



CITY OF

PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 23RD DAY OF OCTOBER, 1991 AT 9:30 A.M.

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

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

Mayor Clark read a proclamation in recognition of the Bill Roberts Transit mall.

Individuals participating in the recognition ceremony included:

Lee Lacey, Downtown Neighborhood Association, paid
Bill Naito, 5 NW Front
Don Palmer, President of Downtown BOMA

Four members of the anti-drug rap group, It's Time to Make a Change, were introduced.

Agenda No. 1761 was pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

1759 Reject all bids for Miles Place wastewater pumping station electrical rehabilitation (Purchasing Report - Bid 13)

Disposition: Adopted.

1760 Accept bid of Les Brown Excavating for construction of SW 49th Avenue and SW Vesta Street storm sewer for \$47,315 (Purchasing Report - Bid 18)

Disposition: Adopted; prepare contract.

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Mayor J. E. Bud Clark

1762 Give the Director of the State Department of Insurance and Finance first lien and priority right to the Workers' Compensation loss reserve account to exempt the City from the surety requirement, per ORS 656 as amended July 1, 1991 (Resolution)

Disposition: Resolution No. 34906. (Y-5)

***1763** Declare surplus property located at numerous locations (Ordinance)

Disposition: Ordinance No. 164751. (Y-5)

***1764** Authorize execution of release and acceptance of payment from Riedel Environmental Services, Inc. (Ordinance)

Disposition: Ordinance No. 164752. (Y-5)

***1765** Amend contract with Nicholas Teeny for Urban Services canvasser services (Ordinance; Contract No. 27232)

Disposition: Ordinance No. 164753. (Y-5)

Commissioner Earl Blumenauer

1766 Accept completion of the SE 24th Avenue Sewer Reconstruction Project by System Construction Co. and make final payment (Report; Contract No. 27120)

Disposition: Accepted.

1767 Accept petition and adopt Resolution to improve SW Palatine Street from SW 47th Avenue to SW 45th Avenue (Report; C-9783)

Disposition: Accepted.

1768 Direct the City Engineer to prepare plans, specifications, and cost estimates for street and storm sewer improvements on SW Palatine Street, from SW 45th Avenue to SW 47th Avenue (Resolution; C-9783)

Disposition: Resolution No. 34907. (Y-5)

1769 Accept Petition and adopt Resolution to improve SW 49th Avenue from SW Vermont Street to approximately 550 feet south of SW Vermont Street (Report; C-9784)

Disposition: Accepted.

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1770 Direct the City Engineer to prepare plans, specifications, and cost estimates for street and storm sewer improvements on SW 49th Avenue from SW Vermont to approximately 550 feet south of SW Vermont Street (Resolution; C-9784)

Disposition: Resolution No. 34908. (Y-5)

1771 Accept petition and adopt Resolution to improve NW Belgrave Avenue from NW Aspen Avenue to its terminus (Report; C-9785)

Disposition: Accepted.

1772 Direct the City Engineer to prepare plans, specifications, and cost estimates for street and storm sewer improvements on NW Belgrave Avenue, from NW Aspen to its terminus (Resolution; C-9785)

Disposition: Resolution No. 34909. (Y-5)

***1773** Revocable permit to Oregon Ballet Theater to maintain banners on street light poles from November 15, 1991 to December 24, 1991 (Ordinance)

Disposition: Ordinance No. 164754. (Y-5)

***1774** Call for bids to construct Unit 3 Transit Transfers Project, authorize a contract, and provide for payment (Ordinance)

Disposition: Ordinance No. 164755. (Y-5)

***1775** Accept a street deed for the future widening of SW Caraway Court east of SW 33rd Avenue, granted by Louis A. Durst and Beulah F. Durst, at no cost to the City (Ordinance)

Disposition: Ordinance No. 164756. (Y-5)

***1776** Accept a street deed for SW Barnes Road, granted by Rudolph and Sule Klucar, at no cost to the City (Ordinance)

Disposition: Ordinance No. 164757. (Y-5)

1777 Authorize the Mayor to amend an Intergovernmental Agreement with the Metropolitan Service District (Metro) for a project to set up and evaluate recycling systems in multi-family residences (Ordinance; Second Reading Agenda 1738)

Disposition: Ordinance No. 164758. (Y-5)

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***1778** Accept nine public walkway and utility easements for two identical parcels of land for the SE Stark Street Improvement Project, granted by George H. Caspar, Mary Hanigan, James R. Waldman, Anne Waldman, James A. Saunders, Maxine E. Saunders, Gordon A. Dowsett, Kimberlie J. Dowsett, Donald F. Plumb, Sharon L. Plumb, Mary Christine Hauptmann, Gary Delorit, Judith Delorit, Glen A. Milligan, and Jane R. Milligan, at no cost to the City (Ordinance)

