



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 10TH DAY OF APRIL, 1996 AT 9:30 A.M.

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

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

Agenda Nos. 519, 520 and 546 were pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 521** Accept bid of Tice Electric Company for FY 96 traffic signal remodel and traffic signal at SE Foster Rd. and 101st Ave for \$640,800 (Purchasing Report - Bid 121)
- Disposition:** Accepted; prepare contract.
- 522** Accept bid of James W. Fowler Company for Capitol Highway Pump Station for \$711,500 (Purchasing Report - Bid 123)
- Disposition:** Accepted; prepare contract.
- 523** Accept bid of Ben-Ko-Matic Brush and Equipment Co. for furnishing three 3-wheel front dump hydraulically driven broom street sweepers for \$278,235 (Purchasing Report - Bid 133)
- Disposition:** Accepted; prepare contract.
- 524** Accept bid of Portland Freightliner, Inc. for furnishing four 16,000 gvw cab & chassis with van body for \$169,956 (Purchasing Report - Bid 134)
- Disposition:** Accepted; prepare contract.
- 525** Accept bid of Davidson Utilities Inc. for N. Kilpatrick Street sewer reconstruction for \$74,747 (Purchasing Report - Bid 139)
- Disposition:** Accepted; prepare contract.

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Mayor Vera Katz

526 Confirm reappointment of Deborah Haring to the Police Internal Investigations Auditing Committee (Report)

Disposition: Confirmed. (Y-5)

527 Confirm reappointment of Jerome Caston, David Johnson, and Ann Sullivan to the Urban Forestry Commission (Report)

Disposition: Confirmed. (Y-5)

528 Confirm appointment of Jacqueline Dingfelder and Robert Jones to the Portland Utilities Review Board (Report)

Disposition: Confirmed. (Y-5)

529 Submit report on demographics of city boards and commissions, as of December 31, 1995 (Report)

Disposition: Placed on File.

***530** Create one Program Manager II/Business Development position and one Assistant Program Specialist position in the Bureau of Purchases & Stores; establish a new classification and salary rate for Business Systems Analyst in accordance with the Personnel Rules adopted by the City Council (Ordinance)

Disposition: Ordinance No. 169956. (Y-5)

***531** Pay claim of Barbara West (Ordinance)

Disposition: Ordinance No. 169957. (Y-5)

***532** Pay claim of Mary Cardoza (Ordinance)

Disposition: Ordinance No. 169958. (Y-5)

***533** Adopt revised City of Portland Loss Prevention Policy, and direct bureaus to prepare five-year loss prevention plans (Ordinance)

Disposition: Ordinance No. 169959. (Y-5)

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Commissioner Earl Blumenauer

***534** Amend Sections of the City Code to reflect changes previously authorized for Professional, Technical and Expert (PTE) services (Ordinance: amend Code Sections 5.01.020, 5.68.010, 5.68.030, 5.68.040, and 5.68.050.)

Disposition: Ordinance No. 169960. (Y-5)

***535** Settle a claim with Region VIII of the U.S. Environmental Protection Agency under the de minimis settlement proposal and consent order for waste material delivered to the Chemical Handling Corporation facility (Ordinance)

Disposition: Ordinance No. 169961. (Y-5)

***536** Accept a grant of \$200,000 from the U.S. Environmental Protection Agency for promoting redevelopment of contaminated property or "brownfields" within and adjacent to the Willamette River waterfront and the North-Northeast Portland Enterprise Zone and Enterprise Community (Ordinance)

Disposition: Ordinance No. 169962. (Y-5)

***537** Contract for the installation of emergency preemption devices and communications cabling to the central traffic signal computer system at various intersections (Ordinance)

Disposition: Ordinance No. 169963. (Y-5)

538 Authorize an Intergovernmental Agreement with the Tri-County Metropolitan Transportation District (Tri-Met) to provide inspection services for the Westside Light Rail Project (Second Reading Agenda 475)

Disposition: Ordinance No. 169964. (Y-5)

Commissioner Charlie Hales

***539** Authorize a contract and provide for payment for Hoyt Arboretum Visitors Center improvements (Ordinance)

Disposition: Ordinance No. 169965. (Y-5)

Commissioner Gretchen Miller Kafoury

***540** Contract with Multnomah County Community and Family Services Division for \$150,669 to provide direct client assistance linked with transitional and permanent housing for low-income residents of

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Multnomah County and provide for payment (Ordinance)

Disposition: Ordinance No. 169966. (Y-5)

