



CITY OF  
**PORTLAND, OREGON**

**OFFICIAL  
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 8<sup>TH</sup> DAY OF DECEMBER, 1999 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Hales and Saltzman, 4.

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

Mayor Katz said Commissioner Francesconi had requested that Item 1737 be heard first.

- \*1737** Authorize agreement for acquisition of a 5.64 acre parcel in the Argay Neighborhood for park purposes (Ordinance)

**Discussion:** Commissioner Francesconi said he is very pleased that the City has been able to obtain this land.

Mary Anne Cassin, Parks Bureau, described the location of the park and said they hope to develop it for active park uses, with ball fields, for instance.

Geoff Roach, 2824 NE 38<sup>th</sup> Avenue, 97212, said the City tried a lot of creative ways to acquire this and the neighbors are very glad to see that it has finally come to fruition.

Jane Roffey-Berry, Argay area resident, described the need for more park space in this area and what a valuable addition this land will be.

Commissioner Francesconi said it is critical to land bank open spaces for parks while they are still available and the fact that this is located next to a school is especially important in an area which has seen so much growth. This helps the City deliver promised services to an annexed area although there is still the issue of how to develop properties that have been purchased. He said the City still has \$5 million left to purchase more land and staff is creating a nomination process about potential locations so the community can be involved in the selection process.

**Disposition:** Ordinance No. 173985. (Y-4)

Agenda Nos. 1716 and 1717 were pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

**CONSENT AGENDA - NO DISCUSSION**

- 1714** Accept bid of J.P. Contractors, Inc. to furnish Powell Butte sites landscape improvements for \$271,824 (Purchasing Report - Bid 99492)

**Disposition:** Accepted; prepare contract.

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- 1715** Accept bid of Daily Journal of Commerce to furnish official advertising and newspaper publication services for three years (Purchasing Report - Bid 99595)

**Disposition:** Accepted; prepare contract.

**Mayor Vera Katz**

- \*1718** Authorize payment to Portland Public Schools for the Sylvan School Reading Program (Ordinance)

**Disposition:** Ordinance No. 173982. (Y-4)

- \*1719** Authorize contract with Worksystems, Inc. for planning and assistance for the Outer Southeast Employment and Economic Development project (Ordinance)

**Disposition:** Ordinance No. 173983. (Y-4)

**Commissioner Jim Francesconi**

- \*1720** Authorize an agreement with the Friends of the Children's Museum to provide supplemental services and programs through the Children's Museum fiscal year 1999-2000 (Ordinance)

**Disposition:** Ordinance No. 173984. (Y-4)

- \*1721** Accept donation of .24 acres of land in SE Portland from Stanley R. Culver for park purposes (Ordinance)

**Disposition:** Ordinance No. 173985. (Y-4)

- \*1722** Grant a revocable permit to Harold E. Johnson and Lisa Carney-Johnson and their heirs and assigns for non-park use of Springwater Corridor for a sanitary sewer lateral crossing at 5150 SE Johnson Creek Blvd., under certain terms and conditions (Ordinance)

**Disposition:** Ordinance No. 173986. (Y-4)

**Commissioner Charlie Hales**

- 1723** Accept completion for improvement of Sunderland Yard, 9325 NE Sunderland Ave., and authorize final payment to Bengé Construction (Report; Contract No. 31936)

**Disposition:** Accepted.

**Commissioner Dan Saltzman**

- 1724** Accept completion of the Columbia Boulevard Wastewater Treatment Plant chlorination improvements, Project No. 6284, and authorize final payment to Triad Mechanical, Inc. (Report; Contract No. 31502)

**Disposition:** Accepted.

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- 1725** Accept completion of the Tryon Creek Wastewater Treatment Plant primary effluent pump replacement, Project No. 6318, and authorize final payment to J.R. Merit, Inc. (Report; Contract No. 32087)

**Disposition:** Accepted.

- 1726** Accept completion of the Beech/Essex outfall line repair project/manhole installation, Project No. 6522, and authorize final payment to Moore Excavation, Inc. (Report; Contract No. 32563)

**Disposition:** Accepted.

- 1727** Contract with Brown and Caldwell for professional engineering services to design the Tryon Creek Wastewater Treatment Plant aeration basin modifications, Project No. 6083 (Ordinance)

**Disposition:** Ordinance No. 173987. (Y-4)

- 1728** Authorize contract with the low responsible bidder for the wet weather primary clarifier project at the Columbia Boulevard Wastewater Treatment Plant, Project No. 6282 (Ordinance)

**Disposition:** Passed to Second Reading December 15, 1999 at 9:30 a.m.

- \*1729** Amend Exhibit A of Ordinance No. 152321 to conjoin the Metropolitan Human Rights Center petty cash fund of \$200 with the Office of Neighborhood Involvement's petty cash fund of \$2,000 (Ordinance; amend Ordinance No. 152321)

**Disposition:** Ordinance No. 173988. (Y-4)

- \*1730** Contract retroactively with the Association for Portland Progress for crime prevention services in the downtown area of the City for the period July 1, 1999 through June 30, 2000 and provide for payment (Ordinance)

**Disposition:** Ordinance No. 173989. (Y-4)

**Commissioner Erik Sten**

- \*1731** Grant a temporary, revocable permit to TCG Oregon and establish terms and conditions (Ordinance)

**Disposition:** Ordinance No. 173990. (Y-4)

- 1732** Authorize an agreement with CH2M Hill, Inc. for an amount not to exceed \$75,000 to provide engineering services for miscellaneous professional services in the area of emergency planning and provide for payment (Ordinance)

**Disposition:** Passed to Second Reading December 15, 1999 at 9:30 a.m.

- \*1733** Authorize an agreement with Murray, Smith & Associates for \$147,063 for the Stephenson pump station to provide professional consulting engineering services to design, provide contract documents, including plans and specifications, assist during bidding and provide construction management assistance and provide for payment (Ordinance)

**Disposition:** Ordinance No. 173991. (Y-4)

### REGULAR AGENDA

- 1716** Authorize City Attorney to appeal order directing return of seized marijuana in State of Oregon v. Samuel Kama, Multnomah County Circuit Court No. 9906-34218 (Resolution)

**Discussion:** David Lesh, Deputy City Attorney, described the circumstances behind the seizure of Mr. Kama's marijuana. He noted that Mr. Kama did not have a medical marijuana card at the time of his voluntary search. Several months ago he filed for return of some of the plants and manufacturing equipment and the court ordered the City to return the marijuana on him at the time, but not the plants or equipment. The Police would like to appeal this decision as it is a violation of federal law to return marijuana even though Oregon law calls for its return. They believe federal law preempts State laws and would like to get this issue resolved.

Commissioner Hales asked what administrative process has been set up for issuing the cards. Is there any assurance that they will be given to people who really need them and that requests will not just be rubberstamped, as they are for handicapped parking.

Jim Ferraris, Police Drug and Vice Division, described the process for issuance and said he does not agree with it, as he believes he easily convinced his own doctor that he had a back spasm and thus obtain a card allowing him to grow or obtain marijuana.

Mayor Katz said she believes this should be appealed to clarify the issue.

