



CITY OF  
**PORTLAND, OREGON**

**OFFICIAL  
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 2ND DAY OF JANUARY, 1997 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Hales, Kafoury and Sten, 5.

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

Commissioner Hales was elected President of Council to serve until June 1, 1997.

Agenda No. 5 was pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

**CONSENT AGENDA - NO DISCUSSION**

- 1 Cash investment balances November 14 through December 11, 1996 (Report; Treasurer)

**Disposition:** Placed on File.

- 2 Accept bids of R & R Uniforms and Harris Uniform Company for police uniforms for \$240,000 annually for three years (Purchasing Report - Bid 60A)

**Disposition:** Accepted; prepare contract.

- 3 Accept bid of Pacific Water Works Supply Co., Inc. for Groups A and C for \$70,174; Familian Northwest for Group B for \$12,193; and Consolidated Supply Co. for Group D for \$14,194 for annual supply furnishing various clamps, service saddles and couplings (Purchasing Report - Bid 75A)

**Disposition:** Accepted; prepare contract.

- 4 Accept bid of Custom Sprinkling Specialists, Inc. for Harrison Park improvements for \$112,500 (Purchasing Report - Bid 79)

**Disposition:** Accepted; prepare contract.

- 6 Accept bid of East Wind for St. Johns sewer extension No. 3 for \$111,417 (Purchasing Report - Bid 82)

**Disposition:** Accepted; prepare contract.

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**Mayor Vera Katz**

- 7** Confirm appointment of Mark Schlesinger to the Private Industry Council (Report)

**Disposition:** Confirmed.

**Commissioner Charlie Hales**

- 8** Correct the metes and bounds description and engineer's predesign estimate of costs for the NE 158th Avenue Local Improvement District (Resolution; amend Resolution No. 35568; C-9926)

**Disposition:** Resolution No. 35583. (Y-5)

- \*9** Agreement between the State and the City for cooperative assistance during snow and ice operations (supersedes Ordinance No. 168457 dated January 25, 1995) (Ordinance)

**Disposition:** Ordinance No. 170807. (Y-5)

- \*10** Contract with Pac-West Distributing for irrigation system upgrade components for Eastmoreland Golf Course in the amount of \$49,791 (Ordinance; waive Code Section 5.68)

**Disposition:** Ordinance No. 170808. (Y-5)

- \*11** Amend Purchase Order with J.D. Walsh and Associates, Inc. to include additional services in the amount of \$5,947 (Ordinance; amend Purchase Order No. 1019488)

**Disposition:** Ordinance No. 170809. (Y-5)

- \*12** Authorize a contract and provide for payment for the SW Hillsdale area slide repair project (Ordinance)

**Disposition:** Ordinance No. 170810. (Y-5)

**Commissioner Gretchen Miller Kafoury**

- \*13** Institute Minor Plumbing Label program for commercial and industrial installations (Ordinance; adopt Code Section 25.04.040 and amend Sections 25.05.010 and 25.05.020)

**Disposition:** Ordinance No. 170811. (Y-5)

**Commissioner Mike Lindberg**

- \*14** Authorize the Commissioner of Public Utilities to execute an agreement settling the following litigation: Contractors, Inc. v. City of Portland, Multnomah County Circuit Court Case Number 9605-03886 (Ordinance)

**Disposition:** Ordinance No. 170812. (Y-5)

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- \*15** Authorize a contract and provide for payment for the Insley Basin CSO sump project, Unit 3-Phase II (Ordinance; Project 5989)

**Disposition:** Ordinance No. 170813. (Y-5)

- 16** Authorize the Commissioner of Public Utilities to increase and extend contract with SERA Architects, PC and provide for payment (Second Reading Agenda 1993; amend Contract No. 28954)

**Disposition:** Ordinance No. 170814. (Y-5)

- 17** Authorize the Commissioner of Public Utilities to contract with Turner Construction Company (Second Reading Agenda 1994; amend Contract No. 29084)

**Disposition:** Ordinance No. 170815. (Y-5)

**Commissioner Erik Sten**

- 18** Amend contract with L.R.S. Architects, Inc. to increase established cost ceiling by \$30,039 for additional architectural and engineering services to revise contract documents to accommodate a 1-hour corridor, to complete the ADA compliance improvements and to convert a wash bay into a repair bay within the Interstate facilities and Willis Building (Ordinance; amend Contract No. 29086)

**Disposition:** Passed to Second Reading January 8, 1997 at 9:30 a.m.

**City Auditor Barbara Clark**

- \*19** Cancel three sidewalk repair liens (Ordinance; amend Ordinance Nos. 169743 and 170582)

**Disposition:** Ordinance No. 170816. (Y-5)

**REGULAR AGENDA**

- 5** Accept bids of Highmark, Reimers Furniture Mfg., Inc. and Bodybilt Seating, Inc. for furnishing fully adjustable chairs for a total estimated amount of \$168,000 annually for two years (Purchasing Report - Bid 81A)

**Discussion:** Commissioner Kafoury said it seems excessive to spend \$168,000 on chairs in view of Measure 47 budget reductions.

