



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 12TH DAY OF JUNE, 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; Harry Auerbach, Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

Agenda Nos. 993, 1000, 1002 and 1005 were pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 980** Cash investment balances May 2 through May 29, 1996 (Report; Treasurer)
Disposition: Placed on File.
- 981** Reject bid of McCoy Electric Co., Inc. for Airport Way I and Cherry Park pump stations PLC improvements (Purchasing Report - Bid 164)
Disposition: Accepted.
- 982** Accept bid of Les Schwab Tire Center for furnishing annual supply of retread truck, tractor and implement tires for \$106,975 for two years (Purchasing Report - Bid 185-A)
Disposition: Accepted; prepare contract.
- 983** Accept bid of Van Lom & Griffin, Inc. for Fire Bureau training center restroom addition for \$152,850 (Purchasing Report - Bid 187)
Disposition: Accepted; prepare contract.

Mayor Vera Katz

- 984** Confirm appointment of Jim Staley and Bruce Krohn to the Business License Board of Appeals (Report)
Disposition: Confirmed.

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***985** Pay claim of Darrell Steen (Ordinance)

Disposition: Ordinance No. 170227. (Y-4)

Commissioner Charlie Hales

986 Grant a ten-year property tax exemption to Walter McMonies, et al, for new multiple-unit housing on NW 20th Avenue between West Burnside and NW Everett Streets (Report and Recommendation)

Disposition: Accepted.

987 Grant a ten-year property tax exemption to Walter McMonies, et al, for new multiple-unit housing on NW 20th Avenue between West Burnside and NW Everett Streets (Ordinance)

Disposition: Passed to Second Reading June 19, 1996 at 9:30 a.m.

988 Confirm appointment of Jeana Woolley to Golf Advisory Committee (Report)

Disposition: Confirmed.

989 Accept completion of the improvement of the Neighborhood Traffic Management project at NE 14th Place intersections of NE Killingsworth and NE Alberta, make final payment and release retainage (Report; Contract No. 30187)

Disposition: Accepted.

***990** Contract with All Concrete Specialties, Inc. for \$54,693 to construct the Pedestrian Safety Project at SE 94th and Foster Road and provide for payment (Ordinance)

Disposition: Ordinance No. 170228. (Y-4)

***991** Apply to the National Highway Traffic Safety Administration for grant funds totaling \$337,500 to support community based initiatives that will result in Safe Communities through a reduction in the incidence of traffic injuries (Ordinance)

Disposition: Ordinance No. 170229. (Y-4)

***992** Grant a revocable permit to the Portland Chapter-American Rhododendron Society to construct a rock, viewing terrace in Crystal Springs Rhododendron Garden (Ordinance)

Disposition: Ordinance No. 170230. (Y-4)

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Commissioner Gretchen Miller Kafoury

- *994** Contract with Van Lom & Griffin, Inc. for \$152,850 for construction at the Fire Bureau's training center (Ordinance)
Disposition: Ordinance No. 170231. (Y-4)
- *995** Intergovernmental agreement with the City of Gresham to provide technical rescue assistance and training (Ordinance)
Disposition: Ordinance No. 170232. (Y-4)
- *996** Authorize the purchase of 37 microcomputers through the Oregon State Price Agreement for a total of \$98,544 and provide for payment (Ordinance)
Disposition: Ordinance No. 170233. (Y-4)
- *997** Amend float loan agreement with Bank of America Oregon, Bank of California, N.A., First Interstate Bank of Oregon, N.A., Key Bank of Oregon, United States Bank of Oregon and West One Bank, Oregon, and Key Bank of Oregon, Agent (Ordinance; amend Agreement No. 50205)
Disposition: Ordinance No. 170234. (Y-4)
- *998** Contract with Metropolitan Family Services for \$26,900 for Project Linkage Summer Yardwork project and provide for payment (Ordinance)
Disposition: Ordinance No. 170235. (Y-4)

Commissioner Mike Lindberg

- 999** Accept completion of the SW Broadway sewer reconstruction project and authorize final payment to Alliance Corporation (Report; Contract No. 30443)
Disposition: Accepted.
- *1001** Authorize the purchase of a parcel of land needed for the Columbia Slough Stormwater Management Project, subject to certain conditions (Ordinance)
Disposition: Ordinance No. 170236. (Y-4)
- *1003** Authorize a contract and provide for payment for the Willamette River Basins CSO sump project, Unit 9 (Ordinance)
Disposition: Ordinance No. 170237. (Y-4)

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- *1004** Authorize a contract and provide for payment for the Insley Basin CSO sump project, Unit 3, Phase 1 (Ordinance)

Disposition: Ordinance No. 170238. (Y-4)

City Auditor Barbara Clark

- 1006** Transmit Certificate of Completion for the NE Mason Street LID (Report; C-9879)

Disposition: Accepted.

REGULAR AGENDA

- 993** Accept completion of Columbia Pool bath house ADA improvements and authorize final payment to Jim Miller Construction (Previous Agenda 939; Contract No. 30253)

Discussion: Cay Kershner, Clerk of the Council, said an incorrect amount listed in the report should be corrected. Commissioner Hales moved the amendment. Commissioner Kafoury seconded and, hearing no objections, the Mayor so ordered.

Disposition: Accepted as amended. (Y-4)

- *1000** Authorize revocation of superseded easement agreement and enter into revocation agreement (Ordinance)

Discussion: The Clerk said this was filed prematurely and should be withdrawn for the present.

Disposition: Withdrawn.