**Disposition:** Resolution No. 35847. (Y-4)

- \*1717** Adjust pay grades and salaries of seven Deputy City Attorneys in the Office of City Attorney (Ordinance)

**Discussion:** Cay Kershner, Clerk of the Council, said this did not need to come to Council and should be withdrawn.

**Disposition:** Withdrawn

- 1711 TIME CERTAIN: 9:30 AM** – Adopt the recommendations contained within the draft Barbur Boulevard Streetscape Plan (Resolution introduced by Commissioner Hales)

**Discussion:** Bill Hoffman, Portland Office of Transportation (PDOT), described how Barbur Boulevard grew into what it is today and how this project came about. He noted that when the Oregon Department of Transportation (ODOT) made plans to repair the road the neighbors asked for connected sidewalks and improved opportunities for transit stops and pedestrian crossings. None of that was within ODOT's budget or time frame so a community advisory team has been formed to establish an action plan so that future projects along Barbur meet community vision and standards. ODOT provided a grant to design a project with input from a committee

representing all the neighborhoods along Barbur and the business community. They developed a vision to guide design and stressed the need for Barbur to be multi-modal, serving autos, pedestrians, bicyclists and transit riders. The Committee also felt the project also needed to provide easy access to retail businesses and services and to connect nearby neighborhoods to the boulevard. Mr. Hoffman reviewed some of the recommendations from residents and from a technical advisory committee. The recommendations include median refuge islands to help pedestrians cross safely; completion of sidewalk connections where possible, provision of transit stops with amenities like shelters; landscaping and street trees, realigned intersections and the continuation of sidewalks into neighborhoods. A demonstration project area, from SW Alice to SW Capitol Hill Road, was selected to act as a focal point for implementing some of these recommendations.

Mr. Hoffman said one outstanding issue is on-street parking. The plan recommends removal of such parking with exceptions to be determined on a case-by-case basis. Regarding sidewalks, he said the street needs to carry large volumes of traffic and removal of auto or bike lanes would be difficult. He said continued ODOT support is needed as the neighborhood is very concerned about the location of trees along the highway. The final issue is how to fund the demonstration project, which is expected to cost \$2 million.

Commissioner Francesconi asked how many parking spaces would be eliminated.

Mr. Hoffman said the total number removed would be 150, of which only 50 are marked spaces, while the rest are unofficial. If built as shown, all would be removed but he believes some will remain, as determined on a case-by-case basis. In no case would parking be removed to add a median. He said small businesses support this, with the caveat that parking will remain if removal is shown to be detrimental to business.

Supporters of the plan included:

Martie Sucec, Multnomah Neighborhood Association  
Patty Lee, President Southwest Neighborhood District Coalition  
Leonard Gard, Southwest Neighborhood Coalition  
Don Baack, co-chair, Barbur Boulevard Citizens Advisory Committee  
Young Park, Barbur Boulevard Technical Advisory Committee, and Tri-Met employee  
Ellen Vanderslice, Willamette Pedestrian Coalition  
Helen Farrens, 3956 SW Condor Ave., 97219  
Greg Olson, 4306 SW Galeburn, 97219  
Rick Seifert, 2115 SW Tyrol, 97201

Proponents said they are pleased that this redevelopment does not destroy anything of value. They especially praised the recommendation to treat outstanding issues on a case-by-case and put this project on the fast track. Several called for medians to get across the street safely and for a corridor study that includes I-405 and Barbur as all traffic going southbound currently ends up at Capitol Boulevard. Supporters stressed the need for increased bus service, better access and more shelters for patrons. There was also some testimony in support of designating Barbur as an historic and scenic roadway.

Douglas Terrill, 6444 SW Capitol Highway, 972191, supported the plan but with exceptions. He said the vision statement is weak and does not create a clear image of what Barbur will look like

when the improvements are done. He also cautioned against removing on-street parking and then spending more money to replace it when businesses fail.

Commissioner Francesconi asked if funding was dependent on the gas tax.

Mr. Hoffman said this will be on the Capital Improvement Project list and PDOT will continue to look at ways to fund it. Improvements can be implemented as redevelopment occurs but the project will move much more quickly if they can rely on gas tax funding.

Commissioner Francesconi said the larger question is how to approach needed infrastructure improvements for town centers as this will play a critical role in the growth of the Southwest area. He said a median is needed but the question is how to maintain vital businesses which need on-street parking to survive at the same time.

**Disposition:** Resolution No. 35848. (Y-4)

- 1712 TIME CERTAIN: 10:30 AM** – Consider vacating a portion of SW Bertha Court south of SW Capitol Highway, as initiated by Resolution No. 35840, to improve vehicular, pedestrian and bicycle facilities by constructing a new, realigned SW Bertha Court east of the existing SW Bertha Court, and improve development opportunities for the vacant side to the west (Hearing; C-9974; Report introduced by Commissioner Hales)

**Discussion:** Matt Brown, PDOT, summarized the proposal to vacate 240 feet of the northern portion of Bertha Court and realign it in a safer more efficient location. PDOT is recommending that the new Bertha Court be constructed to provide a larger redevelopment parcel for the library site plus better access to the Hillsdale area and improvements in traffic flow. The vacation approval includes conditions calling for improvements to City standards with curbs and sidewalks. Cost of these improvements is estimated at \$1.2 million and those need to be done before the City moves ahead with the vacation.

Individuals speaking in support included:

Diane Linn, Multnomah County Commissioner  
Ginny Cooper, Director, Multnomah County Library  
Rick Seifert, 2115 SW Tyrol, 97201  
Wes Risher, Chair, Hillsdale Library Committee  
Eamon Molloy, 7282 SW Capitol Hill Road, 97219

Ms. Linn and Ms. Cooper thanked the City for helping them develop a plan for relocation of the Hillsdale library, perhaps with mixed-income housing as well. They noted the possibility of contamination on the site as well as potential condemnation of the property. Ms. Cooper said without the alternative site on Bertha, they could not be sure where the library would be located.

Doug Terrill, 6444 SW Capitol Highway, 97219, owner of Bertha Station News, strongly opposed this proposal. Instead, he supported removal of the Capitol Highway viaduct which is not currently wide enough to support all transportation modes. He said the Bertha Street vacation is an example of planning on a piecemeal basis.

Don Baack, North Burlingame Neighborhood, said he is concerned about the impact of traffic on Burlingame and believes this realignment will increase traffic there. He filed a petition calling

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for the addition of a condition to the vacation to mitigate that would mitigate any harm that might occur to residents on Burlingame due to traffic during construction.

Thomas Lekas, attorney representing the property owners who would lose access to Bertha Court if this is vacated, said they will be damaged if the street is eliminated or moved as their property was developed on the basis of the existing location.

Commissioner Hales said he is not sure he wants to add the condition Mr. Baack has suggested as part of the vacation approval.

Mr. Brown said he will work with Mr. Baack to minimize the impacts as part of the design process. He added that Multnomah County has initiated a condemnation process on the referenced by Mr. Lekas and the City will not vacate Bertha until it acquires the property.

Commissioner Francesconi said the library will be a terrific attractor here.

Commissioner Hales said this highlights the City's successful intergovernmental agreement with the County to carry out important community goals. He moved to overrule the remonstrances and direct the City Engineer to prepare an ordinance. The motion was seconded and, hearing no objections, the Mayor so ordered.

