



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 18TH DAY OF AUGUST, 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; Harry Auerbach, Deputy City Attorney; and J.P. Smith, Sergeant at Arms.

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

CONSENT AGENDA - NO DISCUSSION

- 1322** Accept bid of Xerox Corporation for color highlight production laser printer for \$271,061 (Purchasing Report - Bid 6)

Disposition: Accepted; prepare contract.

- 1323** Accept bid of Eagle Elsner, Inc., for street improvement within Win Sivers Business Park and construction of street lighting, traffic signals, and sewers for \$405,004 (Purchasing Report - Bid C-9846)

Disposition: Accepted; prepare contract.

Mayor Vera Katz

- *1324** Fix compensation of Charles A. Moose as Chief of Bureau of Police (Ordinance)

Disposition: Ordinance No. 166853. (Y-5)

- *1325** Authorize the Mayor and the Auditor to execute an agreement with ChiroCare of Oregon for the provision of chiropractic preferred provider health care services to the City of Portland self-insured plan participants (Ordinance)

Disposition: Ordinance No. 166854. (Y-5)

- *1326** Authorize restoration of forfeited vacation and compensatory time off to the accounts of 55 Police Bureau employees (Ordinance; return Agenda 1002)

Disposition: Ordinance No. 166855. (Y-5)

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***1327** Pay claim of Gray Stojanovich (Ordinance)

Disposition: Ordinance No. 166856. (Y-5)

Commissioner Earl Blumenauer

1328 Accept completion of SW Alder and Burnside Street Lighting Project, approve change orders, and make final payment to McCoy Electric, Inc. (Purchasing Report; Contract No. 28042)

Disposition: Accepted.

***1329** Modify and authorize the annual extension of a computer maintenance agreement for the Bureau of Traffic Management with Intergraph Corporation through June 30, 1994 (Ordinance; amend Contract No. 12170)

Disposition: Ordinance No. 166857. (Y-5)

Commissioner Charlie Hales

***1330** Authorize agreement with The Musical Company for the management and operation of the Scene and Costume Shop (4337 N. Houghton) for their theater production operations (Ordinance)

Disposition: Ordinance No. 166858. (Y-5)

***1331** Authorize a contract with Multnomah County to provide two full-time Alternative Community Service crews and provide for payment in the amount of \$107,635 (Ordinance)

Disposition: Ordinance No. 166859. (Y-5)

Commissioner Gretchen Kafoury

***1332** Increase contract for design of new North Precinct Police Station (Ordinance; amend Contract No. 28201)

Disposition: Ordinance No. 166860. (Y-5)

***1333** Contract with Metro Community Development Corporation for \$50,000 to develop special needs housing and provide for payment (Ordinance)

Disposition: Ordinance No. 166861. (Y-5)

***1334** Contract with the Catholic Community Services for \$19,550 to provide the Asian Youth Outreach Project and provide for payment (Ordinance)

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Disposition: Ordinance No. 166862. (Y-5)

- *1335** Contract with St. Johns YWCA to complete rehabilitation of the kitchen and dining area of its facility and provide for payment (Ordinance)

Disposition: Ordinance No. 166863. (Y-5)

Commissioner Mike Lindberg

- *1336** Amend contract with Rogers Construction, Inc., to extend the term and increase the amount (Ordinance; amend Contract No. 26236)

Disposition: Ordinance No. 166864. (Y-5)

- *1337** Amend contract with Friendly House, Inc., to allow additional time for fund raising for acquisition and development of recreational facilities and services for the Northwest District of the City (Ordinance; amend Contract No. 27243)

Disposition: Ordinance No. 166865. (Y-5)

- *1338** Authorize a contract with Snyder Roofing, Inc., to construct roofing and roof repair Phase C project for the Bureau of Environmental Services (Ordinance; Contract)

Disposition: Ordinance No. 166866. (Y-5)

- *1339** Authorize the Interim Director of the Bureau of Environmental Services to approve an Intergovernmental Agreement with the Multnomah County Drainage District No. 1 to provide support services for a field study of the Upper and Lower Columbia Slough (Ordinance)

Disposition: Ordinance No. 166867. (Y-5)

- *1340** Authorize the Interim Director of the Bureau of Environmental Services to approve an Intergovernmental Agreement with Portland State University for a field study of the Upper and Lower Columbia Slough (Ordinance)

Disposition: Ordinance No. 166868. (Y-5)

REGULAR AGENDA

- 1320** **TIME CERTAIN: 9:30 AM** - Recommend 1993 Seasonal Water Supply Plan (Previous Agenda 1293)

Discussion: Mike Rosenberger, Water Bureau Manager, described Alternative D, the latest proposal submitted by the Bureau. He noted that Alternative D is essentially a hybrid of B and C and establishes Bull Run Lake use at level 3160.

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Mandatory curtailment measures would go into effect prior to bringing the level down to 3143. The only change to what was suggested by Commissioners Hales and Lindberg last week is that voluntary curtailment has been moved ahead of initial use of the Lake.

Regna Merritt, Oregon Natural Resources Council, thanked Council for taking a wise approach to water use. She said conservation should be the first new source of water. Contrary to Water Bureau statements, her organization hears good things about voluntary conservation as people realize there is a finite water supply. However, the fact that the Bureau loses revenues when conservation measures go into effect must be addressed.

