



CITY OF

PORTLAND, OREGON

OFFICIAL
MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 21ST DAY OF DECEMBER, 1994 AT 9:30 A.M.

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

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

Mayor Katz introduced Gale Costello, new appointee to the Portland Development Commission.

Commissioner Lindberg introduced members of the Neighborhood Green Corps, college students who devote a year to work on energy and environmental issues in low-income neighborhoods. He also recognized members of the Youth Environmental Action Team, high school students enrolled in an environmental employment and training program.

Agenda No. 1960 was pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

1943 Accept bid of Unisys Corporation for remittance processing hardware and software for \$268,274 (Purchasing Report - Bid 33)

Disposition: Accepted; prepare contract.

1944 Accept bid of S-2 Contractors, Inc. for Wellington sanitary sewer for \$5,085,330 (Purchasing Report - Bid 54)

Disposition: Accepted; prepare contract.

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1945 Accept bid of Portland Motorcycle Co., Inc. for furnishing seven police motorcycles for \$61,019 (Purchasing Report - Bid 58)

Disposition: Accepted; prepare contract.

1946 Accept bid of Halton Company for one articulated loader for \$64,890 (Purchasing Report - Bid 59)

Disposition: Accepted; prepare contract.

1947 Accept bid of Jasco Construction Services for tenant improvements for Risk Management, Energy and Cable offices for \$142,474 (Purchasing Report - Bid 71)

Disposition: Accepted; prepare contract.

***1948** Authorize Satisfaction of Contract for outstanding indebtedness of Neighborhood House, Inc. (Ordinance introduced by Commissioners Hales and Kafoury)

Disposition: Ordinance No. 168367. (Y-5)

Mayor Vera Katz

1949 Confirm appointment of Mark Beckius to the Building Code Board of Appeal (Report)

Disposition: Confirmed.

1950 Confirm appointment of Estill Deitz, Gwen Harrison, Frances Johnson, Nancy Muhle, Virginia Shea, Thelma Skelton, Robert Smith, Margie Walling and Eugene Williamson to the Portland/Multnomah Commission on Aging (Report)

Disposition: Confirmed.

1951 Confirm appointment of Michael Prozan and Efoso Odighizuwa to the Portland Internal Investigations Auditing Committee (Report)

Disposition: Confirmed.

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***1952** Pay claim of Shirley Ceaser (Ordinance)

Disposition: Ordinance No. 168368. (Y-5)

***1953** Pay claim of Dr. Charles M. Grossman (Ordinance)

Disposition: Ordinance No. 168369. (Y-5)

Commissioner Earl Blumenauer

***1954** Amend contract with Kurahashi & Associates, Inc. for additional work on Multnomah Street Light Project (Ordinance; amend Contract No. 29242)

Disposition: Ordinance No. 168370. (Y-5)

***1955** Authorize the City Engineer to assign and transfer all of the City's right and interest in and to certain crossing agreements and property leases related to those portions of the City of Portland Shore Line rail right-of-way which lie outside the City limits (Ordinance)

Disposition: Ordinance No. 168371. (Y-5)

***1956** Agreement with Portland Development Commission to provide for preliminary engineering and cost analysis for the extension of NW 3rd Avenue to NW Front Avenue (Ordinance)

Disposition: Ordinance No. 168372. (Y-5)

Commissioner Charlie Hales

1957 Accept contract with Jim Miller Construction for construction of Smith and Bybee observation platforms as complete, authorize final payment of \$822 and release retainage of \$2,025 for a total of \$2,847 (Report; Contract No. 29285)

Disposition: Accepted.

1958 Accept contract with Bengé Construction for paths at Gabriel Park as complete, authorize final payment of \$5,040 and release retainage of \$4,305 for a total of \$9,345 (Report; Contract No. 29347)

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Disposition: Accepted.

- *1959** Extend contract with Clark R. and Robert Cumpston for concession services at Eastmoreland golf course (Ordinance; amend Contract No. 26228)

Disposition: Ordinance No. 168373. (Y-5)

Commissioner Gretchen Kafoury

- *1961** Authorize the Director of the Bureau of Buildings to adopt special alternative inspection programs (Ordinance; amend Code Chapters 24.10, 25.01, 25.02, 25.03, 27.01, 27.02)

Disposition: Ordinance No. 168374. (Y-5)

- *1962** Authorize contract and provide payment for tenant improvements for 11th floor of PacWest Building leased to Bureau of Risk Management, Energy Office and Office of Cable Communications (Ordinance)

Disposition: Ordinance No. 168375. (Y-5)

- *1963** Contract with US West Communications for continuation of telecommunication services for a period of 60 months (Ordinance)

Disposition: Ordinance No. 168376. (Y-5)

- *1964** Amend contract with JASCO by \$34,354 for additional tenant improvement services for the Bureau of Environmental Services (Ordinance; amend Contract No. 29579)

Disposition: Ordinance No. 168377. (Y-5)

Commissioner Mike Lindberg

- *1965** Agreement with Black & Veatch Consulting Engineers for \$268,066 for civil engineering services to analyze the water quality of the City's groundwater resource and study alternative treatment and operational modifications and provide for payment (Ordinance)

Disposition: Ordinance No. 168378. (Y-5)

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- *1966** Agreement with KPFF Consulting Engineers for \$61,320 for structural engineering and inspection services to evaluate the serviceability and condition of the Water Bureau's six steel truss bridges and provide for payment (Ordinance)
- Disposition:** Ordinance No. 168379. (Y-5)
- *1967** Contract with East Multnomah Soil and Water Conservation District for public involvement and education services on comprehensive and holistic landscape practices for \$17,000 (Ordinance)
- Disposition:** Ordinance No. 167380. (Y-5)
- *1968** Authorize the continuance of negotiations for the purchase of a sewer easement required for the SW 19th Avenue sewer extension, authorize the City Attorney to commence condemnation proceedings and authorize the City Attorney to obtain early possession (Ordinance)
- Disposition:** Ordinance No. 168381. (Y-5)
- *1969** Amend agreement with Elcon Associates, Inc. to extend termination dates with no increase in amount of compensation (Ordinance; amend Agreement No. 28537)
- Disposition:** Ordinance No. 168382. (Y-5)
- *1970** Contract with Woodward-Clyde Consultants for professional engineering services on alignment selection for the Columbia Slough consolidation conduit (Ordinance)
- Disposition:** Ordinance No. 168383. (Y-5)
- *1971** Amend contract with Clackamas County Service District No. 1 for joint wastewater treatment options study for the Kellogg Creek, Oak Lodge, Tryon Creek and Tri-City Wastewater Treatment Plants (Ordinance; amend Contract No. 50067)
- Disposition:** Ordinance No. 168384. (Y-5)

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REGULAR AGENDA

***1960** Renew agreement with the Association for Portland Progress for management of Waterfront Park parking lots (Ordinance; amend Contract No. 26366)

Discussion: Commissioner Hales requested that this be continued one week.

