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CITY OF  
**PORTLAND, OREGON**

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**OFFICIAL  
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 19TH DAY OF FEBRUARY, 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.

Agenda Nos. 210 and 211 were pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

**CONSENT AGENDA - NO DISCUSSION**

- 204** Accept bid of M. Stearns Construction, Inc. for University Park improvements for \$224,800 (Purchasing Report - Bid 94)
- Disposition:** Accepted; prepare contract.
- 205** Accept bid of 2KG Contractors, Inc. for Alberta Park improvements for \$246,600 (Purchasing Report - Bid 101)
- Disposition:** Accepted; prepare contract.
- 206** Accept bid of CEMS, Inc. for SW Multnomah Blvd. slide repair east project for \$58,418 (Purchasing Report - Bid 103)
- Disposition:** Accepted; prepare contract.
- 207** Accept bid of CEMS, Inc. for SW Hillsdale area slide repair project for \$65,330 (Purchasing Report - Bid 105)
- Disposition:** Accepted; prepare contract.
- 208** Accept bid of Moore Excavation, Inc. for Willamette River basin test sump unit 12 storm sewer system for \$79,700 (Purchasing Report - Bid 113)
- Disposition:** Accepted; prepare contract.

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- 209** Accept bid of K & R Plumbing Construction Co., Inc. for SW Washington Street sewer reconstruction for \$111,318 (Purchasing Report - Bid 116)

**Disposition:** Accepted; prepare contract.

- 212** Vacate a certain portion of SE Tenino Street east of SE McLoughlin Boulevard, under certain conditions (Ordinance by Order of Council; C-9919)

**Disposition:** Passed to Second Reading February 26, 1997 at 9:30 a.m.

**Mayor Vera Katz**

- 213** Confirm appointment of Lin Harmon-Walker, George Richardson and Michael Warwick to the Sustainable Portland Commission (Report)

**Disposition:** Confirmed.

- \*214** Extend acceptance of donation of a vehicle from Latus Motors-Harley Davidson, Inc. to the Portland Police Bureau (Ordinance)

**Disposition:** Ordinance No. 170917. (Y-5)

**Commissioner Jim Francesconi**

- 215** Accept construction work with Pacific Northern Environmental for fuel management/leak detection system as substantially complete, waive delinquency, release retainage and make payment (Report; Contract No. 29582)

**Disposition:** Accepted.

- \*216** Authorize application to Lower Columbia River Estuary Program for a grant in the amount of \$6,000 for sedimentation testing of the Delta Park ponds (Ordinance)

**Disposition:** Ordinance No. 170918. (Y-5)

**Commissioner Charlie Hales**

- \*217** Authorize a contract and provide for payment for material and labor to construct Woodstock Park improvements (Ordinance)

**Disposition:** Ordinance No. 170919. (Y-5)

- \*218** Authorize a contract and provide for payment for material and labor to construct Rose City Park improvements (Ordinance)

**Disposition:** Ordinance No. 170920. (Y-5)

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REGULAR AGENDA

- 210 Accept bid of Portland Motorcycle Co. for furnishing nineteen police motorcycles for \$171,272 (Purchasing Report - Bid 125)

**Disposition:** Referred to Purchasing Agent

- 211 Vacate certain portions of NE 70th Avenue between NE Roselawn and Emerson Streets, under certain conditions (Ordinance by Order of Council; C-9913)

**Disposition:** Referred to Commissioner of Public Safety.

**Commissioner Jim Francesconi**

- \*219 Accept a grant from Oregon Department of Forestry in the amount of \$5,260 for FY 1996-97 for the Neighborhood Tree Liaison project (Ordinance)

**Disposition:** Ordinance No. 170921. (Y-5)

**Commissioner Charlie Hales**

- \*220 Contract with Portland General Electric to purchase electricity for street lighting at rates based on wholesale market prices and purchasing renewable energy (PGE Schedules 54 and 67) saving \$500,000 per year (Ordinance)

**Discussion:** Richard Gray, City Street Lighting Manager, described key features of this three-year phase-in which allows the City to buy at market rates one year at a time. This is expected to save \$500,000, or about 23 percent of the street lighting utility bill. Five percent of the power will be "green," wind-generated power.

