



CITY OF

**PORTLAND, OREGON**

**OFFICIAL  
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 29TH DAY OF SEPTEMBER, 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; Linda Meng, Chief Deputy City Attorney; and Chuck Bolliger, Sergeant at Arms.

Agenda Nos. 1553 and 1583 were pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

**CONSENT AGENDA - NO DISCUSSION**

- 1546** Accept bid of Moore Excavation, Inc., for Albina Basin CSO Sump Project Units 2-4 for \$907,639 (Purchasing Report - Bid 20)

**Disposition:** Accepted; prepare contract.

- 1547** Accept bid of Power Field Services, Incorporated, for medium voltage electrical equipment three year preventive maintenance program at Columbia Wastewater Treatment Plant for \$41,650 (Purchasing Report - Bid 21 - rebid)

**Disposition:** Accepted; prepare contract.

- 1548** Vacate a portion of SW Zion Street, under certain conditions (Second Reading Agenda 1500; C-9834)

**Disposition:** Ordinance No. 166989. (Y-5)

**Mayor Vera Katz**

- 1549** Confirm appointments of James Francesconi, Cindy Summers and Gale Costillo to the Portland Private Industry Council (Report)

**Disposition:** Confirmed.

- \*1550** Authorize intergovernmental agreement with Multnomah County for training officers/deputies and sergeants (Ordinance)

**Disposition:** Ordinance No. 166990. (Y-5)

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- \*1551** Authorize intergovernmental agreement with the City of Troutdale for training City of Troutdale police officers and sergeants (Ordinance)
- Disposition:** Ordinance No. 166991. (Y-5)
- \*1552** Amend and restate ordinance authorizing Water System Revenue Bonds and provide terms for future Water System Revenue Bonds (Ordinance; amend Ordinance No. 166756)
- Disposition:** Ordinance No. 166992. (Y-5)
- \*1554** Establish five positions in accordance with the Personnel Rules adopted by the City Council (Ordinance)
- Disposition:** Ordinance No. 166993. (Y-5)
- \*1555** Pay claim of Anthony Jacobs (Ordinance)
- Disposition:** Ordinance No. 166994. (Y-5)
- \*1556** Pay claim of Empire Uniform and Continental Insurance Company (Ordinance)
- Disposition:** Ordinance No. 166995. (Y-5)
- \*1557** Clarify Code requirements for payment of issuance fees for refunding bonds for economic development projects (Ordinance; amend Code Section 5.72.100)
- Disposition:** Ordinance No. 166996. (Y-5)
- \*1558** Adopt a Drug and Alcohol Policy and related procedures for the general employees of the City of Portland (Ordinance)
- Disposition:** Ordinance No. 166997. (Y-5)
- \*1559** Authorize the Mayor and City Auditor to execute a labor agreement between the City and the City of Portland Planning and Engineering Employees Association (COPPEEA) (Ordinance)
- Disposition:** Ordinance No. 166998. (Y-5)
- \*1560** Authorize license (intergovernmental agreement) with School District No. 1, Multnomah County, to use school space for Police Bureau training (Ordinance)
- Disposition:** Ordinance No. 166999. (Y-5)

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**\*1561** Authorize agreement with HealthChoice Administrators Incorporated, for provision of flexible spending account administration and retiree, self-pay, and COBRA premium administration (Ordinance)

**Disposition:** Ordinance No. 167000. (Y-5)

**\*1562** Authorize agreement with William Mercer Incorporated for the provision of employee benefits consulting services (Ordinance)

**Disposition:** Ordinance No. 167001. (Y-5)

**Commissioner Earl Blumenauer**

**\*1563** Amend contract with Tri-Met providing for the design and construction of the Transit Transfer Site Improvements, Unit-4 (Ordinance; amend Contract No. 27887)

**Disposition:** Ordinance No. 167002. (Y-5)

**\*1564** Contract with various local jurisdictions to provide emergency communications services (Ordinance)

**Disposition:** Ordinance No. 167003. (Y-5)

**\*1565** Authorize amendment to an agreement with OTAK, Inc., for the provision of professional consulting services related to the River District Development Plan (Ordinance; amend Contract No. 28554)

**Disposition:** Ordinance No. 167004. (Y-5)

**\*1566** Contract with Sara Productions for production and management services for the Bike Fest (Ordinance; waive Code Section 5.68 )

**Disposition:** Ordinance No. 167005. (Y-5)

**\*1567** Call for bids to construct phase two of the Eastmoreland Neighborhood Traffic Management Project at SE 27th Avenue and SE Bybee Boulevard (Ordinance)

**Disposition:** Ordinance No. 167006. (Y-5)

**\*1568** Authorize payment to CH2M Hill, Northwest, Inc., of \$17,586 for dynamic pile testing, interpretation of results and final written report as intended by Emergency Purchase Order No. 1016097 (Ordinance)

**Disposition:** Ordinance No. 167007. (Y-5)

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**\*1569** Agreement with the Oregon Department of Transportation to provide pedestrian and bicycle crossing on the Steel Bridge and a ramp connection to the river overlook (Ordinance)

**Disposition:** Ordinance No. 167008. (Y-5)

**\*1570** Agreement with Shields & Obletz for professional services for Phase 1 of the Portland Transit Mall Restoration Project (Ordinance)

**Disposition:** Ordinance No. 167009. (Y-5)

**\*1571** Amend agreement with the Oregon Department of Transportation, Highway Division, to provide for bridge inspection reimbursement (Ordinance)

**Disposition:** Ordinance No. 167010. (Y-5)

**Commissioner Charlie Hales**

**\*1572** Accept a grant from the Oregon Department of Forestry in the amount of \$19,500 for FY 93-94 for a tree planting project (Ordinance)

**Disposition:** Ordinance No. 167011. (Y-5)

**1573** Carryover 206 excess accumulated vacation hours for Fire Deputy Chief Ivie (Ordinance; waive City Code Section 4.16.040)

**Disposition:** Passed to Second Reading October 6, 1993 at 9:30 a.m.

**\*1574** Contract with Confluence Northwest for professional services facilitating collaborative bargaining between Local 43 of the International Association of Fire Fighters and the City for an amount not to exceed \$25,000 (Ordinance; waive City Code Section 5.68)

**Disposition:** Ordinance No. 167012. (Y-5)

**\*1575** Amend Table 40-B, regarding fees for procession of hazardous substances in City Code Section 31.40.040, Permit Fees (Ordinance; amend Code Section 31.40.040)

**Disposition:** Ordinance No. 167013. (Y-5)

**Commissioner Gretchen Kafoury**

**1576** Accept remodeling of Community Center at 5540 NE Sandy as complete, authorize Change Order No. 3 and make payment (Report; amend Contract No. 28802)

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**Disposition:** Accepted.

- 1577** Accept remodeling of Police Property/Evidence Building as complete and make final payment (Report; Contract No. 28128)

**Disposition:** Accepted.

- \*1578** Accept transfer of Kennedy School property deed for development of the site through the use of PILOT funds (Ordinance)

**Disposition:** Ordinance No. 167053.\* (Y-5)

\*NOTE: This was initially stamped incorrectly as a report after passage. When the error was discovered it was given an out-of-sequence ordinance number.

- \*1579** Accept a US Department of Justice grant for the State Criminal Justice Services Division in the amount of \$185,000 (Ordinance)

**Disposition:** Ordinance No. 167014. (Y-5)

- \*1580** Contract with Clinton Place, Inc., and Portland Community Design for \$20,000 for renovation of the property at 10929 SE Clinton Street, to be used as a transitional housing facility for homeless veterans and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167015. (Y-5)

- \*1581** Authorize payments to the Portland Development Commission for pre-development costs related to the commercial component of the Walnut Park/North Precinct Development project (Ordinance)

**Disposition:** Ordinance No. 167016. (Y-5)

- \*1582** Authorize an intergovernmental agreement between City of Portland, Bureau of General Services, and the Tri-County Metropolitan Transportation District for employee services (Ordinance)

**Disposition:** Ordinance No. 167017. (Y-5)

- \*1584** Agreement with Professional Services Industries, Inc., Pittsburgh Testing Laboratory Division, for structural testing services during construction of the Portland Public Safety Facility (Ordinance)

**Disposition:** Ordinance No. 167018. (Y-5)

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**\*1585** Enter into a lease for office space at 1600 SW 4th Avenue for Parking Patrol (Ordinance)

**Disposition:** Ordinance No. 167019. (Y-5)

**\*1586** Intergovernmental agreement with Multnomah County for shared use of electronic equipment and related sites (Ordinance)

**Disposition:** Ordinance No. 167020. (Y-5)

**\*1587** Increase purchase order contract for design improvements at the Planning Bureau (Ordinance; amend Purchase Order No. 1003821)

**Disposition:** Ordinance No. 167021. (Y-5)

**\*1588** Authorize agreement with Tri-County Metropolitan Transportation District of Oregon for inspection services by the Bureau of Buildings related to construction of certain portions of the Westside Light Rail Line and associated facilities (Ordinance; Contract Nos. WCO400, WCO500 and WCO501)

**Disposition:** Ordinance No. 167022. (Y-5)

**\*1589** Authorize intergovernmental agreement with the Port of Portland for access to City's 800 Mhz Trunking Radio System (Ordinance)