- *1002** Authorize negotiations for the purchase of four parcels of land needed for a pollution reduction facility site located within the Columbia Slough South Shore, authorize the City Attorney to commence condemnation proceedings and authorize the City Attorney to obtain early possession (Ordinance)

Discussion: Mary Abrams, Bureau of Environmental Services (BES), Columbia Slough Watershed Manager, explained the City's need to obtain this property in order to build a stormwater treatment facility in the Columbia South Shore area where the bureau has three land acquisitions underway. This is the second to go into condemnation. The problem in this area is that as development increases in an industrial sanctuary so does the amount of impervious area and the resulting stormwater needs to be treated before it goes into the Slough. BES has an agreement with the Department of Environmental Quality to clean up the Slough and one of the major

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contributors to pollutants is stormwater.

Mayor Katz asked the appraised value of the property.

Shelley Wade, Office of Transportation, Right-of-Way Acquisition, said the appraised value of the total 22.94 acres is \$640,000. The City seeks approximately four acres.

Commissioner Lindberg said funds to obtain the property are in the budget but if the price turns out to be a lot higher than anticipated it would not be covered.

Ms. Abrams said it is difficult to find properties in the area and staff believes this is an important piece.

Dorothy Cofield, attorney representing Ruth Pruett, one of the property owners, described the zoning and the portion, right in the middle, of the property that would be taken in condemnation. She asked Council to review the condemnation process that BES and Right-of-Way have been using. While the ordinance states that the City wants to acquire possession by July 15 and that the appraised value is in the budget, she questioned whether this would actually happen. She said it is not in the best interests of her client to have the City drag out the pre-condemnation negotiations for two years and she would like assurances that the procedures described in the ordinance will be followed in a timely fashion. If a property owner goes to the expense of hiring a lawyer and paying for an appraisal and then the City decides not to pursue the condemnation, this could expose the City to some liability. At the last condemnation hearing it was stated that if a complaint is filed and then abandoned the City would be liable for costs and attorney fees but it would not be liable if the complaint was never filed. However, if the landowner cannot market the property because of the threat of condemnation, there will be liability exposure in terms of interference with prospective business. She said in this case the property owner was offered about \$28,000 an acre, in contrast to the Schlesinger property, where a settlement was reached for \$68,000 an acre. Budgeting for no more than \$28,000 an acre is unrealistic and the City should not rush around passing such ordinances if it does not have an appropriate amount in the budget.

Ruth Pruett, property owner, said this property had been assembled for an industrial park which they were preparing to develop when the City made its offer. They have now been waiting for two years, while the City tries to get up to speed as new managers are brought on. She said she is willing to let the City have it but hopes it will become a responsible land owner out there. A couple of rectangular puddles are not attractive.

Mayor Katz said the City should not be like the Freemen who file frivolous lawsuits that keep people from doing anything with their property.

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Commissioner Hales said he needs an overall grounding again from the Bureau on the plan for this area. What areas does the City need to purchase, what is it going to look like when completed, and how will the BES facility plan fit in with the whole industrial area? Why would the City ever begin condemnation and not complete it and has that happened?

Ms. Abrams said that has not happened within her program. She said they recently finished the Schlesinger condemnation and have started one with the Galitzkis. In this case there are environmental zoning questions and price issues so it may take longer than they would like. She would like nothing better than to take possession on July 15.

Commissioner Hales asked if some projects were taking a longer than normal time.

Kathryn Hall, Office of Transportation Right-of-Way Acquisition, said this program is different from other acquisitions in that BES has the ability to customize the design, partly to individual property owners' needs. They try to work with them on the shape and dimension. In addition, BES very much wanted to negotiate voluntary purchases and to that end negotiated a one-year option to purchase the property. During that time the property was appraised and the City made an offer, which was rejected. That is why they are before Council today. She said they are trying to move forward in a considerate way and to negotiate, as much as possible, a voluntary purchase. The condemnation ordinance itself would allow the City's attorneys to request early possession so that BES can proceed with the project while the determination of value is made.

Commissioner Lindberg said it would be helpful to take another look at the big picture and see how this piece fits in.

Commissioner Hales said this needs to go forward but a legitimate point has been made about the need for the City to be businesslike in its follow through. He asked staff to return to Council if something more needs to be done in order to be an effective partner with these property owners and to act swiftly.

Disposition: Ordinance No. 170239. (Y-4)

***1005** Contract with Damon S. Williams to provide engineering services for the Columbia Boulevard Wastewater Treatment Plant wet weather treatment facility influent pump station and provide for payment (Second Reading Agenda 954)

Discussion: Commissioner Lindberg moved to amend this to add an emergency clause. Hearing no objections, the Mayor so ordered.

Disposition: Ordinance No. 170240 as amended. (Y-4.)

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977 **TIME CERTAIN: 9:30 AM** - Present \$1,500 to Life Flight Network for the purpose of establishing a Global Positioning Satellite network in northern Oregon and southwestern Washington (Resolution introduced by Mayor Katz)

Discussion: David Kish, Director, Bureau of General Services, said this is an important partnership with Life Flight involving the public heliport and the Life Flight program, enabling more lives to be saved.

Larry Odell, Director of Life Flight for Legacy Health Systems, said this satellite navigation system is extremely accurate and will enhance the all-weather ability of the helicopters. He said that 65 percent of Life Flight's business involves the transport of patients from outlying areas to Portland hospitals and with this system in place they will be able to serve those areas more efficiently and safely. He described the three phases of the project, including the establishment of approaches into rural airports and, eventually, into community hospitals.

Betsy Johnson, Director, State Aeronautics Division, Oregon Department of Transportation, said they plan to establish this system at 10 sites in the State and the downtown heliport is their number one priority. She thanked the City for its leadership role in this area dating back to the 1980s when the heliport was established. Portland is the only major West Coast city with a heliport in its core and, while some cities have worked diligently to keep them out of the core, Portland has recognized their important role in the transportation system. The City's support of this infrastructure will truly make it a statewide resource.

