect on the neighborhoods. He noted that neighbors have had a hard enough time learning to live with a race track and that the Plan proposes no increase in its size or in the number of racing events. However, if it did, they know there would be strong opposition. He said

Portlanders are very sensitive about development on public land and he does not think adding an amphitheater is a good idea or one that merits further study. He asked Council to adopt the Plan District as proposed.

Gordon Wilson, Parks and Recreation, said the Plan District recognizes the PIR and allows it to move forward and make improvements that will make the track safer and more pleasant for visitors. No improvements are planned that allow for more or larger events. He said in the beginning he was optimistic about the prospects of having an amphitheater located in part of West Delta Park but has since changed his mind.

Dale LaFollette, Manager, PIR, said the investment contemplated by the Trail Blazers cannot be amortized without giving them total control over scheduling and this will result in insurmountable scheduling conflicts with the PIR. He suggested that another site be found for the amphitheater.

Mayor Katz asked him a series of questions about scheduling and what is done to mitigate noise from the race cars.

Mr. LaFollette said they monitor noise on a 24-hour basis and work with the racing organizations to get them to drop the decibel levels. The four major events have to appear before the Noise Review Board for noise variances and even then cannot exceed certain decibel levels. He said there are currently 474 event "days," some with multiple events and some that do not attract many people.

Mr. Wilson said in evaluating a facility, they consider noise, traffic for peak events, environmental impacts on water quality and wildlife, and scheduling. Scheduling is driven more by the size of the capital investment than by the footprint size.

Bob Whitsett, President, Trail Blazers, said the Rose Garden is a great example of a public/private partnership that has worked well for Portland and they envision the same success for the amphitheater. He acknowledged the need to work with the neighborhoods and the racing community but noted that local governments would receive a contribution of \$600,000 as well as money that would flow from the construction work.

Kevin Johnson, BOORA Architects, described how the design of a state-of-the-art amphitheater using only 10 acres of the site would be integrated with the remaining property.

Bill Parsons, Vice President, Universal Concerts, said his company operates eight amphitheaters and includes all interested parties in all stages of development and during operation. They address local concerns and can document their good neighbor approach in all their venues, which has lead to widespread community support and successful multiple use. He said they expect to be able to resolve any scheduling conflicts and have charted the possible conflicts with the PIR and see only four conflicting dates, which they believe can be resolved. He said their conceptual traffic plan has been approved by ODOT, PDOT and the Police Bureau. He described how traffic and parking would be handled and noted

that the price of parking has been included in the price of the tickets so there is no incentive for people to park in the neighborhood. He stressed their willingness to meet with the neighborhoods to address their concerns. Their operational plan calls for 10,000 reserved and 8,000 general admission seats on the lawn. The plan is based on an average of 27 concerts yearly and they believe attendance would reach full capacity only five times a year. He said PIR is the best site in the region for sound mitigation and outlined some of the techniques, including use of a lawn berm, to abate the sound.

Commissioner Francesconi asked if the size could be reduced from 18,000 to 12,000.

Mr. Whitsett said no one ever asked them before today to present a counter proposal and he cannot give an exact number now, although they can be flexible. Determining the number would be part of a bigger discussion involving all the interested parties. The key will be to have five to six larger events in order to recover their investment.

Commissioner Francesconi asked if they could commit to fewer dates now.

Mr. Whitsett said he cannot say at this point. He said there are only four conflicts with PIR and they believe those can be worked out. They do not plan to interfere with any key racing events.

Commissioner Francesconi asked a number of questions about the kind of concerts, traffic conflicts with I-5 at the peak hour (7 p.m.) and the noise standard.

Mr. Parsons said they attempt to provide a diverse musical line-up and expect attendees to arrive over a fairly extended period of time, rather than all at once. He said PDOT informed them that 7:00 p.m. was the time traffic lessened on the freeway, not the peak time.

Jack Wrightson, sound engineer, described the decibel standards and the results of their sound tests. He said they can mitigate sound by setting contractual sound levels inside the amphitheater and can also build a certain number of sound control devices into the facility.

Mayor Katz said neighbors already have lots of complaints about sound from the racetrack and she was told that noise could be mitigated but that it would require expensive and extensive barriers. She said an amphitheater covers a lot less area than a racetrack and the noise can be boxed in so that it is much quieter.

Commissioner Sten asked if the Blazers had talked to the neighborhoods about this.

