



CITY OF
PORTLAND, OREGON

OFFICIAL
MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 27TH DAY OF NOVEMBER, 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 proclaimed November 24-30 as Caregivers Recognition Week.

Agenda Nos. 1919 and 1923 were pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 1912** Reject all bids for Alder Pump Station on revisions and modifications (Purchasing Report - Bid 29)

Disposition: Adopted.

Mayor J. E. Bud Clark

- 1913** Authorize the City Attorney to pursue all appropriate appeals from the final opinion and order of the Land Use Board of Appeals and the decision of the Oregon Court of Appeals in Blatt v. City of Portland, LUBA No. 90-152, Court of Appeals No. CA A70654 (Resolution)

Disposition: Resolution No. 34920. (Y-5)

- *1914** Amend Chapter 4.48 of Title 4, Personnel, of the City Code to conform the cafeteria benefit plan with the Internal Revenue Code and accurately reflect administrative practices (Ordinance; amend Chapter 4.48)

Disposition: Ordinance No. 164839. (Y-5)

November 27, 1991

- *1915** Amend Chapter 4.50 of Title 4, Personnel, of the City Code to conform the Dependent Care Assistance Plan with Internal Revenue Code and reflect current administrative practices (Ordinance; amend Chapter 4.50)

Disposition: Ordinance No. 164840. (Y-5)

- *1916** Amend Chapter 4.52 of Title 4, Personnel, of the City Code to conform the Medical Expense Reimbursement Plan with the Internal Revenue Code and to reflect current administrative practices (Ordinance; amend Chapter 4.52)

Disposition: Ordinance No. 164841. (Y-5)

- *1917** Call for bids for tenant improvements for the Mid-County Sewer Project facilities, authorize contract and provide for payment (Ordinance)

Disposition: Ordinance No. 164842. (Y-5))

- *1918** Pay claim for Maxine Tuggle (Ordinance)

Disposition: Ordinance No. 164843. (Y-5)

Commissioner Earl Blumenauer

- *1920** Authorize Purchasing Agent to sign a Purchase Order as a contract for Hewlett-Packard to provide a necessary computer system up-grade for an existing system at the Wastewater Treatment Plant (Ordinance)

Disposition: Ordinance No. 164844. (Y-5)

Commissioner Dick Bogle

- *1921** Amend City Code regulations for Gambling and Amusement devices (Ordinance; amend Chapters 14.66 and 14.69)

Disposition: Ordinance No. 164845. (Y-5)

Commissioner Gretchen Kafoury

- *1922** Authorize appropriation for the 1991 Rental Rehabilitation Grant and authorize contract with the Portland Development Commission for \$260,000 to implement the program and provide for payment (Ordinance)

Disposition: Ordinance No. 164846. (Y-5)

November 27, 1991

Commissioner Mike Lindberg

- *1924** Authorize agreement with The Musical Company for the management and operation of the Scene and Costume Shop (4337 N Houghton Street) for drama and production operations (Ordinance)

Disposition: Ordinance No. 164847. (Y-5)

- *1925** Donate certain City-owned property for a temporary construction easement along SW Barbur Boulevard between SW 3rd and SW 4th Avenues (Ordinance)

Disposition: Ordinance No. 164848. (Y-5)

City Auditor Barbara Clark

- 1926** Appoint Louise Gillette-Payne to the Police Internal Investigations Auditing Committee (Report)

Disposition: Confirmed. (Y-5)

- *1927** Cancel systems development charge at 10922 SW 65th Avenue (Ordinance)

Disposition: Ordinance No. 164849. (Y-5)

- *1928** Cancel sidewalk assessment (Ordinance; amend Ordinance No. 164664)

Disposition: Ordinance No. 164850. (Y-5)

REGULAR AGENDA

- *1919** Pay claim of the Estate of Rosemary Coulsey (Ordinance)

Disposition: Ordinance No. 164851. (Y-5)

- *1923** Amend contract with Multnomah County Developmental Disabilities Program to provide recreation integration services (Ordinance: amend contract No. 27260)

Disposition: Ordinance No. 164852. (Y-5)

Commissioner Earl Blumenauer

- 1929** Adopt report recommending conversion of the Irvington, Woodland and Mill Park sanitary sewer systems from a local improvement district to a capital improvement project (Hearing on Report; C-9775, C-9776, C-9777)

November 27, 1991

Discussion: Commissioner Blumenauer said he hopes Council will consider this as one large capital improvement project rather than as 40 independent projects. He said he is convinced the City can manage the project more efficiently as a whole, with the City assuming the risk rather than the individual LIDs. He said they are also attacking ways to reduce the overall cost. He said he has no problems with delaying final action in terms of the report itself but does want to deal with the remonstrances today.

Karen Kramer, Director of the Mid-County Sewer Project, said in anticipation of the Time and Manner hearing, notices were sent out to 2600 people letting them know what their preliminary assessments would be if a local improvement district was formed. She said they received eight written remonstrances and asked Council to vote on them today so that they could proceed with an Ordinance authorizing the Purchasing Agent to go out for bids.

