



CITY OF

PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 16TH DAY OF JUNE, 1993 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Blumenauer, Hales, Kafoury and Lindberg, 5.

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

On a Y-5 roll call, the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

874 Accept bid of Silco Construction Company for Rivergate Vehicle Storage for \$299,000 (Purchasing Report - Bid 171)

Disposition: Accepted; prepare contract.

875 Reject bid for Columbia Boulevard Wastewater Treatment Plant final clarifier modifications (Purchasing Report - Bid 182)

Disposition: Accepted.

876 Accept bid of Buckaroo-Thermoseal, Inc., for Columbia Wastewater Treatment Plant roofing project Phase D for \$99,170 (Purchasing Report - Bid 183)

Disposition: Accepted; prepare contract.

877 Accept bid of Woody Froom Tires for furnishing annual supply of high-speed pursuit tires for \$76,071 (Purchasing Report - Bid 184-A)

Disposition: Accepted; prepare contract.

878 Vacate N St. Louis Avenue west of N Bradford Street, under certain conditions (Ordinance by Order of Council; C-9817)

Disposition: Passed to Second Reading June 23, 1993 at 9:30 a.m.

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Mayor Vera Katz

879 Reappoint Ernest Grigsby to the Building Code Board of Appeals (Report)

Disposition: Confirmed.

880 Reappoint Dale A. Fox, J.D. Kuhn and Eric G. Nickerson to the Business License Appeals Board (Report)

Disposition: Confirmed.

881 Endorse Ballot Measure 1 to allow citizens in local communities throughout Oregon the option to vote in future elections on urban renewal bond repayment (Resolution)

Disposition: Resolution No. 35153. (Y-5)

***882** Intergovernmental agreement with the Port of Portland for Port's police officers to assist the Police Bureau (Ordinance)

Disposition: Ordinance No. 166608. (Y-5)

***883** Establish seven salary rates for the Compensation Plan in accordance with the Personnel Rules adopted by the City Council (Ordinance)

Disposition: Ordinance No. 166609. (Y-5)

***884** Lease agreement with Safeway, Inc., for office space for the Bureau of Police for \$1 per year for one year (Ordinance)

Disposition: Ordinance No. 166610. (Y-5)

***885** Contract with 142nd Fighter Group, Oregon Air National Guard, not to exceed \$86,000 for use of the Portland Air National Guard Range Facility for Police Bureau Training (Ordinance)

Disposition: Ordinance No. 166611. (Y-5)

886 Authorize \$25,000,000 of Water System Revenue Bonds (Second Reading Agenda 838)

Disposition: Ordinance No. 166612. (Y-5)

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- *887** Authorize appointment of Michael Anderson at a rate of pay above entry (Ordinance)

Disposition: Ordinance No. 166613. (Y-5)

Commissioner Earl Blumenauer

- *888** Designate and assign certain real property as public street right-of-way in connection with the construction and development of a new indoor sports arena (Ordinance)

Disposition: Ordinance No. 166614. (Y-5)

- *889** Accept a deed for property rights near the future Blazer Arena from the Oregon Department of Transportation (Ordinance)

Disposition: Ordinance No. 166615. (Y-5)

- *890** Authorize the City Engineer to release Transportation and Bureau of Environmental Services easements no longer needed for public purposes (Ordinance)

Disposition: Ordinance No. 166616. (Y-5)

- *891** Amend contract with W & H Pacific to provide additional final design and environmental services on the N Marine Drive, Rivergate to Interstate 5 Project (Ordinance)

Disposition: Ordinance No. 166617. (Y-5)

Commissioner Charlie Hales

- 892** Accept completion of Alberta Park Irrigation Improvements, approve Change Order No. 3, make final payment and release retainage (Report; Contract No. 28458)

Disposition: Accepted.

- *893** Contract with Alder Creek Lumber Company, Inc., for fire prevention and suppression devices (Ordinance)

Disposition: Ordinance No. 166618. (Y-5)

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***894** Contract with David F. Weich for fire prevention and suppression services (Ordinance)

Disposition: Ordinance No. 166619. (Y-5)

***895** Contract with Burlington Water District for fire prevention and suppression services (Ordinance)

Disposition: Ordinance No. 166620. (Y-5)

***896** Authorize execution of easements to Tri-Met (Ordinance)

Disposition: Ordinance No. 166621. (Y-5)

Commissioner Gretchen Kafoury

***897** Contract with North Portland Citizens Committee and Kenton Neighborhood Association to provide support for implementation of a target area improvement plan for the Kenton neighborhood and provide for payment (Ordinance)

Disposition: Ordinance No. 166622. (Y-5)

***898** Contract with Imani Women's Support Program for \$25,000 to construct a play area for use in working with the children of Imani clients and provide for payment (Ordinance)

Disposition: Ordinance No. 166623. (Y-5)

***899** Contract with Housing Our Families for \$10,000 to create a community planning project in NE Portland and provide for payment (Ordinance)

Disposition: Ordinance No. 166624. (Y-5)

Commissioner Mike Lindberg

900 Accept completion of the Southeast Relieving Interceptor, Phase - 4 and make final payment to Constructors - PAMCO, Inc. (Report; Contract No. 25322)

Disposition: Accepted.

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901 Accept completion and Change Order No.1 for Monte Vista Terrace Sewer Reconstruction and provide for final payment to Gelco Instituforn, Inc. (Report; Contract No. 27878)

Disposition: Accepted.

***902** Amend agreement with Merina and McCoy CPA's to increase it by \$20,000 to pay for additional services requested by the City (Ordinance; amend Contract No. 28584)

Disposition: Ordinance No. 166625. (Y-5)

***903** Authorize an amendment to original agreement with the Oregon Department of Energy to co-sponsor an international global warming workshop and symposium (Ordinance)

Disposition: Ordinance No. 166626. (Y-5)

***904** Contract with the Boys and Girls Clubs of the Portland Metropolitan Area to hire youth in work experience positions in the Water Bureau at \$46,000 and provide for payment (Ordinance)

Disposition: Ordinance No. 166627. (Y-5)

905 Authorize a lease agreement with Rogers Construction, Inc., for 5,100 square feet of office space (Second Reading Agenda 852)

Disposition: Ordinance No. 166628. (Y-5)

***906** Interagency transfer of \$128,108 from the Bureau of Environmental Services to the Portland Development Commission to separate storm and sanitary sewers north of N Broadway concurrent with the Oregon Arena Project (Ordinance)

Disposition: Ordinance No. 166629. (Y-5)

***907** Authorize agreements with two parties for the conveyance of property to the Bureau of Environmental Services, subject to certain conditions being fulfilled, and authorize acceptance of deeds and payment of expenses (Ordinance)

Disposition: Ordinance No. 166630. (Y-5)

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***908** Contract with Northwest Geotech, Inc., for overflow materials testing services (Ordinance)

Disposition: Ordinance No. 166631. (Y-5)

REGULAR AGENDA

872 TIME CERTAIN: 9:30 AM - Endorse the Combined Sewer Overflow (CSO) Management Plan as presented in the Draft Executive Report and transmit with companion documents to the Oregon Department of Environmental Quality (Resolution)

Discussion: Commissioner Lindberg said Portland is currently dealing with a situation where raw sewage finds its way into the rivers nearly every time it rains, amounting to six billion gallons annually. He said a substantial number of surveys indicate that improving water quality is a high public priority and rated it the highest of all environmental issues in the Portland area. He noted that the management plan makes six recommendations but does not include setting a specific level of control for the Willamette River. The report instead offers a range of levels of control with a final decision made through a collaborative process with the Department of Environmental Quality (DEQ) and the Environmental Quality Commission (EQC), representing a continuation of the City's efforts, not a cumulation. He said the City would still take a position, sometime within the next six months, but he believes that a better product will result from discussing other options and arriving at a consensus. A continuing public involvement process is also planned, based on the fact that, despite extensive citizen input, the public still does not understand the implications of these choices. Another issue involves the a cap on the utility franchise fee, something that was discussed during the budget process and is part of the five-year financial plan, but not something which he personally supports at this time.

Commissioner Blumenauer said he was led to believe that this would be part of the collaborative process and subject to review, regardless of what was submitted to the DEQ, and was not meant to be the final word.

Commissioner Lindberg said then perhaps what he recommends is what was intended before the Bureau was switched. Perhaps just the details changed.

Commissioner Blumenauer asked Ms. Nolan what process was envisioned with the DEQ.

Mary Nolan, Director, Bureau of Environmental Services (BES), said it was their aim to work through with the DEQ and the EQC the policy question of

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what level of control should be implemented. She said the policy question is broader than BES, and both the City and State have legitimate concerns that need to be incorporated into a final plan.

Commissioner Blumenauer said he believes it would be better, after four years of study, to make a more specific recommendation and use that as a point of departure. He said this would not exclude a collaborative process but would clarify Council's preference regarding goals and the level of control.

Ms. Nolan updated Council on developments that have occurred in the last two weeks and addressed the four issues raised then and summarized in a June 7 memo. The first concerned the benefits to be derived from various CSO levels of control. She said recreational and aesthetic benefits would be positively impacted by any level of CSO control. If the City were to do no nothing, combined sewer overflows would cause the Slough and Willamette River to exceed water quality standards 1600 hours a year. If it sought 85 per cent control on the Willamette, only 225 hours would exceed State water quality standards in a typical year, six hours occurring in the summer months. Beyond that level, to "the enhanced federal level of control" the summer storm overflow would be eliminated and winter time overflows would be reduced to 66 hours. If the level meets Stipulated Final Order (SFO) standards, there would be no overflows in a typical year but once every five years there would be a winter overflow and once every 10 years there would be a summer overflow. Any level of control named in the report represents a dramatic improvement but on their own none would eliminate upstream pollution which causes the Willamette River to violate water quality standards when it hits the City limits, occurring typically one day in three at the current time. A change in level of control, however, would have a positive impact on the quality of the river and on the aesthetic and recreational enjoyment of it.