- *541** Increase agreement with Salvation Army to provide beds of emergency winter housing by \$33,900 and provide for payment (Ordinance; amend Contract No. 30352)

Disposition: Ordinance No. 169967. (Y-5)

- *542** Contract with Cascade AIDS Project and Portland Community Reinvestment Initiative to rehabilitate seven houses for \$229,705, for people with HIV/AIDS and provide for payment (Ordinance)

Disposition: Ordinance No. 169968. (Y-5)

- *543** Grant permit to provide specially attended transportation services in the city (Ordinance)

Disposition: Ordinance No. 169969. (Y-5)

- *544** Enter into sublease for space at 1211 SW 5th (Ordinance; return Agenda No. 239)

Disposition: Ordinance No. 169970. (Y-5)

- 545** Amend bylaws of Metropolitan Human Rights Commission (Ordinance; Second Reading Agenda 483)

Disposition: Ordinance No. 169971. (Y-5)

Commissioner Mike Lindberg

- *547** Authorize negotiations for the purchase of permanent and temporary sewer easements required for the construction of the Sacajawea sanitary sewer project, to begin condemnation proceedings, if necessary, and obtain early possession (Ordinance)

Disposition: Ordinance No. 169972. (Y-5)

- *548** Authorize a contract and provide for payment for the North Portland sewer extension Project No. 1 (Ordinance)

Disposition: Ordinance No. 169973. (Y-5)

- *549** Authorize a contract and provide for payment for reconstruction of the sewers in NW Glisan Street from Park Avenue to Front Avenue

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(Ordinance)

Disposition: Ordinance No. 169974. (Y-5)

***550** Authorize a contract and provide for payment for the N. McKenna Ave., N. Berkeley Ave., and N. Clarendon Ave. Sanitary Sewer System (Ordinance)

Disposition: Ordinance No. 169975. (Y-5)

***551** Authorize a contract and provide for payment for reconstruction of the sewers in N. Willis Blvd from N. Brandon Ave., 379 linear feet west (Ordinance)

Disposition: Ordinance No. 169976. (Y-5)

***552** Authorize a contract and provide for payment for reconstruction of the sewers in NE 67th Ave. from NE Hancock to NE Broadway (Ordinance)

Disposition: Ordinance No. 169977. (Y-5)

***553** Authorize a contract and provide for payment for the design and construction of the Bull Run Lake underwater outlet pipe extension and valve operator replacement project (Ordinance)

Disposition: Ordinance No. 169978. (Y-5)

***554** Contract with the U.S. Geological Survey for streamflow and water quality monitoring without advertising for bids (Ordinance)

Disposition: Ordinance No. 169979. (Y-5)

***555** Authorize a contract with Marshall Associated Contractor, Inc. and provide for payment (Ordinance)

Disposition: Ordinance No. 169980. (Y-5)

City Auditor Barbara Clark

***556** Amend Ordinances 165934 and 166296 by reducing the amount of one system development charge loan and cancelling two system development charge contracts (Ordinance, amend Ordinance Nos. 165934, 166296)

Disposition: Ordinance No. 169981. (Y-5)

Mayor Katz read a proclamation in honor of Harry Glickman, manager of the Portland Trail Blazers.

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REGULAR AGENDA

516

TIME CERTAIN: 9:30 AM - Support policy recommendations as proposed by Portland Parks & Recreation and the Portland/Multnomah Commission on Aging, advocating for services and issues of concern for Portland's citizens 60 years of age and older (Resolution introduced by Commissioner Hales)

Discussion: Charles Jordan, Director, Bureau of Parks and Recreation, said seniors feel a strong need to be involved in Parks and the Bureau will sign a letter of agreement with the Commission clearly setting out its role in providing both basic and enhanced services. The Commission had asked for a redefinition of basic services to include more therapeutic and preventive services. This resolution outlines a policy calling for all bureaus to make an extra effort to include seniors in all decision-making efforts by holding meetings at accessible, convenient locations and times.

Esther McGinnis, 8331 SW 59th, Aging Services Commission, said the Parks Bureau can play an important preventive role by keeping seniors active.

Commissioner Lindberg asked if this would have budget implications.

Ms. McGinnis said yes, two packages are proposed, one for \$59,893 and one for \$210,000 above current levels.

Commissioner Lindberg noted that he had met with representatives of the aging community as a prelude to the budget and hopes that they will attend the scheduled community budget hearings to describe in detail the nature of their requests.

