



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 3RD DAY OF MAY, 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 Doug McKillips, Sergeant at Arms.

Agenda No. 626 was pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

615 Accept bid of Brattain International for one 18,000 gvw cab and chassis with 10' flatbed body and articulating crane for \$48,235 (Purchasing Report - Informal Bid)

Disposition: Accepted; prepare contract.

616 Accept bid of Brundidge Construction for St. John's "A" CSO project for \$2,892,357 (Purchasing Report - Bid 106)

Disposition: Accepted; prepare contract.

617 Accept bid of Werbin West Contracting, Inc. for 8" and 6" water mains in NE Simpson, Holman, 42nd, 60th, etc. for \$367,900 (Purchasing Report - Bid 121)

Disposition: Accepted; prepare contract.

618 Accept bid of S-2 Contractors, Inc. for Fiske Basin CSO sump project, Unit 4, for \$742,100 (Purchasing Report - Bid 122)

Disposition: Accepted; prepare contract.

619 Accept bid of Moore Excavation for Stark Basin CSO Unit 2 for \$804,274 (Purchasing Report - Bid 123)

Disposition: Accepted; prepare contract.

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620 Accept bid of Copenhagen Utilities & Construction for construction of Essex sanitary sewer system for \$2,943,602 (Purchasing Report - Bid 124)

Disposition: Accepted; prepare contract.

621 Accept bid of Markman, Inc. for vehicle exhaust extraction system at six fire stations for \$91,668 (Purchasing Report - Bid 127)

Disposition: Accepted; prepare contract.

622 Accept bid of Linnco Electric Company for school crossing traffic signal at SE Belmont and 50th for \$68,871 (Purchasing Report - Bid 131)

Disposition: Accepted; prepare contract.

Mayor Vera Katz

623 Confirm appointment of Rudy Barton to the Portland Design Commission (Report)

Disposition: Confirmed.

***624** Authorize a grant application in the amount of \$600,000 to the Federal Center for Substance Abuse Prevention on behalf of the Regional Drug Initiative (Ordinance)

Disposition: Ordinance No. 168749. (Y-5)

***625** Establish one Maintenance Worker position in Parks and Recreation; one Secretary Clerk I position in General Services; one Electrical Inspector and one Building Plan Examiner II in the Bureau of Buildings; establish one class and one salary rate for Operating Engineer Trainee in accordance with the Personnel Rules adopted by the City Council (Ordinance)

Disposition: Ordinance No. 168750. (Y-5)

Commissioner Charlie Hales

***627** Contract with Leisure Concepts & Design, Inc. to prepare a swimming pool master plan for Portland Parks and Recreation for \$23,000 (Ordinance)

Disposition: Ordinance No. 168751. (Y-5)

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628 Authorize extension of lease for Fire Station 17 on Hayden Island (Ordinance)

Disposition: Passed to Second Reading May 10, 1995 at 9:30 a.m.

***629** Contract with A & C Enercom, Inc. for \$43,270 for energy efficient lighting improvements at Fire Station One and provide for payment (Ordinance)

Disposition: Ordinance No. 168752. (Y-5)

Commissioner Gretchen Kafoury

630 Authorize Bureau of General Services to use, jointly with AT&T, existing communications facilities at or around Timberline Lodge in the Mt. Hood National Forest (Resolution)

Disposition: Resolution No. 35389. (Y-5)

***631** Grant a revocable permit to the Portland Rose Festival Association to erect and maintain flags and banners on the ornamental light standards in downtown Portland from May 22 through June 30, 1995 (Ordinance)

Disposition: Ordinance No. 168753. (Y-5)

***632** Grant a revocable permit to the Portland Rose Festival Association to vend and sell Rose Festival items on downtown City sidewalks on May 16, June 3, 7 and 10, 1995 (Ordinance)

Disposition: Ordinance No. 168754. (Y-5)

***633** Grant a revocable permit to the Portland Rose Festival Association to use Tom McCall Waterfront Park for their annual festival from May 22 through June 21, 1995, or as approved by the Portland Parks Bureau (Ordinance)

Disposition: Ordinance No. 168755. (Y-5)

***634** Grant revocable permits to the Portland Rose Festival Association to hold the Starlight Parade in downtown Portland on June 3, 1995 (Ordinance)

Disposition: Ordinance No. 168756. (Y-5)

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***635** Grant revocable permits to the Portland Rose Festival Association to hold the Junior Rose Festival Parade on June 7, 1995 (Ordinance)

Disposition: Ordinance No. 168757. (Y-5)

***636** Grant a revocable permit to the Portland Rose Festival Association to close portions of City streets prior to the Grand Floral Parade from 5:00 am to 12 noon on Saturday, June 10, 1995, and for a float display area after the parade from 2:00 pm Saturday through 6:00 pm Sunday, June 11, 1995 (Ordinance)

Disposition: Ordinance No. 168758. (Y-5)

***637** Grant revocable permits to the Portland Rose Festival Association to hold the Grand Floral Parade on June 10, 1995 (Ordinance)

Disposition: Ordinance No. 168759. (Y-5)

***638** Authorize Intergovernmental Agreement with the Oregon State Police for access to the City of Portland's 800 MHz trunking radio system (Ordinance)

Disposition: Ordinance No. 168760. (Y-5)

***639** Authorize Agreement with Eastmoreland Hospital for access to the City of Portland's 800 MHz trunking radio system (Ordinance)

Disposition: Ordinance No. 168761. (Y-5)

Commissioner Mike Lindberg

640 Accept completion of contract with Christenson Electric, Inc. for medium voltage power system upgrade and pay retainage (Report; Contract No. 29197)

Disposition: Accepted.

