



CITY OF  
**PORTLAND, OREGON**

**OFFICIAL  
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 28TH DAY OF FEBRUARY, 1996 AT 9:30 A.M.

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

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

Dr. Charles Grossman recognized the important role of Evans Carlson, on the 100th anniversary of his birth, in fostering Chinese and American friendship. In honor of this occasion the China Society in Beijing sent a group of performers to Portland. Dr. Grossman introduced the visitors.

On a Y-4 roll call, the Consent Agenda was adopted as follows:

**CONSENT AGENDA - NO DISCUSSION**

- 292** Cash investment balances January 11 through February 7, 1996 (Report; Treasurer)
- Disposition:** Placed on File.
- 293** Accept bid of Brundidge Construction for Ramsey Lake storm trunk for \$3,364,587 (Purchasing Report - Bid 80)
- Disposition:** Accepted; prepare contract.
- 294** Accept bid of Jim Miller Construction for restroom renovations at Glenhaven, Irving and Arbor Lodge Parks for \$227,441 (Purchasing Report - Bid 84)
- Disposition:** Accepted; prepare contract.

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**295** Accept bid of Pro Landscape for Ramsey Lake planting project for \$131,175 (Purchasing Report - Bid 90)

**Disposition:** Accepted; prepare contract.

**296** Accept bid of Alliance Corporation for SW Broadway sewer reconstruction for \$77,521 (Purchasing Report - Bid 94)

**Disposition:** Accepted; prepare contract.

**297** Vacate a certain portion of NW 90th Avenue and NW Bella Vista Drive, under certain conditions (Ordinance; C-9899)

**Disposition:** Passed to Second Reading March 6, 1996 at 9:30 a.m.

**Mayor Vera Katz**

**298** Amend Portland City Code regarding resale of tickets to events at municipal facilities (Ordinance; amend Code Section 14.36.070)

**Disposition:** Passed to Second Reading March 6, 1996 at 9:30 a.m.

**\*299** Pay claim of Wendy Haston (Ordinance)

**Disposition:** Ordinance No. 169825. (Y-4)

**\*300** Pay claim of Mark Libra (Ordinance)

**Disposition:** Ordinance No. 169826. (Y-4)

**\*301** Establish one Senior MIS Support Analyst position in the Bureau of Information Services in accordance with the Personnel Rules adopted by the City Council (Ordinance)

**Disposition:** Ordinance No. 169827. (Y-4)

**\*302** Authorize temporary appointment of David S. Hasson to the position of Economist II at a rate of pay above entry (Ordinance)

**Disposition:** Ordinance No. 169828. (Y-4)

**Commissioner Earl Blumenauer**

**303** Accept completion of contract with All Concrete Specialities for the NE 15th/16th decoupling project, holding in abeyance work on Change Order No. 16; authorize final payment and release retainage (Report; Contract No. 29809)

**Disposition:** Accepted

**\*304** Intergovernmental Agreement between the Portland Development Commission, City of Portland Office of Transportation and METRO to provide up to \$100,000 for economic and development impact analyses of selected segments of the South/North Light Rail alignment (Ordinance)

**Disposition:** Ordinance No. 169829. (Y-4)

**\*305** Authorize a contract and provide payment for traffic signal remodels at six locations and one new traffic signal (Ordinance)

**Disposition:** Ordinance No. 169830. (Y-4)

**Commissioner Charlie Hales**

**306** Accept completion of contract with Zink Commercial Contractors for construction of Fire Station No. 17 and authorize final retainage payment (Report; Contract No. 29632)

**Disposition:** Accepted.

**307** Accept completion of contract with Basic Fire Protection, Inc. for installation of a sprinkler system and authorize final payment of \$19,618 (Report; Contract No. 29928)

**Disposition:** Accepted.

**308** Accept completion of Portland Tennis Center HVAC replacement and authorize final payment to Entek Corp. for \$44,832 (Report; Contract No. 30273)