Mr. Whitsett said they talked to about 12 neighborhood leaders and offered to make presentations to eight. Only one, Portsmouth, took them up on it. He said they realize they have a lot of work to do with the neighborhoods but believe in the end they will feel good about it.

Mayor Katz asked how conflicts with PIR would be worked out.

Mr. Parsons said they will not touch the PIR's major event days. They can be flexible about the dates but need to work things out with PIR representatives. He said they need to know everyone's issues and concerns but as yet no process has been put in place that would allow them to establish a partnership with the PIR.

Mayor Katz asked if they had looked at other sites.

Mr. Whitsett said yes, but this is the best one in the City from their standpoint.

Dan Sieman, Kittelson & Associates, described the traffic management plan, which is designed to mitigate the impacts from the concerts on the freeway and in the neighborhood. He said the plans call for including parking in the ticket price and the use of remote lots served by shuttles.

Mayor Katz said she is disturbed about reports that the Blazers have offered money for the Columbia Slough and other improvements in exchange for support for the amphitheater.

Jay Issac, Aegean and Oregon Arena Corporation, said they anticipate that \$600,000 in revenues will flow annually to the City through user fees and property taxes. They have also proposed a surcharge that would create a neighborhood fund that they estimate would be about \$100,000 per year, to be used for a variety of purposes. They have also discussed having an additional surcharge that would go towards environmental purposes. However, this is conceptual and not meant as a bribe.

Responding to laughter from the audience, Commissioner Francesconi said he is the one who tried to get some money back for the City and this should not be considered a bribe. His idea was to establish a fund to go to those neighborhoods which will have to bear the consequences resulting from the noise and traffic impacts, as well as the environmental impacts.

Mr. Issac said the Oregon Arena Corporation's operational history speaks for itself and described the benefits that flow to non-profit organizations and the community from their operation.

Mr. Parsons said the amphitheaters Universal has built elsewhere provide jobs for local people and allow non-profits to earn money by working the concession stands. They would expect to work with the Blazers to do the same thing here.

Ron Bennett, Chair, Rose Festival Auto Race Committee, said after five months of negotiations, they have concluded that the amphitheater would jeopardize their significant investment at PIR, produce scheduling conflicts, erode the amateur racing infrastructure, send the wrong message to race-sanctioning bodies, and not respect neighborhood concerns. An amphitheater and racetrack are simply not compatible on the same property. PIR is a world-class race facility which the City should vigorously protect. The Rose Festival has invested over \$3 million and countless volunteer hours over the last 15 years



and will continue to promote PIR as an international race venue.

Dick Alexander, former Rose Festival Association President, said he believes even the initial proposal for an amphitheater in the 8,000 to 10,000 seat range with 13 dates is in the wrong place. The current proposal calls for a large footprint which would mitigate against future growth for existing venues. Scheduling is also a problem and the ability to resolve the traffic, environmental and scheduling issues will only grow worse if two operations converge on the same site. If both are permitted, he believes they will work against each other's success. He suggested that the Blazers find another site.

Bob Ames, 1801 SW Highland Road, 97201, said this is a unique racetrack and is a whole lot of the reason why Portland has professional, profitable racing as otherwise there is no natural reason to hold major races here. Without the professional racing they cannot support amateur racing and will lose the volunteers they need to hold their races. The racing community has contributed every dollar it has taken to build the facility.

John Draneas, 222 SW Columbia, President of the Northwest Porsche Club, said the public benefit the amphitheater brings should be analyzed in the context of all the other facilities that already exist, including the 18,000-seat amphitheater being constructed in Clark County. He said the marginal public benefit is questionable and undue hardships must also be avoided on existing uses. He noted that every government employee who has been involved in the planning process, as well as the Planning Commission, has said an amphitheater does not work here. He questioned how Council could come up with the necessary criteria to allow it to go forward and said the best option is to deny it.

John Brewer, President, Brewer Brothers Construction and spokesperson for the amateur motor sports community, the primary users of PIR, opposed the Allen amphitheater proposal. He said PIR is a motor sports facility first and foremost and without amateur motor sports there would be no race track. It is also unique in being a City park, providing everyone an opportunity to use it. It is used by thousands of people and seven non-profit organizations and he does not believe the motor sport users and amphitheater users can co-exist.

Commissioner Hales asked if these two uses are always incompatible and whether these uses have been combined elsewhere in the country, such as Watkins Glen. He said there is no comparative analysis in the record on which to judge that.