Mayor Katz asked what the budget implications are for the future.

Mr. Jordan said the Bureau believes it can go further in providing senior services, noting that recently it has placed a great deal of emphasis on youth programs.

Commissioner Lindberg noted that current Parks programs are weighted heavily towards youth -- 97 percent for youth programs versus three percent for seniors.

Bill Borden, Aging Commission and Grey Panthers member, said many elderly minority residents in Southeast are not currently being served and there is a real need for additional outreach and programs. He said the elderly should not be isolated but should be recruited to serve as well. He supported the additional budget requests.

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Commissioner Hales said preventive programs can avoid other costs later. The question is how the other bureaus will put these policies into practice and it is his hope that they will look for ways to involve seniors in policy development and the provision of services.

Mayor Katz said she recognizes Council's responsibility to consider funding issues tied to this policy. She said it should be easy for Council members to begin implementing these policies within their own bureaus.

Disposition: Resolution No. 35507. (Y-5)

519

Accept bids of Tulsie & Co. Inc., Pioneer Waterproofing Co., Inc., J.E.C. Mechanical, Inc. and EIR Electric for Ira Keller Fountain improvements for \$700,760 (Purchasing Report - Re-Bid 14)

Discussion: Carleton Chayer, Purchasing Agent, said Christianson Electric had filed a letter protesting the rejection of its bid. He said it was rejected because it did not satisfy the City's good faith requirements and he had explained to them the reasons why their bid had been termed unresponsive.

Denise Woodhouse, owner, EIR Electric, Battleground, WA, supported the award to her company and said Christenson's letter of protest strikes a blow to the City's good faith efforts. She has found contacting the 20 businesses on the list is a good networking tool, making her aware of available support services she could use on other projects, if not this one. She complimented the City on its multiple prime contract format, adding that there are a lot of abuses of good faith efforts and minority business designations and this allows a good alternative to that.

Jim Confer, President, Interwest Construction Inc., said this was a lost opportunity for Interwest as it was listed as an EFU (Economically Feasible Unit) but never contacted. If EIR is not awarded the bid it will show other minorities and small business owners that the guidelines do not apply to everyone.

James Cason, JEC Mechanical, 4134 N. Vancouver, Suite 303A, applauded the City's commitment to minorities, women and emerging businesses and said people need to follow the rules.

Mayor Katz asked if everyone received clear information about the need to call through the list of certified contractors.

Mr. Chayer said yes, that was stressed at the prebid conference and the documents are very clear about the need to call all the disadvantaged businesses listed.

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Mayor Katz noted that the City is trying to get the word out to minority, female and emerging businesses about what the City has to offer and encourage them to bid.

Commissioner Hales said this is a shakedown period for this program and staff should review whether even better and clearer information could be given.

Disposition: Accepted; prepare contract. (Y-5)

***517**

TIME CERTAIN: 10:00 AM - Authorize loan of \$150,000 to Portland Opera (Ordinance introduced by Commissioner Lindberg)

Discussion: Commissioner Lindberg said this loan request is in the greater financial interest of the community. He noted that the Opera had experienced a serious cash flow problem as a result of the floods, putting the rest of its season in jeopardy. He explained that the money is being loaned at six percent interest and will be repaid. Commissioner Lindberg reminded Council that the last time such a request had been granted, Council indicated that any future ones should be handled by the Regional Arts and Culture Commission (RACC). However, RACC does not yet have a policy in place to consider such requests and that needs to be implemented.

Robert Bailey, Manager, Portland Opera, outlined the Opera's current financial situation, noting a \$300,000 shortfall at the moment. However, long term, the future looks very good.

Dan Beggs, Portland Opera board member, said the Opera is not asking for a handout and has a plan in place to repay the loan.

Jeff Evershead, Opera board member, said the Board is engaged in a very extensive fund-raising effort at the moment.

Commissioner Blumenauer said he will support this but is concerned with the language referring to natural disasters. He cautioned that the City is not in a position to make such loans for the whole range of organizations that may have experienced losses due to flood damage.

Commissioner Hales said the City should not be seen as the Ford Foundation but it has a lot of partners, such as the Opera, helping to meet citizen expectations. When they ask for help on rare occasions it is reasonable to say yes.

Commissioner Kafoury said the language about natural disasters bothered her too.

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Commissioner Lindberg said if he were to rewrite this, he would take that out.

Mayor Katz said the City has partners in both education and the arts community. There is a precedent for doing this, the financial need is real, and the Opera board is fully committed to repayment. The City should see its loan repaid in two years.