Disposition: Ordinance No. 164759. (Y-5)

***1779** Contract with Century West/Carollo for professional engineering services and provide for payment (Ordinance)

Disposition: Ordinance No. 164760. (Y-5)

Commissioner Dick Bogle

1780 Amend City Code relating to public utility privilege taxes (Ordinance; Second Reading Agenda 1740)

Disposition: Ordinance No. 164761. (Y-5)

Commissioner Gretchen Kafoury

***1781** Amend contract with D.B. Alexander for nuisance abatement by adding the North Portland Service District for the remaining term of the contract (Ordinance; amend contract No. 26742)

Disposition: Ordinance No. 164762. (Y-5)

***1782** Amend contract with J. Murphy Construction for nuisance abatement by deleting the North Portland Service District for the remaining term of the contract (Ordinance; amend Contract No. 26763)

Disposition: Ordinance No. 164763. (Y-5)

***1783** Accept grant from the Department of Human Resources - Senior and Disabled Services Division in the amount of \$30,000 for Project Care: Community Safety Coalition for N/NE Elders which will address needs of senior citizens residing in North/Northeast Portland (Ordinance)

Disposition: Ordinance No. 164764. (Y-5)

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Commissioner Mike Lindberg

1784 Accept contract with Riedel International as complete, for a total cost of \$314,435 and authorize final payment (Report; Contract No. 26529)

Disposition: Accepted.

***1785** Grant a perpetual easement to the Oregon Museum of Science and Industry for access, surface use and utility services across Water Bureau-controlled property in the vicinity of SE Stephens Street and SE Water Avenue (Ordinance)

Disposition: Ordinance No. 164765. (Y-5)

City Auditor Barbara Clark

1786 Amend Ordinance No. 164598 and adjust assessments for sewer system development charges (Ordinance; Second Reading Agenda 1747)

Disposition: Ordinance No. 164766. (Y-5)

REGULAR AGENDA

Mayor J. E. Bud Clark

1761 Confirm appointments of David K. Burtner, John G. Jennings, and Claudia Powers, and the reappointments of Carl Talton and Robin White to the Portland Energy Commission (Report)

Discussion: Commissioner Lindberg introduced Eliot Allen, new Chair of the Energy Commission and other members of the Commission in attendance.

Mr. Allen said renewed vigilance is needed in implementing what is one of the nation's most progressive energy policies.

Disposition: Confirmed.

1787 Authorize the City Attorney to commence legal action to seek a declaration by the Oregon Tax Court that collections for urban renewal bonds are exempt from the \$10 general government tax rate limitation (Resolution)

Disposition: Resolution No. 34910. (Y-5)

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Commissioner Earl Blumenauer

1788 Accept report on compliance status of Portland's required Industrial Pretreatment Program (Report)

Discussion: Commissioner Blumenauer said this is one of the least costly and most effective programs the City has to fight water pollution and keep poisonous toxics out of sewers and rivers. He said under this program the Bureau monitors 400 businesses to see that they meet state and federal pollution standards. He added that businesses had been very cooperative and the Bureau now wants to get the word out to 13,000 businesses about how to comply with the requirements.

Bob Rieck, Bureau of Environment Services, said the Bureau has been working for the last two years to improve its pretreatment program to comply with the federal Clean Water Act. He said the program is intended to regulate toxic materials in order to prevent pollutants from passing through the treatment facilities and entering the rivers.

Mr. Rieck said the Bureau began implementation of a completely revamped industrial waste code in February, 1991. He said today's report highlights completion of most elements of the revised program. He noted the Bureau's active management of industrial discharges, resulting in a significant increase in enforcement actions. It has also initiated a public outreach program to educate businesses about what is acceptable and what is not acceptable to flush down the drain. Beginning in January, the Bureau will publish in the Oregonian every six months the names of industries that have had serious or chronic violations of Code permit requirements.

Disposition: Accepted. (Y-5)

***1789** Authorize final phase of an ongoing cooperative program with the United States Geological Survey (USGS) to conduct water quality monitoring and analyses in the Johnson Creek and related water bodies and provide for payment (Ordinance)

Disposition: Ordinance No. 164767. (Y-5)

***1790** Accept a grant from the Traffic Safety Division, Oregon Department of Transportation, to promote traffic safety education (Ordinance)

Discussion: Commissioner Blumenauer said this grant is part of an effort to fund a comprehensive education campaign to mitigate the negative impact of automobiles on neighborhood streets and promote

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alternative transportation methods. As part of this effort, the City is hosting a Neighborhood Traffic Congress on November 9, 1991.

