



CITY OF  
**PORTLAND, OREGON**

**OFFICIAL  
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 20TH DAY OF SEPTEMBER, 1995 AT 9:30 A.M.

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

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

Agenda Nos. 1538 and 1545 were pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

**CONSENT AGENDA - NO DISCUSSION**

- 1527** Accept bid of McDonald & Wetle, Inc. for Guilds Lake reroofing for \$256,000 (Purchasing Report - Bid 17)
- Disposition:** Accepted; prepare contract.
- 1528** Accept bid of PHI Construction, Inc. for Portland Tennis Center ADA improvements for \$92,248 (Purchasing Report - Bid 23)
- Disposition:** Accepted; prepare contract.
- 1529** Vacate a portion of NE Emerson Street between NE Martin Luther King, Jr. Boulevard and NE 6th Avenue, under certain conditions (Ordinance by Order of Council; C-9892)
- Disposition:** Passed to Second Reading September 27, 1995 at 9:30 a.m.
- 1530** Vacate portions of NE 7th Avenue and NE Oregon Street, under certain conditions (Ordinance by Order of Council; C-9893)
- Disposition:** Passed to Second Reading September 27, 1995 at 9:30 a.m.

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**Mayor Vera Katz**

**1531** Confirm appointment of Fred Stewart to the Police Internal Investigations Auditing Committee (Report)

**Disposition:** Confirmed.

**1532** Recommend organizations eligible to participate in the City's 1995 charitable campaign (Resolution)

**Disposition:** Resolution No. 35444. (Y-4)

**\*1533** Amend Title 4, Personnel, of the City Code to streamline process for enrollment in the deferred compensation plan (Ordinance; amend Code Sections 4.44.040 B and 4.44.110 A)

**Disposition:** Ordinance No. 169303. (Y-4)

**\*1534** Contract with Jensen, Oldani & Cooper for executive search services for Director of the Office of Finance and Administration and Personnel Director (Ordinance)

**Disposition:** Ordinance No. 169304. (Y-4)

**\*1535** Establish one new class and salary rate for Bureau Operations Manager in accordance with the Personnel Rules adopted by the City Council (Ordinance)

**Disposition:** Ordinance No. 169305. (Y-4)

**\*1536** Apply for a \$198,015 grant from the Oregon Department of Transportation, Traffic Safety Division, for DUII enforcement (Ordinance)

**Disposition:** Ordinance No. 169306. (Y-4)

**Commissioner Earl Blumenauer**

**1537** Formally request the transfer of certain Multnomah County tax foreclosed property to the City of Portland to be used as public right-of-way (Resolution)

**Disposition:** Resolution No. 35445. (Y-4)

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- \*1539** Authorize the Purchasing Agent to sign a Purchase Order as a contract with ISC Data Comm for CATV radio frequency modems in the estimated amount of \$47,040 without advertising for bids and provide for payment (Ordinance)
- Disposition:** Ordinance No. 169307. (Y-4)
- \*1540** Agreement with the Oregon Department of Transportation, Highway Division, to provide for bridge inspection reimbursement (Ordinance)
- Disposition:** Ordinance No. 169308. (Y-4)
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**Commissioner Charlie Hales**

- 1541** Accept contract with Parker Northwest Paving Co. for the paving of the Fire Bureau training facility as complete and authorize an amended final payment of \$128,578 (Report; Contract No. 29313)
- Disposition:** Accepted.
- \*1542** Amend contract with US West Communications, Inc. to add 28 additional sites to the City's frame relay wide-area network (Ordinance; amend Contract No. 50409)
- Disposition:** Ordinance No. 169309. (Y-4)
- \*1543** Contract with Entek Corporation for \$44,832 to replace and install HVAC at Portland Tennis Center (Ordinance)
- Disposition:** Ordinance No. 169310. (Y-4)
- \*1544** Contract with City of Vancouver, Washington, for mutual periodic emergency assistance (Ordinance)
- Disposition:** Ordinance No. 169311. (Y-4)
- \*1546** Amend City Code Title 24 regulations pertaining to manufactured dwelling and park trailer installation, manufactured dwelling parks and recreational vehicle parks (Ordinance; amend Code Chapters 24.10 and 24.90)
- Disposition:** Ordinance No. 169312. (Y-4)
- \*1547** Authorize Agreement with Multnomah County Rural Fire Protection, District #14 (Corbett) for access to the City's 800 MHz trunking radio system (Ordinance)

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**Disposition:** Ordinance No. 169313. (Y-4)

**Commissioner Mike Lindberg**

**1548** Accept completion of contract with Pneumatic Construction, Inc. for composter sludge bin and carbon conveyors, make final payment and release retainage (Report; Contract No. 29392)

**Disposition:** Accepted.

**\*1549** Approve Intergovernmental Agreement with Portland State University for water quality and hydrodynamic modeling of the Columbia Slough (Ordinance)

**Disposition:** Ordinance No. 169314. (Y-4)

**\*1550** Approve Agreement for service with the Wetlands Conservancy/Urban Streams Council for support in restoration of Columbia Slough riparian areas (Ordinance)

**Disposition:** Ordinance No. 169315. (Y-4)

**\*1551** Authorize a contract and provide for payment for the Water Pollution Control Laboratory building construction phase (Ordinance)

**Disposition:** Ordinance No. 169316. (Y-4)

**\*1552** Contract with the U.S.D.A. Natural Resources Conservation Service for monitoring of snow cover and precipitation in Bull Run watershed without advertising for bids (Ordinance)

**Disposition:** Ordinance No. 169317. (Y-4)

**Auditor Barbara Clark**

**\*1553** Amend the final assessments of selected properties in the SW 50th and Marigold Street Local Improvement District (Ordinance; amend Ordinance No. 169189; C-9805)

**Disposition:** Ordinance No. 169318. (Y-4)

**REGULAR AGENDA**

**1538** Grant assurances to Zion Lutheran Church regarding future on-street parking removal adjacent to church site (Resolution)

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**Discussion:** Tim Ramis, attorney representing the Zion Lutheran Church, said this is the final piece of due process regarding church parking along SW 18th after completion of the MAX line. He said this will probably never come into play as all parties believe the intersection will work as designed and will not require removal of the off-street parking.

**Disposition:** Resolution No. 35446. (Y-4)

**1545**

Direct the Bureau of Buildings to seek State approval of a local amendment to the Building Code (Resolution)

**Discussion:** Commissioner Kafoury said this amendment is being sought at the request of the River District Steering Committee which asked the Bureau of Buildings to look at another type of construction in this area.

Margaret Mahoney, Director, Bureau of Buildings, said this will allow five stories of wood construction rather than the four currently allowed by the State Building Code. A committee, which included inter-bureau staff, reviewed the economic and public safety issues. They found that allowing a fifth floor reduces costs by \$8.00 per square foot, a significant savings which could help the City provide more housing and reach its growth objectives. Regarding safety, they believe allowing a fifth floor would somewhat restrict fire apparatus access. If the State approves this amendment, it would apply only to Portland.

Jim Swogger, Fire Bureau, said the Fire Bureau was concerned about increased risk but believe the approach taken is probably reasonable. They believe such buildings are not appropriate for senior citizens or people with limited mobility although it would be legally impossible to exclude them. He said the question is whether this population would be able to exit adequately, using the stairs in an emergency.

Commissioner Blumenauer said the City should get the word out that people with mobility problems should not be on the upper floors. He said construction savings of over 10 percent make a big difference for developers and added that Seattle has had this for ten years and has not had a problem.

Mayor Katz said this is a wonderful opportunity to reduce the cost per unit and fits in with her goals for the City.

**Disposition:** Resolution No. 35447. (Y-4)

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**1524**            **TIME CERTAIN: 9:30 AM** - Support the North by Northwest Music Festival (Resolution introduced by Commissioner Lindberg)

**Discussion:** Deborah Fairlie, North by Northwest Music Festival, outlined plans for this upcoming Portland event and described the success a similar festival has been in Austin during its 10 year history.

**Disposition:** Resolution No. 35448. (Y-4)

**1525**            **TIME CERTAIN: 9:40 AM** - Recognition of individuals and businesses for their pollution prevention efforts as part of Pollution Prevention Week (Presentation by Commissioner Lindberg)

**Discussion:** Dean Marriott, Director, Bureau of Environmental Services (BES), recognized 11 City employees and other partners who have demonstrated a commitment to pollution prevention. He described City efforts to work with businesses and industries to prevent pollution.

**Disposition:** Placed on File.

Anne Ryan, Automobile Association of America, presented a national pedestrian safety award to the City, based on its holistic approach to improving pedestrian safety.