Disposition: Continued to December 28, 1994 at 9:30 a.m.

1935 **TIME CERTAIN: 9:30 AM** - Congratulate the University of Oregon Ducks for their outstanding 1994 football season and PAC 10 Conference Championship and wish them well in the Rose Bowl on January 2, 1995 in Pasadena, California (Resolution introduced by Mayor Katz, Commissioners Blumenauer, Hales, Kafoury and Lindberg)

Discussion: Commissioner Blumenauer said this is the kind of event that fosters community spirit as well as inspiring national attention.

George W. Scherzer, President, Oregon Club of Portland, said college athletics is important because it gives the University a bigger window of opportunity for growth.

James F. Dulcich, past President, Oregon Club of Portland, read a "War of the Roses" decree.

Mayor Katz praised the University for using this opportunity to advertise the school's outstanding academic programs as well.

Disposition: Resolution No. 35348. (Y-5)

***1936** **TIME CERTAIN: 9:45 AM** - Agreement for services for five years, with provision of a five year renewal, with the Regional Arts and Culture Council for overseeing all public art matters for the City (Ordinance introduced by Commissioner Lindberg)

Discussion: Commissioner Lindberg said the three actions taken today, which transform the Metropolitan Arts Commission into the Regional Arts and Culture Council, were recommended by Arts Plan 2000 and the Regional Arts Funding Task Force and are the culmination of many years of

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hard work. He said he has been working to ensure continuation of a close relationship with the City Council, which provides a lot of the funding for the organization.

Pat Harrington, Chair, Metropolitan Arts Commission, said the grass roots Arts Plan effort led to the aggressive and visionary steps now being taken. He thanked those involved in the transition work, noting that the business community donated over \$20,000 in pro bono work and that the lease with U.S. National Bank reduces their rent by \$10,000 per year below what they paid in the Portland Building. All savings will be tracked and reported back to Council. The new entrepreneurial spirit of this entity is creating new partnerships to provide art programs to young people and neighborhoods. He said their compact disc recording has been so popular they plan a second one and there are also plans to produce a chocolate Portlandia.

Bill Bulick, Metropolitan Arts Commission Director, thanked Mr. Harrington and fellow staff members for their incredible efforts. He displayed the organization's new logo.

David Knowles, Interim Director, Planning Bureau and chair of the Regional Arts Task Force, credited Commissioner Lindberg for creating a regional arts organization, noting that it is not easy for organizations to give up their control.

Commissioner Blumenauer said volunteers held Council's feet to the flames in moving to a regional organization and congratulated the current Commission for actually doing it. He said spin-offs often have mixed and sometimes unfortunate results, but the foundation laid here is a good one which melds the interests of a two-state region. How this is done will have strong implications for other multi-jurisdictional activities.

Commissioner Hales commended the risk being taken here, adding that the Commission has been both bold and open in the way it proceeded, creating such an ethic of regionalism that the risk goes down day by day.

Mayor Katz said Council commits itself to be good partners with the new entity, adding her hope that some resolution will be reached about how the arts will be funded in the region.

Disposition: Ordinance No. 168385. (Y-5)

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- *1937** Transition agreement with Regional Arts and Culture Council to transfer Metropolitan Arts Commission services, employees, assets and contracts between the City and the Regional Arts and Culture Council and provide for the personnel rights of affected employees (Ordinance introduced by Commissioner Lindberg)

Disposition: Ordinance No. 168386. (Y-5)

- *1938** Intergovernmental agreement with Multnomah, Washington, Clackamas and Clark Counties and Metro designating the Regional Arts and Culture Council as the arts and cultural agency for the region, and terminating the City of Portland and Multnomah County Intergovernmental Agreement which created the Metropolitan Arts Commission (Ordinance introduced by Commissioner Lindberg)

Disposition: Ordinance No. 168387. (Y-5)

- *1939** **TIME CERTAIN: 10:00 AM** - Establish the Livable City Housing Council to assure that Portland builds 50,000 new housing units by 2015 that people want to live in, that people can pay for, and that the development community can afford to build; establish Local Housing Trust Fund to provide gap financing for housing projects that fulfill the goals of the Housing Initiative and the strategies developed by the Livable City Housing Council (Ordinance introduced by Mayor Katz and Commissioners Hales and Kafoury)

Discussion: Mayor Katz said these two major umbrella initiatives are intended to meet the goals of the region's 2040 Plan and to keep the City strong, eliminate sprawl, provide alternatives to the automobile, housing for everyone and strong cultural and recreational opportunities. This is the City's attempt to pull all these pieces together in a comprehensive fashion so that implementation for the next 20 years can begin.

David Knowles, Interim Director, Planning Bureau, presented the report of the Livable Cities housing team. He said this represents a convergence of two major initiatives: 1) building 50,000 housing units in the City within the next 20 years; and 2) creating a Housing Trust Fund to provide financial support for a full range of housing needs.

Mr. Knowles said these initiatives buy into a number of City policies, foremost of which is the Livable Cities program outlining how growth can

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occur in a way that is compatible with neighborhoods. Livable Cities also raised the community's consciousness about growth trends in the region and what will happen if they are not addressed. Other relevant policies are the Central City Transportation Management Plan, Prosperous Portland Economic Development Policy, Portland Comprehensive Plan and Future Focus, which established the 50,000 housing target. He noted that Portland actually lost population between 1970 and 1990 while the region grew by 54 percent and congestion within the City increased. He said five policies summarize this effort: 1) reinforce neighborhood livability; 2) meet a full range of housing needs; 3) foster a strong and diverse economy; 4) provide a transportation system that promotes alternatives to the automobile; and 5) support families through excellent education opportunities at existing neighborhood schools.

Mr. Knowles described the process involved in developing the Livable City Housing Charter and Housing Council. The principle focus for the Housing Council will be identifying sites and ensuring compatible development with neighborhoods. It will also work on financing for a full range of housing needs and address regulatory impediments. To accomplish those tasks, the Council will need to develop strategies for each market segment, rather than a single housing market. Mr. Knowles said this organization can promote community leadership to deal with a problem that is bigger than City government and bring together both the private and public sectors.

Neyle Hunter, Director of Housing, Portland Development Commission (PDC), said the City faces a substantial housing agenda if it is to fulfill the 50,000 unit goal in the next 20 years. He said the 50,000 is specifically targeted to reflect the housing composition that exists currently. Fully half the need is for low-income housing, as Commissioner Kafoury has consistently noted. Regulatory strategies and financing tools are other issues the Housing Council will need to deal with. Finally, the Housing Trust Fund is an effort to provide special gap funding, over and above what is available from other sources such as the federal government and private lenders, needed to get a project to work. Examples are the Belmont Dairy and the City Life projects plus those being considered by Host Development. The \$5 million Trust Fund will be administered by PDC until the Housing Council is fully established with its own administrative unit. The Trust Fund is established for a two-year period and at the end of that time, City Council will review both the effectiveness of the Housing Council and its management of the Fund.