Susan Anderson, Director, Energy Office, said Portland is one of the few cities that has aggregated its municipal loads to take advantage of market-based pricing. She said Portland is also the first city in the nation to ask for the inclusion of green power sources and Portland General is the first to respond. Deregulation of the industry will allow the City to take advantage of a competitive industry and get some of the things it wants, such as renewable energy or help for lower-income families. The City's next step will be to work with other businesses to increase their use of wind power.

Mayor Katz asked if the \$500,000 savings are built into the budget.

Mr. Gray said only the first year of the phase, about \$170,000, is taken into account. Portland General has indicated it will go to 100 percent phase-in after the merger with Enron.

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Commissioner Francesconi asked if the City, as a large consumer, is getting better rates at the expense of smaller users.

Ms. Anderson said not today but that is a concern as the City does not want to do this on the backs of low-income rate payers. The Public Utilities Commission is monitoring this to make sure that does not happen.

Commissioner Sten said that will be the heart of the conflict but there are lots of options in the middle and the City may gain the leverage to get a good deal for the average consumer.

Commissioner Francesconi asked if similar opportunities exist in other bureaus.

Ms. Anderson said it is the Energy Office's role to point them out for other bureaus, which they have done for the Bureau of General Services and the Bureau of Environmental Services.

**Disposition:** Ordinance No. 170922. (Y-5)

- 221** Revise Transportation Regulations to clarify minor ambiguities (Second Reading Agenda 198 as amended; amend City Code Title 16)

**Disposition:** Ordinance No. 170923 as amended. (Y-5)

### Commissioner Erik Sten

- \*222** Authorize contract with Montgomery Watson American, Inc. for \$800,000 for regulatory support services and authorize an Intergovernmental Agreement with New York, New York; Boston, Massachusetts; San Francisco, California and Tacoma and Seattle, Washington (Ordinance)

**Discussion:** Commissioner Sten said the \$800,000 authorized by this contract will be divided by the six participating cities. Because of new threats to unfiltered water systems, those cities that have them want to make sure they do not get unfunded mandates.

Rosemary Minard, Bureau of Environmental Services (BES), said they want to work with the Environmental Protection Agency to make sure that unfiltered water systems remain an option and that they receive case-by-case treatment.

**Disposition:** Ordinance No. 170924. (Y-5)

- 223** Grant a franchise to FirstPoint Communications, Inc. for a period of ten years (Previous Agenda 100)

**Discussion:** Commissioner Sten said this is a new type of franchise which gives the

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city access to more fiber optic wires. However, there are still a few outstanding issues about who has rights to the franchise.

David Olson, Office of Cable and Franchise Management, said this was continued from January because an issue was raised about how parts of the system could be sold to other communications companies.

David Leatherwood, First Point, said as a carrier's carrier they sell and lease fiber to other companies. They are now very close on providing the necessary safeguards.

Mayor Katz asked why there is no franchise fee for cellular phones.

Mr. Olson said because they do not touch the right-of-way, which has traditionally provided the basis for collecting franchise fees. However, the City may seek authority to levy such a fee on them in the future.

Mayor Katz asked if any cities are doing this now.

Mr. Olson said not in Oregon. Washington, however, provides state authority to do so.

Mayor Katz asked Commissioner Sten to see if the City needs State authority to collect such a fee or if it already has the necessary Charter authority. She noted that cellular phone users are not contributing to the 9-1-1 base and that the City should also ask the State to give it a larger share of 9-1-1 revenues as well.

**Disposition:** Passed to Second Reading March 26, 1997 at 9:30 a.m.

#### **City Auditor Barbara Clark**

- 224** Assess property for sewer connection contracts processed through the Private Plumbing Loan program for the period ending February 10, 1997 (Hearing; Ordinance; P0023)

**Disposition:** Passed to Second Reading February 26, 1997 at 9:30 a.m.

- 225** Assess property for sidewalk repair by the Bureau of Maintenance for billing processed through January 15, 1997 (Hearing; Ordinance; Y1014)

**Discussion:** Commissioner Sten said \$56,000 sounds like a lot for sidewalk repair.

Dan Vizzini, Auditor's Office, said the rates are set in the Code and this ordinance covers 126 properties.