**Disposition:** Remonstrances overruled; City Engineer prepare ordinance. (Y-4)

**1713 TIME CERTAIN: 11:00 AM** – Update on the status of Civic Stadium (Report introduced by Mayor Katz)

**Discussion:** Mayor Katz noted the tremendous interest shown in the Stadium issues and pledged to deal with them in the future in formal Council meetings, not work sessions. She said she asked the negotiating team to keep in mind four principles regarding the Stadium as this moves forward: 1) this deal should be as good or better, compared to other cities; 2) the Stadium must be a multi-use facility 3) it must be a good neighbor; and 4) any agreements must aim towards eventually obtaining a major league baseball team.

Tim Grewe, Director, Office of Finance and Administration (OFA), and member of the negotiating team, reviewed the proposal with Portland Family Entertainment (PFE). He said PFE met all terms of the agreement except that it was unable to meet the requirement to acquire a Triple A baseball team by the agreed deadline. Three options now exist: 1) extend the Memorandum of Understanding (MOU); 2) extend the MOU but release the exclusivity clause and consider other proposals; 3) terminate the MOU. He reviewed the new PFE proposal and the cost allocations by event. The Steering Committee believes PFE should retain its exclusive agreement until March while the Metropolitan Entertainment Recreation Council (MERC) supports the extension but does not agree about extending the exclusive partnership.

Commissioner Francesconi asked how much additional money the City would get if the contract is extended three months but PFE is unable to secure a team.

Mr. Grewe said the City would get close to \$1.2 million. This reflects the value of construction documents and other things currently underway. The maximum risk to the City would be \$400,000 while the cost assumed by PFE would be \$600,000. If PFE is unable to secure a team

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after three months, it would lose its exclusivity rights and the City would be free to explore other options.

Sharon Paget, a member of the negotiating team representing the Goose Hollow Neighborhood Association, said the Neighborhood Association voted for the three-month extension as it is very anxious for the proposed renovations to take place. After March 31, if no baseball team is obtained, the neighborhood favors ending the exclusivity clause.

Ken Snyder, Northwest District Association (NWDA), said NWDA supports this based on the consultants' conclusion that this is one of the best such agreements in the country and because of PFE's performance to date. They would rather not start from scratch and are committed to the March 31 deadline for obtaining a ball club.

Harry Glickman, President, PFE, said they feel confident they can secure a Triple A team in the very near future. He noted that the consultants found that was the best such contract in the 12 different cities surveyed. He said he agreed to come out of retirement because this project appealed to him and because he supports this effort to provide affordable family entertainment. He noted the bump clause in the agreement which provides that if a major league baseball team comes to Portland, then the Triple the A team goes away.

Mark Gardiner, Vice Chair, PFE, said PFE is locally owned and managed and its entire business concept is based on providing affordable family entertainment at the lowest possible prices. He said he advises on more than 30 sports facilities around the country and can attest to the fact this is one of most advantageous agreements ever. He described some of the terms of the agreement which include guaranteed payments to the City and the assumption of the City's debt service, growing from two-thirds in the first year to 100 percent in later years. He said private investors are committing \$25 million while the City is putting up \$33 million and PFE is assuming all operating expenses. He said this is a tremendous deal and a credit to the City's negotiating team and to private investors.. Mr. Gardiner stated that PFE is prepared to stand by the March 31 deadline for exclusivity rights and promised that there will be no displacement of any community events.

Others speaking in support included:

Peter Stott, Portland Family Entertainment  
Scott Thomason, president Scott Thomason  
Steve Tidrick, General Manager, Multnomah Athletic Club  
Greg Barton, Junior Sports Manager, Multnomah Athletic Club  
Michael Falkenstein, President, Multnomah Athletic Club  
Roger Krage, Crown Pacific and Oregon Sports Authority and PFE investor  
Len Bergstein, Civic Stadium Task Force  
Greg Peden, Association for Portland Progress  
Lynn Lashbrook, Portland Baseball Group  
George Pernsteiner, Portland State University  
Bob Boileau, Fletcher Farr Ayote Architects  
John Betts, Turner Construction  
Lisa Strader, Portland Family Entertainment  
Shonna William's, speaking for Emilio Pozza, 4021SE 29<sup>th</sup>, 97202  
Roger Hamilton, Oregon Adult Soccer  
Randy Miller, President, Sports Authority



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Scott Andrews, Chair, sports Authority and Melvin Mark employee  
Drew Mahalie, Sports Authority,  
Mike Neely, 4242 SE Milwaukie, 97202  
Tom Mortland, 5731 SW Windsor Court, 97221  
Marcia Clay and soccer teammates, 1776 SW Madison, 97205  
Michael Sievers, 1909 NE 21<sup>st</sup>, 97212  
Louis Boston, 14212 NE Milton, 97230  
Sho Dozano, 400 SW 4<sup>th</sup>, 97204  
James Taylor, Senior Vice President, Albina Community Bank and Portland Sports  
Authority board member  
Harold Pollin, board member of Tri County Lodging Association  
Mark Goodman, 715 SW Morrison, 97205  
Kevin Kohnstamm, 2903 SE Main, 97204

Supporters stressed the importance of having a renovated, first-rate, multi-use stadium available for groups and institutions such as Portland State University and area high schools. They said most of the investors are local business people who are committed to bettering the community and who deserve another 90 days to get the job done. Mr. Bergstein said bringing major league baseball here will require a new ballpark but making this a success will draw the attention of major league baseball owners and will help bring teams to the City and maximize the participation of youth. Mr. Miller said this renovation will help keep the downtown alive and what PFE is offering is the best option available. He also said PFE plans to provide even more opportunities for women and minority contractors than were available on the Rose Garden project.

Representatives of adjacent neighborhood and business groups testified about the need for Council to address the impacts of traffic and parking on the Goose Hollow and Northwest neighborhoods.

They included:

Steve Fosler, Transportation Manager, Nob Hill Business Association  
John Bradley, President, Northwest District Association  
Patricia Gardner, Goose Hollow Foothills League  
Don Singer, Nob Hill Business Association

Those testifying asked Council to consider amending the agreement so that a good neighbor agreement could be integrated into the basic document. They said aggressive transit promotion programs are needed and off-street parking also needs to be addressed as new parking facilities may be needed if the number of events is expanded. Parking and traffic management programs are crucial and noise and light impacts must be considered as well if already dense neighborhoods are to avoid being

The following individuals testified in opposition to the agreement:

Chuck Fall, 2712 SW Salmon,  
Tom Ranieri, 1740 SE Bidwell, 97202  
Ken Ray, 5235 NW M?? Court, 97229

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Opponents questioned the premise that acquisition of a Triple A team is necessary to attract a major league team and asked what the City would have to pay PFE if a major league baseball did agree to locate here. They expressed concern about the impact on the neighborhood because of increased traffic and the lack of parking. Several suggested that MERC would be a better operator, rather than turning this over to a private, profit-seeking group of investors. Opponents said PFE has not lived up to the terms of the agreement and it should not be amended now to suit them.

Joe Rastatter, Jobs with Justice, said the City should not enrich the private investors at the expense of Stadium employees who work for minimum wage. He urged the City to enact living wage standards for Stadium employees.

Steve Janik, attorney and member of the City's negotiating team, said all plans will have to be approved by the City until this is brought to closure. That includes the good neighborhood agreements which will probably be added as exhibits to the overall agreement.

Commissioner Hales moved acceptance of the recommendations. This was seconded and, hearing no objections, the Mayor so ordered.