The second issue raised concerned what actions individuals and businesses can take to reduce CSOs. Ms. Nolan described some of the ways that storm water volumes can be reduced as well as options for businesses to reduce the concentration of pollution and control the timing of their discharges.

Mayor Katz asked how much controlled discharge was being done now and what per cent of the problem would be eliminated if the discharge was controlled during bad weather.

Ms. Nolan said not very much controlled discharge is being done now but they are working with some large businesses to identify how that would work and what financial incentive might be provided. She said she could not specify a

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percentage yet as it is a site by site issue. Ms. Nolan said if they can document a reduction in volume through such measures that would allow them to build smaller sized facilities. However, they have not yet been able to make that connection.

Third, regarding public response and values, the Bureau has heard repeatedly that the public attaches a very high value to clean water but it has also heard that it must convince the public that the CSO project is urgent and will deliver results. About one third of those surveyed believe that the current level spent on water quality is insufficient and nearly half have indicated a willingness to pay higher sewer bills to address CSO concerns.

Fourth, regarding City use of gas taxes to help pay for pollution caused by the road runoffs, she said maintaining proper drainage on a roadway falls within the category allowed by the state constitution. Council has to address the issue of whether to use existing revenues or seek increases in transportation revenues. She noted that the City now receives \$26 million in gas taxes but Council already dedicated all current resources to transportation projects. Any increase in the gas tax itself would have to be through the County. A one cent per gallon increase would generate an estimated \$1.3 million a year for the City and \$1 million for the County.

Ms. Nolan reviewed the six recommendations, including: fast tracking the Cornerstone projects; pursuit of the SFO level of control recommended for the Columbia Slough; completion of all CSO work by 2011; request of a waiver for temporary screens on the outflow; rejection of systemwide sewer separation; and establishment of a single rate schedule based on volume but with a low-income assistance program. They also recommend that the City seek state and federal grants to support the program wherever possible and rely on transportation users to fund part of it as well.

A range of options, rather than a recommendation, is offered regarding the level of control on the Willamette River. She said changes have been made in the Executive Report in the last two weeks, including adding language regarding public values, details about the Cornerstone projects, and the addition of two options for the sake of completeness.

Regarding the requirement to conduct a land-use compatibility study for any major public facility, Ms. Nolan said the Planning Bureau is willing to undertake such a study to make sure there is compatibility with both the Comprehensive Plan and state land-use planning goals. She said they hope to have it done this fiscal year. She said information was added to Chapter 3 for

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more extensive discussion of how the CSO project fits in with other City initiatives to protect rivers and streams as well as a more extensive discussion of opportunities for individuals and businesses to help solve this problem.

Ms. Nolan reviewed the committees, groups and other City bureaus that BES has worked with in defining the problem and identifying solutions. She thanked Commissioner Blumenauer, Bob Eimstad and Jeff Bauman, BES staff members, for their efforts.

Commissioner Hales asked what effect the gas tax increase would have on customer rates.

Ms. Nolan said they have not made a projection of a mix of funding but instead have looked at what portion of the runoff is attributable to the roads, highways, parking lots, etc., which they believe is between 30 and 40 per cent. A policy issue for Council to decide is whether the primary impetus is the volume of storm water, which by itself does not cause a violation of water standards, or the sanitary sewage which does cause the bacterial exceedances.

Commissioner Lindberg asked how much it cost per month for each \$100 million in costs.

Ms. Nolan said it would cost between \$2 and \$4.00 a month in utility bills. A one cent gas tax would generate \$26 million in 20 years, saving .50 to \$1.00 a month.

Commissioner Blumenauer said since Portland constitutes about 85 per cent of Multnomah County there is no reason why gas tax proceeds could not flow back to City residents proportionately. It could all be dedicated to drainage and storm management Countywide.

Donald McClave, Chair of the Clean River Task Force, said the same public that supports clean rivers also expresses great concern about rate increases. What Council is faced with the impact of the additional costs on economic growth. Clean River Task Force does not know what the absolute level of control should be although it generally agrees that there should be 85 per cent control in Willamette and a higher level on the Slough. The idea of a split standard sounds reasonable to them as does the notion of entering into a working partnership with the DEQ. He added that the public is not totally convinced that the project is justified both in political terms and in economic consequences.

Commissioner Blumenauer asked him, as Chamber of Commerce President, what he thought about the level of control.

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Mr. McClave said every time the City agrees to a higher standard of control than is required elsewhere, additional costs for businesses and homeowners will be generated. He recommended not going above the 85 per cent in the Willamette unless there is a very good reason. He said Boston Harbor was an example of an environmental disaster being turned into an economic disaster, as business and homeowners are forced to go elsewhere because of high water and sewer rates.

Mayor Katz said the issue is whether the City comes into the DEQ and draws the line or says we are in this together knowing the need to keep the costs down.

Mr. McClave said the Clean River Task Force did not have technical expertise to support the 85 per cent level. He said he personally believes that SFO as laid down by DEQ is very likely an unreasonable one.

Commissioner Blumenauer said he is not suggesting laying down an absolute line but would like Council to focus on whether the collaborative process would be enhanced by defining Council's point of departure with the SFO.

Dennis Richey, Chair, East Portland District Coalition, said a single rate schedule is unfair to the people in his area, which is still reeling from the financial impact of the mid-County sewer project. He said ongoing costs of the Mid-County project have never been exactly determined nor do they know whether mid-County is being subsidized by other rate payers or whether more revenues are being collected than the project currently costs. Another concern is whether another sewer treatment plant will be needed.

Richard Steinfeld, Portland Chamber of Commerce Sewer Task Force, and President of Steinfeld Products, said they recommend an 85 per cent level for both the Columbia Slough and the Willamette River as set by the federal standard. He said it does not make sense to set standards that the City may or may not meet and then find itself in violation. He said he is excited about some of the efforts being made with individual businesses but is disturbed to learn that a 100 per cent level would not significantly clean up the river. The Chamber supports the resolution wholeheartedly and supports spreading the cost over the broadest customer base possible.

Mayor Katz said the City will make it clear to the DEQ that if the City makes such a commitment to a certain level, other communities must be held to it equally.

David Pietka, 2650 NE Alameda, said spending a billion dollars on this project squeezes out many more worthy projects or services. He said priorities should

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be considered, arguing that the projects' costs and benefits are out of line and should be reconsidered.

Mayor Katz asked if the City should ignore the court order.

Mr. Pietka said it is time to go back to the state and federal governments and say it is absurd to spend a billion dollars to get a marginal benefit when the problem lies elsewhere, noting that the water will still be polluted one out of three days because of upstream pollution. He stressed the need to talk about the entire Columbia basin and called for the levels of control to be changed.

Richard Forester, Committee for Sound Public Policy, 2011 NE Thompson, said the City must know all the impacts of its decisions now that it has the technical information. He said this project should not be dealt with in isolation but should be considered in relation to other capital projects as well as its impact on affordable housing, economic development, etc. The time to study such impacts is right now, not when the pipeline is about to be constructed. He said a collaborative approach is very good but the best results come when the parties know the impacts before committing to any specific approach.

Commissioner Lindberg said he would like to set up a meeting with the Committee for Sound Public Policy.

Donald Bradley, President, Club Estates East Condominium Association, said the 80 units in the Association, mostly single units, got no break on the cost of sewers in Mid-County because they were a condominium. He said they are very concerned about the substantial increases they hear will take place.

Kay Durtschi, Southwest Hills Residential League Chair and member of the Clean River Task Force, said there is a need to slow down and make sure that all bureaus are involved in order to make the CSO project successful. She said her number one concern is how to pay for it, as well as increasing enforcement efforts against pollution violators and making sure those upstream are doing their fair share. She asked that the City also pursue allowing residents to take a tax deduction to cover the cost. She noted EPA's Needy City project which might make funds available for this project.

Commissioner Lindberg said the criteria for that are still being determined.

David Burney, 11439 NE Morris, said the problem with the combined sewers is mostly in the older part of the City and gas taxes may be the best way to finance a project of this magnitude. He said his main concern is to find some way to eliminate double taxation in east Multnomah County.

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Carl Williams, 11304 NE Morris, said he knows the project is necessary but cannot afford the increased costs.

Commissioner Lindberg said Mr. Williams is referring to a flyer distributed in East County. He said he is not sure that the numbers are accurate and he has asked BES to review it.

Mayor Katz cited a memo from the Director of Financial Planning stating the costs at different levels of compliance and noted that they are nowhere close to those referred to by Mr. Williams.

Don Francis, Northwest Environmental Advocates, said eliminating high CSO levels allows the City to maintain its reputation as one of the most desirable places to live in the country based on its protection of natural resources. He said one concern is that if the City goes with the minimum standards it may have to rebuild its system in 25 years or so as more information comes in. He said City residents do not have a moral right to continue to flush toilets into the river and expose people to potentially lethal diseases. He said people downstream from Portland have cause to be concerned as well. He added that the 85 per cent federal standard is not a requirement but a proposed guideline and may move up from there. He endorsed the resolution.

Tom O'Keefe, United Community Action, said commercial users will see a reduction on their storm water charges in July while residential users will see a slight increase. He asked the City to determine how much pollution is coming from industrial users, including Burlington Northern and Wacker Industries, rather than residents.

Paul Richmond, no address given, said residents should not pay for the industrialization of the area. He called for the firing of Joe Glicker.

Commissioner Lindberg moved to amend the report to remove the reference to a recommended funding mechanism and capping the utility franchise fee (Section 5, page 7, paragraph 3) as he believes it should be done as part of the five-year financial plan. He said there is also a proposal to have a full study of rates for low-income citizens.