Paul Grainer, 1545 SE Henry, criticized the gross overcharge made by the City for his sidewalk repair and also its high-handed methods. He said the notice he received

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from the City made it seem as if the repairs had to be done immediately to protect public safety. He described the problems on his sidewalk as very minor and much less dangerous than problems on downtown sidewalks. He contacted three private contractors who gave him bids between \$430 and \$500 for the necessary repair work. However, the City ended up charging him \$624.25.

Mr. Vizzini described the process and noted that there are very specific standards guiding sidewalk inspections. The City relaxed its standards some years ago because of complaints about their being too high. He did agree that Mr. Grainer's complaint about the length of time between the inspection and the repair work was valid, noting that the property was inspected in December, 1994. He said generally the City tries to give people six months to do the repairs; in this case it took two years.

Commissioner Francesconi asked if the notice to property owners includes an estimate of the repair cost.

Mr. Vizzini said yes. In this case the estimate was \$529, if the City did the work. He said it is not unusual to have private contractors make lower bids. Repair work by the City is granted to the lowest bidder and one reason for the delay in this case was due to the City's attempt to give more work to smaller companies.

Mayor Katz said having it done in bulk by one contractor for a year can be a better deal for residents and this option will be reviewed.

Mr. Vizzini said the City assures that the work is done up to standard and then assesses, based on the bill. Although it may sometimes be higher, the Maintenance Bureau's goal is never to pay more than the original estimate. He said several years ago the Auditor's Office suggested that citizen appeals of assessments go to the Code Hearings Officer, leaving Council out of it. The Maintenance Bureau disagreed.

Commissioner Sten noted that the estimate was off by a whole lot in this case.

Mr. Vizzini said the City's policy is that property owners are responsible for the cost of work, but most objections are referred to the Maintenance Bureau for further review. Then, if the Bureau is unable to resolve the matter, it comes to Council.

Mayor Katz said perhaps this one should be reassessed because of the two-year delay.

Mr. Vizzini said that is possible or it could be sent back to the Bureau.

Commissioner Hales suggested continuing this one week for further review of Mr. Grainer's assessment.

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Ben Walters, Deputy City Attorney, said the Charter calls for Council approval of assessments by ordinance. It could be difficult to arrange to have that part go to the Code Hearings Officer.

Mr. Vizzini said the reform suggested by the Auditor's Office included a Charter amendment.

Commissioner Hales moved to amend the ordinance. Commissioner Sten seconded. The motion carried. Commissioner Hales then moved to refer Mr. Grainer's case to the Bureau of Maintenance. Commissioner Francesconi seconded and, hearing no objections, the Mayor so ordered.

Mr. Grainer said while he can afford to pay the increased assessment many elderly people on fixed incomes are panicked by the threat of a possible lien on their property.

Mayor Katz said this matter needs a closer look.

**Disposition:** Passed to Second Reading as amended February 26, 1997 at 9:30 a.m.; one referral to Bureau of Maintenance.

- 226** Assess property for sewer system development contracts for the period ending January 15, 1997 for the mid-County sewer project and non mid-County area (Hearing; Ordinance; Z0645, Z0646, Z0647)

**Discussion:** Mr. Vizzini said this ordinance concerns the standard loans his office processes each month.

**Disposition:** Passed to Second Reading February 26, 1997 at 9:30 a.m.

#### **FOUR-FIFTHS AGENDA**

- \*226-1** Amend Agreement with Portland YouthBuilders, Inc. establishing \$729,668 as the new budget for this contract and provide for payment (Ordinance introduced by Commissioner Kafoury; amend Agreement No. 30320)

**Discussion:** Commissioner Kafoury said this had to be passed this week or the City would lose the money.

**Disposition:** Ordinance No. 170925. (Y-5)

- \*226-2** Accept a grant from the Environmental Protection Agency in the amount of \$8 million for FY 97-01 (Ordinance introduced by Commissioner Sten)

**Discussion:** Commissioner Sten said this also has to be approved this week in order to get the money.

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**Disposition:** Ordinance No. 170926. (Y-5)

At 10:35 a.m., Council recessed.



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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 19TH DAY OF FEBRUARY, 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; Ruth Spetter, Senior Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

- 230** Tentatively grant appeal of Mike and Ardele Obrist, applicant, against Hearings Officer's denial and approve application with conditions for a 25-lot major land division and planned unit development with environmental review located south of SE Foster Road and west of SE Barbara Welch Road (Findings; Previous Agenda 203; 95-00661 SU PU EN AD)

**Discussion:** Commissioner Hales moved adoption of the findings with the amendment attached. Commissioner Francesconi seconded.