Mr. Ames said Watkins Glen went bankrupt and is now operating on a much smaller scale.

Mr. Draneas said scheduling on summer weekends is the key for racetrack users and they believe their dates will disappear if the amphitheater is built. The motor sports community supported the initial 8,000 seat facility because it was not going to take any summer days, only nights, but the Aegean Company has not talked to anyone about how these conflicts can be worked out.

Mayor Katz asked Mr. Draneas if he thought the two uses could co-exist if the days could be resolved.

Mr. Draneas said if they are off the track by 5:30 p.m., then the conflict goes away but if they want five weekend days, there will be a problem. And there is still a problem with the neighborhoods.

Don Arambula, Chair, Kenton Neighborhood Association, said there has been no discussion between the neighborhoods and Aegean about any of this. He said other appropriate sites for an amphitheater in the region should be studied first and current facilities should be evaluated to see if they could be enlarged. He said the Neighborhood Association believes it does not have enough information about the proposal to determine if it should be part of the Plan District at this point and opposes its inclusion.

Other Neighborhood Association representatives speaking in opposition included:

Gayla Whitman, Hayden Island Neighborhood Association  
Tom Markgraf, Piedmont Neighborhood Association  
Jean Hoops, Cathedral Park Neighborhood Association  
Kent Hoddick, Arbor Lodge Neighborhood Association  
Walter Valenta, Bridgeton Neighborhood Association  
Richard Ellmyer, Portsmouth Neighborhood Association

They objected to the noise, traffic congestion and conflicts with other uses, including Expo and Delta Park. Opponents said they see no positive benefits to the neighborhood. Several also objected to being marketed to, rather than involved as citizens and said neighbors found Aegean's marketing blitz offensive and voiced strong distrust of the Blazers. For the neighbors to consider the amphitheater in a positive light, the process would have to start from scratch and include consideration of other sites and other uses at the PIR.

Commissioner Kafoury and Mayor Katz said they heard that neighborhood groups had received funds from Clark County amphitheater supporters and said they were offended by that also.

Joe King, speaking for the Clark County amphitheater proposal, urged Council to consider the importance of spreading regional facilities throughout the region. He said they are committed to working with C-Tran to encourage people to use transit but they have no other special plans to mitigate traffic. He added that about two weeks ago his organization mailed a check for \$2,000 to a Portland neighborhood association to pay for postage for a mailing to counter Aegean's media blitz.

Individuals speaking in support include:

Bill Failing, Executive Director, Portland Baroque Orchestra  
John Sellers, 3815 N. Alaska, 97217  
Bill Stoller, Portland Opera Association

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Matt Hennessee, Pastor, St. Paul Baptist Church  
Jennie Portis, North/Northeast Economic Coalition  
Pat Harrington, BOORA Architects, 3214 NE U.S. Grant Place, 97212  
Drew Mahalich, Director, Portland Oregon Sports Authority

Supporters said this will provide enhanced economic opportunities for North/Northeast Portland residents and allow Portland performing arts groups to appear in a larger venue and an outdoor setting. Several said the noise they are subjected to by the PIR races is worse than the noise from the tests conducted by the Blazers and that the proposed noise mitigation measures, such as the berm, will be effective in reducing the noise. Mr. Mahalich suggested a process that would ensure the benefits of an amphitheatre would outweigh the burdens on the racing industry by starting out small, on terms acceptable to the racing community, regarding the number of dates and level of attendance. Many asked Council to see if a solution can be found.

Individuals speaking in opposition included:

Stephen Price, 2606 NE 59th, Oregon Symphony member and classic car club member  
Dick Clark, Executive Director, Rose Festival Association  
Mike Houck, Audubon Society  
Michael Czysz, 1336 NW Northrup, 97209  
Peter Teneau, 2715 N. Terry, 97217  
Mary Starrs, 1630 N. Highland, 97217  
Jon Brobst, 6645 NE 78th Court, 97218  
Troy Clark, Friends of Smith and Bybee Lake, 2821 NE Klickitat, 97212  
Roger DeFrancisco, 1501 N. Hayden Island Dr., 97217  
Pam Arden, 1817 N. Winchell, 97217  
Nancy Cushman, 2715 N. Terry, 97217  
Bonnie Meltzer, 9124 N. McKenna, 97217  
James Antonio Edgar, 235 NW 10th, 97209  
William Duniway Murray, 5620 SW Menefee Dr., 97201  
Karen Suriano, 2627 N. Winchell St., 97217  
Jeff Drago, 17512 NE 4th Circle, 98684  
Richard Calderwood, 2775 NW 126th Ave., 97229

Opponents voiced their concerns, which included loss of habitat, the impact of additional noise and traffic in an area already negatively impacted by PIR events, the need to protect current race car events and dissatisfaction with the design and operation by the Blazers organization of the Rose Garden. Additional concerns about the process, including the noise tests, were also expressed and Council was urged to support the Parks Bureau and Planning Commission recommendations for non-inclusion of an amphitheater.

