



CITY OF

PORTLAND, OREGON

OFFICIAL
MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 27TH DAY OF APRIL, 1994 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Blumenauer, Hales and Kafoury, 4.

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

Agenda Nos. 610 and 624 were pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

598 Cash investment balances for March 10 through April 6, 1994 (Report; Treasurer)

Disposition: Placed on File.

599 Amend Purchase Order No. 1016866 to White GMC Trucks of Oregon for two 100,000-GVW conventional setback truck tractors (Purchasing Report - Bids 117 and 118)

Disposition: Accepted; prepare contract.

600 Reject all bids for Washington Park irrigation system (Purchasing Report - Bid 132)

Disposition: Accepted.

601 Accept bid of Northside Ford Truck for furnishing Ford heavy duty truck parts and accessories at 12 percent above dealer's net price (Purchasing Report - Bid 141-A)

Disposition: Accepted; prepare contract.

602 Accept bid of Courtesy Ford, Inc. for two 14,500-GVW trucks with eight-foot flatbed body for \$41,408 (Purchasing Report - Bid 143)

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Disposition: Accepted; prepare contract.

- 603** Accept bid of Gelco Services, Inc. for SE Sherman Street, SE 39th to SE 45th Avenues sewer reconstruction for \$483,085 (Purchasing Report - Bid 146)

Disposition: Accepted; prepare contract.

- 604** Accept bid of Courtesy Ford, Inc. for eight compact four-wheel drive utility vehicles (4-door) for \$163,688 (Purchasing Report - Bid 151)

Disposition: Accepted; prepare contract.

- 605** Accept bid of Gelco Services, Inc. for NE Airport Way, NE 138th to 181st Avenues sanitary sewer repair for \$1,187,432 (Purchasing Report - Bid 154)

Disposition: Accepted; prepare contract.

- 606** Accept bid of Courtesy Ford, Inc. for three compact four-wheel drive utility vehicles (2-door) for \$57,780 (Purchasing Report - Bid 158)

Disposition: Accepted; prepare contract.

Mayor Vera Katz

- 607** Confirm appointment of Dominic Corrado to the Noise Review Board (Report)

Disposition: Confirmed.

- 608** Accept completion of the Wheeler Basic Relief Phase 2 Unit 1 sewer reconstruction and make final payment to S-2 Contractors, Inc. (Report; Contract No. 28737)

Disposition: Accepted.

- 609** Accept completion of the Sellwood and Lents 1 test sump project and make final payment to Eudaly Brothers (Report; Contract No. 29120)

Disposition: Accepted.

- 611** Direct appointment of George B. Jones to the Water Quality Advisory Committee (Resolution)

Disposition: Resolution No. 35267. (Y-4)

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- *612** Authorize Mayor to enter into an Intergovernmental Agreement with government partners contributing towards the Regional Disparity Study (Ordinance)

Disposition: Ordinance No. 167574. (Y-4)

- *613** Authorize Mayor to enter into a Professional Services Agreement with George R. LaNoue, Director, Policy Sciences Program and Professor, Political Science, University of Maryland, to assist in design of a regional disparity study (Ordinance)

Disposition: Ordinance No. 167575. (Y-4)

- *614** Issue Sewer System Subordinate Lien Bond Anticipation Notes (Ordinance)

Disposition: Ordinance No. 167576. (Y-4)

- *615** Provide for family and medical leave for eligible employees (Ordinance; amend Code Section 4.24.180)

Disposition: Ordinance No. 167577. (Y-4)

- *616** Authorize a grant application in the amount of \$50,000 to the Federal Center for Substance Abuse Prevention on behalf of the Regional Drug Initiative (Ordinance)

Disposition: Ordinance No. 167578. (Y-4)

- *617** Pay claim of Paula McCall (Ordinance)

Disposition: Ordinance No. 167579. (Y-4)

- *618** Pay claim of Howard R. Woods (Ordinance)

Disposition: Ordinance No. 167580. (Y-4)

- *619** Pay claim of Darlene Etheridge (Ordinance)

Disposition: Ordinance No. 167581. (Y-4)

- *620** Further amend City Code to clarify descriptions of drug-free exclusion zones (Ordinance; amend Chapter 14.100)

Disposition: Ordinance No. 167582. (Y-4)

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- *621** Agreement with the Federal Protection Service to provide access to the Portland Police Data System (Ordinance)

Disposition: Ordinance No. 167583. (Y-4)

- *622** Repeal Ordinance No. 167456 which amended Ordinance No. 156133 to delete some of the conditions and to amend Condition 8 (Ordinance; 93-00658 SU PU EN AD)

Disposition: Ordinance No. 167584. (Y-4)

- *623** Amend contract for engineering services with PAE Consulting Engineers to increase the amount by \$4,465 and add to the scope of work (Ordinance; amend Contract No. 28336)

Disposition: Ordinance No. 167585. (Y-4)

- *625** Amend contract with Organizational Dynamics for facilitation of the Bureau of Environmental Services Testing Lab Review Committee (Ordinance; amend Contract No. 29180)

Disposition: Ordinance No. 167586. (Y-4)