**Disposition:** Ordinance No. 167023. (Y-5)

**Commissioner Mike Lindberg**

**1590** Accept completion of the Southeast Relieving Interceptor, Phase - 4 (original contract) and make final payment to Seaboard Surety for Felton Construction Company (Report; Contract No. 25323)

**Disposition:** Accepted.

**1591** Accept contract with Colt Construction for installation of 8-inch water main in NE Rocky Butte Road as complete and authorize final payment of \$9,193 (Report; Contract No. 28620)

**Disposition:** Accepted.

**1592** Accept completion of the South Mid-County Interceptor - Unit 1 , Proposal C and make final payment to Seaboard Surety Company for Felton Construction Company (Report; Contract No. 25374)

**Disposition:** Accepted.

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- 1593** Release retainage for the SE Salmon Street, 15th to 16th Avenues Sewer Reconstruction (Report; Contract No. 28711)  
**Disposition:** Accepted.
- 1594** Partially release retainage withheld on the Alder Pump Station Remodel project (Report; Contract No. 27642)  
**Disposition:** Accepted.
- \*1595** Authorize a refund to Salty's on the Columbia for septage disposal charges (Ordinance)  
**Disposition:** Ordinance No. 167024. (Y-5)
- \*1596** Contract with Brown and Caldwell for professional engineering services and provide for payment (Ordinance)  
**Disposition:** Ordinance No. 167025. (Y-5)
- \*1597** Amend contract with Black & Veatch to provide professional engineering services for the pre-design and permitting work phase for the Treatment of Stormwater through Constructed Wetlands project in the area of Ramsey Lake (Ordinance; amend Contract No. 27564)  
**Disposition:** Ordinance No. 167026. (Y-5)
- \*1598** Amend ordinances designating Noam Stampfer as the authorized grant representative in relation to the Environmental Protection Agency's Wastewater Construction grants program (Ordinance; amend Ordinance Nos. 159689 and 163390)  
**Disposition:** Ordinance No. 167027. (Y-5)
- \*1599** Authorize a contract and provide for payment for the Albina Basin CSO Sump Project - Unit 5 (Ordinance)  
**Disposition:** Ordinance No. 167028. (Y-5)
- \*1600** Authorize a contract and provide for payment for the SE Rex Drive, SE 45th and SE 46th Avenues Sanitary Sewer System (Ordinance)  
**Disposition:** Ordinance No. 167029. (Y-5)
- \*1601** Contract with SERA Architects, PC in an amount of \$1,212,029 for architectural and engineering services related to the Water Pollution Control Laboratory (Ordinance)

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**Disposition:** Ordinance No. 167030. (Y-5)

- \*1602** Contract with RZA AGRA, Inc., in an amount of \$92,500 for environmental engineering services for site evaluation and remediation related to the Water Pollution Control Laboratory (Ordinance)

**Disposition:** Ordinance No. 167031. (Y-5)

- \*1603** Approve Change Order Nos. 1, 2 and 3 on contract with Colt Construction Company, Inc., for the Rivergate Quarry Drainage System and authorize payment (Ordinance; amend Contract No. 28668)

**Disposition:** Ordinance No. 167032. (Y-5)

- \*1604** Authorize a grant from the City of Chicago on behalf of the Urban Consortium Energy Task Force for \$37,000 for FY 1993-94 to fulfill the role of Chair of the Urban Consortium Energy Task Force (Ordinance)

**Disposition:** Ordinance No. 167033. (Y-5)

- \*1605** Contract with 15 arts organizations at a total cost of \$591,673 to provide public performances and/or public services to promote the arts and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167034. (Y-5)

- \*1606** Authorize amendment to contract with Murray, Smith & Associates, Inc., for \$232,490 for construction period services and additional professional engineering services to accommodate impacts to the water system by the Westside Light Rail Transit project and provide for payment (Ordinance; amend Contract No. 28429)

**Disposition:** Ordinance No. 167035. (Y-5)

- \*1607** Authorize a contract for the Summerplace Sanitary Sewer System and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167036. (Y-5)

- \*1608** Authorize negotiations for the purchase of permanent and temporary sewer easements required for construction of the Powell Village No. 41, Sanitary Sewer Project, to begin condemnation proceedings, if necessary and obtain early possession (Ordinance)

**Disposition:** Ordinance No. 167037. (Y-5)



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- \*1609** Contract with CH2M Hill, Inc., to provide engineering services for the power distribution system design at the Columbia Boulevard Wastewater Treatment Plant and authorize payment (Ordinance)

**Disposition:** Ordinance No. 167038. (Y-5)

- \*1610** Amend contract with HDR Engineering, Inc, to expand the project implementation and alternative analysis tasks for the Columbia Slough Water Quality Implementation Plan (Ordinance; amend Contract No. 28845)

**Disposition:** Ordinance No. 167039. (Y-5)

- \*1611** Call for bids for the renovation of customer service area, authorize a contract and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167040. (Y-5)

**City Auditor Barbara Clark**

- \*1612** Continue contract with Phillip E. Grillo from October 1 to December 31, 1993 (Ordinance; amend Contract No. 26563)

**Disposition:** Ordinance No. 167041. (Y-5)

**REGULAR AGENDA**

- 1544** **TIME CERTAIN: 9:30 AM** - Accept the Westside Corridor Traffic Management Plan (Report introduced by Commissioner Blumenauer)

**Disposition:** Accepted.

- 1545** Adopt the report for the Local Traffic Mitigation portion of the Westside Corridor Project Traffic Management Plan (Resolution introduced by Commissioner Blumenauer)

**Discussion:** Commissioner Blumenauer said money was specifically set aside for this project during the last budget process. He added that he hopes the lessons learned from these mitigation efforts will have widespread application through the City.

Laurel Wentworth, Office of Transportation, said goals of the program are to: 1) keep traffic moving during construction; 2) attract drivers from single-occupant cars and; 3) discourage traffic diversion into neighborhoods. She described some of the measures planned, including those which encourage car pooling by establishing emergency, smart-car lanes which allow buses and carpoolers better access to traffic lanes. Two new signal projects, at Macleay and Barnes, and improvements at the zoo interchange are also planned.

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Donna Green, Project Manager Bureau of Traffic Management, reviewed the status of the local mitigation portion of the plan. She said it reflects concern with the potential impacts of the project on local service streets and neighborhood collectors. After taking traffic and speed counts, public meetings were held to present the information and alert residents about what will be happening. She noted that a working advisory group was formed to address the key issues and make recommendations. Its work is reflected in today's report. She said they want to implement it in two phases: 1) mitigation prior to any potential diversion on streets that already have problems or are likely to be impacted and; 2) continual monitoring and mitigation of streets which see significant diversion once construction is underway. She asked for approval of this report.

Commissioner Blumenauer said the bottom line is they anticipate about 1,000 cars per hour are not going to be on the Sunset. This is an effort to mitigate those impacts in the neighborhoods and when the project is done, hopefully there will be some change in habits and new protections that will make the system better than when the project started.

Commissioner Hales asked how the bureau would modify the plan as the Bertha/Terwilliger Plan is completed and connects to I-5.

Ms. Wentworth said they believe most of the traffic diversion on the Sunset will be either to Barnes/Burnside or Cornell rather than Beaverton Hillsdale or Bertha, which is too far south to be greatly impacted.

Judy Satterwhite, 3825 SW Hamilton, said they believe they will be directly affected by the diversion and are concerned about the safety of their children. She supported the neighborhood collector project.

Karen Evans, 6320 SW Hamilton, said they realize their streets will be impacted and that there is not adequate funding to go around. She said neighbors are looking for a way to get private funding to increase safety on their streets.

Commissioner Blumenauer said they will follow up to see if there is a way to have a partnership with individual neighborhoods.

Mayor Katz asked for a list of the streets where crossing and walking is a problem.

Robert Shaw, SW Hamilton, said he realizes there is not enough money available for such projects on all the streets where there is equally high risk. He said the neighborhood group would like to explore private funding opportunities.

Mayor Katz said she hopes Commissioner Blumenauer and staff will return to Council with a report on this.

**Disposition:** Resolution No. 35189. (Y-5)

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Cay Kershner, Clerk of the Council, noted that an item had been filed on the Four-Fifths agenda to be heard with 1553, which was pulled from Consent.

Hearing no objections to introducing it, the Mayor so ordered.

**FOUR-FIFTHS AGENDA**

- 1626-1** Establish priorities for tax increment funded projects within the South Park Blocks Urban Renewal Area by the Portland Development Commission (Resolution introduced by Mayor Katz)

**Disposition:** Resolution No. 35190. (Y-5)

- \*1553** Issue Multi-Family Housing Revenue Bonds in an amount not to exceed \$4,500,000 for the St. James Housing Project (Ordinance)

**Discussion:** Commissioner Kafoury said this is one of the first new projects with a low market rate that the City has been involved in. This project is aimed at people working in service jobs downtown.

**Disposition:** Ordinance No. 167042. (Y-5)

- \*1583** Amend contract with Grady Harper, Carlson, Inc., for construction of the Portland Public Safety Facility (Ordinance; amend Contract No. 28276)

**Discussion:** Commissioner Hales said while he believes this should be approved, Council should be aware that the cost of ancillary equipment is part of this package, bringing the total cost in the bond amount to about \$615,000. He said this will pay to equip the Center in a way it should have been equipped all along and reflects the wakeup call resulting from the March earthquake. He said there will be a 94-95 budget implication, increasing the Fire Bureaus' target amount by approximately \$56,500 to pay the bond costs for the additional equipment and services.