Disposition: Ordinance No. 169982. (Y-5)

518

TIME CERTAIN: 10:15 AM - Accept and direct implementation of Metro Facilities Consolidation Committee Report (Resolution introduced by Commissioners Kafoury and Lindberg)

Discussion: Commissioner Lindberg said for over 10 years, the City has been trying to resolve the issues surrounding support for the Portland Center for the Performing Arts (PCPA). A task force was formed last year by Council and Metro to deal with such issues as ownership, financing and management of the Performing Arts Center and the Civic Stadium, which was later taken out and dealt with separately. He summarized the 11 recommendations of the task force. First, the facilities should be managed regionally under a flexible financial and operational management system. The Performing Arts Center should be subsidized utilizing pooled funds, with the estimated base need of \$1.5 million per year plus \$500,000 in tenant support and marketing, if funds are available. It recommends that the facility be managed through a contract with the private non-profit sector and noted that major capital improvements cannot be supported through basic operational revenues. One recommendation is that the City should make an ongoing financial commitment to the operation of the PCPA, which he believes is reasonable given the economic benefit to the downtown area. Resolution of the ownership issue has been delayed.

Commissioner Lindberg said while the task force was nearly unanimous in its recommendations, there was some disagreement and Mike Burton, Executive Director, Metro, has recommended, as an alternative, an increase in the hotel/motel tax from six to nine percent to equalize it throughout the region. That would take care of some, but not all, of the problems identified. He said there is friendly disagreement about how to resolve this but the task force did a tremendous job over 10 months and while there are some lingering, unresolved problems to do with funding the Performing Arts Center, this is a solid report that should be implemented.

Commissioner Kafoury said the task force avoided the funding issue to some extent for political reasons. The decision rests with elected officials and it is not incompatible for the City to work with Metro on establishing a permanent and stable funding base at the same time the independent commission is formed.

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Commissioner Lindberg said Mike Burton at Metro has suggested forming a tax study committee to look at the issue of an equal hotel/motel tax. He said it is possible to adopt this report and do that as well.

Mayor Katz said she understood there were not four votes on the Metro Council to support adoption of this report. If so, where does the City go from here? She asked those testifying to respond to this.

Mary Arnstadt, President, Heathman Management Group, and a citizen representative on the task force, said a transition team is needed to implement these recommendations. The facilities are healthier than they have been in the past, due to excellent operations by the on-property managers and healthy room tax revenues. They are not the complete answer however. While the committee did not directly address room tax revenues, they believe them to be understated and, if the partnership between the hotel industry and sports/entertainment facility remains healthy, this will benefit the City. She noted that the Tri-County Lodging board has stated that it wants to be part of further discussions regarding tax parity among the three counties. However, another increase in the Multnomah County hotel tax beyond parity would be very destructive and an even playing field is needed in any discussion of these issues.

Mayor Katz asked how such an increase would fit in with the financial plan. Should the City not adopt the report and just accept the raise in the other two counties, giving them enough money to maintain the facilities but then having the same problem in the following year.

Commissioner Lindberg said that would probably not generate enough money.

Ms. Arnstadt said that would be a short term solution. She said the hotel industry is very cyclical and its healthiness right now buys time to keep the facilities viable while stable funding is sought. The inability of the facilities to make agile decisions on signing contracts and getting added restroom facilities forces them to operate in a very cumbersome way. The performance of the property managers is very impressive and because of the connections between them she personally does not favor spinning off any of the facilities.

Bing Sheldon, President, Business Committee for the Arts, said there is enough money for a short-term fix now but a more flexible management system is needed. He said Council should adopt this now and keep looking for a long-term financial solution. He noted a lot of support in the community for the report.

Larry Harvey, Tri-County Lodging Association, said there is no disparity between passing this today and continuing to talk about regional tax

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policy. He said his industry will continue working with Metro to see what can be resolved regarding parity throughout the region.

Bill Bulick, Regional Arts and Culture Council (RACC), said the Board supports these recommendations. He said it is important to keep rents and users' fees in the affordable range for arts organizations. Allowing more autonomy in the management should also be beneficial, such as the non-profit model that has been discussed. Regarding cultural tourism, he said the planning process is now complete and they have some demonstration projects under way to show the impact on the region. He acknowledged the unresolved concerns about governance and funding but said Council should move ahead despite these.