Disposition: Ordinance No. 164768. (Y-5)

Commissioner Gretchen Kafoury

1791 Establish \$82,590 as the maximum price for a newly constructed single family house eligible for limited property tax exemption in a distressed area (Resolution)

Discussion: Commissioner Kafoury said this and the following ordinance deal with tax exemptions for homeowners.

Mike Saba, Planning Bureau, said the resolution is a housekeeping item required before the City can fully implement its property tax exemption for new single-family construction in distressed areas.

Denise Hamilton Church, 15818 NE Sandy Blvd. #9, said this resolution will allow her to purchase her own home which she could not afford if she had to pay the property taxes.

Don Morris, 15735 NE Fargo Court, Denise Church's father, also supported passage.

***1792** Amend the programs offering limited property tax exemption for residential rehabilitation and new construction of single-unit housing in distressed areas (Ordinance; amend Code Chapter 3.102)

Discussion: Commissioner Kafoury moved the substitute ordinance. Commissioner Bogle seconded and the motion carried. (Y-5)

David Knowles, attorney representing Harsh Investment Corp., said this ordinance implements a statute adopted by the 1989 legislature. He said it solves a dilemma for owners of private housing who had Section 8 federally-assisted housing contracts and also had property tax abatements. The abatements terminated after ten years but the federal government would not allow any adjustments in their rental contracts to reflect the higher tax costs for owners after that period. This ordinance will extend tax abatements due to terminate if the owners have Section 8 contracts and have made reasonable efforts to get federal government to change the contracts. He urged approval.

Commissioner Kafoury said the Planning Commission originally called for the properties to be owner-occupied. However, she said, to increase neighborhood stability, her staff felt the program should offer affordable

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rentals as well. She said the Planning Commission now agrees with this strategy and that is why the substitute, which takes out the reference to owner-occupied, has been filed.

Mr. Saba said the program was adopted in conjunction with neighborhood revitalization efforts, specifically the Nehemiah project. He said the ownership requirement added another layer of risk for non-profits who need to have a guaranteed purchaser before they begin construction.

Bruce Mock, 12410 SE Madison, a realtor and small construction business owner, said this will encourage the construction of smaller, more affordable homes.

Disposition: Substitute Ordinance No. 164769. (Y-5)

***1793** Contract with Erv's Inc., 6849 NE 47th Avenue, for \$10,500 to demolish the structure(s) on the premises at 9209-9233 N Calvert Street and provide for payment (Ordinance)

Disposition: Ordinance No. 164770. (Y-5)

At 10:23 a.m., Council recessed.

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WEDNESDAY, 2:00 PM, October 23, 1991

DUE TO LACK OF AN AGENDA
THE MEETING WAS CANCELED

October 24, 1991

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 24TH DAY OF OCTOBER, 1991 AT 2:00 P.M.

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

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

The Clerk noted that an item had been filed under the Four/Fifths Agenda.

Commissioner Blumenauer moved that the item be considered. Commissioner Kafoury seconded and the motion carried. (Y-5)

- 1795** Accept a grant from the State Department of Land Conservation and Development in the amount of \$2,500 for basic planning assistance. (Ordinance introduced by Commissioner Kafoury)

Disposition: Ordinance No. 164771. (Y-5)

- 1794** **TIME CERTAIN: 2:00 PM** - Consider findings in response to LUBA rulings in appeal of Joseph Angel of denial of a zone change to develop a Burger King at SE 39th and Hawthorne (Findings; Previous Agenda 1619)

Discussion: Bob Glascock, Planning Bureau, reviewed the revised Council findings prepared in response to four directives from the Land Use Board of Appeals. In response to the first directive, Council held a remand hearing on August 21, 1991 and the revised findings identify and discuss remand testimony given at that time on traffic operations and safety. Second, Comprehensive Plan policies have been clarified and it has been noted that they are not applicable as approval criteria for a zone change in compliance. Third, the findings acknowledge that the proposal is to the maximum Comprehensive Plan designation. Fourth, a clarification is made about how much of the record the Council relied on in making its decision. Mr. Glascock said the parties disagree about this item but the findings state that Council has considered the credible evidence, expert testimony and that of persons who live and work nearby, and Commissioners' site visits. The findings conclude that the applicant failed in its burden of proof to show adequate transportation capabilities at the intersection of 39th and Hawthorne.