Commissioner Francesconi said this deal better advances his vision for the City than does major league baseball as it will allow a whole host of events to be held here and helps PSU accomplish its mission. He believes MERC could operate and renovate this facility but that would not be the best deal for taxpayers or the most appropriate role of government. He noted that private investors have raised \$4 million and there have been other contributions that lower the risk to taxpayers. He will support the 90-day extension as it is in the City's best interest but will not support any further ones.

Commissioner Hales wished PFE luck in getting this done within the next 90 days. He said the City has a solid financial agreement in place and this extension seems to be the best choice to get the building in good physical condition and provide for a multi-use facility. He said whenever one choice is made other possibilities are closed but this helps delay for now seeing a major sports facility built on some soulless freeway.

Commissioner Saltzman said the private investors met every deadline except this one and have made a good faith effort to meet this one as well. He is very comfortable with this agreement and willing to look at a longer extension if this one does not work out.

Mayor Katz said the negotiating team has done an excellent job and this is a very good deal for the City. She said it would take \$350 million to buy a major league baseball team, requiring a substantial local investment plus another \$6 million to build a facility. How that would be paid for is an unresolved issue but in the meantime the City has a historic stadium that needs renovation, a neighborhood that wants improvements and teams that want to play there. She said she does not believe a single-use facility is viable here.

**Disposition:** Recommendation adopted. (Y-4)

### **Communications**

- 1739 Request of John Hreha to address Council regarding his treatment by a variety of parties (Previous Agenda 1618)

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**Discussion:** Mayor Katz noted that Mr. Hreha was not present.

**Disposition:** Placed on File.

Mayor Katz announced that the remaining items on the Regular Agenda would be continued to the 2:00 p.m. session

At 1:50 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON  
WAS HELD THIS 8<sup>TH</sup> DAY OF DECEMBER, 1999 AT 2:00 P.M.

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

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

- \*1734** Adjust FY 1999-2000 Budget recognizing and appropriating additional resources from FY  
1998-1999 (Ordinance)

**Disposition:** Continued to December 15, 1999 at 9:30 a.m.

- 1735** Adopt the 8<sup>th</sup> Amendment to the Oregon Convention Center Urban Renewal Plan to establish  
authority to acquire property at 834 NE Martin Luther King, Jr. Blvd. (Second Reading Agenda  
1672)

**Disposition:** Ordinance No. 173992. (Y-4)

- 1736** Adjust the current compensation plan for the Planning Director classification in accordance with  
the Personnel Rules adopted by the City Council (Second Reading Agenda 1698)

**Disposition:** Ordinance No. 173993. (Y-4)

**City Auditor Gary Blackmer**

- 1738** Assess property for sidewalk repair by the Bureau of Maintenance for billing processed through  
October 22, 1999 (Second Reading Agenda 1709; Y1036)

**Disposition:** Ordinance No. 173994. (Y-4)

- \*1740 TIME CERTAIN: 2:00 PM** – Adopt new City Code Chapter to establish an impoundment  
and investigation process for determining whether a vehicle driven by an individual arrested for  
DUII is forfeitable (Ordinance introduced by Mayor Katz; add Code Chapter 14.95)

**Discussion:** Multnomah County Commission member Lisa Naito stated her support for this  
proposed ordinance to deal with the extreme problem of those who repeatedly drive under the  
influence of drugs and alcohol. She said she understands the City's ordinance will initiate  
impoundment for the second offense or to the extent allowed by law.

At this point, Mayor Katz suspended further testimony on this item in order to consider findings  
in two land-use cases.

**Disposition:** Ordinance No. 173995. (Y-4)

**Mayor Vera Katz**

- 1742** Consider issues identified in remand from the Land Use Board of Appeals on the East Portland Community Center (Findings; Previous Agenda 1668; LUR 96-00430 CU)

**Discussion:** Kathryn Beaumont, Senior Deputy City Attorney, said Council has before it a proposed set of findings that reflect its discussion and some of the tentative determinations made as a result of the remand hearing on the East Portland Community Center. If the findings are acceptable, Council should take the final vote.

Commissioner Hales moved to adopt the findings and Commissioner Francesconi seconded.

Commissioner Francesconi said he was not here originally but reviewed the record from that hearing and find, based on the testimony and his review of the record, that it would have no effect whatsoever.

Commissioner Saltzman said he also was not here for the hearing but has not gone over the record as much and so will abstain.

**Disposition:** Findings adopted. (Y-3; Abstention-1, Saltzman)

**Commissioner Charlie Hales**

- 1743** Consider report and recommendation of the Hearings Officer for a Comprehensive Plan Amendment and Zone Change from R7 and R7c to R2 and R2c and Minor Subdivision requested by Capitola Partners Ltd. to create four lots at 4310 SW Galeburn Street (Findings; Previous Agenda 1585; LUR 99-00362 CP ZC SU)

**Discussion:** Ms. Beaumont said these are findings for Council to consider and adopt. Commissioner Hales moved their adoption and Commissioner Francesconi seconded.

**Disposition:** Findings adopted. (Y-4)

At this point testimony resumed on Agenda Items 1740 and 1741.

Assistant Chief of Investigations Dennis Merrill discussed the two ordinances. He said the first amends the City Code to declare certain motor vehicles as nuisances, subject to seizure and civil forfeiture to the extent allowable under State law. The second ordinance will add a new chapter to the Code to establish an impoundment and investigation process to determine whether a vehicle driven by an individual arrested for DUII is forfeitable. He noted that the legislature passed a bill in October which did not preempt the City's intent to pass its own forfeiture ordinance, as long as it was completed by January 1, 2000. He believes these two ordinances will provide a very valuable tool to deal with DUII drivers and the number of DUII-related deaths within the City.

Police Captain James Ferraris, Drug and Vice Division, described the purpose and scope of the ordinances which will allow for the impoundment and, in some cases, the forfeiture of vehicles used during DUII crimes, criminal driving while suspended and attempting to flee or elude a police officer. He outlined the magnitude of the problem resulting from drivers who are intoxicated and noted that traffic deaths in Portland as a result of DUII have risen from seven in

1995 to 25 in 1998, while crashes have risen from 674 to 813. Captain Ferraris said traditional sanctions, such as license suspensions, have had minimal effect on the problem and by impounding and potentially forfeiting cars of irresponsible drinkers, the City will take the equivalent of a loaded gun out of the hands of intoxicated drivers who use their cars as weapons. He said they have researched concerns that Hispanics have been over-represented in the DUII arrest statistics and believe that perception is unfounded. He said the Police believe these ordinances will be cost neutral and that the fees charged will offset any costs above what is currently provided.

Commissioner Francesconi asked for clarification of the arrest rates for Hispanics.

Captain Ferraris said since 1979 the number of Hispanics arrested for DUII more than once is 4.1 percent. From 1994 to 1998, the number of Hispanics involved in alcohol-related accidents rose 11.7 percent, which he believes is consistent with the increase in Hispanics in the community over the past four years.

Commissioner Hales asked how much discretion is given to determining if a vehicle is to be forfeited

Madelyn Wessel, Chief Deputy City Attorney, said determining whether forfeiture is appropriate is done on a case-by-case basis. Because it involves the taking of personal property, the City must meet due process standards. Proportionality must also be considered with respect to an individual and the current process applies four tiers of checks and balances to make sure that legally defensible choices are being made, including review by the City Attorney's office. If someone does not challenge a forfeiture, there will not be any independent review.