Ms. Merritt cautioned that when the Lake level gets down to 3145, 90 per cent of the trout eggs are lost. She expressed concern with allowing decorative fountains to continue running before getting the lake down to 3160 and said businesses should be directed to make landscaping changes to effect wiser use of water. She said they were puzzled in July that the Bureau was willing to use the reservoir before going to the Lake at 3143 as that seemed to violate their desire to keep water quality standards high enough to keep the EPA from calling for filtration. She said Alternative C is consistent with the Water Quality Advisory Committee's recommendation as it allows occasional pumping to 3143 but calls for a high level of protection and recovery.

Tom O'Keefe, United Community Action Network, said all mandatory curtailment should be above use of the Lake at the 3148 foot level. He asked what the formula is for triggering these measures and urged speeding up well testing in hopes of bringing more wells on line.

Joe Glicker, Water Bureau, said the first key point is the start of draw down. Based on stream flow trends, weather predictions and reservoir levels, the Bureau then puts in place a whole list of actions. These would be evaluated every week based on new information and results. Water supply updates would be issued on a periodic basis.

Mr. Rosenberger said if they get into a water shortage situation, they intend to keep the public informed on a daily basis if necessary. He said the first order of business after use of reservoirs is conservation. He also noted that the plan does not put seasonal pricing in place because it is assumed it will already be in effect. That will send a strong message to the public about conservation.

Mayor Katz asked Council members if they were satisfied with the plan now, noting that it could be reviewed next year.

Commissioner Kafoury said mandatory conservation has to come first, before pumping the Lake, and she would vote against this plan.

Disposition: Approved Alternative August-D. (Y-4; N-1, Kafoury)

- 1321 Recommend a preferred alternative for the Bull Run Lake Environmental Assessment (Previous Agenda 1294)

Disposition: Joe Glicker, Water Bureau, said the Substitute Resolution requires periodic updates regarding any draw down of the Lake. He said all the alternatives assume there will be no impact on the Lake but if there is, monitoring and mandatory mitigation plans will go into effect. He said there is some controversy about mandatory mitigation and described the measures proposed by the Forest Service for using fish-cover structures as the Lake is drawn down. He said the Forest Service has revised downwards the number of structures needed and no road construction or introduction of outside materials is planned so as to keep the impact low. Estimated cost has also dropped significantly, to \$18,000.

Mayor Katz asked if the mitigation measures were firm or still negotiable.

Mr. Glicker said he thinks they are still negotiable, adding that the Bureau disagrees with the final mitigation measure, which is for the Forest Service to collect fish for an outside hatchery for testing purposes. The Bureau does not understand the purpose and would negotiate with the Service on the need for that one. The Resolution includes a statement that the Bureau will review the need for mitigation annually and open that up for public hearing too.

Tom O'Keefe, United Community Action Network, criticized the fact that car washing has been put ahead of conservation. He said there is a lot of concern with mitigation, noting there are 300 roads in the area. He asked that all alternatives be rejected and that the one year permit be continued instead of seeking a 20-year permit.

Regna Merritt, Oregon Natural Resource Council, said there are significant differences between Alternative B, the one the Water Bureau supports, and Alternative C, which the Water Quality Advisory Committee supports. Alternative C calls for a level of recovery of the Lake 12 years out of 20, adding that one of the cheapest ways to avoid mitigation is allowing the Lake to recover. She said she does not like Alternative C because it calls for some mitigation measures but it does decrease the need for other measures if full recovery occurs. She said a five, rather than 20, year permit would make a lot more sense as more would be known then about conservation and fish production.

Tom Parker, Forest Service employee, said 73 per cent of the large wood debris is in the zone from 4173 to 4178 and their plan is to spread the debris out over that range for fish cover. Regarding the pilot project for trapping fish, there are very few fish in the Lake, for a lake of its size, and this measure just sets out a method for capturing the fish if they ever need to. Fish that are caught are released.

Commissioner Lindberg asked about the 20-year permit and if there was a

reopener clause. He said one thing that has been lost sight of is that a major policy shift has been made, away from the use of Bull Run. He said it is not true that the Bureau wants to use the Lake, noting that the Lake has been used in eight out of the last 20 years but under this plan they predict that they will use it only one year out of eight. He added that according to Bureau studies there would be no environmental impact at the 3160 level.

Mr. Glicker said the Bureau has operated with a year-to-year plan only in the last two years and the Forest Service has indicated they do not want to continue on that basis. The 20 year permit includes specific provisions to reopen the process and change the permit if new information is obtained from monitoring the Lake, the well field and the regional water supply plan.

Commissioner Hales asked whether it is assumed that mitigation will happen but that the level and specific strategies are still somewhat undecided.

Mr. Glicker said the Environmental Assessment is still in draft form and once that is in place specific mandatory mitigation measures will be required. He said the Bureau will negotiate with the Forest Service on the one issue mentioned before.

Commissioner Hales asked if the draft assumes that the full cost of mitigation will be borne by the City.

Mr. Glicker said it varies with the City picking up the cost of the fish screening while other costs would be split with the Forest Service.