**Disposition:** Referred to Purchasing Agent.

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**Mayor Vera Katz**

- \*20** Amend City Code to update the City's Deferred Compensation Program in accordance with recent federal legislation (Ordinance; amend Code Sections 4.44.050, 4.44.080 and 4.44.090)

**Disposition:** Ordinance No. 170817. (Y-5)

**Commissioner Mike Lindberg**

- 21** Authorize two year contract with Montgomery Watson Americas to provide professional engineering services for the Willamette River predesign project in the amount of \$2,452,350 (Second Reading as amended Agenda 2006)

**Discussion:** Cay Kershner, Clerk of the Council, noted that this was amended last week.

Commissioner Sten noted that the public involvement portion of the contract is not going forward at this time. He said the Bureau of Environmental Services (BES) will return later with a public involvement plan for Council approval. While the CSO project will include significant public involvement, the best way to do it post-Measure 47 is being reviewed.

Commissioner Hales said there will be an overall look at the whole concept of public involvement for the CSO project. Then Council can decide if this portion is still needed.

Commissioner Francesconi suggested a review of how public involvement is done generally in the City to see if it can be consolidated and perhaps save money.

Mayor Katz said Council discussed that earlier and it is her intention to do an overall review across the bureaus. She said Council may want to go ahead with pieces of the BES public involvement process, however, before the Citywide review is complete.

Commissioner Hales said Commissioner Sten should use his discretion in deciding if neighbors need to be notified about impending construction and that sort of thing.

Commissioner Sten said BES has a fairly sizable public outreach department and he will try to have them handle things and not spend any money on outside help until this is reviewed.

**Disposition:** Ordinance No. 170818 as amended. (Y-5)

At 9:40 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 2ND DAY OF JANUARY, 1997 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Hales, Kafoury and Sten, 5.

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

- 22 TIME CERTAIN: 2:00 PM** - Hear appeal of William Thompson (PIIAC Appeal #96-21; Previous Agenda 1902) and hear advisors' recommendations on appeal from Shirley Pipkin (PIIAC Appeal #96-16) per City Code 3.21.085 (4)(d) (Hearing on Appeals; introduced by Mayor Katz)

**Discussion:** Re #96-21, Lisa Botsko, staff to the Police Internal Investigations Auditing Committee, said the Police Internal Affairs Division (IAD) declined to investigate Mr. Thompson's complaint that he had not been allowed to arrange for the care of his pet after his arrest or to make a phone call from the Justice Center. He also contends he was refused medication, causing him to have a seizure. The PIIAC Advisors agreed with IAD and with its advice that the General Order with respect to prisoners' animals be reviewed.

William Thompson, appellant, said Captain Jensen, IAD, erred in stating there was no evidence to confirm that he had a seizure after being denied his medication. He said Multnomah County Commissioner Sharon Kelly's office could confirm his charges, as could his doctor or sister. He said he was denied use of a phone for 24 to 26 hours and not allowed to phone his ex-wife to arrange care for his dog. He also disputed Captain Jensen's statements that he did not take into account the seriousness of his arrest. He said he stands to serve six years in the penitentiary, something he takes very seriously.

Mayor Katz said the two issues for the City are the care of his dog and the medication. The phone call would be a matter of County policy. She said she has asked for a review of the General Order regarding pet care.

Captain C. W. Jensen, Commander, IAD, said it is standard procedure not to allow people in jail to carry pills in with them. They are not given medication until after a full medical screening. He noted that Mr. Thompson was on suicide watch and that is why he was not allowed to make a phone call. He agreed with the Mayor that the General Order regarding the care of animals needs to be changed. Current policy is to remove animals from cars and shopping carts if their owners are taken into custody but not to remove animals from homes. The way the Order reads now, the Police would need to remove all animals from the home, including ant farms.

Commissioner Sten noted that usually a prisoner would be able to call someone.

Captain Jensen said Mr. Thompson was not allowed to call because he had some emotional problems that caused him to be given special treatment.

Mr. Thompson said he had a seizure, not emotional problems.

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Mayor Katz said the issue is the animals, not the medication or phone call. She reviewed the options available to Council.

Commissioner Francesconi moved to affirm the PIIAC findings in support of the declination but to ask the Police to revise the General Order to bring it in line with current practices.

Re #96-16, Ms. Botsko said in this case, the appellant charged that an officer used excessive force when he pepper sprayed her. Because both the complainant's report and the Police report were consistent, the Citizen Advisors declined to further investigate her appeal. However, IAD declined the complaint and the Advisors then requested that it send the case to the precinct commander for a formal finding. The choices for a finding would be "unfounded," "insufficient evidence" or "exonerated," which means the actions occurred but were within Bureau guidelines. However, Internal Affairs declined that recommendation and the Advisors would now like Council to consider it.