Commissioner Saltzman asked if failure to pay child support is grounds for having a driving license suspended or revoked. He said he is also concerned about people driving with suspended licenses regardless of whether or not there is an underlying criminal conviction. He said the number of people driving without valid drivers' licenses is horrifying, drunk or not. He asked if the word criminal can be deleted and license suspension or revocation can be made grounds for forfeiture.

Ms. Wessel said for now she supports the ordinances as written although staff can explore whether forfeiture can be extended to civil offenses. She believes, however, that it is prudent to start with criminal suspension status, rather than civil suspension, because of the proportionality issue. Having a criminal component heightens the City's ability to show that taking the property is consistent with meeting a compelling societal need.

Ms. Wessel said it is important to remember that when any forfeiture scheme is considered, constitutional protections apply and require a case-by-case assessment. It also applies when any government engages in actions that could potentially have a disparate impact on communities of color. Staff has taken a hard look at the data available and found that the actual arrest patterns are extremely consistent with the real demography of the City. She noted there is a difference in the number of those initially arrested and the number of DUII arrests arising out of accidents. Those numbers are higher for Hispanics but those are numbers in which there is no selectivity applied by the Police Bureau. The Police are simply showing up at the scene of an accident that has already occurred. There is some concern that this higher number reflects a problem that needs to be addressed through social service and other tools.

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Ms. Wessel said the first ordinance makes important technical modifications to the City's existing forfeiture Code, expanding the types of criminally-suspended offense for which the City can move towards forfeiture. A new section will allow the City to move towards forfeiture for people who are arrested for DUII. She said the recently passed House Bill 3304 clearly established the State policy of allowing forfeiture for people who have a prior arrest within the last three years but created a lot of linguistic problems for the City and Multnomah County which had been clear in their desire not to be bound to a particular time span of prior arrests within three years. This ordinance respects the problems created by that State statute but creates a basis for the City to have an intact forfeiture scheme based on DUII offenses whether or not the barrier of a prior offense within three years is removed. The City will not move forward with forfeiture unless there is a prior arrest that meets the State standard and that is why the second ordinance, impoundment and investigation, was developed. This will be a formal tool that allows the Police Bureau to examine the record of every single driver arrested for DUII to determine if he has the kind of record that meets the State statutory requirement. That ordinance will also provide for a systematic approach to data collection and background investigations to give everyone a better picture about all people who are arrested for driving under the influence and why forfeiture did or did not apply to them.

Commissioner Hales asked what the response will be to the hardship argument and what happens to the sales proceeds when cars are forfeited and sold.

Captain Ferraris said in terms of hardship there might be a proportionality call.

Commissioner Hales suggested that those who lose their automobiles be introduced to the transit system and that the City buy them a month's bus pass.

Judge Dorothy Baker Circuit Court Judge, said she handles about 99 percent of third time and above DUII offenders. She said she supports any constitutional approach that will reduce recidivism and sees no difference between an automobile and firearm. She said one condition of probation should be to require all offenders to live on a bus line. She said she sees no ethnic disproportionality at all in the number of offenders. In response to questions from Council, she said a more holistic approach would be helpful, taking away the instrumentality at one end and offering treatment programs for addiction at the other.

Bennie Guisto, Gresham Police Chief said over the years attempts have been made to deal with this problem by arresting people, educating them or taking away their drivers' licenses. All these efforts have been generally unsuccessful, as shown by the over 300,000 suspended driver's licenses in the State. While drunk driving is now a felony, the reality is that the chance of offenders actually doing jail time is about zero unless a death is involved. Automatic police pursuit of a reckless driver is no longer accepted as automatic and police are now asked to make a conscious decision as to whether to do so.

Others testifying in support included:

Dan Oldham, Multnomah County Sheriff's Office  
Chris Carey, Deputy District Attorney and Forfeiture Counsel  
Joan Fairchild, Trauma Nurses Talk Tough, Legacy Hospital  
Jean Canfield, State Chair, Oregon Chapter Mothers Against Drunk Driving (MADD)  
Patricia Blenkinsop, 6030 NE Broadway, 97213  
Jason Snider, American Medical Response, 1 SE 2<sup>nd</sup> Avenue, 97201

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Jeff Birrer, American Medical Response, 1 SE 2<sup>nd</sup> Avenue, 97201

Susan Holtsclaw, American Medical Response, 1 SE 2<sup>nd</sup> Avenue, 97201

Bev Whitehead, member of MADD, no address stated

D. H. Collins, member of MADD and Oregon COPS (Concerns of Police Survivors)

Marie Brown, MADD

Dr. Michael Hess, Police Internal Investigations Auditing Committee staff person

Several supporters said their children had been killed by drunk drivers who had prior DUII convictions and stressed that driving is a privilege, not a right. They said when cars are used as weapons they should be taken away from the offenders.

Commissioner Francesconi said the best reason to do this is to prevent future tragedies from happening. He said this meets the constitutional test but it will be very important to get the word out to people. He said there needs to be tougher enforcement and more aggressive effort to fund prevention/intervention programs.

Commissioner Hales said this is a good piece of public policy and everyone should get the message that if you drink and drive you can lose your car.

Commissioner Saltzman said this is another tool in the City's arsenal but will probably not be last one needed. He said he will explore this further to see if automobile licenses can be revoked for civil reasons too.

Mayor Katz said this is one case where Council can actually help save lives.

**Disposition:** Ordinance No. 173995. (Y-4)

**\*1741** Declare certain motor vehicles to be nuisances and subject to forfeiture to the City of Portland and correct statutory reference in Section 14.90.020 in conformance with existing Oregon Revised Statutes (Ordinance introduced by Mayor Katz; replace Ordinance Nos. 163438 and 165594; amend City Code Chapter 14)

**Disposition:** Ordinance No. 173996. (Y-4)

At 3:30 p.m., Council recessed.



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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON  
WAS HELD THIS 9<sup>TH</sup> DAY OF DECEMBER, 1999 AT 2:00 P.M.

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

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

**1744 TIME CERTAIN: 2:00 PM** – Amend City Code regulations for secondhand dealers (Ordinance introduced by Mayor Katz; amend Code Section 14.37)

**Discussion:** Mayor Katz said this is an effort to strengthen regulations for secondhand dealers that grew out of the report presented by Commander Mark Paresi regarding the recovery of stolen property and the SPI program.

Lynae Berg, Acting Police Chief, said this ordinance is a result of collective work by the Police and License Bureaus to recover stolen property. She said modifications have been made based on input from those in this industry and believes this is a common sense approach.

Jim Wadsworth, Bureau of Licenses, said the Bureau wanted to be sure it could provide the administrative services and track the permit fees before bringing this forward. He said the Bureau supports the provisions in this ordinance and the process that was undertaken to get to this point.