- *626** Authorize a contract and provide for payment for the Sunderland pump station construction project (Ordinance)

Disposition: Ordinance No. 167587. (Y-4)

- *627** Revise easement description for the Balch Creek storm water management project (Ordinance; amend Ordinance No. 166471)

Disposition: Ordinance No. 167588. (Y-4)

- *628** Authorize an Intergovernmental Agreement with Clackamas County, Clackamas County Services District No. 1, Happy Valley, and Milwaukie to develop watershed awareness programs for the Johnson Creek watershed (Ordinance)

Disposition: Ordinance No. 167589. (Y-4)

- *629** Allow reinstatement and carryover of vacation accrual for two employees of the Bureau of Environmental Services (Ordinance; waive Section 4.16.040)

Disposition: Ordinance No. 167590. (Y-4)

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Mayor Vera Katz

- S-610** Approve certain amendments to the City's Personnel Rules necessary to assure that they are consistent with a recent City Code amendment regarding compensation (Resolution)

Discussion: Commissioner Blumenauer moved the Substitution; Commissioner Hales seconded and, hearing no objections, the Mayor so ordered.

Laird Cusack, Bureau of Personnel, said earlier in April Council passed a performance management program for non-represented employees and directed that the Personnel Rules be changed to conform to the new program. It turned out that a number of the Personnel Rules impacted represented employees as well, leaving a number of compensation issues for represented employees uncovered. The substitute clearly states that the rules do not apply to represented employees.

Disposition: Substitute Resolution No. 35268. (Y-4)

- *624** Authorize the purchase of furniture and accessories through an Oregon State Price Agreement and provide for payment (Ordinance)

Discussion: Cay Kershner, Clerk of the Council, said the Bureau of General Services had requested that this be referred back to the Commissioner in Charge.

Disposition: Referred to Commissioner in Charge.

- *594** **TIME CERTAIN: 9:30 AM** Authorize an agreement with the Oregon Department of Transportation to undertake Phases I and II of the Pedestrian Facilities for Transit Access Project (Ordinance)

Discussion: Commissioner Blumenauer said people are expecting more of the transportation system at a time when resources are shrinking. He said staff, however, has taken advantage of the new flexibility available in the use of federal funds to do things differently and shift priorities to give people more transportation choices. Priorities have changed to put more emphasis on performance and less on laying down more concrete or widening streets.

Gail Shibley, Education and Outreach Director, Bureau of Traffic Management, said this and the following transportation items have to do with transportation safety and neighborhood livability, which are interwoven. The goal is to encourage a truly multimodal transportation system by leveraging money from the federal government.

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Francie Royce, Bureau of Traffic Management, discussed the three proposed projects: 1) pedestrian facilities for transit access; 2) Bike Central and; 3) Neighborhood Rideshare. The first is a \$200,000 agreement with the Oregon Department of Transportation (ODOT) to identify and design pedestrian improvements. The second, Bike Central, is a \$350,000 project to provide bike parking and facilities. The Rideshare program will encourage neighborhood-based, rather than work-place, car pooling and is intended to overcome the barrier of having to ride with a stranger.

Commissioner Hales asked how these projects fit in the sequence of other plans, such as the Transportation Element of the Comprehensive Plan, the Arterial Streets Classification Plan, etc. He also asked what information the transit access project will provide that is not already known.

Ms. Royce said the pedestrian transit access study will look at some specific transit streets and determine what amenities are lacking that prevent pedestrians from being able to use transit. She said this study will get down to specific design and engineering work.

Commissioner Blumenauer said staff knows where the deficient areas are and the preliminary engineering will allow these to be brought to the point where the next step will be the actual construction.

Commissioner Hales asked how the million dollars proposed for construction in the second phase would be allocated and which projects would be selected.

Ms. Shibley said part of identifying the capital improvements is assessing cost benefit. One of the frustrations for staff is that plans such as the Transportation Rule do not translate into changes on the street. This translates policy into real life on-the-street change.

Commissioner Blumenauer said staff is working with the new Pedestrian Advisory Committee to prioritize pedestrian projects in the five-year Capital Improvement Plan. He said they would be happy to make a presentation and get feedback from Council. The idea here is to move ahead with construction improvements in high priority areas and make the million dollars go the furthest.

Commissioner Hales said because of the link between infill and the pedestrian/transit environment the City should move as rapidly as it can from the conceptual to the real world. He noted 1000 Friends of Oregon's recent analysis of pedestrian access and suggested using their data.

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Mayor Katz asked if one aim was to increase the number of pedestrians getting to bus stops. She asked if there was a baseline for increasing the number of bicyclists and car poolers.

Ms. Royce said for car pooling they will do baseline surveys in the neighborhoods.

Mayor Katz asked for baseline figures before the projects start as well as the expected outcomes so they can tell if the numbers are increasing and people are actually changing their behavior.

Tom O'Connor, Portland resident, asked why there is no provision for motorcycles, which also take less space than cars.