Disposition: Resolution No. 35525. (Y-4)

Mayor Katz noted that an item had been introduced on the Four-Fifths Agenda. Commissioner Lindberg moved its acceptance; Commissioner Hales seconded and, hearing no objections, the Mayor so ordered.

***978** **TIME CERTAIN: 9:45 AM** - Contract for towing and storage of vehicles ordered by the City (Ordinance introduced by Commissioner Kafoury)

Discussion: Marion Gaylord, Towing Coordinator, Bureau of Licenses, described the process for awarding these contracts to 32 towers recommended by the Tow Board for the FY96-97 period. The District 5 contract is slightly different in order to accommodate the special needs of the Port of Portland. She said the towing program has been a successful one for 20 years and these new contracts continue a process of gradual upgrades. Last year's contract was a short-term one, allowing for certain immediate upgrades, and they now hope to go to a longer contract period. Changes in the new contract include establishing a schedule of small monetary penalties to speed up the enforcement process in the case of minor violations. This increases the enforcement authority of the towing coordinator, whose decisions are always

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appealable to the Tow Board. Also, actions of the Tow Board will now be appealed to the Code Hearings Office rather than City Council. The other primary change is the one plus two term option. She said this gives the City the option of extending contracts for an additional two years if towers meet certain additional criteria, including training, certification of drivers, and receive no more than two percent of complaints on the total number of tows performed. The towers in general support these changes. A storage rate increase was approved this year by the Board, rising for the first time in 10 years, and the Police Bureau will also increase its storage fees. Towers who qualify for the two-year extensions will receive a \$1.00 increase to the basic tow fee as part of the Bureau's goal to provide more gradual fee increases than in the past when there have been long gaps necessitating pretty big jumps to bring them into line with the Consumer Price Index. All other fees will remain unchanged. Ms. Gaylord also described the changes in the application process, which were made to ensure that the City awarded contracts to serious companies with good track records and that all companies are raised to a very professional level of behavior.

Mayor Katz asked Ms. Gaylord if the Bureau had conducted a customer survey which was mailed directly to her office.

Ms. Gaylord said that has not been done in the past but is one of the suggestions for the first year. She said currently customer satisfaction is based more on the volume and nature of the complaints but more proactive contact with customers is intended in the future. She said the towers have made remarkable efforts to improve their standards this year. Three new companies have been added.

Terry Slominski, attorney representing Eric Benson, objected to the rejection of Mr. Benson's application because of his lack of managerial experience. He said the Tow Board is discriminating against him because of his father. He said Charles Carnese, an attorney and member of the Tow Board, should have disclosed that he represents Sergeant's Towing. He said Ben Walters of the City Attorney's office has a letter which, within the last six months, has demonstrated that he does represent Sergeant. That is important because Mr. Carnese was the primary interrogator of Mr. Benson and told him at various times that he did not believe he had managerial experience with A & B Towing. Mr. Slominiski said he has filed a copy of the evidence submitted by Mr. Benson and a copy of the transcript of the Tow Board meeting although he noted that in many places where it indicates Dennis Nelson was talking it was actually Mr. Carnese. At one point Mr. Carnese said that when he was in high school he managed his father's tailor shop but he did not believe that Eric Benson could. Mr. Carnese referred to Mr. Benson as a child and it does not make any difference, in talking about discrimination, whether people are young or old. It is against the policies of the City and is illegal. However, at one point Mr. Nelson told some of the towers at the meeting that the reason Mr. Benson was being so scrutinized was because of his father. Ms. Gaylord

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obtained some statements solicited from Gary Coe of Speed's Towing (a competitor), Automobile Association of American (AAA) and the Clackamas County Sheriff's Deputy indicating that they were familiar with A & B but were not aware Mr. Benson was involved in management. There are two ways to be on the contract. You can own one truck and be in the tow business for one year. Or, you may have a substantial participation in the management -- you do not have to be the manager. Mr. Benson testified that because his father owned the company, people usually went directly to him. However, Eric Benson and Kwik-R are qualified and Mr. Carnese should have recused himself.

Commissioner Kafoury asked if that was his main point.

Mr. Slominski said yes.

William Runyon, General Manager, Western World Recovery, said he has done business with Eric Benson since early 1993 regarding truck towing. He said he owned his own towing company when he was 18 and his son has been running his business since he was 16.

Harold Beal said, as an old dinosaur who has been in the towing business in Portland since 1946, he has known Mr. Benson in his capacity as a manager for the past three years. He said he knows he is the manager because his company leases some property for the Gresham office and anytime there was a problem he always called Eric. He was the only one he or his employees called. Being called a child is very wrong as Eric is very capable of running this towing business and has been very up front and done what he said he would do.

Eric Benson, owner of Kwik-R Towing, said he is qualified in every way and will meet all the standards in the towing contract. He said he only wants to be given a fair shot and not be scrutinized because of his father and his mishaps with the City.

Mayor Katz asked Mr. Nelson if he voted in opposition to the denial on this contract.

Mr. Nelson said no, it was unanimous. No one was opposed.

Dan Lorenz, attorney representing A & B Towing, said A & B is not the subject of the contracts this morning but he wanted to bring to Council's attention the fact that an application was filed on behalf of A & B but was returned unopened. He asked Council to direct the Tow Board to at least consider that application and make a report to the Council. He noted that about a month ago A & B was terminated from the contract by Council after a fair amount of debate. There was some concern about the nature of the sanction and whether it should be temporary or long term. One change that is

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occurring is that, by reason of this contract, the City is effectively going to a three-year contract and, as a result, A & B is being disqualified not only for the 60 days between May and July 1, 1996 but effectively for an additional three years. He requested that Council ask the Tow Board to reconsider their application and make some provision for towers who wish to join this contract to do so on an annualized basis rather than having to wait a full three years before applying again.