Disposition: Resolution No. 35177. (Y-4; N-1, Kafoury)

1342 Outline creation of Economic Development Policy Implementation Project Team resulting from the Mayor's Business Roundtable process (Report)

Discussion: Mayor Katz said this team will review the recommendations of the Roundtable as well as begin thinking about the future of the Portland Development Commission.

Disposition: Accepted. (Y-5)

1341 Report from the Government Relations Office Director on the results of the recently completed legislative session (Report)

Discussion: Marge Kafoury, Government Relations Office Director, recapped actions taken at the recent legislative session on issues of concern to the City. The City did very well with respect to its measures although the jury is still out on some of the larger policy issues which will go to the voters in November. She said out of 13 bills the City introduced, 10 passed including those relating to enterprise zones, the Blazers arena, ADA requirements, property tax exemptions for non-profits and others. The City now has the ability to lien landlords for the

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unpaid utility bills of tenants and was also able to obtain lottery funds for the Boys and Girls Club facility. The legislature failed, however, to approve measures regarding congestion pricing, public records, concealed knives and other City-supported bills. She said no assessed valuation cap was approved and state-shared revenues are intact. Forfeiture laws have been extended and modified to reflect federal standards.

Ms. Kafoury said no pre-emptions passed with the exception of the sales tax amendment which would pre-empt local sales taxes. She said thanks to Commissioner Hales there is no urban services legislation. Among the disappointments was failure of the gas tax package, except for the repeal of the ethanol exemption.

Mayor Katz asked how much the ethanol exemption would add to City monies.

Commissioner Blumenauer said the Office of Finance and Administration is planning a report but it looks like a \$3 million cut can be expected over the next two years. The State however, is looking at a \$411,000,000 reduction in the six year Transportation Plan so there will be major cuts in transportation funding statewide.

Ms. Kafoury said the taxation of PERS benefits issue was not resolved and there was no increase in beer and wine taxes. She said the impact of some bills, such as the secondary lands measure, are unknown. She added that if the sales tax package passes in November there is only a partial exemption for local governments which means the City would pay a sales tax on construction equipment and vehicle purchases and this could cost the City an estimated \$7 million.

Commissioner Kafoury said she thought the City projected it would lose beer and wine revenue sharing and took \$6 or \$7 million out of the budget.

Mayor Katz said it was \$600,000 and that money would now be available.

Commissioner Kafoury said she thought they planned on losing the liquor revenue money.

Ms. Kafoury said that was never threatened. The serious issue was the beer and wine.

Mayor Katz said the City only anticipated losing money from Rep. Campbell's legislation which would have cost about \$600,000.

Commissioner Blumenauer noted the sales tax would have to pass first before Council had to worry about the loss of \$7 million.

Ms. Kafoury said if the sales tax does pass, it would allow an additional personal

property tax exemption for machinery and equipment that is estimated to cost local government about \$12 million. She said the City fought very hard against this legislation. She said a written report on the outcome of the session will be issued in September.

Commissioner Hales asked if there were any bills we support or oppose that might be vetoed.

Ms. Kafoury said one is the continuation of the real estate transfer tax moratorium, which prevents the City from levying a local real estate transfer tax. Another is modification of the historic property designation, particularly the provision requiring owner consent.

Disposition: Accepted. (Y-5)

Mayor Vera Katz

1343 Report on August Jobs for Youth program (Report)

Discussion: Mayor Katz said she was concerned that many of these programs would end the first week in August and thanked the organizations involved for finding ways to extend these services and keep the kids working. The next step will be planning for the long term.

Disposition: Accepted. (Y-5)

1344 Authorize City Attorney to join Portland as a party in litigation seeking a declaration as to legality of placing on the ballot the initiative known as "The Minority Status and Child Protection Act" (Resolution)

Discussion: Jeff Rogers, City Attorney, recommended that Council make the City a party to this case. This is a law suit which seeks to keep the Oregon Conservative Alliance initiative off the ballot based on the legal argument that a majority cannot single out one category of people, in this case, homosexuals, and deprive them of civil rights protections. There may also be home rule issues.

Disposition: Resolution No. 35178. (Y-5)

Commissioner Charlie Hales

1345 Accept Planning Commission report and recommendation to grant a ten-year property tax exemption to St. James Housing, Inc., for new multiple-unit housing at the northwest corner of the block between SW Jefferson, Columbia, Park and 10th (Report)

Disposition: Accepted. (Y-5)

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- 1346** Grant a ten-year property tax exemption to St. James Housing, Inc., for new multiple-unit housing at the northwest corner of the block between SW Jefferson, Columbia, Park, and 10th (Ordinance)

Disposition: Passed to Second Reading August 25, 1993 at 9:30 a.m.

Commissioner Gretchen Kafoury

- 1347** Transmit Bureau of General Services' report discussing issues of renewal of the parking garage operator contracts (Previous Agenda 1292)

Discussion: Commissioner Kafoury said questions were raised about the legality of extending the contracts. She said Mr. Kish has revised the contracts and recommends that they be limited to a five year extension.

Jeff Rogers, City Attorney, said some amendments should be made to the contracts, if Council wishes to extend them, to avoid the possibility of losing the tax exempt status of the bonds. He said they believe the amendments can be made without much difficulty and also recommend that the contracts be extended one year at a time. In short, they believe the legal obstacles can be overcome so that the decision to extend the contracts becomes a policy matter.