Disposition: Ordinance No. 167591. (Y-4)

- *591** Agreement with the Oregon Department of Transportation to provide for Central City Bicycle Facilities (Bike Central) Project (Ordinance)

Disposition: Ordinance No. 167592. (Y-4)

- *592** Authorize an agreement with the Oregon Department of Transportation to provide for the Neighborhood Rideshare Cooperative Project (Ordinance)

Disposition: Ordinance No. 167593. (Y-4)

- *593** Agreement with the Oregon Department of Transportation for the implementation of a traffic safety improvement project at the intersection of NE Killingsworth Street and NE 60th Avenue (Ordinance)

Discussion: Ms. Shibley said this is part of the Bureau's goal of increasing traffic safety for all modes, including the automobile. This signal upgrade is at a high accident location and the benefit to cost ratio has been identified as eleven to seven and qualifies for federal funding with a 90 percent federal, 10 percent local match.

Disposition: Ordinance No. 167594. (Y-4)

- *595** Agreement with the Oregon Department of Transportation for the implementation of a traffic safety improvement project at the intersection of N Interstate Avenue and N Buffalo Street (Ordinance)

Discussion: Ms. Shibley said this project has a benefit to cost ratio of six to four and also qualifies for federal funds at a 90 per cent federal, 10 per cent local match.

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Disposition: Ordinance No. 167595. (Y-4)

596

TIME CERTAIN: 9:45 AM - Report on Arterial Traffic Calming Program projects on SW Cornell Road and NE 15th Avenue (Report)

Discussion: Ms. Shibley updated Council on these two test projects, which were adopted by Council in September, 1993, and asked for approval to build the designs at these locations.

Chrysttal Atkins-Conwell, Project Manager, Bureau of Traffic Engineering, said these streets are part of the City's arterial street system and must serve a number of different functions. However, the land use along the streets is primarily residential and to keep neighborhoods viable, livability needs to be enhanced. She said staff believes they have successfully balanced the needs of residents and users and by and large the response from both residents and motorists has been positive or neutral.

The first project was on NW Cornell Road and the goals were to reduce traffic volumes, reduce traffic speed, enhance the neighborhood environment and increase pedestrian safety. As part of the test, two speed bumps and one median slow point were installed. Test results show that traffic speeds were reduced by eight to ten miles an hour and there was no diversion onto Westover. An additional speed bump was then placed on the upper portion of the street but proved ineffective and was removed. This Spring, staff will test a rumble strip and then measure its effectiveness.

Doug McCollum, Bureau of Traffic Management, said a rumble strip is a tactile device which changes the surface of the roadway, making it uncomfortable for motorists to drive over at fast speeds.

Commissioner Blumenauer said one reason they want to test this is because it makes noise when vehicles go over it.

Ms. Atkins-Conwell said they also want to make sure it is safe for bicyclists.

Regarding the NE 15th Avenue Test Project, Ms. Atkins-Conwell outlined seven goals, including reduced traffic speeds, increased pedestrian and bicycle safety, prevention of an increase of traffic volume, encouragement of alternative transportation, reduction of noise vibrations and air pollution, restoration of the historic character of the neighborhood and ensuring that the project does not adversely affect adjacent streets. As part of the test, a series of four 22-foot speed bumps were installed as well as two slow points. Following testing, two more speed bumps were added. Unlike Cornell Road, the data on the

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effectiveness of the slow points in reducing traffic speed was inconclusive even though they definitely increase pedestrian safety. Currently as part of Phase 2, two other slow points are being tested and the results will be reported to Council. No diversion of traffic to adjacent streets was seen. Staff also worked closely with Tri-Met to establish criteria for device location on streets with transit service and with the Fire Bureau to address their concerns and mitigate any possible negative impact on fire response times.

Commissioner Blumenauer thanked the Fire Bureau for its hard work in finding solutions.

David Stauffer, representing the 15th Avenue Project Committee, said they believe the project works, at least to a degree, and is better than the traffic circles the Committee originally wanted but could not have because 15th Avenue is a neighborhood collector. It seems to have resulted in a significant reduction in speed and there have been virtually no complaints. This project is a step in maintaining neighborhood quality of life and the Committee recommends that it become permanent.

John Paul, 2310 NE 15th, said this project has had excellent results. Regarding the slow points, he noted that they include temporary curbs and this may be one reason why they are ineffective. The neighbors would like to see the project completed.

Dustin Posner, 2831 NW Cornell, said the Cornell test project has been very successful and should be implemented. He also noted that, while there may not have been a significant diversion of traffic onto Westover because of this project, there always has been a tremendous amount of traffic that has used Westover because of the back-up on Cornell. To discourage traffic onto Westover, he asked for replacement of the striping with a physical barrier to make it impossible for people coming east into town to access Westover.

Tom O'Connor, no address given, opposed putting a rumble strip near the Cornell/Westover intersection because of its steepness and bad winter weather conditions. He said there also needs to be more advance warning about the presence of speed bumps so cars have enough time to slow down.

Kathy Leslie, 15th Avenue Project Committee member, said the traffic on 15th is slower and more careful as a result of this project, particularly with the addition of the speed bumps. The project has made the streets safer, decreased the number of traffic accidents and made a real difference in the quality of life.

Dean Gisvold, 2815 NE 17th, said he is very pleased with the results of the 15th Avenue Project and called for the devices to be made permanent.