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Gretchen Dursch, President, Community Development Network, said they are very excited about this initiative and believe it is much stronger than the original proposal but wish to offer some criteria for judging its success. One criteria is that housing be built that meets real demand and that the Council look carefully at who is actually moving to the City. At a time of scarce resources, funds also need to be channeled to the people with the most need. The initiative should result in real projects, not more strategies or studies, and make possible projects that make neighborhoods more livable and revitalize stressed areas.

John Carroll, private developer, said this is a broad-based effort, one not driven solely by the public sector and one that the private sector can feel good about. He said affordable housing was not the exclusive focus as recognition was given to the need for some subsidies for market-rate housing if the target densities are to be achieved. River District is an example of an area that needs some subsidies for infrastructure.

Susan Emmons, Chair of Housing and Community Development Commission, said they are very excited about this ambitious housing goal, adding that clearly the greatest gap is housing affordable to people who earn 30 percent of median income. She said there is a deficit in the community of over 10,000 units in this category, adding that the Task Force learned that the reason this housing is so hard to build is that it has to be debt free or people in this income group cannot afford it. Deep subsidies will be needed to make them debt free. She said she is very encouraged by the Trust Fund and hopes that something can be done for housing poor people as was done recently for Parks and light rail with voter approval of the ballot measures. She concluded by noting that some of the low income housing proposed for the River District could be replacement housing for the Hamilton Hotel.

Margery Ellie, Housing Authority of Portland, said the most significant action taken in these measures is acknowledgment that the City has an obligation to provide decent and affordable housing for all its citizens. She distributed several graphs, including one indicating that currently 18 percent of total federal housing subsidies go to the bottom 20 percent quintile while 61 percent of housing assistance go to the top quintile, to people with household incomes of over \$60,000. Working people are the ones who are missing out and their needs should be addressed.

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Dan Steffey, 808 SW 3rd, Suite 580, a member of the work group, said this is a balanced approach to the entire community housing agenda.

Jeff Tashman, Tashman Associates, 6585 SW Parkhill Dr., said he is pleased that many of the strategies included in the Housing Council Charter are similar to those included in a redevelopment and infill study he worked on with the Planning Bureau and Office of Transportation. Because this is a public/private effort, the Housing Council can capitalize on marketing urban amenities and realize the strong connection between speedy regulatory approvals and the quality of those projects. It can also draw on innovative resources in Portland and on the West Coast.

Commissioner Blumenauer said in some cases congestion has gotten worse in areas where there has been little growth because the City did not plan properly. The current strong economy provides an opportunity to use growth to solve problems and enrich the community by working together cooperatively. The special challenge will be to make sure that everyone in the City feels a part of this, as projects such as the Convention Center or the Arena would have failed if they had been characterized as benefiting only a small sector. He said as a member of the Housing Council he will, as his special responsibility, make sure there is something for everyone in terms of housing, particularly the 60 percent in the middle.

Commissioner Hales said one of the keystones of this proposal is an ethic that we are all in this together which allows the community to embrace new ideas and make them real. Often such ideas spring from the private sector and this model provides the ingredients that support such an approach. He said this is a real challenge as, even if the City succeeds, it will get only one-fifth of the region's growth and, if these strategies do not work, the urban growth boundary will have to be extended much farther than anyone wants. However, just 15,000 units downtown will not hold that boundary either; it will take other projects as well. He said he is committed to this agenda and to making it happen.

Commissioner Kafoury said this accomplishes one of the major goals, a housing agenda, she set for herself when she took office four years ago. Portland has been very generous in funding parks and transportation and she hopes ways can be identified so that residents can contribute to the housing stock as well. She expressed concern about the amount of money being put into staffing the Housing Council as she believes there is a tremendous amount of staff already, including Portland Development

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Commission and Planning Bureau employees who are capable of doing this work. She said her goal is that the full \$660,000 in the budget be used to beef up the housing investment fund, rather than on staff. She said money is needed to do the models and projects so people can see what the City is talking about. She is also fearful of losing the momentum of the affordable housing agenda and hurting the most vulnerable citizens as the City moves to the bigger picture. Finally, her third concern, and the reason why she was reluctant to bring this forward at the same time as the River District and Central City, is her fear that the focus will once again appear to be on downtown while other areas, such as outer southeast, are neglected.

Commissioner Lindberg said this is one of the most historic days for Council as it recognizes the importance of housing to the overall health of the City. If housing is left to market forces, there will be gaps in terms of affordable housing and sprawl. This is bold, action-oriented and measurable. He said if the City can succeed in funding convention and sports facilities, in cleaning up the Slough, etc., it certainly can do it for housing.

Mayor Katz said she is very proud of what the City has accomplished in the last 20 years but well aware of what is required in the next 20 years to keep a vibrant Portland, particularly when the tools of the last 20 years are no longer available. She said there are a lot of creative ways the Housing Trust Fund might be enhanced, such as tying tax incentives provided in the Enterprise Zone to commitments for housing in North/Northeast Portland. It was important that a new organization be considered--one that is bigger and maybe better than government itself--and that is what is being voted on today. She said this effort benefits the entire City as what is done in River District takes pressure off other neighborhoods. She said she is very sensitive to comments that not all efforts should be concentrated in the Central City but the five-year business plan recently adopted by Council clearly shows that over \$30 million dollars is committed to Southeast and \$20 million to Northeast--neighborhoods that have been neglected in the past. But there must also be a strong Central City.

Disposition: Ordinance No. 168388. (Y-5)

1940

Establish Central City 2000 Task Force to promote the near-term development of high-density housing, mixed-use development and other major projects in the Central City and to recommend any necessary public-private development strategies to the City Council (Resolution introduced by Mayor Katz)

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Discussion: Bob Ridgely, Chair of the Central City 2000 Task Force, listed the proposed Task Force members and described their goal - providing 15,000 housing units and 75,000 jobs in the Central City by the year 2000. He noted that those figures were not included in the resolution and suggested that it be amended to include them and also to clarify the fact that the River District Steering Group will bring forward changes to the strategies and funding programs approved today. He said this is a significant public-private partnership, probably more important than those leading to development of the convention center and the new Blazers arena.

The Task Force will take on three tasks: 1) identifying neighborhoods that can accommodate substantial near term growth; 2) producing jobs; and 3) providing public infrastructure and amenities that support new housing and jobs. He said the Task Force will conduct its business openly and reach out to neighborhoods of significant interest, such as the River and University Districts.