***641** Authorize the continuance of negotiations for purchase of sewer easements required for construction of the Flavel Park #33 sewer project, authorize the City Attorney to commence condemnation proceedings and authorize the City Attorney to obtain early possession (Ordinance)

Disposition: Ordinance No. 168762. (Y-5)

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***642** Increase the Bureau of Environmental Services discretionary Change Order authority for the Guild's Lake Industrial Site by \$103,920 (to 44 percent of the original contract amount) to complete required remedial action and render the site usable (Ordinance; amend Contract No. 29549)

Disposition: Ordinance No. 168763. (Y-5)

***643** Authorize the Purchasing Agent to sign a Purchase Order to serve as a contract with SYBASE, Inc. for the Bureau of Environmental Services in the amount of \$63,329 without advertising for bids, authorize a contract and payment (Ordinance)

Disposition: Ordinance No. 168764. (Y-5)

***644** Amend Intergovernmental Agreement with Portland State University for additional computer model runs in support of Columbia Slough Total Maximum Daily Load development in the amount of \$20,000 (Ordinance; amend Contract No. 29267)

Disposition: Ordinance No. 168765. (Y-5)

***645** Contract with Chester Environmental for professional engineering services and provide for payment (Ordinance)

Disposition: Ordinance No. 168766. (Y-5)

***646** Contract with Dames and Moore, Inc. for \$137,428 for geotechnical, structural and non-structural engineering services to evaluate the seismic response and recommend seismic strengthening for the Ground Water Pump Station complex and Interstate Headquarters and Fleet Maintenance garage buildings (Ordinance)

Disposition: Ordinance No. 168767. (Y-5)

***647** Call for bids for the construction of Forest Park (High) 0.5 MG Reservoir (Ordinance)

Disposition: Ordinance No. 168768. (Y-5)

City Auditor Barbara Clark

***648** Reduce sidewalk repair assessment for property at 3125 SW Florida Street (Ordinance; amend Ordinance No. 167827)

Disposition: Ordinance No. 168769. (Y-5)

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***649** Cancel sewer system development charge for property at 15700 SE Millmain Drive (Ordinance)

Disposition: Ordinance No. 168770. (Y-5)

REGULAR AGENDA

***626** Authorize the Director of Parks and Recreation to adjust certain fees at municipal golf courses (Ordinance; amend Code Section 20.20.010)

Discussion: Commissioner Hales asked that this be referred to his office.

Disposition: Referred to Commissioner of Public Safety.

614 **TIME CERTAIN: 9:30 AM** - Amend Title 17 of the City Code to eliminate the Drainage Fee Discount Program (Previous Agenda 540; amend Chapter 17.36; introduced by Commissioner Lindberg)

Discussion: Commissioner Lindberg described a new option the Bureau of Environmental Services is proposing today, in addition to the three circulated earlier. Their aim is to design a program that seems fair and yet makes sense from a policy standpoint. The new proposal, Option 4, calls for them to stop taking new applications for the drainage discount program and phase-out discount holders over a period of four years. That cost would be roughly the same as the one-time compensation package. A claims process would allow people who took action in anticipation of the discount to file for compensation. BES will also be instructed to return, no later than June, 1996, with recommendations for a more equitable drainage rate structure which would give people some opportunity to control their rate.

Dean Marriott, Director, BES, outlined the four options under consideration, including a one-time compensation payment to discount holders. A slight variation would be to add an appeals process for people who felt they had spent more than they were being compensated. The second approach would not provide compensation but would allow people to file claims to recover the amount spent in reliance of the discount program. The third approach responded to Commissioner Hales' suggestion to phase out the discount program over several years and allow a grace period to allow people who have not yet signed up for the discount to qualify. The fourth option would be to stop taking applications and incorporate the phase-out program for up to four years, with a claims process for extraordinary cases. The Bureau would also report back on more equitable rate approaches.

Commissioner Hales asked for clarification of the claims process. He

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asked if it would be available both to those who had spent more than the compensation schedule would allow as well as those not yet connected who made changes in anticipation of the discount.

Mr. Marriott said yes.

Commissioner Blumenauer said he does not want anyone who has made extraordinary expenses to be disadvantaged, whether they were able to hook up or not. He said he knows the estimates of how many people would fall into this classification are soft but it is important that those people not be left out.

Mayor Katz asked about the cost.

Mr. Marriott said the fourth option would cost roughly the same as the Public Utility Review Board (PURB) recommendation, an estimated \$1.8 million rather than \$1.6 million, with a little more to cover administrative costs and the claims process.

Mayor Katz asked if the City is still committed to dropping the rate from a 13 percent to 12.5 percent increase.

Mr. Marriott said they believe they can still reach that target.

Mayor Katz summarized Council's preferred approach, the four-year phase-out with no compensation. She asked if participants would still get the discount during that time.

Mr. Marriott said yes, if you are a current customer already receiving the discount. Claims would be paid only to someone who took extraordinary steps in anticipation of the discount.