**Disposition:** Accepted.

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**309** Contract with Multnomah County Rural Fire District No. 30 for periodic mutual emergency assistance (Ordinance)

**Disposition:** Passed to Second Reading March 6, 1996 at 9:30 a.m.

**\*310** Acquire land by purchase from Portland Public Schools for park purposes (Ordinance)

**Disposition:** Ordinance No. 169831. (Y-4)

**\*311** Authorize a contract and provide for payment for the renovation of Duniway Park (Ordinance)

**Disposition:** Ordinance No. 169832. (Y-4)

**\*312** Authorize a contract and provide for payment for the renovation of Normandale Park (Ordinance)

**Disposition:** Ordinance No. 169833. (Y-4)

**Commissioner Gretchen Kafoury**

**\*313** Increase contract with Mackenzie/Saito & Associates for architectural services by \$6,280 for design of the East Portland Community Policing facility (Ordinance; amend Contract No. 29849)

**Disposition:** Ordinance No. 169834. (Y-4)

**Commissioner Mike Lindberg**

**314** Accept completion of Phase I, Unit 2 of the Alder basin relief and reconstruction project and authorize final payment to Constructors-Pamco (Report; Contract No. 29058)

**Disposition:** Accepted.

**\*315** Authorize a contract and provide for payment for the Columbia Slough watershed tree planting project (Ordinance)

**Disposition:** Ordinance No. 169835. (Y-4)

**\*316** Contract with ValueCAD for professional services for the sewer quarter section mapping update and provide for payment (Ordinance)

**Disposition:** Ordinance No. 169836. (Y-4)

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- \*317** Authorize a contract and provide for payment for the construction of 6-inch and 8-inch water mains in N Decatur, N Banks, N James, N Crawford and NW Midway (Ordinance)

**Disposition:** Ordinance No. 169837. (Y-4)

- 318** Amend City Code to provide Water Bureau ownership and repair or replacement of privately owned water meters more than one inch (Second Reading Agenda 274; amend Code Sections 21.12.260, 21.12.265 and 21.12.330)

**Disposition:** Ordinance No. 169838. (Y-4)

**City Auditor Barbara Clark**

- \*319** Cancel sidewalk repair lien (Ordinance; amend Ordinance No. 162200)

**Disposition:** Ordinance No. 169839. (Y-4)

**REGULAR AGENDA**

- 320** Reject all bids for street improvements: NE 21st and Siskiyou; NE 24th and Siskiyou; NE 24th and Klickitat; NE 21st and Regents Dr.; N Denver, Kilpatrick to McClellan; NE 15th at Shaver; and NE 15th at Failing (Previous Agenda 255; Bid 83)

**Disposition:** Accepted. (Y-4)

**Commissioner Earl Blumenauer**

- \*321** Agreement with the Oregon Department of Transportation and the Metropolitan Service District to jointly study the feasibility of congestion pricing in the region (Ordinance)

**Discussion:** Lavinia Wihtol, Bureau of Traffic Management, said this \$30,000 contract will compensate the City for staff time taken to study the feasibility of implementing congestion pricing. The City is one of seven jurisdictions participating in this two-year study. She said congestion pricing is seen as a possible solution to reducing traffic congestion in urban areas. It would toll people who choose to drive on heavily-used routes during peak hours. The concept was endorsed by Council during the Future Focus process.

Mayor Katz asked if this has been done yet anywhere in the country.

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Ms. Wihtol said twelve other studies are underway and it has been implemented on a public/private project in California on what was originally constructed as a private road. An HOV lane in San Diego was just initiated and is considered a form of congestion pricing. Singapore is the one place where it has been implemented and is working quite well.

Mayor Katz asked its purpose.

Ms. Wihtol said they will not have to build as many roads if they can take people off them during peak periods.

Commissioner Lindberg said he did not think legislation had been passed yet that would allow implementation of congestion pricing.

Ms. Wihtol said Senate Bill 621 was passed at the last session allowing public/private toll roads to be constructed in two areas -- Sherwood and the Newberg/Dundee bypass.

