



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 14TH DAY OF AUGUST, 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; Peter Kasting, Senior Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

Mayor Katz noted that Council needed to declare that an emergency existed regarding Commissioner Kafoury's absence, allowing her to participate by telephone. Council concurred.

Agenda Nos. 1351, 1359 and 1367 were pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 1352** Accept bid of American Express Janitorial, Inc. for janitorial services for NE Community Policing Center for \$35,820 annually for three years (Purchasing Report - Bid 6-A)

Disposition: Accepted; prepare contract.

- 1353** Accept bid of United Pipe & Supply Co., Inc. for furnishing tapping sleeves for \$43,982 annually for two years (Purchasing Report - Bid 7-A)

Disposition: Accepted; prepare contract.

- 1354** Accept bid of Oldcastle Precast, Inc. dba Brooks Products for furnishing concrete meter boxes, covers and lids for \$35,417 annually for two years (Purchasing Report - Bid 8-A)

Disposition: Accepted; prepare contract.

- 1355** Accept bid of Interactive Technology, Inc. for furnishing midrange computer system for \$102,675 (Purchasing Report - Bid 11)

Disposition: Accepted; prepare contract.

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- 1356** Accept bid of Wakabayashi Construction Company for furnishing sidewalk repair services for an estimated annual amount of \$35,610 (Purchasing Report - Bid 124-A)
- Disposition:** Accepted; prepare contract.
- 1357** Reject all bids for Parkrose water supply main - Phase I (Purchasing Report - Bid 213)
- Disposition:** Accepted.
- 1358** Accept bid of Custom Sprinkling Specialists, Inc. for Kern Park improvements for \$78,000 (Purchasing Report - Bid 220)
- Disposition:** Accepted; prepare contract.
- 1360** Accept bid of Parker Northwest Paving Co. for SE 81st Avenue/SE Claybourne Street local improvement for \$167,074 (Purchasing Report - Bid C-9897)
- Disposition:** Accepted; prepare contract.
- 1361** Accept bid of Parker Northwest Paving Co. for SE Ankeny Street from SE 119th to 122nd Avenues local improvement for \$154,247 (Purchasing Report - Bid C-9907)
- Disposition:** Accepted; prepare contract.

Mayor Vera Katz

- 1362** Confirm appointment of Marty Brantley to the Portland Development Commission (Report)
- Disposition:** Confirmed.
- *1363** Pay claim of Mary Faust (Ordinance)
- Disposition:** Ordinance No. 170471. (Y-4)
- *1364** Pay claim of Mallory Hotel (Ordinance)
- Disposition:** Ordinance No. 170472. (Y-4)
- *1365** Pay claim of Trung Hang (Ordinance)
- Disposition:** Ordinance No. 170473. (Y-4)

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***1366** Pay claim of Truc Hang (Ordinance)

Disposition: Ordinance No. 170474. (Y-4)

***1368** Contract with KPMG Peat Marwick LLP for assistance with Federal Emergency Management Agency (FEMA) and Oregon Emergency Management (OEM) reimbursement of 1996 flood expenditures (Ordinance)

Disposition: Ordinance No. 170475. (Y-4)

Commissioner Charlie Hales

1369 Declare the purpose and intention of the City to form the NE Broadway, Weidler, Halsey and 9th Avenue Local Improvement District (Resolution; C-9921)

Disposition: Resolution No. 35540. (Y-4)

***1370** Amend greens fee schedule (Ordinance; amend Code Section 20.20.010(d))

Disposition: Ordinance No. 170476. (Y-4)

***1371** Authorize acceptance of a 25' recreational trail easement on the Columbia South Shore Slough (Ordinance)

Disposition: Ordinance No. 170477. (Y-4)

Commissioner Gretchen Miller Kafoury

1372 Confirm appointment of Gary McGrew to the Taxicab Board of Review (Report)

Disposition: Confirmed.

1373 Accept contract with Markman, Inc. as complete for the installation of vehicle exhaust extraction systems at six fire stations and make final payment (Report; Contract No. 30032)

Disposition: Accepted.