Commissioner Lindberg said, after talking to citizens, he believes it would be better to have more time to develop the procedures as the Bureau does not know all the individual circumstances.

Mayor Katz said the other piece is finding a more equitable system for drainage rates.

Mr. Marriott said he cannot promise there is a more equitable way but they will explore that. The basic reason for doing this is because the City now has a program in which some people are not paying any drainage fees while the City's cost to maintain a drainage system continues to go up. This put extraordinary pressure on the remaining ratepayers and is also inequitable. Over time, as more and more people sign up for the discount, this would get worse and worse.

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Mayor Katz asked about commercial drainage charges.

Mr. Marriott said BES will return in six to eight weeks to deal with commercial accounts. PURB believes commercial accounts should be handled consistent with residential.

Mayor Katz said some commercial establishments have taken extraordinary steps to save system costs.

Mr. Marriott said the Bureau might want to handle such accounts differently.

Mayor Katz suggested that Council let Mr. Marriott know their ideas about dealing with commercial customers.

Commissioner Lindberg noted a May 2 letter from several PURB members which asked for time to review any new proposals. Noting that the latest Council option was developed within the last 24 hours, he suggested taking a final vote on this next week.

Mayor Katz agreed. She asked those testifying to respond only to the new proposal Council is considering.

Commissioner Lindberg said BES reviewed public testimony and visited with Council members to see if there was consensus.

Doug Morgan, Chair, PURB, said they have not had time to digest these proposals and would like to review all of them in light of the nine criteria they had used.

Paulette Rossi, PURB member, said she supports any compromise that includes a Citywide appeals process. She is still frustrated, however, because the drainage billing system creates two service classes -- those who pay and those who do not. Drainage is not necessarily property specific as everyone benefits. Currently only those who have sanitary services pay drainage. All those who benefit from living in an urban setting should pay some drainage fee, which would enlarge the rate base.

Joe Keating, PURB member, asked if this proposal is an either/or proposal.

Commissioner Lindberg said everyone would be transitioned out and there would be no option.

Mr. Keating said both proposals are fair as long as the current value of dollars is taken into consideration so the pay-out at the end of the

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period is comparable to current value dollars.

Commissioner Lindberg asked if PURB could adjust its agenda to discuss this tonight.

Mr. Morgan said they will add this to their agenda and see how far they get.

Dan Aspinwell, 3565 SE Clinton, said residential rate payers are being overcharged for stormwater drainage. The discount program is simply a way for houses to be billed at the same rate as commercial properties and property owners should not have to pay stormwater fees they do not produce. He also opposed continued subsidization of the automobile on water bills. Finally, the eight percent franchise fee levied on water bills for the General Fund is very dangerous as it makes high-cost solutions more attractive. The proposal being considered today does not address this underlying inequity and if property owners must carry the burden, then it would be best to measure everyone's use.

Tom O'Keefe, United Community Action Network (UCAN) opposed eliminating the drainage discount program until the issue of making rates more equitable is discussed. He said many people are upset that the discount program is going to disappear. He criticized BES for announcing a rate about three weeks ago, before Council even took a vote. He called for the Council to look at commercial rates and to start prorating people for the exact amount of impervious surface on their property. He noted that the Office of Transportation, with 40 percent of the hard surface, pays no drainage fees and called for a look at other ways to raise money, such as the gas tax. He said eliminating the franchise fees could drop everyone's rate by eight percent tomorrow. He said this looks like a done deal to him.

Mayor Katz said in July, after the legislative session ends, Council will look at the utility franchise fee.

Kevin Puckett, 3704 SE 166th Avenue, said people should be charged fees based on their amount of hard surface draining onto the street. To be assessed a fee and then told the deadline for applying for the discount program is past is remiss.

Commissioner Lindberg said Mr. Puckett's charges, which he reviewed, would be adjusted.

David Nelson, 3546 NE 152nd, Wilkes Community Group, asked Council not to adopt anything hastily, without adequate time for public review, perhaps 90 days. He said he liked Commissioner Hales' proposal.

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Commissioner Lindberg said they will try to connect community groups with PURB and educate them about its role.

Mr. Nelson said the public deserves adequate time for public input.

Leonard Kirshner, 5333 SE Rhone, 97206, said he likes the idea of continuing the discount for four years and phasing it out.

Jim Worthington, 3232 SE 153rd, said he is glad to hear that the new downspout disconnect program has been separated from the discount. Both residential and commercial rates need to be looked at all together and rates should be based on the square footage covered. He said there should be a base charge with additional charges for stormwater added into the system. He questioned a statement made last week that the City might be liable if the rebate is taken out of a sewer fund but would not be if the rebate comes from some other fund. He said he does not understand that as the money still comes from the taxpayer, out of one pocket or another.

Mayor Katz said there are limitations within the Charter regarding what fund can be used to reimburse people not currently hooked up to the system.

Jerry Ernst, 308 SE 148th, said citizen committees are valuable but often become landlocked and unable to address the broader picture. He said neighborhood associations should be pulled into the process to allow more input from citizens.

Commissioner Lindberg said PURB does have public input and he will check to see if the neighborhood associations are informed about their activities.

Mayor Katz asked Council to give Mr. Marriott suggestions regarding more equitable drainage rates. She said Council will not adopt anything today until PURB has had a chance to review this.

