



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 8TH DAY OF MARCH, 1995 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; Ben Walters, Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

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

CONSENT AGENDA - NO DISCUSSION

- 294** Accept bid of Nutter Underground for street improvement of streets within the NE Mason LID for \$216,685 (Purchasing Report - Bid C-9879)
- Disposition:** Accepted; prepare contract.
- 295** Accept bid of Marshall Associated Contractors for NW 29th and 31st street sewer diversion manhole elimination for \$193,660 (Purchasing Report - Bid 89)
- Disposition:** Accepted; prepare contract.
- 296** Accept bid of Russ Chevrolet for ten compact four door sedans for \$169,290 (Purchasing Report - Bid 93)
- Disposition:** Accepted; prepare contract.
- 297** Accept bid of Daily Journal of Commerce for annual furnishing of advertising and newspaper publications for \$70,000 (Purchasing Report - Bid 96-A)
- Disposition:** Accepted; prepare contract.

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Mayor Vera Katz

298 Confirm appointment of Kimberley McMillan and Lisa Miller to the Advisory Board for Special Inspections (Report)

Disposition: Confirmed. (Y-5)

***299** Settle claims of Steven Denkers (Ordinance)

Disposition: Ordinance No. 168569. (Y-5)

***300** Pay claims of James and Joan Davis (Ordinance)

Disposition: Ordinance No. 168570. (Y-5)

***301** Agreement with the Oregon Liquor Control Commission to provide access to the Portland Police Data System (Ordinance)

Disposition: Ordinance No. 168571. (Y-5)

***302** Lease with International Refugee Center of Oregon for Portland Police contact office space at 4424 NE Glisan Street (Ordinance)

Disposition: Ordinance No. 168572. (Y-5)

Commissioner Earl Blumenauer

***303** Authorize Agreement between Mike Agar, Morrison Oil Company, and the City for equipment removal (Ordinance)

Disposition: Ordinance No. 168573. (Y-5)

***304** Amend contract with OTAK, Inc. for additional work on 15th/16th Project (Ordinance; amend Contract No. 27310)

Disposition: Ordinance No. 168574. (Y-5)

***305** Revocable permit to Jake's Restaurant to close SW Stark Street between 12th Avenue and 13th Avenue, March 16 through March 18, 1995 (Ordinance)

Disposition: Ordinance No. 168575. (Y-5)

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***306** Authorize contract with Portland Habilitation Center for \$312,368 for one year of janitorial services (Ordinance)

Disposition: Ordinance No. 168576. (Y-5)

Commissioner Charlie Hales

307 Contract with Van Domelen, Looijenga, McGarrigle and Knauf to prepare seismic upgrade plans for fire stations in the amount of \$93,000 (Second Reading Agenda 270)

Disposition: Ordinance No. 168577. (Y-5)

Commissioner Gretchen Kafoury

308 Accept contract with A&C Enercom Services, Inc. to perform energy efficiency improvements at the 4th and Yamhill parking garage as complete, authorize final payment and release retainage of \$41,452 (Report; Contract No. 29140)

Disposition: Accepted.

***309** Declare surplus property located near N. Bank and N. Columbia Boulevard and authorize sale (Ordinance)

Disposition: Ordinance No. 168578. (Y-5)

***310** Authorize contract and provide payment for the Albina Yard reroofing project (Ordinance)

Disposition: Ordinance No. 168579. (Y-5)

***311** Authorize Intergovernmental Agreement with Multnomah County for the collection of prior years' outstanding taxes by the Bureau of Licenses as administrator of the County's Business Income Tax program (Ordinance)

Disposition: Ordinance No. 168580. (Y-5)

***312** Contract with ROSE Community Development Corporation for \$17,925 to provide community organizing and improvement projects in the Brentwood Darlington neighborhood and provide for payment (Ordinance)

Disposition: Ordinance No. 168581. (Y-5)

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Commissioner Mike Lindberg

313 Accept completion of the SW 25th Avenue and SW Lancaster Road sanitary sewer construction project and authorize final payment to Casper & Magera, Inc. (Report; Contract No. 29389)

Disposition: Accepted.