Chief Lynn Davis said the Emergency Operations Center (EOC) will be collocated at the new 911 Center and this equipment is necessary to make it functional. He said staff went through three processes to pare this equipment list down and consider what is left to be critical.

David Kish, Director, Bureau of General Services, said the list is in line with what was brought to Council in June. The extension of the Grady Harper contract reflects work already done that Council authorized earlier.

Commissioner Kafoury asked if Council had not talked earlier about the added amount and at that time the Fire Bureau said it was not going to participate.

Mr. Kish said in June they brought in three options, ranging from \$470,000 up to

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\$1 million. The Fire Bureau at that time said they wanted to go back and confirm exactly what kind of equipment they needed.

Chief Davis said they refined that list down to what they believe is essential equipment.

Commissioner Hales said Council is not actually voting on that today but if Council approves modification of the contract and building the facility it would be foolish not to recognize the need to equip it. The costs for the equipment need to be included in the bond amount.

Ruth Roth, Bureau of Financial Planning, said it is critical that Council authorize the expenditure for equipment along with the contract amendment even though there is not a formal action on the floor because they are going to market with a fairly large debt issue and need to know exactly how much money is needed. That is why Commissioner Hales has raised the issue now. Several months ago the Office of Finance and Administration recommended that the EOC be made part of the bond sale and that a target adjustment be made for the Fire Bureau to accommodate the debt service, which will be about \$56,000 a year. She said the dollars specified are capital dollars and do not cover the costs of installation, which are unknown at this time.

Commissioner Kafoury said she is comfortable with the bond sale but questioned automatically increasing the target budget without having the Bureau prioritize this against other activities.

Ms. Roth said it has been the practice, when extraordinary things increase the ongoing expenses of a Bureau, to make target adjustments to accommodate them.

Mayor Katz said they will try to find savings in the Bureau to mitigate that cost and keep the budget within current service levels if at all possible.

Commissioner Blumenauer said that is an interesting question as Council will be authorizing later this morning revenue bonds authorized by the gas tax for a transportation obligation which is not an Office of Transportation responsibility but a fallout from not having tax increment spending. He said Council ought to be consistent and treat unexpected items the same in these situations.

Mayor Katz said the Transportation situation is a little different because it is also expecting over \$1 million in additional revenue because of unanticipated legislative action. She said all bureaus will try to keep within current target service levels.

Commissioner Blumenauer said the \$1 million may close the gap in maintaining current service levels but this is a new obligation.

Mayor Katz said this will be considered an additional expense that a bureau has to manage because it is capital construction and authorized by the Council. The Bureau will be encouraged to keep its budget within current target levels because additional resources are not going to be available.

Commissioner Hales said by voting to amend the contract, Council is also acknowledging the need for \$615,000 in the bond sale to cover the equipment costs. However, he is not precommitting Council to any budget decision to 94-95.

**Disposition:** Ordinance No. 167043. (Y-5)

**Mayor Vera Katz**

**1613** Authorize City Attorney to apply to Oregon Supreme Court for amicus curiae status on behalf of Oregon League of Cities (Resolution)

**Discussion:** Ben Walters, Deputy City Attorney, said this concerns Marx v. McKenzie High School Fact-Finding Team, a case where the Oregon Court of Appeals reversed a long standing interpretation of the public records law that specified that simply by contracting to perform a duty on behalf of a public body, a private organization would not become in and of itself responsible for complying with the public records law. In its decision the Court did not give much guidance about how its new interpretation was to be applied in the future and by taking this action the City is asking the Court to adopt a test so cities will have some understanding of how to reply to such requests.

**Disposition:** Resolution No. 35191. (Y-5)

**\*1614** Authorize intergovernmental agreement with Multnomah County for Contractor's Opportunity Loan Program (Ordinance)

**Discussion:** Mayor Katz said one of the pieces in the fair contracting resolution passed in February, 1993, was to identify barriers for minority and female contractors. The City is working on the obvious one, bonding, with other jurisdictions. This ordinance concerns the financing issue and is an agreement with the County which will trigger a loan fund of up to \$3.6 million from the private sector and will allow small businesses to access those resources and build a relationship with the banking community.

Carol-Linda Casson, Portland Development Commission, said this is a major piece in a menu of business support programs that will transition emerging small businesses into viable, wealth-creating concerns. She said this is a major milestone in public/private partnerships in that it calls for clients to be fully serviced directly through banking partners rather than through PDC.

**Disposition:** Ordinance No. 167044. (Y-5)

**\*1615** Adjust FY 1993-94 Budget for Fourth Quarter changes (Ordinance)

**Discussion:** Commissioner Blumenauer noted that last week Council approved a contract for \$97,000 to provide support for the US Conference of Mayors but left open how much the City would be investing in it, somewhere from zero to \$200,000. He asked if it would be worthwhile to determine how much, above the staffing, was a grant and how much was a contribution.

Mayor Katz said she would like to delay an answer to that until one of the consultants completes an assessment of what support is available on both the national and local level.

Commissioner Blumenauer said he would feel much more comfortable if half these funds were a grant, with half to be paid back. He said personally he does not feel comfortable having the City on the hook for more than \$100,000.

Mayor Katz noted that \$10,000 was transferred from Contingency to the Bureau of Housing and Community Development for one time support of Outside Inn's needle exchange program.

**Disposition:** Ordinance No. 167045. (Y-5)

**\*1616** Authorize Gas Tax Revenue Bonds (Ordinance)

**Discussion:** Elsa Coleman, Parking Manager, said this is a letter of intent to go to bond for the 15th/16th Street project, adding that the Office of Transportation will be working with the Office of Finance and Administration to determine the exact amount, the number of years and the debt service.

Vic Rhodes, Office of Transportation, said the project is to complete a decoupling of 15th and 16th east of the Lloyd Center and to allow for housing development on the easterly portion of the remaining land and expansion of the Lloyd Center on the west. He said this is part of the package put together for the Lloyd Center, the Convention Center and Holladay Street.

Commissioner Blumenauer said this was a partnership with PDC, Tri-Met, the private sector and Transportation. Everyone else has met their commitment but when tax increment financing was lost funding for the project was jeopardized. If the City is not able to go ahead with construction this season, the project will be delayed a year and will leave the other partners hanging. He said charging the full \$11 million of PDC commitments against Transportation is not a long term solution but they see no alternative right now.

Ken Rust, Debt Manager, said this ordinance allows them to start the publication and notice period. He said there is no real schedule for financing the project but they would like to tie it to the planned issuance of gas tax supported revenue bonds associated with the Arena project to save some issuance costs. The

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terms and conditions will not be set until later but the ten year repayment schedule is about \$380,000 per year. He noted concerns about the City's policy for using gas taxes and part of this process is an agreement that no further obligation of gas taxes will occur until there is a clear policy. However, this is seen as a very special project where a prior commitment has been made and which makes sense to complete.

Mayor Katz said because of the repeal of the ethanol exemption, the City is anticipating over \$1 million in additional revenues. She said she would hope the Department would look at the use of these additional revenues rather than cutting existing programs because the money will be there to repay the debt.

Commissioner Blumenauer said he assured Mayor Katz privately that their intention was not to do program cuts. He said Transportation is in an awkward position because its resources are not tied to inflation but to gallons and are therefore flat. At least for first year, however, they do not foresee program cuts. There should be no negative consequences from an affirmative vote today.

**Disposition:** Ordinance No. 167046. (Y-5)

**Commissioner Earl Blumenauer**

- 1617** Direct the Office of Finance and Administration to obtain funds for completion of the 15th/16th Avenue Project (Convention Center Urban Renewal Area) and cause any debt obligations incurred to be repaid from gas taxes (Resolution)

**Disposition:** Resolution No. 35192. (Y-5)

- S-1618** Declare City Council intent to work together with the Portland School Board to achieve mutual goals for improving the quality of life for Portland families (Resolution)

**Discussion:** Commissioner Blumenauer moved a Substitute, adding school retention as a goal. The motion carried. (Y-5) He said he appreciated feedback from Council, adding that the School Board unanimously approved this earlier.

**Disposition:** Substitute Resolution No. 35193. (Y-5)

**Commissioner Charlie Hales**

- 1619** Approve use by Multnomah County of three tax-foreclosed properties as a park or recreational area in conjunction with its Brentwood-Darlington Safety Action Team Office (Resolution)

**Discussion:** Commissioner Hales asked that this be continued to the afternoon session to allow Multnomah County Commissioner Tanya Collier to speak.

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**Disposition:** Continued to September 29, 1993 at 2:00 p.m.

- \*1620** Authorize Portland Development Commission to administer Economic Development Trust Fund (Ordinance)

**Discussion:** Commissioner Hales said this is the transfer of funds to PDC which will be used to leverage the Contractors Opportunity Loan Program which he expects to be both a more effective use of funds and a better administrative location.

Commissioner Kafoury asked if there were outstanding loans.

Commissioner Hales said yes, and PDC will assume responsibility for both performing and non-performing loans.