Mr. Marriott asked Council for language that would implement Option Four so that the Bureau could bring back some amendments to the ordinance this afternoon.

Commissioner Lindberg said it would be helpful to get the amendments in this week and then carry this over for a second reading next week. Council agreed.

Commissioner Hales said he is prepared to support Option Four. He thanked PURB for its work and, even though changes have been made at a brisk pace, the process has been a successful one. The point has

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been made for real neighborhood involvement and there is an opportunity for that over the next year when the rate structure itself comes up for discussion. Council today is moving from one imperfect tool to another one, trying to ensure that what is adopted is reasonably fair to different circumstances and different neighborhoods, particularly East Portland.

Commissioner Kafoury asked about neighborhood involvement in the roof drain disconnect program.

Mr. Marriott said that program includes active participation from a number of neighborhood associations.

Disposition: Continued to May 3, 1995 at 2 p.m.

Mayor Vera Katz

650 Authorize submission of FY 1994-95 Spring Supplemental Budget to the Multnomah County Tax Supervising and Conservation Commission (Resolution)

Discussion: Ruth Roth, Bureau of Financial Planning, said the Tax Supervising and Conservation Commission will hold a hearing on June 7 for the Spring Supplemental Budget for 1995 and the Approved budget for 1995-96.

Disposition: Resolution No. 35390. (Y-5)

Commissioner Earl Blumenauer

651 Consider vacating a portion of NE Flanders Street between NE First and Second Avenues at the request of Frank Phillips (Hearing; Report; C-9768)

Disposition: Approved: City Engineer Prepare Ordinance.

652 Consider vacating a portion of SW Virginia Court at the request of Irwin Hodson Company (Hearing; Report; C-9874)

Disposition: Approved: City Engineer Prepare Ordinance.

Commissioner Charlie Hales

***653** Establish a fee for the new environmental plan check and notice and review process; establish a fee for the new Type III review for violations of Chapter 33.430 (Ordinance; amend fee schedule for land use reviews, planning services and hearings)

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Discussion: Commissioner Hales said this is the fee that covers the new process for environmental reviews. In most cases, the fees should cost less than currently.

Disposition: Ordinance No. 168771. (Y-5)

Commissioner Gretchen Kafoury

***654** Accept bid and authorize contract with Sam Gillispie for custodial services at the Sandy River Station (Ordinance)

Disposition: Referred to Commissioner of Public Affairs.

City Auditor Barbara Clark

***655** Create the Harney Park HCD Local Improvement District (Hearing; Ordinance; C-9878)

Discussion: Commissioner Blumenauer said this is an example of coordination and hard work among the bureaus, neighborhood associations and citizen volunteers and an example of how the City does things right. Because of this coordination the City will see savings of \$110,000 and reduced disruption of the neighborhood.

Dan Vizzini, Auditor's Office, said his office received only two remonstrances which they recommend that Council overrule, as recommended in the engineer's report circulated to Council. He said this project has been a joy to work on because it brought together a variety of bureaus working toward a single goal. It implements a significant part of the neighborhood plan and piggybacks different public works projects so the neighborhood is not disrupted too much. He recommended a special celebration upon completion.

David L. Davis, 8406 SE 66th, 97206, said he lives on 66th Avenue between Clatsop and Tenino on a good street where they have already paid for services. Now the City proposes to tear it up and start over. He said everyone on the street agrees this is a mistake and they should not have to pay for a new street when they already have one in good condition.

Don Lloyd, 8427 SE 66th, 97206, said he is a new resident on the street who is willing to pay for curbing and sidewalks even though this is probably one of the best streets in the Harney Park area.

Kathleen O'Brien, 8315 SE 66th, a six-year resident, said this is a good street and it is not necessary to tear it up. She suggested working on the worst street first and believes that not all the streets need curbs

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and sidewalks.

Mary Dozart, 6905 SE Harney St., 97206, said she recalls, from canvassing, that a majority of 66th Avenue residents signed consent forms for the improvements. She said if those residents really do not want to be included she would happily recommend that they be removed. She said perhaps that would save on her assessment too.

Mary Davis, Vice President, Brentwood-Darlington Neighborhood Association, said she canvassed in that area and recalls that the rate schedule depends on the amount of reconstruction that would be needed. Residents on streets which have some improvements already there would not pay as much as those who had none. She said she welcomes sidewalks, curbs and safe streets. It is time to become an urban village.

Nick Sauvie, ROSE Community Development Corporation, 7455 SE 52nd, 97206, said this is a great project and a good example of folks working together.

John Teal, 8203 SE 66th, urged passage of this LID as it will upgrade the community. He said the reconfiguration of Tenino will reduce speeds on that street and this project will also help reduce the use of public streets for vehicle storage.

Commissioner Blumenauer said all property owners in this area are eligible for the 80 percent subsidy.

Mr. Vizzini said the property owners' share is about 16 percent of the total project cost. The apportionments are very complicated because different levels of work are being done on different streets. Residents on 66th will be assessed for sidestripping rather than for full street improvement. This is on top of the subsidy due to the infusion of Community Development block grant funds. The Office of Transportation raised the issue of prior assessment on 66th Avenue but the Auditor's Office could find no record of a City assessment for local street improvements there. They found 66th to be a substandard street which is being raised to full City standards and the Auditor's Office believes residents will benefit and should pay for the improvement, particularly as this is a remarkable deal for these property owners.