Police Captain Rosie Sizer described how the current secondhand dealer's ordinance works and outlined the individual responsibilities of the store owners, the Police and the Bureau of Licenses. She said the existing ordinance had some confusing language that has caused complaints from businesses and that has been clarified in this proposal. The Police Bureau has also had problems identifying burglars and thieves and believes these amendments can significantly increase the amount of stolen property recovered. She said they studied the best practices in other jurisdictions and met with the business community, revising the initial proposals substantially based on their feedback. She outlined the proposed changes that have resulted in the most controversy. These include clarification of acceptable ID, adding new items to the regulated property list, expansion of the basis for denying a permit to anyone with a felony conviction and requiring fingerprints and photographs of applicants. The new ordinance will require sellers to sign a declaration of ownership and affix a thumbprint to the secondhand dealer report. Captain Sizer said they are also asking businesses to make copies of the seller's photo id at the time of the sale. Other changes include increasing the holding period for property from 15 days to 30 days and increasing the permit fee from \$150 to \$300 per year. Finally, they have added a requirement that property remain tagged with the Secondhand Dealer Report (SDR) until sold. She outlined the implementation time lines and said the Bureau is committed to providing training for business owners, especially regarding the thumbprint provision. Ms. Sizer said other local jurisdictions, which have historically mirrored their provisions on Portland's, are waiting to see if this enacted and will probably implement measures similar to the City's once these are in effect. She said a further effort is planned to conduct a public information campaign to encourage people to mark their property.

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Ron Keller, Police Detective Sergeant, Special Investigations, explained some of the investigative techniques used to recover stolen property. He cited several cases where valuable property has been recovered through the use of these methods.

Commissioner Saltzman asked if law enforcement agencies regularly check for stolen property.

Sergeant Keller said yes, if they have information leading them to believe that burglars will sell or pawn property in Portland and explained some of their procedures..

Commission Francesconi asked if there should be fewer restrictions for secondhand dealers on less valuable items.

Captain Sizer said from a social justice standpoint one cannot attach dollar signs to people's memories.

Commissioner Francesconi noted that the value of a stolen item has to reach \$200 before a felony charge applies so there are some values placed on different levels.

Sergeant Keller said selling stolen property is always a felony regardless of value. He said while a burglar caught the first time may only have stolen \$50 or \$75 it targets that person as someone likely to repeat this behavior.

Commissioner Francesconi asked if these more stringent regulations will cause displacement to other areas.

Sergeant Keller said he does not think there will be a tremendous amount of displacement as people generally need their money so badly they will jump through this new version of hoops.

Mark Paresi, Assistant Police Chief, noted that the Bureau found, in an earlier report on receivers of stolen property, that most was sold by methadone users who knew they would face few recriminations. He said this ordinance is needed to respond to citizens who continually ask why the Police never recover stolen property.

Captain Sizer described the high hurdle the Police must meet to prosecute cases regarding the identification of sellers of stolen property. She said it is very difficult for clerks to positively identify a seller, particularly as drivers licenses and identification cars are often bogus, and that is why Police would like to require a thumbprint. She described the process, which is not intrusive or time consuming.

John Herman, 2929 SE Powell Blvd., said 75 percent of the merchandise handled by second hand dealers is stolen but it is difficult to know which is which. As a counterproposal, he requested that the Auditor's office do a performance audit to determine what has worked and what has not in the last 15 years. He also proposed that information be added so that dealers could immediately access information about potential sellers and that no transactions below a \$75 threshold be recorded as the district attorney will seldom prosecute at that level. He added that there should be a representative from the dealers to work with police task force on these issues.

Tim Calvert, City Bikes, 734 SE Ankeny, 97204, offered two counterproposals. He said the bureaus should take this back and do more work with the secondhand dealers as well as

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eliminating finger printing and the 30-day hold. He said reusing property should be encouraged and the current permit system as it stands is reasonable. He challenged the claim that 75 percent of merchandise is stolen. He said bikes are stolen everyday but are not sold by legitimate sellers of secondhand goods. Passage of this ordinance will drive even burglars and thieves to the unregulated markets, i.e. Thrifty ads and the Internet, etc.

Sara Stout, co-owner, City Bikes, said her store does not pay out for two weeks so sellers of stolen bikes are not rewarded by getting immediate cash. She said requiring thumb prints is insulting and called for appointment of a secondhand dealer to the advisory committee.

Peggy Muth, All That Glitters Loan and Jewelry, 515 SW 3<sup>rd</sup>, 97204, one of the largest pawnshop chains, said she fully support these changes and noted that California has had this system for 10 years.

Jon Wallace, vintage guitar shop owner, said he would favor this if it were enacted Statewide as he fears this will drive his customers to other jurisdictions and push stolen items out of the City's grasp.

Earl Oller, owner of Silver Lining Jewelry and Loan Co., 2122 NE Sandy, 97232, asked that this be postponed until after the holidays to allow dealers more time for review. He cited several examples of what he believes are unfair or unclear provisions and said a 21-day hold would be better than the 30 days currently proposed.

Roger Noehren, City Bikes, objected to the fingerprinting of all prospective sellers and said selling a used bike should not imply criminal activity. He said this is an invasion of privacy and presented a petition signed by his customers opposing this. He said requiring fingerprints will just drive those with stolen property to sell through other venues.

Alex Hofberg, Watchworks, 711 SW 10<sup>th</sup> Avenue, 97205, said he buys second, expensive watches from people who will not wait 15 days for payment so he must make judgments every day about whether the merchandise has been stolen. He objected to holding this hearing during the Christmas season when merchants cannot attend.

Vicki Kidwiler, 304 SW Washington, 97204, owner of Affordable Jewelry, said many stores sell lower than appraised value because they have lower markups. She said the way to get at stolen property may be through computerized information and search rather than the 30-day hold.

Ted Hill, owner of Ted's Tool Shed, 8819 SE Powell Blvd., 97266, said only half of secondhand stores are licensed in the first place and the Police do not have enough officers to enforce this in any case. He too opposed the 30-day hold as will take a very long time to check merchandise and disagreed with the 75 percent figure stated above.

Steve Syaloff, economist, said the cost of implementing this is likely to cost more than the half million it is estimated to recover. He said there is also the issue of sales at liquidated estates, businesses in liquidation and purchases from garage sales. He believes it is unfair to regulate useful items, such as bikes and photographic equipment, the same way as high value items like jewelry. He said fingerprinting is a very intrusive and would drive people out of the City.

Terry Henniger DeYott, Police Bureau Records Division, described how the Police document errors on the reports from dealers and said a 30-day hold would give them more time to check for

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compliance and accuracy. She added that those who object to the \$75 limit ignore the fact that dealers pay ten cents on the dollar for the items they receive.

Teresa Watts, Women Victims Against Crime, supported prosecution for sellers of stolen goods, even if items are sold for less than \$75. She noted that her stolen bike, valued at \$600, was sold for less than that.

Gary Albertson, Camp Sherman, OR 97730, a professional photographer, described the theft of camera equipment from his pick-up. He supported the proposed ordinance.

Ron Morris, H and B Jewelry and Loan, 526 SW 2<sup>nd</sup> Ave, testified in support of the proposal and said finger printing should not be that onerous.

Mayor Katz reviewed some of the issues raised, including the input of the purchase directly into the computer, the issue of Statewide applicability and the mobility of property going from one place to another, the 30-day hold and the issue of using scanners.

Captain Sizer said the technology is not yet available to have a fully automated system for secondhand dealer reports and scanning is also not possible now. They will support doing that when the technology is available so that information from a store's computer can go directly into the Police computer and a search for the stolen property can begin immediately.

Ms. DeYott said she is not sure how much that would help the victim find out sooner if the items had been stolen.

Captain Sizer said she would like to try to make some of these regulations statewide but the local law enforcement agencies are anxiously awaiting adoption of this ordinance which they would like to mirror so their communities will not be the recipient of stolen property.