***1374** Grant permits to provide Specially Attended Transportation services in the city (Ordinance)

Disposition: Ordinance No. 170478. (Y-4)

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***1375** Amend agreement with AGI Technologies for soil remediation at the former Linnton Oil Fire Training Grounds to extend the scope of work, increase the amount by \$11,715 and extend the completion date (Ordinance; amend Contract No. 30461)

Disposition: Ordinance No. 170479. (Y-4)

***1376** Amend contract with Richard E. Ragland, Architect & Planners, for architectural services for the Southeast Precinct and East Portland Community Policing Facility projects to extend the contract termination date (Ordinance; amend Contract No. 30312)

Disposition: Ordinance No. 170480. (Y-4)

***1377** Appoint Randy Watson to Trades Supervisor above the mid-range of the pay grade (Ordinance)

Disposition: Ordinance No. 170481. (Y-4)

***1378** Agreement with Aron Faegre and Associates for architectural services for an addition to the Emergency Communications Center for communication services (Ordinance)

Disposition: Ordinance No. 170482. (Y-4)

Commissioner Mike Lindberg

1379 Accept contract with Alliance Corporation for the Windmere sanitary sewer project as complete and provide for final payment (Report; Contract No. 29906)

Disposition: Accepted.

***1380** Authorize a contract with Ashbrook Corporation for the repair/refurbish of two belt presses and provide for payment (Ordinance)

Disposition: Ordinance No. 170483. (Y-4)

***1381** Authorize a contract and provide for payment for reconstruction of the sewers in the Wheeler Basin Phase 2-Unit 3 project (Ordinance)

Disposition: Ordinance No. 170484. (Y-4)

***1382** Amend contract with K & S Madison, Inc. to redefine the area available for Portland Bulk Class B Biosolids (sludge) land application (Ordinance; amend Contract No. 27955)

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Disposition: Ordinance No. 170485. (Y-4)

- *1383** Contract with EMA Services, Inc. for \$161,400 for professional services for a feasibility analysis, preparation of plans and specifications and implementation services, for the Water Control Center maintenance project and provide for payment (Ordinance)

Disposition: Ordinance No. 170486. (Y-4)

City Auditor Barbara Clark

- 1384** Approve Council Minutes for January 3 through March 27, 1996 (Report)

Disposition: Approved.

REGULAR AGENDA

- 1351** Accept bid of H & W Emergency Vehicles for furnishing four triple combination pumpers for \$974,578 (Purchasing Report - Bid 3)

Discussion: Cay Kershner, Clerk of the Council, said the Purchasing Agent had requested a one-week delay on accepting this report.

Disposition: Continued to August 21, 1996 at 9:30 a.m.

- 1359** Reject all bids for Brookside wetland and stream enhancement (Purchasing Report - Bid 226)

Discussion: Carleton Chayer, Purchasing Agent, said they recommend that all bids be rejected on this project and that it be rebid promptly. Paul Brothers, the second low bidder, has raised some concerns about its bid which the City believes was non-responsive to the Good Faith efforts.

Jim Van Dyke, Deputy City Attorney, explained why the Paul Brothers bid was rejected. He noted that the specifications for good faith efforts are being slightly modified for bids going out July 1 and after. Under the old specifications, which applied to this bid, bidders are required to contact all Minority/Women/Emerging Small Business (M/W/ESB) subcontractors listed. Paul Brothers failed to do that and were judged non-responsive. However, they cite a letter from the Purchasing Agent indicating that as of July 1 those specifications were going to change. That was an informational letter and apparently they became confused and thought the compliance form attached to the letter was applicable to their bid even though that is not the process by which the City modifies bid specifications. Because of this confusion, Mr. Van Dyke analyzed their response as if the new specifications were in effect and found that they were still not responsive. Under the new specifications, only five subcontractors need to be contacted but Paul Brothers did not submit

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documentation that five contacts had been made during the time period required. This is not about their good intentions; it is about whether they submitted the right documents. They submitted a \$2 million bid that did not identify a single subcontractor that was either an M/W/ESB. He recommended that all bids be rejected and that this be rebid.

Commissioner Lindberg asked why fewer subcontractor contacts were now being required, particularly given Council's desire to take extraordinary efforts to increase M/W/ESB participation.