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Steve Janik, attorney representing Joe Angel, noted that originally both the Office of Transportation and Hearings Officer found that the zone change would not adversely affect the level of transportation services on 39th. He said on a purely technical traffic issue about which it has no expertise, the Council disagreed with its own staff's recommendation. On remand, Council members were questioned about their on-site visits and testified that their observations did not make any difference in their final decision. He cited changes in the final version of the findings which contradict earlier statements that Council members' decisions were not based on site observations. He questioned Council's ability to make conclusions about technical matters such as queuing and cycle lengths. He said these findings reflect staff efforts to put words in Council members' mouths and called the findings a paper shield over a decision unsupported by the evidence.

Mr. Janik also questioned the standards Council used to determine that the proposal would create unacceptable traffic safety and service level problems. He cited memos from the Bureau of Traffic Planning stating that Service Level E is acceptable under the public facilities plan for regional transportation. He said the reference to an ordinance adopted by Metro regarding its definition of acceptable service levels is new information and does not constitute a valid approval standard. Finally, in the July 20, 1990 draft of the findings, Council said it reviewed six sources of oral and written testimony in evaluating the proposal for traffic safety. He said at the September 11, 1991 hearing, he asked Council members if they had reviewed the record in the meantime and they said no, they had not. The new findings say that Council considered the record before the Hearings Officer and all the other evidence before the Council. He said this statement is inconsistent with the earlier statements. He urged Council to grant the zone change, despite the political pressure from five neighborhood associations for approval.

Ky Holland, Richmond Neighborhood Association, 4106 SE Lincoln, urged adoption of the findings.

Ed Sullivan, attorney representing appellants Wakelin and Marshel, supported the findings. He said in June, 1990 Council determined that three elements were involved in determining the adequacy of transportation facilities. They are: 1) acceptable levels of service at both intersections and access driveways; 2) acceptable impact on traffic operations and safety and; 3) acceptable impact on local neighborhood streets. He said this interpretation was not challenged by the appellants in the LUBA appeal and both parties are now required to follow it. He said these findings analyze the application in terms of all

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three elements and determine that two of the three criteria have not been met. He said if any of the criteria are not met, then the application must be denied.

Mr. Sullivan said expert testimony is not the only basis for concluding that transportation facilities are inadequate and that the testimony of people who actually live and work there must also be considered, as well as Council's own observations. Estimates of traffic impacts are not a matter of mathematical calculation left solely to the judgment of experts. He said Council's judgment may be based partially or wholly on actual or derived observations about traffic facilities. He said the applicant has not met the burden of providing conclusive proof that harm will not happen. He said applicant admits that 39th and Hawthorne is at or near capacity while opponents say it is at or above capacity. He said the proposed mitigation is insufficient to deal with traffic operations and safety.

Even though Council members are not experts, Mr. Sullivan said, Council can make its own independent decision based on the record. He said changes from earlier drafts of the findings make no difference as it is the final version that counts. Standards are based on individual cases and Council can choose to use the regional transportation plan if it wishes. Regarding Mr. Janik's query of Council members about their reading of the entire record since the original hearing, Mr. Sullivan said since they were at the hearing and had access to the written record they had an adequate basis on which to vote. He urged adoption of the findings.

Commissioner Blumenauer asked whether the inclusion of the reference to Metro's regional transportation plan was appropriate.

Pete Kasting, Chief Deputy City Attorney, said it is appropriate to take official notice of it since it is a law, and laws are regarded as legal matters, not as factual matters.

Commissioner Lindberg asked if this was the first time it had been referred to.

Mr. Glascock said it was mentioned in earlier documents.

Commissioner Blumenauer, while noting that he might not have used the exact language found in the findings, said the findings frankly acknowledge that this is an area where judgment comes into play. He said he did not apologize for not having read every single page because he did review what was relevant and important. He said it is important for Council to establish standards which staff can use in future decisions about acceptable service levels.

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Commissioner Bogle said the basic issues are quite simple but became complicated in their presentation and discussion. He said he is comfortable with his earlier vote.

Commissioner Lindberg said he supports the findings because they reflect the record and it is incumbent on the Council to use its own judgment where there is conflicting testimony. He said while his site visit was a factor it was not the overwhelming factor that determined his vote.

Mayor Clark said because of the conflicting evidence, this is a case where judgment is necessary and he believes Council has made the right decision.

Disposition: Findings Adopted. (Y-4; Commissioner Kafoury abstained)

At 2:40 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner
By Cay Kershner
Clerk of the Council