Commissioner Hales said he would like to look further at the dollar threshold.

Captain Sizer said when secondhand dealers are buying items at 10 cents on the dollar, property upwards of \$750 may be received.

Council requested that the Police and License Bureau staff meet with the dealers to review some of the concerns raised and return in 30 days.

**Disposition:** Continued to January 20, 2000 at 2:00 p.m.

**1745 TIME CERTAIN: 3:00 PM** - Consider report and recommendation of Hearings Officer for a Comprehensive Plan Amendment and Zone Change from R2cx to IG2cx requested by Kevin Flannigan, Sea Maritime Group LLC, and Steve Purchase, Division of State Lands, for proposed boat building and repair facility (Hearing; LUR 99-00486 CP ZC EN)

**Discussion:** Linda Meng, Senior Deputy City Attorney, and Mayor Katz outlined the procedures to be followed in today's hearing. No ex parte contacts or conflicts of interest were declared.

Kate Green, Office of Planning and Development Review, described the proposal and the applicable approval criteria and summarized the Hearings Officer's recommendation. The applicants are requesting a Comprehensive Plan map amendment to change two acres known as

Canoe Bay from low-density multi-dwelling residential to industrial sanctuary. They also request a concurrent zoning map amendment from R2 to IG2 so that the zoning would match the industrial designation on the applicant's adjacent upland property. Finally, they request environmental review for construction of a boat building and repair facility, Schooner Creek Boatworks. Ms. Green said Canoe Bay is a seven-acre cove along the Columbia River on the north side of Hayden Island and no development is located on the bay at this time although the R2 base zone does allow development with uses accessory to the existing residences on the adjacent uplands to the south and east. She said the Hearings Officer found that Comprehensive Plan map and zoning designations for water usually match those on the adjacent uplands but in this case there are two different designations on the adjacent uplands on Canoe Bay – IG2 to the west and R2 to the south and east. The applicant proposed that the bay be divided to allow industrial zoning on the portion of the bay adjacent to the industrially-zoned uplands and residential zoning on the portion of the bay next to the residentially-zoned uplands. However, the Hearings Officer found that the bay is not suited to a simple division because it is small and enclosed and because the two existing zones allow uses that can produce strong conflicts. The IG2 zone allows a range of uses such as warehouse and freight movement operations and many such uses will have significantly more adverse impacts on the residential area than the specific use proposed by the applicant. The applicant has argued that other state and local regulations and the fact that the site is a bay would preclude development of those higher impact uses. However, the applicant also acknowledges that the way to ensure against adverse uses is to impose conditions that would specifically limit the uses allowed in the IG2 zone. This would essentially create a special zone that is not allowed by law and is impractical for continued regulation of the site. Therefore, the Hearings Officer found that the goals and policies regarding urban development and diversity, residential neighborhoods, buffering, housing and the protection of non-industrial lands are not met. The Hearings Officer also found the vegetation on the west bank of the bay and the 500-foot expanse of water between the industrial and residential uses currently buffer each zone from impacts by the other. This proposal will also not meet goals and policies regarding open space, residential neighborhoods, buffering, housing and protection of non-industrial lands. For those reasons, the Hearings Officer recommended denial, on the basis that substantial evidence had not been provided that, the requested change, on balance, would better or equally meet the goals and policies of the Comprehensive Plan. Ms. Green reiterated that when a Comprehensive Plan amendment is reviewed the Code requires that the entire range of permitted uses must be considered and, in this case, any other industrial zones allowed in the IG2 zone could be located in the bay.

Commissioner Hales asked if other zones were considered.

Ms. Green said no.

Commissioner Francesconi asked if there is any good option that could be considered, noting that it is illegal to create a special zone. Can any restrictions be placed on the property that are legal?

Ms. Green said no, anything allowed in the Industrial zone would be possible. A buffer could be applied on the land but there is no opportunity to do that on the water.

Commissioner Francesconi asked about the difference between imposing conditions and creating special zones.

Ms. Meng said if this use and not others is allowed, one would have to look at the applicant's specific proposal. She said she cannot give a general rule.

Commissioner Saltzman asked if the Division of State Lands would also have to issue a permit.

Stacy Wenger, OPDR, said the Division of State Lands wetland regulations would not apply. The Division is leasing the land to the applicant and the City was told that the leasing rules changed in July to generally allow what the City allows under its Comprehensive Plan policies. The Division of State Lands does not have a problem with a change in the Comprehensive Plan and would support the proposed use. She said the DSL could not limit uses already allowed by the base zone. She cautioned however, that two other public agencies -- the Corps of Engineers and the National Marine Fisheries Service --- would have an interest in any use since this property is on a waterway.

Phil Grillo, attorney representing the applicant, said the Hearings Officer found this proposal met all the approval criteria and would have a minimal impact but that she had to consider the impacts from other possible uses allowed in the IG2 zone. Mr. Grillo said the Hearings Officer listed the uses she was unsure about but he does not believe any of those other uses are feasible and that is what he would like to focus on today. He said the only use one can come up with is essentially this one, for a marina and boat repair. He highlighted some of the constraints on other uses, which include City regulations, such as environmental conservation prohibitions and overlay approval criteria, off-site impact standards, noise regulations, conditional use standards and hazardous substances review. He noted that the entire bay is in environmental conservation zone, which is a major constraint. Still other constraints include Metro, State and Federal regulations, including Endangered Species Act (ESA) provisions. All these restraints would screen out all but this use as would site specific constraints. The bay is quite shallow, access from the river is difficult and the bay itself is quite small so that only recreational boats can access it. Manufacturing, warehouse and freight movement, wholesale sales, industrial services, waste related uses and commercial outdoor recreation unrelated to the river are also unfeasible. The one use that is feasible is the one proposed today—a marina that can service small boats. He said the applicant will offer an additional condition attached to the environmental review which would prohibit any repair work except that related to masts and rigging.

Mayor Katz said applying all these screens leads to the conclusion that what is proposed is the only thing that can be done here and at some point staff needs to respond to this.

Mr. Grillo said conditional rezonings are not illegal although they are frowned upon by planners because they are difficult to track. That is why the applicant is proposing the condition attached to the environmental review.

Commissioner Hales noted that the standard for granting a Comprehensive Plan amendment and Zoning Change is very high and asked what other alternative the applicant has.

Mr. Grillo said there are no other alternative suitable sites. He said staff has alluded to other acreage along the river and he is prepared to rebut all that evidence as an exhaustive analysis of all those sites has been done and this is the only site that works. He noted that the entire bay is zoned R2 but, because of the upland IG2 zoning, residential uses cannot occur on the portion adjacent to that site. Because no use is possible in the R2 portion that means that the existing zoning violates the City's own Comprehensive Plan.

Commissioner Francesconi noted that the Hearings Officer talked about retail sales and service.

Mr. Grillo said the Hearings Officer found those would not be feasible in bay. That would preclude a restaurant or any structures on water. He said houseboats cannot be located there because of the noise overlay. He said the effect of the proposed use on nearby residents would be minimal as the only exterior work would be on masts and rigging.