Commissioner Kafoury asked when that study would be done.

Ms. Nolan said that would be done in time for next spring's budget deliberations. It would evaluate the combined impact of utility charges on low-income households of all ages.

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Mayor Katz said the amendment reflects the desire by Council to look at all utility fees.

Commissioner Hales seconded.

Commissioner Blumenauer asked how low-income rate relief would be financed if the utility franchise fee is not capped.

Commissioner Lindberg said he did not have an answer to that yet, but that would be one of the options.

Commissioner Blumenauer said he had hoped that this report could be the clearest report possible about Council intent with regard to capping the utility franchise fees, noting the potential for a windfall for the General Fund in subsequent years if this is not done. He argued that capping the fees is the only way available to subsidize low income people and deal with affordability, adding that this was recommended by two citizen groups. He urged rejection of this proposal for this reason.

Cay Kershner, Clerk of the Council, said if the amendment passes, the back-up technical documents will need to be revised.

Commissioner Blumenauer asked if this meant that the recommendations that people made would be deleted.

Mayor Katz said the motion was to be silent on the issue of utility franchise fees since it will come back to Council within the context of the five-year financial plan.

Commissioner Kafoury said she will believes the utility cap will be the primary source of revenue for the low-income programs and will take the rest of Council at its word that it will be considered in the future.

Commissioner Lindberg said the windfall in franchise fees does not occur for several years which will give the City time to do a thorough study to see what kind of rate system there should be.

Commissioner Lindberg's amendment passed. (Y-4; N-1, Blumenauer)

Commissioner Blumenauer moved to amend the report to have Council recommend an 85 per cent level on the Willamette and 100 per cent on the Slough. Commissioner Kafoury seconded.

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Ms. Nolan said as she understood it the amendment would call for editing the report to state a preference while still inviting discussion and collaboration.

Commissioner Blumenauer said there is no health hazard to justify higher than an 85 per cent level of control or to justify the expenditure of so much money. He argued that after three years of hard study, Council should set its priorities and then proceed with collaborative efforts.

Commissioner Hales said it is not wise to go into collaborative bargaining with a base line.

Commissioner Kafoury disagreed, arguing that it makes clear what Council goals are and that stating a base line does not undermine the collaborative process.

Commissioner Lindberg said he believes the process he has recommended is better. He asked if the City is really ready to move into its position or is there more work to do before taking a final position. He added that moving beyond minimum federal standards will be extremely costly but noted that the City did basically agree to the 99.6 per cent level stated in the SFO.

Mayor Katz voted no to the amendment but said she is concerned about the cost and the cost of all utilities rising in this area. She said she believes that when you go into a long term process with a regulatory agency you need to make clear your position but do not draw the line.

Roll was called on Commissioner Blumenauer's amendment and the motion failed. (Y-2, Blumenauer and Kafoury; N-3)

Commissioner Hales said the history of these efforts has not been collaborative in the past, noting what had happened with the cleanup of the Tualatin River. All issues raised by citizens are better dealt with in this experimental approach rather than the traditional, more legalistic one.

Mayor Katz stressed the need to continue to look at reducing utility rate raises. She committed to conducting utility rate reviews with input from outsiders.

Disposition: Resolution No. 35154 as amended. (Y-5)

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873 10:30 AM - Instruct the Bureau of Fire, Rescue and Emergency Services to participate in the Multnomah County Ambulance Service Area planning process and to advocate for a public/private partnership system for emergency patient transport (Resolution)

Discussion: Commissioner Hales said there are several key questions to be answered including: is this good public policy; does it improve existing service; and is it reasonable for the City to begin providing a service which has until now been provided by the private sector. He said he intends to bring this back for a vote on June 23.

Commissioner Lindberg declared a conflict of interest because his son works as a paramedic with Buck Ambulance.

Tanya Collier, Multnomah County Commissioner, encouraged passage of the resolution so that the Fire Bureau can be a part of the process. She said she has no predisposition to the outcome yet and that the main goal is to create a plan that delivers high quality service and is timely and cost effective. On June 23, the County will hear all the plans and then come to a conclusion.

Commissioner Hales said with this resolution the City is giving the County a recommendation about what it is prepared to do. The County may agree or not and at any point Council could choose to pull back depending on what the County asked the City to do.

Commissioner Blumenauer asked if it made any difference whether full, partial or whatever service was recommended. Would the County accept or reject the recommendation rather than scaling it down or reconfiguring it.

Ms. Collier said the County would like the Fire Bureau to participate in the whole process rather than putting parameters on the recommendation.

Mayor Katz asked whether the County was likely to recommend that the Fire Bureau do all of the EMS if the City were to give the green light to the Fire Bureau to participate.

Ms. Collier said she honestly does not know the answer to that.

Commissioner Kafoury said she would like to discuss the advantages of having the Fire Bureau take on the entire service, not just part of it.

Commissioner Blumenauer suggested that Commissioners Hales and Collier determine how specific the City's recommendation should be. He said he does not want to be in position of having to give a yes or no answer.

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Commissioner Hales said the County has not gotten clarity about what the City is prepared to do.

Lynn Davis, Acting Fire Chief, said two options were offered at an earlier meeting: 1) advocate a public/private partnership system with the Fire Bureau providing transport of life-threatened patients; 2) call for the Fire Bureau to provide all emergency patient transport. The Bureau recommends that they be allowed to participate in the process and pursue Option 1. He said the Bureau believes its participation has the potential to lower the cost to citizens and provide a higher level of experience with life-threatening emergencies by a smaller group of paramedics. It retains the Bureau's ability to provide advanced life-support in high risk environments such as hazardous materials and Police and rescue operations. The Bureau's lower turnover rate will provide for a more experienced workforce and improved medical direction, providing long term stability and maximizing existing Bureau resources while minimizing the impact on the private sector. They believe this is a logical extension also of Bureau goals.

Tom Steinman, Fire Bureau, said Bureau paramedics are well trained and would provide a very stable workforce. Option 1 will provide the least handoffs possible and have the least paramedic displacement, although it does reduce the number of paramedics that would be required.

Acting Chief Davis said the Bureau believes taking on these additional duties would not negatively impact their fire suppression services. He described time and unit allocations for Bureau staff if critical care transport is assumed, noting that it would account for three per cent of the Bureau's time, and maintained that the changes would not negatively impact current operations and that the peak transport loads can be absorbed and staffing maintained without compromising fire suppression capability.

Mr. Steinman said the Bureau currently provides first response and does not see any negative impact on that. He said one concern is the need for additional paramedics in order to meet County expectations regarding first response. They will begin a system status plan once they know which model the County selects. He said it is not possible to do one until that model is chosen. He reviewed the time allocations.

Commissioner Kafoury asked if staff would be cross trained or if they would be sworn officers.

Chief Davis said that has not been resolved. He said they hope to bring people in from the private sector with the intent of making them all sworn officers, although that may not be possible.

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Commissioner Kafoury asked what the paramedics would do the rest of the time when they are on duty.

Captain Davis said they would still be acting as medics at fire scenes but not engaging in actual fire suppression.

Mr. Steinman said the Bureau predicts response will average 1.2 transports per unit per shift or five per cent more work in order to do the transport but believes it is something it can take on. Until a model is adopted, it is very difficult to get hard answers about what they would happen in non-urban areas, or for the two per cent of the population outside Portland and Gresham.

Commissioner Hales asked what assumptions had been made about the cost of services outside the City limits.

Tom Feely, Fire Bureau Financial Officer, said that cost is built into the proposal. He said one ongoing cost issue regards collection rates, adding that they would expect to hire a private biller and have based their model on a 60 per cent collection rate on advanced life support billings. He updated Council about the Medicare allowable rate, which is higher than what is proposed in their report.

Barbara Cotrell, Fire Bureau Accounting Supervisor, compared pay rates for civilian and Fire Bureau paramedics, maintaining that the Bureau estimates only a small difference between civilian and Fire Bureau paramedic rates. All together the break even rate for the fee comes out to \$22 per transport difference.

Regarding training costs, the Bureau has assumed that any new paramedics would be certified at EMT-4 levels so the initial training costs were not built in for the nine additional paramedics assumption of a tiered response plan would entail. However continuing education and recertification costs were added.

Regarding added liability for the City, Ms. Cotrell said Risk Management indicated the added exposure for transporting injured citizens would not make any difference in current coverage but they would watch the actual history to see if claims increased. There have been very few claims against the City to date.

James Dugoni, Multnomah County Medical Advisory Board, said the tiered response model was rejected by the Board which believes that multiple agency involvement make it much more difficult to provide quality care. It will make

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a second class of private paramedics who receive the so called less critical calls. He said this is an attempt by the Fire Bureau to circumvent the County and Medical Advisory Board recommendations and argued that Council is focusing not on medical care but the financial aspects. He said the Fire Bureau is a vital link in terms of first response and could be a vital provider of all emergency response.

Mr. Dugoni said his preference is for the Portland Area Paramedic Alliance (POPA) plan which identifies a clear line of medical authority and assures quality of care. It calls for one agency to provide all 911 service.

Commissioner Hales said the relative merits of any one plan is not what the City is choosing today.

Mr. Dugoni said the Fire Bureau needs to come forward with a plan to provide all 911 services. The tiered response is inferior and unworthy of consideration.

Commissioner Hales noted that Council has not given the Bureau a clear message about its preference.

Mr. Dugoni said the Bureau should be directed to develop a plan in which they are the sole transporter in the county. The POPA plan does not recommend a particular vendor to the County but only sets up a medical plan with several options. He said the current system has many structural weaknesses in that whenever there are multiple agencies trying to deliver a public service there are patient care problems.

Mark Drake, Care/AA Ambulance, said they support the tiered response and public/private partnership with one modification. They ask that two districts be created for the non-critical care calls, one for Care and one for Buck.