**Disposition:** Findings adopted as amended. (Y-5)

- 227** **TIME CERTAIN: 2:00 PM** - Appeal of Downtown Community Association against Hearings Officer's decision to approve application of City Center Parking for Central City Parking Review for parking spaces in an office tower located at the block bounded by SW 2nd Avenue, Morrison Street, 3rd Avenue and Alder Street (Hearing; 96-00880 PR)

**Discussion:** Ruth Spetter, Senior Deputy City Attorney, outlined the procedures to be followed in testifying.

The Council declared no conflicts of interest or ex parte contacts.

Robert Stacey, Jr., representing the applicant, Wright Runstead & Company, requested that the appeal be dismissed because the Downtown Community Association (DCA) did not meet the all conditions needed for a fee waiver and did not pay the fee that would otherwise be required to file an appeal. He said to qualify for a fee waiver the general membership, governing body or land-use committee must vote in favor of the appeal in an open meeting. In this case he has been informed that only last night (long after the deadline for submitting either a valid fee waiver request or a fee) did the DCA Board vote to approve this appeal.

Ms. Spetter said the Code requires that at the time of application for an appeal a fee needs to be included. If the fee is waived, the waiver approval must occur prior to the time the application is submitted. That does require a vote in an open meeting, which she has been told did not take place until last night. That could be a problem.

Tim Sercombe, attorney representing the DCA, said Ed Pischedda, the land-use

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committee chair, signed the appeal form after a vote of the land-use committee in an open meeting. That action was then ratified by a vote of the general membership last night. As he understands it, a vote by the land-use subcommittee in an open meeting is sufficient.

Les Prentice, Portland Development Commission, said he attended the DCA general board meeting last night when the vote was taken but was not at the prior land-use meeting so does not know if a vote was taken then.

Ed Pischedda, DCA Land-Use Committee Chair, said the land-use committee held an open meeting in December at which it voted to pursue this appeal. He said they typically have between four and six members attending.

Commissioner Hales moved to deny the request and proceed with hearing the appeal. He said while Council has dismissed appeals recently because no vote was taken, in this case it looks like the DCA's conduct was within bounds.

Commissioner Sten seconded and, hearing no objections, the motion carried. (Y-5)

Susan McKinney, Planning Bureau, said the DCA is here today to appeal the Hearings Officer's approval of the Central City Parking Review. The purpose of the review is to allow development of 400 parking spaces in a new 23-story building, which currently serves as a surface parking lot with 190 spaces. The 400 parking spaces will be allocated between retail and office tenants of the new building (growth parking), and tenants of nearby existing buildings (preservation parking). Because preservation parking is included in this proposal, the Code requires Central City Parking review for the entire proposal. When this application was heard by the Hearings Officer, the applicant was unsure of the final design and exact number of growth and preservation parking spaces. Since then, the applicant indicates there will be 84 preservation and 316 growth parking spaces. This proposal is also subject to Design Review. The Design Commission approved the proposal in January and the DCA has also appealed that decision. However, any design elements or issues are not under consideration today. Ms. McKinney read the applicable approval criteria.

Ms. McKinney described appellant's appeal points. First, the DCA states that the Hearings Officer erred in extending the deadline for keeping the record open for an additional 12 hours to allow the applicant and Mr. Cassidy to respond to a letter of opposition submitted by the DCA at the hearing.

Rich Cassidy, Office of Transportation, showed slides describing the proposal and explained that the DCA believes all the parking spaces on surface lots that are displaced by this project should be made available for some other garage. They have challenged the way the Parking Manager is managing the parking reserves. He noted some of the key goals of the Central City Transportation Management Plan (CCTMP), including preservation and expansion of maximum parking ratios to

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surrounding subdistricts. He said a major goal is to supply more parking for existing buildings which lack parking spaces and suffer from high vacancy rates. The term "preservation parking" was added to the CCTMP adopted in 1996 to reflect the need to provide a certain number of parking spaces if these buildings are to remain viable, particularly as surface parking lots are redeveloped. He said right now the City is operating in an interim period at a time when both the Downtown Parking and Circulation Policy (DPCP) and the CCTMP are in effect. The interim period will last until final approval by the federal government of the CCTMP. With that approval, the parking lid will be removed and the only reserve will be the preservation parking, a maximum of 4,600 spaces. That is the number of surface parking spaces they expect to disappear in the next 20 years.