John Hawthorne, Office of Transportation, said 66th Avenue appeared to be the only street in the area that looked salvageable but, after taking a core sample, they found it did not have an adequate substructure. The street also is now too high and needs to be lowered to make the grades work with existing properties.

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Mayor Katz asked about the petition strength and the number of approvals on 66th.

Mr. Vizzini said support was spread throughout the district and there were not many streets that were not included because there was no petition strength.

Commissioner Blumenauer moved to overrule the remonstrances and pass the time and manner ordinance. Commissioner Kafoury seconded.

Commissioner Blumenauer said everyone will be better served with this project, which reflects tremendous citizen effort.

Disposition: Remonstrances overruled. Ordinance No. 168772. (Y-5)

At 11:15 am, Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 3RD DAY OF MAY, 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 Doug McKillips, Sergeant at Arms.

- 614** Amend Title 17 of the City Code to eliminate the Drainage Fee Discount Program (Previous Agenda 540; amend Chapter 17.36; introduced by Commissioner Lindberg)

Discussion: Dean Marriott, Director, Bureau of Environmental Services, explained the amendments to the current ordinance that encompass the option Council supported this morning. It would authorize the Director of BES to establish a claims process and a way to pay those claims. It also directs the Bureau to return with recommendations for an equitable system of drainage rates. Finally, BES requests a technical change which leaves the commercial industrial discount program alone for now. That issue will be dealt with later in the month.

He said Alternative 4, the phase-out discount over four years, substitutes new language for numbers eight and nine of the findings in the current ordinance. He referenced a chart which projects the cost of this phase-out, a total of \$1.7 million, and explained how this would work for different categories of discount holders. He said the smallest discount holders would get \$12.00 and, after one year, the discount would be lost. A 100 percent discount is worth \$216 over a four-year period. Because of this disparity, he ran numbers for several other alternatives. Alternative 5 would allow discount holders to keep the discount for the whole four years -- the total cost of this option would be \$1.8 million while the cost of the one-time buyout would be \$1.6. Because he was unsure whether Council wanted to spend more than \$1.6, he also figured the discounts for a 3-1/2 year period (Alternative 6). Language is provided for each of those alternatives.

Mayor Katz said the last one would be equivalent to the one-time compensation package and keeps the cost down to \$1.6 million.

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Commissioner Hales asked why someone would get \$12, or 25 percent, instead of the full discount. What have they spent to get that.

Mr. Marriott said it would apply to someone who had done a small amount of work, such as disconnecting one downspout or to those who have remeasured and have gotten a discount based on a lower-than-average amount of impervious surface.

Noam Stampfer, Director of Business Operations, BES, said some customers did partial disconnections.

Jane Burke, BES, said the smallest class of discount holders are those who were remeasured. Most customers in the program did some mitigation.

Commissioner Lindberg asked which alternative staff preferred and which best meet the criteria.

Mr. Marriott said he favors Alternative 6 which would allow everyone to keep the discount for the same amount of time, ending in October, 1998. It would also be easier to administer and the closest in cost to the cash payments.

Mr. Stampfer said it would be cheaper administratively to compensate everyone at once and have everyone's compensation end at the same date.

Commissioner Blumenauer said he is concerned with the relatively small amount of money involved in some of the categories. He asked if it might not be better to pay off people in the 25 percent category, for instance, all at once instead of over four years.

Commissioner Hales said he would guess across-the-board continuation (Alternative 6) would be the least expensive to implement because staff would not have to send anyone a check.

Mr. Marriott said if Alternative 6 were chosen, staff would notify everyone in advance of the cutoff date in October, 1998 and make all the changes at once. Between now and then the Bureau would continue to operate as it has been. He said he did not know if it would be cheaper to pay off people in the smallest categories all at once as Commissioner Blumenauer suggested.

Commissioner Hales said he finds Alternative 4 or 6 more attractive than 5 because of the lower transactional costs.

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Mayor Katz said she leans to Alternative 6 at this point. She asked if Council felt comfortable adopting one of the alternatives.

Commissioner Lindberg moved to adopt Alternative 6 as well as the cover page submitted by BES. Commissioner Hales seconded and roll was called (Y-5).

Commissioner Lindberg stressed the importance of involving the public in the rate review study, rather than relying on staff to figure out the best system.

Mayor Katz said it is not PURB's responsibility to go out into the community. It is the Bureau's responsibility to get the community to participate.

Disposition: Passed to Second Reading, as amended, May 10, 1995 at 2:00 p.m.

656

TIME CERTAIN: 2:00 PM - Hear Police Internal Investigation Auditing Committee (PIIAC) Citizen Advisor findings and recommendations on recent appeals (Report introduced by Mayor Katz)

Discussion: Ingrid Slezak, Chair of the PIIAC Citizen Advisors, described the disposition of 12 PIIAC appeals over the last two quarters. Of those, the findings on four were upheld although they requested that one additional appeal be reclassified and recommended that the officer who filed the report be counselled to write more customer friendly reports in the future. Four appeals were returned to the Internal Investigations Division (IID) which voluntarily withdrew four others, probably because PIIAC had indicated that the investigations were inadequate. Many of those cases are pending and will be reinvestigated. One case returned to IID came back after reinvestigation and was still found to be completely inadequate. At that point, PIIAC felt its suggestions had not been listened to and the appeal was sent to the Command Review level which then returned it to IID. Since then the IID section has been restructured and a new team is now on board. The advisors now believe the quality and thoroughness of the investigations will improve.