Mr. Van Dyke said over the past year Purchasing found that a lot of contractors spent a lot of time trying to contact people whose business had been changed, who did not update their addresses or were never interested in bidding on these kinds of projects. He said Purchasing is trying to draw a fine line between giving people an opportunity without imposing needless bureaucratic requirements. Beginning July 1 they are trying a slightly different approach to see if it works better.

Pat McGuire, Paul Brothers, said they believe the dispute is a very minor one and that the City should not reject all bids thus increasing the cost of the project to the City. She said the Purchasing Agent issued a letter June 26 which stated that new guidelines were effective as of July 1 for the M/W/ESB program. Paul Brothers used that compliance form when it submitted its bid. She contended that Purchasing is wrong about the number of subcontractors contacted and that the company did contact 10, all of whom indicated they were either too busy or not interested in the job. She said Mr. Van Dyke's contentions that no M/W/ESB firms were contacted are not accurate. Their second dispute with the City is that the rules call for documentation that a company has complied with the Good Faith Efforts program within five days. Paul Brothers thought that meant five days after receiving notification that they might receive the bid. It does not seem reasonable that bidders who do not get the job would continue to supply documentation. It seems more reasonable to be given five days to provide additional documentation after being notified that you have a chance to get the award even though you were not the low bidder. She said Paul Brothers complied with the new guidelines and was ready to comply with the old ones. She said this project should not be rebid.

Commissioner Hales said he is confused and asked if there is a process for technical correction.

Mr. Chayer said yes, by addendum. He said Paul Brothers failed to meet the requirements and specifications of both programs, either the one in place before July 1, or the new one. He said he finds their confusion about time lines puzzling as the company has bid on City projects a number of times and is very familiar with the process.

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Commissioner Hales noted that the City states the company had contacted only one subcontractor but Ms. McGuire contends they contacted ten and four. If there is a numerical difference like that, can it be corrected?

Mr. Van Dyke said yes, if they hand in the documents during the required time period. Under the old specifications, companies had five days after their bids were turned in to document their responsiveness. Paul Brothers did not do that within the five days and the City has to draw the line somewhere, especially for the Good Faith Efforts program where there have been complaints from M/W/ESBs that they are contacted after the bid and that there is coercion.

Mayor Katz asked about the discrepancy in the number of contacts.

Mr. Van Dyke said under the old process a company had to submit proof within five days after the bid that it had contacted all the names on the list it was given. Paul Brothers did not meet that requirement. Under the new system, only five contacts are needed and the documentation must be turned in by 2 p.m. the following day. Paul Brothers did not turn in five contacts, even five days after the bid. The City does not want to reject bids unnecessarily but must stand by its requirements. If the City awarded the bid to Paul Brothers, one of the other bidders would probably take the City to court and would win.

Commissioner Lindberg moved to reject the bid. Commissioner Hales seconded.

Commissioner Hales said the City needs to create as simple a process as possible and then stick to it.

Commissioner Kafoury said it is clear that the current bidders will have a chance to bid again.

Commissioner Lindberg said the indication here that contractors are finding that no M/W/ESBs want to bid on these projects brings up questions about the capacity of such businesses to respond.

Mayor Katz said if capacity is not increased soon she fears that is exactly the position the City will find itself in.

Disposition: Accepted. (Y-4)

S-*1367 Authorize the City to resume paying employee contributions to the Public Employee Retirement System (PERS) for its nonrepresented employees and elected officials; discontinue the temporary pay schedule (Schedule B) established by Ordinance No. 168390; and specify the effect upon employees in the classifications involved effective August 22, 1996 (Ordinance)

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

Ruth Roth, Acting Director, Office of Financial Planning, said the Substitute provides two different methodologies, one for 1995 and one for 1996, for reimbursing nonrepresented employees for the financial impact associated with Ballot Measure 8. She noted that after it passed and the six percent PERS contribution was deducted from salaries, the Council authorized a temporary 5.5 percent increase. Now the State Supreme Court has ruled that the 6.0 percent salary deduction for pension contributions was a violation of the contract clause of the U.S. Constitution. As a result, the Acting Personnel Director recommends that the six percent no longer be deducted and that the City once again begin paying the PERS pickup. She also recommends that the City pick up the .5 percent difference between the salary increase and the PERS deduction. For 1995 the City is unable, according to an IRS ruling, to restate wages and obtain refunds on various taxes deducted from salaries. Therefore, the best that can be done is to recalculate the difference between the .5 and the 5.5 percent to come up to six percent. For 1996, the City can undo the series of transactions because they occur in the same calendar year. The Substitution sets up a different methodology for 1996 than for 1995 and at less net cost to the City.

