



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 22ND DAY OF MARCH, 2000 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Saltzman and Sten, 3.

OFFICERS IN ATTENDANCE: Britta Olson, Clerk of the Council; Ben Walters, Senior Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

REGULAR AGENDA

- 382** Cash Investment balances February 3 through March 1, 2000 (Report; Treasurer)

Disposition: Placed on File.

- 383** Accept bid of Danka to furnish one high-speed copier for \$389,975 (Purchasing Report - Bid No. 99212)

Disposition: Accepted; Prepare Contract.

- 384** Accept bid of Western Waterproofing Company, Inc. to furnish the Portland Building east and west wall repair for \$620,000 (Purchasing Report - Bid No. 99762)

Disposition: Accepted; Prepare Contract.

- 385** Accept bid of Portland Motorcycle to furnish Police motorcycles for \$155,558 (Purchasing Report - Bid No. 99792)

Disposition: Accepted; Prepare Contract.

Commissioner Charlie Hales

- 386** Consider vacating an alleyway in Block 32, Portsmouth Addition at the request of the University of Portland (Hearing; Report; C-9971)

Disposition: Approved; City Engineer Prepare Ordinance.

- 387** Consider vacating a portion of SW Multnomah Boulevard east of SW 24th Avenue at the request of SW Medical Dental Center (Hearing; Report; C-9972)

Disposition: Approved; City Engineer Prepare Ordinance.

MARCH 22, 2000

- 388** Provide guidelines for obtaining demolition search warrants (Second Reading Agenda 374; amend City Code Title 29)

Disposition: Ordinance No. 174265. (Y-3)

Commissioner Dan Saltzman

- 389** Accept completion of the Columbia Boulevard Wastewater Treatment Plant outfall waterline, Project No. 6442, and authorize final payment to Northwest General, Inc. (Report; Contract No. 32617)

Disposition: Accepted.

- 390** Consent to the transfer of Wunsch Sanitary Service solid waste and recycling franchise to Heiberg Garbage & Recycling (Ordinance)

Disposition: Passed to Second Reading March 29, 2000 at 9:30 a.m.

Commissioner Erik Sten

- 391** Authorize a contract and provide payment for the maintenance and rehabilitation of ground water wells 2, 4, 9 and 15 (Ordinance)

Disposition: Passed to Second Reading March 29, 2000 at 9:30 a.m.

- 392** Grant a franchise to First World Communications, Inc. for a period of ten years (Second Reading Agenda 376)

Disposition: Ordinance No. 174266. (Y-3)

At 9:38 a.m., Council recessed.

MARCH 22, 2000

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 22nd DAY OF MARCH, 2000 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Saltzman and Sten, 3.

OFFICERS IN ATTENDANCE: Britta Olson, Clerk of the Council; Ruth Spetter and Adrienne Brockman, Senior Deputy City Attorneys; and Chuck Bolliger, Sergeant at Arms.

- *393** **TIME CERTAIN: 2:00 PM** – Amend the Comprehensive Plan Map and change the zone of property near SE Flavel Street, SE Deardorf and SE 122nd Avenue from OS (Open Space) to R10 (Low Density Single Family Dwelling); and approve amendments to environmental zones as shown on Exhibit H-17 (Previous Agenda 159; LUR 99-00301 CP ZC)

Discussion: The Clerk said the applicant has requested a continuance.

Disposition: Continued to May 31, 2000 at 2:00 p.m.

Mayor Vera Katz

- 394** Hear appeal of Mary Rooklidge to the Police Internal Investigations Auditing Committee, #99-26 (IAD #98-341), per City Code 3.21.085(4)(d) (Report)

Discussion: Dr. Michael Hess, Police Internal Investigations Auditing Committee (PIIAC) Examiner, said the citizen advisor who examined the investigation will present this case.