James Bailey, 5249 NE Mason St., said he recently submitted an application for a towing contract on behalf of Atlas Towing. He met with the Tow Board coordinator at the Crystal Lane facility when she made her inspection and at that time asked her some direct questions as she had the Atlas application in her possession. She told him that the only problem she could foresee concerned Patrick Maher's ability to bid because of his two-year suspension. He said in his review of those documents he found that the suspension would have been up in March which would have made him eligible again. So he was prepared to come to the Tow Board and address that issue because he thought that would be the only issue raised. When he got there, however, Mr. Carnese went over the application with a microscope and a pair of tweezers looking for flyspecks in the pepper. He found some mistakes and he has since found out their application is in error. He requested that Council allow the company to make the corrections and resubmit an amended application, which he, and not Mr. Maher, will be totally responsible for.

Mayor Katz asked what the errors were.

Mr. Bailey said Mr. Maher stated that Atlas was a limited partnership, which is totally inappropriate as they could not possibly be one. He said he is not going to be a financial partner; he is going to be a participating partner. Mr. Maher is not an attorney and did not know that, nor is he. He just made some mistakes in what he was supposed to say. Lawyers are expensive and he was just trying to do it himself. He said he would submit an amended return. Another problem the City had was that he had the insurance company list him on the policy as doing business as Atlas Towing while the full terminology name was Atlas Towing and Sales. The reason for that was that he wanted to get hold of old dead car engines that do not have cracked blocks for export. He wants to incorporate, not create a partnership. He said that would have been done even before the contract was in effect so he could not understand Mr. Carnese's obvious disdain until he learned this morning that he has a conflict of interest because he is the attorney for another party. That bothers him. He thought Mr. Carnese was just a pro bono attorney serving the City but if he has clients in the tow business that is a conflict of interest and would explain why he was so vituperative in his comments.

Commissioner Hales asked for a response from staff.

Dennis Nelson, Chair, Towing Board of Review and Manager, License Bureau,

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said Mr. Carnese is a citizen member of the Board and an attorney in private practice. He noted a letter from Mr. Carnese to Deputy City Attorney Ben Walters regarding a potential Code amendment that was being discussed by the Police Bureau and the towers. In that letter he indicated that he represented the tow industry. Mr. Walters wrote back and said if that was correct, he could not be on the Tow Board. However, it is not true that Mr. Carnese represents the tow industry. It is a standard phrase he uses in all his letters. What he had done was to volunteer his services to the Police Bureau and the industry reps to draft an ordinance that would solve a problem. He received no money and did it as a member of the Board because he had the ability to do so. In fact, after the issue was raised, he stated that he knew he could not represent anyone and had no intention of doing that. He withdrew all involvement so there would be no pretense of his representing a company or the towing industry. Mr. Nelson said he went over the matter with Mr. Walters and agreed there was no conflict of interest involved, only an inadvertent statement in a letter, and that his activities were a volunteer effort, on behalf of no particular company, to solve a problem. Mr. Carnese has been a long time member of the Board and is extremely familiar with the issues involved. It is fair to say he participates fully and brings his legal experience to bear. Mr. Nelson said Mr. Carnese is a valuable Board member and his opinions are not tainted in any way. The assertion that he represents Sergeant's is incorrect. Mr. Preston, the owner of Sergeant's is the tow industry representative on the Board and the conversation that occurred after the Tow Board meeting with representatives of the Police Bureau and Mr. Preston were in that capacity and not on behalf of his own personal company.

Commissioner Lindberg asked for a response about the allegation regarding age discrimination.

Mr. Nelson said the Tow Board spent a lot of time with this application. There were extensive materials submitted by the applicant and Ms. Gaylord did an investigation on this issue because it was a key point in the application. Of primary concern, because this is a new company, was establishing whether or not Mr. Benson had three years of management experience in the tow industry. The issue of age came up because that three-year period would have gone back to a point when Mr. Benson was still in high school. There was some discussion by the Board as to whether a person at 17 or 18 would be involved in a management capacity in a big towing company. Mr. Nelson said he does not believe there were age discrimination issues but certainly Mr. Benson's age and capacity at the time was discussed by the Board. He said the Board spent a lot of time on this and in the end determined that there was sufficient evidence to cast doubt on the level of his experience and to preclude approving his application. There were also contradictions in the evidence submitted. One was that Mr. Benson was not listed by A & B Towing on their records until 1995. In addition, there were the comments from the Clackamas County Sheriff's deputy responsible for towing who indicated that he had not had business dealings with him. That

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was true also with AAA. There is no doubt he was involved in the towing business -- he's grown up in the business -- and this is no comment on his ability. However, it is a requirement that you have three years significant management participation in a company. The Board found the experience provided did not meet that standard and recommended not approving this contract.

Commissioner Kafoury asked if the action taken today means that no new tow companies will be brought in for the next three years.

Mr. Nelson said yes. Under the current recommendations the City will open this up again as an "all comers" contract three years from now.

Commissioner Kafoury asked if the Board discussed what would happen if a number of companies got into difficulty and fell off.

Mr. Nelson said the City has an option at the end of one year to extend a contract or to reopen it.

Commissioner Kafoury said there is some turnover in the business and it seems like there ought to be a provision that if companies go out of business or have problems, then new ones could be brought in. Three years seems like a long time.

Mr. Nelson said the vast majority, 28 companies, are renewing contractors and many have been on the contract for over 20 years. At the core it is a very stable industry, although there have been a few drop-offs and some sales of companies. The City reserves the option to not extend a contract next year. He said gradually the number of towers has increased over the years.