Lindsay des Roches, Vice President, Finance and Administration, Portland State University, said one of the goals of the University Plan, which will be coming to Council shortly, is to increase housing density around the University district area and not just for students. She said they are also interested in job development and would like to cooperate in developing the agenda for that area. She said they estimate they could create 1000 plus housing units in the perimeter around the University.

Mr. Ridgely said other neighborhoods of significant interest include Southside and north Macadam. Exciting things are also going on in the Rose Garden District and there will be a full review of the Convention Center and where it is headed. The Task Force also needs to look at the area around OMSI and establish a streetcar system that will feed off light rail and cover both sides of the River. He said they are funded for 20 months and will then return with recommendations for action, not further study.

Commissioner Lindberg asked if the Central Eastside was being added as a district.

Mr. Ridgely said it was originally grouped inappropriately with the Rose Garden but the intent is to focus on the entire area and not exclude the Central Eastside. He said, however, they do not intend to make recommendations on very political issues.

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Commissioner Blumenauer said the definition of the Central City does include that area.

Mr. Ridgely said when you talk about 15,000 units you have to include that area.

Prior to voting, Cay Kershner, Clerk of the Council, noted that the item needed to be amended to include the names of the Task Force members and to adopt the amendments referenced by Mr. Ridgely.

Hearing no objections, the Mayor so ordered.

Commissioner Hales said benchmarks are important here and the Task Force and Council will know if they have succeeded if housing is woven into the existing fabric of the neighborhoods, if the whole population is served and if the City really gets 20 percent of the market share. He said they will know they have succeeded in the River District and Southside if real neighborhoods are created when the projects are completed. This has never been done before and will be the first attempt at partnership by the business community and municipal government.

Disposition: Resolution No. 35349 as amended. (Y-5)

1941

Adopt the River District Housing Implementation Strategy, the River District Strategic Investment Plan and a management structure and operating budget for the River District and direct the respective City Bureaus and agencies to proceed with implementation (Resolution introduced by Commissioner Blumenauer)

Discussion: Robert Ames, Chair, River District Steering Committee, reviewed the chronology of this process, noting Council's request to the Steering Committee to develop: 1) a strategy to ensure housing for a broad income range; 2) a finance plan; and 3) an implementation plan. This resolution does those things and also recommends immediate action to get the housing and agricultural marketing center under way at Union Station. He described the intent of the resolution, adding that once it is passed the Steering committee will change its focus to implementation. The principal goal is to achieve housing in the River District that reflects the diversity of the City as a whole, with somewhere between 35 and 50 percent of the housing for low and moderate-income residents. Achieving those goals will depend on the level of public assistance. Council is also being asked to

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adopt a Strategic Investment Plan for this \$870 million project, with private participation set at approximately \$710 million, primarily in the development of residential housing units and office/commercial space. The \$160 million public investment will go towards infrastructure and assistance to achieve low and moderate income housing. He said there is a lot of optimism about the long term availability of private financing but public financial assistance is also presumed, including \$24 million currently budgeted by the Bureau of Environmental Services for the Tanner Creek CSO project which in turn will leverage federal funds to build the Basin and park. Finally, the plan proposes that about \$13 million in General Fund money be invested over the next six to seven years which should be offset by higher taxes and fees over time. The initial request to the City is for \$4.66 million of General Fund money as the City's share of the cost to reconstruct Front Avenue and make other infrastructure improvements needed to facilitate development. Finally, Council is being asked to approve financing for the River District Steering Committee and the Central City 2000 Task Force activities. Approval today will be the first and most vital step in actually building the River District.

Commissioner Lindberg said of the \$250,000 City match for implementation studies, \$84,000 is to come from the Bureau of Environmental Services (BES). He offered some amendment language that would allow it to look at an expanded Tanner Creek project.

Roger Breazley, Chair, River District Association, said this is the culmination of eight years of continuing effort.

Mayor Katz noted an amendment had been proposed and distributed by Commissioner Blumenauer.

Commissioner Blumenauer said it clarifies that a General Fund commitment would be considered in light of the overall budget. He moved the amendment. Commissioner Hales seconded and, hearing no objections, the Mayor so ordered.

Disposition: Resolution No. 35350 as amended. (Y-5)

***1942**

Agreement with the River District Association, in cooperation with the Portland Development Commission, for professional services related to the River District Development Plan and the Central City 2000 Task Force (Ordinance introduced by Commissioner Blumenauer)

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Discussion: Mayor Katz noted the amendment referred to by Commissioner Lindberg (regarding the scope of work). Commissioner Lindberg moved his amendment and, hearing no objections, the Mayor so ordered.

Disposition: Ordinance No. 168389 as amended. (Y-5)

1972 Purchase five S-10 Blazers from Russ Chevrolet per State Price Agreement No. 07022-4517 for a total of \$95,666 (Purchasing Report)

Disposition: Accepted.

S-1973 Establish temporary pay schedules and specify the effect upon employees in the classifications involved effective December 29, 1994 (Second Reading Agenda 1934; introduced by Commissioners Hales, Kafoury and Lindberg)

Disposition: Substitute Ordinance No. 168390. (Y-3; N-2, Blumenauer and Katz)

Mayor Vera Katz

***1974** Authorize the Mayor and Auditor to execute a labor agreement between the City of Portland and the Portland Fire Fighters Association, relating to terms and conditions of employment of represented personnel (Ordinance)

Discussion: Laird Cusack, Bureau of Personnel, said the current Fire Fighter's contract expired June 30, 1994 and the proposed contract will run through June 30, 1996. It accomplishes a majority of the Council's major bargaining objectives and ties monetary subjects to total compensation. It also resolves issues in the area of the fire fighter training program, advanced life support transport and ongoing management relations. Finally, it is consistent with wage and benefit settlements already provided in existing labor agreements.

Fire Chief Robert Wall said this agreement includes some landmark issues, especially in the area of labor management relations.

Randy Leonard, President, Fire Fighters Association, complimented Fire Chief Wall as the first Chief he has worked with who sincerely wants to compromise rather than taking black and white stands. He added that the Bureau is going through a transition and Council needs to understand some

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of the fire fighters' perspective and acknowledge that public safety is not just the Police Bureau but the Fire Bureau as well. He acknowledged Commissioner Hales' positive role and personal involvement, even though the two did not always agree.

Commissioner Blumenauer, noting his nay vote on the previous item, said he has not been comfortable with Council's approach to Measure 8 and in order to be consistent he could also vote no on this agreement since it was agreed upon after the election. However, a no vote would serve neither the process nor employees since Council has now approved a course of action which will allow half the employees to go forward to June 30, 1996 (before feeling the effects of Measure 8). He said it is important not to be punitive or unfair to the remaining employees.

Commissioner Hales thanked Chief Wall and the bargaining team for their leadership and perseverance in a difficult process conducted at a time when the mixture of services offered by fire fighters is changing.