Denise Stone, PIIAC citizen advisor, said this incident occurred on December 4, 1998 and the complaint was filed on December 7, 1998. The complaint arose when the appellant called the Traffic Division about reviewing the photo radar manual. During the phone conversation, she was told there was a fee to view the manual and she told the officer (Officer A) that she would find it a hardship to pay that fee. The allegation is that upon hearing that information, the officer deliberately and cheerfully threatened to tack on additional charges for his time spent with her on the phone. That is the first part of her complaint, which would hinder her public records rights. This element of the complaint was characterized as conduct by Internal Affairs (IAD). Conduct is defined as allegations of misconduct which bring reproach or discredit upon the Police Bureau. The second part of the complaint is that Officer A was rude to exhibit cheerfulness when he threatened to add costs to viewing the records. This element of the complaint is categorized by IAD as communication, which is defined as allegations relating to attitude, rude conduct or verbal abusiveness.

Ms. Stone said the complaint was investigated as an inquiry, which is not a formal investigation. It is an investigation of a minor rule that, if sustained, would not result in discipline. Upon review, the complaint is either returned to IAD for a formal investigation or it is declined for further investigation. The appellant's interview was conducted by Sergeant Ben Panit and was thorough and lengthy, with the appellant given as much time as she needed. The Sergeant's questions were not leading. The interview was fully audiotaped. An example given by the appellant referred to Officer A's tone of voice. Officer A's interview was conducted by Captain Nelson, then of the Traffic Division, now retired. The Captain was the subject of a separate issue, a different complaint by the same appellant at the same time of the short interview, which was seven months after the incident.

MARCH 22, 2000

Captain Nelson's questions were rather shallow and close-ended. The Letter of Disposition sent to the appellant, written by Captain Bell, was dated September 23, 1999. The letter detailed some flaws found in the Police Bureau's Policies and Procedures for viewing public records and the plans to remedy them. The letter did not include a statement of the investigation into the appellant's complaints and did not define the Bureau's policy on inquiry which PIIAC has found to be a source of confusion for complainants. In this situation, there were three separate professionals (investigators) who looked at the case as a whole and made the determination to not recommend turning this into a formal internal affairs investigation. The Citizen Advisors agreed with this.

Ms. Stone said the disposition letter was fair in most respects, but there are inadequacies with the viewing of public (in this case, traffic) records. Changes have been made in procedures about viewing public records and it has been determined that disposition letters need to specify what an inquiry is as opposed to a formal investigation and the findings need to be stated. She noted, even though Captain Nelson's retirement affected the timeliness, that timeliness is an on-going issue. PIIAC has asked IAD to address timeliness.

Ms. Stone said several positive actions have come from this whole situation. The appellant's complaints have created an awareness of the need to have a proper fee schedule for viewing records. Although he denied being rude, Officer A was counseled on courtesy. The disposition of this entire case will go in his file. As Citizen Advisor, she recommends reaffirming Captain Bell and having IAD close the inquiry with no formal investigation.

Mayor Katz thought this would have been a good case for mediation.

Captain Bret Smith said it could have been. However, a positive result has been a better Traffic Division understanding about the Radar Policy Manual, which is actually owned by a private company. The company allowed the police to use, but not share, it. The fact that viewing requests have been rare made a difference to this case. In answer to Commissioner Sten's question about the fee and if a person could simply look at the manual, he said a fee is set up, per Ordinance, to cover copies and staff time, but the manual is privately owned. If the manual was viewed, a staff person would have to be with the viewer and there would be a charge for that time.

Commissioner Sten said people ought to look at the manual without a fee – it is a public record. A vendor knows that when it contracts with the City.

Ms. Stone said the fee issue comes up frequently and it would be good to review the Code. But, in this case the complaint was about subsequent treatment after the fee was discussed.