**1526**            **TIME CERTAIN: 10:00 AM** - Adopt the Southeast Water Avenue Extension alignment and direct the Bureau of Transportation Engineering and Development and Transportation Planning to develop land use findings and a finance proposal for the project (Resolution introduced by Commissioner Blumenauer)

**Discussion:** Larry Brown, Portland Development Commission (PDC), said their most recent study concluded that Water Avenue needed to be extended to provide better access to OMSI, Portland General Electric, KPTV and the new Portland Community College Training Center. This resolution calls for an extension to Caruthers and reflects the finding of staff, working with area businesses, that the alignment previously selected was no longer the best choice. A consulting firm, KKFF, was hired to look at other alternatives.

Jeanne Caswell, Office of Transportation, described the three "build" and one "no-build" options that were developed. The first, which would extend Water Avenue directly south on Caruthers and east onto Division Place, is the most direct route and presents fewer conflicts. However, it requires extensive rights-of-way and is the most costly because of disruptions and disturbances to businesses on

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Division Place. Alternative Two, which extends Caruthers east to 4th and then to Division Place, involves no property acquisition and has all the right-of-way in place. It would also require less street construction but does require three turns, a disadvantage for trucks and transit. In addition the traffic parallels the railroad and pedestrians and bicycles could not be accommodated. The need to provide rail safety makes the cost substantial.

Ms. Caswell said Alternative Three extends east on Caruthers to Grand and then onto Division Place. It would require one turn but no right-of-way acquisition, less street construction and fewer disturbances. It is also the lowest in cost. The major disadvantage is that a column for the Grant Street viaduct would need to be relocated.

Ms. Caswell said the City views the Water Avenue extension as a potential LID project but businesses object to carrying 100 percent of the cost. The City, therefore, sought outside funds and grants, including a request to Metro for \$1.5 million. It will also request urban arterial funds of \$1.5 million from the federal government. Portland General Electric has agreed to make a substantial contribution in excess of what its LID assessment would be. Staff asks that Council approve Alternative Three 3 and direct preparation of a financial plan.

Commissioner Hales asked if the extension to the west of Caruthers was included in all three alternatives.

Ms. Caswell said yes, in order to provide access to the riverfront.

Commissioner Blumenauer asked about phasing.

Ms. Caswell said they have talked about doing the extension from Water to Caruthers as the first phase.

Commissioner Blumenauer said he would appreciate having phasing options as part of the financial plan.

Bill Parfitt, Lone Star Northwest, 110 SE Caruthers, said he agrees with the choice of Alternative Three but is still concerned about the cost and hopes an equitable funding arrangement can be worked out.

Dan Petrusich, Melvin Mark Co., representing PGE and KPTV, said they have no preference for any of the alignments but do want the project to proceed during the summer of 1996. He said it is very important to KPTV to have Water Avenue extended and both companies support a public/private financing partnership.

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William Morris, 17828 Robins View Court, West Linn, past owners of Door Distributors of Oregon and owner of property on Division Place, said he does not want Division Street to become a collector street. He asked that Alternative One not be included in the resolution and called for the expense to be shared by all those benefitting from a collector street, not just Division Street property owners.

Bill Wiley, Door Distributors, 330 SE Division, said he opposes Alternative One as it abrogates the industrial sanctuary policy. He argued that the Executive Summary issued earlier did not show that alternative as favorably as the resolution does. He said cost is the big issue for the affected businesses, particularly as the benefit is spread over a much wider area.

Dale Kirchner, Rail Restoration Company, said he cannot support these alternatives as they are likely to put his company, a railroad repair business, located in a historic building, out of business. He said the primary beneficiary is Portland General Electric, not anyone else, and there may be a more appropriate use of the land.

John Gilliam, Office of Transportation, said Alternative One is the superior choice in meeting the City's collector street policy and the City has to consider what is best for the southern triangle. However, Option 3 has the fewest impacts and is still adequate. He said the City believes the best approach is to go ahead and build the first phase of Water Avenue, constructing Caruthers as an overstreet but retaining Alternative One, to Division Place, as the longterm alignment.

Regarding the Rail Restoration Company, Ms. Caswell said there is a limit on what public institutions can do. She described the company's operation, including its need for maintenance pits which would be very expensive to reconstruct elsewhere. She said the public sector cannot pick up all the cost to meet such requirements.

Larry Brown, Portland Development Commission, said Rail Restoration is a tenant of the Portland Traction Company which would like to sell this property so the company is unlikely to remain here over the long term.

Commissioner Blumenauer said Council needs to approve an alignment and move the project forward.

Mayor Katz said if this cannot be managed equitably, the project will fail. She said Council needs to hear more about what the City is prepared to do.



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Mr. Brown said PDC is very experienced in this area and sees this as a unique challenge, but one that can be solved.

**Disposition:** Resolution No. 35449. (Y-4)

**Mayor Vera Katz**

**1554**

Establish CITY KIDS VOLUNTEER PROGRAM allowing employees to use flexible time to volunteer with Oregon's SMART (Start Making A Reader Today) Program or as a volunteer in their children's schools (Resolution)

**Discussion:** Mayor Katz said the notion of volunteerism in the public sector is not new but the issue for the City was whether to allow employee volunteers to use flex or City-paid time. She said the decision was to go with flex time, up to two hours per month plus travel time, as this is easier for the bureaus to handle.

Neil Goldschmidt, Childrens Foundation, said SMART is a reading program for kids in grades 1-3 available in 61 schools. The goal is to make reading a friendly idea.

Janice Hurst, Children's Foundation, said 3,000 volunteers in nine different counties participate and the Foundation's goal is to enroll 10,000 kids in the program. She described how the program works.

Ex-Governor Goldschmidt noted that an independent evaluation is made at the end of every year and the goal is to have kids take home two books each month which they have read.

Gail Eckhart and her son Matthew described how the program had benefitted them. Lisa Parker and her daughter Michelle also reported on their successful participation.

Mayor Katz said if this is successful, other programs can be added but this will make citizens more literate.

**Disposition:** Resolution No. 35450. (Y-4)

**Commissioner Earl Blumenauer**

**1555**

Consider vacating a portion of SW 60th Avenue, south of SW Lesser Road, at the request of Albert T. Capen (Hearing; Report; C-9883)

**Disposition:** Approved; City Engineer prepare ordinance. (Y-4)

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\*1556 Accept grant from the Federal Highway Administration for grant funds totaling \$18,000 to execute a public education campaign against running red lights (Ordinance)

**Disposition:** Ordinance No. 169319. (Y-4)

**Commissioner Gretchen Kafoury**

1557 Transmit report on the cracks in the 15th floor structural slab of The Portland Building (Report)

**Discussion:** David Kish, Director, Bureau of General Services, said the Bureau recently discovered substantial cracks in the 14th Floor of the Portland Building. He said Roger McGariggle, a structural engineer was hired to look at the problem and propose solutions. He found that the 14th floor supports the 15th floor, but there is no structural beam in place. Hoffman Construction was hired under an emergency purchase order and added posts to shore it up. Another month is needed to determine what the long term fix will be, and how much it will cost, but the cost for the first phase is \$50,000 to \$70,000.

Commissioner Kafoury asked if the original contractor was liable or had made any guarantees.

Mr. Kish said they are investigating but do not know the answer yet.

Commissioner Kafoury said this seems early in the life of the building to have such a problem.

Roger McGariggle, consulting engineer, said the problem appears to be a design defect that resulted in failure to provide an adequate structure and he is very relieved to have the shoring in place now. He said there it is likely that a similar condition may apply on the second floor.

Mayor Katz asked if the 15th floor was still occupied.

Mr. Kish said yes, by the Multnomah County Commissioners.

Mr. McGariggle said the crack had been there for five to 10 years so it did not seem necessary to evacuate the floor now that it has been braced.

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Mr. Kish said the Portland Building has moved from a being post modern building to being a modern post building.

**Disposition:** Accepted.

**1558** Select Donald M. Drake Company as construction manager/general contractor for the City Hall renovation project (Report)

**Discussion:** Mr. Kish said two companies bid on this project. The bids were reviewed by a committee which recommended Drake although it found the choice very difficult as both companies are excellent. Construction documents will be finalized over the next two months and a guaranteed maximum price is expected to be set by December.

**Disposition:** Accepted.

**\*1559** Authorize the Purchasing Agent to issue a Purchase Order as a contract with Johnson Accoustical and Supply Company for remodeling of the second floor of The Portland Building without advertising for such services and provide for payment (Ordinance)

**Discussion:** Mr. Kish said the public meeting rooms are being remodeled and Tri-Met, which uses the large conference room, is contributing \$50,000, on condition that the remodeling be completed by January, 1996. The estimated total cost is \$250,000.