Commissioner Lindberg asked how much money the City will be saved in taxes in 1996.

Ms. Roth said about \$150,000.

Disposition: Substitute Ordinance No. 170487. (Y-4)

1350 TIME CERTAIN: 9:30 AM - Accept PIIAC Citizen Advisors Second Quarter 1996 Monitoring Report per City Code 3.21.050 (Report introduced by Mayor Katz)

Discussion: Lisa Botsko, Police Internal Investigations Auditing Committee (PIIAC) staff person, reviewed the PIIAC Citizen Advisors monitoring report for the second quarter. She noted that seven new appeals were heard and in five cases, the decision of the Police Bureau's Internal Affairs Division was affirmed. Additional information was sought in one case while another appeal was withdrawn by the Police Internal Auditing Division for further work. The Citizen Advisors also monitored 18 cases involving the use of force and communication issues. She said issues of concern to the Advisors include a lack of timeliness in some cases, the quality of investigations at the precinct level and inconsistent procedures for informing officers when complaints are filed against them.

Ms. Botsko said one trend they have noticed is that in sustained complaints officers allow subjects to push their buttons and then take out their

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frustrations on the subjects either verbally or physically. To overcome that, additional training in situational management is planned. She said the mediation program seems to have lagged and the Advisors are working with the Office of Neighborhood Associations to establish timelines.

Commissioner Lindberg asked if resources are a problem for the Mediation Center.

Ms. Botsko said partly but the mediation staff also seems unwilling to use volunteers because of the sensitivity of some of the cases. They also have no timelines in place, no way to track cases and trouble making contact with citizens involved in mediation.

Mayor Katz said the timelines are very sensitive as people cannot wait too long. If this continues to be a problem, the City may have to go outside to get mediators.

Commissioner Lindberg asked her to elaborate on the statement that officers are taking out their frustrations on civilians.

Ms. Botsko said in several cases that began as minor incidents, i.e. jaywalking, the situation escalated to the confrontation level. Complainants would admit that they had committed an offense but contend that the officer had overreacted. In one case pepper spray was used on a man after he was handcuffed as an "attitude" punishment. She said the Police Academy in Monmouth teaches a procedure called a "distraction technique" which involves hitting someone in the head or kicking them as a distraction if the officer is having trouble handcuffing them. She said the force may be necessary but to describe it as a legitimate distraction technique is of concern. She said the Police Bureau will work with Monmouth staff on this point.

Mayor Katz said the City is a heavy financial supporter of the Monmouth facility and does not want to have to undo training it paid for in the first place. She said the City may have to develop its own program, although this is a politically sensitive issue tied to the desire of many metropolitan area police departments to have a regional training facility. This is only in the thinking stage now.

Commissioner Hales said it is not unreasonable to go to Monmouth and voice concern with this training.

Mayor Katz identified three issues of concern to her. First, she would like to see if there is any correlation between the length of service and the number of courtesy complaints. Second, do some precincts have more complaints filed than others? And third, do courtesy complaints generally come from relatively minor infractions such as jaywalking and traffic violations?

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Ms. Botsko said, as might be expected, the busiest precincts have the most complaints. Courtesy complaints are across-the-board for all violations, not just minor ones, although PIIAC does not focus on cases where courtesy is the only issue.