Mayor Katz asked if the contracts would come back to Council if changes were made.

Mr. Rogers said no, this is advisory.

Commissioner Kafoury said it is an administrative decision.

Mayor Katz said she was glad this issue came before Council but asked if these needed to come back as new contracts.

Nancy Ayres, Deputy City Attorney, said since the original contracts were approved by ordinance, the amendments would also need to be authorized by ordinance and approved by Council.

David Kish, Director, Bureau of General Services, said five of the contracts are between the Association for Portland Progress (APP) and City Center and would probably not come back to Council. The master contract between the City and APP and one contract with City Center would have to be revised.

Mayor Katz asked whether the contracts between APP and the City need to come back.

Ms. Ayres said she thought the City was required to consent to those contracts.

Mr. Kish said he did not believe they had come to Council before.

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Mayor Katz said she would like a legal review of whether Council has to vote for these changes or not.

Mr. Rogers agreed.

Mr. Kish said they now recommend, consistent with advice from the City Attorney, that the contracts be extended to August, 1995, the date at which all seven can be bundled and put out to bid as one contract. He noted that last week a majority of potential bidders testified in favor of bundling them and the Bureau also believes this makes sense. He said they still believe City Center has earned the right to the renewal options because it has performed over and above City expectations.

Ted Runstein, attorney for Ace Parking, said they like this better than waiting until August, 1996, but all the contracts could be bundled and bid as of March, 1995, not August, 1995. He again noted their preference to bid them all in November, 1993 with the Front and Davis lot to be transferred in March, 1993. He added that his client has assured the City that the fees will come down and the service will be as good or better and is willing to bond those assurances. Regarding their preference for March, 1995, he said waiting until August might lead to some problems with the Christmas rush.

Commissioner Kafoury clarified that earlier references to problems with the Christmas rush referred to this year only. She said having an August date does not mean the process will not start until then. That will start in the Spring and the contract should be completed by July and ready to go in August.

Mr. Runstein said his point is that legally there is no impediment to doing it in March, 1995 which rewards City Center for its performance but opens up the contracts somewhat earlier. He said there is no real reason to extend it to August if they can be bundled in March, other than that, it is the last possible date under the federal five-year limitation regulation.

Mr. Kish said they picked August, 1995 because it is consistent with granting the one year extensions, which were put in at the request of other bidders: City Center has exceeded the objectives and deserves the extensions. Also bidding in March does not work well for City staff because it is budget season.

Commissioner Hales said he reviewed the record, met with staff and is satisfied with the recommendations.

Commissioner Lindberg said he supports bundling for reasons of efficiency and the extensions because they reward excellent performance. Finally, periodic bidding still allows for competition.

Mayor Katz noted her concern about the value of extending opportunities for competition in the City. She agreed performance has been excellent but would

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prefer a four year contract, not five. She said giving out those contracts with earlier expiration dates could give smaller businesses an opportunity to bid on them. She said there are risks but minority or women owned businesses would never have a piece of the economic benefits if the City does not take those risks. For these reasons, she voted no.

Commissioner Kafoury said it is their intention to amend the contracts as per this advice.

Disposition: Accepted as revised (Y-4; N-1, Katz)

City Auditor Barbara Clark

1348 Assess property for large lot deferral contracts through June, 1993 (Hearing; Ordinance; L0031)

Discussion: Dan Vizzini, Auditor's office, said these refer to deferrals for the Mid-county sewer project. No remonstrances have been received.

Disposition: Passed to Second Reading August 25, 1993 at 9:30 a.m.

1349 Assess property for sewer system development charges through June, 1993 (Hearing; Ordinance; Z0458 through Z0489)

Discussion: Dan Vizzini, Auditor's Office, said these are essentially loans to property owners to pay for Mid-County sewer projects. A number of property owners have asked to cancel their loans because they are in the midst of refinancing or selling their property. The ordinance accommodates those property owners.

Disposition: Passed to Second Reading August 25, 1993 at 9:30 a.m.

1350 Assess property for sidewalk maintenance through April 30, 1993 (Ordinance)

Discussion: Dan Vizzini, Auditor's Office, said this is a final assessment of properties for the cost of repairing sidewalks. Two remonstrances were filed and have been referred back to the Bureau of Maintenance for additional work with the property owners.

Disposition: Passed to Second Reading August 25, 1993 at 9:30 a.m.

At 11:05 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 18TH DAY OF AUGUST, 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; Pete Kasting, Senior Deputy City Attorney; and J.P. Smith, Sergeant at Arms.

Mayor Katz said Council will consider a request to reschedule a land use hearing appeal. She said there seems to be conflicting statements regarding knowledge of a time problem.

Pete Kasting, Senior Deputy City Attorney said there are two issues to consider in determining whether to grant the setover request. The first has to do with the reasonableness of the request and potential hardship to the parties. Council could, just as in any matter, make a discretionary decision to accommodate a party that has difficulty with a date. The second issue is that this application has been pending for quite a while as it was originally filed in November, 1992. Generally, the City has a statutory obligation to complete its review of a land use application within 120 days of the date it became final. He said the City is past the 120 days at this point and there may be disagreement between the parties as to whether that obligation has been waived. He noted that the recourse for the City's failure to process an application within that time frame is to ask the circuit court to compel the City to issue a permit. Since only a two-week extension is being requested, in all likelihood the City would complete its process before the court completed its review.