Disposition: Ordinance No. 168391. (Y-5)

***1975**

Authorize employee contributions to the Fire and Police Disability and Retirement Fund for work performed on and after December 29, 1994 to be made on a pre-tax basis (Ordinance)

Discussion: Grandma Jotta, Portland resident, said if people get pensions they must be funded or otherwise the pension funds will disappear.

Disposition: Ordinance No. 168392. (Y-5)

***1976**

Amend City Code to add revised Vehicle Loss Control Policy (Ordinance; replace Chapter 3.58)

Discussion: Fred Cuthbertson, Risk Management Director, said this replaces previous Code language adopted in 1980 and incorporates changes recommended by a committee whose members represented all bureaus which use the City fleet.

Disposition: Ordinance No. 168393. (Y-5)

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Commissioner Earl Blumenauer

1977 Consider vacating a portion of SE 94th Avenue north of SE Harold Street at the request of J2M3, Inc. (Hearing; Report; C-9866)

Disposition: Approved. City Engineer prepare ordinance. (Y-5)

Commissioner Charlie Hales

***1978** Authorize the Fire Bureau to provide ambulance services for a fee under certain circumstances within Multnomah County (Ordinance)

Discussion: Fire Chief Robert Wall said this fee structure will allow the Bureau to recover costs for ambulance service whenever appropriate and at a time when the current number of ambulances in the County is insufficient. He said over the last six months there were 93 times when there have been two or less ambulances available throughout the entire City/County service area. When that occurs, the Bureau's resources are put into place to respond. Out of those 93 situations, the Bureau was called on to respond 100 times as the primary transport unit and 68 of those situations involved patients with serious injuries. This ordinance provides a fee structure to collect those costs.

Commissioner Kafoury asked why this was an emergency.

Chief Wall said the Bureau believes it is important to start the collection process.

Commissioner Blumenauer said without the emergency clause another month would go by before the City could collect the money taxpayers are entitled to. He asked how much money is involved.

Chief Wall said the average charge would be about \$500.

John Praggastis, 225 SE 44th, representing the Paramedic Alliance, asked that Council vote no on this and protested the lack of advance notification, noting that no ambulance company representatives were present. He said most of the 63 transports were done between March and May when there were problems with the CAD system which, while still not fixed, is considerably better now. He said in many cases the Bureau took the patients even though Alliance rigs were closer. He said he does not see that

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this is an emergency and asked that hearings be held so people outside the City limits know what the price will be. Also, there is a problem where the Ordinance authorizes the Bureau to transport patients under circumstances specified in Multnomah EMS protocols 30.00605 and 40.00444. He said these are Bureau of Emergency Communication (BOEC), not County, protocols and, if 30.00605 were to be changed, as BOEC staff is authorized to do, Portland will be in the transport business without Council permission. He said what is really going on is that people are jockeying for position because the County RFP will be issued in January and the Fire Bureau is looking for permission to be in the transport business without coming to Council directly.

Commissioner Blumenauer asked if the Fire Bureau is in the transport business.

Mr. Praggastis said in 10 years, the Bureau generally transported less than 12 patients per year.

Commissioner Blumenauer asked if the City is not entitled to collect for that transport.

Mr. Praggastis said no, because these are times when emergency services are pressed, such as during an ice storm, and it is not worth the money to try to collect the bills on 12 transports, especially when taxes have been used to buy the ambulances in the first place.

Terry Marsh, Vice President, American Medical Response Northwest, questioned the emergency clause. He stated three concerns: 1) that the fee structure be limited to existing transport conditions and not expanded beyond what is currently being done; 2) that the proposed rate be consistent with the Medicare allowable; and 3) that the rate structure methodology be consistent with other providers. He said they are not opposed to charging for services rendered as long as it is limited to current service levels.

Commissioner Lindberg noted Fire Bureau statistics indicating 100 situations in the last six months where only two ambulances were available. He said there seem to be a lot of instances where there is bare bones coverage and asked Mr. Marsh if his group provided most of the services.

Mr. Marsh said his group responds to approximately 72 percent of the 9-1-1 calls in Multnomah County. The Bureau's involvement in peak load

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instances is reasonable although problems with the BOEC system are partially to blame. Bureau utilization is also appropriate during worst case scenarios, which happen very infrequently, and some form of public/private partnerships, which have been successful in surrounding counties, may be appropriate.

Commissioner Blumenauer said he appreciates any constructive criticism that will protect the public safety of people in the community.

Mr. Marsh said collaborative efforts are underway to work through some of these issues.

Commissioner Blumenauer said it is entirely appropriate to have a fee schedule in place and, whatever change happens in the future, there will be plenty of opportunities for input.

Commissioner Hales said this is a simple authorization to collect a fee for a business the Bureau is already in. If the Bureau engages in a different business in the future that will be under the purview of the Multnomah County Board of Commissioners and there will be public discussions. All deleting the emergency clause would do at this point is delay the effective date.

Commissioner Kafoury said she looks forward to holding discussions in the spring about having a single ambulance provider.

Disposition: Ordinance No. 168394. (Y-5)

Commissioner Mike Lindberg

1979

Authorize the Mayor and Auditor to execute a labor agreement between the City of Portland and the District Council of Trade Unions (DCTU) relating to the extension of the November 1, 1992 to June 30, 1995 DCTU contract, with certain amendments, to June 30, 1996 (Ordinance)

Discussion: Commissioner Lindberg moved to add an emergency clause because of the time frame and the need to make decisions quickly. Commissioner Blumenauer seconded and, hearing no objections, the Mayor so ordered.

Laird Cusack, Bureau of Personnel, said this would extend the contract for

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the DCTU from its current expiration date on June 30, 1995 to June 30, 1996 and give 100 percent of the Consumer Price Index and wages and benefits consistent with other contracts on July 1, 1995. The DCTU would agree to participate in the City's human resources policy and work within the existing productivity committees to address a number of issues, including flexible use of the workforce, field-crew management, use of contractors and seasonal employees and collaborative dispute resolution. Traditionally the bureaus and the DCTU would report to Council in January, 1996 as to the results of their efforts.

Commissioner Blumenauer said with Council approval of the Fire Bureau contract, over 60 percent of the workforce will be granted the phase-in of Measure 8 until July 1, 1996. This would take the largest City union with the lowest paid employees on average and give them the same equitable treatment others have been provided. He thanked the union representatives for trying to make this a collaborative effort, not just a contract extension, by adding language that makes it clear to the public that the City is trying to improve service and do business differently. Because of the equity involved with the 38 percent of employees who are the least well paid, he does not feel comfortable treating them differently and will vote aye.