Trace Skeen, CEO, Buck Medical Services, stressed the Tri-Data Study finding that the existing EMS system delivers good service in the majority of cases, despite recommendations for change. He reviewed those findings, including staffing and system standards, quality of service, external monitoring, medical direction, turnover and compensation. He noted that the national excellence standard on response times for first responders calls for a four minute response 90 per cent of the time with the ability to deliver rapid defibrillation. The Fire Bureau is currently running five minutes 76 per cent of the time. On the issue of rates, the standard calls for delivery of such services at less than \$3.00 per capita. Currently Multnomah County pays zero while the provider returns over \$200,000 back to the County.

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Comparing private and public sector costs, the average \$588 per call in the private sector, which has been termed too high by the County, is comparable with public sector providers, such as Salem, Eugene and Seattle. If full costing is done, the Fire Bureau cost is over \$1,011. He said private sector companies are competitive because they can spread the cost over a large base by utilizing the same vehicles for both emergency and non-emergency transport.

Mr. Skeen said the first option should be to provide the Fire Bureau with the resources to provide the four-minute first response time and then look at reducing ambulance response times across the board. He called for regulation of ambulance rates, comparable to the Medicare rates, with annual adjustments and the addition of performance standards. The County should also require a cost benefit analysis.

Commissioner Hales said he understood the tiered approach estimates the Fire Bureau would transport eight per cent of the total volume of ambulance transports in the County. He asked if that was accurate and the effect it would have on private ambulance companies.

Mr. Drake said that will decrease revenues but will also decrease costs under the public/private model. He said it would mean going from an eight per cent response with 90 per cent reliability to a 12 minute response which means they could decrease the number of units they need to have on the street at any one time. It also calls for having only one paramedic, instead of two, which would reduce costs as well.

Mr. Skeen said the financial impact to the private companies would be slightly negative but mostly neutral. Quality of care is the issue and they believe there will be mass exodus of paramedics out of this area committed to dealing with critical patients.

John Pregastas, Portland Area Paramedics Alliance, opposed this resolution, contending the Fire Bureau cannot meet the four minute time standard 90 per cent of the time. He argued that both the City and County data is flawed and incomplete. Another concern is that the people served are the least likely to be able to pay for it. He said no other system in the nation expects that this small a population can be self-supporting and expects the injured party to pay. In addition, there is the question of sending two ambulances because it is hard to determine ahead of time how sick a person is or make judgments about who is just sick and who is critically sick. Other concerns were longer response times, salary differences between sworn and non-sworn people, and the additional capital costs called for by the Tri-Data study. He compared differences in the City plan and that proposed by the County.

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Mayor Katz asked who made the determination as to whether the situation was life-threatening under the County plan.

Mr. Pregastas said the first responder can do that, noting that now a fire ambulance is sent to every call. This is ridiculous. He showed a map of who makes the response time in four minutes, arguing that it needs to be the same throughout the County. He said despite spending \$200,000 on the Tri-Data study, they still have not figured out where to place the units or the medical direction.

At 1:40 p.m., Council took a 20 minute break, resuming at 2:00 p.m.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 16TH DAY OF JUNE, 1993 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Blumenauer, Hales, Kafoury and Lindberg, 5.

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

- 873** Instruct the Bureau of Fire, Rescue and Emergency Services to participate in the Multnomah County Ambulance Service Area planning process and to advocate for a public/private partnership system for emergency patient transport (Resolution; Continued from June 16, 1993, 10:30 a.m Time Certain)

Sonia Zalubowski, East Portland resident, described an outstanding bill her late father incurred from Buck Ambulance that she was unable to get excused. When two agencies respond, costs are doubled, adding that people who call 911 are particularly vulnerable and have no choice.

Alec Jenson, Tualatin Valley Fire and Rescue in Washington County and former Buck Ambulance employee, said the issue before Council is whether the City is willing to use the infrastructure it has built over the past 20 years. He said it is preposterous to suggest that the quality of care will go down if the Fire Bureau gets involved.

Commissioner Kafoury asked if the system would be any better if it were a single system, whether provided by a public or private entity.

Mr. Jenson said yes and it would not matter whether it is the public or private although he personally believes there will be an increased emphasis on the public sector picking up its share.

Commissioner Blumenauer asked if fees are charged in the same way as the private sector or absorbed as part of the overall system when the public provides ambulance service.

Mr. Jenson said generally they are absorbed. The public gets a lesser rate of collections, perhaps because they are more sensitive to individual situations.

Richard Lazar, Emergency Medical Service (EMS) attorney, said he believes public sector involvement is in the public interest. He contended that the assumption of a competitive provider and use of an RFP process by County is incorrect. He said there have been three changes that require a new look at

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how the service is provided: 1) new interest in providing the service by the Fire Bureau; 2) health care reform and; 3) Tri-county regionalization of EMS. He urged support of the resolution but with an amendment that would allow the Fire Bureau to work toward assumption of the entire 911 market.

Dr. John Jui, Oregon Health Science University (OHSU) physician, said the continued viability of the Fire Bureau to provide service is at issue here. He said he has faith in the ability of their paramedics to do the job. A second issue, the need for EMS to begin concentrating on the prevention of illness and injury, is something only the public sector can do.

Carol Frederick, Assistant Professor, OHSU, said many of the proposed systems could provide good care but the job satisfaction of paramedics needs to be considered, noting that a Portland area study showed that public sector employees, in this case Fire Bureau employees, had higher job satisfaction. The effects of a tiered system and factors regarding minority participation must also be addressed, however.

Mike Anderson, Kaiser Permanente, 2201 NW Vaughn, said any EMS system needs to support the health reform measures that are underway, adding that a regionalized system is more effective in creating quality and cost effective service. He said Kaiser has no position currently on any one plan as much more work needs to be done.

Opponents, many of them paramedics, charged that adoption of the tiered system will result in the displacement of many highly trained paramedics, particularly women and minorities who would stand little chance of being hired by the Fire Bureau. They also contended that response times will increase and questioned the accuracy of the data provided by the Bureau regarding the cost.

Ronald Heintzman, President, Amalgamated Transit Union, which represents the professional paramedics and EMTs, said the Multnomah County Medical Advisory Board's judgment that a two-tier system, as recommended by the Fire Bureau, is ineffective should be respected. Another issue is the Fire Bureau's affirmative action record, which is much poorer than the private providers. He contended that if the Fire Bureau is selected to provide emergency medical service, most of the women will not be able to continue in their chosen profession.

John Shipley, 11909 SW 95th, #8, Tigard, 97223, a retired EMT trainer in Houston, said emergency transport charges are far too high in this area, forcing people who need the service to take cabs because they cannot afford the fees. The bottom line should be to serve the people.

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Terry Marsh, Vice President, Buck Medical Service, said he would submit his testimony in writing.

Ray Van Beek, independent CPA for Buck Medical Service, criticized the Fire Bureau budget, maintaining that the lack of a status system plan indicates they do not have the ability to budget. He questioned the accuracy of Fire Bureau cost and revenue assumptions and reviewed areas, such as overtime and capital outlays, where he felt those assumptions were in error.

Tom Lindley, attorney representing Buck Medical Service, raised the issue of City-County equity, noting that the rate to be charged Portland residents. \$600, is different from the fully-costed rate of \$1,011 per transport. That difference is due to the fact that resources are already in place within the City. He said if the City charges the same rate everywhere it runs the risk of being sued by Portland taxpayers for improperly subsidizing those outside the City limits. However, if a cost differential is charged, users outside the City boundaries will have to pay the full actual cost or the County Commissioners will have to increase county taxes to subsidize the Fire Bureau.

Terry Schmidt, Physician Supervisor for Buck Medical Services Ambulance, said either single or tiered response systems can work. What is needed is a system that provides high quality working conditions for the paramedics which allows the hiring of women and minorities. The bottom line is to encourage Fire Bureau participation in the County plan but not limit it to a tiered response.

Individuals speaking in support of the resolution included:

Charles Flake, 6520 NE 6th, #3, 97212

Sgt. Stan Grubbs, Supervisor of the Police Bureau Special Reaction Team

Kli Goram, Clackamas County Rural Fire Department No. 1

Ron Mariani, Fire Bureau employee

Jim Beery, Fire Bureau employee

Mohammed Daya, Assistant Professor, OHSU

Tom Chamberlain, Secretary-Treasurer, Portland Firefighters Assn.

John Moorehead, OHSU, Chairman of the Department of Emergency Medicine

Gordon Johnstone, Arbor Lodge Neighborhood Association

Randy Brusse, Fire Bureau paramedic

Jerris Hedges, OHSU, Department of Emergency Medicine

Proponents supported the proposal as a means to increase efficiency and provide long term stability for the EMS. They also testified to the

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professionalism of Fire Bureau employees and asked that the Fire Bureau be allowed to compete in the process. Many also stressed the need for the public sector to provide this service.

Individuals speaking in opposition to the resolution included:

Cole Theander, 22439 SE Morrison Court, Gresham, OR 97030

Mary Ann Morrison, practicing nurse, no address given

Harold Staigle, 2531 NE 131st, Buck Ambulance employee

John Oliver, 3905 SE Jefferson, Milwaukie

Vern Hilt, 19970 SE Tillstrom, Boring, 97009

Gary McLean, President, Portland Area Paramedic Alliance, PO Box 1183,
Sandy, 97055

Richard Blatt, 13490 SE Hubbard Rd., paramedic

Denise Clark, paramedic with Buck Ambulance

Tina Gay Wilson, 12190 SE Grand Vista Drive, Clackamas

Sean Riley, Multnomah County paramedic

Pontine Rosteck, 424 NE 44th, 97213

Roy Loewen, paramedic

Jean McSharuan, Buck paramedic

Wallace Feist, 1801 NE Couch, 97232

John Shipley, 11909 SW 95th, #8, Tigard, 97223

Mayor Katz asked about the concern raised about whether the County was going to select a provider rather than going through an RFP process.