Harriet Sherbourne, Manager, PCPA, noted the Metro Entertainment Recreation Commission's March resolution in support of these recommendations. She stressed the need for a more efficient management apparatus to respond to changing markets. She said they have successfully accomplished, as well as they could under the existing system, the goals set by the community regarding efficiency and maximization of earned income. She said these recommendations were not easily arrived at and reflect the greatest consensus among the arts community ever likely to happen. She urged adoption as this could come unravelled if the recommendations are not implemented. She said she understood that Metro would like the City to take the lead in endorsing the recommendations and that it would then follow suit.

Commissioner Lindberg said Metro may end up agreeing with nine out of the 11 recommendations. The City is trying to get consensus among all the entities but there may come a point when Council members personally need to push for resolution. He agreed with Ms. Sherbourne about the importance of not having this unravel.

Commissioner Blumenauer said because of the cyclical nature of the funding situation, he hopes a rainy day fund can be set up.

Commissioner Hales said some of the issues raised here are the same ones that were unresolved when the new Charter for Metro was adopted. The old model of Metro was "to get by;" the new one is to provide regional planning and facilities. Metro has to have the courage to ask voters if they are willing to pay for the facilities. He said he thinks the voters are ready to do that and that all these recommendations need to be put in effect as a package, not just the easy ones.

Commissioner Kafoury said it very hard for governments to be the keepers of public money and yet let others run things on their own, without tight control on everything. She said the City needs to keep working with Metro to make it understand that it can be responsible but still trust non-profit

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groups to do the day-to-day operations.

Mayor Katz said this is a package and she does not want the governance piece peeled off. She said the cost imposed on arts organizations is critical, as is the money needed for operations. She said since the City has been asked to be a financial partner in implementing this, it is critical to urge the Metro Council to keep this as a package so the policies stay together.

Disposition: Resolution No. 35508. (Y-5)

520 Accept bid of Moore Excavation Inc for NE 158th Avenue and private property sanitary sewer for \$1,048,314 (Purchasing Report - Bid 106)

Discussion: Mayor Katz said there appears to be some inconsistency in how the City deals with these bids.

Carleton Chayer, Purchasing Agent, said this is not the item of concern.

Disposition: Accepted; prepare contract. (Y-4)

546 Accept completion of the Stark Basin CSO Sump Project Unit 2 and authorize final payment to Moore Excavation, Inc. (Report; Contract No. 29915)

Discussion: Cay Kershner, Council Clerk, said the Bureau of Environmental Services has asked that this be filed for no further consideration as it plans to do a new one later.

Disposition: Filed for no further consideration.

557 Accept bid of Copenhagen Utilities & Construction Inc. for Brentwood sewer lines, water lines and street work for 4,343,356. (Purchasing Report - Bid 101)

Discussion: Carleton Chayer, Purchasing Agent, said they recommend that S-2's low bid be rejected because it was not prequalified by the City Engineer and that the second low bid (by Moore Construction) also be rejected because it was non-responsive to the good faith efforts requirements. Moore just won an award for over \$1 million so obviously this was an error on their part and they are not unaware of what needs to be done on City projects. He said the City's recommendation is to award the bid to the third lowest bidder, Copenhagen Utilities.

Jim Van Dyke, Deputy City Attorney, said the first three bidders were within \$20,000 of each other. Regarding S-2, neither the company nor the sub-contractor were pre-qualified to do the street improvement work, something the City always requires. He said he is willing to talk to them

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about their concern that the disqualification was proper but it is too late once the bids are opened. Two questions were raised by Moore's bid, both having to do with the good faith efforts. They were required to submit their documents within five days but only did so on the sixth, contending that they had done so previously. He said when staff checked they found that was because the fifth day was on a Sunday. He said while the two rejected bidders are considering filing law suits if Copenhagen's bid is accepted, he concurs with Purchasing's recommendation to award it the bid.

Kenneth Antel, attorney representing Moore, said Purchasing told them their bid was third and chances were low that they would win the award. He said the follow-up documents are quite cumbersome and time consuming, making it impractical to complete them if one is not the lowest or second lowest bidder. He said the City's rules go every which way and Moore was rejected because of technical non-compliance. He said ambiguities should be resolved in favor of the public and Moore should be awarded the bid.