Mr. Cassidy said the City believes the 190 currently existing surface parking spaces on this property are already counted in the parking inventory. The effect of this approval is that 106 spaces will be returned to the "flexible" pool if the applicant breaks ground in the next eight months. After that those spaces go into the preservation parking pool. He emphasized that while 84 preservation parking spaces will be built on this space, 106 will be built at another location by another party at another time. Another benefit this will create is to preserve preservation parking at the same location where it is displaced. The appellant contends that all of the surface spaces should be made available to some other garage and there should be a first-come, first-served basis for the 190 spaces. Mr. Cassidy said since 1975 the City has managed the parking reserves on a net-draw basis and the parking manager only has to draw from the reserve when a development includes more parking than exists on the site. This project actually returns 106 spaces. If the appeal were granted it would prevent replacing preservation parking at the same location where it is displaced. Surface lots would have to close prior to land-use reviews, removing existing parking for up to two years. This would mean that surface lots would be less likely to be redeveloped. The City believes this proposal conforms with policies that promote the redevelopment of surface lots into structured parking.

Mr. Sercombe said the DCA takes issue with the interpretation of some provisions of the parking policy. Right now the City has an interim policy with both a cap on the number of spaces that can be built and establishment of a pool for preservation parking. That reserve has now been consumed and the only way for it to be replenished is for surface parking lots to close and for those spaces to then be placed into the preservation parking reserves where they can be drawn upon by anyone who desires to build that kind of parking. The Hearings Officer allows a bypass of this policy for those building on top of an existing surface parking lot. In such cases, she allows the builder to net out the surface parking spaces and says you do not need to place them into the reserve. Instead you can consume them as part of your proposal. That is what has been done here. The DCA believes this prevents anyone but the owners of surface parking lots from developing preservation parking and that this interpretation by the Hearings Officer is flatly wrong and inconsistent with a number of City policies.

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Mr. Sercombe said there has been no real analysis of those policies by the Hearings Officer or staff. It is not true that the DCA's position is that the preservation spaces should not be available for the building. Rather, their position is that in order to use preservation parking it should be placed in a reserve where it is available not only to this but to other building owners, not just to the owner of the existing surface lot. This creates too much of a monopoly and is an unfair situation. The concept of net draw is relatively new as under the DPCP it was expressly proscribed, stating that "credit will not be assigned automatically for on-street or off-street parking that is removed as part of the development project." Instead it will be placed in a reserve "for possible reassignment to anyone in downtown." That is what the DCA believes the current Code and the implementing CCTMP ordinance provides as well. He said the Hearings Officer did not analyze a key part of the Code, how parking spaces removed from a surface parking lot can be automatically placed in the parking reserve unless certain conditions are present. The conditions where they do not go into the reserve are when they are part of an improved phase development plan and if the space is removed for growth parking. Neither of those conditions are present here. The CCTMP states that parking removed from redeveloped surface lots can be used for parking for either existing or new development. The standard of the net draw is inconsistent with those policies. Finally, on October 30, 1996, the City adopted an ordinance setting out procedures for how the parking reserves are drawn upon, both the growth and preservation. It clearly states that the net draw concept can be used for growth and visitor parking but when it talks about preservation parking, it says you must draw upon the reserve and not merely identify spaces that are going to be removed. What the DCA opposes here is the precedent and creation of policy against the plain language of the Code which prevents anyone else downtown from being able to construct preservation parking when surface parking lots are decommissioned and instead gives it to the essentially one owner of those parking lots. The DCA believes the Code requires that it go into a reserve where it can be drawn upon by many.

Commissioner Hales asked if the property owner, City Center, owned all the downtown lots and thus created a monopoly.

Mr. Sercombe said they may not own 100 percent but the point is who has control over the allowance and who has access to the spaces.

Commissioner Hales asked if 106 spaces are added to the pool does any one party have easier access to those.

Mr. Sercombe said he has no facts about who intends to use preservation parking spaces. There is some mention in the record of competition among developers for preservation parking spaces and the number quickly went down from about 700 to a handful.