Stephen Janik, attorney for the principle opponent, BCT Partnership, requested a two week extension from September 14 to September 22 because he will be out of town, a fact that has been known to the other side for a considerable time. He said Barry Schlesinger's letter to Council is an outrageous distortion of the facts and a number of his key statements are false. He said it is not true that several other delays and continuances were granted to him, charging that all the delays were requested by Mr. Schlesinger and his lawyer in order to convince staff to reverse their initial unfavorable report and to rebut the Hearings Officer's arguments. Mr. Janik also stated that they were never consulted about the September 8th date and never agreed to it, contrary to what Mr. Schlesinger claims.

Michael Robinson, representing the BPM Associates, said to his knowledge his clients have not waived the 120 day clock. Following the end of the public hearing, parties have a right under State law to keep the record open and they did exercise that right in order to respond to issues raised at the hearing. He said they do not think the hearing should be rescheduled, asserting that they have the burden of proof in this case and must organize the witnesses and make

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sure they have their evidence ready. He said they had planned on this September 8 hearing date which has been known for almost a month and was set by the Planning Bureau on July 30, not them. He said the other side should have anticipated that an appeal would be filed and, if someone is on sabbatical, other people could presumably handle the case. Finally, he noted that Mr. Janik, who supposedly is on sabbatical now, is here.

Commissioner Hales asked about past situations when the City has honored a request from someone other than an applicant for a waiver of the 120-day period. He said he believes it is the applicant's call.

Mr. Kasting said only the applicant can request an extension under the State Statute.

Mr. Janik said because of the applicant's own requests for extensions, the 120 day period expired March 4, 1993, before the first hearing, and the application of the State statute is now a legal irrelevancy.

Mr. Kasting said there is a factual dispute here as to whether the 120 day clock has been waived or, if it was extended, the limits on that extension.

Mr. Robinson said as far as he knows his client has not officially waived the 120 day rule and can request continuances without waiving that rule. The fact that this has taken so long is because it is a complicated matter that has taken longer than most land use cases. He said they are extremely concerned about further delays.

Commissioner Kafoury said Council generally tries to be accommodating, adding that she has known for a long time that Mr. Janik was going to be on sabbatical. She moved to allow the two week extension. Commissioner Hales seconded.

Commissioner Blumenauer said he would vote no as he would support rescheduling only if both parties agree or if there is a real emergency.

Commissioner Hales said he would expect that the City would set reasonable time standards and if 120 days is not enough, recommend that the legislature change it. If there is such a standard in State law and the City is dilatory in processing applications, he would expect people to go to Court and then the City would find out if this was a reasonable standard. However, in the past Council has granted extensions when they were needed by a party to the action and that is enough of a precedent for him to support the motion.

Mayor Katz said she would like to accommodate both parties as the issue itself is going to be very difficult. She supported this delay but is sensitive to the fact that the applicant has been waiting almost a year.

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The motion carried (Y-3; N-1, Commissioner Blumenauer) and the hearing will rescheduled to either September 22 or 23.

1351 TIME CERTAIN: 2:00 PM - Adopt the Fourth Amendment to the Airport Way Urban Renewal Plan (Ordinance)

Discussion: Bob Glascock, Planning Bureau staff, said the Planning Commission unanimously recommended approval of this amendment which clarifies the new budget realities in the face of potential litigation from certain property owners based on their expectation of extensive urban renewal efforts in the Holman area. The Planning Commission's role was to determine if the amendment was consistent with State statutes relating to urban renewal and the City's Comprehensive Plan. The Commission did make those findings.

Mayor Katz asked if the Planning Commission dealt with the issue of withdrawing money allotted to one area and applying it to the urban renewal area as a whole.

Mr. Glascock said they did not specifically look into the budget implications, deciding not to substitute their judgment for the Portland Development Commission's (PDC.)

Larry Dully, Portland Development Commission, said the area in question is 95 acres in multiple ownership close to the Airport and with a mix of vacant, residential and business property. After the Supreme Court decision in 1992 regarding tax increment financing, over half of the 18 owners requested that the plan be abandoned if PDC could not afford to purchase the property. A vocal minority of property owners asked that PDC not abandon the project and spend the remaining project dollars to correct access problems and allow for greater capacity. Simultaneously, PDC found that the ICN Pharmaceutical site had extensive groundwater contamination problems which would cost an estimated \$1 to \$3 million to correct and require a multi-year clean-up effort before building could occur at that site. In view of that they decided it would not be prudent to spend large amounts of scarce dollars on the Holman Road access problem on the assumption that new investment might occur.

Mr. Dully said these same scarce dollars can be spent to stimulate job-producing investment throughout the entire urban renewal area. He said they would consider specific assistance to the Holman area if certain key elements were in place. For example, if the owners would agree to work on a common plan and commit to it by a joint financing arrangement, either through a local improvement district, dedication of uncontaminated land for a the roadway or a combination of these. Short of that, PDC believes, as does the Columbia Corridor Association that the agenda for the Holman area must be the same as for the entire urban renewal area, which is to assist those projects that will create jobs and investment. He said they are working with Transportation and Environmental Services on a secondary infrastructure plan for Airport Way and there are clearly needs far in excess of the approximately \$8 million in remaining urban renewal

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funds. He said they do not want to commit infrastructure dollars unless concurrent jobs result.