Rod Monroe, Metro Councilor and JPACT Chair, said this does not institute congestion pricing but simply implements a regional study. The funding is 80 percent federal and paid for with Intermodal Surface Transportation Efficiency Act (ISTEA) funds. He said congestion pricing only works if alternative travel modes are available as the purpose is to encourage people to use these during peak hour times so that more freeways and more traffic lanes do not have to be built. He said light rail would be one such alternative. He said congestion pricing is controversial but this study will provide the information that will allow public officials to make a reasoned choice in the future.

Commissioner Lindberg asked if Metro would seek the authority to implement congestion pricing in its legislative agenda for the next session.

Mr. Monroe said probably not until after the study is complete and they see if this is a workable option in this region.

Dick Feeney, Government Affairs Director, Tri-Met, said there has not been much implementation of this around the country yet and now is the time to do it, while ISTEA is still in place. He said the federal government looks to the Portland area to take some leadership in moving this along.

Mayor Katz asked how long it would take to decide if this is workable in the region.

Mr. Feeney said perhaps two years.

Dave Williams, Region I, Oregon Department of Transportation, said the Transportation Commission believes this is an idea worth pursuing and has provided half the match for the federal grant. It has no preconceived notion of how the public will respond or how to overcome some of the practical problems of implementation.

Maureen Quaid, Oregon Environmental Council, said the Council supports this pilot project because visionary solutions are needed to deal with increased congestion. This targets demand and could result in both decreased congestion and emissions. It could also reduce the demand for more highways and promote more efficient movement of goods and services. She said the Environmental Council has two recommendations regarding the project. First, its scope should be broad-based to increase the sense of fairness. Second, it should be revenue neutral and equitable, perhaps allocating vouchers to low-income drivers.

Joe Walicki, 918 SW Gaines, #12, a member of Metro's Regional Transportation Committee, urged support of the concept as a means of reducing traffic and improving air quality.

Commissioner Hales said this involves a complex set of issues and the City needs to work with the region on solutions. He said this is a tool people are not used to but if Portland does not want to look like Seattle it needs to consider new ways to deal with sprawl.

Commissioner Lindberg said he hopes those involved will start laying the ground work statewide by educating legislators about this concept.

Mayor Katz said two major benchmarks were identified here: 1) the reduction of other taxes to make this revenue neutral; and 2) increasing the number of people using alternative transportation. She said people need to see what the tradeoffs are.

**Disposition:** Ordinance No. 169840. (Y-4)

\*322

Authorize the Purchasing Agent to sign a Purchase Order with Balzer Pacific Equipment Co. for one new portable screen plant in the amount of \$82,800 without advertising for bids (Previous Agenda 259)

**Disposition:** Referred to the Commissioner of Public Works.

**Commissioner Mike Lindberg**

**\*323**

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

**Discussion:** Kathryn Hall, Right-of-Way Acquisition, Office of Transportation, reviewed purchase efforts to date and said no agreement on the price has yet been reached. This ordinance allows the negotiations to continue.

Mary Abrams, Bureau of Environmental Services (BES), described the need for siting a pollution reduction facility at this site as part of efforts to meet the state-mandated cleanup the Columbia Slough.

Dorothy Cofield, attorney representing the property owners, Bernard and Pearl Galitzki, said the City's offer of \$4,000 an acre for this 9-acre piece is unacceptable as the market supports a price \$140,000 per acre, about \$3.25 per foot. She said the City's offer does not reflect fair market value or severage damages resulting from taking nine acres right out of the center of the Galitzki's property. There are also consequential damages. She said the Galitzki's made a well-supported counter offer which was not accepted City staff. The Galitzki's are not fighting the City's need for this property but do intend to fight for fair market value.

Commissioner Hales noted that this ordinance authorizes continued negotiation on just these issues. He said he heard two contradictory statements. First, that the Galitzki's were not fighting the City's need for this land and, second, that there is a problem with the developability of the remaining parcel. He said he assumes the parcel BES wants to purchase is in the area that was designated as not developable, or not easily developable, when the Columbia Sough Shore plan was done. He said he understood that at that time agreement had been reached as to which portions were developable and which were not.