Commissioner Hales noted that Council recently approved 260 spaces for the Schlesingers, over the objections of City Center. So the argument that one party, by

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virtue of owning a lot of real estate, controls the parking reserve does not seem to work out in practice.

Mr. Sercombe said he is not saying one party will have every single parking lot. The Code requires that the reserve be open and available to all and the way it has been interpreted here is to give leverage to the surface lot owner, whoever that is.

Commissioner Sten asked Mr. Sercombe if he agreed with staff that through this proposal 106 spaces will go into the reserve and be available to anybody.

Mr. Sercombe said yes but the applicant states that only 84 preservation spaces will be used in the structure and therefore only 84 could be credited that way in the net draw system. The rest would go into the pool when the surface lot is decommissioned. It is not the numbers but the principle and precedent they are fighting about.

Commissioner Francesconi asked if he agreed with the staff conclusions in its report about the effects.

Mr. Sercombe said he agrees with their argument that when surface lots close the spaces can become available in the reserve but is not sure he agrees that lot owners would be less likely to develop their properties.

Ed Pischedda, Land-use Chair, DCA, PO Box 9032, 97207, said the Hearings Officer made an error that, if not corrected, will cause the downtown community to suffer a corrosion in the quality of its life. Older buildings (B & C) will be placed at a competitive disadvantage and the DCA believes the existing policy within the CCTMP relating to the conversion of surface parking lots into preservation parking spaces is a sound one. The staff policy appears to contradict the clear wording of the CCTMP and if their interpretation is allowed to stand, this will establish a precedent which will award converted preservation parking spaces, not to blocks where they are needed, but only to owners of blocks currently occupied by surface parking lots. This is bad for downtown development, which should be both fair and competitive. The DCA is very much in favor of the conversion of surface lots into structured space but does not believe that preservation spaces should be available to all developers wishing to build beneficial projects throughout downtown City. An open, competitive market should make downtown development attractive to many companies. He said they do not want to see preservation parking spaces used only by massive tower projects. Instead, they believe Portland will be better served by a dispersion of preservation spaces throughout downtown so that the B and C buildings that lack parking, not just those near surface lots, will benefit. A greater number of smaller scale garages and a lesser number of massive behemoths will make for a better downtown.

Commissioner Sten said it seems reasonable to him that a surface parking lot owner would never convert preservation parking in order to redevelop unless he controlled

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it. As the owner, he would just hold onto it. It seems to him some kind of compromise is needed here to spur development and make the market fair for other developers.

Mr. Pischedda said parking lots are only a temporary way to earn money until the right project comes along. This project is worth millions of dollars and it would not make sense to continue to operate a surface parking lot in such circumstances. The land price would take into account the discounted value of all future parking lot revenues.

Commissioner Francesconi asked how a developer could determine if he could get access to the preservation parking pool to do the development.

Mr. Pischedda said growth parking is available and the builder could choose to build without any preservation parking. It is not critical to this project.

Commissioner Hales said the DCA is appealing this not because this proposal uses up the whole pool but because it disagrees with the staff interpretation of the policy and the precedent. But this is a hearing on a particular case where the existing policy does not necessarily create the permanent problem described. Has the DCA, through the Code Improvement Project, recommended a Code change that would remedy this.

Mr. Pischedda said he did not think a Code change was needed. Their argument is that the City is applying a different interpretation than what the Code says.

Peter Finley Fry, planning consultant and former DCA Land-use chair, said the theory behind this provision is that over time parking is consolidated because of market and regulatory forces to surface parking lots. The policy was to disperse these lots back out and get parking to B and C buildings as well as apartments. The policy is to allow the parking to go into a pool and then people could pull it out. This building should draw preservation parking from the pool like everyone else. He said Council should support this project but not allow this interpretation to go forward as it would violate almost three years of policy development.

Commissioner Francesconi asked him to describe his role in developing the policy and if the intent was to preclude net draw.

Mr. Fry said that is what he understood. The decision was made to disperse this asset throughout downtown in small chunks. The mechanism for doing so was to sever the direct connection and establish a time cap.

Tracy Ritter, 3340 SE Morrison, said it is important not to set an ill-fated precedent for future parking. It is important to stick by the policy and Code and make certain it is the same for everyone.