Mayor Katz asked if they wanted to set the money aside and link it with specific job opportunities.

Mr. Dully said yes. They came up with a new way of doing business in response to the cash shortage.

Mayor Katz asked about the legality of using urban renewal funds targeted for one area somewhere else.

Ken Iltz, attorney and City bond counsel, said this type of finance is heavily regulated by the IRS, adding that these bonds were issued as private utility bonds because it was thought the land would be developed for sale or leased to private businesses. Because of the private use of the proceeds, the bonds were issued under an exception in the IRS Code which permits qualified redevelopment bonds to be issued on a tax exempt basis. Initially the City is limited to using bond proceeds to the properties and for the purposes described in a public notice and at a hearing prior to sale of the bonds.

Commissioner Kafoury asked if the initial notice limited the properties to the Holman area.

Mr. Iltz said yes but the City can always use bond proceeds for governmental purposes. If the City were to use the proceeds for infrastructure such as streets and sewers where there was no direct benefit to a particular private owner that would be fine. That kind of development is thought to benefit the public as a whole. Thus, there are two uses that can be made of the unexpended proceeds of this bond issue.

Paul Shirey, Portland Development Commission, said removal of their authority to buy property in the Holman area resulted from the passage of Measure 5 and the failure of the tax increment financing measure. He said they do not have the wherewithal to proceed with this \$16 million project and it is with great regret that they abandon their plans just on the verge of moving forward.

Mayor Katz asked how many dollars are left.

Mr. Shirey said approximately \$4.5 million and they would like to use that money for specific investments that produce jobs.

Commissioner Hales said originally there was an \$11 million revenue source.

Mr. Shirey said it is now \$4.5 million. He said a million is on reserve for an LID program to help landowners pay for sewer and water.

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Commissioner Hales said it looked like \$6-7 million has been spent and asked if this was spent in Holman.

Mr. Shirey said approximately \$1 million was spent on environmental testing and several hundred thousand was spent to prepare the master plan, plus other items to support staff work.

Commissioner Kafoury asked for a recap of that information. She asked if any remediation had been done.

Mr. Shirey said no, only testing.

Mayor Katz read off a list breaking down how the money had been spent for it, including acquisition of some property.

Commissioner Kafoury said it does not have the budget attached to it. She asked if there was a plan for spending the \$4.5 million.

Mr. Dully said the first issue is whether the City wants to keep condemnation authority, the issue before Council today. The second issue is use of the remaining money. He said the general plan is to spend the money on public improvements as development occurs rather than speculating where it will occur beforehand.

Commissioner Kafoury asked if this had been on the legally obligated list or whether it was discretionary.

Mr. Dully said this is the one urban renewal area where bond proceeds still remain and a lot of people are interested in spending them.

Commissioner Kafoury asked if businesses who could guarantee job-producing potential would be considered.

Mr. Dully said absolutely. He said if this area can never be cleaned up they could use the money somewhere else in Airport Way where jobs would result.

Commissioner Kafoury asked if there were other ways to help them build the road.

Mr. Dully said the whole secondary infrastructure plan which looks at streets, sewers and water facilities, is a team effort and this will continue. Everyone agrees there is more to be done than there are funds to do it. He said they have some drainage and environmental issues related to the Slough that are very important to resolve.

Commissioner Hales asked why they did as much environmental testing as they did.

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Mr. Dully said it was a judgment call and they agreed with the property owners to do the testing with the cost of cleanup to be reflected in the price. They felt it was a predevelopment cost to minimize the burden on the property owner and get the necessary information about whether the cleanup costs made it worth proceeding. He said contamination of the ICN property, right at the entrance to the area, presented them with a dilemma even without passage of Measure 5.

Commissioner Hales asked why PDC assumed it should do remediation on property that would end up underneath a road.

Mr. Dully said their experience elsewhere is that their development efforts are not successful unless remediation takes place.

Commissioner Hales asked who stopped them.

Mr. Dully said private and public utilities because they have to repair those facilities in the future.

Mr. Shirey said any prudent buyer would test prior to acquisition to make sure they are not buying contaminated land. Once they discovered the problem at the ICN site, they notified the DEQ and it was their clear understanding that ongoing remediation would have to be done prior to construction of the road. Cleaning up ground water is a complicated and iffy proposition.

Commissioner Hales said he is concerned that the City not waste money remediating sites that do not need remediating. He said while it is contrary to current wisdom he believes the City should not do remediation unless required to do so by a regulator. He said cleaning up property to the level of farmland before paving it over is absurd and should be challenged.

Mr. Dully said the Economic Development work group on physical infrastructure is addressing that issue to see if there are ways for the City and property owners to work with the DEQ to come up with reasonable ways to clean up sites, adding that a lot of properties are sitting vacant because of minor environmental problems that cost a fortune to remediate.

Mayor Katz said Commissioner Hales was also raising the issue of "do we have to do it" which should be raised with the DEQ.

