



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 26th 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: Britta Olson, Acting Clerk of the Council; Harry Auerbach, Deputy City Attorney; and Chuck Bolliger, Sergeant at Arms.

Agenda Nos. 242 and 262 were pulled from Consent. On a Y-4 roll call (Commissioner Francesconi was late), the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

232 Cash investment balances January 9 through February 5, 1997 (Report; Treasurer)

Disposition: Placed on File.

233 Accept bid of Christensen Oil Co. for furnishing the annual supply of lubricating oils, greases and turbine oil for \$76,586 (Purchasing Report - Bid 108-A)

Disposition: Accepted; prepare contract.

234 Accept bid of Safelite Autoglass for autoglass and glass services for \$32,357 (Purchasing Report - Bid 125-A)

Disposition: Accepted; prepare contract.

235 Vacate a certain portion of SE Tenino Street east of SE McLoughlin Boulevard, under certain conditions (Second Reading Agenda 212; C-9919)

Disposition: Ordinance No. 170928. (Y-4)

Commissioner Charlie Hales

236 Accept contract with All Concrete Specialties, Inc. for improvements of the traffic calming projects at NE 21st Avenue/NE 24th Avenue, N Denver Avenue and NE 15th Avenue as complete and release retainage (Report; Contractor No. 30580)

Disposition: Accepted.

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237 Accept contract with Brundidge Construction, Inc. for NW Skyline Blvd. slide repair-central project as complete, make final payment and release retainage (Report; Contract No. 30797)

Disposition: Accepted.

238 Correct the listing of estimated assessments for the SE Water Avenue and Caruthers Street Local Improvement District (Resolution; amend Resolution No. 35558; C-9925)

Disposition: Resolution No. 35589. (Y-4)

*239 Institute Minor Plumbing Label program for one and two family dwelling installations (Ordinance; amend Code Section 25.04.040)

Disposition: Ordinance No. 170929. (Y-4)

*240 Approve agreement with the Oregon Department of Transportation allowing them to install closed circuit television cameras at 10 locations, using the City right-of-way for the associated fiber-optic network (Ordinance)

Disposition: Ordinance No. 170930. (Y-4)

Commissioner Gretchen Miller Kafoury

*241 Contract with the Oregon Wing Civil Air Patrol for disaster response cooperation (Ordinance)

Disposition: Ordinance No. 170931. (Y-4)

*243 Declare surplus property located at 4835 NE 106th Avenue (Ordinance)

Disposition: Ordinance No. 170932. (Y-4)

*244 Increase Agreement with Multnomah County for community programs by \$290,056 and provide for payment (Ordinance; amend Agreement No. 30914)

Disposition: Ordinance No. 170933. (Y-4)

*245 Contract with Sabin Community Development Corporation to undertake commercial revitalization activities for \$36,562 and provide for payment (Ordinance)

Disposition: Ordinance No. 170934. (Y-4)

*246 Contract with the REACH Community Development, Inc. for \$50,000 for the Community Builders and provide for payment (Ordinance)

Disposition: Ordinance No. 170935. (Y-4)

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Commissioner Erik Sten

- 247** Accept contract with James W. Fowler, Inc. for the Parkrose sanitary sewer project as complete and provide for final payment (Report; Contract No. 29738)
- Disposition:** Accepted.
- 248** Accept completion of the St. Johns A Basin CSO project and authorize final payment to Brundidge Construction, Inc. (Report; Contract No. 29845; Project 5266)
- Disposition:** Accepted.
- 249** Accept completion of the Balch Creek pilot project and authorize final payment to Paul Brothers, Inc. (Report; Contract No. 30190; Project 5177)
- Disposition:** Accepted.
- 250** Accept contract with S-2 Contractors, Inc. for the Darlington sanitary sewer project as complete and provide for final payment (Report; Contract No. 30342)
- Disposition:** Accepted.
- 251** Accept completion of the NW Glisan Street sewer reconstruction and authorize final payment to Copenhagen Utilities & Construction, Inc. (Report; Contract No. 30583; Project 5678)
- Disposition:** Accepted.
- *252** Authorize a contract and provide for payment for the Fiske B Basin CSO pollution reduction facility, Project No. 5730 (Ordinance)
- Disposition:** Ordinance No. 170936. (Y-4)
- *253** Authorize a contract with the lowest responsible bidder for the NE 59th Place wastewater pump station for the Bureau of Environmental Services and provide for payment (Ordinance)
- Disposition:** Ordinance No. 170937. (Y-4)
- *254** Authorize a contract and provide for payment for the SE 33rd Avenue and Sherrett Street sanitary sewer, Project No. 5906 (Ordinance)
- Disposition:** Ordinance No. 170938. (Y-4)
- *255** Authorize a contract and provide for payment for the 19th and W Burnside sewer, Project No. 5430 (Ordinance)
- Disposition:** Ordinance No. 170939. (Y-4)