Regarding the area covered by the Conservation Zone, Ms. Cofield said under the Code the Galitzki's could alter this area and mitigate in another area. Also, under the City's Code for industrial parks, one can transfer density so they could make use of 100 percent building coverage in other areas of the property that are not going to be condemned and use this nine acres as open space to go towards the landscaping requirement.



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Commissioner Hales said he was worried that inconsistent signals were being given by leaving a portion of the property unencumbered by environmental zoning and then nibbling away at that with this purchase. However, this piece of property does not appear to be environmentally zoned.

Mr. Galitzki said Council approved a new platting some years ago, part of which is in the area the City now wants to buy. That means they would lose some of the benefits they had agreed to which would permit usable lots along the future Mason Street. If the City condemns that entire portion, the benefits of having more developable property are lost.

Ms. Hall identified the cross-hatched area on the map which the City would like to acquire. Presumably, if the property owners continued to develop the other acreage, they could consider constructing a north/south access way.

Mr. Galitzki identified the area which the City designated as usable for development. If it takes the nine acres, they will be left with a very narrow usable portion at the curve of Mason Street.

Duncan Brown, Planning Bureau staff, said the area in the Environmental Conservation zone can be developed for industrial purposes with mitigation, either through enhancement of an already existing environmentally-zoned area or through creation of new natural resource areas.

Mayor Katz asked if the Galitzkis were given the green light about developing that particular land with mitigation.

Mr. Brown said yes.

Ms. Cofield said if a regulation is placed on property and it is later found that was done in anticipation of condemnation, the land is valued as if that regulation was not there. The Galitzkis contend that the land has a value of \$3.25 per foot, as if it were fully-developable.

Commissioner Hales said the questions for Council are whether BES has done due diligence in planning for the facility and whether the City has been inconsistent in stating go ahead and develop this property while at the same time removing all possibility of that. He said he believes the City has been consistent.

Ms. Cofield asked if Council had any role in deciding how much could be spent.

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Mayor Katz asked if BES will back out of the purchase if the judgment comes in too high. Is it prepared to potentially pay the highest figure?

Linda Meng, Senior Deputy City Attorney, said State law provides that a public body can abandon a condemnation proceeding if it agrees to pay attorney fees and other costs.

Catherine Collis, BES, said this is a very important property for BES but if it became clear that the cost and the timing were prohibitive that would be weighed against the legal fees. Staff would take advice from Council as to whether to move forward.

Commissioner Lindberg asked how crucial this project is to clean-up efforts in the Slough.

Ms. Collis said this facility is critical to efforts to meet existing stormwater and other regulations regarding load limits for certain pollutants. She said there are very few opportunities for land acquisition in the Slough and this is a prime one. However, at some point the timing and price both have to be weighed.

Commissioner Lindberg said the price would depend on what is approved in the budget. He noted the many challenges to keep rates at the level budgeted.

Mayor Katz said this could impact the rate structure and she does not want to make a decision about this land without having that rate discussion first.

Ms. Collis noted that the existing budget contains money for this purchase, but at the \$4,000 per acre cost. However, money is budgeted for other property acquisitions in the Slough and if the price for the Galitzki property is higher than budgeted that will be weighed against other possible property acquisitions to see what the tradeoffs are. She said land acquisition is very tricky.

Mr. Galitzki said they have tried to be good citizens and know Council will be just and fair about this.

Mayor Katz said it will be the courts that will be just and fair.

**Disposition:** Ordinance No. 169841. (Y-4)

Commissioner Hales moved acceptance of an item to be heard on the Four-Fifths Agenda.