Richard Forester, attorney representing Holman property owners here today, said since he assumes that PDC can legally move the money around, the issue for them is whether this is ethical. He said while ostensibly this amendment removes PDC's condemnation authority for the Holman area subdistrict, this action actually amounts to the abandonment of the Holman area cold turkey without any recognition of the efforts of Holman residents who have worked with PDC under the threat of condemnation for five years. Nothing is being proposed to help owners in that area achieve the vision that both the City and PDC once

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found so full of promise. He said the withdrawal by PDC has been abrupt with many owners never receiving notice. While recognizing the political and fiscal situation besetting urban renewal, the Holman residents want some of the remaining bond funds to be used in Holman, enough to provide a decent intersection at Holman Road and Airport Way. He said the ordinance states that \$4.5 million remains and that \$1.3 million has been spent in the Holman area. However, in the Comprehensive Plan findings it states that this amendment will allow PDC to reallocate \$5.9 million from money currently allocated to Holman to other projects. He said they are confused as to what remains, adding that the difference would pay for the intersection improvements they are requesting. They also call for a full accounting and request that PDC reserve sufficient funds to improve the intersection and not spend the reserve amount on anything else without publicly asking Council's permission. Second, they ask that some properties be legislatively rezoned from General Industrial to General Employment to give them more flexibility. He said the commitment made in the past by PDC to take care of the rezoning needs to be kept.

Denny Roger, 10921 NE Simpson, objected to the waste of money in that area. He said PDC told them there would be \$15 million to spend and now there is only \$4.5 million left and nothing has been done. He said their property has been devalued, noting that no one wants to buy property they think will be condemned. He also claimed the redesign of the intersection is unworkable.

Lloyd Farley, 16200 S. Pacific Highway, #28, Lake Oswego, OR 97034, spoke on behalf of the McDonald Brothers, purchasers of the INC property. He described a meeting with PDC staff regarding their request for a zone change, asserting that they were told all along that PDC would take care of it. When the McDonalds acquired the property they had a letter from the EPA stating there was no contamination but PDC insisted on several rounds of testing and then finally found it. He said the greatest scare seemed to be the lead in the well and contamination in the shallow aquifer, not in the deep water. When they retested the well they found out there was no more lead in the well.

Mayor Katz asked if they had a buyer for the hotel.

Mr. Farley said they have an agreement for an Embassy Suites hotel of approximately 230 rooms once the site is clean and ready to build on. It would employ 200-250 people.

Commissioner Hales asked if the hotel plan relied on the intersection.

Mr. Farley said the intersection built by the City six years ago has now been found to be inadequate because of the curbs.

Shawn Dickenson, 2513 NE Rasmussen Rd., Corbett, OR 97034, said in 1992 he granted PDC an option to purchase his property and was told they were prepared to exercise it. He said he now knows that is not possible and

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requested the intersection improvements and a zone change so he can get his property back to the value it was before PDC entered the picture.

Mayor Katz asked if PDC could have met all its obligations in this area if Measure 5 had not come along.

Mr. Dully said the solid contaminant problem made things difficult but he believes they could have carried out the plan if not for Measure 5.

Mayor Katz said the point is PDC cannot now do what they thought they could do before Measure 5.

Walter Mantow, 11140 NE Simpson, said he would like to see 115th and Holman improved.

George Mantow, 10861 NE Simpson, said he would like to see the intersection at Airport Way and Holman improved.

Patricia Power, representing Cassan Enterprises of Portland and Seattle, said many property owners do not realize what Measure 5 has done to this project. She questioned where all the money has gone of the \$15.3 million originally slated for this project. Because of the inconvenience, the loss of tenants and zoning concerns, they believe Holman property owners are entitled to all the remaining funds which will allow them to go on and either develop or sell their property. She said the road is essential to any development there.

Commissioner Hales asked if her property had Multnomah County zoning when it was annexed which was to remain in effect for a certain period of time.

Ms. Power said they had County zoning when they bought the property with a grandfather clause good to a certain date. After the purchase PDC stated that they would handle the zoning. She said they went along with PDC, with some negotiations back and forth, and then the time ran out. She said they went to the expense of having environmental studies and architectural plans drawn for their business but did not go through with them because their business, airport parking, was discouraged by PDC as a land use in this area.

Teri Sykes, Vice President, Airport Drayage Company, 6331 NE 112th Ave., said her father, Paul Wolfe, purchased the land for this business in the 1970s, based on its proximity to I-205 and Airport Way frontage. She described their difficulty in making alternate plans and leasing space to tenants once they found out that a different use was envisioned under the Holman Redevelopment Plan and that their business would be relocated. She asked that the money committed to the area remain there.

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Wayne DeWitt, 10910 NE Holman, asked that the zoning be rectified and described some of the problems that resulted from his anticipation that he would have to relocate.

Ann Nichol, Columbia Corridor Association, agreed that the Holman Plan needs to be reevaluated, given the lack of funds. She noted, however, that Holman involves 98 acres while 1700 acres remain to be developed in the Airport Way plan. She said her Association is sympathetic to land owners in the Holman area but believes the City must take the broader view and address the overall goal of the Urban Renewal Plan to promote investment and job creation in all the area. She said that may make more sense than using the limited remaining dollars doing a small and speculative piece in the Holman project. She explained that the \$15 million cited by several testifiers was part of a planned bond issuance which never occurred because the bonds were not issued after Measure 5 passed. She added that while Holman needs the intersection, there are no real commitments for development today, noting that the site contamination problem is unresolved. In the meantime there are projects in the rest of the area that are now on line. Their biggest concern now is addressing flood and storm drain issues which will impact development on the other 1700 acres. She urged Council to locate replacement funding sources for PDC so it can continue to support private investment and job creation in the District.