Commissioner Kafoury asked about the Atlas Towing license issue.

Mr. Nelson said the Board's recommendation was that Atlas Towing's contract not be approved based primarily on the fact that the company does not exist as a business entity. The State Corporation Commission has it listed as a sole proprietorship, with Donald Carpenter listed as the owner and sole signatory.

Ms. Gaylord described what she found when she checked Atlas Towing's business licenses. She found that, of the three listed, the top one was applied for by three people who are not shown anywhere on the applications that exist with this current entity. They were in business for about three months and then the account was closed. The City never received any financial information about them -- they simply paid \$100 and were given a first year's business license. The second two represent Mr. Maher's application as a sole proprietor who paid \$100 and got a first-year license. This year, at renewal time, he applied for a tentative license, and an extension for filing financial information. No financial information has as yet been filed. At that time too,

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Mr. Maher submitted another application saying that he was now a limited partnership but he lists no partners.

Mr. Nelson said the documents Ms. Gaylord reviewed, except for the business licenses which really do not tell much of anything, were all available to the Board at the time of their review.

Commissioner Hales said he is troubled by the way the Bureau operates and the way policies are put into practice by staff. He said whether it is taxicab licensing or towing, the City needs to pay attention to the way the regulatory structure actually works in the market place. Apparently, while the City creates no barriers to the creation of a towing business, in reality, getting a City contract is a big deal and if the City creates too high a hurdle to obtaining one, then the City creates an oligopoly where only a few control, or appear to control, the business. That is not healthy. No one is doing anything wrong but it is a question of how high a hurdle the City wants to set in terms of policy. He accepts that no one on the Towing Board is exerting inappropriate influence but the reality is that sometimes boards can turn out to be something like medieval guilds, protecting those who are already in. He said having a two or three year contract duration when such contracts have a huge effect on the financial viability of a company is of concern. He said he was concerned about A & B Towing and is concerned in this case where there is someone who is close to being qualified. He said he found some of the comments in the record about someone being a child offensive and wishes there could be some kind of probationary contract, not just feast or famine.

Commissioner Kafoury said, on the other hand, because this is a lucrative business and involved in City business, she has encouraged the Bureau to hold the towers to higher standards.

Commissioner Hales said there are two ways to do that. One can only let the creme de la creme into this deal or set a relatively low entry barrier and a high level of supervision.

Commissioner Kafoury said Ms. Gaylord has really worked hard to get out in the community and see how things are going. She said she would like to know if Council believes this is too restrictive.

Mayor Katz said one option would be to have the high standards but allow people the opportunity to join "the guild" every year, rather than waiting three years. If someone needs to learn a lesson, one year of not being involved with these contracts will hurt them financially and they may then get their act together. Waiting three years may force some out of business.

Mr. Nelson said these are the same issues the Board struggles with in trying to raise standards. Raising professionalism has been used as a barrier to entry. Regarding the oligopoly concern, he said every year the contract has

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been opened new companies come in and the City has more towers on the contract right now than ever before, including three new ones this year. Portland has more towing contractors than any comparable city in the country. He said it is fairly easy for a company with professional standards to get a City contract. On the other hand, several companies in town choose not to participate and do very well without City contracts. There is no perfect solution. One issue is that the annual contracting process is enormously time consuming for staff.

Commissioner Hales said the question is how often the window opens versus how long the contract lasts. If the contracts last three years and it is a stable industry and most of the players are long term, then they will not require a lot of supervision. So the question is how often do you open the window so someone rejected in this round does not have to wait a ludicrous amount of time to get another shot at it. It looks like Mr. Benson just barely fell short in peoples' minds of being qualified. Does he have to wait three years to prove his merit?

Mayor Katz said Ms. Gaylord could go on part time.

Commissioner Kafoury said she has another job.

Mr. Nelson said the window will again open under this proposal in three years for new people.

Commissioner Kafoury said Council is feeling some discomfort with that.

Mr. Nelson said Council could direct staff to have a limited window for new people only to reapply and the ones currently on the contract could be extended. That way they could avoid reinspection of existing contractors.

Commissioner Hales asked if that makes sense.

Ms. Gaylord said it does. Historically the contracts have been for two years but last year this was reduced to one year in order to raise the standards without slamming the industry with them all at once. She said the industry has been very patient about this as a one-year contract does not have much value to them as they need a little more predictability. This was an attempt to thank them for working with the City, by giving them a longer-term option.

Commissioner Hales said but the deal is we'll promise you some stability but not freedom from competition. That is what concerns him. Three-year contracts are fine. Three-year windows are not.

Commissioner Kafoury suggested holding this over for a week to allow staff to make amendments that would allow for some opening of limited duration on an annual basis. Council agreed.

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Commissioner Hales said that way people like Mr. Benson (who looks like he has a good shot of operating an effective company) and Mr. Bailey (who could clear up questions about his company's status) can reapply within a reasonable time period.

Mayor Katz said she believes the solution shared by Mr. Nelson is a good one. It gives stability to those who want to participate in the three-year contract without reapplying but still gives other people an opportunity to reapply.

Commissioner Kafoury said there should be an open period on an annual basis.

Mr. Nelson said he will work with the City Attorney's office to modify the ordinance and the contracts to do that.

Commissioner Kafoury moved to hold all three items concerning towing over one week.

Disposition: Continued to June 19, 1996 at 9:30 a.m.

***979** Contract with towers in District 5 for vehicle towing and storage (Ordinance introduced by Commissioner Kafoury)

Disposition: Continued to June 19, 1996 at 9:30 a.m.

FOUR-FIFTHS AGENDA

***979-1** Revise appeals process for towing companies under contract with the City (Ordinance introduced by Commissioner Kafoury; amend City Code 3.98.030)

Discussion: Commissioner Kafoury said this is a gift from the Bureau to Council as appeals of Tow Board decisions will go the Code Hearings Officer if this is approved.