***314** Amend contract with K & S Madison, Inc. to redefine land area to which sludge may be land applied (Ordinance; amend Contract No. 27955)

Disposition: Ordinance No. 168582. (Y-5)

***315** Contract with CH2M Hill for professional engineering services for the South Vermont Infiltration and Inflow Study and provide for payment (Ordinance)

Disposition: Ordinance No. 168583. (Y-5)

***316** Authorize negotiations for the purchase of three parcels of land needed for a pollution reduction facility site located within the Columbia South Shore, authorize the City Attorney to commence condemnation proceedings and authorize the City Attorney to obtain early possession (Ordinance)

Disposition: Ordinance No. 168584. (Y-5)

***317** Three year contract with Merina McCoy Gerritz CPA's for \$135,000 to conduct annual financial reviews of franchised solid waste and recycling companies and provide advisory services for City rate review and other analytical purposes (Ordinance)

Disposition: Ordinance No. 168585. (Y-5)

***318** Amend contract with Economic and Engineering Services for additional services to evaluate alternatives to corrosion control treatment (Ordinance; amend Contract No. 29540)

Disposition: Ordinance No. 168586. (Y-5)

***319** Call for bids for the construction of 12-inch, 8-inch, 6-inch water mains in SE Flavel Park District, SE Ogden and SE Henderson Streets (Ordinance)

Disposition: Ordinance No. 168587. (Y-5)

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REGULAR AGENDA

292

TIME CERTAIN: 9:30 AM - Support reauthorization of the National Foundation on the Arts and Humanities Act of 1965 and continued funding for the National Endowment for the Arts, National Endowment of the Humanities and the Institute of Museum Services and request Oregon's Congressional delegation to support reauthorization and funding of these agencies (Resolution introduced by Commissioner Lindberg)

Discussion: Commissioner Lindberg said it is incomprehensible to him that anyone would want to dismantle this program. Depending solely on private support will only make the arts more elitist and less democratic, decreasing the artistic life of this country. He said he will visit members of the Oregon Congressional delegation in Washington D.C. next week to seek their support of continued funding.

Supporters of continued funding for the NEA and other groups cited in the resolution included:

Allen Dubbin, 222 SE Spokane, 97203, former curriculum chair for Portland Public Schools

Roger Buchanan, board member, Columbia Symphony Orchestra, 3641 NE 72nd, 97213

Sally Woolley, Oregon Council for the Humanities and the Chautauqua program

Robert Hamm, West Linn School District teacher

Neil DePonte, music director, Oregon Ballet Theatre

Murry Sidlin, 6209 SW Downsview Court, 97221, resident conductor Oregon Symphony

Chris Bright, attorney and member of Columbia Symphony Orchestra

Paul Sutinen, artist and art critic

Michael Grice, Portland School District and arts activist

Clark Worth, past chair, Metropolitan Arts Commission

Jay Gerard, 8808 SW Rambler Lane, 97223, graphic designer and teacher

Ron Ennis, President of Pathways through Transition and board member of several arts organizations, including the Portland Festival Symphony

Rhonda Kennedy, 3212 SE 23rd, 97202

Connie Mom-Ching, 4004 NE 123rd Ave., Vancouver

Sophie Francis George, 2035 NW 7th Place, Gresham, 97030

Leanne Sylvester, Roosevelt High School artist in residence

Jeannette Ward, 6645 W Burnside Rd., 97210

John O'Brion, actor, 309 SW 6th, Suite 202, 97205

Jose Gonzalez, 2322 SE Yamhill, artistic director of Miracle Theatre

Alice Norris, 141 Ogden Drive, Oregon City, 97245, citizen member of

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MERC and Oregon Trail Pageant Director
David Olson, past chair, Oregon Commission of the Humanities, and
founder of Tygres Heart theatre company
Myra Donnelley, 2115 SE 46th, 97215
Rosalie Tank, 1910 SW Clifton, board member of Portland Repertory
Theatre
Leigh Stevenson, 2959 SW Montgomery Dr., 97201
Tom O'Keefe, no address stated

Supporters described local programs which receive NEA funding and stressed the important role investments in cultural resources and the arts play in education and in enriching the community.

Commissioner Blumenauer suggested that those testifying also take direct action and let the politicians know how they feel.

Commissioner Hales said government is charged with building community as well as providing basic services and community cannot be built without culture.

Commissioner Kafoury said current community commitments may also be cut as Congress is looking at budget recisions.

Commissioner Lindberg said they will put together a video of today's testimony to show the Oregon delegation in Washington, D.C. He said change always occurs because a critical mass of people at the grass roots level speak out.

Mayor Katz noted her past involvement in the arts and said she considers art to be the soul of the community.