Bill Collum, Multnomah County, said he does not know the legal answer to that yet or what the legal options are.

Mayor Katz said he ought to know after 15 years. She asked the Fire Bureau what happens now when a 911 call comes in and what will happen under County's proposal.

Mr. Steinman of the Fire Bureau described how the system works now.

Mr. Collum said when the responders get there they would make a decision as to whether the case warrants emergency use of the Fire medic ambulance. He said it is looked at as a system response and the bill would reflect that.

Mayor Katz said a lot of these issues deserve far more review by the County and the Fire Bureau before any of the proposals are adopted.

Commissioner Hales asked County and Fire Bureau staff to provide an analysis on the merits of the POPA plan. He noted that the City is not even

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making a recommendation to the County today other than its willingness to have the Fire Bureau participate.

Commissioner Kafoury said she has believed for a long time that a single system, whether public or private, is needed and urged an amendment to the resolution to allow the Fire Bureau to bid on a single system.

Commissioner Blumenauer said in the 12 years he has been involved, no one has agreed on these issues and no resolution has been achieved. He said the current system cannot be continued with the City subsidizing first response out of the General Fund without any return for it. There is also a lot of redundancy that needs to be eliminated, particularly as changes in the health care system are made. He said it is inappropriate to dismiss the City as a single provider at this point and called for including both options in the resolution.

Commissioner Hales said he is open to that. He said he believes it is good public policy for the Fire Bureau to propose a role for itself in EMS transport and use the machine the public has built in a way that provides maximum benefit. He said one reason for choosing a tiered response system is to minimize the invasion of the private sector and preserve competition but he tends to agree with Commissioners Kafoury and Blumenauer that Council should tell the County that the Fire Bureau is prepared to provide either a tiered or single system. The direction toward regionalization is also an important consideration. He said some changes will have to be made regarding opportunities for women and minorities because of the fact that the Bureau has hired so few in the past.

Commissioner Kafoury said one County option could be a private system as it may be that the Fire Bureau is too expensive.

Commissioner Hales said the County could designate a provider or it could initiate a bid process.

Mayor Katz said the County has to decide whether a tiered system or single provider is best for the community and then everyone can move ahead and bid on that system. At that point the full cost of services can be compared.

Disposition: Continued to June 23, 1993 at 9:30 a.m.

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- 909** Report from the Bureau of General Services, Office of Transportation and Office of Finance and Administration recommending changes in parking rates at City-owned public parking garages (Report introduced by Mayor Katz and Commissioners Blumenauer and Kafoury)

Disposition: Adopted. (Y-4)

Mayor Vera Katz

- 910** Accept recommendation for expenditure of State Shared Revenues in FY 1993-94 (Report)

Disposition: Accepted.

- 911** Certify that certain services are provided by the City of Portland for eligibility of State Shared Revenues (Resolution)

Discussion: Mayor Katz read a statement as required by law to provide certification.

Disposition: Resolution No. 35155. (Y-5)

- 912** Approve the Fiscal Year 1993-94 Oregon Arena Corporation proposed budget pursuant to Coliseum Operating Agreement No. 28356 (Resolution)

Disposition: Resolution No. 35156. (Y-5)

- S*913** Adopt the annual budget of the City of Portland and establish appropriations for the fiscal year beginning July 1, 1993, and subject to certification by the Multnomah County Tax Supervising and Conservation Commission (Ordinance)

Discussion: Commissioner Hales moved acceptance of the Substitute. Commissioner Kafoury seconded and the motion carried. (Y-5)

Tim Grewe, Office of Financial Planning, said the Substitute incorporates technical adjustments that occurred after approval of the Budget and updates it to make it as current as possible. Adjustments to the Oregon Arena and Walnut Creek projects reflect Council direction. He noted that Certification was made by Tax Supervising Commission without recommendations or changes.

Disposition: Substitute Ordinance No. 166632. (Y-5)

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- *914** Adopt a Supplemental Budget for FY 1992-93 of \$293,892,782, increase resources and requirements in various City funds and make appropriations (Ordinance)

Discussion: Tim Grewe, Office of Financial Planning, said this was presented to the Tax Supervising Commission yesterday and was accepted without objections or modifications. This refers to changes in the current year budget.

Disposition: Ordinance No. 166633. (Y-5)

- *915** Elect to accept funds from the State of Oregon under the State Revenue Sharing Program for FY 1993-94 (Ordinance)

Disposition: Ordinance No. 166634. (Y-5)

- *916** Close four City funds and transfer the remaining balances effective June 30, 1993 (Ordinance)

Disposition: Ordinance No. 166635. (Y-5)

Commissioner Earl Blumenauer

- 917** Consider vacating a portion of SW Logan Street and an unnamed alley lying west of SW Macadam Avenue, as initiated by Resolution No. 35138 (Hearing; C-9821)

Disposition: Approved. City Engineer Prepare Ordinance. (Y-5)

- 918** Consider vacating a portion of an unnamed street south of N Marine Drive which lies along the east side of the Exposition Center, as initiated by Resolution No. 35137 (Hearing; C-9833)

Discussion: Lee McCormick, chief engineer for KINK-FM102, said their primary concern is that the buffer zone will revert to their ownership.

Ms. Hall said when a street is vacated, it is returned to the property from which it is dedicated and that is done by the County assessor.

Disposition: Approved. City Engineer Prepare Ordinance (Y-5)

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- 919** Consider vacating certain portions of N Burr Avenue, N Bellingham Street, N Moltzen Street and an alleyway in Block 22, East St. Johns Addition, as requested by Jim McGehee, Builder (Hearing; C-9824)

Disposition: Approved. City Engineer Prepare Ordinance (Y-5)

- 920** Declare the purpose and intention of the City of Portland to construct street and storm sewer improvements on SW 7th Avenue from SW Alice Street to SW Lobelia Street and SW Orchid Street from SW Terwilliger Boulevard to SW 8th Avenue (Resolution; C-9797)

Disposition: Resolution No. 35157. (Y-5)

- *921** Authorize continued negotiations for the purchase of rights-of-way required for the N Marine Drive Phase 1, Rivergate - N Portland Road Section, Street Improvement Project, and in the event that no satisfactory agreement can be reached, authorize the City Attorney to commence condemnation proceedings and authorize the City Attorney to obtain early possession (Ordinance)

Disposition: Ordinance No. 166636. (Y-5)

- S-922** Adopt regulations prohibiting the rental of rooms by the hour at businesses that provide overnight accommodations (Second Reading Agenda 825; amend City Code Title 14)

Discussion: Commissioner Blumenauer, noting that an emergency clause had been added to the ordinance, moved acceptance of the Substitute. The motion carried. (Y-5)

Disposition: Substitute Ordinance No. 166637. (Y-5)

- *923** Increase Appropriation Unit authority for purchases from \$500 to \$5,000 and eliminate requirement for approval of the Commissioner-in-Charge (Ordinance; amend City Code Section 5.01.030)

Disposition: Ordinance No. 166638. (Y-5)

Commissioner Charlie Hales

- 924** Recommend \$63,000 appropriation in Portland Parks and Recreation budget to operate youth programs (Report)

Discussion: Commissioner Kafoury asked about interaction with the School district.

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Commissioner Hales said Parks is still negotiating with the District to see if a more innovative approach can be found. He said the fall back position would be traditional payment of janitorial services and fees.

Mayor Katz asked why Council has to act today. She said she objects to paying rent.

David Judd, Bureau of Parks and Recreation, said the Office of Finance and Administration recommends that this be deferred to August. He said the School District has not been able to give clear directions about how its budget decisions will affect fall, winter and spring programs.

Mayor Katz said she told the School Superintendent that the City could not pay rent for facilities that are empty anyway. She asked to hold off on this until July 28th.

Disposition: Continued to July 28, 1993 at 9:30 a.m.

- 925** Recommend smaller, decentralized Mt. Tabor stores operation be established and managed by the Bureau of Parks and Recreation for parks maintenance and program needs, and FY 1993-94 Parks and Recreation budget be increased by \$116,026 (Report)

Discussion: Mayor Katz questioned the amount being paid and said this needs to come back at another time.

Disposition: Continued to July 23, 1993 at 9:30 a.m.

Commissioner Gretchen Kafoury

- 926** Appeal of Portsmouth Neighborhood Association of decision of Noise Review Board to grant a variance to Bill Graham Presents for a concert on June 20, 1993 (Hearing on Appeal)

Disposition: Continued to June 17, 1993 at 2:00 p.m.

Commissioner Mike Lindberg

- 927** Select a preferred alternative for the Bull Run Lake Environmental Assessment (Resolution)

Discussion: Joe Glicker, Water Bureau, said Bull Run Lake has been used as a storage reservoir to meet water supply needs, if necessary. The Lake is on Forest Service land and the City has been granted a special use permit to

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use it. Part of the last agreement was that a long term recommendation for use of the lake would be developed. The Forest Service will actually make the decision but will take into consideration the City's recommendation. Six alternatives were looked at in detail: this resolution recommends alternative B which balances use of the Lake and also directs the Water Bureau to maintain the Lake as full as possible and sets a target for its full recovery, including mitigation efforts.

Commissioner Lindberg asked about the cost over 20 years.

Mr. Glicker said they are asking for a 20 year permit so that they can rely on the use of the Bull Run Lake for a longer time period. There is also a significant cost, \$86,000, to prepare such a permit. The resolution calls for yearly reports back to Council on the environmental impacts and, if there are unacceptable impacts, there will be a process to allow public input. The Permit can also be reviewed if new information comes to light relating to water supply or the effect on the fish population and other species. Types of mitigation efforts are not spelled out in the environmental assessment itself but a mitigation strategy will be enacted at a cost of about \$70,000 in the first year. Even without mitigation there is no significant environmental impact on the lake.