Mayor Katz said the reasons for the change in the Police Bureau are a result of the constant prodding by the Advisors.

Dan Handelman, People Overseeing Police Study Group, 260 NE Martin Luther King, Blvd., No. 106, 97212, said PIIAC is doing a very good job of what it is allowed to do. Citing the reinstatement of a police officer who had been fired for shooting a citizen 22 times, he said PIIAC should

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be given more power to conduct its own independent investigations.

Disposition: Accepted. (Y-5)

657

Hear appeals on PIIAC Cases #94-17 and #94-18 (Report introduced by Mayor Katz)

Discussion: Ms. Slezak said the first appeal involves a father roller blading with his daughter in Waterfront Park. Two officers questioned him after allegedly seeing him conversing with suspected drug dealers. The appellant charges that the officers were rude and restrained him after he declined to grant permission to be searched. No drugs were found and appellant believes that his search was not only illegal but humiliating to him, and traumatizing for his daughter. PIIAC Advisors found that IID's investigation was thorough and the questioning was appropriate. It exonerated the Police regarding the procedure and found that there was insufficient evidence to make a finding about the communication issue. A majority of the Advisors upheld the IID finding, although there was a great deal of discussion about the extent to which the Advisors can independently investigate such incidents as opposed to merely reviewing the investigation done by IID. This case raised questions about the limits of the Advisors' mandate.

Silbestre Ceballos, 8535 N. Baird, 97217, said the officer's report to PIIAC stated that the date of the incident was different than what he had said. He said that should be investigated as the officer is trying to discredit him and he knows the date he wrote down is correct. He said it was very humiliating for both him and his daughter to be harassed by an authority figure, perhaps because of his skin color, his surname or the area he was in. In addition, he questioned the right of the Police to search someone who has not been arrested.

Mayor Katz said the law allows a warrantless search to occur if there is probable cause to believe a crime has been or is about to be committed and the suspect is in a position to destroy or dispose of evidence. From the officer's report, the Police suspected that either a crime was committed or that evidence could be destroyed. That was the reason for the search.

Mr. Ceballos said he does not know what the officers saw but he tried to be cooperative the whole time and could not understand why the officer was rude. He said he would like this investigated further.

Commissioner Lindberg said IID seemed to deal more with what the officers observed but did not deal much with the communications between the two parties. If this gentlemen's report is correct, there seems to be a problem with that.

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Ms. Slezak said that is a recurring issue. Even though a number of lawyers serve on the committee, they do not make judgments about whether there was probable cause for search and seizure. That is the job of IID investigators. On the search and seizure issue, Commander Garvey exonerated the officer because he felt the proper procedure had been followed for a warrantless search. On the communication issue, things are fuzzier and it comes down to IID investigators doing as thorough an investigation as possible, including information from witnesses. The reason there was not a unanimous vote on this appeal was because there was some concern about how thorough that investigation was and whether the daughter should have been interviewed. The insufficient evidence finding shows that a determination could not be made one way or another because there was not enough information to proceed against the officer or make a different finding. All the Advisors could do was find that the investigation was appropriate, although it might have been better if that issue had been dealt with directly in the correspondence from the IID investigator to the appellant.

Mayor Katz said there were no other witnesses.

Ms. Slezak said perhaps IID did not do this because it is a nebulous issue to get a handle on.

Commissioner Hales asked if someone, either from IID or PIIAC, addressed the appellant's version of what was said with the officers to get either confirmation or denial.

Ms. Slezak said the Advisors found that IID investigated as best it could. Advisors do not have the authority to speak to the officer himself. The finding is only insufficient evidence and does not determine which version was accurate.

Commissioner Lindberg asked if the officer denied asking such questions as, "Are you a liar?"

Ms. Slezak said he did not call it the same way the appellant did.

Ms. Ceballos said the officer's allegation that he had the wrong date was a way of saying that he did not know what he was talking about. He said there should be a record of that date.

Lisa Botsko, PIIAC Examiner, said as far as the date is concerned, the Advisors felt that was a moot point, although the officer did misstate the date by a day or so. However, he had proper identification of the appellant. Regarding communication, the officers were asked to describe the conversation but were not given a verbatim replay of what

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the appellant said they had said to him. Both described being as polite as possible because of their concern about traumatizing the daughter any further. What you have here is the word of two officers against the appellant's. As there were no other witnesses, the Advisors did not know what else they could do.

Commissioner Blumenauer moved to accept the Advisors' recommendation.

Mr. Ceballos said nothing was said in the letter written to them about the officer's concern for his daughter. They did not even ask if the child was his daughter until after the search.

Commissioner Blumenauer said he does not know what more Council can do in cases like this, where there are differences of opinion about what was said.

Mayor Katz said there was nothing the Advisors could do in this case because there were no other witnesses. That is the frustration in such cases and the reason for the split vote.

Ms. Slezak said this is the most difficult issue for them because they have to rely on the integrity of the IID investigator. In another case that was returned to IID for further investigation, the officer admitted he used the language as the appellant claimed. In that case, the Advisors asked IID specifically why that officer was exonerated.