Individuals speaking in support of the applicant's request included:

Jim Butler, 15600 NE Halsey, 97230  
Brad Howton, 515 NE Tomahawk Island Dr., 97217  
Chuck Gardes, 3450 NE Flanders  
Mel Pittmon, 1934 SE Lambert, 97202, former Portland Harbormaster  
Paul Shirey, Port of Portland  
Donald Jolly, Schooner Creek Boatworks  
Tom Kelly, 123 NE Bridgeton Rd., 2972  
Campbell Rivers, 3416 NE 38<sup>th</sup>, 97212  
Brian Barnett, 3405 NE 25<sup>th</sup>, 97212  
Tim Morris, 603 NE Sacramento, 97212  
Mike Oxborrow, 14001 SE Celeste, Milwaukie, 92267  
Bruce Markusen, 8370 SW Ridgeway Dr., 97225  
Loren Beach, 310 SW Nevada, 97219  
Kerry Poe, 3157 NE Marine Dr., 97211  
Randy Webster, 9913 NE 28<sup>th</sup>, 97211

Supporters said the service this company provides is very important to the boating community and the existing business is likely to be lost if this use is not allowed because there is no other suitable site for this unique business. They said Schooner Creek employees have a national reputation as master craftsman in an art that is dying out. They said this use will have minimal impact on adjacent properties as it will have low traffic, minor development and minimal noise. Mr. Pittman said that staff references to the vacant lands inventory and redevelopment analysis are not applicable in this case because the preponderance of vacant land lies upstream from the Willamette and would conflict with commercial vessels. Mr. Shirey noted that Comprehensive Plan policies also call for retaining existing businesses by providing appropriate sites in industrial areas. The current operation must move because a bridge proposed by the Port of Portland will cut off boat access.

Robert Brummett, 2366 N Menzies Court, 97217, spoke in opposition to the proposed change. He said he resides next to this site and believes this use will bring noise and visual and light pollution. It will also be detrimental to salmon and wildlife habitat. He called for denial based on the Hearings Officer's decision and noted that the boat builder who previously occupied this site was in violation of the City's noise ordinance most of the time. He said nearby residents know that noise from moored boats goes on goes on all night.

John Baricevic, 2371 N. Menzies Court, 97217, said nothing has been said about the pilings that will be needed or the size of the boats. Boat repair places are noisy and he believes another site could be found as this one is subject to flooding, in which case any on-ground pollution would end up in the lagoon. He said he represents 350 people who live adjacent to lagoon and who object to this proposal.



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Greg Harnell, 12850 N. Image Canoe Avenue, 97217, said this is a very small bay and adding a new development would make dramatic change. He questioned whether it is wise to develop every bit of waterway, transforming a sleepy bay into an industrial outpost

In rebuttal, Mr. Grillo said Canoe Bay was historically zoned industrial before residential development existed. He said the bay always provided a connection between upland industrial uses and the Columbia River and that connection was there until the boat yard went out of existence.

Mayor Katz asked staff to respond to Page 3 of the addendum regarding conversations with the DSL that rebuts the case Mr. Grillo has made about the screen of uses.

Commissioner Hales said he would like to hear more about alternative sites.

Ms. Green said Mr. Grillo is arguing that none of the other uses identified on the list would be allowed on the site but is proposing an industrial service use, boat building and repair. She said staff in its presentation showed a slide of a bay of comparable size that had warehouse and freight movement operations. She said staff believes there are still a number of uses that could be allowed on the upland property that would then have accessory uses of docks to move the products developed on the upland portions anywhere along the river. Regarding whether the R2 designation on the bay precludes its use, she said it is not completely accurate to say that no development could occur on the bay although it is true no new residential development or housing can occur there due to the noise overlay. However, uses could be located on the bay which are accessory to the residential properties to the south and east. For instance, boat docks and boat houses could be located there. Ms. Green said staff believes there are other uses that could be developed on the industrial property and in the bay right now.

Mayor Katz asked if she agreed that the City has regulatory constraints that would not permit vehicle repair, manufacturing and production, warehouse and freight movement.

Ms. Green said she does believe other uses could be developed in the bay. Regarding the feasibility of other locations, she said staff reviewed the Metro inventory of vacant and redevelopable lands and found there are other waterfront lands, approximately 800 acres in the City, with access to the water. However, she does not know how they would work for this specific business, which is operating at an alternate location now.

Regarding the regulatory screen, Ms. Wenger said the applicant referred to the prohibitions of the environmental zoning, implying that any uses for the bay would have to be river-related or water-dependant, such as freight movement by barges. With regard to limits imposed by other regulatory agencies, such as the Corps of Engineers, Division of State Lands and National Marine Fisheries Service, that would otherwise be allowed in the City's IG2 zone, these agencies are interested in protecting the resources under their charge. While they may heavily condition proposals to develop the bay, they would not prohibit a use specifically allowed by the City's base zone and while they have a vested interest in the waterways, wetland and fish, they have no interest in the impacts of an allowed use on adjacent residential uses. Those impacts, such as noise, are what staff and the Hearings felt were not addressed by the applicant. Nor are the regularly agencies concerned with buffering or whether specified City goals and policies are met in such areas as urban development, urban diversity, open space, residential neighborhood or protection of non-industrial lands. The applicant has contended from the beginning that limiting the use of the bay to this one specific use should be left to the City's own environmental



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regulations or other federal and state regulatory agencies. Staff believes the appropriate forum for determining the type of use of the bay is through the Comprehensive Plan map and zoning designation.

Commissioner Hales asked what sort of industrial uses were intended when IG zoning was applied to the upland portion of the site, given the fact that this area is zoned industrial and there is a mobile home park across the bay.

Ms. Wenger said the history of zoning on the upland sites adjacent might not have been researched all that carefully because the City adopted the zone that was most comparable to the County's zone at that time.

Ms. Green said it would be hard to surmise what the County intended.

Ms. Meng said if this property is rezoned it is zoned for all the possible uses allowed in the zone and conditions could be imposed that could ameliorate some of the repercussions but not change the uses. The applicant is arguing that other environmental regulations would do that but staff's position is that all uses specified in the zone are allowed and cannot be conditioned out.

Commissioner Hales moved to tentatively reject the Hearings Officer's recommendation and approve the Comprehensive Plan amendment and Zone Change. Commissioner Francesconi seconded.

Commissioner Hales said on balance he is persuaded that approving this zone change is the correct thing to do. He said because of the lack of alternative appropriate sites based on river operations and the fact that Hayden Island is zoned as a recreational boating area it seems logical to him that boat servicing should be feasible there as well. He also believes that since the whole site is subject to environmental zoning, the restrictions will be significant. He asked staff if the additional condition proposed by Mr. Grillo should be attached as part of his motion.

Ms. Wenger said yes.

Commissioner Francesconi said he would like to see the City keep this terrific employee and, while it is hard to prove a negative, he found the applicant's argument that there is no alternative site compelling. On balance he believes in the importance of retaining industrial diversity and is also concerned about the outcome of forcing a viable small business to move because of Port activity.

Mayor Katz said she wants to believe Mr. Grillo but she heard some real hesitation on staff's part as to whether his legal arguments are accurate. She asked staff to show her that the position it has taken is still sound after reading Mr. Grillo's arguments. If staff cannot support that position, she will support Commissioner Hales's. She said she will vote no for now.

**Disposition:** Tentatively approve request; applicant prepare findings for December 22, 1999 at 9:30 a.m.

At 5:15 p.m., Council adjourned.

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GARY BLACKMER  
Auditor of the City of Portland

*Cay Kershner /bo*

By Cay Kershner  
Clerk of the Council