Joe Yasback, attorney for S-2, denied that the company was not pre-qualified as it had already been pre-qualified by the Oregon Department of Transportation (ODOT) and the City's Code states that in that case the company is also considered to be pre-qualified by the City. He noted too that the City opened S-2's bid although its policy is not to open those of non pre-qualified bidders. He said the controversy arose because S-2 used an EFU sub-contractor for sidewalks, curbs and gutters as part of its 13 percent DBE (Disadvantaged Business Enterprises) contribution. He said S-2 was told that sub-contractors would be approved after bid openings in the normal course of contractor administration but what happened is that the City said the sub-contractor was not pre-qualified for \$800,000 of street work. He said they believe that happened because of a disagreement over another recent contract the City had with S-2 and staff is now being hyper-technical on this.

Vic Johnson, Copenhagen Construction and Utilities, said the City should be consistent in its requirements, one of which is pre-qualification.

Mayor Katz said there is a lot of talk about purchasing flow and the City needs to be consistent as these issues continually bubble up.

Mr. Van Dyke said even though S-2 was pre-qualified by ODOT, the City still has the option of pre-qualifying also. He said, in this case, the City did not come to the same conclusion that ODOT did as it had some concerns about work done on a prior project.

Mr. Chayer said the Code is very clear. While the City usually accepts ODOT's pre-qualification in lieu of an application, in this case the City

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Engineer decided to look deeper and, based on those findings, the pre-qualification was denied.

Mayor Katz asked if there had been complaints about the quality of work.

Mr. Chayer said yes.

Mr. Van Dyke said that is one reason why the bid specifications were amended on this project so that the prime contractor did not have to be pre-qualified if the sub-contractor was. He said this was done at the request of S-2 which was aware it had a pre-qualification problem and wanted to submit a subcontractor who was pre-qualified. Unfortunately, the sub-contractor it submitted was not pre-qualified and that was one reason why the City had to open their bid package. He said pre-qualification is a different issue from using a disadvantaged business as part of the work. Regarding Moore, he said they seem to have misunderstood where they were in the chain of bidders and therefore deliberately did not submit the needed documents within the five days. He said Moore told him today that it had a letter from Purchasing that referred to 48 hours and if so, that was a mistake, but that does not change his recommendation.

Commissioner Blumenauer moved to accept the bid. He said Council is always willing to accept ideas for improvements for streamlining but the established procedures need to be followed. He noted that all three bidders were very close and all were under the City's estimate.

Commissioner Hales said he is mystified about these challenges when there is so much construction work out there. He said he believes the City is consistent in its rules but needs to make a continuous effort to ensure that the process is not unnecessarily complicated. He said he sympathizes with those having to do all the paper work the City requires.

Disposition: Accepted; prepare contract. (Y-5)

Commissioner Charlie Hales

558

Appeal of Marty Rowe, Pacific Gateway Hospital and Counseling Centers of decision of Urban Forestry Commission (Hearing on Appeal)

Discussion: Cay Kershner, Clerk of the Council, said Mr. Rowe had requested a continuation.

Disposition: Continued to April 24, 1996 at 9:30 a.m.

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- 559 Change City Code provisions relating to public docking in parks (Second Reading Agenda 503; amend Code Section 19.16.060)

Disposition: Continued to April 10, 1996 at 2:00 p.m.

Commissioner Mike Lindberg

- 560 Recognize Groundwater Awareness Week and the value of Portland's groundwater resources (Resolution)

Discussion: Commissioner Lindberg said while the Bull Run is an enviable treasure, the City is doubly blessed because its groundwater resource in the Columbia South Shore adds significant value to the water system. That was especially evident during the February storms when groundwater was used to meet the drinking water needs of the region. He said the City is still struggling with a number of protection issues relating to groundwater and everyone needs to commit to keeping it clean.

Dan Aspinwall, 3565 SE Clinton, 97202, said Commissioner Lindberg paints a very rosy picture about the groundwater even though the well field went \$40 million over budget and will continue to be costly. He said turgidity from the Bull Run came from the logged areas and he will continue efforts to prevent further clear-cutting there.

Disposition: Resolution No. 35509. (Y-4)

- *561 Authorize an agreement with Montgomery Watson Americas, Inc. for \$803,500 for professional engineering and planning services to conduct the Open Reservoirs Study (Ordinance)

Discussion: Mike Rosenberger, Director, Bureau of Water Works, said a selection committee was used to determine the contractor, using a very rigorous, competitive process. He outlined the work to be done, noting that the first phase, at an estimated cost of \$803,000, will give them a complete report on all five open reservoirs, something they have never had before. He said the reservoirs are old and need a great deal of maintenance, particularly in the face of new seismic and water treatment standards. Whether the reservoirs should be covered is a major and highly technical question that needs to be resolved.