**Disposition:** Ordinance No. 169320. (Y-4)

**\*1560** Amend City Code regarding delegation of authority to obligate the City; payment of salaries, wages and expenses; emergency warrants; and petty cash and warrants (Ordinance; amend Code Sections 5.01.010, 5.01.020, 5.08.050, 5.08.090, 5.16.010, 5.16.020 and 5.52.010)

**Discussion:** Commissioner Kafoury said this is a paper work reduction effort which allows a Commissioner to delegate authority to others, if so desired. It does not mandate anything. The next item to be considered is raising the limit on personal services contracts.

**Disposition:** Ordinance No. 169321. (Y-4)

**\*1561** Amend City Code regarding Leave of Absence Without Pay (Ordinance; amend Code Sections 4.24.020 and 4.24.030)

**Disposition:** Ordinance No. 169322. (Y-4)

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**Commissioner Mike Lindberg**

- \*1562** Amend City Code Chapter 17.36, exempting temporary structures and connections from sanitary and storm system development charges (Ordinance; amend Code Chapter 17.36)

**Disposition:** Ordinance No. 169323. (Y-4)

**City Auditor Barbara Clark**

- 1563** Assess property for sewer system development contracts of the Mid-County Sewer Project for the period ending August 30, 1995 and Non Mid-County for the period ending August 30, 1995 (Hearing; Ordinance; Z0615 through Z0617)

**Disposition:** Passed to Second Reading September 27, 1995 at 9:30 a.m.

- 1564** Assess property for sewer connection contracts processed through the Private Plumbing Loan Program for the period ending September 13, 1995 (Hearing; Ordinance; P0013)

**Disposition:** Passed to Second Reading September 27, 1995 at 9:30 a.m.

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

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 20TH DAY OF SEPTEMBER, 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 and Michael Holstun, Senior Deputy City Attorneys; and Officer Chuck Bolliger, Sergeant at Arms.

**REGULAR AGENDA**

**Commissioner Charlie Hales**

**S-\*1567** Amend Title 33, Planning and Zoning, to clarify several issues (Second Reading Agenda 1523)

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

Bob Glascock, Planning Bureau staff, said after the testimony on these amendments last week, Council directed staff to consider including some of the suggestions made then. Exhibit B provides alternative language for the land-use review notices and also corrects the typo that was contained in the Planning Commission Report to Council. The effective date of the ordinance was also changed in response to the request of residents who are interested in building double-car garages. The Substitute Ordinance adds an emergency clause which would make the amendments effective October 12, the first day after the 21-day LUBA appeal period expires. That will save staff from having to write State Goal findings for each and every building permit issued within that time period.

Commissioner Hales moved to accept the Substitute. Commissioner Kafoury seconded and the motion carried (Y-4).

**Disposition:** Substitute Ordinance No. 169324. (Y-4)

**1566** Appeal of Allvest, Inc., applicant, against Hearings Officer's decision to deny application for a conditional use and design review in order to use an existing building for a rehabilitation services program at 723-737 East Burnside Street (Previous Agenda 1477; 95-00256 CU DZ)

**Discussion:** Commissioner Kafoury said she had semi-volunteered last time to work on a task force with the County to look at siting

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community corrections facilities. She said they should be able to use the Fair Housing siting work as an example and then look more broadly at community corrections. She said she is willing to do that.

Michael Holstun, Senior Deputy City Attorney, said he was just served with an alternative writ of mandamus by an attorney on behalf of the property owner, Mr. Hoggard. It asserts that the City has exceeded the 120 day statutory limitation for rendering a decision on the Allvest appeal. Staff believes there are at least two responses at this point. The first is that it does not believe the 120-day statutory limitation has been exceeded. Second, there is some question as to whether Mr. Hoggard, who is believed to be the contract purchaser, has standing as an applicant for purposes of filing an alternative writ of mandamus. Mr. Holstun recommended that Council proceed with the Allvest appeal today and render a final decision not later than October 3, 1995, which the City believes to be the expiration date of the 120-day statutory limitation. Council could do that by adopting an oral decision today and reducing that to writing within a week.

Mayor Katz asked if Allvest itself had withdrawn.

Mr. Holstun said the matter is very confused. He noted a letter received from Mr. Sullivan last week indicating that he represents the appellants, whom he then refers to as Allvest and Mr. Hoggard. However, the appellant listed on the appeal application is Jim Griffith and Associates, who has not officially withdrawn. He said he believes the City thus has an appeal pending before it and there is no reason not to proceed and make a decision.

Commissioner Kafoury moved to reject the appeal and deliver findings as per earlier discussions about the high concentration of other social service providers.

Commissioner Hales seconded.

Commissioner Kafoury said it might also be helpful to reference in the findings Council's belief that the 600 foot restriction applies not only to conditional-use facilities but also to facilities which have non-conforming uses or perform some kind of community function similar to a conditional use facility.

Commissioner Blumenauer asked if the two parties should be heard before disposing of this.

Mr. Holstun said if Council wished to proceed it should first close the record and the hearing. It could then move to take the action

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proposed by Commissioner Kafoury and could also allow the parties present today to make additional legal arguments, although that is not required.

Commissioner Kafoury withdrew her motion.

Mr. Holstun said Council had continued the hearing and left the record open until today.

Commissioner Hales moved to close the record. Commissioner Kafoury seconded and, hearing no objections, the Mayor so ordered.

Lauren Moughon, an Allvest employee, said at the last hearing it was rather graciously suggested that perhaps Allvest should withdraw the appeal. That is what Allvest decided to do and thought that the letter from Attorney Ed Sullivan stating that intent would be enough. Jim Griffith and Associates is a planner employed by Allvest, and only by Allvest, and if all that is necessary to withdraw the appeal is for them to do so, then that is exactly what they will do. However, the building owner, Blaine Hoggard, hired Mr. Sullivan jointly with Allvest and wishes to continue, as indicated by the filing of this writ of mandamus. She said it is not Allvest's intention to do business at that site ever and it will do whatever it needs to do to withdraw.

Ken Shiroishi, attorney representing the relater in this case, J. Blaine Hoggard, said his client is the contract vendee of the property in question. This afternoon Judge Ceniceros issued an alternative writ of mandamus to the City under ORS 277.178. Thus the decision is now for the court and not for this body. Although the City may raise legal questions as to whether the writ was validly issued or can continue, as of this point Council cannot continue to consider this issue.

Mayor Katz said Council will act upon the legal advice of the City Attorney.

Bob Stacey, attorney representing the Lower East Burnside Boosters, recommended that Council take final action on the appeal because of the uncertainty about whether Mr. Hoggard can act as an appellant at this stage. To not issue a decision on the merits could cloud the character of Council's action, particularly as there is circuit court intervention in this matter. Mr. Stacey also encouraged Council to adopt the motion made by Commissioner Kafoury and to include as part of its findings the interpretations adopted by the Hearings Officer in her decision, supplemented by Council's own. He said nothing Council has discussed this afternoon is inconsistent with the Hearings Officer's decision. It has a fully stated analysis which

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would be useful to have as the decision of the City.

Pamela Emmons, representing Jim Griffith and Associates, said her company was originally hired by Allvest and, if it is listed as the applicant, would like to withdraw as an appellant.

Mr. Holstun said the person who signed the application form and the person who filed the appeal on behalf of the applicant have now indicated that they are withdrawing their appeal. He said with the filing of the alternative writ of mandamus, the situation may be confusing enough to call for a belt and suspenders approach. The Council might want to consider adopting an alternative decision and proceed to make a decision on the merits of the appeal, adopting the Hearings Officer's decision supplemented by findings from the prevailing party. Council could also adopt a decision that, in case a court of higher jurisdiction determines that the withdrawal of this appeal divested Council of jurisdiction, simply affirms the Hearings Officer's decision. In that event, the Hearings Officer's decision would stand as the final decision of the City.

Commissioner Kafoury moved to adopt Mr. Holstun's recommendations for alternative decisions.

Commissioner Hales seconded.

Commissioner Blumenauer said he wanted to make that tentative and Commissioner Kafoury added that word to the motion.

Mr. Holstun said findings would be drafted over the next week to reflect what he just said.

Mayor Katz said she would like to see that in writing and finalize the tentative findings next week.

Commissioner Hales asked if there were any particular issues that Council wants to add in terms of findings.