Commissioner Hales said the IID investigator did not specifically ask the officers to refute the appellant's version of the conversation.

Ms. Slezak said that was correct.

Commissioner Lindberg said that was his concern and, in fairness, the officers should be presented with the allegation and given an opportunity to respond.

Ms. Slezak said now that there is a whole new team of investigators in IID, it may be time to reinvestigate this communication issue.

Commissioner Kafoury moved to send this back for additional investigation on that point. Commissioner Hales seconded. (Y-4; N-1, Blumenauer)

Ms. Botsko said this would have been a wonderful case for mediation, although it is too late now as it has to be offered before an actual investigation.

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Mayor Katz said she hopes Council will not see this kind of case coming before it anymore.

Disposition: Case No. 94-17: Referred to Citizens Advisors.

Regarding Case No. 94-18, Ms. Slezak said this complaint was filed against an arson detective by an appellant who was subsequently convicted by a 12-person jury in June, 1991. The conviction was upheld on appeal and appellant, who adamantly asserts that he is innocent, is currently serving his sentence. The allegation is that the officer did not conduct an adequate investigation prior to the arrest, disregarded additional evidence which arose subsequently and falsified a report. IID declined to investigate the complaint. The Citizen Advisors' position is that when something has gone through the legal system, the appropriate place to deal with such issues is through cross-examination at the trial. PIIAC loses its jurisdiction when questions about the legal sufficiency of a criminal complaint are raised. For that reason, they upheld IID's declination.

Tanya Vallek, wife of Joseph Vallek, said things have come to light which did not surface until after the trial ended and they began their own investigation. She said the detective did not do a very good job of the investigation.

Mayor Katz asked if any of this was investigated by Mr. Vallek's attorney.

Ms. Vallek said no and she is currently going to court on those grounds. She said she just wants something done.

Commissioner Kafoury said this is one case which is clearly not within the jurisdiction of PIIAC. She moved to uphold the recommendation. Commissioner Hales seconded.

Commissioner Lindberg asked if there were specific Code language that put this outside the PIIAC jurisdiction or is this merely a judgment call.

Ms. Botsko said this is a policy decision by IID. If an officer is accused of negligence and the case has already gone to the District Attorney, it is then up to him to verify the integrity of that officer's work. It is also up to defendant's attorneys to properly cross-examine that work. If additional evidence does come to light after the judicial process, the detective is not obligated to work on that unless so instructed by the District Attorney. She said the appellant is currently pursuing action against the defense attorney and part of this appeal is based on the fact that the detective did not look at the alternative suspect theory. This is something the defense attorney did not deal with and is why Ms. Vallek

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is pursuing action against him.

Disposition: Case No. 94-18: Affirmed. (Y-5)

Commissioner Gretchen Kafoury

658

Liquor license application for Ki Sang Yim, dba Pinokio Music Studio, 5118 SE Powell Blvd., retail malt beverage liquor license (new outlet); unfavorable recommendation (Report)

Discussion: John Werneken, License Bureau, said one issue in this case is whether it is good policy to support the sale of alcoholic beverages when consumption will occur in private rooms or booths with no adequate observation by staff. He noted that usually in such cases, such as the tatami room in an Asian restaurant, there is full food service, round-the-clock staffing and a focus on something other than alcoholic beverages. Another issue is the proposed operating hours, as the Bureau has never before experienced a night club that stayed open after 2:30 a.m., when liquor sales cease, where there have not been problems. The Bureau believes the City should not encourage the State to license the service of alcoholic beverages where there is a physical problem with supervision or to license after-hours operations. Applicant has now proposed a modification to OLCC staff so that alcoholic beverages would only be consumed in the lobby and in one of the larger studios, where there is a window for observation. He said that does not change his recommendation, as historically there have been problems when a licensee has responded to problems by physically dividing his operation to make the alcoholic beverage portion smaller unless the separation is complete. He is not confident this modification would adequately address the issue. The Bureau's recommendation is unfavorable based on the undesirability of encouraging the consumption of alcoholic beverages where it cannot be monitored, or encouraging after-hours operation or grabbing onto a change in the operating proposal when there is no firm ability to monitor it.

Mayor Katz asked if this was a new trend, to listen to music in little cubicles.

Mr. Werneken said the original idea was that clients could record their karaoke performances. He said he has never had an application for a liquor license for such a place before.

Mayor Katz noted this is actually a recording studio then.

Police Officer Lawrence Seivert, Drugs and Vice Division, said the Bureau opposes this type of operation but does not have enough data to oppose or support because there is no similar operation in effect.

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However, they believe this could be similar to massage parlors with private rooms. He added that over the last several years, Police have shut down about six illegal massage parlors because of prostitution activities in the private rooms. Police do not want to set a precedent for allowing people to drink in private rooms without being observed.

Ki Sang Yim, applicant, said this is not a recording studio. It is for karaoke sing alongs.

Mayor Katz asked why he wanted separate little rooms.

Mr. Yim said it is for families and others who do not want to sing before a large crowd.

Commissioner Kafoury said the Police position on individual rooms has to be respected in this situation.

Commissioner Hales asked Mr. Yim if he wanted to sell beverages at the bar that people could take back to the rooms.

Mr. Yim said he could monitor the drinking.

Commissioner Lindberg asked if this is a concept that exists elsewhere.

Mr. Yim said there are many in Korea and one has been opened in Beaverton.