Disposition: Resolution No. 35371. (Y-5)

***293**

TIME CERTAIN: 10:30 AM - Execute Option to lease real property with Northwest Natural Gas Co. for Classical Chinese Garden (Ordinance introduced by Mayor Katz)

Discussion: Mayor Katz said this is the first step in making this garden a reality in the heart of Old Town/China Town. The Portland Development Commission (PDC) has been working for almost a year with representatives from the Chinese Garden Society and Northwest Natural Gas on an option agreement for a city block located on NW Flanders and Glisan between 2nd and 3rd. This option will allow the City to acquire the site from the Gas Company on a 99-year lease at \$1.00 per year. There are many difficult steps ahead, including raising money for the garden and replacing the lost parking spaces. The Garden will follow the example of the gardens in Portland's sister city of Suzhou

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and its sister city in Taiwan, Kaohsiung, has also made a commitment to help. She said Commissioner Hales and Commissioner Lindberg have been asked to participate in designing the garden and in fundraising.

Donald Jenkins, Chairman, Classical Chinese Garden Society, said Portland has the most authentic Japanese garden in the United States and now has an opportunity to do the same thing with a Chinese garden. He said the site, at the edge of China Town, will allow school children to make contact with the roots of a civilization and increase their respect for diversity.

Dr. Eng Lock Khoo, Chinese Garden Steering Committee and past president Chinese Consolidated Benevolent Association, said the idea for such a garden began in 1986 when the China Town gate was built. In March, 1989, Commissioner Lindberg appointed a task force which produced a 50-page report calling for the first full-scale Chinese Garden in the U.S. to be built here. He said Council approval today of the lease and appointment of a Steering Committee will give the project a jump start which they hope will lead to completion in the not too distant future.

Bill Naito, 5 NW Front, 97209, said this could be the Pioneer Square of the River District and he is prepared to twist arms, or whatever is necessary, to make this a success. He thanked Northwest Natural Gas for generously donating this valuable piece of real estate.

Commissioner Lindberg said this is a challenge but one that will be a tremendous legacy.

Mayor Katz said a lot of people were working on this long before she became Mayor. She said it would be quite a coup to have gardeners from Suzhou working here as well as to have both sister cities involved.

Disposition: Ordinance No. 168588. (Y-5)

320

Accept bid of Moore Excavation for Flavel Park sanitary sewer system for \$3,865,034 (Purchasing Report - Bid 91)

Discussion: O.B. Hill, Chairman, National Minority Contractors of Oregon (NAMCO), said in the past 3-1/2 years, Moore Excavation has been recommended to perform \$15,821,261 in City contracts. During this time, however, it has not been in compliance with City Economic Equal Opportunity requirements (EEO) or Minority Business Enterprise (MBE) contract provisions. Noting the City's goal for 1995 of nine percent MBE, he said there has been zero percent on this and the contractor's previous award. Awarding this contract to Moore

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Excavation amounts to a diversion of \$670,270 from the African-American and other ethnic minority-owned firms. This is a crime. Furthermore, the firm is currently in violation of federal, state and City EEO provisions as it has no people of color in its workforce, a blatant violation of the law. He asked that this award not be made as it signals that the City is not really serious about its MBE program.

Carleton Chayer, Purchasing Agent, explained some of the concerns Purchasing has about this contractor's performance regarding the low (one percent) minority participation level on City contracts and the lack of a diversified work force. The Bureau of Purchasing has informed the contractor that when his EEO certification renewal comes up in June, he will be decertified and no longer allowed to bid on City contracts. He said they did a careful review of this proposal and concluded that in this particular case, at this particular time, it was responsive to the bid requirements. He noted that participation goals are targets only as numerical goals cannot be enforced on any contracts. He recommended awarding the contract.

Commissioner Blumenauer said he liked the distinction between the City's goals and what is legally enforceable. He asked if the second low bidder is being kept in the picture.

Chayer said second low bidder will submit its good faith effort report in the same five-day period that the low bidder does so that the City has a backup in the event the low bidder fails to meet the requirements.

Commissioner Blumenauer asked about the timing on this contract.

Mr. Chayer said, regarding the EEO certification, firms are certified for a one year period and Moore Co.'s comes up for renewal in June, when this contract, if awarded, would already be in process.

Commissioner Hales asked if there was any opportunity to hold the contract up until then.

Madelyn Wessel, Deputy City Attorney, said they believe the EEO certification system needs to be triggered prior to the bidding process. To award a bid and have the winning company make commitments to subcontractors and begin construction and then yank it, through a decertification process, would create a legal nightmare. Instead, the City's policy has been to tell companies that if they are decertified they may no longer submit bids for a period of time. That seems to be the best way to ensure some predictability for the bureaus and others that are counting on construction to proceed.

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Commissioner Lindberg asked if there was any legal way to deny this contract, based on the company's miserable performance.