Commissioner Kafoury said the 600 feet (limitation between facilities with similar social service functions) was in the Hearings Officer's report but it was not cut and dried. There was a debate about whether that was a criteria or whether these were conditional uses as intended. She noted, however, that Mr. Holstun suggested that if there is some other problem here, Council should just adopt the Hearings Officer's decision without any changes.

Mr. Holstun said he is trying to anticipate arguments that might be made and it is at least conceivable that they would argue that the



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withdrawal of the appeal ended this matter. In that case Council should make it clear that the Hearings Officer's decision stands as the final decision of the City. That is probably going to be the legal effect of it anyway so there is no reason not to make that clear.

Commissioner Hales asked if the less Council messes with the Hearings Officer's decision, the better off the City will be.

Mr. Holstun said Mr. Stacey, on behalf of the prevailing parties, will take first stab at adopting draft findings which he will review before bringing them back to Council for approval next week.

Mayor Katz called roll on Commissioner Kafoury's motion. (Y-4)

**Disposition:** Tentatively deny appeal and uphold Hearings Officer's decision with clarification. Prepare findings for September 27, 1995 at 2:00 p.m. If Council found to lack standing, Hearings Officer's decision affirmed.

**1565**

**TIME CERTAIN: 2:00 PM** - Appeal of Laurelhurst Neighborhood Association against Hearings Officer's decision to approve, with conditions, application of Mt. St. Joseph Residence and Extended Care Center for a conditional use master plan for an existing residential and nursing care facility at 3060 SE Stark (Hearing; 94-00932 MS CU)

**Discussion:** Ruth Spetter, Senior Deputy City Attorney, outlined the guidelines to be followed in this quasi-judicial proceeding.

Susan McKinney, Planning Bureau, summarized existing development at the site and the proposal. The applicant, the largest and oldest longterm care facility in the State, proposes a 10-year Master Plan on its 6.3 acre site. There is a community garden in the Northeast corner and five single-dwelling residents which are proposed for removal or demolishment as part of the Plan. The Master Plan includes the addition of three new buildings and four independent cottages as well as the remodeling of existing buildings. Assisted living units will be offered in addition to the current nursing and medical care. Community, daycare and medical centers are also proposed. The number of employees would increase to approximately 226 and parking spaces would increase to 182. The proposal, as submitted, complies with all development standards except for the height of the four buildings where adjustments would be needed. She showed slides of the site. In order to guarantee communication between Mt. St. Joseph's and the surrounding neighborhood, the Hearings Officer added a condition of approval requiring assignment of a community liaison to the neighborhoods. After the appeal was

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filed SE Uplift held three facilitative meetings between St. Joseph's and the surrounding four neighborhood associations. She noted two letters from Mt. St. Joseph's to the Laurelhurst Neighborhood Association, both dated September 8, stating that it would be willing to accept two additional conditions concerning use of the community and daycare centers. The Planning Bureau supports both. The second letter states that Mt. St. Joseph's would be willing to enter into a good neighborhood agreement with Sunnyside and Laurelhurst Neighborhood Association on four specific items. The Planning Bureau would not support a condition requiring a good neighbor agreement or any other further land-use review but definitely supports ongoing communication and does support the condition addressed previously as part of Criterion C-2. Ms. McKinney said the City Forester told her yesterday that a permit would be needed by the applicant in order to remove any trees over 12 inches that are within the footprint of the proposed buildings. That, however, is not a part of this land-use review. The City Forester also stated that street trees would be required. Ms. McKinney stated the applicable approval criteria for the record.

Scott Pratt, President, Laurelhurst Neighborhood Association, said the Sunnyside Neighborhood Association also wished to appeal this but had a technical problem which prevented them from doing so. He said with all the proposed new buildings and parking spaces, the land area covered by Mt. St. Joseph's will be approximately doubled. It also proposes to demolish single-family housing and replace it with conditional use housing and parking lots. New uses are also proposed, including a community, medical and daycare centers, none of which are allowed in an R5 zone. He said if the new uses were limited to staff and residents of Mt. St. Joseph's, the neighborhood would not object but there are no conditions which would ensure they would be the primary users. The Neighborhood Association recognizes the increasing need for this kind of facility but believes the addition of 150 residents will burden surrounding residents with additional traffic, parking and safety problems and have a negative aesthetic impact on the neighborhood. He said the six conditions they have requested would do a great deal to mitigate these impacts. One condition would require underground parking, which would retain the five existing affordable residences and allow Building A to be relocated so it is not so close to Stark Street. He also objected to the fact that 200 people can use the community center and there is no requirement that any of them be residents of Mt. St. Joseph's or the surrounding neighborhoods. He said prohibiting Mt. St. Joseph's from charging for use of the center will help it to comply with Code requirements. He said a condition allowing them to charge only for their expenses is not enforceable as it would require constant monitoring and a review of financial records. Regarding the daycare

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center, the current condition does nothing to ensure that it serves only employees and the local community and therefore violates City Code. He said up to 60 percent of daycare participants may be non-employees or nearby residents, adding to traffic congestion during peak traffic hours and adversely impacting surrounding residents. He said three new three-story buildings and parking lots are proposed for the area currently occupied by single-family homes. People who now look out the windows at these houses will be looking at large buildings and parking lots. If Building A is moved to Parking Lot B, that impact can be limited and, combined with improved landscaping, that will help make this project compatible with existing residences. He asked that the record be kept open for seven days to allow for additional evidence.

T.J. Browning, Laurelhurst Neighborhood Association, said this is a neighborhood versus an institution. Two issues of concern are the row houses, which they call cottages. Applicant states that the removal of the five single housing units will be mitigated by the proposed independent living cottages and additional residential nursing and assisted living units. She said there is a big difference between four row houses for seniors and affordable housing for families. She also objected to plans to move the existing community garden and reduce its size from 20,000 to 3,000 square feet. She said the City must maintain a balance between high density and open space, particularly in a residential area. This Plan will cause the neighborhood to lose housing, open space and community gardens. She contended that the row houses will face the campus interior with their backs to the neighborhood. She said they are not opposed to this expansion but it should not be done at the cost of neighborhood livability.

Commissioner Hales asked if they were recommending relocation of Building A because that would place it farther away from Stark Street.

Mr. Pratt said they recommend moving it 20 to 30 feet further back from Stark.

Mayor Katz asked if the back of the row houses will be facing the main street.

Ms. Browning said yes, according to current site plans.

Robert Monaghan, 3227 SE Stark, 97214, opposed the Plan based on concerns for public safety. He said heavy traffic during peak hours already makes it very difficult to access his driveway and he is also concerned about the increase in emergency vehicle traffic.

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Carol Boutard, Co-Chair, Friends of Portland Community Gardens, said the community garden at Mt. St. Joseph's was developed five years ago as an attempt by the facility to improve relations with the surrounding neighborhood. She described the benefits of community gardening and said loss of the garden at this site will negatively impact the many single elderly residents who currently participate and curtail the integration of Mt. St. Joseph's residents with those of the neighborhood.

Commissioner Blumenauer asked Ms. Boutard what they hoped to accomplish.

Ms. Boutard said 3,000 square feet proposed for the community garden under the Master Plan, or six plots, does not constitute a community garden and will not be maintained as such, much to the sadness of the neighborhood. Mary Klein did generously propose to upgrade it to 10,000 square feet and she hopes that will occur.

Commissioner Blumenauer said he supports community gardens but if the signal here is that people who donate part of their property to a community garden will engender future opposition, he cannot think of anything that will do more to discourage people from contributing their land for five or 10 years, or even longer.

Ms. Boutard said they are very sensitive to that point but also believe the community garden is a great way for Mt. St. Joseph's to maintain a connection with the community.

Shelly Bryan, resident of Sunnyside neighborhood and manager of the community gardens, raised issues of physical compatibility and neighborhood livability. She said the large surface parking lots are incompatible and will have negative environmental, social and economic consequences. Multi-level parking makes better sense. Another concern is the inadequacy of the landscape plan. She requested that approval be conditioned on the employment of a certified arborist to evaluate all trees and develop a preservation plan. She also requested that a landscape architect be employed to complete the landscape design and include the community garden within it.

Lavinia Marx, Chair, Land-Use Committee, Sunnyside Neighborhood Association, said their arguments center around livability and compatibility issues. She said their suggestions were ignored until the last few months when Mary Klein was chosen to head Mt. St. Joseph's. She said Mt. St. Joseph's obtained the five single homes gradually and has allowed them to deteriorate. She suggested rehabbing these homes rather than removing them as it does not

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seem like a fair exchange to lose them for single occupancy cottages. She also asked to leave the community garden where it is. Another issue is increased traffic.