Commissioner Lindberg asked if one conclusion of this study would be to cover the reservoirs.

Mr. Rosenberger said the conclusions could range from covering them to abandoning them. There are soil stability issues due to leaks and maintenance plans need to be developed for each of them. Another question is whether they should be retained as part of the distribution

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system for another 20 to 100 years. It would be very expensive to cover them.

Mr. Aspinwall questioned the process by which Montgomery Watson had been selected. He said not going out to bid in this case gives the appearance of impropriety as the company is led by ex-Water Bureau employees, including former head Ed Tenny. He urged Council to hold public hearings and go to an open bid process rather than awarding a cream puff contract and relying on an "old boy network."

Commissioner Lindberg asked him if the company should be disqualified because former City employees work for it.

Mr. Aspinwall said no, but it should have to compete on an open basis. He said \$1.4 million could pay to cover some of the reservoirs and he questioned doing a study to fix a leak or cover one.

Commissioner Lindberg said sometimes studies save money over the longer term.

Mr. Aspinwall said doing a big study is what is best for the Water Bureau but that is not what is best for the City.

Tom Cropper, PO Box 18025, 97218-0025, said placing an emergency clause on this ordinance does not allow adequate public input. He said he was not able to get a copy of the selection committee's report to learn why this company was unique and why this contract could not be opened to public bidding. He said he would like to know who else qualified.

Mayor Katz asked about the Code requirements on professional services contracts.

Harry Auerbach, Deputy City Attorney, said Code Section 5.68 is applicable here. He said as part of the selection process, three firms submitted proposals and were interviewed. Coming before Council counts as the public hearing. He said a written advertisement seeking proposals was placed in the newspaper and it is not as if there were no competition or public participation. For professional services contracts, one is allowed to consider criteria other than price.

Mr. Rosenberger reiterated that there had been an open bid process, and both qualification and proposal requirements. This was not a sole source process but only three bidders responded to the advertisement.

Disposition: Ordinance No. 169983. (Y-4)

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City Auditor Barbara Clark

562 Assess benefitted property for the costs of the NW 9th Avenue Local Improvement District (Second Reading Agenda 508; C-9693)

Disposition: Ordinance No. 169984. (Y-4)

***563** Create the NE Jarrett Street and 138th Avenue Local Improvement District (Previous Agenda 509; C-9896)

Disposition: Ordinance No. 169985. (Y-4)

At 11:56 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 10TH DAY OF APRIL, 1996 AT 2:00 P.M.

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

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

559 Change City Code provisions relating to public docking in parks (Second Reading Agenda 503; amend Code Section 19.16.060)

Discussion: Commissioner Kafoury said people had called her to complain about preferential treatment.

Harry Auerbach, Deputy City Attorney, said the intent is to keep the docks open and available.

Discussion: Ordinance No. 169986. (Y-4)

565 Amend Title 33, Planning and Zoning, to update regulations pertaining to the protection of Portland's Historic Resources (Second Reading as amended Agenda 514; amend Title 33)

Disposition: Ordinance No. 169987 as amended. (Y-4)

564 **TIME CERTAIN: 2:00 PM** - Appeal of A & B Towing of Tow Board action taken January 17, 1996 (Hearing on Appeal)

Discussion: Dennis Nelson, Chair, Towing Board, said the board recommended termination of the A & B Towing contract due to numerous contract violations, including 14 documented incidents of overcharging or overbilling, often of \$150 to \$200 per tow. He said they were charging private "retail" rates as opposed to what the City allows by contract. He said these billing practices have been of concern for some time and A & B does not dispute the overbilling charges. The company also engaged in "call jumping" practices and failed to use separate tow vehicles, as required, in the two districts for which it has contracts.

Dan Lorenz, attorney for A & B, said termination will mean the company will be disqualified from three years of City work since the City is now in the process of going from a one- to a three-year contract. Termination will cost A & B about \$30,000 per month in revenues. He said the overcharging violations occurred on occasions where the tow calls originally came in as private non-preferential tows. The company admitted there

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had been a problem and refunded those who had been mistakenly overcharged. Regarding the "call jumping" charge, Mr. Lorenz said the original charge was that the company was using scanners to intercept calls. That allegation was withdrawn as totally insupportable. He said the company now has a policy of never accepting employment unless it is dispatched to the scene. In one case, however, a tower happened upon an accident that had not been called in yet. He said this was not call jumping. As for the cross-response violation, Mr. Lorenz said when no towers are available in one district, those in another are called. In this case a car with very expensive stereo equipment was towed and the tower felt it would be safer in one storage yard, rather than the one in the district, because of theft problems.