Ms. Wessel said staff went over the documentation provided by the company with a fine tooth comb. This case points out the difference between establishing policy and being able to ensure compliance and certain results. That is why Council funded the disparity study and, a year from now, the City should have the data that will give it a better tool to enforce specific outcomes. What the City has now, however, is a frustrating situation that reflects the limbo it is in without that tool. Based on her review, she finds no basis for rejecting this bid today.

Mayor Katz asked what would happen if Council decides to put this project on hold.

Ms. Wessel said recertification will occur over the summer and yanking this project would require a wait of several months while a new round of certification decisions are made. That would be hard on all the bureaus which have construction seasons. The City got very far behind on EEO certification because of a lack of staff but, with Council authorization of a rigorous staffing of this effort, it should not have these same problems a year from now.

Commissioner Lindberg asked if there was any legal way to hold this project.

Ms. Wessel said that is always an option for Council.

Commissioner Blumenauer suggested holding this over until this afternoon while Commissioner Lindberg checked with the Bureau of Environmental Services (BES) to see if it wanted to lose the construction cycle.

Elise Anfield, Commissioner Lindberg's assistant, said BES staff would like to continue with this project in a timely manner and not see it delayed. This is a Mid-County sewer project.

Commissioner Lindberg said this might not be fair to citizens if they end up having to pay a higher cost.

Mayor Katz asked what good faith efforts mean.

Mr. Chayer said the good faith efforts submitted by Moore are complete but obviously the results, one percent participation, are not entirely successful even though they went through the complete process the City required.

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Commissioner Lindberg suggested holding this over to this afternoon to get more information about the effect of delay.

Mayor Katz asked them to see also if there is any other route, other than the delay, to go until the EEO certification comes up.

Disposition: Continued to March 8, 1995 at 2:00 p.m.

321

Authorize the Portland Development Commission to obtain City General Fund allocation from Livable City Housing Investment Fund and enter into a redevelopment agreement with REACH Community Development in an amount not to exceed \$193,923 to finance construction of the City Life project with repayment due from REACH Community Development upon sale of units or by June 30, 1996 (Resolution introduced by Mayor Katz and Commissioner Kafoury)

Discussion: Neyle Hunter, Portland Development Commission (PDC), noted that the original request was for \$70,000 to cover what REACH estimated would be the gap between the estimated sales price and construction costs. Between March, 1994 and March, 1995, however, interest rates climbed and the cost of site improvements also increased. REACH then indicated it needed an additional \$123,000. He said PDC recommends that the entire \$193,923 be loaned to REACH Community Development and that the balance be repaid after all the units are sold. He said it does not cost PDC \$34,000 to administer a \$200,000 loan, and

stressed that this amount also includes the Livable City Housing Council work done to date.

Commissioner Kafoury said this is a wonderful kickoff to the Housing Investment fund.

Disposition: Resolution No. 35372. (Y-5)

Commissioner Earl Blumenauer

***322**

Agreement with the Oregon Department of Transportation and Multnomah County to provide for the Westside Corridor Project (Ordinance)

Disposition: Ordinance No. 168589. (Y-5)

***323**

Contract with four professional, technical and expert service firms for engineering services related to transportation projects (Ordinance)

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Discussion: Commissioner Blumenauer said this is an effort to make sure projects do not get backed up because of staffing problems.

Disposition: Ordinance No. 168590. (Y-5)

Commissioner Mike Lindberg

324 Amend Code to reflect transition of Metropolitan Arts Commission to Regional Arts and Cultural Council (Second Reading Agenda 279; amend Code Chapter 5.74)

Disposition: Ordinance No. 168591. (Y-5)

325 Repeal Code Chapter 3.120, Metropolitan Arts Commission (Second Reading Agenda 280)

Disposition: Ordinance No. 168592. (Y-5)

City Auditor Barbara Clark

326 Assess property for sidewalk maintenance for accounting period 8, ending January 31, 1995 (Hearing; Ordinance; Sidewalks Y1002, Y1003)

Discussion: Dan Vizzini, Auditor's Office, said they received three or four remonstrances on these sidewalk repair assessments and returned them to the Bureau of Maintenance. Two have since paid their invoices. About 90 accounts are represented in this ordinance. He recommended passing this on to second reading, noting that if the remonstrances are not addressed by the Bureau to the satisfaction of the property owners, they are brought back to Council in a subsequent hearing.

Disposition: Passed to Second Reading March 15, 1995 at 9:30 a.m.