Mayor Katz asked her if they would support the application if all the four points identified by Mary Klein in her memo of September 8 letter are approved.

Ms. Marx said she did not feel those were strong commitments.

Mayor Katz asked about the elements of those four points -- underground parking, adding up to another 5,000 square feet to the community garden, etc.

Ms. Marx said it would sound better if all four were added in but they would especially like to see the four homes retained.

Commissioner Blumenauer asked how many other facilities for the elderly exist in Sunnyside or if the land-use committee had looked at the needs in Sunnyside of its elderly residents.

Ms. Marx said she did not know and they have not directly looked at that issue.

Bill Will, 3245 SE Alder Court, 97214, said the Master Plan is insensitive to the needs of the neighborhood and his number one concern is the removal of five single-family dwellings, four of which will be replaced by parking. He said they would make good starter homes and improving them would contribute to the local economy. He said increasing parking would devalue adjacent property and make the streets more unsafe. He said he opposes the proposed configuration and believes it violates Code provisions regarding household living uses, physical compatibility and livability.

Mary Klein, CEO, Mt. St. Joseph's, applicant, said for the last 3-1/2 months they hosted Providence Hospital's Elderplace program which added over 100 clients and over 30 staff members on a daily basis. They have not received a single complaint about increased traffic on Stark and believe this is a pretty good indication of what their future contribution to increased traffic would be. The community center was created to help Mt. St. Joseph's reach into the community and she is happy to restrict its use to residents, staff and the surrounding community. They have no intention of charging community groups for its use and the only time they would charge would be to cover such items as refreshments at funeral services. She said she is committed to retaining the community garden and does not intend to move it into the compound but to bring it closer to residents to

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encourage interaction between them and the community. She said she appreciated Commissioner Blumenauer's comments about the gardens but is committed to expanding it to 24 plots. She said there are two other nursing homes in the immediate area but no assisted living, congregate care or residential facilities in the four surrounding neighborhoods. Nor are any intended to meet the needs of low-income elderly -- 50 percent of Mt. St. Joseph's population is on Medicaid or other assistance. A good percentage of their employees reside in the local area and one strategic goal is to provide affordable housing. She said they have made every effort to reach a satisfactory agreement with the community although her predecessors probably did not reach out in the early stages of the planning process to the degree that they could have. She said they will try to come to agreement with the neighbors over these issues as it is their mission to serve this community.

Mayor Katz asked about the outcome of the meetings facilitated by SE Uplift.

Ms. Klein said while there was some frustration because Mt. St. Joseph's wanted to proceed with this hearing, they did agree to meet again and will continue to work on the four points in the neighborhood agreement although they cannot commit to them until additional architectural consulting work is done regarding movement of Building A, accommodation of the community garden, etc.

David Sanders, consultant on feasibility and design for Mt. St. Joseph's, said one of the goals of this Plan is to reverse any perception that they are institutional or standoffish. The proposed community center, clinic and child daycare center would help accomplish this goal. The community center in particular, at the sidewalk level, was envisioned to be something that would create a welcoming door for the community. Mr. Sanders noted that over the next 20 to 30 years, one out of every three adults will be over 65, something that has never happened in this country before. He said by the time that point is reached, it is likely that there are way too many single-family houses and not enough other options for older adults. Mt. St. Joseph's also hopes that it is not proposing anything that R5 zoning does not envision. He said while they are listed as a non-conforming use, they see themselves as a form of housing, which is allowed in R5 under the conditional use process. He said they are not recommending anything that is prohibited in the zone.

Regarding orientation of the cottages, Mr. Sanders said they were placed intentionally at the corner to bring the scale of the project down to one-story single-family units. There is not a front and back; there are two fronts. The central parking lot sits in the center of the

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site and is virtually invisible from the street. The one on Alder Court, however, needs a visual uplift and the hope was that could be accomplished with the expansion. One reason for acquiring the single-family houses was to eliminate situations where neighbors are surrounded by the institution. The only house currently surrounded by the facility is Mr. Will's and they made considerable efforts to accommodate his concerns.

Commissioner Blumenauer asked what the project would cost if more of the parking were put underground.

Mr. Sanders said underground parking runs between \$6,000 and \$10,000 per space. This project was designed with the potential for underground parking, in addition to the surface parking, but in working with City staff they came to believe that this would encourage car use and put additional pressure on the site. Instead they were required to submit a traffic mitigation plan. The preference is to not put dark parking below grade if they do not have to but this is an option they are willing to study.

Ms. Klein said they believe putting the parking underground would cost about \$350,000.

Commissioner Hales noted that Hearings Officer's report states that about 59 percent of employees utilize off-street parking and the remaining 41 percent arrive by foot, bicycle or bus. Would that split be maintained after the expansion?

Mr. Sanders said they expect to maintain at least that level. As part of the Plan they submitted a traffic mitigation plan which would encourage the sale of bus passes, car pooling and other mechanisms not being done formally right now. The current ratio exists because so many employees live in the neighborhood. He said the new facilities are also less staff-intensive than nursing care.

Commissioner Hales noted testimony about the proximity of Building Site A to the street. He asked Ms. McKinney how precise the location included in a Master Plan must be.

Ms. McKinney said it is usually pretty precise. The site plan would be taken through the Building Permit process. If they were to move it, the building would need to go through a Type II review, using the conditional use approval criteria.

Mr. Sanders said one problem is that relocating that building back into the area where the central parking lot is would severely impact the feasibility of any underground parking.

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Commissioner Hales asked whether their street trees plan met or exceeded the requirements of the City forester.

Mr. Sanders said they will probably exceed them; they hope to improve the landscaping plan with larger, more frequent trees, benches, etc., in order to soften the buildings already there. He said the one place they may have missed the street trees is on 30th where it appears to show shrubbery but no street trees.

Don Nielsen, 905 NE Floral Place, 97232, supported the Plan and added that there is no other housing for the elderly in this area. He said there are some honest concerns about traffic for those who live along Stark but residents in such facilities are not going to be driving at peak hours, if at all. Having one building closer to the street breaks up the parking lot and makes the streetscape more pleasant.

Richard Kroll, 3360 SE Ankeny, 97214, said the Laurelhurst Neighborhood Association Board acted without the approval of the general membership in filing this appeal and does not represent the majority view. He said Laurelhurst residents need such facilities and this will give them more housing choices. He said he does not consider traffic a problem except at 33rd and Stark and suggested that a timed traffic light instead of a trip light be installed to allow people to get out of their driveways. He said neighborhood associations can be so negative about development that they end up with empty, derelict buildings instead of improving the neighborhood.

Barbara Rummel, 4317 SE Pine, 97215, said traffic on Stark is a problem but this is because of traffic cutting through the neighborhood to someplace else. She said the Hearings Officer's decision was very fair. Since a general meeting of the Laurelhurst Neighborhood Association is scheduled for tonight, she asked that the record be kept open for seven days so that other residents can comment.

Ms. Spetter said the record will be left open for seven days and an additional seven days will then be granted for responses by the applicant.

Dee Sellner, Senior Vice President of Nursing and Health Services, Mt. St. Joseph's, described their current community services, including educational forums and the community garden, and said they envision incorporating additional community outreach activities with a better integrated facility.

Sister Mary Helen Naveaux, Sister of Mercy, said the Plan responds to the emerging needs of the elderly, which are constantly changing.



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Sister Canisuius Daniels, Sister of Mercy, said if Mt. St. Joseph's cannot grow to meet the future needs of the elderly, perhaps they will have to look to a place where people would welcome them. However, they see needs in this location and hope the neighborhood will come to see that they are trying to benefit it, not harm it.

Mayor Katz noted the need for a wide range of facilities for the elderly, which are very limited in the Central City.

Robin Huntington, 4131 NE Laddington Court, 97232, said the need for such facilities is very great, adding that Mt. St. Joseph's is at capacity now and turning away people everyday. He asked for Council approval of the Plan today. He said Laurelhurst residents knew nothing about the Neighborhood Association appeal and that Kerns Neighborhood is actually much closer to Mt. St. Joseph's than Laurelhurst.

In rebuttal, T. J. Browning reviewed the areas where Laurelhurst agrees and disagrees with the Plan. She said they support Ms. Klein's commitment to a 10,000 square foot community garden and would agree further if she also said Mt. St. Joseph's would do underground parking, rather than merely "explore" it. Laurelhurst would also approve the Plan if it reconsidered relocation of the building and assisted in lobbying for greater traffic control. She said they agree with the restriction of the community center to residents if the word "no rental" is added. Finally, they ask that the child care center be utilized by residents and staff families only. She said they are very close to reconciliation and the only reason they are here is because Mt. St. Joseph's would not postpone this hearing and this came before Council prematurely.