Disposition: Continued to June 19, 1996 at 9:30 a.m.

1007 Vacate NE Halsey Street between NE 3rd Avenue and NE Martin Luther King, Jr. Boulevard, under certain conditions (Second Reading Agenda 963; C-9838)

Disposition: Ordinance No. 170241. (Y-4)

Mayor Vera Katz

***1008** Adjust FY 95-96 Budget for Period Five Adjustments (Ordinance)

Discussion: Ruth Roth, Acting Director, Bureau of Financial Planning,

described the adjustments for Period Five. It distributes the established cost of living (COLA) for the current fiscal year. While employees start receiving it as of the prior July 1, the City does not distribute the set-aside until the very end of the year, when they see how much is actually needed. The other major adjustment is the transfer of \$515,000 to the Parks Trust Fund to repay golf surcharge revenues due to continued low play on the courses. This was an anticipated adjustment although they wish it was not for as much money. For next year's budget, the City will not rely on golf surcharge revenues as the General Fund has taken over that obligation. This ordinance also deals with some FEMA issues arising from the flood emergency and authorizes the expenditure of money needed to begin work now with the expectation that much of it will be reimbursed by FEMA later. Finally, the ordinance also deals with the carryover of capital improvement projects into the next fiscal year, removing the appropriation in the current fiscal year and moving it into the next one.

Disposition: Ordinance No. 170242. (Y-4)

***1009** Accept an \$8,000 grant from the Oregon Department of Transportation for safety belt and special traffic enforcement (Ordinance)

Disposition: Ordinance No. 170243. (Y-4)

Commissioner Charlie Hales

1010 Increase the General Fund set-aside for capital projects (Resolution)

Discussion: Mayor Katz said this is an issue Commissioner Hales raised during the budget process and there was a sense from Council that it was a good idea.

Ken Rust, City Debt Manager, Office of Finance and Administration, said this reflects earlier discussions with respect to funding ongoing needed capital improvements. At that time staff had suggested raising the amount of money that is routinely budgeted from the General Fund as a contribution to the City's capital program. The resolution today formally directs staff to study what the level of that funding should be and to begin increasing the set-aside by \$1 million a year from its current \$3 million level to one consistent with their findings, putting the City in a position to take care of ongoing need. This is an important step in improving their ability to meet capital needs they have not been able to address as part of the current capital budget process.

Tim Grewe, Director, Office of Finance and Administration, said staff will return to Council with a capital financing plan, with options for addressing capital needs and recommendations for the level of General Fund support. This policy is similar to others adopted by Council and can contribute to the City's financial stability. He said when they return, staff will also bring some

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new policies to consider regarding capital funding. This is a timely issue as all cities are currently struggling with the question of unfunded liabilities.

Mayor Katz asked him to also incorporate the notion of the development fund that has been talked about, along with a list of projects that provide opportunities to reach Metro 2040 goals but which were not included in the budget. She said Commissioners have identified several projects where a commitment to funding is needed right away.

Mr. Grewe said they can do that and will try to balance that flexibility against sending out a signal that the City is going to be doing budgeting every day of the year.

Mayor Katz said the flexibility is important as there will be more opportunities. The question is where do those fall within the entire capital needs and what are the priorities.

Mr. Rust said he does not see increasing the set-aside as the only action that will remedy the City's need to fund capital improvements but only as just one component of the plan.

Commissioner Hales said in the past three years the Council has taken some actions that it can be proud of, including funding the renovation of City Hall. It is timely now to plan for the future and look at the long term financial needs of the City. This is an important step but not the only one needed. They also need to look at what the General Fund targets should be and whether they should be set so that bureaus do not have to choose between keeping their staff whole or starving capital, as has occurred in the past. There are also major implications for capital spending resulting from the City's desire to reach its growth targets.

Commissioner Lindberg said historically the City has set aside a low amount for capital to maintain the assets it has. This commitment to maintaining what we build is very important if severe problems with deterioration are to be avoided.

Disposition: Resolution No. 35526. (Y-4)

1011 Authorize acceptance of a Conservation Easement in Foothills View Planned Unit Development (Second Reading Agenda 965)

Disposition: Ordinance No. 170244. (Y-4)

Commissioner Gretchen Miller Kafoury

***1012** Accept a grant from the Equity Foundation in the amount of \$710 for FY 95-96 for production of the Civil Rights is the Issue campaign (Ordinance)

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Disposition: Ordinance No. 170245. (Y-4)

City Auditor Barbara Clark

- *1013** Create the SW 37th Avenue/SW Vesta District Local Improvement District (Hearing; Ordinance; C-9875)

Discussion: Lola Gailey, Transportation Engineering and Development, described the Local Improvement District (LID) project and noted that it is supported by 76 percent of the property owners. One remonstrance was filed regarding cost, which is addressed in the Engineer's Report.

Norman Fenton, 3510 SW Vesta, said he began this LID project in August, 1993 and all the property owners knew what was being proposed. He said this will provide all the City-required services and allow the property to be developed.

Dan Vizzini, Auditor's Office, recommended that the remonstrance be overruled as they believe that the apportionment method used in this project is appropriate and provides an equitable distribution of costs. The remonstrator has a large oversize lot with a single home on it so his assessment is high. As the City seeks to achieve its 2040 goals, this is a problem that will arise often as the LIDs drive up higher densities on under-utilized lots. Some properties will receive very high assessments, based on their use for single homes. However, the LID process is about building up infrastructure so these lots can be built out.

Commissioner Lindberg moved to overrule the remonstrance and approve the ordinance. Commissioner Kafoury seconded and the motion was approved on a Y-4 roll call.