Commissioner Hales said everyone on Council has taken positions based on principle and tried to work through to a compromise that is reasonable and responsible. With this package of measures, Council is making sure that Measure 8's impact on the workforce is equal and that all take the hit at the same time. This is fair and people in the community will agree once they understand what Council is doing. He thanked the union leadership and staff for trying to get to something that is responsible and minimal.

Commissioner Kafoury said this is a vote for equity for all City workers and for equity with other government jurisdictions, at least for 18 months.

Commissioner Lindberg said he votes aye for four reasons: 1) the need for a transition period for implementation because of the difficulty it presents to families of the City's lowest-paid workers; 2) the importance of equity for all employees; 3) the DCTU commitment to engage in a partnership so that better service can be provided more efficiently at less cost; and 4) the advantage of having all City contracts expire on the same date. He said this has been very difficult and thanked the DCTU representatives for their flexibility.

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Mayor Katz said she did not object to adding the emergency clause but cannot support these two new contract extensions, noting that her no vote will effectively kill this and the following ordinance. She said she has agonized over this as she realizes that many of these members are the lowest paid employees but she cannot support the new contract extensions because they have been proposed for the purpose of delaying implementation of Ballot Measure 8 for City employees whose contracts expire June 30, 1995. She too believes that all contracts should be acted on at the same time since, if that had been done, this issue would not be before Council. Mayor Katz said she cannot tell voters simultaneously that she is keeping faith with Measure 8 and then turn around and vote in favor of these extensions. By comparison, she did support renewal of the Fire Fighters agreement because it has been in negotiation for almost a year. If this ordinance fails, and it will, she will propose a substitute ordinance which keeps faith with the voters on Measure 8 while providing some additional reassurance for DCTU and recreation employees. She voted no.

Disposition: Failed to pass as amended. (Y-4; N-1, Katz)

1980

Authorize the Mayor and Auditor to execute a labor agreement between the City of Portland and Municipal Employees, Local 483, Recreation Employees relating to the extension of the July 1, 1992 to June 30, 1995 Recreation Employees contract, with certain amendments, to June 30, 1996 (Ordinance)

Discussion: Mr. Cusack said this is essentially the same as the DCTU contract although there are some different issues, particularly the employment of temporary and seasonal employees in Parks Operations.

Disposition: Failed to pass as amended. (Y-4; N-1, Katz)

Suspension of Rules

Mayor Katz requested Suspension of the Rules to allow her to submit two new ordinances to see if some agreement can be reached with the entire Council, even though they will not satisfy all Council members. However, she wants to do something that allays the fears of the union leadership with regard to their rights during the time they bargain. Hearing no objection, the Mayor so ordered.

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- *1980-1** Authorize the Mayor and Auditor to execute a labor agreement between the City of Portland and the District Council of Trade Unions (DCTU) relating to the amendment of Article 37, Effective Date and Duration of the Agreement, of the current November 1, 1992 to June 30, 1995 DCTU contract (Ordinance)

Discussion: Mr. Cusack said these two items are essentially the same, with both providing for the continuance of the contract during the period of negotiations, if those negotiations go past the end of the contract. Thus, if negotiations with the DCTU and recreation instructors go past June 30, 1995, the contract would cease to be enforceable. Given the difficult contract negotiations coming up, such a provision would allow the unions to bargain with the City until they reach agreement. This agreement includes the good provisions of the previous ordinances in terms of working on the human resources policy and the productivity improvement committees.

Commissioner Kafoury asked if this meant that during the time the contract was open there would be no Cost of Living Adjustment (COLA) increase.

Mr. Cusack said yes, COLA increases are only given after bargaining is completed.

Commissioner Kafoury asked if the practical effect is that the City is picking up PERS but after July 1 of this year there will once again be inequitable treatment between classes of employees.

Stephen Bauer, Director of Finance and Administration, said what there will be is exactly what would happen under the current contracts which are due to expire in July 1, 1995 and unless there was a replacement agreement in place at that time, members of DCTU and recreation instructors would not receive, under normal events, a pay increase until the contracts were completed. It is comparable to what has been done for other City employees to the extent that by allowing the contract conditions to continue, the PERS pickup would continue also. All other aspects, such as the COLA and merit increases, would be subject to negotiation.

Harry Auerbach, Deputy City Attorney, said if negotiations were not finished by June 30, 1995 but did involve a pay increase, it would be retroactive.

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Commissioner Kafoury said if it could be shown to be a direct offset to Measure 8 that adjustment would be illegal and not allowed.

Mr. Bauer said that is an issue the City will confront with its labor agreements in any event. He explained how these two ordinances differ from those previously voted on. They continue the same agreement as contained in the other labor agreements to work together on significant issues between the City and the unions but the major difference is that, with the previous ones, it might have been well into 1996 before the City could bargain with the unions on issues of common interest. This and the following ordinance, by resolving that ambiguity, allows the City to move ahead on issues of common interest beginning this spring or summer and concluding within a year. To that extent, they actually represent an improvement over what was proposed before.

Commissioner Blumenauer said he will reluctantly support this as he believes it is bad to discriminate against DCTU and the park recreation employees when Council just approved the Fire Fighters contract. This is the wrong signal to send to employees who have agreed to work with the City on management issues because it provides an incentive for employees not to reach an agreement with the City as long as they think they can postpone the PERS pickup. Everyone knows there is language in these contracts that needs to be changed and there is an opportunity to improve the management of the City but instead, using this device to keep the PERs pickup going, the City unnecessarily locks itself into the old contract. It would have been much better to accept the reasonable offer these employees presented. It is wrong to treat the least well-paid employees worse than the other 60 percent. Finally, it seems hypocritical to state that Council is keeping faith with Measure 8 in voting down the previous ordinances when the only reason this is being adopted is to get around Measure 8 by extending the pickup for a year or two. That is the intent of this language, which no labor relations expert would recommend. He said he is sorry to be in this situation but does appreciate the hard work of staff and the union.

Commissioner Hales said Council members are called on to be both servants of the law and good managers. Measure 8 should be put into effect and Council should deal with as many of the crazy side effects as it can. He said there are nine different categories of employees which results (because of Measure 8) in a few people paying now and a few paying later with who knows what impacts on morale, productivity and the City's legal standing. From the beginning his objective has been to put Measure 8 into effect

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consistently for the workforce.

Commissioner Kafoury said this is very unfair and means a certain group of workers will not get their COLA come July 1st so that in six months there will be a discrepancy in wages once again. She said she is forced, however, to vote for this or there would be no extension at all.