John Medak, 10106 NE Shaffer, objected to the increased sewer cost, noting that in 1988 his cost was projected to be \$7500 but the current estimate is \$11,000, an increase of 46 percent. He said interim financing costs should be lower, reflecting the decrease in interest rates. Mr. Medak suggested asking contractors to roll back their costs or use the prior estimates as a base and increase them by the cost of inflation. Another alternative would be to have the City construct them.

Paul Libby, 4818 NE 50th Place, said the cost of his sewer would be a third of the value of the cost of his house. He said he believes he should pay half the cost with the rest of the City paying the other half.

Adrienne Marcy, 1904 NE 101st, objected to the cost increase and asked if project participants would have to pay for costs of old sewer systems when they need repairs. Regarding a proposed wastewater pump station, she objected to the reduction in the standard lot requirement from 10,000 square feet to 1,000 square feet.

Commissioner Blumenauer said the Bureau is looking at overall system changes. He said historically once a system is up to standard and accepted into the system, then long term maintenance is a problem of the entire system. He said they are also looking at equity issues.

Scott Crawford, 3208 SE 116th, said the cost is excessive and needs to be either lowered or subsidized.

Cindy Lieke, 3208 SE 116th, said doubling the assessments in so short a time is unsatisfactory. She said there needs to be alternate financing and subsidies.

November 27, 1991

Commissioner Blumenauer said Staff is available to address specific issues. He said any changes made in the system will be retroactive so that no one is penalized. He said they will study whether the City could do the construction more cheaply itself as well as issues dealing with subsidization and project management. He said the Task Force will issue its report before the end of December and the Council will deal with it early in January.

Commissioner Blumenauer moved that the remonstrances be overruled. Commissioner Lindberg seconded.

Mayor Clark said he had asked for a delay to allow Council to discuss the policy changes.

Disposition: Remonstrances overruled (Y-4; Bogle absent); Referred to Commissioner of Public Works.

City Auditor Barbara Clark

1930 Assess property for sidewalk maintenance through August 31, 1991 (Second Reading Agenda 1908)

Disposition: Ordinance No. 164853. (Y-4; Bogle absent)

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

November 27, 1991

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 27TH DAY OF NOVEMBER, 1991 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Clark, Presiding; Commissioners Bogle, Kafoury and Lindberg, 4.

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

Commissioner Dick Bogle

1932 Liquor license application for Katie Huyen Le, dba St Johns Market, 6835 N Fessenden Street, Package Store liquor license (new outlet); favorable recommendation (Report)

Discussion: Mayor Clark asked if anyone wished to speak against this recommendation. There was no response.

Disposition: Favorably recommended (Y-4)

1931 TIME CERTAIN: 2:00 PM - Volunteers of America proposal for revision of the design and size of the required open space for a residential care facility located at 2400-2422 NE Martin Luther King Jr. Boulevard (Hearing: CU 110-90)

Discussion: Laurie Wall, Planning staff, said the only issue today is whether Council will hear the modification or send it back to the Hearings Officer. If Council decides to hear it, the substance of the proposal will be heard December 11.

Lee Perlman, 512 NE Brazee, Vice Chair of the Eliot Neighborhood Association asked that this proposal be submitted to the Hearings Officer because it represents significant changes in parking and recreational use which demand close scrutiny.

Eric Wentland, 102 NE Fargo, said the new plans are not in response to the LUBA remand but are in response to VOA's own fiscal problems. He said there are major changes which bring into question both the conditional use as well as the variance. He said not enough time has been given for consideration by neighbors of these changes.

Steve Rogers, 533 NE Brazee, said the substantial changes essentially make this a new case that should be heard by the Hearings Officer. He also objected to the lack of notification to those who had testified previously or signed petitions and said the relationship between the neighborhood association and VOA is at ground zero.

November 27, 1991

George Fleerlage, representing applicant VOA, said Council should dispose of these issues itself and not refer them back to the Hearings Officer. He said the substance of what Council previously approved remains the same. He said because LUBA denied the variance for open space and because of problems putting a deck on the roof, VOA needs need to make two physical changes to give them more open space.

Commissioner Kafoury said Mr. Fleerlage is going beyond arguments about whether Council should hear the remand and getting into substantive issues.

Mr. Fleerlage said he was simply trying to say that the two physical changes are very modest and the one substantive change is a reduction in residents from 60 to 40. He said the program elements remain the same. He noted that Council almost always disposes of LUBA remands itself and said further delay will kill the program.

Bob Stacey, Planning Director, said to ensure that both sides are fully informed about the changes, the revised proposal from VOA and the Planning staff report on that proposal will be available at 4:30 p.m., Friday, Nov. 29. He said Planning believes that the changes are not substantive enough to merit a new application process. Rather, Council will have to decide whether some different development characteristics meet the conditional use criteria.