**Disposition:** Ordinance No. 167047. (Y-5)

**Commissioner Gretchen Kafoury**

- 1621** Authorize the Bureau of General Services to call for proposals for professional planning services for an East-Portland Master Facilities Plan (Resolution)

**Disposition:** Resolution No. 35194. (Y-5)

- \*1622** Contract with Portland Security, Inc., for dispatching of towing services (Ordinance)

**Disposition:** Ordinance No. 167048. (Y-5)

**Commissioner Mike Lindberg**

- \*1623** Authorize contract with CH2M Hill, Inc., in the amount of \$145,065 to conduct a sewer system commercial/industrial class charge study (Ordinance)

**Disposition:** Ordinance No. 167049. (Y-5)

- \*1624** Authorize a performance-based, intergovernmental agreement with the Oregon Department of Energy for the Multi-Family Energy Savings Assistance Program (Ordinance)

**Disposition:** Ordinance No. 167050. (Y-5)

- \*1625** Authorize execution of an Order with DEQ in connection with investigation and remediation, if necessary, of sediment contamination associated with discharges by the City to the Columbia Slough (Ordinance)

**Discussion:** Commissioner Lindberg asked staff to provide an overview of what



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this Order will do and stressed the seriousness with which the City is taking its responsibilities in this matter.

Noam Stampfer, Interim Director, Bureau of Environmental Services (BES), said the issue of sediments in the Slough is part of a complex of issues involving the biological community, the water column, recreational uses and flood plain management. He noted the sediment piece is of unknown dimensions involving multiple parties, incomplete standards and unevaluated risks associated with all the mediation options that might be available. He said the Slough is not now in a natural state and pollutants are still flowing into it, which is the primary reason why an orderly process is needed. He described some of the projects currently underway regarding the Slough, including a summit of stakeholders to try to build consensus on how to proceed. He said they are also working on the inflow of pollutants, source control and with the DEQ on standards and monitoring.

He noted that Exhibit A of the Consent Order calls for a phased approach through all the different pieces, the ultimate result being a staged implementation of remediation efforts. He said there is a tremendous amount of uncertainty about the Slough now and once that uncertainty has been removed they will know how to proceed. He said the Bureau is working on several tracks in addition to its work with DEQ, adding that this Consent Order does not preclude an agreement with Northwest Environmental Advocates as they hope to avoid litigation if possible. He said they are concerned about working with all the stakeholders involved, not just one.

Ann Nichol, Columbia Corridor Assn., supported this action. While farming, industry and residents have contributed to the contamination they have also provided food and jobs. She said this is a complex effort, involving more than just the City, and described some of the projects the City is creating that will divert stormwater and sewage. She explained that a group of 60 people have been meeting as the Columbia Slough Watershed Council which recognizes that the Slough serves many users and involves a multitude of issues which must be dealt with on a holistic basis.

Mayor Katz asked when the Council was formed.

Ms. Nichol said it was formed by BES which plans to issue an RFP for a consultant. She said they believe that is the best way to deal with all the problems.

Nina Bell, Northwest Environmental Advocates, said this ordinance comes with zero time for public input and the last minute action is ironic given BES' emphasis on public involvement. She said this is not the way to build trust with the public although she does understand the compelling need to get this done now. She contended that BES has taken action before in too great a hurry and hopes that the City realizes that it is only one of many discharges into the Slough who should help shoulder the financial load in the future. She charged

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that the City has been all too willing to shoot the messenger, Northwest Environmental Advocates, rather than recognizing the problem.

Mr. Stampfer said they are committed to working with all parties and do not intend to shoot any messenger with valuable information.

Ms. Nichol said she hoped Northwest Environmental Advocates would participate in the Watershed Council.

Ms. Bell said there has been an issue about whether they were willing to participate in the various processes. She said they cannot be condemned for missing meetings when they are out of town or have to leave early. She said to date these processes have not worked and have been frustrating. She said they have been asked by the Bureau to participate in a smaller process but need a fuller explanation about the goals before they would commit to participating. She said she hoped that would not be seen as a negative response.

Mayor Katz said she hoped Northwest Environmental Advocates could perform both jobs and keep prodding while still being a productive player.

Tom O'Keefe, United Community Action Network, said his organization initiated the storm drain stenciling project which they did for free in Lake Oswego but which Portland would not allow them to do. Now they understand the City is giving \$20,000 grants to people to do this. He said they have concerns about threats of litigation and criticized the City's contract with Northwest Environmental Advocates for Splash Day, contending that in order for an organization to get recognition it has to sue. He said BES was left out of the radio promotional ads for Splash Day even though they gave more money than anyone else.

Mr. Stampfer said their interest in Splash Day was getting the community involved in cleaning up the river bank. He said their primary goal was not to be heard on KISN listeners but to get the river cleaned up. He said they went through an orderly RFP process, arguing that the contract amount, \$14,000, would not have worked as a lollypop to buy off Northwest Environmental Advocates.

Ms. Bell said they work with their opposition whenever they can, citing their work with Portland General Electric as an example. She said this was seen by her organization as a means to clean up the riverbank and to increase education about sewer overflows and she would not have signed any contract where the intent was to avoid litigation. The radio ads were outside their control and when they found out about them they tried to rectify the situation.

**Disposition:** Ordinance No. 167051. (Y-5)

**\*1626**

Authorize the continuance of negotiations for the purchase of six permanent sewer easements required for construction of the Rose City Sanitary Sewer

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System Project, to begin condemnation proceedings, if necessary, and obtain early possession (Ordinance)

**Discussion:** Mayor Katz urged bureaus to get as much minority and female contractor participation as possible on these large construction projects.

**Disposition:** Ordinance No. 167052. (Y-5)

At 11:15 a.m., Council adjourned.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 29TH DAY OF SEPTEMBER, 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 Chuck Bolliger, Sergeant at Arms.

Mayor Katz read a proclamation in celebration of neighborhood associations. Kitty Wheeler, coordinator of the flag project, said there are now 55 flags and presented four new flags-- for Kerns, Roseway, Ardenwald/Johnson Creek and Concordia.

- 1619** Approve use by Multnomah County of three tax-foreclosed properties as a park or recreational area in conjunction with its Brentwood-Darlington Safety Action Team Office (Resolution continued from 9:30 a.m. session)

**Discussion:** Tanya Collier, Multnomah County Commissioner said she is very excited about this project to build a family community center on these properties.

Sally Lucero, Vice Chair Brentwood-Darlington Neighborhood Association, said this started with the safety action team which empowered the members to push for the center.

Ms. Collier said it is fun to see the idea of partnership catching fire. The next step will be zoning and budget requests.

Commissioner Kafoury asked if these were to be tied to the rest of the community.

Ms. Collier said of 33 needs listed by the neighborhood, 11 will happen at the school.

**Disposition:** Resolution No. 35195. (Y-5)

## REGULAR AGENDA

### Commissioner Charlie Hales

- 1627** Consider the LUBA remand of the application by Dale Rhine to establish a non-conforming use on property located at 4031 and 4033 SE Milwaukie Avenue (Hearing; 91-00863)

**Discussion:** Mayor Katz and Commissioner Hales recused themselves from this hearing.

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Peter Kasting, Senior Deputy City Attorney, read statements explaining the procedures to be followed. He asked Council members to report any ex parte contacts, personal knowledge, or conflicts of interest. He said this is not a hearing for the purpose of taking new evidence although Council could choose to do so.

Commissioners Blumenauer, Kafoury and Lindberg indicated they had no ex parte contracts, personal knowledge or conflicts of interest to report.

Mike Hayakawa, Planning staff, reviewed the history of the case which was to establish legal non-conforming rights for a reprographics and printing business for the period from 1987 to 1991. After an appeal of Council's denial the Court of Appeals remanded this back on the grounds that the findings were inconsistent, stating that the only question to be considered is whether the petitioner's printing activities constituted a continuation of the non-conforming use or some part of the use. Code Section 33.258.050 D (1), which is central to the discussion, states that non-conforming use rights are lost if a site is vacant for two continuous years and reestablishment of a non-conforming use is prohibited. If the site is vacant for less than two continuous years the non-conforming rights are maintained.

Mr. Hayakawa said the first question for Council is whether that Code section means that any activity within the two-year period is sufficient to maintain full non-conforming use rights. If non-conforming uses have diminished over time, can the owner maintain the non-conforming use at that reduced level of activity. He said this is important because Council previously found that some level of activity associated with printing and reprographics had occurred there. The second question is what do the facts show regarding the use of the site since 1987. Third, applying these facts, what specific non-conforming rights does Mr. Rhine still enjoy at this site. Mr. Hayakawa said the Court upheld Council's definition of vacant and that the liquidation of printing and reprographics equipment does not constitute extension of the business itself. Staff recommends that Council find that a full scale reprographics business did not exist as demonstrated by the absence of a business license and little or no use of utilities, from 1987 to 1991. Based on the record in this case, Council should find that the subject property was vacant because business activity was interrupted for more than two years and the non-conforming use rights have lapsed.

Jacob Tanzer, attorney representing Mr. Rhine, made a procedural motion to reverse the decision, objecting to the fact that Council members recused themselves, arguing that his client is entitled to be heard by the entire Council as it presently exists. He said they are entitled to the deliberation of five people, even if a majority of three might carry the day.