Mr. Pratt said Laurelhurst would have no objection to the expansion if what Mt. St. Joseph's proposes can be made conditions. He said it is to their benefit to keep this a thriving neighborhood where people want to live.

Commissioner Hales moved to tentatively uphold the Hearings Officer's decision and deny the appeal. Commissioner Kafoury seconded.

Commissioner Hales said the Hearings Officer made the correct decision, the criteria are met and the Plan concept is sound. He said he does not see any reason to push the applicant toward underground parking and while he would like to expand the community garden program, the City cannot do that if the voluntary provision of community gardens is entangled with the land use process. He said he has not heard an argument for the change of Building A that

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requires intervention by the Council and he has no interest in further restricting use of the daycare center. He does want to adopt the additional findings Ms. McKinney recommended. He said he respects the right of the Laurelhurst Neighborhood Association board to take a position and urged those who opposed this appeal to show up and participate in the meetings. He said the big issue here, however, is whether there are places to grow old in the City of Portland. He said the City is lucky to have this institution and he believes it has gone far enough in its Master Plan to protect the community's interest. He moved to amend his motion to add Ms. McKinney's condition for additional findings. Commissioner Kafoury seconded.

Mayor Katz said is very clear that Mt. St. Joseph's has made a real effort to reach out to the community and there is more time for them to work with the community to see to what extent their requests can be accommodated. No one is asking them to do all of those but merely to continue the discussion. That is all she is prepared to request at this time and supports the motion.

Commissioner Blumenauer said he remembers when residents argued against the expansion of Bess Kaiser and believes that its decision to abandon that site is partly because of that battle and the residual bitterness that never went away. He said Mt. St. Joseph's has an outstanding record and will be badly needed as the elderly population grows. He said he did not like the tone of this hearing and it does not speak well for what the community will have to do to address this problem.

Commissioner Kafoury said she hopes this helps set a course for the future for other institutional master plans, so there is no rerun of the battles over Kaiser and Emmanuel.

Mayor Katz challenged the neighborhood associations to make a greater effort to understand and meet the challenges facing the City in the wake of projected growth.

Ms. Spetter said those who requested that the record be left open will have seven days to file material. There is an additional seven days for others to respond to that material. At that point, the applicant has the right to request another seven more days to make a written response.

**Disposition:** Tentatively deny appeal and uphold Hearings Officer's decision as amended; applicant prepare findings for October 4, 1995 at 2:00 p.m.

At 4:10 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 21ST DAY OF SEPTEMBER, 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; Linda Meng, Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

1568

**TIME CERTAIN: 2:00 PM** - Accept report on luxury transportation providers operating in Portland (Report introduced by Commissioner Kafoury)

**Discussion:** Commissioner Kafoury said she requested this report from the Taxi Board of Review to address the confusion in this area. She said the Taxi Board spent a good many hours hearing from both sides on this matter.

Dennis Nelson, Director, Bureau of Licenses, and Chair of the Taxi Board of Review, said this is a controversial issue and also signals a change in the economy. The question for the City is what is its role and whether the current form of regulation, or lack of it, is appropriate for luxury transportation providers. He said the purpose section of the Taxicab Code, drafted in the late 1970's, encourages competition with a minimum level of regulation to protect the public safety. The City has felt that some regulation was necessary because the taxicab industry is an essential part of the transportation system. Beyond the cab industry, the Board's position has been that other transportation providers need not be regulated, absent some clear and pressing public safety or welfare need. In its most recent review, the Board could find no such need to justify extending regulation to the luxury transportation industry. During that review process, however, it tried to create clear distinctions between taxicabs and other transportation providers. Six criteria were set for defining a luxury vehicle, including provision of a uniformed chauffeur and an expensive car, service by reservation only and premium rates for luxury service. This summer the Board reviewed the disputed issues concerning reservations and rates. The Board believes City policy is being followed, using minimum regulations where possible, and does not feel the cab industry is unduly restrained. It also believes the market for cab services is expanding, not decreasing, and the luxury transportation service is good for the community and does not unduly harm the cab industry.

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Robert Lucas, attorney representing Radio Cab, said Radio Cab appealed the Board's decision regarding reservations. The other criteria is on appeal also. He took exception to City Attorney Ben Walter's suggestion that this is not appealable because it is an interpretation of a regulation, not a regulation.

Mayor Katz noted that this is a hearing on a report, not an appeal.

Mr. Lucas said the real issue here is the distinction made between taxicabs and luxury transportation. In 1993, the Board exempted luxury transportation providers from taxicab regulations, in effect deregulating them and freeing them from many of the requirements the taxi industry labors under. This is not very fair. Distinctions need to be made between the two that protect the public and also protect the providers so that one -- the taxicab industry which is controlled, limited and regulated -- can effectively compete against a totally unregulated entity. The distinctions must be sound. At its July meeting the Board virtually destroyed one of the distinguishing criteria -- service by reservation only -- when it ruled that meant that any phone or nominal prior contact would be a reservation as was any service arranged by a third party. It also ruled that on-demand service at the Port of Portland was all right, a decision dictated by the Port. This puts the luxury transport people directly in conflict with the cab industry. A huge proportion of Radio Cab Co. business comes through dispatch -- that's a reservation for the luxury transportation people. He noted that taxicab drivers cannot turn down rides -- whether profitable or not. Third party intermediation means that it is okay if a hotel doorman or concierge calls up or whistles for a luxury car. But these people are being paid, either monthly by the hotel for each ride procured or by the transport company. There is nothing illegal about but if people are getting paid to call a particular company, their objectivity is questionable. Third parties who get paid are really agents for the principles. He asked that the concept of reservation be restored. Reservation, in this instance, implies a request significantly in advance of the time of use and some sort of objective standard, such as four hours. In August, the Board reviewed the issue of premium rates, with the taxicab industry arguing that there should be a definitive standard, perhaps 50 percent more, which is the standard in eight cities comparable to Portland. He said the Board did not accept that but finally changed the wording on that criteria to read "rates that are consistently and substantially higher than taxis." Everyone agrees luxury transport rates should be higher and yet the companies advertise themselves as having rates comparable to regular taxis.

Steve Moskowitz, attorney representing Pacific Towncar, said the Port asked for the City's cooperation in being able to offer executive

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car service to its customers. When Radio Cab filed its appeal on the prior reservation issue, Pacific Towncar decided to appeal the premium rates issue to make sure the City had not inadvertently embarked on a path of minimum rate regulation unauthorized by the Code. He said anger and distress of some cab drivers, while understandable, is also misdirected. There has been a change in the kind and quality of service people expect, as reflected in the issues recently before Council involving special medical transport, the provision of newer cars and now, the Port request for a certain kind of service at the airport. The determining factor should be what benefits the public, not any particular industry. The prior reservation issue arose because the Port wants to provide walkup service to executive cars. He noted that several months ago Tri-Met came to Council indicating they needed a certain type of provider for customers in need of medical attention. Council appropriately decided not to second guess Tri-Met about who is an appropriate provider. The situation is the same with the Port which sees "on demand" executive car service as being in the best interest of the public. The Taxicab Board of Review's decision reflected their earlier concerns that this luxury service did not travel the streets waiting to be hailed and did not occupy taxicab stand space. He said a number of hotels and businesses have arranged for service with Pacific Towncar and the Port wants walkup service. The Board found these requests consistent with the regulations. He urged affirmation of the Board's decision. Regarding premium rates, Code policy is to promote innovation and favor competition in response to the marketplace over regulation and monopoly service. Pacific Towncar raised the issue of premium rates because the language may inadvertently send a message that the City is not setting minimum rates for this type of business. Luxury transport does not serve a general population but markets to those who want luxury service, primarily businesses. Staff studied eight other cities and found that none regulates the rates of executive cars.

Tarak Robbena, Radio Cab driver, questioned how the City can enforce six criteria distinguishing luxury cars from taxicabs. What does it mean to be impeccably clean and rigorously maintained? He said the rules are very vague. His solution is to use the definition in the Code itself which defines what a taxicab is. He said the chart indicating rate distinctions in various cities had a typographical error which remains uncorrected despite his repeated attempts to get Bureau staff to do so. He asked whether the number of luxury cars would be limited, noting that Radio Cab is limited to 136.