Commissioner Kafoury asked why the Bureau was not recommending Option C, the choice of the Water Advisory Council.

Mr. Glicker said Option C would be more protective of the environment and less flexible about water supply. However, under Option C, it will be much more difficult for City itself to decide how to use the Lake. Under Option B, use becomes the City's decision, rather than the Forest Service's.

Frank Gearhart, President of Citizens Interested in Bull Run, said because of prior decisions the Water Bureau is in a tight spot and now has to ask the Forest Service to allow use of Bull Run Lake as a backup water source. He said none of the alternatives are appropriate and the only possible solution is an extension of the present permit for perhaps two years to see how things go. He said his organization has requested an environmental assessment from the Forest Service but have had no response.

Tom O'Keefe, United Community Action, said they support Option D which calls for no action. He said they are concerned about turning this lake into a reservoir and believe there should be no access. He said nothing was drawn from Bull Run Lake during the drought because the City could use the Blue Lake wells instead.

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Vera Davoe, said the environmental assessment is not sufficient and she cannot support any of the options. She recommended extension of the current permit for several years, not 20, as the best alternative. She said Bull Run Lake should stay a lake and not be turned into a third reservoir.

Joseph L. Miller, Jr., supported seeking a one year permit and continuing what was done last year. He said a 20-year permit will interfere with Commissioner Lindberg and Representatives Wyden and Furse's options and approval would be a living monument to the collusion of the Forest Service and Water Bureau. He said all the options presented in the resolution are unacceptable and stacked.

Ragne Merrit, Oregon Natural Resources Council, said this Lake is a jewel which is valuable because it has been unmanaged. She said the environmental assessment is inadequate and noted an alternative proposed by the Water Quality Advisory Committee. She said fish issues should also be considered as fish in this area act as a control because of the Lake's lack of use. She said they believe the Water Bureau will rely on pumping and mitigation which will cost at least \$80,000. She recommended wrapping the Lake into a larger environmental assessment area and considering the broader picture.

Commissioner Lindberg said this was brought forward after dozens of hours spent with the Bureau. He said the goal is to never use this Lake but there is a need to make sure the City does not reach a point where there is mandatory curtailment of water or a water filtration plant is required. He said a multitude of other actions would be taken before taking water from this Lake, adding that the Bureau was responding to pressure from his office to give the City every tool at its disposal to satisfy water supply needs. He said he knows the Bureau would hope never to use the Lake. He said he is personally open to reducing the time frame but the Bureau asked for 20 years in order to save money. Council can direct that no water ever be taken but that takes another tool out of tool bag. He said public review could also be directed prior to using the Lake.

Mayor Katz said she hears concerns about when use will be triggered as well as long period of time.

Mr. Glicker said use of the Lake is considered a last resort by the Bureau but unfortunately because of the limitation on use of the wells, they have had to rely on the Lake more frequently than they would like to. The Bureau would be open to seeking a permit for a shorter duration but the Forest Service has indicated it is not interested in a one or two-year permit and would prefer a

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longer time period. The Water Bureau prefers a longer permit length also to give them confidence that they could rely on the Lake in their planning efforts.

Commissioner Lindberg said the Bureau wanted this tool available for the summer but it could be set over if Council wished.

Mr. Glicker said the current permit expires July 15 and a new permit could be obtained no earlier than August 15. The beginning drawdown is not estimated not to begin until mid-July.

Mayor Katz asked Council what instructions it wished to give the Bureau before bringing this back for a vote.

Commissioner Lindberg said no one wants to make this Lake a reservoir.

Mayor Katz said the length of the permit is an issue and whether there could be a public hearing about it first. She said she would like to shorten the permit time and add language to deal with some of the safeguards regarding the public process. She said it is not clear that public response will be sought prior to using the Lake.

Mr. Glicker said he would not like to delay this for more than two weeks as then they would not have access until September. Given this year's supply, however, it would probably be okay to delay until then.

Disposition: Continued to June 30, 1993 at 9:30 a.m.

- *928** Authorize negotiations for the purchase of one permanent sewer easement required for construction of the SW Barbur Boulevard, SW 24th Avenue, SW Hume Court Sanitary and Storm Sewer Project, and, if no satisfactory agreement can be reached, authorize the City Attorney to begin condemnation proceedings and obtain early possession (Ordinance)

Discussion: Susan Feldman, Planning Bureau, said the City wants to impose a condition for a dedicated easement. If that fails in the land use process, passage of this ordinance will serve as a backup way of getting the dedication.

Disposition: Ordinance No. 166639. (Y-5)

- *929** Authorize execution of an agreement with Marathon US Realities, Inc., for purchase of Guilds Lake property (Ordinance)

Disposition: Ordinance No. 166640. (Y-5)

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***930** Authorize contract with Portland General Electric for warehousing and inventorying services for the Water Bureau, not to exceed \$50,000 without advertising for bids, authorizing the drawing and delivery of warrants and declaring an emergency (Ordinance)

Discussion: Commissioner Lindberg said water efficiency kits will be delivered to 100,000 customers.

Disposition: Ordinance No. 166641. (Y-5)

***931** Call for bids for color laser production printer for the Water Bureau (Ordinance)

Disposition: Ordinance No. 166642. (Y-5)

City Auditor Barbara Clark

932 Assess property for sewer system development charges through May, 1993 (Second Reading Agenda 868; Z0432 through Z0439)

Disposition: Ordinance No. 166643. (Y-5)

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933 TIME CERTAIN: 2:00 PM - Consider request by Tan and Thanh Hai Vominh and Paul and Dorothy Anderson for a Comprehensive Plan Map Amendment and Zone Change from R5 to CG to allow continuation of an existing service station in an R5 zone located at NE 72nd and Halsey (Previous Agenda 507; 92-00563 CP ZC)

Discussion: Susan Feldman, Bureau of Planning, said this is a proposal for a zone change from R5 to CG which would allow an existing auto repair business, not an existing gas station as stated in the title, to continue at this site. This is not an appeal but a recommendation from the Hearings Officer to the Council. Both the Hearings Officer and the Bureau of Planning recommend denial of the request.

Ms. Feldman noted that a zone change was granted in 1954 from residential to commercial to legalize an illegally established gas station on the eastern portion of the site. The zone change had a condition that if the gas station use was to cease, the zoning would revert back to residential. In 1959, the site was legislatively rezoned to multi-family residential and then to single family residential in 1981 when the Comprehensive Plan was adopted. The gas station operation ceased in the late 1980s. The current use of auto repair was established illegally and is not considered a legal non-conforming use. Ms. Feldman also noted that in 1990 the deedholders signed a Consent Order which would have allowed them to reestablish the gas station use after a two-year hiatus. She said the Code Compliance Officer stretched the regulations to allow them to reestablish that use but that option was not picked up on.

Ms. Feldman said there are two important policy issues involved. First, Council must find that the Comp Plan map amendment criteria are satisfied and that the proposed designation is equally or more supportive of the Comprehensive Plan as a whole than the existing residential designation. Neither the staff or the Hearings Officer can make findings in support of that designation. The second issue is that the applicants ask that the zone change be conditioned to allow only the existing auto repair use on this site. This would disallow the full range of commercial uses and both the staff and Hearings Officer rejected this request. She said in the past zone changes with these kinds of conditions have caused many enforcement problems and buyers are often unaware of the limitations on what appears to be general commercial property. Finally, the Bureau believes it is generally bad policy to continue this use as it would not be supportive of the Comprehensive Plan goal. Ms. Feldman added that prior Councils have affirmed the residential use of this site three times.

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Jean Harrison, Office of Transportation, said Halsey is designated as a major transit street so allowing an auto-oriented use to continue violates that classification. She said there is a bus stop at the corner of this site and traffic from businesses would interfere with the smooth flow of transit and the ability of pedestrians to safety access that transit. She said the designation is supported by the Transportation Element adopted last fall and by the Transportation Planning Rule adopted in 1991 by the State and which the City is obligated to follow.

Ruth Selid, Planning Bureau, showed slides of the site.

Adrienne Brockman, Deputy City Attorney, announced guidelines for this hearing and for filing an appeal. Ms. Feldman read the applicable criteria on which the decision must be based, including 33.855.050, Zoning Map amendments, and 33.810.050 (a) Comprehensive Map approval.

Bud Morrison, representing Thanh Hai Vominh, objected to the fact that they paid \$3,000 in application fees alone to get this far and are now only getting 10 minutes when people's jobs are at stake.

Commissioner Hales said these rules are applied to all land use proceedings and apologized for the wait this afternoon.

Mr. Morrison said their businesses have been disrupted for two solid days and they lost some of their supporters because of the continuation and the delay in being heard today. He said the Vominhs purchased the property unaware that it had lost its non-conforming use even as a service station, much less as an auto repair business, which had been converted by the previous owners in 1981. He said the irony is that if the applicants had continued to be a service station, they would be creating a lot more problems for a transit street. He said the first issue raised by the City regarded meeting the no-net housing loss. He contended that loss is being met by the creation of two apartments, which the Hearings Officer conceded could be met with a covenant. He said they could also sign a covenant restricting use to the automotive repair uses that have been going on there for 10 years. He said the Hearings Officer fails to mention the central issue, that of sustaining stability in the neighborhood. Mr. Morrison noted support for the this request from the Montavilla Community Association and said they also have the signatures of 35 neighbors in support. He said the neighbors are so supportive because they fear what will happen if these businesses, which offer a valuable service to the community, are lost. He contested the Hearings Officer designation of these businesses as marginal.