Disposition: Approved. (Y-4)

597

Establish and appoint members to the Reclaiming Our Streets Implementation Team for the Portland Office of Transportation, Bureau of Traffic Management (Resolution)

Discussion: Ms. Shibley said staff is trying everything they can, including erecting four banners and issuing bumper stickers, to educate motorists about the Reclaiming Our Streets program. The Implementation Team will prioritize strategies, advocate for their implementation and take the lead in at least one implementation activity. A progress report and evaluation is planned. She named the Team members.

Commissioner Blumenauer said this is the culmination of over two-and-a-half years of work. He noted that Mayor Katz is declaring May as Traffic Safety Month, adding that the leading cause of death and crippling injuries for Oregonians is traffic accidents. He said speeding is also the single greatest area of complaint of residents about their neighborhoods and he is committed to improving traffic safety so Portland does not continue to have the highest fatal accident and injury rate of any Oregon city with a population of over 18,000.

Mayor Katz said if that was not adopted as a benchmark by the Portland/Multnomah County Progress Board, it should be added.

Disposition: Resolution No. 35269. (Y-4)

REGULAR AGENDA

630

Adopt a code of ethics for all City officials and approve a pamphlet published by the Auditor containing explanations and examples of ethical principles (Ordinance introduced by Order of Council; add City Code Chapter 1.03)

Discussion: Barbara Clark, Auditor, thanked Council, City staff and the unions for their work in bringing this to completion.

Paul Richmond, PO Box 454, 97207, said while a code of ethics is needed, this is just for the sake of appearances. He said ballot measures 26-6 and 26-7 will eliminate the \$25,000 bonds that all elected officials are to file in the event they are liable for misconduct or malfeasance. He also objected to the \$2.00 a page charged by the Police

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Bureau for its records.

Tom O'Connor, no address given, objected to the way the City has treated him. He added that he does not see any teeth for enforcement in the Code, noting the payout on several claims on today's agenda and other breaches of ethics by City employees.

Disposition: Passed to Second Reading May 4, 1994 at 2:00 p.m.

631 Appeal of Jo Hale Lyndon of Urban Forestry Commission decision of March 17, 1994 (Hearing on Appeal)

Discussion: Jo Lyndon, the appellant, described the background of this appeal of the Forestry Commission's denial of her request to remove a horse chestnut tree which is very close to her house and is damaging the sidewalk and curb. It is also causing a major safety hazard because of the chestnut fall. She noted that her request was denied because the tree is healthy and it is beautiful to have three trees of the same kind in a row. However, she said, removal of the tree would still leave five other chestnuts and one hawthorne tree. Ms. Lyndon said there are more trees on her property than any other property for blocks around. She said she understands the Commission's concern for retaining trees in general but believes her concern with citizen safety and property damage makes her request for removal a reasonable one. She added that many other trees have been removed without permission or butchered beyond belief but she has chosen to take the accepted route of appearing before the Commission.

Alex Wynstra, City Forester, said in the past 18 years they have probably had three appeals that have gone to Council. He said in this case the Commission agreed that the trees were planted too close together and several years ago allowed Ms. Lyndon to remove every other tree. He said there are thousands of horse chestnuts planted on right-of-ways and the problems this property owner has are the same that everyone else has with falling horse chestnuts. The Commission could not find any real reason to allow removal and believes about a third of the trees in Portland would probably be eliminated if it allowed every property owner to remove a tree because of falling leaves or horse chestnuts. He supported the Commission's decision and advised the property owner that there is a new product available that prevents the formation of undesirable fruits and nuts.

Commissioner Blumenauer asked Ms. Lyndon if she was willing to plant another tree at this location and if it were correct that she had a dozen mature trees on her property.

Ms. Lyndon said yes.

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Mayor Katz asked Mr. Wynstra what difference it makes when a resident wants to substitute one tree for another.

Mr. Wynstra said if the tree is mature and healthy, the Commission feels very strongly about the amount of canopy that would be lost because it would take probably 30 years to get a similar canopy.

Commissioner Blumenauer said he strongly supports having street trees but does not agree with the notion that no matter the cost or circumstances one can never get rid of a mature tree. That is a disincentive for people to plant street trees. He said he would rather promote the planting of more street trees and work with people who want to be responsible tree owners. He said he thinks the City is overregulating in this area and sending the wrong signal to property owners. Ms. Lyndon has played by the rules, unlike many others, and in this case he would give her the benefit of the doubt and grant the appeal. He said he would rather concentrate on going after those who do not play by the rules.

Commissioner Hales said he was inclined to support the Commission as a matter of policy and not to set convenience as a precedent for removing trees. However, this would penalize Ms. Lyndon for being responsible and doing a better job than a lot of people in her neighborhood in maintaining the street trees. The fact that a tree produces fruit that causes a minor inconvenience is not sufficient but the fact that the property owner has gone to some expense to space the trees that remain is an important factor. He moved to overrule the Commission and grant the appeal with a condition that a replacement tree be planted. Commissioner Blumenauer seconded.