Commissioner Kafoury said a liquor license is a privilege and at this point she prefers prefer to abide by the Bureau's recommendation.

Katherine Anderson, Southeast Uplift crime prevention specialist, said she has had no complaints about this business and does not know the applicant. However, she is concerned with the expanded hours and she fears there could be difficulties with monitoring, particularly as no food is served. The connotation of "viewing rooms" is questionable, although that should not reflect on this applicant.

Commissioner Kafoury moved to uphold the License Bureau's recommendation. Commissioner Lindberg seconded.

Commissioner Blumenauer said monitoring concerns him and he would like to strengthen the language being sent to OLCC on this point.

Commissioner Hales said he is disappointed to hear that OLCC granted such a license to Beaverton. He said he does not see how even a responsible operator could determine how much someone was drinking or whether minors were drinking.

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Mayor Katz said the studio concept has created an enormous problem in the neighborhoods and the fact there is no food or real, serious monitoring is of concern.

Disposition: Unfavorably recommended. (Y-5)

At 3:20 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 4TH DAY OF MAY, 1995 AT 2:00 P.M.

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

OFFICERS IN ATTENDANCE: Cay Kershner, Clerk of the Council; Linda Meng, Chief Deputy City Attorney; and Doug McKillips, Sergeant at Arms.

Commissioner Hales moved to suspend the rules in order to consider an ordinance which accompanies Larry Epstein's memo of April 3, 1995 and implements the findings (see Item No. 660). Commissioner Kafoury seconded and the motion carried. (Y-4)

659

TIME CERTAIN: 2:00 PM - Consider the LUBA remand of the application by Winmar of Jantzen Beach for a comprehensive plan and zoning map amendment in order to reconfigure and renovate an existing houseboat/boat moorage in five phases located south of N Tomahawk Island Drive and N Jantzen Avenue, between I-5 and Lotus Isle Subdivision (Hearing; 93-00869 CP ZC AD EN)

Discussion: Linda Meng, Chief Deputy City Attorney, outlined procedures to be followed in connection with this hearing and any appeal.

Mayor Katz noted that there was no opposition at this point, as the neighbors have reached an agreement with Winmar.

Duncan Brown, Bureau of Planning, said the applicant requests a zone change, removal of a buffer overlay zone from the rezoned land and environmental review for in-water portions of moorage reconfiguration and for related development to within 25 feet on the top of the bank of the Columbia Slough. It also seeks an adjustment to allow use of land rezoned R3 for a parking lot for the moorage, although not on the same site. The applicant proposes to reconfigure and renovate an existing floating home and boat moorage in five phases. Neither the first or second phases are part of the remand. Because the site of the proposed parking lot is zoned IG2 (General Industrial) and such land cannot be used for residential parking, applicant requests a Comprehensive Plan

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map amendment and zone change to R3 (multi-dwelling residential). The applicant also requests elimination of the buffer zone, as approval of the zone change would eliminate the need for it. Environmental review is requested because the moorage reconfiguration is proposed within an environmental zone. Mr. Brown noted the applicable approval criteria. He explained that, after an appeal of Council's decision in June, 1994, LUBA remanded the decision back to the City for a number of reasons, as outlined in the findings. The Bureau of Planning recommends a hearing today on new findings related to stormwater collection and disposal, along with a letter submitted by Amy Welch. It also recommends approval of the new findings with conditions as proposed.

Larry Epstein, attorney representing Winmar, Inc., 722 SW 2nd Avenue, 97204, said this afternoon the parties who filed the appeal agreed to withdraw it after signing an agreement which calls for Winmar to provide funds to the Hayden Bay Condominium Association to mitigate impacts of the proposed parking lot. He called for Council to adopt the proposed findings with a replacement for Page 24, which has been modified to include the date the Bureau of Environmental Services submitted a statement indicating that the stormwater plan is adequate. He asked that a new Page 29 also be substituted to delete Condition K, which required Winmar to install certain landscaping on Hayden Bay Condominium property. Now that Winmar proposes to provide funds to the Condominium Association, they can do their own landscaping and therefore Condition K is no longer necessary. The applicant also asks for a new Condition R which states that Winmar can only use the sand lot for parking in conjunction with the floating homes or for up to four dwelling units. That would limit the future potential density on that site. Four units is what is permitted now under the Portland International Airport overlay zone.

Ms. Meng asked for additional time to review the latest changes in the findings. She then reported that she had no problem with the replacement pages.

Commissioner Hales moved to substitute Pages 24 and 29 to the findings and conditions. Hearing no objections, the Mayor so ordered.

Commissioner Hales moved to adopt the revised findings and conditions and approve the original application. Commissioner Kafoury seconded.

Disposition: Findings adopted as amended. (Y-4)

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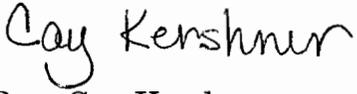
SUSPENSION OF RULES

***660** Amend the Comprehensive Plan map and change the zone of property south of N. Tomahawk Island Drive and Jantzen Avenue between I-5 and the Lotus Isle Subdivision, from IG2, Industrial, to R3, Residential (Ordinance; 93-00869 CP ZC AD EN)

Disposition: Ordinance No. 168773. (Y-4)

At 2: 15 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland


By Cay Kershner
Clerk of the Council