Mary Rooklidge, appellant, said this had not come before the full PIIAC board. At no point did she ask to view the records for free, although she did mention her financial hardship. Her complaint is the officer's threat to add on additional fees for his time with her on the phone. Captain Bell's disposition letter only vaguely refers to the communication issue and appears to either ignore or diminish the conduct charge. Common sense dictates a decision both be made and articulated in inquiries. When she contacted Captain Bell after receiving his letter to ask if a decision was forthcoming, he said he did not have to pursue an inquiry or make a decision in this matter as it involved the issue of an officer's word against that of a member of the public. Ms. Rooklidge later confirmed with Sergeant John Stewart that this was indeed incorrect. Captain Nelson was improperly assigned to the inquiry because of a

conflict of interest as he was looking into a matter directly out of which arose a complaint against him, of which he was aware when conducting the inquiry. She had also spoken to a Sergeant Vincent Jarmer that the police were illegally conducting a photo-radar operation on a controlled access highway. This conversation and those with Captain Bill Bennington are not a part of the record. She asked that this complaint be sent back to IAD for a proper investigation.

Ms. Stone confirmed that indeed three PIIAC members reviewed this complaint and they did not say the investigation was substandard.

Ms. Rooklidge said there was no decision on her complaint in the disposition letter and it has yet to be addressed by IAD or PIIAC.

Mayor Katz asked, in a case like this, when there are no witnesses, is it a he-says/she-says issue for the Citizens Advisors.

Ms. Stone said they can look at all of the other information involved to weigh credibility.

Commissioner Sten moved to uphold the Citizen Advisors recommendation and Commissioner Saltzman seconded.

Commissioner Saltzman said the letter of disposition should have noted that the detailed interview of the appellant regarding Officer A is in fact did and is leading to a clearer public records procedures.

Commissioner Sten said moving this to a formal investigation will not do anyone any good. It sounds like the public records access problem in Traffic has been fixed. It is clear that the officer was strongly cautioned about courtesy.

Disposition: Appeal denied. (Y-3)

395

Hear appeal of Mary P. Rooklidge to the Police Internal Investigations Auditing Committee, #99-18 (IAD #99-009), per City Code 3.21.085(4)(d) (Report)

Discussion: Citizen Advisor Robert Wells said this complaint against Captain A is bifurcated from Sergeant A. The Citizens Advisors voted unanimously to affirm IAD's exoneration of the captain. The complaint incident occurred on January 8, 1999, when appellant called the Traffic Division requesting information about photo radar. Appellant alleged a captain tried to dissuade her from filing a complaint against a sergeant in his division, that he violated ORS statutes regarding coercion or the public records law by hindering viewing the photo radar manual and the captain was condescending and did not take the complaint seriously and implied she was the one miscommunicating. Appellant said that Captain A was predisposed to see her original complaint with Sergeant A as meritless as the Captain said the Sergeant was "one of his best." In an interview, Captain A agreed he said that in response to the appellant saying this sergeant was "a lousy person." Appellant said when she phoned to make an appointment to view this proprietary photo manual, the receptionist knew who she was and asked her why she was so difficult and that they were not going to schedule the viewing at the appellant's leisure.

MARCH 22, 2000

Mr. Wells said appellant said Captain A committed a felony by trying to coerce her to drop her complaint against Sergeant A. Appellant alleges that Captain A told her she had wasted many hours of police time. Captain A, in his interview, said he had been called by the Multnomah County District Attorney's Office, who received a call from the Oregon State Police, asking what was going on regarding public records laws. He had also been called by the Oregon State Attorney's Office and the Federal Bureau of Investigation about this. Captain A, in admitting to saying "how can I made you happy" and other phrases, said he was not angry with her, but frustrated. In the interview with Sergeant Jarmer, appellant said Captain A should be reprimanded and in another interview, said "what the hell. Give him a week off without pay." Mr. Wells sees that the appellant felt she and her viewpoints were being brushed off, but is very concerned about appellant stating that certain officers were lying outright to her and about her charging Captain A with a felony. The Citizens Advisor group agreed that the category of inquiry by IAD go no further, the inquiry issue of Captain A be noted as complete, objective and fair. Captain A, without being obliged to, wrote the appellant to the effect if she were willing to wait briefly, the photo radar manual would be available in the Police Records Division, which would be of less cost to her to view this proprietary manual.