327 Assess property for private plumbing contracts through February, 1995 (Hearing; Ordinance P0007)

Discussion: Mr. Vizzini said this and the next three items all grew out of the Mid-County sewer project. The project runs a private plumbing loan program to assist property owners with connection costs. This ordinance involves 15 properties.

Disposition: Passed to Second Reading March 15, 1995 at 9:30 a.m.

328 Assess property for sewer system development charges through February, 1995 (Hearing; Ordinance; Sewer System Development Charges Z0596 through Z0598)

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Discussion: Mr. Vizzini said these represent loans the City is writing for about 54 properties owners who are connecting to the sewer system. No remonstrances were received.

Disposition: Passed to Second Reading March 15, 1995 at 9:30 a.m.

329

Assess property for large lot deferral contracts through February, 1995 (Hearing; Ordinance; Large Lot Deferral Program L0049)

Discussion: Mr. Vizzini noted that a deferral program was created for residential property owners in the Mid-County sewer project who have oversize lots. This item involves three deferral contracts to be assessed. One remonstrance was received from Paulette Rossi.

Mr. Vizzini said the Rossi property extends between 147th and 148th just south of Sandy Boulevard and is served by a sewer line constructed by the County with the help of a federal grant. Ms. Rossi objects to paying for a connection even though the sewer line was built by the County. The explanation is that when those kind of assets come into the City they are applied systemwide, thus reducing the total capital costs to the City of building out the mandatory system. The City has the option of extending the benefit of the line on 147th only to the property owners on either side or to all the property owners in the system. The City's policy is that every property owner contributes to the local construction costs of the system and so the benefits are more fairly spread to all property owners in the system. Otherwise the Rossi's would get their sewer for free while those three blocks away would have to pay. He recommended overruling the remonstrance.

Stella Rossi, 3710 NE 147th, said of the three abutting properties, the property to the north received no bill while she has had to place a lien of \$11,000 on her property in addition to the \$3,800 she has already paid to partition her homesite. She asked why she should have to take out a lien when the property to the south hooked up years ago and paid only \$1,200. She also fears that another sewer line will come through and she will have to pay again.

Bonnie Morris, Mid-County Sewer Project, said the line on 147th was built in 1972 using federal grants and the County gave all property owners, including Ms. Rossi's mother, an opportunity to connect. It was a very good deal which these property owners did not take advantage of and the property then fell into the Mid-County sewer project. She said the City believes that since it is just a matter of luck as to whether a property owner is in a location where federally funded loans are coming through that those benefits should be applied systemwide. She said some of Ms. Rossi's neighbors who connected to the sewer prior to the

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inception of the Mid-County project are considered to have prior-existing connections and were not assessed.

Mr. Vizzini said those people are considered to have satisfied the mandate under the County so the City does not have jurisdiction there. He said the large lot deferral applies to residential lots only and on the other side of the Rossi's are vacant lands that do not have to make any payment or incur any lien at this time. When the City converted from a local improvement district to a capital improvement program for the sewers, the impact of that was that anyone who had to connect to the sewer line within a year of its construction was going to be subject to the lien right away. Anyone else needs to connect only when they build. In effect, the City carries the construction cost for the vacant land until the property is developed.

Commissioner Blumenauer noted the risk owners of vacant lots take in the form of higher costs by waiting until their property is developed.

Mr. Vizzini said because of the financial effect on residential lots, Council passed the large lot deferral and financial assistance programs to soften the blow on residential properties, leaving vacant property owners open to having to pay the full cost of the sewer when they connect. For that reason, they recommend that the remonstrances be overruled.

Ms. Rossi asked why her vacant land is subject to the line charge now while her neighbor's is not.

Mayor Katz asked Mr. Vizzini to respond to that later.

Commissioner Hales moved to overrule the remonstrance and the motion was seconded.

Disposition: Remonstrance overruled. Passed to Second Reading March 15, 1995 at 9:30 a.m.

At 12:10 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 8TH DAY OF MARCH, 1995 AT 2:00 P.M.

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

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

REGULAR AGENDA

320 Accept bid of Moore Excavation for Flavel Park sanitary sewer system for \$3,865,034 (Purchasing Report - Bid 91)

Discussion: Commissioner Lindberg noted this had been continued from the morning session to allow Bureau of Environmental Services (BES) staff to comment on whether the project could be delayed.

Linda Dartsch, BES, said this is a Mid-County sewer project and involves coordination with Water, Sewers, Transportation and Community Development in order to minimize impacts on the neighborhood. She said the street portion is an LID, subsidized to some extent by Community Development funds.