Disposition: Remonstrance overruled. Ordinance No. 170246. (Y-4)

- 1014** Assess property for sidewalk repair by the Bureau of Maintenance for billing processed through April 26, 1996 and sidewalk repair for billing processed through May 9, 1996 (Hearing; Ordinance; Y1005, Y1006, Y1007, Y1008, Y1009)

Discussion: Mr. Vizzini said this ordinance includes a large number of sidewalk repair liens. He requested an amendment to have the proposed assessment for property at 301 NW 3rd Avenue referred back to the Maintenance Bureau for further review. He said that is customary and if the problems cannot be worked out at that level, they will then be brought back to Council. He said it would be best to continue this ordinance showing the corrected amount next week.

Paul Euler, Acting General Manager, Day's Inn City Center, 1414 SW Sixth

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Avenue, protested the sidewalk repair work done by the City on SW 5th and Columbia where there has been an ongoing problem with a collapsed sink hole. He said many attempts have been made to determine the cause of the collapse and why the underside of the sidewalk was being washed away. The City said it was a Pacific Power and Light (PP&L) problem while PP&L said it was a City problem. He said they do not believe Day's Inn is responsible for it. He said the City finally came in September and repaired the sidewalk but without resolving the underlying erosion problem. However, with the heavy rains this winter that sidewalk is already beginning to show some minor surface cracks and they believe it will collapse again. He distributed photographs to illustrate the problem.

Glen Graves, building engineer for Day's Inn during the original collapse of the sidewalk, said City staff and PP&L employees who looked at this admitted that the sand underneath washes away and leaves a cavity between the base and the sidewalk. The City pumped water with a stain in it to determine where the water was going but it never showed up anywhere. However, it did wash away more sand.

John Holm, current Day's Inn engineer, said both the City and PP&L point fingers at each other as to who is to blame. He said the City finally repaired the sidewalk and is now assessing Day's Inn for \$2,700 but this did not really fix the underlying problem, which will recur.

Commissioner Hales asked what their insurance company recommended in regard to the liability problem and whether the City is responsible.

Mr. Euler said he has not had a chance to investigate that yet.

Mr. Vizzini said a determination needs to be made as to what piece of this action belongs to the Maintenance Bureau. However, the City's bottom line is to maintain the safety of the sidewalk itself and the property owner is responsible here. The Sidewalk Inspector posted this as a problem and, after a certain amount of time, the City went out and did the work. The bill, under City Code and Charter, is sent to the property owner. That does not resolve the underlying geological questions that exist but it is still ultimately the property owner's responsibility.

Commissioner Kafoury pointed out, however, that if the property owner had gotten a response from the City it could have done the work a lot cheaper.

Mr. Vizzini said unfortunately he does not have the record of their contact with the Maintenance Bureau.

Commissioner Kafoury suggested that this property be removed from the assessment list for further review.

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Commissioner Hales said no one should be given false hopes about the outcome as the sidewalk is the responsibility of the property owner. If it turns out that the City's water or sewer line is causing the problem then you have an insurance claim. This situation is cropping up all over the City as a result of this winter's flooding where whole streets are now gone. The question of who is responsible for what, given the storm damage that occurred this year, is going to have to be crystal clear for the whole community.

Mr. Holm said they have been in contact with the City and PP&L for between six and eight months and during that time no one has been able to tell them that the sidewalk will not break up again because the underlying problem has not been fixed.

Mr. Euler described potholes on Columbia street that opened up recently when traffic was reduced to one lane. He said they still have not been fixed.

Mayor Katz said don't hold your breath.

Mr. Euler said it appears that existing pipes no longer in use are probably causing the drainage problems.

Commissioner Lindberg said the bureaus involved, Maintenance, the Bureau of Environmental Services and the Water Bureau, will conduct a joint analysis and bring something back.

Mr. Vizzini said he will try to organize a meeting to get this resolved.

Mayor Katz said they should not be back in two years after paying for this repair.

She noted that the motion was to remove 301 NW 3rd and 1414 SW 6th. Hearing no objections, she so ordered.

Disposition: Passed to Second Reading as amended June 19, 1996 at 9:30 a.m.

1015 Assess property for sewer system development contracts of the Mid-County sewer project for the period ending May 8, 1996 and non Mid-County for the period ending May 8, 1996 (Hearing; Ordinance; Z0633, Z0634)

Discussion: Mr. Vizzini asked that this be amended to give one property owner an opportunity to use the safety net. That is why there is an adjustment to the document.

Commissioner Lindberg moved the amendment and, hearing no objections, the Mayor so ordered.

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Disposition: Passed to Second Reading as amended June 19, 1996 at 9:30 a.m.

1016 Assess benefitted property for the cost of street and storm sewer improvements of the SW Dolph Street LID (Second Reading Agenda 971)

Disposition: Ordinance No. 170247. (Y-4)

At 12:15 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 12TH DAY OF JUNE, 1996 AT 2:00 P.M.

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

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

Commissioner Charlie Hales

1018 Deny appeal of Emily Cohen, applicant, against Hearings Officer's decision to deny application for a subdivision at 10535 NE Shaver, but approve specified design options (Findings; 95-00909 SU)

Discussion: Commissioner Hales moved adoption of the findings. Commissioner Lindberg seconded.

Disposition: Findings Adopted. (Y-4)

1017 **TIME CERTAIN: 2:00 PM** - Hear Police Internal Investigations Advisory Committee appeal #95-23 as provided in City Code 3.21 (Report introduced by Mayor Katz)

Discussion: Gerald Klug, Police Internal Investigations Advisory Committee (PIIAC), reviewed this case where the appellant's mother filed an excessive force complaint on behalf of her adult son. He described both the appellant's and the Police versions of the incident and noted that the Police acknowledged the use of force but felt it justified by the appellant's extreme resistance to arrest. This was largely corroborated by numerous bystanders who expressed concern for the safety of the officers. He said PIIAC determined that the findings made following an extensive investigation were correct and supported exoneration of the officers.