Mary Rooklidge, appellant, said Mr. Wells was wrong to say he did not think Captain A lied. Her argument, which may have been a bit subtle for some associated with this matter, is that the Traffic Division charges the top pay rate of a Sergeant, regardless of who sits with the viewer. She added that neither PIIAC nor Council is concerned about the procedural integrity of IAD decisions. In this appeal, she wants to call someone to testify who will contradict the Captain's statements. She would like a continuance and that Sergeants John Steward, Traffic Division, and Vince Jarmer, IAD, be subpoenaed to appear before Council.

Dr. Hess, PIIAC Examiner, quoted the Administrative Rules which say that "except in extraordinary circumstances, witnesses will not be required to appear involuntarily." An example of an extraordinary circumstance would be if there were no tapes for advisors to listen to.

Commissioner Sten moved to uphold the Advisors recommendation and Commissioner Saltzman seconded.

Commissioner Sten said this obviously grew out of the previous case. The situation escalated but there is nowhere for this to go.

Mayor Katz said she certainly agrees that a fee should not be charged to visually review a manual.

Ms. Rooklidge said she was entitled to speak further. The complaint filing process with Bennington and Jarmer was flawed, whether or not it was properly classified. In this case, as in the other, tapes are missing from the record, there is a conflict of interest and leading questions in interviews. She alleged Captain Nelson said she had offered a "personal" form of payment to see the manual.

Dan Handleman, PO Box 42456, 97242, Portland Copwatch, said there have been two instances where subpoena power has been used. In 1988, several PIIAC members quit after a judge ruled that any subpoena (by Council) would be limited to asking questions regarding

PIIAC's scope. Also, in the Nathan Thomas case when the boy hostage was killed, the subpoena issue was raised.

Mayor Katz said this would have been a good one for mediation, but is not sure the appellant would prefer that.

Disposition: Appeal denied. (Y-3)

396

Hear appeals of Alnath Oliver to the Police Internal Investigations Auditing Committee, #99-27 (IAD #99-014), per City Code 3.21.085(4)(d) (Report)

Discussion: Dr. Hess said the appellant did not appear before the Citizens Advisors. He apologized and said he had simply forgotten in the bustle of his life.

Rick Alexander, Citizen Advisor, in answer to Mayor Katz' question if it would have made a difference if the appellant had been present, said he could not assume that. They do make their decisions on the information in the case file.

Mayor Katz asked the appellant if he would like another opportunity to present his case to PIIAC.

Alnath Oliver, appellant, said he would.

Mr. Hess was concerned about setting a precedent, as every appellant is told several times in writing and by phone to appear.

Commissioner Sten suggested that there should not be an appeal to Council without appearing before PIIAC.

Disposition: Referred to Police Internal Investigations Auditing Committee.

397

Hear appeal of Catherine Georgetown to the Police Internal Investigations Auditing Committee, #99-23 (IAD #99-187), per City Code 3.21.085(4)(d) (Previous Agenda 123)

Discussion: Citizen Advisor Robert Wells said this case arose from four separate police service calls and a search warrant service by a police multi-agency task force at the appellant's residence in January, 1999. These all arose from neighborhood complaints of gunfire from that residence. On the first day of complaints, two rear windows had been shot out of vehicles and were originally thought to be from a slingshot until more calls about gunfire came in. Also, two bullet holes were in a side panel of another vehicle and two slugs were recovered. Police noted that a window on the second floor of the residence was in direct line of fire to the street and a branch was shot and hanging in that direct line. PIIAC advisors voted five yes and one no to decline the case due to lack of merit and failure to articulate any facts indicating a violation of Police Bureau rules or procedures. The five appellant allegations are: 1) Police officers harassed the appellant in response to alleged gunshots from her residence. The Bureau of Emergency Communications (BOEC) records indicate the officers were dispatched from neighborhood-generated calls; 2) Police officers illegally searched the home prior to obtaining a search warrant. The appellant was not present and the children in the home gave permission for the officers to search the home; 3) Officers obtained an illegal search warrant. The warrant was issued after a sworn affidavit