Commissioner Lindberg said this is a comprehensive neighborhood improvement project which should not be delayed, especially as costs continue to rise. He said the issues raised about Moore Excavation should be dealt with separately.

Ms. Dartsch said BES has just hired a new coordinator to work with contractors to increase the participation of minorities, women and emerging small businesses.

Mayor Katz said the other critical piece is the lack of businesses owned by minority and women in certain areas. If those are flagged early enough, the City can develop the skills programs necessary to meet the requirements for these bids. She asked Ms. Dartsch to flag those for the C-3 committee.

Commissioner Lindberg said both in construction and professional services contracts, the Bureau will see what it can do to build such businesses.

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Commissioner Hales said he is willing to go forward with this with the expectation that this contractor will either clean up its act or not be in the game anymore.

Disposition: Accepted; prepare contract.

Commissioner Charlie Hales

- 331** Tentatively approve Hearings Officer's recommendation to approve a modification to Condition A of CU 99-89/S 37-89 regarding medium-density areas of the Forest Heights PUD (Previous Agenda 283; Findings; 93-00901 PU)

Discussion: Commissioner Hales said even though all the findings on all the items were not filed, there is agreement that Council can go ahead and adopt those that were.

Tom Bizeau, Planning Bureau, said they would like to have the other items continued for two weeks.

Disposition: Findings adopted. (Y-5)

- 332** Approve modification of the Preliminary Development Plan for Forest Heights approved in CU 68-81, at NW Miller Road and NW Cornell Road (Second Reading Agenda 284; Findings; LUR 93-00901 PU)

Disposition: Ordinance No. 168593 as amended. (Y-5)

- 333** Tentatively deny appeal of Forest Park Neighborhood Association and uphold Hearings Officer's decision to approve modification to the street circulation plan for Phase 7 of the Forest Heights PUD (Previous Agenda 285; Findings; 93-00902 PU)

Disposition: Findings Adopted. (Y-5)

- 334** Tentatively deny appeal of Forest Park Neighborhood Association and uphold Hearings Officer's decision to approve Phase 4 of the Forest Heights PUD (Previous Agenda 286; Findings; 93-00898 PU SU IR)

Disposition: Continued to March 22, 1995 at 2:00 p.m.

- 335** Tentatively deny appeal of Forest Park Neighborhood Association and uphold Hearings Officer's decision to approve Phase 5 of the Forest Heights PUD (Previous Agenda 287; Findings; 93-00899 PU SU IR)

Disposition: Continued to March 22, 1995 at 2:00 p.m.

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- 336** Tentatively deny appeal of Forest Park Neighborhood Association and uphold Hearings Officer's decision to approve Phase 7 of the Forest Heights PUD (Previous Agenda 288; Findings; 93-00900 PU SU IR)

Disposition: Continued to March 22, 1995 at 2:00 p.m.

- 337** Tentatively deny appeal of Nauru Phosphate Royalties, applicant, and uphold Hearings Officer's decision to impose Condition I in approving application for Phase 5 of the Forest Heights PUD (Previous Agenda 288; Findings; 93-00899 PU SU IR)

Disposition: Continued to March 22, 1995 at 2:00 p.m.

- 330** **TIME CERTAIN: 2:00 PM** - Request for Council to determine whether appeal filed by Costco Wholesale Corp. against Hearings Officer's denial of a Conditional Use request for a Costco store at 2825 NW Yeon Avenue and 2345 NW Nicolai Street should be heard "de novo" or "on the record" (Hearing; 94-00603 CU)

Discussion: Mayor Katz said each party will be given ten minutes and individuals will be granted three minutes. She said this is a hearing on a legal issue only and testimony must be confined to that issue only.

Susan McKinney, Planning Bureau, said Title 33 allows appeals to Council to be heard either "de novo" or "on the record," at Council's discretion. The opponents to the project have requested that the April 19 hearing be "on the record" while representatives of COSTCO have requested that it be "de novo." The Bureau of Planning recommends that it be "de novo" because they did not announce that an appeal would be heard on the record at the time of the Hearings Officer's decision. Also, it has been standard practice for Council to hear appeals "de novo" and there is no reason why that should change at this point.

Joe Voboril, 1600 Pioneer Tower, 888 SW 5th Avenue, 97204, attorney for COSTCO, said the applicant requests that the hearing on April 19, 1995 be "de novo" because the record in this case is voluminous -- the transcript is 600 pages long and there are more than 500 exhibits -- making it difficult for Council to determine if testimony represents new evidence or is a restatement of testimony previously given to the Hearings Officer. Arguments among lawyers about whether an item is new evidence or not could easily become a procedural nightmare. It is also a bad idea to deny citizens who did not testify before the Hearings Officer an opportunity to testify on April 19. This would be particularly questionable since the public was not told earlier that the appeal would be "on the record." Finally, opposing attorneys are asking Council to function as an appellate court rather than as policy makers who interpret and explain what the policies mean. He said as policy makers,

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Council should want to hear from all citizens with an interest in this case. He noted appellant's request for time limits for the 19th.