Captain Bennington, Police Internal Affairs Division, said his division conducted a thorough review. He noted that it was not until a third officer showed up that they were able to subdue the appellant.

Commissioner Lindberg moved to deny the appeal and uphold PIIAC's decision in this case.

Disposition: Appeal denied. (Y-4)

At 2:30 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 13TH DAY OF JUNE, 1996 AT 2:00 P.M.

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

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

REGULAR AGENDA

Commissioner Charlie Hales

- 1019** Amend Title 33, Planning and Zoning, to change sign standards and define monument signs (Second Reading Agenda 973)

Discussion: David Knowles, Bureau of Planning, said the City has reached an agreement with the billboard companies, specifically Ackerley Outdoor Advertising, dealing with the extension of the Stipulated Agreement for a 90-day period. The extension agreements will duplicate the provisions of the Stipulated Agreements that expire June 17, with some special conditions that Council outlined in the emergency ordinance passed last week. The conditions that the companies are prepared to meet are slightly different from those in the emergency ordinance but staff recommends that the extension agreements be signed.

Mr. Knowles noted the memorandum from City Attorney Jeff Rogers and himself which describes how the extension agreement differs from the Stipulated Agreement. First, the new agreements will expire September 18, 1996. Second, the companies will not apply for any permits for new or relocated signs between June 5 and September 18, 1996. Third, the companies may build or relocate signs for which they have applied or received permits by June 5, 1996. He noted that at this point Ackerley has received all the permits it is entitled to receive - a total of 48 faces, with 21 poster faces and 12 bulletin faces. One of the attachments to the agreement is a list of the tentative locations where signs will be built or relocated under those permits. That list of locations is tentative and not binding. The conditions are as follows: 1) for each sign face built or relocated, a sign face the same size or larger has first been removed; and 2) sign faces already removed this year and which count toward meeting this requirement are listed on Attachment A. The second attachment is a tentative list of the other sign faces that will be removed in the future in order to allow new sign faces to be built. The

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number already removed this year is eight. He noted that the attachments do not have the totals listed and said he would give that detailed information later. For each structure built or relocated at least one structure has been removed first. Again, structures already removed this year and which count towards meeting this requirement are listed in the first attachment. This is also a tentative list because the company needs some flexibility in the event that its business arrangements change during this interim period. Finally, the sign faces and structures need to be within the City of Portland.

Mr. Knowles said the number of structures is 21 of the smaller structures and 12 of the larger structures for a total of 28.

Commissioner Lindberg said Attachment A lists the structures, all removed in 1996 and then lists the structures to be removed.

Mr. Knowles said that is correct. Between January 1 and June 5 Ackerley removed eight structures. It wanted to count that towards the total. For the balance of the year, it proposes to remove 20.

Commissioner Lindberg said then the number to be added would be 33. That is on Attachment C.

Mr. Knowles said those are faces.

Commissioner Lindberg said all right, that refers to faces and the first number was structures. It was 28 structures and 33 faces.

Mr. Knowles said this agreement has achieved Council's objective of a one per one exchange. If a smaller sign is removed, only a smaller sign is to be put up and if a larger sign is removed, that entitles Ackerley to put up a larger sign.

Mayor Katz said the only difference really is that staff is recommending that the eight signs removed prior to the starting date be counted.

Mr. Knowles said that is correct.

Commissioner Kafoury asked what can now happen between tomorrow and September 18th.

Mr. Knowles said, as discussed last week, a task force will be convened that has representatives from the major stakeholders, including members of the public. It will review the contents of the Code amendments that Council will adopt today and, in addition, will determine whether it is appropriate to continue to regulate billboards through an agreement with the billboard companies or whether there should be any special arrangement for regulating billboards, either in the Zoning Code or by special agreement.

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Commissioner Kafoury said that conversation may be different from the ones with the other affected parties.

Mr. Knowles said they will be related because if the decision is to regulate them under the Zoning Code, there may be implications for other sign companies as well. That is why it is important to have all of those interests at the table for that conversation.

Jeff Rogers, City Attorney, said there was discussion last week about whether Council could go ahead and pass the Code amendments this week as they stand or, if no agreements could be reached with the companies, Council would consider converting the ordinance to an emergency ordinance and making the Code amendments effective now. He said if Council agrees with the approach presented today and the Code amendments are passed effective September 18, the next step will be to get signed agreements with the companies. That should not be any problem as it will just basically be signing off on what is before Council now.

Mayor Katz noted that the resolution was adopted last week.

Mr. Rogers said last week Council adopted a resolution setting up the task force and an ordinance directing staff to try to negotiate these interim agreements. That has been done, with the slight modification mentioned. Incidentally, staff has been in discussions with Ackerley, TCI and Clark Signs. They have not had discussions with Meadows or 3M National but they are in a somewhat different situation as those companies do not have outstanding permits and no difficulty is anticipated there.

Mayor Katz asked for a motion to amend.

Commissioner Hales moved the amendment.

Mr. Rogers said no amendment was needed. All Council has to do is go ahead with the Second Reading on the Code amendments which will make them effective September 18th. That is a signal to staff to go ahead with the agreements with the companies.

Mayor Katz called for the vote. She thanked everyone for working together. She said this is the first hurdle that had to be passed before the City could proceed to the next one. She asked that Council be kept informed as everyone understands that this issue is not over yet.

Disposition: Ordinance No. 170248. (Y-4)

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

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BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council