MARCH 22, 2000

from a Multnomah County Sheriff's Deputy and signed by a Circuit Court judge. (PIIAC members determined the warrant and its validity was not within their jurisdiction, but belonged in a court of law.); 4) Officers damaged and "messed up" during the service of a search warrant. The Task Force reported the house was dirty and in disarray before service of the warrant, but that a pre-existing hole in a ceiling was enlarged to look for items on the search warrant; and 5) Officers retaliated against appellant by contacting the Bureau of Buildings regarding the conditions of the house. Under Police General Orders, they have the responsibility to report serious residential hazards which may be unsafe for occupants. PIIAC was only able to recommend that when a search warrant is being served on a residence, before and after pictures should be taken.

Mr. Wells quoted the neighbor calls by day and incident, written up independently by different officers. The search warrant specified gang-related items. As there were four service calls, excluding the formal warrant, the burden lies with the appellant that the police harassed her. One officer, on January 15, 1999, at 5:17 p.m., stated he wanted the Neighborhood Response Team (NRT) to be aware of the increased calls concerning guns at this location.

Dr. Michael Hess, PIIAC Examiner, clarified that the decision was to decline this case. It was not investigated as it was deemed without merit.

Mayor Katz noted IAD was currently conducting a separate, formal investigation on an allegation of force.

Catherine Georgetown, appellant, said she is asking for a continuance. She has consulted an attorney on this issue. She has not seen the photographs or police reports, which she paid for. BOEC told her there was no 5:07 p.m. call on January 15, 1999. The conduct of the police was questionable due to the abuse of her daughter and the damage to her house. The Bureau of Buildings violations were minor and corrected in less than a month. The house may have been in disarray, but most of that was because the officers dumped her drawers, as well as other things, on the floor.

Mayor Katz asked if Council gave the appellant the opportunity to get more information, will this come back to Dr. Hess?

Adrianne Brockman, Senior Deputy City Attorney, said if Council gives her additional time, it should go back to PIIAC.

Dr. Hess asked Captain Smith if the photographs are considered evidence and can actually be released. Otherwise, there is no reason to continue this.

Captain Smith said because a criminal trial is going on as a result of the search warrant, he is unsure on the photographs' status. The Police Bureau has no problem with making copies for Ms. Georgetown.

Ms. Georgetown said there is no trial, as no one in her household was arrested, convicted or charged.

Dr. Hess suggested, since there is another case regarding use of force which is related to this case, combining them to be heard together by PIIAC.

MARCH 22, 2000

Ric Alexander, Citizen Advisor, asked for clarification on whether or not a person who does not attend the scheduled PIIAC hearing, will be able to appeal to Council. Should PIIAC hear the case at all without the appellant's presence at the meeting.

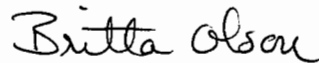
Commissioner Sten said his general feeling is that PIIAC should read the record. If PIIAC finds against the person, the person should not be able to appeal to Council without attending their scheduled hearing. This procedure will have to have a legal ruling.

Dan Handelman, Portland Copwatch, emphasized today's issues on timeliness. In 1993, an Auditor's Office report said that taking 120 days on these cases was unacceptable. With recognition that IAD is trying hard, the average case takes 13 months now between filing and resolution.

Disposition: Referred to Police Internal Investigations Auditing Committee.

At 4:10 p.m., Council adjourned.

GARY BLACKMER
Auditor of the City of Portland



By Britta Olson
Clerk of the Council