Commissioner Lindberg asked if he thought the proposed changes in midstream merited sending it back to the Hearings Officer.

Mr. Stacey said he does not feel the changes are substantive.

Commissioner Kafoury moved to have Council hear the matter itself on December 11 at 2:00 p.m. Commissioner Bogle seconded. On a roll call vote, the motion carried. (Y-4)

Disposition: Continued to December 11, 1991 at 2:00 p.m.

Commissioner Gretchen Kafoury

1933 Appeal of Nancy Brenner against Hearings Officer's decision to extend for only one year her permit to continue to operate a swim school out of her home at 4530 SW Fairhaven Drive (Hearing; 91-00406 RP)

Discussion: Jessica Richman, Planning staff, reviewed this request for a onetime three-year extension of a revocable permit, the maximum allowed under the new Code. She noted that a revocable permit for a five-year period had previously been granted to Ms. Brenner but has now expired.

November 27, 1991

She said the criteria for an extension are: 1) that there be no adverse impact; and 2) that an extension is needed to allow for orderly closure or relocation. Staff recommended denial even though it found the use had no negative impacts because it believes criteria about the time needed to move was not met. The Hearings Officer agreed there was no negative impact but recommended approval for one year to give the school time to relocate or close.

Ms. Richman said the appellant believes that the one-year extension is insufficient and also maintains that this operation falls into a school use category and is not a retail sales service use. She said both the Staff and the Hearings Officer disagree. They believe the operation does not qualify as a school because it is not public, open to everyone qualified and controlled by the public. Ms. Richman cited examples analogous to swim schools, such as commercial dance schools, where lessons are offered for money and when the operator has the option to turn people away.

Mayor Clark said he is sympathetic to the swimming pool people, noting that under the old Code Council could have extended the permit for any amount of time.

Ms. Richman said because Ms. Brenner offers up to 30 classes a week it does not qualify for a home occupation permit.

Mayor Clark said he would like to grant the three-year extension and then put the matter of the school definition on the list of Code matters for review. He said Council has no power to reclassify it as a school.

Vincent Salvi, 111 SW 5th, attorney representing Ms. Brenner, disagreed, contending that Council does have the power to designate this as a school and that Ms Brenner's operation clearly fits under the definition of a school. He said Staff is fundamentally wrong on this issue and asserted that the Code criteria states that a school may be either public or private.

Mr. Salvi said Mrs. Brenner's school has been operating for almost 20 years and she is believed by many to be the best swimming teacher in the City. He said she wants to continue her operation, not for a set period, but for as long as there is a need and she is able. He said Council has the ability to designate this as a school because it offers a state-mandated physical education program.

Mayor Clark asked Ruth Spetter, Senior Deputy City Attorney, if she agreed with the Staff interpretation of the Code.

Ms. Spetter said yes.

November 27, 1991

Mr. Salvi said putting this into a retail sales and service category really stretches the Code. He said this is not like a dance class because of state law mandating physical education. He said a clearly expressed public need, where there is no opposition, should be met and Ms. Brenner should be given the ability to continue.

Mayor Clark said he has to follow the advice of the City Attorney.

Commissioner Kafoury said there is a danger in setting a precedent if the classification is changed.

Ms. Spetter said the options are to approve the Hearings Officer opinion and give a one-year extension, a three-year extension, or something between one and three years. She said Council could also direct a review of the revocable permit regulations.

Nancy Brenner, applicant, described her swim program and said it bothers her that she cannot continue her school without having to return to Council.

Individuals testifying in favor of the extension and of classifying Ms. Brenner's operation as a school included:

Kathryn Clifford, 5740 SW Hewett Blvd.
Nell Hoffman Bonaparte, 3210 SW Evergreen Lane
Dr. Edward Rosenbaum, 4444 SW Fairhaven Dr.
James Watts, 200 SW Birdshill Rd.
Pat Wall, 4317 SW Bernard, member of Acquatics Task Force
Laura Wall, 4317 SW Bernard Dr.
Michael Rosenberger, 3025 NE 53rd

Supporters said the swim school was an institution in the community and should qualify as a school, both legally and from a commonsense standpoint. They said the school provided an essential service.

Commissioner Bogle said the City Attorney states that three years is as long as Council can grant an extension under the Code.

Commissioner Kafoury moved to amend the Hearings Officer's decision to grant a three-year, instead of a one-year, revocable permit. Commissioner Bogle seconded.

Mayor Clark said he believes Council should have more latitude on these issues. He said he would like to be able to grant revocable permits for the life of the person running the operation rather than having them coming back to Council every few years.

November 27, 1991

Commissioner Kafoury said she is committed to having the Planning Bureau examine this issue to see if it could grant this request without setting a precedent.

Disposition: Hearings Officer decision amended. (Y-4)

At 3:15 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council

November 28, 1991

THURSDAY, 2:00 PM, November 28, 1991

**DUE TO THE HOLIDAY
THE MEETING WAS CANCELED**