Mayor Katz said she offered this as an effort for her personally to keep faith with the voters' decision on Measure 8 and provide some assurances for the unions. The previous ordinance rolled over the contract and, frankly, the City did not get much in return for it, nor did it keep faith on Measure 8. This ordinance does not extend the contract or raise salaries but does clarify any potential confusion generated in lawsuits about the ability of contract provisions to continue during negotiations. That is the issue as there was concern that the unions had the right to continue to negotiate their contracts and still get their benefits, as indicated in the provisions already contained in current contracts which she believes will carry forward regardless of the passage of Measure 8. Nonetheless, there are worries among the workforce regarding this matter and this ordinance attempts to address those concerns. She contended that this ordinance is an improvement over the past approach in that it continues the normal contract bargaining process, provides incentives for both sides to work on important issues of productivity and quality service and allows that to go on until 1996. She noted that no one gets COLA until the contracts are signed and some go for a year, some longer. She thanked Leonard Harlow and John Werneken of the DCTU who consulted with her on this ordinance, adding that she knows it is not what they first wanted or what she wanted as she did not support Ballot Measure 8. However, this is what she can support given her commitment to the voters to implement it. She thanked the DCTU leadership for its continued hard work to improve customer service, adding that the unions are entering a new century where collaborative work between management and the workforce is emphasized and that work will continue. Along with the ordinance, she proposed that an advisory working group be established to review the City's compensation policy in light of Measure 8. She concluded by noting this is not what the Council would prefer and was not an easy decision for her, but is one that protects the union as it bargains and puts a limit to the time span, probably codifying labor law and providing protection.

Disposition: Ordinance No. 168395. (Y-5)

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- *1980-2** Authorize the Mayor and Auditor to execute a labor agreement between the City of Portland and Municipal Employees, Local 483, Recreation Employees, relating to the amendment of Article 35, Effective Date and Duration of the Agreement, of the current July 1, 1992 to June 30, 1995 Recreation Employees contract (Ordinance)

Disposition: Ordinance No. 168396. (Y-5)

City Auditor Barbara Clark

- 1981** Assess property for private plumbing contracts through November, 1994 (P0006; Second Reading Agenda 1929)

Disposition: Ordinance No. 168397. (Y-5)

At 12:50 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 21ST DAY OF DECEMBER, 1994 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 Officer Chuck Bolliger, Sergeant at Arms.

1982

TIME CERTAIN: 2:00 PM - Appeal of Forest Park Neighborhood Association against Hearings Officer's decision to approve application of HGW, Inc. for an 111-lot subdivision located one-half mile north of NW Cornell Road, adjacent to and west of NW Skyline Boulevard (Hearing; 94-00259 SU ZC IR)

Discussion: Pete Kasting reviewed rules for conducting the hearing and for appealing issues to the Land Use Board of Appeals.

Tom Bizeau, Planning Bureau, stated the approval criteria and described the 61-acre site, one of the few remaining in that area that does not already have some form of subdivision approval. He said the Neighborhood Association raised three issues, two of which have been resolved. First, a height condition would be removed and a Code section reducing height would instead be applied. Second, agreement between the applicant and the neighborhood was reached to make design changes which would accommodate a drainage way in its natural state and place an easement across it. The third issue relates to fire protection adequacy. Since this is a Comprehensive Plan Map zone change, findings must show that services, including police and fire, are adequate. The neighborhood believes this approval criteria has not been met. At issue is the current response time of 13-15 minutes because fire engines must come from downtown Portland. However, Mr. Bizeau pointed out, response time is not an approval criteria in the Code. A condition to improve fire protection has been added placing buffers on the rear end of lots to give fire engines an extra window of time for response. Another issue is the establishment of a fire station in the area.

Commissioner Hales asked about Bureau plans for improving fire capacity in this general area.

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John Wilson, Fire Bureau, said they are in the process of acquiring a site at the corner of Skyline and Cornell and intend to request funding to construct a station in the coming fiscal year.

Commissioner Hales asked about the street tree condition and whether the skinny street standard is being used. Would there be a planter strip between the sidewalks and street or would they be right up against the curb?

Mr. Bizeau said most of the streets are private and have been approved with certain standards, but not necessarily the skinny street standard.

Commissioner Hales said if a street tree condition is going to be enforced on private streets the City should at least know the design. He asked whether the requirement for a pedestrian pathway along Skyline was also imposed on the adjacent subdivision to the south.

Mr. Bizeau said that was not required on the adjacent development, where there are waivers.

Commissioner Hales said those waivers could then be executed later.

Mr. Bizeau said yes.

Arnold Rochlin, P.O Box 83645, 97283, Arnold Creek Neighborhood Association, said they have reached agreement on the issues described. He raised a procedural issue about Section 2.b of the Notice which states that the applicant is required to show that each and every approval criteria can be satisfied. He said they object to that standard and believe that it should read that each and every approval criteria are satisfied. He said while the standard can sometimes be met by a condition requiring some future act, that requires a determination now and certainty that such future action will indeed satisfy all requirements of the standard. He also criticized the wording in Section 2.C, which states than an opponent must show that elements of the approval criteria cannot be met. He said there is no requirement in the Code that opponents show anything; it is the applicant who carries the burden of proof to show that the criteria are met, not the City or other parties to show that the criteria have not been met. He objected to both these rules and asked Council to acknowledge the correct standard.

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Regarding fire service, Mr. Rochlin noted that staff has stated that fire response time is not a standard. But, he asked, if fire response is not a part of the capability of emergency fire service to meet the needs of the community, what is? He said everyone agrees that the response time is 12 to 15 minutes, noting that the average in the City is five minutes. He said the applicant has agreed to some conditions that reduce risk and believes these are an adequate substitute for fire response. Mr. Rochlin said they mitigate but are not adequate, arguing that there are many reasons why response times should be even shorter in the area because of its closeness to the forest. The developer also states that even if the response time is not adequate now, it will be when development is complete because of Bureau plans to add a new station, no later than 1999. He argued that the developer cannot rely on a letter from Chief Wall stating this intent as only Council can authorize and fund a fire station. He proposed adding two conditions: 1) the zone change will not be effective until the Planning Director has been notified by the Fire Chief that a location has been acquired that can provide a five-minute response and Council has authorized and funded a fire station to be completed no later than 1999; and 2) no occupancy permit will be issued until actual construction of the fire station has begun. He said if the Council is fully committed to the station, imposing these conditions will not be a burden.

Michael Harrison, attorney representing applicant HGW, said their request from RF to R10 is in compliance with the low density, single-dwelling Comprehensive Plan map designation. Mr. Rochlin makes it sound as if applicant has requested some intense zone not previously considered for this site. That is not the case and both the staff and Hearings Officer found the development in compliance with the Comprehensive Plan. Regarding the fire issues, he noted their extensive meetings with both the Planning and Fire Bureaus and their agreement to a number of conditions to make the fire protection service adequate in the area. He said when rezoning, the applicant must show that police and fire protection are capable, or will be capable of supporting uses allowed by the zone by the time development will be complete. He said their development will be completed by 1999 so the Fire Bureau can look either at the present time or 1999 to determine if fire protection would be adequate. The second issue is who decides whether the service is adequate. The Code states that it is the service bureau that does that. In this case Chief Wall's letter states that construction of the fire station will be in place no later than 1999. Mr. Harrison said there is no requirement for a four to five minute response time in the Comprehensive Plan, the Zoning Code or any document used as an approval criteria by the

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Fire or Planning Bureaus. The only relevant policy is a provision in the Comprehensive Plan that states that service levels need to be uniform and these will be by the time the subdivision is complete. The suggested condition by the Neighborhood Association is unworkable and unlawful. In this case the criterion tells applicant what must be proved and this has been done through the Fire Chief's assertion that fire protection will be adequate by 1999. He asked that the appeal be denied and that they be allowed to revise the Hearings Officer's findings with respect to the agreed-upon issues.