Kalau Davis, Rose City Cab driver, said towncars charge rates similar, and sometimes less, than cabs, depending on the distance. The Airport seems to be mandating towncar service but the City is

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not looking at the service actually being provided. He noted that the cab companies pay \$100 to the City for each car it operates. Basically, the City seems to be saying they do not want taxis anymore, it wants towncars. In that case, the cab companies should take the top lights off their cars and turn them into towncars. There is no other difference, except the City will receive less money.

Patrick Fesler, representing PRIDE, Portland Region of Independent Drivers and Extramens, said the City has regulated the taxicab industry for 35 years in a straightforward way and has never before let unregulated cabs on the streets. He questioned why the City would exempt an elitist business from regulation. The recent ruling by the Board has only deregulated the limitation put on the "black car" services who may now act as unregulated or unmetered taxicabs that can be called for anytime for immediate use. He disputed the Board's interpretation of the word "reservation" which has resulted in allowing luxury transport to work without time or price restraint and allows them to choose who they will pick up. "Black car" drivers do not need to be screened or licensed and pay no fees. He said luxury cars at the airport are allowed to pose as taxicabs, sitting in front of their line. He also charged that it is inappropriate for Dennis Nelson to serve as chair of the Board as he has failed to protect the rights of taxicab drivers.

Roy Jay, owner of Celebrity Limousine and president of Limousine Owners and Operators of Oregon, said they provide a higher level of service to executives and others who want something a step up from a cab. Portland is just now beginning to meet this need and he is very supportive of it, even though his company does not have cars at the airport. Because it is a niche market, he does not think it will negatively impact the cab industry

George Forbes, manager of the Governor Hotel and President, Tri-County Lodging Association, said visitors to the City expect to be treated right. He noted an incident where a cab driver confronted a guest who chose luxury transport when the cab turned up 20 minutes late. He said Pacific Towncar owns 11 cars compared to 200 cabs, just five percent. He said he has a hard time consistently knowing that a cab will leave a good impression for an important guest and that the driver will be on time, cordial and well-groomed and that the cab will be clean.

Serafin Pilomares, Portland Taxicab driver, said Pacific Towncar is taking the cream of the crop from the Airport and blatantly refusing short fares to North/Northeast Portland and Gresham. They do that by quoting premium rates to those customers; however, these rates do not apply to those going to the central City. The towncars are

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hacking at the Airport and, putting them into direct competition with cabs and now the Taxicab Board of Review wants to pressure cab drivers further by requiring them to have vehicles no more than five years old. He said the City is giving the edge to the towncars and a bunch of elitists.

Lisa Kroll, Radio Cab Company, said cab drivers have built a business people can rely on and developed a rapport with the public. They are out 24 hours a day and become the police department at night. In snowstorms, cabs become makeshift ambulances. If towncars are established as a permanent fixture in the City they should be willing to provide all service aspects, not just skim the cream off the top. If they operate as taxicabs they should be regulated as taxicabs.

Ted Blaszak, Radio Cab driver, said unfair competition is going on between Pacific Towncar and the cabs. Cabs queue up at the Airport and wait over an hour while towncars are allowed to race to the front and can make many more trips. They use their fare system to avoid the short runs and approach passengers for fares as they leave the Airport. The kickbacks to the doormen are also unfair. Their argument that they offer a completely different level of service lacks merit -- the only difference is that they receive privileged status.

Des Faye, Portland Taxi Company driver, said luxury cars take the customers they want and leave the rest. They should be called, not go anywhere they want. He cited an instance where they grabbed away a customer.

George Van Hoomison, President, Broadway Cab Company, said if the City did not regulate the taxicab industry, the companies would have no legitimate beef about towncar services. But the City, with over 50 pages of regulations, tries to ensure that there is available, reliable, consistent and reasonably-priced transportation for all members of the community. Some segments are unprofitable to serve, i.e. short trips or charging regular cab rates for using \$30,000 wheelchair vans. If the free market dictates service, the downtown hotels and Airport would continue to be served well but other segments of the community would not. Because of the way the Code defines a taxicab, it prevents people from competing directly with cab companies, skimming off the cream and leaving the bad stuff for competitors. Taking the top light off and the meter off a car, does not make a towncar not a cab if basically what it provides is cab service. The City cannot expect the cab industry to adhere to all the regulations and lose money subsidizing some services if there is no corresponding protection for the lucrative segments of the market. The Taxicab Board has, in this case, exceeded its authority and

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rewritten the Code, not just interpreted it.

Commissioner Blumenauer asked if there is anything to stop any person in the cab industry from taking the top light off and move over into premium service?

Mr. Van Hoomisen said no, the City's current policy will eventually force that very thing to occur and the quality of service will decline and the market will segment.

Commissioner Blumenauer said that might be an experiment to be tried. Would it be possible to regulate less tightly in terms of the number and let those who want to be in the luxury car business go out and compete?

Mr. Van Hoomisen said it would be fair for the City either to relieve the taxicab industry of the regulatory burden or to place those same burdens on luxury transportation. But the current system leads to a logically inconsistent regulatory structure.

Commissioner Blumenauer asked him to comment at some point on the idea of giving licenses to any qualified person who wants to operate under the taxicab rules and regulations. Then let everyone who wants to operate the other way compete in the towncar, unregulated market.

Mr. Van Hoomisen said that would require a major restructuring of the regulatory framework and would not be appropriate without a lot of debate. He agreed to meet with Commissioner Blumenauer for further discussion about releasing the cap on the number of cabs.

Joseph Meran, no address given, said the majority of cab drivers are respectful to the public, whether they have a \$3.00 or \$25.00 fare. He asked if Larry at the Airport owns a percentage of the Towncar company, as he has heard.

Mayor Katz said she does not know if anyone can respond to that. She said it appears that change is occurring in the industry and that's why there is so much frustration and anger.

Dennis Bromka, Pacific Towncar, said this year the Taxicab Board of Appeal clarified what it meant by its 1993 definitions of luxury transportation and he believes what was produced is workable. He said in 1994 he asked people at the Port, the hotels and the travel industry how they would react if business travel transportation was provided to professionals traveling to Portland. They responded very favorably so last year he went into business. He said he found a



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percentage of people in Portland who did not want to take taxis and who are willing to pay for a reasonable alternative. He opposed any rate regulation, contending that his company exceeds the minimum standards imposed by Code on the taxicabs and do not need to be regulated.

Commissioner Hales asked how their rate structure works, noting the charge about redlining. Are rates quoted in advance.

Mr. Bromka said all rates are based on a unit base between the Airport and Downtown and increase by \$5.00 increments in concentric circles. From the Airport to downtown is \$25.00, to Beaverton is \$40.00 and to North Portland is \$20.00. There is no redlining.

Commissioner Blumenauer asked him to respond later to the idea of letting anyone who wants to operate a cab, play by cab regulations, and letting people who want to provide premium service operate without them.

Bobbie Mehar, Radio Cab Company driver, charged that the towncars are undercutting cab drivers, noting that it costs cab drivers \$20-25 to provide that service and she does not consider their rate to be a premium one. She said they have also gotten complaints from people about towncars that never showed up.

Abraham Semari, Portland Cab Company, said the current rate system is driving cab drivers into the welfare system. Also, if all cabs take their lights off and drivers refuse short fares and handicapped service, what will happen to the system? Cabs and towncars should be equally regulated.

Commissioner Hales asked if anyone was here from the Port as the operation at the Airport seems to be the major source of concern. Did the Port negotiate with the City in advance about how this service would be provided?

Mr. Nelson said no, but the Bureau is aware of what is going on at the Port, which has been conducting a 90-day trial of luxury car service. He described how the executive service works and noted that it has proved to be very popular and the trial was instituted at the request of many business travellers. The Port plans to move ahead and establish permanent executive car service, which at some airports, has grown to take 30 to 50 percent of the rides.

Mayor Katz asked if the executive cars can reject a passenger.

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Mr. Nelson said in some cases luxury drivers have told people that taxis are cheaper. That could be considered shoving customers over to cabs and he does not know if it is sanctioned by the Airport. That is the kind of thing they are trying to get a handle on during the trial period. He said it is not his business to tell the Port how to get their people downtown. They have their passengers, liability interests and service standards at heart and he is not about to say don't do that and do this.

Commissioner Blumenauer asked, if the City is regulating taxicabs, why would it not be in its interest to suggest certain principles to the Port that would make a difference; for example, that there ought to be a uniform response about rates, refusals, etc., to avoid discriminatory practices?

Mr. Nelson said he discussed many of those things with the Port, which wants to work with the City.

Commissioner Blumenauer said as long as taxicabs are regulated, should not the Bureau be proactive to protect the system.

Mr. Nelson said it is not his business to dictate to them but he can and does advise. That is one of the things that goes on at the Taxicab Board meetings.