Mayor Katz said Council may be able to announce that today.

Steve Schell, 707 SW Washington, Suite 1200, 97204, representing ESCO and the organized opposition, said the appeal is basically about misinterpretation of the record rather than missing information and, as a policy matter, to allow "de novo" hearings to continue undermines the overall land use process because people do not do their full share at the hearings level and wait until they get to Council to present their information. The fact that it was not announced at the hearing is irrelevant as the Code allows Council to make this choice without any announcement. The argument that it is the past practice of Council should be examined as the impact of holding "de novo" hearings overall weakens the process at the lower levels. The argument about creating an objection nightmare seems quite overblown as Council is quite capable of seeing that a circus atmosphere does not result. If the rules are clear to begin with, there should be no reason why people cannot restate or provide excerpts from their testimony in a manner that helps Council make its decision. He said Council is better served by hearing the appeal "on the record" because it forces people to provide the hard evidence where that exists. The record is so big, after five hearings, that to start another round of dueling traffic engineers or disputes about additional evidence simply delays this matter unnecessarily and does not serve the interests of the City or the public. He too noted their request for time frames.

Commissioner Blumenauer said he agrees with Mr. Schell but he also agrees with Mr. Voboril that to all of a sudden start a new policy at this point is troubling.

Mr. Schell said Council always has the choice as the Code states. In this case, they believe the request is warranted as the standards are clear and Council is going to hear interpretations no matter what it does.

Commissioner Lindberg asked if jurisdictions who have "on the record" hearings turn out to have lots of objections.

Mr. Schell said many other jurisdictions hold their review hearings "on the record." Portland is somewhat unusual in the State.

Paul Norr, attorney for one of the opponents, said Council should ask itself how it can make the best decision in a case where the record is so huge. He said the best way would be for the parties to submit their best arguments in writing and then provide a period of time to

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summarize them. He said his main concern is that new information will invariably lead to requests for continuances and delays. It is unrealistic to think Council will hear this case on a "de novo" basis in one day. He asked Council to hear it "on the record" and limit the time to a review of the best arguments of both sides.

Commissioner Hales moved to hold the hearing "de novo."
Commissioner Blumenauer seconded.

Commissioner Blumenauer said it would be better to deal with these appeals "on the record" but he believes a policy statement is needed at the beginning as people may have done things differently if they knew Council was going to change its policy.

Commissioner Hales said the process changed in 1989 when LUBA specified more clearly that arguments need to be raised at the original hearing with sufficient specificity if an appeal is to be made. Council's job is to apply its Code to the circumstances of the case and hear arguments about the applicable criteria. He said "de novo" is not Latin for repeating oneself and Council is obligated to review the record no matter how the hearing is conducted. Also he believes "de novo" is preferable because the process should be oriented toward the substantive arguments and away from the procedural ones.

Mayor Katz said she does not want to deal with the policy at this point, but would like to discuss this in a different setting. She said this is the public's court and provides an opportunity for it to testify before Council.

Regarding the time frame for the hearing, Commissioner Hales said he polled the other Commissioners and would now propose 30 minutes for opening statements, three minutes for individuals and 10 minutes for closing statements. Time in both the afternoon and evening sessions would be apportioned equally so that people on both sides have an opportunity to testify at each of the two sessions.

Mayor Katz asked Council members to let Commissioner Hales know if they do not agree.

Mayor Katz said she would like Council to receive information on the issues as soon as possible, with a matrix on each of the arguments.

Disposition: "De novo" request approved. (Y-5)

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Commissioner Gretchen Kafoury

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Liquor license application for William R. Hicks, dba The Paris Theater, 6 SW 3rd Avenue, Retail Malt Beverage liquor license (new outlet); favorable with a letter of warning recommendation (Report)

Discussion: John Werneken, License Bureau, said this outlet is within an area designated by Council as of special concern and where additional liquor outlets of the type that have caused problems in the past are discouraged. The Bureau is recommending a favorable endorsement with a letter of warning because Mr. Hicks will be operating primarily an entertainment-oriented establishment, not a tavern. The letter of warning cautions him to continue to operate as he has proposed. As there may be some problems with Building Code compliance, Mr. Werneken suggested that Council recommend to OLCC that it add a condition that the permanent license not be granted until compliance has been satisfactorily resolved.