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Mayor Katz asked about the time line.

Mr. Fry said it is to sever the real estate link between the owner/developer/seller of the lot and the asset, i.e. surface parking on the lot. The parking moves into a pool that can be pulled out by a developer if it is available.

Mr. Stacey, attorney representing the Wright-Runstead, said that company is the applicant/developer and also co-owner, with ODS.

Jon Nordby, Wright-Runstead, 1191 2nd Ave., Suite 2000, Seattle, 98101, said they are the developer, but not the land is owned by City Center. Preservation parking was included in their plan because there was adequate capacity and it might be several years before another new building comes along. He said if the 84 preservation stalls are not approved now it could jeopardize the financing, as they will have 84 spaces they could do nothing else with. If they had believed the DCA's interpretation to be correct they would not have included any preservation parking in their project. However, now they are so far along with the design they cannot turn around.

Commissioner Hales asked if any clouds appeared about this interpretation of the Code when this was discussed at the preapplication level.

Mr. Stacey said the cloud appeared only 10 minutes before the proposal went before the Hearings Officer.

Linley Rees Ferris, attorney representing the applicant, said Mr. Sercombe and Mr. Pischedda said there is only one way to interpret the Code and that surface parking lots have to be physically redeveloped before they can use those surface spaces in an application for the same site. However, they are wrong as there is nothing in the Code or ordinances that bind the City to this interpretation. The applicant believes, as did the Hearings Officer, that the City's net draw policy is reasonable and conforms with the City's policies and the applicable approval criteria. The DCPC provisions stated by Mr. Sercombe regarding the prior net draw policy is not applicable as the CCTMP made it very clear which DCPC policies were to continue. This was not one of them.

Commissioner Francesconi asked if a net draw was prohibited by the DCPC.

Ms. Ferris said her understanding is that the policy was the same prior to implementation of the CCTMP although she does not know how this provision was revoked. The key Code provision states that when development occurs that removes parking spaces on surface lots, the spaces will be added to the reserve. The key word here is "removed." In this case the applicant is removing not 90 but 106 spaces which will then go into reserve or the flexible pool. The CCTMP also provides that the number of spaces removed as a result of surface lot redevelopment, goes into a pool for existing or new development. Again, this provision is triggered only when

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spaces are removed as a result of surface lot redevelopment. By returning 106 spaces to the pool, it conforms with the administrative section of the CCTMP.

Commissioner Hales said you are saying that the word remove means eliminate entirely rather than relocate within the new use on the site.

Ms. Ferris distributed a chart explaining the net draw policy. The DCA's interpretation would remove surface parking currently serving older and historic buildings and create a strong disincentive to the redevelopment of surface lots. She said this particular proposal will not create any more spaces than are currently in the inventory. There is currently a preservation parking pool and this application, by converting 84 spaces, does not draw from the reserves. It also makes 106 spaces available for older buildings and for new development off this site. She urged rejection of the appeal.

Charles Latourette, ODS Health Plan, voiced his support for the applicant's proposal for preservation parking.

Irwin Mandel, 1511 SW Park, questioned the vote of the land-use committee, noting that Mr. Pischedda was unable to state how many people attended the meeting or the date. He said anything that gets rid of surface parking is something to cheer.

Les Prentice, Downtown Development Manager, Portland Development Commission, said approval of the DCA's interpretation will discourage development of surface parking lots and chill the desire of any owner to include preservation parking in his proposal. There is also the possibility that preservation parking spaces could be placed in the pool but no application to replace them comes along for some time. He noted that only one office tower is built about every five years and not all may elect to have preservation parking. The alternative then is to build a parking structure for preservation parking, which is expensive and aggregates it all in one garage rather than dispersing it throughout downtown.

Commissioner Hales asked how likely it is that smaller properties would apply for preservation parking.

Mr. Prentice said he thinks it would only happen as part of much larger-scale proposals. He said the economics is important here.

Commissioner Francesconi asked if he testified about this to the drafters of the CCTMP.

Mr. Prentice said he was not part of that discussion.

Cindy Edens, Wright Runstad, said during the preapplication process this was always discussed as a net draw and they never believed it would be interpreted as the DCA has.