Individuals who testified with concerns but stated that they were neither for or against included:

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David Eatwell, 2601 N. Willis Blvd., 97217, Kenton Action Plan,  
Tim Brooks, 734 SE 34th Ave., 97214  
Jay Mower, Columbia Slough Watershed Council  
Jada Mae Langloss, 310 NE Flanders, 97208  
Nancy Donner, no address stated  
Bill Schwarzbach, Ladd's Circle Grocery

Their concerns included the environmental impact on the Slough and other sensitive areas nearby as well as the impact of increased noise on wildlife. Mr. Eatwell, noting the extensive outreach efforts that were taken in Kenton, called on Council to get past the rhetoric and find the best possible outcome, noting that while some amphitheaters are horrors others, such the Miller Theatre in Houston, greatly enhance their communities. Ms. Donner questioned how often the amphitheater could be used in a climate with so much rain.

Mayor Katz noted that Council had three options: 1) accept the Planning Commission's recommendation; 2) add the amphitheater to the Plan District; and 3) delay action and allow the Blazers 30 to 45 days to see if they can arrive at a win-win proposal.

Ms. Pinard described the planning process that would be involved in considering any new proposal for an amphitheater and estimated that a realistic time frame would be six months.

Commissioner Francesconi discussed the possibility of doing it in less time.

Mayor Katz asked if a new proposal could come directly back to Council rather than going through the Planning Bureau.

Linda Meng, Chief Deputy City Attorney, said if Council acts on the Plan and then amends the Code regulations, it needs to go back through the prescribed process. Amendments to the Zoning Code require consideration by the Planning Commission.

Commissioner Sten said he personally likes the idea of having an amphitheater in town and believes some middle ground could have been found. He said he is very frustrated by the approach that has been taken here but will probably vote to uphold the Planning Commission as he does not believe the conflicts can be worked out. He noted that the Parks Bureau is adamantly opposed, as are the environmentalists.

Commissioner Kafoury said she believes the tactics exhibited by both sides were abominable and that this is a horrible way to do business. She said putting an amphitheater here is not a terrible idea but she has not been convinced it would be a great addition either and will support the Parks Bureau and Planning Commission recommendations.

Commissioner Hales said it is in no one's interest to discuss the amphitheater further as he believes there is no way to get to yes in this case. He does not like to chase such facilities to the suburbs and he himself would love to have more outdoor concerts in the City. He said no one put enough effort into finding a site served by transit and noted that both the

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Rose Garden and Civic Stadium are served by light rail.

Commissioner Francesconi said after much reflection he decided that the public benefit an amphitheater would add is not worth the rupture with the neighborhoods. He said Neil Goldschmidt, lobbyist for the amphitheater, and Paul Allen, owner of the Blazers, need to help the City resolve these problems and noted that a reduced site should have been looked at first, before the proposal was taken to the Planning Commission.

Mayor Katz said she thought an agreement could be worked out but both sides have blown it and the City has missed a wonderful opportunity here. She would like to stop all the noise on both sides and try to put a group together to see if agreement can be reached about the site and size. She said she will talk to Council members in the coming week to see if a process can be found and work out a schedule. She noted that Clark County will be building an amphitheater and that needs to be considered as well.

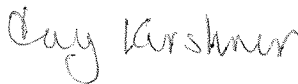
Commissioner Sten said he is not optimistic that this site will work.

Commissioner Hales moved the technical amendments requested by the Planning Bureau. Commissioner Kafoury seconded and, hearing no objections, the motion carried.

**Disposition:** Passed to Second Reading as amended December 23, 1999 at 9:30 a.m.

At 7:45 p.m., Council adjourned.

BARBARA CLARK  
Auditor of the City of Portland

  
By Cay Kershner  
Clerk of the Council