Mayor Katz asked what affect a letter of warning has.

Mr. Werneken said it calls attention to concerns and to the fact that if these are not resolved, the applicant's license may be restricted or refused in the future.

Mayor Katz said she would prefer not to have to wait for a whole year if there are problems.

Commissioner Kafoury moved approval of the Bureau's recommendation as amended to require clearance from the Bureau of Buildings.

Disposition: Favorably recommended with Letter of Warning as amended. (Y-5)

339

Liquor license application for Bruce Bauer and Jeanne Subotnick, dba County Cork, 3632 SE Hawthorne Blvd., Retail Malt Beverage liquor license (change ownership); favorable with a letter of warning recommendation (Report)

Discussion: Mr. Werneken said this is favorable with the understanding that the applicant will operate as agreed in the good neighbor agreement with the Richmond Neighborhood Association. Applicants plan a family-oriented operation which the Bureau does not believe would pose the type of problems normally associated with taverns. However, considering its location in an area where there is already a great deal of late night activity, neighbors are concerned about noise and parking problems. Applicants have agreed to limit their operating hours and work with the neighborhood association to

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find better transportation alternatives. One specific problem is what to do with a one-way street leading into Hawthorne Boulevard. The Bureau forwards a favorable recommendation with a letter of warning both from the City and OLCC that the applicants operate as proposed.

Jeanne Subotnick, applicant, said they have had great support from the neighborhood and are receiving an award from the Hawthorne Business Association for the most improved business. She said no one has complained about anything.

Bruce Bauer, co-owner of County Cork, stressed the lack of complaints and the welcome reception they have had from neighbors.

Susan Ferguson, 1719 SE 38th, said as a business owner and neighbor this pub has been a wonderful improvement to the neighborhood.

Cathy Koretski, 1542 SE 36th, asked that the license be granted, but with the restrictions already agreed to in the good neighbor plan. Citing the parking problems, she suggested that the applicants arrange with nearby businesses to use their parking spaces at night.

Jay Gilagerky, 36th Avenue near Hawthorne, said he heard rumors that the applicants intend to request longer operating hours than agreed to now. He questioned changing the direction of the street as he believes it is okay. He requested some sort of density cap on the number of alcohol-related businesses.

Rita Weatherhold, 4856 SE Lincoln, Richmond Neighborhood Association board member, said County Cork represents an improvement over what was here in the past. She said the Neighborhood Association will support it as long as it abides by the good neighbor agreement but would like to find a way to address with the OLCC and the City the issue of liquor-license density and the problems associated with it, such as parking.

Mayor Katz said Northwest Portland has the same concern and the issue of a cap came up there too.

Marty Harden, 4307 SE Harrison, supported the applicants and their operation, particularly given the seedy bar it replaced.

William Bauman, 4307 SE Harrison, said he sees this primarily as a restaurant, not a drinking establishment. As a recovered alcoholic and resident of the neighborhood, he feels very comfortable there and finds it an enormous improvement over what was there before. He said there have been parking problems in the area for a long time and it is unfair to blame them on the applicants alone.

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Mayor Katz asked Mr. Werneken if the operating hours are in the good neighbor plan and not the license itself.

Mr. Werneken said the Bureau assumes that if an applicant make a promise he or she will be required to keep that promise or the license may be restricted or refused in the future. The Bureau is recommending that OLCC also issue a letter of warning advising applicants to operate as proposed. The Bureau has not recommended that the restrictions be placed on the license itself as it does believe there is evidence on hand to justify that at this time.

Mayor Katz said the use of empty building parking lots at night is a viable option. She suggested that the neighborhood and business association work with the applicant on securing those parking spaces.

Mr. Bauer said it would be better approached on a neighborhood rather than an individual effort.

Commissioner Kafoury moved to adopt the staff report. Commissioner Hales seconded.


Commissioner Hales said this applicant is clearly very responsible but there are problems that need attention. As this area becomes something of an entertainment center, other kinds of stores such as barber shops tend to be replaced, raising livability issues. He said the City needs to figure out how one can maintain a diversity of commercial establishments and deal with traffic and parking density. He said these issues cannot be dealt with through the liquor license process.

Mayor Katz said Hawthorne will experience the same issues that have occurred in Northwest as the community changes and grows.

Disposition: Favorably recommended with Letter of Warning. (Y-5)

At 3:10 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland


By Cay Kershner
Clerk of the Council