Mr. Kasting said nothing in the Code creates an entitlement for a full Council. Appellants are entitled to a decision from Council and this requires at least three

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votes one way or the other. If three members do not vote the same way, one of the new Council members will have to review the record and participate.

Commissioner Lindberg said the two Council members chose to recuse themselves because they were not here when the case was initially heard.

Mr. Tanzer cited a case concerning Washington County in 1976 in which the Court of Appeals found that since you can not get substitutes for Commissioners, the applicant is entitled to the participation of all. He said his burden is now getting three votes out of three, rather than three out of five.

Mr. Kasting said in the Washington County case the issue was that the Commissioner was needed in order to have a quorum and make a decision and in that case the remedy was for the party who had declared a conflict of interest to participate.

Mr. Tanzer said that is not correct as he wrote the opinion.

Commissioner Lindberg said Council could defer this for additional research.

Mr. Kasting said Council should give some thought to whether it wishes to require that all five members participate in each and every land use hearing. He said this has never been the policy.

Commissioner Blumenauer said there are often situations where Council does not have all five members present. He noted Council usually allows continuations of first hearings if there are not at least four members present. However, in this situation where the issue is very narrow, he would support moving forward. He said Council would have difficulty guaranteeing that all five members be present.

Commissioner Kafoury noted that it was a 5-0 vote before, adding that she refrained from participation on cases heard prior to her election. She said requiring five would set a bad precedent.

Commissioner Lindberg said if Council agreed, the proceeding would continue.

Mr. Tanzer said the fact that this is a remand is not a basis for a people to excuse themselves. He said the findings which state that "Mr. Rhine returned to the building whenever he could to do small printing orders, sell his remaining inventory and sell his equipment" is a correct summary of the facts. The findings then continued to state that the specific level of activity could not be determined and it is that language which the Court found improper because it is not a matter of how much but whether any activity occurred. The Court said some activity was conducted, including printing, and that the findings appeared to be founded on the legal premise that a non-conforming use is lost completely if it is not conducted at a sufficient level of intensity. That is contrary to the general law of

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non-conforming uses. He noted that Mr. Rhine testified he came as often as he could and made cash transactions. Other testimony also supports that. The Court stated that the only question is whether petitioner's printing activity constituted a continuation of a non-conforming use or some part of that use.

Mr. Tanzer said the Planning Bureau seems to be looking for any reason it can to take away a non-conforming use and is now saying it has to be a bona fide business for profit, which is a whole new rule that has not been heard before. He asked that this ordinance be applied fairly and that Mr. Rhine's non-conforming rights be recognized for the purpose of avoiding hardship.

John Kelly, Co-Chair, Brooklyn Action Corps, urged support of the Planning staff. He asked that the statement in the findings be stricken which states that Mr. Rhine returned to the building to make copies. That is erroneous and a mischaracterization of the record as the evidence clearly supports a sequence of events in which the copying business was abandoned. Mr. Kelly claimed that when Mr. Rhine went to the building he was liquidating the equipment although he might have made copies for passersby who thought the business was still ongoing because the sign was still up. He said there was no phone listing, no business license and all the evidence shows that this was an abandoned building. He said if he had reviewed the findings he would have asked that the sentence regarding the lease to St. Vincent de Paul also be stricken as this was an illegal use. He encouraged Council to stick to its guns, following the leadership of Commissioner Blumenauer who pointed out that nonsensical effects will result from the interpretation suggested by Mr. Tanzer. LUBA virtually invited the City to introduce its own interpretation of this matter. He said if Council recognizes this use, even at a reduced level, it will invite every owner of a non-conforming use to perpetrate the appearance of some sort of use and will subvert the intent Citywide. It will also subject the Brooklyn neighborhood and others to endless interpretation issues. He said this matter needs to be put to rest so the neighborhood can move onto more productive issues.

Mr. Tanzer said Mr. Rhine was a member of the Brooklyn Action Corps since it was founded and is entitled to fair application of the Code. He said Mr. Kelly is asking that this statement be stricken because it provides the basis for recognizing the non-conforming use rights. He read from the transcript of the original hearing to support Mr. Rhine and Mr. Cragero's testimony about copying activities and said these people are not liars and must be believed. Regarding the report which said there was no water use during that time, he noted that Mr. Rhine said that the pipe broke and he did not have the money to fix it but that the business did not require water. When he had the money, he fixed it. He had a business license for commercial rentals because that is what he was trying to do. He said a precedent of fair application of the ordinances is a very healthy one in order to avoid hardship in certain circumstances, which apply here and have been proved. He said the factual determination is quite clear.

Commissioner Blumenauer moved to adopt the staff recommendations and

tentatively affirm the decision. He said the reasons Council is moving in this direction is to avoid precisely the situation of taking anecdotal information and determine who is a liar or not. Council needs to rely on objective evidence that everyone can rely on, such as whether there was a business license. If anecdotal evidence or potential liquidation was accepted, the City could have some of these non-conforming uses continue in perpetuity, which would be nonsensical. Commissioner Kafoury seconded.

Commissioner Blumenauer asked if the non-participating Council members could review the findings to see if they supported the Council decision rather than waiting until November, when the same three Council members would be present.

Mr. Kasting said they could but since Council was not dealing with an initial application, no one would be prejudiced by waiting until the same three Council members present today would be back. He said no precedent would be set by waiting.

Referring to the case (Eastgate Theatre v. Washington Co.) cited by Mr. Tanzer, Mr. Kasting noted two Commissioners abstained due to a conflict of interest and the remaining three split two to one. Since, the Charter required three affirmative votes to take any action, the Board could not act due to the abstention of the two members with a conflict. The Court wrote that the abstention did not prevent partiality, it prevented the decision itself and denied the petitioners their entitlement to any tribunal at all. The core issue in that decision was that the decision-making body was not able to make a decision without the participation of the other members.

**Disposition:** Tentatively deny appeal (Y-3); prepare findings for November 3, 1993 at 2:00 p.m.

1628

Appeal of Don Olsson against Hearings Officer's decision to deny application for a four-lot subdivision with adjustments, located at SW 62nd Avenue and Garden Home Road (Previous Agenda 1540; 93-00217 ZC SU AD)

**Discussion:** Mr. Kasting read statements regarding the procedures to be followed.

Mike Hayakawa, Planning Bureau, said an understanding had been reached between the applicant and the principal opposing party shortly before Council convened. He said this is an application for a subdivision for four lots which requires an adjustment and a variance to reduce some of the site development standards for some of the lots. Staff made a favorable recommendation and the Hearings Officer approved the zone change but denied the rest of the application primarily for two reasons: 1) the land suitability criterion had not been met because of conflicting evidence and; 2) the proposed sidewalk along Tract A, the private street, threw off the entire design.



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The appellant disagreed on both matters, contending that the Hearings Officer did not consider whether the sidewalk was needed and should not have denied the bulk of the application on that basis. Additional material has since been submitted on the land suitability criterion, including a letter from the Soils Engineer in the Bureau of Buildings stating the criterion has been met. Second, the applicant has agreed to install a sidewalk through an easement through the front yards of the lots that abut Tract A, thus addressing the second concern of the Hearings Officer. Staff believes the applicable criteria have been met and supports the proposal.

Mr. Hayakawa said colleagues in the relevant technical areas concur with this recommendation. He showed slides of the site, indicating that it is a low-density, single family area.

Tim Ramis, attorney representing Don Olsson, said they reached agreement with the principal opponent and are now asking Council to adopt two additional conditions and approve the application. He said all of the issues except the sidewalks and drainage design were approved by the Hearings Officer. He noted four letters which state the new drainage plan is superior to what was there in the past and exceeds what was recommended by the opponents except for one aspect. To address that concern, he requested that Council adopt a condition calling for two catch basins rather than the three proposed by the opponent and the one initially proposed by the applicant. Second, they ask that Council adopt two sets of conditions dealing with shared access and adopt them in the alternative. They have proposed some conditions to guarantee shared access opportunity as has Brian McCarl on behalf of the adjoining property owner. Rather than fighting over them, Mr. Ramis asked Council to adopt both in the alternative. That way the project can proceed under either set of conditions while the parties negotiate.

Kurt Hettinger, W.B. Wells and Associates, Inc., described the proposal regarding Tract A, the location of the two catch basins. He addressed four requests made by a neighbor, William Donner, regarding the width of Tract A and drainage issues. Regarding surface water running downslope, applicant is proposing a French drain system so that the surface water which travels to the Olsson property will be channelled into a trench drain system and conveyed into the stormwater system. This will protect the Olsson and Donner property.

Mr. Ramis noted that Transportation has no objections to the shared access proposal.

John Spitzer, Executive Vice President of Professionals 100, read a letter written by Greg Bush of the Home Builders Association expressing concern with circumvention of the City's infill policy. He said the subdivision was entirely replatted to meet the increased density goal and no connection should be required to adjoining developments, which may never be built. No development should pay more than its share and many of these conditions provide

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infrastructure that will benefit adjoining properties.

Dana Erickson, 83330 SW Sexton Court, Beaverton, 97005, an area builder, said the neighborhood fears about excessive water flow are unfounded and infill projects like this are very important and should be supported.

Ed Whillett, area realtor, said the City's infill policies are designed to eliminate urban sprawl and are the guidelines realtors use when showing property to developers. It is a misrepresentation to sell this property and then arbitrarily deny development on it.