Mayor Katz asked how this case could be distinguished from any other case involving trees with huge roots which break through the sidewalk and have messy fruit. She said she is worried about the precedent this would set for people who simply do not like the mess of a horse chestnut tree.

Mr. Wynstra said he too has a problem with the precedent this would set. He said if the tree were defective, removal would not be denied, but the Commission has gone to great length to preserve older trees.

Commissioner Blumenauer said the difference here is that there are a dozen trees in a yard, a number of them along the street. The property owner is asking to remove only one that is very close to the entrance, where there is root damage, and is seeking to replace it. He said denial of the appeal sends out the message to property owners to just cut down their trees rather than seeking City approval first, which is what is happening now. He said if responsible property owners make

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reasonable requests and are willing to replace a tree with one of a better species, then Council ought to seriously consider granting them. He said the emphasis should be on planting street trees.

Commissioner Kafoury disagreed, noting that the Commission had earlier approved the removal of three trees. She said there is not enough evidence that this tree is a real problem and she is very nervous about the precedent.

Commissioner Hales said interference in the sidewalk is not a sufficient reason to grant the permit and private property owners are expected to spend money to replace their sidewalks when there is root damage. However, when a property owner is being a good steward of a resource and she wants to change how that is managed, that warrants granting the appeal, even though it is a close call.

Mayor Katz noted that Council seemed to be split on this matter.

The Clerk called the roll on Commissioner Hales's motion. (Y-2; N-2, Kafoury and Katz). The motion failed.

Commissioner Blumenauer asked if would be appropriate to carry this over until Commissioner Lindberg had a chance to review it and vote.

Mr. Auerbach said it takes the affirmative vote of three Council members to do anything, except in the area of land use appeals where the parties have a statutory right to an affirmative decision, and there is no process in place to bring this back for another vote unless Council moved to hold it over and reconsider it. If there were not three votes to overturn the appeal, the decision of the Forestry Commission would stand. He suggested moving this for reconsideration at a time when all five Council members are present.

Commissioner Blumenauer moved for reconsideration. Commissioner Hales seconded and the motion carried (Y-4).

Disposition: Continued to May 4, 1994 at 9:30 a.m.

632 Appeal of Ferd Moreno of Urban Forestry Commission decision of February 17, 1994 (Hearing on Appeal)

Discussion: Ferd Moreno, 14420 SW McFarland Blvd., Tigard, 97224, requested removal of a chestnut tree on property he owns at SW Curry and Hood. He said the chestnuts hurt and he should not have to wear a hardhat when he works in his yard.

Commissioner Hales asked what the difference is between an American

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chestnut and a horse chestnut.

Mr. Wynstra said the American chestnut is a disappearing species. He said the Commission could not find anything structurally wrong with the tree and felt this was a special tree that should be preserved.

Commissioner Hales noted that all the American chestnuts had been wiped out by disease in his home state of Virginia.

Paul Richmond, PO Box 454, 97208 said when the government of this country made treaties with Native Americans they forgot to make treaties with the salmon, the owl and other living things.

Commissioner Hales moved to uphold the Commission and deny the appeal.

Commissioner Blumenauer said these two cases are distinguishable but he is concerned that City policies do not promote planting and keeping street trees.

Commissioner Hales said this particular tree is so significant that Mr. Moreno should be encouraged to seek Heritage Tree designation for it.

Disposition: Appeal denied. (Y-4)

Mayor Vera Katz

634 Approve the Consolidated Cable Communications Commission FY 1994-95 budget (Resolution)

Discussion: Barbara Rutherford Crest, Consolidated Cable Communications Commissioner, said the budget has already been passed by Wood Village, Troutdale, Fairview, Gresham and Multnomah County. She noted that staff is handling an enormous increase in its work load with no additions to staff.

Ken Osuna, Consolidated Cable Communications Commissioner, said a modified zero-based budget approach was used to develop this budget. A budget was prepared at 95 percent of the current year budget with a series of optional service level increments called decision packages. The Commission recommends the funding of several packages, including Paragon renewal, the financial analysis for rate regulation and a customer service efficiency package. He described major sources of revenue, including franchise fees, contributions from each of the jurisdictions and proceeds from the East Multnomah Settlement fund. The Settlement Fund disbursement issue should be settled later this year but, if it is not, the Commission may withhold disbursement of the

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funds until resolution. Revenues are expected to remain flat next year due to rate regulation.

Commissioner Blumenauer said there was a reference to the KBOO issue during the budget hearings. He said while it is not appropriate to go back to all the jurisdictions to amend the agreements to remove that, he wanted to flag it because it is unresolved.

Disposition: Resolution No. 35270. (Y-4)

633

Urge Congress to include franchise requirement and provide for appropriate community obligations in any legislation authorizing telephone companies to enter cable television business (Resolution)

Discussion: David Olson, Cable and Franchise Management, noted significant telecommunications infrastructure legislation pending in Congress which would allow telephone companies to provide cable television services without requiring a franchise. That threatens existing City franchise requirements and this resolution urges Congress to include a franchise requirement and provide for community obligations in any such legislation. US House Bill HR3636 would directly affect the City's right to regulate existing franchises and require compensation for the use of public property. He said, if passed, it would eliminate a minimum of \$200,000 in general fund resources monies and call into question all or some portion of the \$2,000,000 received annually from cable companies. With Council approval, this resolution will be transmitted to the Oregon's congressional delegation and key players in the House.