Captain Jensen said the Internal Affairs Commander has the authority to decline complaints. He believes that if, after investigation, there is no basis for the allegations, he can decline it. Even though a case involves a use of force, as this one did, Internal Affairs can decline to investigate it if it is deemed a proper action. However, PIIAC could then overturn this decision, providing adequate oversight to this.

Mayor Katz said when the Commander declines to investigate a complaint about excessive use of force there is then the possibility for command review. There may be officers who are on the edge regarding excessive use of force, even if justified. Reviewing these complaints is a process issue.

Commissioner Sten asked if PIIAC believes all excessive use of force complaints should have a finding.

Captain Jensen said it is sometimes hard to determine whether the use of force actually happened and it has always been the responsibility of the IAD Commander to decide to decline to investigate, although very few are declined. In this case, both the complainant and the officer agreed that she had resisted arrest. Pepper mace is the lowest level of force used to overcome resistance.

Commissioner Hales said it seems to him the officer's conduct was appropriate but what should be reviewed is the appropriateness of the action taken by IAD, not whether there was any basis in fact for the complaint.

Captain Jensen said this appearance before Council is how the appropriateness of his actions are being reviewed. In this case he is comfortable with his decision.

Ms. Botsko said PIIAC has no authority to request an additional investigation of a finding unless it has been appealed. The Advisors do plan to address declination as a policy issue. The General Order calls for declination to be used as an option in cases which are fallacious or without merit. In this case, the woman was pepper sprayed and so her complaint is not entirely without merit. The definition for "exonerated" is that actions of the officer were within the Bureau guidelines and if the Advisors had a choice of findings, this would be it. However, in their review of other cases that have been declined, there have been several where injuries resulted requiring stitches and some Advisors are uncomfortable about some of these declinations.

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Commissioner Francesconi said while he would like more policy discussion on the use of excessive force, using a case where the officer was clearly justified to get to the broader policy issue makes him uncomfortable. The other question is who makes the decision how these are categorized and what does it mean to be investigated by Internal Affairs. What the Advisors are saying is that they want final findings in every excessive force case.

Commissioner Sten said the issue is that over time there needs to be a record of use of excessive force complaints brought against officers.

Mayor Katz said that is the issue for her as there may be officers who are beginning to pile up these kinds of complaints and someone in the Bureau should work with them to avoid a serious situation. The issue raised by Commissioner Francesconi will be considered during the PIIAC quarterly review.

Captain Jensen said rather than simply make a declination, he could make a finding, such as "exonerated," and then decline it. He said he would rather do a declination in Internal Affairs instead of sending it off to the precincts. All use of force complaints are investigated by his sergeants.

Commissioner Sten said he would like to see some middle way where time is not wasted but neither is any pattern of behavior missed.

Captain Jensen said if declination of use of force complaints got either an "unfounded" or "exonerated" finding, that would go on the officer's record and would be there for Command Review, even if someone did not appeal.

Commissioner Francesconi said if an officer's conduct is not unethical, based on the complaint, then he is not sure it should be in his record. It does not get to whether he is a bad officer or not. When a complaint alleges bad or unethical conduct, the nature of the complaint itself should trigger a final finding, even before the investigation, and be on the officer's record.

Commissioner Sten said complaints about excessive use of force should stay on the record as he is worried about the extreme case where a bunch of such complaints come through and signal something in the aggregate.

Commissioner Hales moved to accept the Advisor's recommendation to reclassify this and forward it to the Precinct Commander for a finding.

Captain Jensen said the Advisors want this case to go to the Precinct Commander rather than to him and he needs to talk with Police Chief Moose before agreeing to it.

Ms. Botsko said the Advisors do not care who makes the finding but it is their understanding, from the General Order, that decisions are made by the Precinct Commander. However, they would probably not object to Captain Jensen making the decision as they just believe a formal finding needs to be made on excessive or inappropriate use of force complaints where it has been established that the force took place.

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Captain Jensen asked if this decision would apply just to this case or to all excessive use of force cases.

Mayor Katz said just this case. The Advisors will make a recommendation on the policy later. It is up to Council as to where it wants to send this.

Commissioner Hales said in this case, since there is no policy, he believes Council should take the Advisors' advice and send this to the Commander.

Commissioner Kafoury seconded Commissioner Hales' earlier motion.

Commissioner Francesconi voted no, stating that this is not a good case to get at policy. However, there should be a policy discussion as he believes there needs to be a way to measure excessive use of force complaints so that officers receive counseling if needed.

Commissioner Hales said this process now has a lot of credibility and this is one of those times when a gap in the policy is evident. But it is best to send this case off to the Commander and then get at the policy question later.

Commissioner Kafoury said the facts in this case are clear so this can be processed easily.

Commissioner Sten said in this particular case he would like a finding but is all for trying to find a better way to handle these types of cases.

**Disposition:** #96-21; Appeal denied; clarify General Order. (Y-5)  
#96-16 PIIAC Advisors recommendations affirmed (Y-4; N-1, Francesconi)

At 2:45 p.m., Council adjourned.

BARBARA CLARK  
Auditor of the City of Portland



By Cay Kershner  
Clerk of the Council