Dan Kearns, representing adjacent property owner Nancy Donner, noted that the developer has presented new plans which correspond to the issues -- sidewalks and drainage -- that they are concerned with. Her desire has been to coordinate the design of this property with hers and asked that the application be approved as reconfigured and with conditions that would guarantee joint access. They have submitted alternative conditions which leave open an opportunity to strike a deal with the developer.

Kay Durtschi, Southwest Neighborhood Information, said this is one more case where mediation should have been used but was refused by the applicant. She asked Council to look at the Albuquerque method and stated that her organization is not anti development. She cited water as her major concern in this development and the need to make sure that builders and developers are doing the proper thing regarding storm water drainage. One catch basin is not enough and there should be more. Ms. Durtschi said the traffic impact on Garden Home Road is another concern, adding that care needs to be taken about where the curb cuts are placed. She said this is one more case where reasonableness has been replaced by vendettas.

Dorothy Gage, Ashcreek Neighborhood Association, said the drainage issue is critical in this area. The property in question is on the cusp of the hill and they are concerned with people who find water in their basements after the rhetoric ends. She also cited concern with the traffic impacts on Garden Home Road.

Nels Paine, Garden Home Road, said everyone has diverted their water to that lot and it has become a very troublesome spot. The drainage issue will be solved only if surface and underground water are taken care of. He questioned the adequacy of the sampling and testing and asked Council to make sure that this will actually take care of the problem for people who have water in their basement.

In rebuttal, Mr. Ramis agreed that the developer should be talking with the neighborhood. He noted that a great deal of attention has been given to the drainage problems and they believe they now have a solution that will actually improve conditions downhill.

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Commissioner Lindberg said there seems to be a courthouse steps agreement but it appears the neighbors have not seen the new information.

Mr. Ramis said the agreement was with Mr. Kearns, attorney for the adjoining property owner. He said it was a question of timing as far as getting the information out.

Mayor Katz noted the letter from the Bureau of Buildings stating approval of the proposed drainage plans and asked what recourse citizens have if serious runoff problems then result, which she has seen happen in other subdivisions. She said when citizens contact the bureaus that have given an approval that turns out not to be all right, they are told to sue the developer.

Mr. Kasting said when the City reviews these matters, it reviews for compliance with City standards. Those standards are not set to prevent damage in any and all circumstances and judgment is needed to determine the appropriate standard.

Mayor Katz said this seems to be a troublesome geographical area and asked if City staff had reviewed their standards to avoid property damage to others. She said she supports the Bureau recommendations but is uncomfortable when citizens report problems after approval has been given and the City finds that somebody erred and the only recourse is suing the developer.

Commissioner Blumenauer said standards are promulgated that balance the cost and the consequences but the City does not make guarantees. He said he does not want to move forward if there is an expectation about a different standard that guarantees there will be no flooding. That would require a much different standard in terms of approval.

Mr. Kasting said the Mayor's point would require analysis as there are several different places for recourse, depending on the circumstances.

Mayor Katz said the question is how would the Bureau of Buildings make a determination as to whether they are negligent in their recommendations or whether the negligence belongs to the developer or is an act of God. What kind of a standard do we use to make that judgment? She said perhaps the City ought to review some of the water issues in geographic areas like Southwest.

Mr. Kasting said discretionary judgment is needed in balancing the cost of infrastructure versus the likelihood of receiving a benefit.

Commissioner Blumenauer asked who in the Bureaus is telling citizens to sue.

Mayor Katz said she knows of citizens who have called the Bureau of Buildings and been told to sue. She said she needs to understand what they review before they make that kind of a statement.

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Commissioner Blumenauer said then let's bring them in and ask them. If Council wants to have stricter standards, the Bureaus will make them as strict as the Council wants to make them. He said he feels uncomfortable about these developers who have come in under the existing rules. He also noted that in this case other neighbors have testified that this property has been used as their catch basin.

Mayor Katz said she has no problem with this particular case but with previous decisions that have been made that impacted the quality of life in this particular area. She said this may not be the time or place for a discussion of what bureaus review before they tell people to sue the developer.

Mr. Kasting said generally the City Attorney does not recommend that City employees advise citizens to sue anyone.

Commissioner Kafoury said that is an important charge and there needs to be more than anecdotal evidence.

Mayor Katz said citizens had come to her on a particular case and since the same issues keep coming up with regard to drainage she wanted to bring it up here.

Commissioner Hales asked why the applicant originally proposed a private street.

Mr. Hettinger said the property is isolated and the street can not be a through street. It is meant to service only the developable lots.

Mr. Ramis said they were advised by the City that this was not the place for a private street.

Commissioner Hales asked about the adjacent property which may be subdivided to take advantage of the proposed access conditions. He asked if it is wide enough to accommodate the lots on the other side of the property line and whether a cul de sac would be required at the end.

Glen Pierce, Transportation Engineer, said there is a sub division behind this property so this access can only dead end. It is wide enough to accommodate two lanes of traffic and if it were a public street a circular cul de sac would be required but private streets generally end in a hammerhead if needed.

Commissioner Hales asked whether two different sets of conditions regarding shared access had been submitted.

The Clerk noted they had been filed as Council began and would be made available.

Commissioner Hales moved to overturn the Hearings Officer's denial and

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tentatively approve the subdivision with additional conditions regarding storm drainage to include both the french drain and two proposed catch basins, and that a set of two alternative conditions regarding shared access be adopted, one with the sidewalk located entirely on the subject's property and another with the location shared between the two. Commissioner Kafoury seconded.

Commissioner Blumenauer said he is open to a review of drainage standards to make them more strict if Council wishes.

Commissioner Hales recognized the successful collaborative efforts, despite their lateness, and said he hoped that will be noticed by all parties involved in this and other similar transactions.

**Disposition:** Tentatively grant appeal (Y-5); applicant prepare findings for October 20, 1993 at 2:00 p.m.

**Commissioner Gretchen Kafoury**

**1629**

Liquor license application for Francisco and Norma Valenzuela, dba Tropicana, 5017 N Interstate Avenue, restaurant liquor license (new outlet); favorable with restrictions recommendation (Report)

**Discussion:** Gary McGrew, License Bureau, said in response to neighborhood concerns about this request for a retail malt beverage license, the Valenzuelas agreed to change this to a restaurant application which allows for the sale of alcoholic beverages on the premises only. He said the Valenzuelas have had considerable experience with food service although they have no experience in the liquor industry. He described the operation, noting closing hours of 11 p.m. on weekdays and 12 midnight on weekends.

Mr. McGrew said this application has stirred considerable neighborhood interest, and 12 letters have been received, most in opposition. Concern has been voiced because of prior problems experienced in the neighborhood with operations on Interstate. The proposed operation received approval from the Overlook Neighborhood Association after Mrs. Valenzuela met with them to let them know what steps she has taken to lessen any negative impact and to change from a tavern to a restaurant with a change also in closing hours. He said the Bureau recommends a favorable recommendation based on the applicant's prior record and their belief that changing this operation from a tavern to a restaurant will make less alcohol available for off-premises consumption. Applicants have also been responsive to the concerns of neighbors and regulatory agencies.

Perry Christiansen, Portland Police Bureau, said they did some extensive background on this location and everyone seemed very comfortable with this recommendation.

Evelyn Johnson, owner of the abutting property, said she was against this initially

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but now supports it because of the agreements and the fact it will not be a liquor outlet. She asked the owners to report any prostitution activity to the police.

Mayor Katz noted that police had reported favorably on the Valenzuela's operation in Old Town.

Commissioner Kafoury said it is important to have a business there, not just a vacant building, and that this process has been very helpful.

Commissioner Hales said a well run restaurant will turn out to be an asset if there is a capable applicant.

Commissioner Kafoury moved a favorable recommendation with restriction. Commissioner Lindberg seconded. He complimented the Bureau for the way it worked with the applicant and for providing interpretation.

**Disposition:** Favorably recommended with restriction (Y-5)

Commissioner Blumenauer left at 4:05 p.m.

**1630** Liquor license application for Lucky Partners, Inc., dba 2 by 6 North, 535 NE Columbia Boulevard, dispenser Class A liquor license (change ownership); unfavorable recommendation (Report)

**Discussion:** Perry Christiansen, Police Bureau, said this is for a cocktail type establishment which has been at this location for the last 40 years. The issue is whether an application which is incomplete or misleading should receive a favorable recommendation. Charles Greenough, one of the applicants, listed three misdemeanor convictions on the application but failed to list two harassment convictions and an arrest for prostitution which resulted in a conviction for disorderly conduct. Because Mr. Greenough's record indicates a pattern of abuse of alcoholic beverages, disregard for the law and apparent contempt for authority, the Bureau is forwarding an unfavorable recommendation.

Mayor Katz asked if applications were approved where there have been arrests for speeding.

Officer Christiansen said any conviction for a misdemeanor will not preclude a favorable recommendation but a felony conviction will. He said there has been no felony conviction in this case but the rules strictly state that all convictions for any crimes must be listed.

Mayor Katz said the reason for an unfavorable recommendation is that not all the arrests were in the application, not the fact that there were arrests and convictions.

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Officer Christiansen said the pattern of arrests and alcohol abuse also led to the recommendation.