Paul Richmond, PO Box 454, said he agrees with this.

Disposition: Resolution No. 35271. (Y-4)

***635**

Accept a \$400,000 grant from Department of Treasury, Bureau of Alcohol, Tobacco and Firearms for the GREAT Program by the Portland Police Bureau (Ordinance)

Discussion: Paul Richmond, PO Box 454, said he does not see how gangs can be included within the jurisdiction of the Bureau of Alcohol, Tobacco and Firearms (ATF). He said the Bureau seems to have a habit of harassing law-abiding gun owners while avoiding more dangerous criminals and has a history of fabricating crisis to promote its own power. He said he does not want this kind of training going into the schools.

Mayor Katz said the Police just completed an ATF project in Parkrose which was a wonderful piece of work done with younger children

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regarding gang membership. The training is done by Police Bureau staff, not by ATF employees.

Disposition: Ordinance No. 167596. (Y-4)

- *636** Approve application of Oregon Parks Foundation, Inc., a nonprofit corporation, for property tax exemption (Ordinance)

Disposition: Ordinance No. 167597. (Y-4)

- *637** Pay claim of Maegan Peterson (Previous Agenda 562)

Disposition: Ordinance No. 167598. (Y-4)

- *638** Authorize Bureau Directors to approve change orders adjusting the contract price and time construction contracts, subject to certain limitations (Previous Agenda 543)

Disposition: Continued to May 11, 1994 at 9:30 a.m.

At 11:40 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 27TH DAY OF APRIL, 1994 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Blumenauer, Hales and Kafoury, 4.

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

639 **TIME CERTAIN: 2:00 PM** - Citizen Advisors 1994 First Quarter Monitoring Report to Police Internal Investigations Auditing Committee (Report introduced by Auditor Clark)

Discussion: Jane McNeil, Chair of the PIIAC Monitoring Subcommittee, said this committee reviews all cases that go before the Police Internal Investigations Division (IID) to see if there are trends and to make recommendations. This report covers all the cases reviewed in depth in 1993 and also includes a more general review. Generally, the subcommittee found IID staff work to be excellent and was comfortable with what had been done. However, when cases arise which encompass a much broader issue it believes the Precinct Commander is in the best position to coordinate them. The committee also recommends that Commanders monitor the nature as well as the number of complaints against an individual officer.

In conclusion, Ms. MacNeill said the subcommittee believes Risk Management reports should also be incorporated but, because of confidentiality issues, does not know how that should be done.

Mayor Katz thanked staff assistant Joan Engert for her work.

Dan Handelman, People Overseeing Police, said they have heard complaints about misuse of the Hooper Detox Center and the Providence Hospital Mental unit. He said they are happy to see reports such as this and suggested that something be done to let more people know about the process. They are also anxious to have a full time investigator hired as staff person.

Mayor Katz said some work needs to be done on the issue about Hooper Detox.

Paul Richmond, PO Box 454, 97207, said he is disturbed by certain law enforcement trends and wonders if PIIAC can be effective in its current form. He said he is concerned about the erosion of the Multnomah County Sheriff's office, particularly since the sheriff is elected, not

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appointed. He compared the Police to an occupying force because citizens do not have a chance to terminate their employment.

Tom O'Connor, no address given, said there has been a police problem for 30 years. He said the City is using methods and policies that do not work.

Disposition: Accepted (Y-4)

640 Citizen Advisors recommendations on appeals to Police Internal Investigations Auditing Committee (Report)

Discussion: Todd Olson, Chair, Police Internal Investigations Auditing Committee, reported on six cases and an appeal to the Mayor's office.

Case 93-07 involved a complaint about excessive use of force by a man arrested for menacing people with a gun. A reinvestigation of the case by IID and interviews with witnesses found that the charges could not be corroborated. Advisors recommended no further investigation.

Case 93-13 involved a man who claimed disparate treatment in a traffic stop. IID voluntarily reinvestigated the case and issued a finding of Unfounded. Advisors recommended no further consideration.

Case 93-14 involved a complaint about unnecessary detention at Hooper Detox and IID made findings of Exonerated for Force and Unfounded for Procedure. Advisors declined to review the complaint because there was no evidence of excessive force but referred the issue of unnecessary detention to the Monitoring Subcommittee.

Case 93-15 - Advisors accepted the IID's finding of Exonerated in this case involving a woman who left a restaurant without paying her bill. Based on the PIIAC Advisors' administrative rule allowing rejection of similar appeals from the same appellant, advisors declined to re-open the case, noting that two different trial juries found in favor of the officer and against the appellant.

Case 93-16 - Because this complaint about excessive force from the father of a man involved in a bar fight was filed a year after it occurred, PIIAC declined review.

Case 94-01 involved a man who complained about excessive force after being arrested in a prostitution sting. The Advisor reviewing this case noted an interview with a newspaper reporter who had witnessed the arrest and stated nothing inappropriate happened. Based on an assessment that the witness was credible, the Advisors affirmed IID's findings of Unsubstantiated.