**FOUR-FIFTHS AGENDA**

324

Make findings to support prior City Council decision regarding performance of work by the Water Bureau (Resolution introduced by Commissioner Lindberg)

**Discussion:** Jim Van Dyke, Deputy City Attorney, said this responds to law suits filed by the Associated General Contractors (AGC) and a number of private bidders regarding the Brentwood project, the water main construction project to be undertaken by the Water Bureau's own crews. This was approved by Council December 20, 1995. The plaintiffs contend the City failed to follow the correct procedures in making its decision and, although the City Attorney's office disagrees, it has decided to supplement the prior record to eliminate any procedural objections. He said this will allow them to focus on substantive issues such as the contention that the City's cost estimate is flawed. This resolution supplements the record and also notes that there were other reasons to reject the bids of the private contractors, particularly their failure to meet "good faith effort" requirements.

Andy Jordan, representing the AGC and the private contractors who bid on this project, said they reluctantly filed a lawsuit because there were both procedural and substantive defects in the process that awarded this to the Water Bureau. In their view, this resolution acknowledges the significant defects in the process and is an attempt to cure them. He said if there are enough defects to attempt to correct them through the six paragraphs in this resolution, it indicates this is a substantially defective process and ought to be reexamined. Also, this resolution does not even cure the defects indicated in the resolution. It attempts to cure a defect with regard to filing a notice with the Department of Labor. However, that notice, which was filed just yesterday, does not spell out the fact that the project was intended to be done with the City's own personnel and equipment. The resolution states that a cost accounting system was adopted, relying on a Coopers and Lybrand finding in their 1995 audit, but nothing in that audit report states that a cost accounting system was ever adopted or applied in this case. All the audit states is that they found no violation of ORS 279 in their review. But they did not look. The resolution states that the Council adopted a cost comparison methodology but in the transcript of the December 20 meeting, Mayor Katz states that the methodology was not adopted and was not intended to be adopted until after the project is

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done. The bureau also attempted to find that its cost comparison methodology complies with State accounting guidelines. There is no finding of compliance with those guidelines and indeed the City and AGC cooperatively funded the study by KP&G Peat Marwick of whether or not the City complies with the guidelines. That study, which is only in draft form now, says the City has not. The City has also failed to show, as required under State law, that it complies with the least-cost policy. The resolution is also in error when it states there is a record as Council decided there was none when it made its December 20th decision. The City is required by law to create a record and plaintiffs request that record be submitted to the court. Finally, the resolution states that the private contractor's bids were rejected at least partially because they did not meet good faith efforts. However, the Coffman bid not only made good faith efforts but assured Council the goal would be met, making good faith efforts a moot point. AGC would argue that good faith efforts are unlawful under the Croson case because the City has not completed its disparity study. The City has decided in this case that the Brentwood project is a pilot project and that it will decide after it is done whether it was done right. The law does not allow this; it requires that the findings be done before approving such a project. This resolution does not cure the legal violation and the City should review this project again.

David Douthwaite, Governmental Affairs Manager, AGC, said they would like to continue to work on the cost methodology.

Mr. Van Dyke asked why AGC filed two suits requiring two different procedures. He said the City is allowed to supplement its record and he does not understand why Mr. Jordan is saying that is not permitted. He said good faith efforts require documentation which was not done.

Commissioner Lindberg asked if the Purchasing Agent had gone over the materials.

Mr. Van Dyke said yes.

Michael Rosenberger, Director, Water Bureau, said the Bureau thinks it is protecting the public and has tried to demonstrate that its cost methodology is correct. He said the Bureau worked with AGC for about eight months on the methodology and had hoped agreement had been reached. Now AGC is alleging there were 28 alleged discrepancies. The Water Bureau believes the methodology is correct.

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Mayor Katz said she is sorry this has happened as the City and unions made some hard decisions to get to this point.

**Disposition:** Resolution No. 35500. (Y-4)

At 10: 50 a.m., Council adjourned.

**BARBARA CLARK**  
Auditor of the City of Portland

*Cay Kershner*  
By Cay Kershner  
Clerk of the Council

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**WEDNESDAY, 2:00 PM, FEBRUARY 28, 1996**

**DUE TO THE LACK OF AN AGENDA**

**THERE WAS NO MEETING**