Commissioner Hales asked if the recommendation would have been the same if based on the pattern alone.

Officer Christiansen said, based only on the criminal convictions, they might have been swayed to a favorable recommendation.

Adeline Gotcher, one of the partners in the business, said Mr. Greenough's involvement in the operation is very small as she oversees all the work at the restaurant, while Mrs. Greenough is the bookkeeper.

Lynn Greenough, applicant, described the circumstances behind the application, stating that Mr. Greenough had forgotten some of the incidents because they were so long ago. She said her husband is a good businessman and they had no intention of misleading anyone, noting that the Oregon State Lottery and the OLCC has approved this operation, pending the City's recommendation.

Mayor Katz asked if the Lottery people knew the entire history when they gave their approval for the video machines.

Ms. Greenough said yes, once the omission was brought to their attention, they added a statement to the OLCC and the State Police were recontacted to include the misdemeanor charges.

Robert Charles "Chuck" Greenough, explained that if he, rather than his wife, had filled out the form, he might have remembered the misdemeanors. He said he thought the DUII was actually the more serious offense. He objected to the process, adding that he has owned Andy's Auto Repair business for 18 years and has dealt with many other governmental offices and has had no problem following their rules. He said neither of his personal recommendations were checked, adding to his fears that government could focus on a small segment of a career in deciding a person was not qualified to invest in a business involving liquor. He said this is character assassination, particularly as there have been no misdemeanors in the last ten years. He said he hopes his failure will not penalize the other nine employees or cause him to lose the \$30,000 he has invested.

Commissioner Kafoury asked about the relationship with the neighborhood.

Mr. McGrew said he was aware of no neighborhood problems.

Commissioner Hales asked if the day-to-day operations were to be in the hands of Ms. Gotcher and his wife.

Mr. Greenough said, yes, that is set out in the articles of incorporation.

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Mayor Katz asked if conditions could be added stating that Mr. Greenough not be involved at all in the day-to-day operations.

Mr. McGrew said with that condition, a favorable recommendation with restriction seems appropriate. In response to another question by Mayor Katz, he said he believed the option of listing only the two women on the application was offered by Officer Christiansen.

Officer Christiansen said the Bureau relayed their belief that if Mr. Greenough removed himself completely from the application a favorable recommendation could be made. Mr. Greenough indicated that he had no interest in removing himself as he put up all the money.

Mayor Katz asked if Mr. Greenough would still be a partner in this venture if he were completely removed from the application. What would the legal difference be between that versus adding the condition removing him from day-to-day operations?

Commissioner Hales said it is not a good idea, even if it is legally okay, to have a corporate partnership and encourage only a subset of them to apply for the license.

Mr. McGrew said he believed there would be a basis for adding the condition restricting Mr. Greenough's involvement in liquor-related activities, but keeping the corporation intact and not having him withdraw. If OLCC placed that restriction on a license they would explain to Mr. Greenough that he could come in at a later date and ask for removal of the restriction.

Commissioner Kafoury made a motion to recommend a favorable recommendation with the added condition that Mr. Greenough not participate in the liquor related activities associated with day-to-day operations. Commissioner Hales seconded.

**Disposition:** Favorably recommended with conditions. (Y-4)

At 4:40 p.m., Council recessed.



**SEPTEMBER 30, 1993**

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 30TH DAY OF SEPTEMBER, 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; Kathryn Imperati, Senior Deputy City Attorney; and Chuck Bolliger, Sergeant at Arms.

**Commissioner Charlie Hales**

**S-\*1631** Readopt and implement the Albina Community Plan and the 11 neighborhood plans developed with and as a part of the Albina Community Plan (Ordinance)

**Discussion:** Michael Harrison, Planning Bureau, noted the Substitution.

Commissioner Hales moved the Substitution and Commissioner Lindberg seconded.

Mr. Harrison said the substantive difference is a change in the boundaries in Exhibit X which would be exempt from the Albina Community Plan. The area in question is the area that Al McGuinness has an interest in and which prompted his appeal to LUBA.

Hearing no objections, the Mayor ordered the Substitution.

Mr. Harrison said in order not to delay implementation of the Plan while the appeal is in process the Bureau recommends readopting the Plan but exempting Mr. McGuinness' property along Marine Drive as indicated on Exhibit X. The property on Marine Drive would be rezoned if the City's action is upheld on appeal.

Milton Brown, owner of Tax Lots 80, 93 and 158 adjoining the McGuinness property, said at the time the plan was proposed his property was to have the same zoning as the McGuinness property. He said his property should also be deleted as it is a necessary part of the proposed development in that area, adding that if this is not done, he intends to appeal also.

Mr. Harrison said Mr. Brown's property is included in the Substitute and his concern has been addressed.

Mr. Brown said he thought they neglected to take out one lot.

After the vote was taken and the next item read, Senior Deputy City Attorney Kathryn Imperati noted that one tax lot did appear to have been omitted and that

the Substitute ordinance needed to be amended.

Commissioner Hales moved reconsideration. Hearing no objections, the Mayor so ordered.

Commissioner Hales moved to amend the Substitute to include Tax Lot 93 in the area to be excluded from the Plan. Roll was called and the amendment passed (Y-5)

Commissioner Hales moved adoption of the ordinance as amended.

**Disposition:** Substitute Ordinance No. 167054 as reconsidered and amended. (Y-5)

- 1632** Tentatively deny appeal of Wilson Neighborhood Association and grant appeal of Housing Authority of Portland for conditional use, essential service provider and an interim resource protection review, in order to construct a 31-unit residential building to provide short-term housing, located at SW Bertha Boulevard near SW Chestnut (Findings: Previous Agenda 1541; LUR 91-00336 CU ES IR)

**Discussion:** Cay Kershner, Clerk of the Council, noted that the findings had been distributed.

Commissioner Lindberg noted that Commissioner Hales and Mayor Katz did not participate earlier.

**Disposition:** Findings Adopted (Y-3; Hales & Katz recused)

- 1633** Appeal of Barry D. Schlesinger for BPM Associates against Hearings Officer's decision to deny application for a conditional use for a parking structure in a CXd zone, located on the north half of Block 177, bounded by SW 6th, SW Washington and SW Broadway (Previous Agenda 1543; 92-00763 CU)

**Discussion:** Ms. Imperati read the hearing guidelines.

Commissioner Lindberg reported an additional ex parte contact, with Greg Goodman and Steve Siegal for 15 minutes.

Commissioner Blumenauer turned in the list of contacts with staff.

Steven Janik, attorney for BCT Partnership, opponents, said they made a mistake last week in stating that there would only be 183 spaces left in the lid if this was approved. He said they had assumed the federal courthouse would use the number of parking spaces they have a right to under the DPCP (Downtown Parking and Circulation Plan) and only learned last week that they would be using less than the allocated number of stalls. Staff indicates there would be approximately 300 spaces left in the lid if this garage is appealed. Applicant's

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contention that there will 508 spaces left, however, completely ignores the federal building.

Mr. Janik charged that appellants have completely reversed their original theory for approving this garage, previously arguing that when the City adopted the Central Plaza decision that action established a short term parking strategy which meant you had a right to short term parking if you did a parking analysis which showed a need. In the materials submitted last week, however, that theory was abandoned and the theory now is that numerous policies taken together comprise the strategy. He said they picked bits and pieces from four different planning documents and assert that these can be assembled into a strategy. He said there are several major problems with that. First, these policies do not establish an integrated strategy for managing short term parking. Nor do they indicate what kind of short term parking is permitted or set standards for deciding which applications for short term parking can be approved and which cannot.

Mr. Janik said the question is what does Section 2-7 (c) of the DPCP mean when it says the City short term parking strategy. He said they believe you cannot rummage through planning documents and assemble this kind of a parking strategy. The real question is what did Council mean when it modified the DPCP in 1986 to add 2-7 (c). He said Council either meant to say that the strategy would be found in other planning documents or it meant that the City would go forward and adopt a short term parking strategy. He argued that it was very clear that the intent under 2-7 (c) was to develop a parking strategy for specific districts downtown, noting a resolution adopted by Council at the same time which stated that the Office of Transportation would work with Planning, the Portland Development Commission and other city agencies to develop and refine parking strategies for specific districts downtown. That indicates clearly that a short term strategy had not yet been adopted and that until one was adopted, 2-7 (c) was not operative. When the City adopted the Central City Plan, Council said exactly the same thing again in Action Item T-14 of the Transportation Goal which stated "develop a parking strategy for each Central City district and for specific sectors within the downtown..." within five years. He said there is still no legislatively adopted short term parking strategy as envisioned by Council and until one is adopted, 2-7 (c) is not operative and can not form the basis for approval of this case.

Mr. Janik said the numbers from ECO are different from those in their previous reports and those differences have been enumerated in written materials submitted by his client. He said they have also provided letters to show that a number of letters in support were incorrect and that the parties are neutral.

He summarized by reiterating that there is no legal justification for this request as there is no adopted short term parking strategy, that justification cannot be based on the Central Plaza case and that the numbers supplied by the applicant do not show need, as the Hearings Officer found.

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Steve Pfeiffer, attorney for BPM Associates, noted that last week he stated there would be 508 spaces left in the LID if this garage is approved. Staff said there would be 427 spaces left, not 300 as opponents assert. The difference between them is 81 spaces, precisely the number of new spaces occupied by the federal building which have not been deducted from the lid as yet.