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In rebuttal, Mr. Sercombe said this appeal is not about whether the preservation policy is good or bad. Rather it is about the language of the law and the policy already adopted by Council. It is not a question of whether the development goes forward but about how spaces are allocated to this building and other future projects. The issue is how preservation parking is allotted, whether by big structures or put into a pool for use by a variety of projects. He quoted from the CCTMP: "If resurfaced parking lots are redeveloped in between the effective date of the CCTMP, the number of spaces removed will go into a separate pool for use for either existing or new development." He said according to this language the spaces are removed. Council has already decided that will produce good effects and that decision should not be revisited today.

Commissioner Sten asked why the CCTMP would then distinguish between redevelop and remove.

Mr. Sercombe said this is talking about when surface parking lots are redeveloped, not parking spaces. When surface lots are redeveloped, the number of spaces removed will go into a pool. When a building is placed on a lot, which is the case here, the number of spaces removed go into a pool.

Commissioner Hales said how does someone then redevelop a site if you do not remove the surface parking.

Mr. Sercombe said you do not. The spaces go into a reserve to be drawn from. Or there could be a parking lot no longer used for parking. What you are talking about here is redevelopment producing the removal.

Mr. Pishedda objected to Mr. Mandel's remarks. He said the DCA was never approached by the applicants about this project prior to the hearing and has no apology for raising this issue at the last minute. He said he finds it difficult to believe that the whole project would collapse without the preservation parking spaces.

Commissioner Francesconi suggested giving more time to the applicant's attorneys to respond to the legal issues raised today about redevelopment of surface parking lots. The CCTMP says "when development occurs that removes parking lots and surface lots, the parking spaces will automatically be added to the parking reserve except ..." He said this is a legal question.

Ms. Ferris said the word removed is used differently in the CCTMP. Commissioner Sten's point is a good one. If there is no distinction between what redevelopment and removal mean, there is no reason to use the word remove.

Commissioner Francesconi said he does not agree, citing Subsection C, on redevelopment of surface lots, where it says "when development occurs that removes parking spaces in surface lots." This does not say from parking reserves but from

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parking lots or anything else.

Ms. Ferris said in this case 106 are removed and go into the pool.

Mr. Stacey said the others (the 84) are retained. He said they would like to get a prompt decision so they could move forward, rather than belabor the legal arguments although they would be glad to answer any further questions.

Commissioner Sten moved to tentatively deny the appeal. Commissioner Kafoury seconded.

Commissioner Francesconi said he would appreciate the benefit of the City Attorney's opinion on this and would rather abstain.

Mayor Katz said that was not an option. This is a tentative vote and Ms. Spetter will provide a legal opinion with the findings.

Commissioner Francesconi said he will then vote aye although he may change his mind after he reads the legal opinion.

Commissioner Hales said he will claim some responsibility for this obscure part of the Code. He believes the staff interpretation, not the DCA's, is correct. To find otherwise would effect a tortured understanding of the word "removal" and have a chilling effect on development.

Commissioner Kafoury agreed.

Commissioner Sten said to him it is common sense that the 84 parking spaces will continued to be used by the buildings around it and therefore are not being removed.

Mayor Katz said intuitively she believes the DCA's argument does not make sense, particularly in view of what a struggle it is for the City to find a developer willing, without assistance, to build an office tower. She noted the City's commitment to create 170,000 new jobs, most of which will have to be in the Central City.

**Disposition:** Tentatively deny appeal; prepare findings for February 26, 1997 at 2:00 p.m.

### **Commissioner Charlie Hales**

**228** Accept bid of Copenhagen Utilities & Construction, Inc. for Broadway/Weidler corridor improvements, Phase I, for \$2,961,747 (Purchasing Report - Bid 99)

**Discussion:** Vic Rhodes, City Engineer, said the City's share of these improvements will be \$1.6 million and the cost will be split between tax increment funds and the General Fund.

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**Disposition:** Accepted; prepare contract.

- \*229** Amend a contract with Lloyd D. Lindley, ASLA for \$158,500 to provide construction services for NE Broadway, NE Weidler, NE Halsey and NE 9th Avenue Local Improvement District project (Ordinance; amend Contract No. 30722)

**Disposition:** Ordinance No. 170927. (Y-5)

At 3:55 p.m., Council adjourned.

BARBARA CLARK  
Auditor of the City of Portland

*Cay Kershner*

By Cay Kershner  
Clerk of the Council