Commissioner Hales asked if there would be room for street trees.

Don Hanson, OTAK, said the streets are a combination of widths, with a public street 26-feet wide with a sidewalk along the side. The private roads vary in width and street trees are proposed behind the sidewalks, on the lots.

Commissioner Hales said this is something that needs to be looked at in the Subdivision Code as sidewalks are being built right to the street with fire hydrants in the middle of the sidewalks.

Mr. Hanson said the reason for putting the sidewalk right next to the curb is because of the severe slopes on the site.

In rebuttal, Mr. Rochlin said even with the significant mitigating conditions, this site remains a very severe fire hazard area and adequate fire response is necessary. Second, if contingent zoning is not legal then there is not adequate fire service and Council has no choice but to deny this application. He said approval is contingent on an unrealized fact that there will be a fire station in 1999 and there is no remedy if it is not there.

Commissioner Hales said he appreciates the need to get on with building the fire station and described various ways of financing infrastructure improvements. Ideally, the station should have been financed by formation of a district with imposition of system development charges on every new house built. However, the City has chosen broadly-based methods and often uses backward financial tools such as LIDs to make improvements later on. He said he is committed to moving ahead with the fire station and noted the bureau's intention to move it up as a capital improvement priority. However, it would be wrong to use a concurrency approach and hold this one project hostage until the infrastructure was provided. He

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moved to uphold the Hearings Officer's decision but amend the conditions and findings as recommended by Mr. Bizeau in his memo of December 21, 1994. Commissioner Lindberg seconded.

Disposition: Tentatively uphold Hearings Officer's decision as amended; applicant prepare findings for January 11, 1995 at 2:00 p.m.

1983

Request of Nauru Phosphate Royalties, applicant, that the appeals filed regarding the Forest Heights PUD be heard "On the Record" as opposed to "de Novo" (Hearing; 93-00898 PU SU IR/93-00899 PU SU IR/93-00900 PU SU IR/93-00902 PU)

Discussion: Peter Kasting, Senior Deputy City Attorney, said the Code states that appeals may be heard "On the Record" although appeals before Council have traditionally been "de Novo", allowing new evidence to be considered in addition to what was submitted to the Hearings Officer. He said Council has the option of hearing the appeal "On the Record" although the Code does not provide any criteria for deciding between the two.

Arnold Rochlin, Forest Heights Neighborhood Association, raised a procedural question about the amount of time granted each party, asking for the 10 minutes stated in the hearing notice.

Council agreed but Mr. Kasting noted that the only issue today is whether to hear the appeal "On the Record" or "de Novo".

Richard Whitman, 101 SW Main Street, attorney representing the applicant, said the notice provisions set time limits for the appellant and opponent but do not deal specifically with a situation like this where there is no appellant or opponent, only a request.

He said there are two reasons for hearing this "On the Record". First, these four cases have set a record for the lengthiest and longest record in the Planning Bureau. Multiple hearings have been held and there have been many opportunities for all parties to provide testimony. Second, the already compiled record on these four land use applications is approximately 8,000 pages and involves over 100 conditions of prior approval dating back to 1975.

Commissioner Blumenauer asked why the hearing would go on and on if

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Council establishes procedures, as is its custom, for the time and the parties to participate.

Mr. Whitman said Mr. Rochlin's appeal is very general and he suspects he would like to submit additional testimony which the applicant would then have a right to respond to. To some extent Council procedures control that but there is still the problem of dealing with a mass of complex material.

Commissioner Blumenauer asked how, if there are over 8,000 pages, one determines what is in or out of the record.

Mr. Whitman said one possibility is to allow the parties to provide argument but prohibit the introduction of new evidence.

Arnold Rochlin, Forest Heights Neighborhood Association, again objected to the rules of procedure regarding the burden of proof which he raised in the earlier appeal and which the Council did not respond to.

Mr. Kasting said he thought it was an editorial issue, adding that it would be looked at.

Mr. Rochlin said if Council plans to reject this request for an "On the Record" hearing, he will not press the issue. He also objected to applicant's request that all these appeals be heard in one hearing.

Commissioner Blumenauer said Council can only consider the request for a hearing "de Novo" or "On the Record".

Mr. Rochlin said no matter how Council decides, it will have to determine what the record is in one of the cases. He said there are five appeals and one matter, on reducing density, which is not on appeal. Council must decide whether the Hearings Officer's proceedings on that matter are properly part of this record. He asked if that was within the scope of this hearing.

Commissioner Hales, noting that the request was simply to hold an "On the Record" proceeding as opposed to Council's usual approach, moved to deny it. He said there are a lot of things wrong with the appeals process, some of which will require changes in State law, but holding "de Novo" proceedings means that Council does not have to spend a lot of its time grappling with minute procedural issues. Council's land use decisions generally turn on

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substantive issues more often than on procedural ones while in jurisdictions using an "On the Record" basis it is the other way around. He said for that reason the "de Novo" process should be continued, adding that it also tends to encourage the parties to reach agreement.

Commissioner Kafoury seconded Commissioner Hales's motion.

Commissioner Blumenauer disagreed, arguing that Council should consider making the hearings "On the Record" so people will lay their cards on the table before the Hearings Officer instead of waiting and throwing the dice before Council. He said some cases could have been resolved before they got to Council if people had done their homework in the beginning. It also is not fair when someone saves their best arguments for last. However, he is not interested in changing Council's current system now, particularly if it disadvantages neighborhood volunteers. He said it might be wise to reconsider the current policy of encouraging everything to come to Council, noting that some of the best land use lawyers favor a change to "On the Record" hearings. He voted in favor of denying the request.


Commissioner Hales said the 1991 changes made to LUBA statutes requiring issues to be raised with sufficient specificity at the local level cured a lot of the "save your best arguments to last" syndrome. He said he thinks that is a better route than changing the Council process.

Commissioner Kafoury said her experience in Multnomah County was that they spent inordinate amounts of time on procedural issues and she believes Council has made progress in encouraging people to resolve issues before they get to Council.

Disposition: Request denied. (Y-5)

At 3:05 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland


By Cay Kershner
Clerk of the Council