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Case 94-05 was considered at the March meeting where advisors unanimously affirmed IID's Unsubstantiated finding; this was appealed to the Mayor's Office. The appellant alleged illegal entry and inappropriate use of force by Police officers assisting a tenant moving out of the appellant's house. The Advisors found that the officers had used acceptable procedures and violated no General Orders. Advisor Frank Dixon reviewed the file, which indicated that officers had responded to a call for assistance and a radio dispatch about a disturbance at the residence. The Advisors Committee also heard the objections of the appellant but agreed that IID's decision was appropriate and made no recommendation for further investigation.

Mayor Katz said she has given the appellant time to make his case before Council today but would like to get to closure on all the other cases.

Paul Richmond, PO Box 454, 97207, said there should be some process to discuss the Police Bureau's increasing trend to militarization and its practice of keeping intelligence files on private citizens. He criticized the fact that the Chief, an appointed official, is removed from public scrutiny, adding that if the City is serious about community policing citizens need to be able to make decisions about who is policing their community and how they can be removed.

Tom O'Connor, no address given, criticized inappropriate Police use of the Detox Center and hospital mental units.

Commissioner Kafoury moved to approve the report, save for Case 94-05. The motion was seconded and passed (Y-5).

Mayor Katz said after hearing this appeal, Council could either conclude that no further investigation is necessary or that it should be reopened by IID.

Norman Wicks, complainant, said his home was invaded by Police in a civil matter at a time when there was no report of a crime having been committed. The matter was decided on the basis that the Police may enter a home without permission of a legal resident upon the word of an illegal resident. He said his complaint is based on the illegality of the entry and the use of mace on someone who had just returned from the hospital. He said the question for Council, however, is whether IID and PIIAC did an honest and thorough investigation. He said PIIAC talked only to the Police and not to witnesses who were available. He said he offered to have the woman who called the police appear as a witness as well as others who witnessed the event but that offer was not acted upon. He said it is poor people, the mentally ill and the homeless who are abused by police and criticized the present form of dealing with

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citizen complaints. He said PIIAC has no authority to do anything worthwhile. It can only review and make decisions that no one needs to do anything about, fooling the public into thinking there is a viable means of dealing with police brutality.

Frank Dixon, 2205 NW Johnson, PIIAC Advisor, said the difficulty with this case is that when the complainant went to IID, the investigator saw the case as a question of whether the Police could enter complainant's house to assist a woman in removing her personal belongings because the complainant had admitted she had been there earlier, with his permission. That left PIIAC with the same legal question because, after the investigator explained this to the complainant, he became angry and left, leaving the investigator with no additional details about the problem. At the PIIAC meeting, the City Attorney advised that the officers did have a legal right to escort the woman into the house. Therefore, the Advisors found there was no basis for a complaint about police misconduct based on that particular issue. Regarding the issue of unreasonable force, the Advisors felt they did not have sufficient resources to consider that issue. The IID officer had trouble communicating with the claimant so there was no reason to refer him back to IID as that would appear futile. The complainant was advised of his right to appeal to the full PIIAC Committee, which is City Council, and to present witnesses or do anything else he wished in presenting his case. That is where the matter stands now. If the revised intake process had been in place when this complaint was made, complainant would not have needed to confront police authority and would have been able to go to a neighborhood office and talk to someone who was not a Police officer. That would have allowed IID to do a better job of addressing his concerns. The revisions will also give PIIAC more ability to investigate cases itself. However, in the current case, the best the Advisors could do is tell the complainant to take his case to Council.

Mayor Katz asked if other witnesses appeared at the PIIAC hearing.

Mr. Dixon said no but the claimant's post traumatic disorder caused Mr. Wicks to get angry when he was told the Police had a legal basis to enter his house, even against his wishes. From that point on, he talked about the PIIAC process and how to improve it.

Mr. Wicks said Mr. Dixon's statement is full of hot air. When he offered to bring to PIIAC the woman who called the Police, neither the Police or PIIAC took him up on his offer. The Police say things that they know will incite him because they know that he suffers from post traumatic stress. He said he has the right to order his son's girlfriend, who was a guest in the house, to leave. He said PIIAC shut him off and took a vote without even offering to hear his witnesses. The only information PIIAC is listening to is from the Police.

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Dan Handelman, People Overseeing Police Study Group and member of Flying Focus Video Collective, said he taped the PIIAC meeting at which Mr. Wicks appeared. He said he was surprised at the way the case was handled, particularly as PIIAC made a judgment about whether the woman was a legal resident or not. He said without the woman's presence and a full hearing, that is not due process. He recommended referring this back to IID with a request to have them interview the witnesses.

Paul Richmond, PO Box 454 said he too is concerned that the witnesses were never questioned. He also questions whether PIIAC made judgments on the status of legal residency of the woman.

Mr. Olson said there was not very much fact finding by PIIAC because of the initial contact Mr. Wicks had with the investigator. He said he personally believes it would be appropriate for Council to ask IID to investigate this.

Mayor Katz asked him why the PIIAC group did not ask for that.