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Regarding the transit issue, Mr. Morrison said the City has never surveyed how many customers come there. He said the businesses do not attract that much traffic, not like a bank or a convenience store, or like the many apartments in the neighborhood. He said the Hearings Officer does not put much emphasis on economic development although the Comprehensive Plan considers it very important. He said the Hearings Officer admits that the existing business may be the best short term answer to the longstanding land use problem but doubts that it is the best long term answer. He said they never asked for a zone change or amendments to the Comprehensive Plan and would accept a variance, conditional use or any covenant or deed restriction to hold them to these uses. He said the entire neighborhood wants these businesses to stay and the applicants are willing to fix the area up and make it very attractive. He said if the businesses are closed, the neighborhood will be destabilized.

Tan Vominh, owner of the property, showed some slides to prove that a new business would not be placed there, just continued use of his commercial business.

Mr. Morrison said if the City had enforced this in the beginning, the owners would not be in this situation now. He contended that there are not many more intensive uses in the CG zone except for a tavern which could be controlled by a license or a service station, which is not economically viable today. He said the applicants would never have purchased the property in the first place and he did not accept at all that the City did not have the power or resources to monitor Code violations. He offered as a compromise, suspending the enforcement for a five-year period at the end of which time applicant would agree to tear the businesses down. If there were problems before the end of the period, the City could call for closure. He said that compromise would satisfy the applicants and neighbors and give everyone a chance to see how Halsey develops.

Jerry Reynolds, 7130 NE Halsey, 97213, one of the building tenants, said if this does not go through, he does not know what he will do. He said he has the support of all the neighborhood, except for one man. He noted that the landlord is willing to spend money to fix it up and criticized the City's process.

Jim Harper, 1425 SE 34th, said if he loses this place he does not know where he will go.

Oscar Hess, Montavilla Community Association, said the neighborhood association voted unanimously to approve the zone change, which really just leaves things as they have been for years. Neighbors voiced concern over the

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loss of two businesses and the use of pay phone located there. He noted the willingness of the owners to upgrade the property to make it less of an eyesore.

Ms. Feldman noted the opportunity of the deedholder to reestablish the gas station use in 1990 which could have included auto repair as well. She said the owners at that time did not take advantage of that opportunity even though they were well aware their commercial option was running out.

Commissioner Blumenauer asked about the precedent if someone does not check use before purchasing property.

Ms. Feldman said that is not valid grounds for a zone change. She said they encourage people to check with their title companies prior to purchase. She said the applicant (the deedholders) did have knowledge of this problem in 1990.

Mr. Vominh said when they bought the property they believed it was commercial zoning because a gas station was there. Then he was told that if he did not pump gas they would remove his business.

Commissioner Hales said he is struggling with the fact that while this is a transit street designated with a housing zone, the City is trying to enforce use of a gas station instead of a vehicle repair business.

Ms. Feldman said she believes there was more than a two-year suspension of the gas station operation and if the owner had continued to operate a gas station there that would have been legal because the previous zone change had the condition that only a gas station could operate there.

Commissioner Blumenauer said it sounds like the Code Compliance Officer tried to supply a quick fix in 1990 that was not consistent with City policy and now these stretched limits are being parleyed into a permanent change contrary to City policy.

Ms. Feldman said the deedholder knew when he sold the property that he did not have a legal, commercial use there and could not reestablish it because he did not take up the option to continue the gas station use.

Commissioner Hales noted support from the Montavilla Community Association.

Ruth Selid, Bureau of Planning, said she was not sure whether the request for support was in the form of a zone change or just requesting that the current businesses stay there.

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Mayor Katz noted that the Association letter specifically supports a zone change as outlined by the applicants.

Ms. Feldman said there is a halfmile residential strip along that portion of Halsey. She also pointed out that the western half of the property was never legally a part of the gas station use which over time crept onto that half and now the applicant is asking for a zone change for the whole north half between 71st and 72nd on Halsey.

Ms. Selid, Bureau of Planning, noted that the properties on the corner were downzoned from GC (general commercial) to CN (neighborhood commercial) during the last legislative zone change in order to support transit, not of a regional nature.

Commissioner Hales asked why a CN was not requested instead of a CG.

Commissioner Blumenauer said the question is whether the City is going to institutionalize a nonconforming and illegal use and make it impossible to make the transition on Halsey to support other uses.

Ms. Feldman said auto repair has not been allowed as a new use in the CN2 zone since 1992.

Mr. Morrison said their block could not equal the large industrial zone just north of the Vominh property.

Commissioner Hales said he would like to spend some more time with staff to clear up issues raised today.

Commissioner Kafoury said she wants to be sensitive to individual cases but is concerned with the policy precedent that will be set if Council allows cases such as this, albeit painful ones, to change the zoning.

Commissioner Blumenauer said even though the Code has not been vigorously enforced on this site, Council should not undercut established policy on transit streets. Approval means there will be piecemeal application of the Code. He said he is sorry the applicant did not check what was allowed prior to purchase but Council cannot grant the change simply because they did not get the information as then anyone could come in and say they forget to check.

Commissioner Hales said he agrees that ignorance of the law is no excuse and that the zone change should not be granted simply because someone feels sorry for the applicants. What concerns him is the neighborhood association recommendation for a site-specific rezoning, something which was given

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considerable weight in the Albina Community Plan. He said he is not sure also how clear the City has been, given the record of enforcement on this site. He said he wanted to gain a better understanding of the staff report and Hearings Officer's recommendation as well as the precedents that would be set by granting the request.

Ms. Feldman said they will contact the Neighborhood Association to clarify that many who signed petitions favored a conditional use, not a permanent zone change.

Disposition: Continued to June 24, 1993 at 2:00 p.m.

REGULAR AGENDA

Commissioner Charlie Hales

- 934** Consider request for Comprehensive Plan Map amendment and zone change from R2 to CG to build an office building on property at SW 24th and Spring Garden Road and to amend ordinance to allow modification of development on property at SW 24th Avenue and Hume Court (Previous Agenda 786; amend Ordinance No. 154620)

Disposition: Continued to June 30, 1993 at 2:00 p.m.

- 935** Amend the Comprehensive Plan Map and change the zone of property at SW 24th Avenue and SW Spring Garden Road, from R2, Residential, to CG, Commercial, with conditions (Previous Agenda 787; 92-00853 CP ZC)

Disposition: Continued to June 30, 1993 at 2:00 p.m.

- 936** Amend Ordinance No. 154620, which granted a Zone Change on property located on SW Hume Court at SW 26th Avenue, from R7 to R2, to modify Condition 1, and add conditions (Previous Agenda 788; 92-00853 CP ZC)

Disposition: Continued to June 30, 1993 at 2:00 p.m.

FOUR FIFTHS AGENDA

- 936-1** Amend Title 33, Planning and Zoning, to clarify several issues (Ordinance)

Disposition: Continued to June 17, 1993 at 2:00 p.m.

At 7:10 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 17TH DAY OF JUNE, 1993 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Blumenauer, Hales, Kafoury and Lindberg, 5.

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

937 TIME CERTAIN: 2:00 PM - Amend the Business License Law to obtain code conformity with Multnomah County, County Business Income Tax (Ordinance introduced by Commissioner Kafoury)

Discussion: Hank Miggins, Acting Chair of the Multnomah County Commission, said one of the issues for him was local control.

Dennis Nelson, Director, Bureau of Licenses Director, said the first ordinance conforms the two Codes. He said the changes have been reviewed by many persons in the business community. Major changes include: 1) adoption of a single factor system which they believe supports fairness throughout; 2) moving to estimated quarterly payments for some businesses; 3) raising the exemption from \$10-15,000 gross and extending the amount of net operating loss that can be carried over. He said they also took a hard look at the residential exemption and considered lowering it from nine to five houses but finally changed it to 10.

Commissioner Kafoury said the quality Housing Task Force recommended lowering it to five houses and will be considering that issue at a later time.

Mr. Miggins said a mechanism needs to be set up so such changes can be reviewed rather than considering them on an ad hoc basis.

Mr. Nelson said businesses will now see one form, write one check and have one agency they can complain to. He said several items are still in process, including having the Mayor's Business Roundtable give them an idea of the effect on economic development. After a year they should have a pretty good idea of what other changes may be needed.

Regarding revenue neutrality, Mr. Miggins said there is approximately \$300,000 that the County would gain in income.

Mayor Katz asked what information had been mailed to business leaders.

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Mr. Nelson described efforts to reach businesses and the public, including surveys. It was on that basis that the ordinances were made it revenue neutral.

Barbara Adler, Past President, Coalition of Metropolitan Properties Association, said her group voted to support the proposal only if it were revenue neutral. She charged that Portland has the highest taxes on small businesses of any city in the country. She said they still have concerns about elimination or loss carryovers and also believe the deduction should be increased and then adjusted annually based on inflation.

Stephen Workman, Independent Employees Association, 1750 SW Skyline Blvd., 97221, said they are pleased with the majority of the changes proposed. On the issue of net operating losses, they believe the City and County should consider adopting the Oregon statute that allows a 15-year carry forward and offsetting of 100 per cent of current income, rather than the proposed 75 per cent offset with only a 5-year carry forward. They are also concerned about the current use of the \$50,000 limit on shareholder deductions which impacts small businesses disproportionately. They asked to be included in any future meetings to consider those changes.

Robert Butler, 824 SW 18th, 97205, said all of the County Commissioners had concerns about the income tax on owners' compensation over and above the normal tax paid by businesses. They were also concerned about the lack of data to answer questions about what would happen if that lid were changed from \$50,000 to \$125,000, for example, as recommended in 1991 by the Citizens Task Force. He said actually an overwhelming amount of data has been gathered and he urged Council to assemble and report on that data as soon as possible rather than waiting a year. He said that issue has been on the shelf long enough.