Mr. Pfeiffer said they believe the City indeed has a short term parking strategy consistent with ORS 227.173. He restated his position that the DPCP and the existing adopted policies, all of which were referenced in the findings of the Central Plaza case, serve as the strategy. He contended that Mr. Janik contradicts himself by stating that there is no strategy as he relied on exactly the same theory that proponents and the City Attorney are using now when he argued the Central Plaza case. That theory being that the strategy is reflected in the various policy statements, goals and criteria incorporated in the entire set of planning documents. He criticized Mr. Janik's suggestion that there are numerous documents which supplement the DPCP which call for further refinement as there is no indication in any of those documents that the short term parking policy in place in 1986 and 1988 and today is superseded or repealed, leaving the City without a strategy. To call for further discussion and refinement does not repeal what was adopted in 1986. He argued that the phrase in 2-7 (c) "consistent with the short term parking strategy" does not mean the City will develop one; it means the City has one and subsequent actions call for refinement.

Mr. Pfeiffer referred to letters in the record from Frederick and Nelson and Commonwealth which support long term over short term parking. He said opponents have twisted the letter from Mr. Weston of Commonwealth who is strongly in support of this project but asks for long term parking as well. He argued that the City does have a strategy for short term parking based on need which has been refined and which the City Attorney reports is consistent with the statutory requirement. Council and staff have provided a direction for any applicant to demonstrate compliance with that strategy. Staff has indicated that they have provided the evidence to show there is a need for short term parking in this area. The issue here is one of credibility, evidence and economic policy. They believe their evidence is the most credible and the policy goal is to provide sufficient parking to support the retail, office and other users of short term parking downtown.

Randy Pozdena, Managing Director of ECO Northwest, said the material submitted by Mr. Janik is full of misleading "data fast balls", which he described and rebutted. Most important, opponents would have Council believe there is no weakness in supply and yet they themselves have stated that this is a battle over a scarce resource. He said he saw nothing in the document submitted to change his opinion that there is more than sufficient demand for this facility.

Commissioner Hales said the opposition has made several arguments that would probably be bad policy for Council to apply generally. One is having Council

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decide land use cases based on whether or not a previous case was a precedent. He said he believes the City has a pretty good Zoning Code and the job of Council is to apply good judgment to that document. That document does refer to other documents, such as the DPCP, but at bottom Title 33 has to be the preeminent document. The other argument is that a lack of clarity in one of the standards should be grounds for denial of a property owner's desire to build something. He cited Ms. Imperati's memo which states that the City's approval criteria need not be perfect, only reasonably clear and capable of informing the applicant what must be established to obtain approval, adding that he thinks the strategy is clear and this project advances it. He moved to tentatively overturn the Hearings Officer's denial and approve the proposed conditional use. Commissioner Kafoury seconded.

Commissioner Blumenauer moved to amend the motion to add a condition to reduce the larger wall openings so that the horizontal dimension does not exceed the vertical dimension.

Commissioner Kafoury seconded. Hearing no objection, the Mayor ordered approval of the amendment.

Tim Barnes, Planning staff, noted that he had distributed additional conditions at the last meeting.

Commissioner Hales said his motion included the prior set of conditions submitted earlier.

Commissioner Kafoury noted that staff had provided conditions last week , "a" through "p", and Commissioner Blumenauer has now added "q".

Commissioner Blumenauer said the policy is debatable and the arguments were well stated but the issue is one of clarity rather than precision. He said there has been an adequate objective demonstration of need here. He said the Hearings Officer's decision was not a reasonable interpretation, as he believes it is a stretch to deal with short term parking and not deal with other than retail customers and to demand that the applicable area be throughout downtown. He said he hopes staff and the Hearings Officer will deal with subsequent applications in a reasonable fashion and not have some draconian test or unnecessary obstructions.

Commissioner Hales said this project will improve the character of the area. He said the key phrase for him is found in Section 2-7 (c) which says the City may approve a new short term parking structure as long as it finds it is consistent with its short term parking strategy. Those words are not capitalized which leads him to believe that Council should apply its own judgment as to what the strategy is. To the extent that strategy is embodied in policy and Code, this project complies with it.

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Commissioner Kafoury said based on the City Attorney's arguments it is clear that there was a policy and the issue then is to demonstrate need. She believes the application is consistent with existing policies.

Commissioner Lindberg said grappling with the numbers has been extremely challenging but after reviewing the original staff recommendations he supports their position, that basically the strategy is to supply an adequate amount of short term parking to support the retail core. He entered into the record a letter from Tim Barnes outlining the staff position.

Mayor Katz said she relied on two documents, the DPCP Sections 2-7 (a through d), and on the City Attorney's memo which states that although the Council has not adopted a document entitled "Short Term Parking Strategy" it has adopted a group of policies which it identified as comprising the short term parking strategy in the Central Plaza case. This is sufficient to comply with the legislative need in State law to show need. She said there is no precise standard to answer the question of need but one is not required to be precise. One could look at the downtown area and comfortably state the need has been proven for this particular geographic area.

**Disposition:** Tentatively grant appeal with conditions; applicant prepare findings for November 10, 1993 at 2:00 p.m. (Y-5)

**Commissioner Gretchen Kafoury**

**1634** Liquor license application for Nu Tran, dba How R You, 4806 SE Stark Street, restaurant liquor license (new outlet); favorable recommendation (Report)

**Discussion:** John Werneken, License Bureau, said this liquor license in a largely residential area would be the first one at this location. Approval was based on two assumptions: 1) that the applicant would personally manage the premises and; 2) it would remain a family restaurant with a reasonable closing hour. He said he was told that the Sunnyside and Laurelhurst Neighborhood Associations had been waiting to support a good neighbor plan but are unable to do so because it has not yet met the concern of the neighbors about limiting the operating hours. He said the applicant is concerned about not being entrapped by promising to meet some standard for closing hours and then running into a good business reason for seeking a temporary change. He recommended that Council condition any favorable recommendation upon an understanding that this is a family restaurant and consider asking the OLCC to require notice to the City and neighbors if a change in the closing hours beyond 9:00 p.m. is requested.

Mayor Katz asked about the operating hours.

Mr. Werneken said they would close at 9:00 p.m. but the applicant wanted to be able to accommodate special events and later hours in the summer. He said they have not been able to write a framework yet which gives that flexibility. By

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transmitting concern about the closing hours to the OLCC, staff hoped to have time to provide that framework. The expectation is that if there are good grounds for a later closing hour, they would be acceptable to the neighbors for events such as a family gathering.

Mayor Katz asked if the neighbors would be the neighborhood association.

Mr. Werneken said they would notify the immediate neighbors who had participated in this process.

Nu Tran, owner of the restaurant, said they would like to accommodate customers who would like a glass of beer or wine with dinner without imposing any hardship on the neighborhood. She said she is on the premises at all times.

Mayor Katz asked if she had any problem with the recommendations about coming to the City and neighbors if the hours changed.

Ms. Tran said she would not like to have it so restrictive that she can not accommodate requests for special events. She said she does not always know very far in advance when such special events occur.

Donna Sparks, 727 SE 48th, 97215, said How R You did not participate in the SE 48th Street neighborhood watch meetings. Graffiti remained on their building for 30 days before SE Uplift removed it and the neighborhood believes Ms. Tran should have taken care of this. In August the neighborhood had a meeting and all agreed the license would not be an asset. She pointed out that Ms. Tran also has a full time day job. At a meeting in September regarding a good neighbor agreement Ms. Tran said she had no intention of changing the closing hours, currently 9:00 p.m., but later refused to put that in the agreement and will not sign one even with 10:00 p.m. closing for an occasional special event.

Commissioner Kafoury asked if there had been problems with noise or were people were aware that the building has been open later than intended.

Barbara Rommel, 4317 SE Pine, 97215, said she is a regular patron of the restaurant and is concerned that no one over 21 who speaks English will be available to enforce the liquor regulations. She said she has never seen Ms. Tran on the premises and also objected to the number of liquor licenses in the Sunnyside area. She argued that the hours, as proposed, are reasonable and later hours, if combined with liquor, will negatively impact the neighborhood. She also expressed concern with the way the good neighbor plan has not gone together.

Mayor Katz asked Mr. Werneken what language he planned to send to the OLCC regarding the closing hours.

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Mr. Werneken recommended endorsement as proposed with notification before any changes in operating hours are made.

Commissioner Hales asked if it was possible to delay this action to see if the parties could craft a good neighbor agreement.

Commissioner Kafoury said a lot of the concerns are speculative, not based on fact. She said she does not want to set a precedent that if there is no good neighbor agreement, Council will not approve an application.

Mr. Tran disputed Ms. Sparks statement, arguing that she does believe in being active in the neighborhood. She said 9:00 p.m. is their planned closing time but they want the option to remain open until 10:00 p.m. occasionally.

After some discussion about the status of the good neighbor plan, Commissioner Kafoury moved to continue this one week in hopes that the parties can come to some agreement.

**Disposition:** Continued to October 7, 1993 at 2:00 p.m.

At 3:30 pm, Council adjourned.

BARBARA CLARK  
Auditor of the City of Portland

*Cay Kershner*  
By Cay Kershner  
Clerk of the Council