Dan Handelman, Portland Cop Watch (People Overseeing Police Study Group), said PIIAC should focus more on the intake process. Some intake centers, such as the Albina Ministerial Alliance, have had only one complaint filed there because people do not know this is an intake site. He said the rudeness issue should be studied more closely to see if racism is the underlying reason. Regarding the distraction technique issue, the Police Chief skirts the issue when he says "the Police need some way to justify and document the rationale for an increase in the level of the use of force." Mr. Handelman said use of the words "distraction technique" does not make an action necessarily justifiable. He said the mediation system is in disarray and no one knows whether it is the police or civilians who are refusing to participate. He suggested doing public service announcements to make people more aware of the service. Finally, he said his organization still cannot understand why cases cannot be referred to, even by case number, in the PIIAC monitoring reports. He said the public loses when it cannot learn even the general details of a case. Now that Council does not hear cases unless they are appealed, they do not hear anything about specific cases.

Mayor Katz said she hears about them from the Police Chief and will check with other Council members to see if they wish to be included as well. She also believes public service announcements about mediation are a good idea.

Barry Sutton, no address stated, said using the distraction technique is wrong and makes people defensive when approached by an officer.

Disposition: Accepted. (Y-4)

Mayor Vera Katz

***1385** Accept \$29,000 grant from Department of Justice, Criminal Justice Division for Marijuana Task Force (Ordinance)

Disposition: Phil Smith, NORML, urged rejection of this grant, contending that for every dollar the federal government gives the City, residents spend much more for prosecution and jail space. He said marijuana growers have no role in serious crimes and it does not improve public safety to send them to jail. He said the City should stop spending its resources on victimless crimes.

Terry Miller, Portland NORML, said they found, after contacting 50 people busted by the Marijuana Task Force, that the majority were employed and had no prior convictions. Over half owned their own homes. He criticized "the knock and take" technique as coercive because the police trash the homes of

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residents who do not cooperate, forcing them to obtain a search warrant. He said the cost of enforcement is excessive and of no benefit to public safety.

Kristen Cummins, Portland NORML, said the Task Force is not economically feasible, does not reduce crime and does more harm than good. She said more people are in the cannabis closet than were ever in the gay and lesbian closet. Cracking down on pot smokers makes people less respectful of the police and makes their job harder.

Commissioner Hales said this testimony raises legitimate questions but more community input is needed as he does not know if the level of marijuana enforcement is at the right or wrong level. However, this is a policy and budget question that should be separate from accepting this grant. He said he does not have a strong prejudice either way about this issue.

Commissioner Kafoury said she continues to be concerned about the use of jail space and would like to know how many minor drug offenders are using prison beds. She said she looks forward to a future policy discussion on this but not as part of this grant.

Commissioner Lindberg said he agrees with Commissioners Hales and Kafoury that the testimony raises interesting issues. However, Council first needs to involve a broader spectrum of the community rather than deciding this on the basis of a ten-minute discussion on one grant.

Mayor Katz said she did not recommend that Council use any General Fund dollars in the Police Budget to fund the Task Force. She said Council can argue if the City ought to have the Task Force at all but this is not the place for that debate as this issue needs to be dealt with either by the Legislature or at the ballot box. She said the Public Safety Coordinating Council formed by the County is monitoring use of jail bed space and the issue of what to do with drug offenders is on its agenda. She is prepared to dispute some of the numbers cited regarding the use of jail beds for drug offenders as the Coordinating Council feels some frustration about seeing drug offenders back on the streets selling crack and heroin. She said it may be helpful to bring a report to Council on what is happening with drug crimes in the justice system.

Disposition: Ordinance No. 170488. (Y-4).

Commissioner Charlie Hales

***1386** Accept a grant from Multnomah County in the amount of \$43,815 for FY 96-97 for operation of an integration program for senior citizens who have mental retardation/developmental disabilities (Ordinance)

Disposition: Ordinance No. 170489. (Y-4)

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Communication

1387 Requests of Lanny Swerdlow and Chris Kerchum to address issues regarding operation of the City Nightclub (Communication)

Discussion: The Clerk said she had received letters from both parties asking to return at some later date.

Disposition: Withdrawn.

At 10:55 a.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner
By Cay Kershner
Clerk of the Council

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WEDNESDAY, 2:00 PM, AUGUST 14, 1996

DUE TO THE LACK OF AN AGENDA

THERE WAS NO MEETING