Mr. Olson said for the reasons Mr. Dixon stated. However, he believes referral would be a legitimate alternative.

Mr. Dixon said references made to the fact that Police had visited Mr. Wicks' house on other occasions are unfair and may have had an influence on how PIIAC treated the case.

Commissioner Kafoury asked if PIIAC wanted to do another round of interviewing.

Mayor Katz said they cannot do the interviewing but Council could ask PIIAC to ask IID to review the case.

Commissioner Blumenauer said he has not heard anything that makes him disagree with Mr. Dixon's recommendation. The witnesses could easily have been present today and he did not hear anything to convince him that stirring the pot more will accomplish anything. He said he is not willing to direct the Police to go back and do it again.

Mayor Katz supported Commissioner Blumenauer, noting the unanimous recommendation of PIIAC.

Commissioner Hales said he would support having the recommendation stand.

Mayor Katz said Council then supports the PIIAC position and there will be no further action.

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Commissioner Blumenauer moved to accept the Advisors' recommendation for no further investigation.

Commissioner Kafoury said the reason PIIAC was revamped was to make sure that all investigations were above the law and she has heard enough today to convince her to vote no.

Mayor Katz said the PIIAC Advisors have been encouraged to send back cases for further review if they are not satisfied with the outcome and also encouraged to ask as many witnesses as it wishes. She said she supports the motion because of PIIAC's unanimous recommendation, even though some of the members would like to see a different method of operation. However, they are working under the current Code.

Disposition: Recommendations upheld. (Y-3; N-1, Kafoury)

- 641** Appeal of Roy L. Orem Trust against Hearings Officer's decision to approve application of Tri-Met for a conditional use, design review and adjustments to develop commercial parking lots near the alignment of the Westside Light Rail line (Hearing; 93-00665 CU DZ AD)

Discussion: Ruth Selid, Planning Bureau staff, said appellant had raised issues which were not approval criteria for this case, including the terms for parking and the draft, not the actual, management parking plan. She read the approval criteria and presented three items: 1) a revised Planning Bureau report and a recommendation to uphold the Hearings Officer's decision with some revisions; 2) the final Westside Light Rail Goose Hollow Project Replacement Parking Management Plan; and 3) a set of six maps showing the layout and landscaping for the three parking lots. With the revised findings and adoption of the report and additional exhibits, the appellant's issues are resolved.

Pat O'Malley, attorney representing the Orem Trust, said they believe their appeal has been resolved by the revisions that have been made.

Commissioner Hales moved to accept the Planning Bureau's report and recommendations and uphold the Hearings Officer's decision, with revised conditions as outlined in the report. Commissioner Kafoury seconded.

Disposition: Appeal denied; revised findings adopted. (Y-4)

- 642** Liquor license application for Baalbek Restaurant, Inc. dba Baalbek Restaurant, 414 SE Grand Ave., restaurant liquor license (new outlet); favorable recommendation (Report)

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Discussion: John Werneken, License Bureau, said the Police and License Bureau recommend a favorable endorsement. Remonstrators have indicated that their primary concern was to state for the record that neighbors in the Central Eastside industrial area remain very concerned that no licenses be granted that reintroduce the alcohol-related problems of the past. Both Bureaus share that concern but believe this licensee will in no way cause such problems.

Commissioner Kafoury moved approval and Commissioner Hales seconded.

Disposition: Favorably recommended. (Y-4)

643 Liquor license application for Jeffrey John and Silvia Ann Russell, dba Little Bear Cafe, 7742 SE 13th Ave. restaurant liquor license (new outlet); favorable recommendation (Report)

Discussion: John Werneken, License Bureau, said the License and Police Bureaus found no grounds for denial although a protest was received from one property owner concerned about the impact of growing businesses on nearby residential property, specifically the use of on-street parking by business employees or customers. While this may be a concern, it is not a grounds for denial.

Tom Vistica, Sellwood resident, noted the increase in parking for commercial uses. He said he is concerned about traffic and parking problems on a residential street. He said businesses in the area should provide parking although he has nothing personally against this applicant having a liquor license.

Commissioner Kafoury said while the Council understands the concern, it does not form a basis for denying a liquor license. She suggested that Mr. Vistica contact the Neighborhood Association about the parking problem to see if a voluntary agreement could be reached with some of the employers in the area. She moved to approve the application. Commissioner Blumenauer seconded.

Commissioner Blumenauer said the cafe has already been operating six months and so the problems are not unique to its having a liquor license.

Commissioner Hales noted that Council cannot use the license process to deal with land use and zoning issues.

Disposition: Favorably recommended (Y-4)

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Commissioner Blumenauer moved acceptance of the Four Fifths Agenda.

FOUR FIFTHS AGENDA


- *644** Settle claims of City of Portland and Kathleen Snider relating to property at 3711 SE 101st Avenue (Ordinance introduced by Mayor Katz)

Discussion: Mayor Katz said she knows Council will be happy to see that the claims regarding this property next to Ed Benedict Park have finally been resolved.

Disposition: Ordinance No. 167599. (Y-4)

At 3:40 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland


By Cay Kershner
Clerk of the Council