Commissioner Hales said the problem is the Port is dictating policy to the City by setting up this kind of service curbside without cross referencing City taxicab regulations. They set the stage for this confrontation. Does the Port plan to wait to issue its RFP until the City comments?

Mr. Nelson said they work very cooperatively with the Port, which is very aware of the City's regulations. They do not want to foul each other up.

Commissioner Hales said the issue never got to this point of contention until the inception of this experiment at the airport.

Mr. Nelson said he would characterize it more as a growth in the executive car service, most visibly at the airport. The question that arose was whether City rules are broken if the Port gives a company a permit to operate this kind of service. That is what the Board looked at this summer. The Board's answer was no and it found no reason to prevent the Port, a hotel or corporation from engaging in that transportation service.

Mayor Katz said service by reservation is relatively clear to most

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people but, as she understands it, if the Port had not made its request the City would probably not have redefined service by reservation to be on demand and then had to finesse the doormen at the hotels. Why did the Board review some of these definitions?

Mr. Nelson said one of the issues that brought this to the Board's attention was service at the airport. When it reviewed the "by reservation only" definition which stated it as "not to be hailed from the street," the Board first asked whether it needs to protect the riding public. The second piece is whether City regulation is unnecessarily being imposed into the marketplace. Third, what is the impact on the whole industry. He said they could find no basis to deprive business travelers of the service and felt the public was protected through screening by hotels and the airport.

Mayor Katz said for her the issue of service by reservation only, i.e., not to be hailed on the street, is the one that separates the two types of service. She said she is nervous about it now being defined basically as "on demand" without a specified time for a reservation. She also has a problem about kick backs and rewarding people at the end of the month for providing a service on demand, not reservation.

Mr. Nelson said that issue is beyond his purview.

Mayor Katz said there cannot be a two-tiered system and then a change in the definition.

Commissioner Kafoury said the committee did a very good job with the report, laying out both sides. What Council needs to do is to go through and see if it agrees with the logic. The anger overlay does not help, even though it is understandable. Is there a real difference in the way these two industries operate right now? She said when she saw the ads in the taxi section of the phone book, it triggered the change for her. She asked Mr. Nelson why taxis should not be deregulated altogether.

Mr. Nelson said they can review that again. He said there is a two-tier system today and people can choose between the two.

Clyde Earl, Taxicab Board of Review, said the Board carefully reviewed these issues, with a lot of debate about the definitions. The introduction of luxury cars at the Airport changed the whole definition of "on demand" but because the Port is a regulatory body itself, that makes it different, in his mind, than other areas of the City. There is still the issue regarding reservations and the amount of time that elapses before arrival. He also considers a request for service other than a cab as a reservation.

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Mayor Katz said if someone is standing there and goes up to the driver, it is "on demand." It is also "on demand" if the doorperson goes to the phone and, instead of calling a cab, calls the limousine service even though there was no specific request for such service. That is where she has some difficulty.

Bill Graham, Board member and employee in the Bureau of Traffic Management, said he opposed the motion because he could not determine what "substantially" different meant regarding the rate differential. Is it three, 50 or 80 percent? He said the rates should be "recognizably" different, as was the wording in the original motion.

Mayor Katz noted he also voted no on service by reservation only.

Mr. Graham said any vehicle that can be hailed is not by reservation in his mind. He said the taxicab zones can be used only by licensed cabs; any others would be cited. If town cars -- or taxis -- are parked in hotel zones, they can do so for 10 minutes. There are no zones for limos although they constantly receive requests for them. Since it is not a regulated industry, the Bureau will not provide them.

Commissioner Kafoury asked what Council wanted to do.

Mayor Katz said she is concerned that the Port seems to be driving this and unless the Council sends some clear instructions the City will not know what restrictions regarding fares or red lining will be placed on them.

Commissioner Hales asked if anyone had briefed the Port's governing body about this policy conflict between the City's taxicab regulation and their pilot project.

Mr. Nelson said there is no policy conflict between them. The City has worked closely with the Port to make sure they were in synch on this program. The Port is a responsible governing body and has its customers at heart.

Commissioner Hales said the problem for him is that the City has chosen the most invasive regulatory strategy possible, rate regulation, for the taxicab industry because it is in the public interest. Up until this experiment by the Port, the luxury car service seemed to be operating a clear and distinctly different service. Now there is overlap and a policy conflict. Until that is resolved, all that happens is the City creates winners and losers and uncertainty for both businesses. He said detailed conversations with the Port over its needs and objectives are needed.

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Mr. Nelson said Council recently considered the transportation permits under the Tri-Met contract and determined it had no business telling Tri-Met what to put in its contract even though there is some crossover between taxicabs and non-taxicabs. He considers the situation at the Port to be similar and does not understand why telling them how to run their business is appropriate. He said the Board does not believe what the Port proposes conflicts with City policy and feels the public is protected.

Mayor Katz said the Council is concerned with the change in the regulation because it has opened up the demand issue and is defining reservation a little bit differently. Her only recommendation would be to put a stop on the RFP until that is clarified. Council could introduce an ordinance reversing what the Board has done, which would put the Port in a difficult situation.

Commissioner Hales said he is not sure exactly what he wants to do but does know he does not want the Port to lock down the RFP without first resolving "on demand."

Mr. Nelson said he is still struggling with exactly what the problem is. Who is being harmed by the Port practice.

Mayor Katz said in 1993 service "by reservation only" was not having taxicabs and limos on demand. That is the troublesome part.

Mr. Nelson said that is a different opinion than the Taxicab Board came to.

Mayor Katz said clearly. Council can tell the Board to rethink this, and maybe reverse itself.

Commissioner Kafoury said the Taxicab Board stewed over this for two years and this is their best shot, although she is still uncomfortable with this. She remembers Commissioner Blumenauer asking why Council was sticking its nose in Tri-Met's business. Now Council is worried about the Port doing it. There is something different, which she has not been able to articulate although Mr. Van Hoomisen did speak to the broad public good involved here. No one would deny allowing rich people to use this service but she worries that town cars are operating as "on demand" taxis. But then she wonders, does the City care?

Commissioner Hales said that is what needs to be reexamined. He is against regulating price unless there is a very good reason. If the reasons are not very good, then the City should deregulate the industry and let everyone compete. But there may be a compelling

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public purpose in having a regulated transportation system that is provided by private companies.

Mayor Katz said she did not agree with regulating the price but also had a problem with changing the definition of service by reservation only. She said Council can decide not to accept the report and ask for further discussion among Council members. She said of immediate concern is the Port's RFP.

Commissioner Hales said he does not want to accept the report but asked Mr. Nelson to inform the Port immediately that it should not go out with an RFP that may conflict with City regulations.

Commissioner Kafoury said there must be some followup.

Commissioner Blumenauer said the only real differences he heard concerned the allegations about redlining and refusal of service. Those could be taken care of in an RFP. He is not certain that giving people a choice of service at the Port is a fundamental conflict. If the Port gets guidance from the City about premium rates, undercutting and making sure anybody has access to the service, beyond that he is not sure how much conflict there is.

Commissioner Hales said he thinks there is a big conflict as to whether the City regulates rates. If Mr. Van Hoomisen has cars with lights on top, we tell him what he can charge; if the cars do not, he can charge whatever he wants. That is an absurd situation.

Commissioner Blumenauer said there is nothing to prevent Mr. Van Hoomison from getting in the other line and being non-regulated. They should be able to do that if that is the business they want to be in. If they want to be in the cab business, they fall under City rules. No one forces people to drive either a cab or a towncar. Perhaps freer access to the cab market should be allowed.

Commissioner Kafoury said this makes her head spin.

Mayor Katz said the concept of reservation must be revisited and that while there is agreement about premium price, she disagrees.

Commissioner Kafoury said she will meet with Council members to get a sense of the issues. She asked that the report be referred back to her.

Mayor Katz asked that the Board be informed that Council is uncomfortable about the additional tweaking of the rules. She also asked Mr. Nelson to tell the Port to hold off for awhile.

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Mr. Nelson thanked Council for playing Taxicab Board today and for struggling as it does.

Mayor Katz said there is room for both businesses in the City but there is an element that makes everyone uncomfortable.

Commissioner Blumenauer moved that it be referred to Commissioner Kafoury. Hearing no objections, the Mayor so ordered.

**Disposition:** Referred to Commissioner of Public Affairs.

At 4:10 p.m., the Council adjourned.

BARBARA CLARK  
Auditor of the City of Portland

*Cay Kershner*

By Cay Kershner  
Clerk of the Council