Commissioner Hales said he is trying to understand how special this case is. It appears that promises were made in terms of actual acquisition of property by PDC and asked how common that was in the rest of the Columbia Corridor.

Ms. Nichol said promises were made but if the funding formula for a plan changes, it stands to reason that the plan itself has to change. The reality is that the \$4 million will not address all the promises made by PDC.

Commissioner Hales said everyone seems to acknowledge that the money is not there to meet all the promises. The issue is to what extent the promises can be kept, scaled back, or completely abrogated.

Ms. Nichol said if there is any way possible the City can keep its promises to Holman and even minimally meet them, then that should be done. But the Corridor is asking Council to make that choice with full recognition that if you have limited resources you will not be able to do other things with that money which may affect the potential of the area.

Commissioner Hales asked what she thought about the zoning issues raised, such as legislatively rezoning portions of Holman to improve its development prospects.

Ms. Nichol said she thought that would be a great tradeoff if the City can not put the money into it.

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Mayor Katz asked if the City had authority to do that.

Mr. Kasting said yes, the City can initiate legislative rezones.

Mayor Katz said that may be one way Council can mitigate this serious situation.

Commissioner Kafoury and Mayor Katz asked Commissioner Hales to pursue that with the Planning Bureau and with PDC.

Verla Rae Kwernan, 11200 NE Simpson, 97220, said they acknowledge that funding is scarce but believe some mitigation is in order. She noted that one of their tenants left because they believed the property would be condemned. PDC intrusions have immobilized the property owners and damaged their economic interests. After destabilizing Holman property owners, PDC seems content to walk away without leaving a single tangible improvement. Without improving the intersection, property owners are truly handicapped.

Calvin Luetjen, 491 Country Club Lane, Lake Oswego, OR 97034, described a property sale which was halted by PDC just before completion. When the sale did not go through, PDC said it would try to get the zone changed. He said he could sell the property if it was rezoned as it was before.

Mr. Dully says everyone agrees this is a difficult situation and PDC would like to work with residents to improve the intersection. The question is does the City foot the entire bill. Regarding the zoning, the issue is a transportation one as if the zone is changed from IG to IC there is more office use and more infrastructure may be needed.

Commissioner Hales asked if hotel uses had been envisioned.

Mr. Shirey said just on the frontage property.

Mayor Katz asked about use of the dollars.

Mr. Dully said they had planned to do a number of bond issues and purchase the property in phases.

Commissioner Kafoury said the condemnation will be removed. The question is the zoning.

Commissioner Hales said he thought the ordinance also dealt with reallocation.

Mr. Dully said it only removes the condemnation.

Mayor Katz said Council reviewed this issue during the budget process and urged that the reallocation not be done piecemeal.

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Commissioner Hales said reallocation is mentioned twice in the ordinance and looks fairly significant in that context.

Mayor Katz said it talks about Airport Way and the Holman area is part of that.

Commissioner Hales said it names a dollar amount in 8 (c) and talks about how the funds will be utilized in 8 (g).

Mr. Dully said they would be happy to work on that between now and the next hearing. He asked if the item could still be voted on if amendments were proposed.

Cay Kershner, Clerk of the Council, said if amendments are made of a substantive nature, another reading would be needed.

Mayor Katz said she does not want to delay this issue in terms of how the dollars are going to be spent. That is an issue that is dealt with at budget time. The other concern, with rezoning, may entail a transportation issue that needs to be addressed.

Commissioner Kafoury said she thinks the answer is that while reallocation is referenced in the ordinance, the decision was already made in January about setting the funds aside. As Mr. Dully pointed out, Council has looked at those lists on several occasions and this money is not absolutely targeted because none of these projects were legally obligated. Council has already agreed that, unless legally obligated, it is not going to commit to projects at a future date without going through some process to determine priority.

Commissioner Hales said if that is the case, the ordinance did not need to speak to allocation of the revenue. He said we are being either redundant or confusing.

Commissioner Kafoury said she does not care if he wants to take that out but the decision was made not to authorize any more urban renewal money.

Mayor Katz asked PDC to review this with Commissioner Hales and bring this back next week and not delay it further. She said there is another question in terms of the allocation of those dollars for other projects in Airport Way, including the possibility of projects in the Holman area which create jobs and meet other criteria. That is the other piece Council wants to know.

Mr. Dully said he hopes that can be done in a comprehensive fashion because wherever they look they are not going to have enough money.

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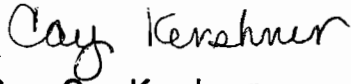
Mayor Katz said they could do that at a project team meeting or in some other appropriate way. She said this will move onto Second Reading unless Commissioner Hales has some reasons for further delay. PDC may want to review the language to see if it needs clarification.

Mayor Katz said these limited resources are to be used for the creation of jobs, which is a policy this Council has set.

Disposition: Passed to Second Reading August 25, 1993 at 2:00 p.m.

At 4:00 p.m. Council adjourned.

BARBARA CLARK
Auditor of the City of Portland


By **Cay Kershner**
Clerk of the Council