Commissioner Hales said Code conformity is achieving more than revenue neutrality. It is also more favorable to small businesses and those located within the City and County. The result is a better and simpler Code with a leaner administrative structure, although the issues raised today do need more attention.

Mayor Katz asked Mr. Nelson to identify a Task Force and a process for continuing this work at the Second Reading.

Commissioner Blumenauer asked for information about the validity of the charges that Portland has the highest tax rate on businesses in the country.

Disposition: Passed to Second Reading June 23, 1993 at 2:00 p.m.

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- 938** Authorize intergovernmental agreement which contracts with Multnomah County for the Bureau of Licenses to administer the Multnomah County Business Income Tax program (Ordinance introduced by Commissioner Kafoury)

Disposition: Passed to Second Reading June 23, 1993 at 2:00 p.m.

- 926** Appeal of Portsmouth Neighborhood Association of decision of Noise Review Board to grant a variance to Bill Graham Presents for a concert on June 20, 1993 (Hearing on Appeal)

Discussion: Larry Scruggs, Chair of the Noise Review Board, said the event at issue today is a concert by Lollapalooza. In exchange for receiving a variance to allow them to exceed normal decibel levels for a 30 minute period, the applicant agreed to a number of conditions to mitigate the noise effects. Mr. Scruggs said the real issue here today is not the 30 minute variance but the growth in the number of places in North Portland that generate noise, such as Delta Park and Portland Meadows. He noted that currently there is little or no coordination between events at these facilities so that the cumulative effect is increased traffic and noise in this area. He said unfortunately that is outside the jurisdiction of the Noise Review Board.

Commissioner Lindberg said he would agree in terms of the increased number of events but he believes that at the PIR there has been about a 90% reduction in the number of times violations occur.

Mr. Scruggs concurred, noting that this year they have had only three events requiring noise variances, but said the cumulative growth in the number of events is causing concern from neighbors.

Paul Herman, Noise Review Board, said the Board's job is to act on the variance requests it receives. From the residents viewpoint, it is non stop throughout the summer but the Board does not have the authority to deal with that.

Lee Poe, Chair, Portsmouth Neighborhood Association, said their issues have to do both with the rock concern and with the bigger issue of having their neighborhood polluted with noise that goes on day and night from events, traffic, industry and the PIR racetrack. She said they also protest the fact that there will be between 6,000 and 20,000 strangers in their community and believe this group will not be a healthy addition to the neighborhood. She said a comparison of other cities shows that Portland is in excess of other cities in the noise levels it allows and should be brought into line with what other cities allow.

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Pam Arden, Kenton Neighborhood Association, referred to an October 1993 concert at Portland Meadows which caused many of her neighbors to complain. She said the conditions added to the variance are a step toward trying to get people to be responsible. She said the Board was trying very hard to get the promoter to stay within the 65 decibels and the promoter was saying they did not think they could do that. She said there are five other concerts scheduled now and this may be a constant routine all summer long. Another concern is that Portland Meadows is supposed to have a conditional use permit in order to have a major entertainment event such as horse racing. In order to change from one major entertainment event to another, such as a concert they need to seek a conditional use. She believes this is an illegal use right now.

Mayor Katz asked for a legal opinion about the conditional use.

Dave Pittman, Portland Meadows, concurred that neighborhood concerns have not always been taken into consideration when events are planned but said they are doing everything they can to monitor the noise. He said they are trying to be good neighbors, but pointed out that if the City does not allow events there, many groups would not come to Portland at all.

Mike Quinn, Monqui Presents, producer of the Lollapalooza show and also producer of the Nirvana show last November which neighbors objected to, described differences in the two shows that should lessen the noise level. He said they will monitor noise levels in the neighborhoods and maintain hot lines and an immediate response system. He said the variance was needed to assure artistic integrity.

Commissioner Blumenauer asked what would happen if did not get the variance.

Mr. Quinn said they will live within the limits and at 10 p.m. will have to turn the decibel level down.

Commissioner Kafoury asked what the penalties were.

Mr. Herman said he could only issue one citation per day, with a maximum of a \$500 fine. One other possibility is closing down the concert which would cause him to risk life and limb. He said the biggest hammer available is to turn the group down next time if it does not perform up to snuff this time.

Mayor Katz asked what artistic integrity needs to be maintained between 10 and 10:30 pm.

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Mr. Quinn said a lot of the contracts with musicians specify a specific decibel level.

Mayor Katz asked whether Council has the tools to deny this promoter access to these facilities in the future if he breaks the Code now.

Mr. Herman said one of problems is that each application is a new one and it is difficult to employ criteria in such cases.

Commissioner Kafoury said that can be changed.

Commissioner Blumenauer noted that there are six sites, some of which the City controls, and said he is concerned about holding the owners of the properties responsible as well as the promoters.

Mayor Katz asked if the owners could be held responsible for Noise Code violations.

Mr. Herman said no. He also noted that he is the only one who monitors noise violations.

Commissioner Hales asked how often anyone was fined in the last year.

Mr. Herman said he has issued 50 citations in the past 20 years and has found that he is usually dealing with repetitive situations.

Linda Meng, Chief Deputy City Attorney, said she would like to do some more research regarding conditional use requirements.

Commissioner Kafoury moved to grant the appeal and deny the variance.

Disposition: Appeal granted; variance denied. (Y-5)

Four Fifths Agenda

936-1 Amend Title 33, Planning and Zoning, to clarify several issues (Ordinance)

Discussion: Jessica Richman, Planning Bureau staff, said this package proposes 16 changes and outlined the major ones. She said many of the changes will reduce staff work and streamline processes. Regarding the Adler Bread and Breakfast case, she said state law says that the record must be kept open for seven days for anyone who requests it but does not require that this be announced. That announcement was not made in the Adler case and it was remanded for that reason because our Code states that such an announcement

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will be made. The Planning Commission heard testimony on this issue and recommends that our Code not be amended to delete the announcement requirement.

Stephen Adler, attorney, 1211 SW 5th, testified in favor of the Planning Commission recommendation that the announcement regarding the option of keeping the record for seven days continue to be required. He described his experience in seeking approval for a bed and breakfast in his neighborhood and objected to the amount of time he was granted. He said since the applicant is often only allowed five minutes to speak, keeping the record open to provide additional information is needed.

Commissioner Blumenauer said he remembers the Adler case as a relatively simple and straightforward one and the notion that it would consume a huge amount of public expense for both parties and could be remanded on this technicality concerns him. Our notice now says that people have the right to request that the record be kept open. He said he is willing to have it read, as well as putting it in the notice, but questions whether a hearing should be subject to remand solely on the basis of someone not repeating these words. He said that is legalism run amok and failure to have another reminder should not trigger a complete reversal, as happened in the Adler case.

Ms. Richman said the the broader issue of opening up a remand based on a technical point is a problem with all legal situations now. In this particular instance if our Code had not said Council must make this announcement, there would not have been a remand. Eliminating that announcement would have helped in this case.

Commissioner Blumenauer said neighbors were mystified (in the Adler case) by the technicality that forced them to come back down to Council and go through another hearing. He said he is suggesting that Council amend the ordinance and eliminate use of failure to read a sentence as grounds for a technical appeal even though it would continue to be read.

Mayor Katz said she is concerned about getting public input on this. She said the interested parties should be informed that Council will be acting on this issue and not denied the right to testify.

Commissioner Hales said he does not believe this should be dealt with piecemeal. He said the land use appeals process is procedurally bound and the system is so byzantine that every party to it is confused and frustrated. While this needs to be addressed it is but one of 50 items on a list of actions needed to make the appeals process less arcane and quicker.

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Commissioner Blumenauer said he will not make a motion now. He suggested that Council members talk to people on the other side who felt violated.

Mayor Katz said the problem is that no one is here to talk about that issue because they thought it was off the table. She said she would be willing to bring it back, and may even support the motion, but needs to have that discussion with citizens.

Ms. Richman said all letters received by the Planning Commission were against deleting the announcement. No testimony was received in favor of the deletion. Several neighborhood representatives wrote letters but did not attend today's hearing because the ordinance was not filed in time and the hearing has to be continued to next week, with the second reading on June 30.

Commissioner Blumenauer said this is an example of why he is concerned about their ability to function as a Council. This is really cut and dried and it is not good use of Council time to spend two hours on something Council should be able to figure out in 30 seconds.

Mayor Katz said it is good use of Council time to make sure the public understands why Council might adopt such a motion. She asked that the neighborhood associations be informed of the issue so they can testify next week.

Ms. Richman said the neighborhoods chose not to come today because they felt that they had either registered their testimony or that Council was going to agree with the Planning Commission. She said she would be glad to call them.

Mayor Katz said the point raised by Commissioner Blumenauer was valid but Council needs to explain to the public that it is not trying to pull a fast one.

Commissioner Hales said he would prefer not to act on this item now but come back to include it with other procedural matters later. He said having a one hour hearing on one piece of the puzzle is not efficient. He said it could come back in six months when next package of amendments is dealt with.

Ms. Richman said if Council supports the Planning Commission recommendation of no change, there would be no follow up on this particular element unless Council directs otherwise and it would not be addressed in the next amendments package unless another project was dropped.

Commissioner Hales asked if there were other instances at which our Code is at variance with the State.

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Ms. Richman said there are many instances where City requirements exceed those of the State because during the Code rewrite process neighborhoods asked for additional notification.

Commissioner Hales asked Commissioner Blumenauer if he wanted to take them all on or just this one.

Commissioner Blumenauer said when a problem can be solved without going through prolonged effort, it should be done then.

Mayor Katz said there are probably three votes to make that change but asked staff to notify the neighborhoods about this and give them an opportunity to testify.

Disposition: Continued to June 24, 1993 at 2:00 p.m.

At 4:00 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council