Jack Benson, A & B Towing, said he has been a contractor for 20 years with the City and has never before been suspended or put on probation. He admitted to some management lapses but said new practices were put into effect and there have been no complaints since then. He asked Council not to put a company with 46 employees out of business.

Commissioner Lindberg asked what percentage of business is done with the City.

Mr. Benson said approximately one third. He said all the overcharges occurred because the calls were dispatched as private preference tows.

Roscoe Nelson, attorney for A & B Towing, stressed that once brought to Mr. Benson's attention, the company took action and there have been no problems since. He said there is no precedent for this drastic action.

David Van Rene, Claims Supervisor, Farmers Insurance, said over the last three to four years he has noticed billing discrepancies in dealing with A & B, a company he has worked with for 20 years. He said when he brought this to their attention, it was totally disregarded. He said some salvage tow bills were altered at different times and he began referring the disputed bills to the Towing Coordinator, Marion Gaylord.

Mayor Katz asked if this were a fraudulent rate accusation.

Mr. Nelson said it was intentional overbilling, the result of being dispatched as private preference tows. He said tow logs were new at that time and a lot of these issues arose before they came into use. The company believes it was a recordkeeping error.

Commissioner Lindberg asked if there were levels of sanction other than a three-year suspension. He also asked if any intermediate steps were taken prior to this one.

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Mr. Nelson said letters dating from 1993 and 1994 were sent to A & B regarding the serious problems with overbilling, cross calling, etc. He said the Bureau's goal is to resolve problems informally if possible.

Commissioner Hales asked if A & B would be eligible for the next round because of the termination.

Mr. Nelson said they would not be eligible. Part of the language in the existing and proposed contracts states that anyone terminated from an existing contract is not eligible to participate in the next one. He said the normal contract period is two years but this past year they just did a one-year contract while they initiated the towing improvement plan. Now they are proposing what is essentially a three-year contract.

Commissioner Hales said he believes the truth is somewhere in between the two sides presented and he is sorry that more informal means did not resolve the dispute. He said while these contracts are not rights, they provide a pretty significant portion of business for the towers and saying no has a very large impact. He said he believes the sanction in this case is excessive.

Commissioner Kafoury said the Bureau spent a lot of time working through this and she respects their work. They are not trying frivolously to put someone out of business. She noted that much of the towing business has been generated because of changes in the City's laws, which has been a Godsend to the towing industry.

Commissioner Blumenauer said people rely on the City to make sure they are not ripped off by towers. Here there are documented problems going back years. He has no qualms about supporting the Tow Board as the public, not the towers, need to be able to rely on the City to provide quality control. In this case the City should protect the consumer and send a message to the towing companies not to cheat the consumer or insurance companies.

Commissioner Hales said that makes sense. He asked how many instances of overbilling had occurred.

Mr. Nelson said 14 with another 10 to 20 complaint difficulties over the prior year. He said there were overbillings in the amount of under \$100, several in the \$150-200 range and several above that. The difference in what can be charged under private contracts and what the City allows can be substantial.

Ms. Gaylord said there is virtually no control of the private rate.

Commissioner Lindberg asked if the suspension had to be for three years,

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under current rules, since they cannot bid on the next contract.

Mr. Nelson said suspension and termination are two different things. Suspension would have been for several months.

Mayor Katz said the contract could have been suspended to its ending date and then the Bureau could have recommended that A & B not receive the contract for the next three years.

Commissioner Hales said if the contract were suspended, A & B could make its case to the Board again.

Mayor Katz asked Mr. Nelson if he felt comfortable with the Tow Board recommendation.

Mr. Nelson said yes, many of Commissioner Blumenauer's remarks were also voiced by Tow Board members. Both the police and the public expect quality service. The City does not have time to monitor every one of the 25,000 to 30,000 tow transactions occurring yearly and must trust its contractors. A & B's pattern of serious violations over time indicated that this trust had been broken. The License Bureau has a good system for dealing with contractors who foul up once or twice but when there is an extensive pattern of serious violations, that is the time to impose heavy sanctions.

Commissioner Kafoury moved to deny the appeal and uphold the Board's decision.

Disposition: Appeal denied. (Y-4; N-1, Hales)

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

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council