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- *256** Authorize a contract and provide for payment for N Missouri and Alberta sewer reconstruction, Project No. 5734 (Ordinance)
- Disposition:** Ordinance No. 170940. (Y-4)
- *257** Authorize a contract and provide for payment for the N Willamette and Mary sewer, Project No. 5392 (Ordinance)
- Disposition:** Ordinance No. 170941. (Y-4)
- *258** Contract with PowerWare, Inc. to provide programming services not to exceed \$37,500 to develop new computer systems for the Industrial Source Control Division of the Bureau of Environmental Services (Ordinance)
- Disposition:** Ordinance No. 170942. (Y-4)
- *259** Contract with CH2M Hill for professional engineering services for Columbia Boulevard Wastewater Treatment Plant odor control project for solids processing areas and provide for payment (Ordinance)
- Disposition:** Ordinance No. 170943. (Y-4)
- *260** Authorize a contract and provide for payment for the Alder Basin sewer reconstruction project, Phase 2, Unit 2, Project No. 5885 (Ordinance)
- Disposition:** Ordinance No. 170944. (Y-4)
- *261** Authorize the continuance of negotiations for the purchase of a sewer and water facility easement required for operation and maintenance of a sewer pipeline and water facilities in connection with the Ramsey Lake trunk sewer project and authorize the City Attorney to commence condemnation proceedings, if necessary (Ordinance)
- Disposition:** Ordinance No. 170945. (Y-4)
- *263** Apply for a grant from the Governor's Watershed Enhancement Board in the amount of \$65,000 for FY 1997 and FY 1998 (Ordinance)
- Disposition:** Ordinance No. 170946. (Y-4)
- *264** Authorize a contract with the lowest responsible bidder for the digester rehabilitation at the Tryon Creek wastewater treatment plant, Project No. 5151, and provide for payment (Ordinance)
- Disposition:** Ordinance No. 170947. (Y-4)
- 265** Authorize a contract and provide for payment for the installation of underground conduit at the Water Bureau's Operations Yard (Ordinance)

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

- *266 Amend Purchase Order with Geotech Explorations, Inc. for drilling and instrumentation at the Ditch Camp and Camp Namanu landslide areas (Ordinance; amend P.O. 1019328)

Disposition: Ordinance No. 170948. (Y-4)

- *267 Set hearing on withdrawal of territory from Tualatin Valley Water District at 9:30 a.m. on March 19, 1997 (Ordinance)

Disposition: Ordinance No. 170949. (Y-4)

City Auditor Barbara Clark

- 268 Appoint Ed Freeman as Bureau Administrative Manager at the top of the pay grade range (Ordinance)

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

REGULAR AGENDA

- *242 Contract with the U.S. Department of Energy, Bonneville Power Administration, for land use related to remediation of contaminated soil (Ordinance)

Disposition: Referred to Commissioner of Public Affairs.

- *262 Contract with Parametrix, Inc. for professional drafting services for the as-built update project (Ordinance)

Discussion: Council approved a motion to add an emergency clause.

Disposition: Ordinance No. 170950 as amended. (Y-5)

- *231 **TIME CERTAIN: 9:30 AM** - Adopt Fair Contracting and Employment strategy (Ordinance introduced by Mayor Katz)

Discussion: Mayor Katz said her efforts on this ordinance began in January, 1993 and today the Council is considering a strategy that will hopefully move the City into the top tier of American cities which are taking their responsibility to provide significant opportunities to minority, women-owned and emerging small businesses, as well as individuals seeking employment with City contractors. Portland is a complex \$1.4 billion municipal corporation with over 5,000 employees and 32 operating bureaus, contracting nearly \$200 million worth of goods and services in a fiscal year. The strength of the strategy is based on thoughtful and sound guiding principals developed by many of the people present in this meeting. Another strength of the strategy is the plan for institutionalizing the "Vision" principals on a City-wide basis through the contractor development program. The funding plan is largely based on using existing expenditures differently, a wise approach in the post-Ballot Measure 47 financial situation. Mayor Katz thanked all those involved who spent hundreds of hours on

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this strategy, including the local minority contracting community, the members of the Contract Coordinating Committee (C-3) and the local majority contracting community who came to the table.

Carlton Chayer, Director of the Bureau of Purchases, said this issue has a long history, with the City adopting the first Minority and Women Business Enterprise program in 1979. That program, consisting of one page of findings, lasted ten years and remained essentially unchanged. In most cases the number goals were achieved and there was a perception of success but the program did not address many of the fundamental issues faced by Minority, Women and Emerging Small Businesses (MWESB). In 1989, the U.S. Supreme Court, in the Croson decision, struck down most of the goal-oriented minority business programs which dealt a severe blow to MWESB participation on City projects. What followed was an effort to continue to provide opportunities in different ways. Mr. Chayer said that at that time the Bureau of Purchases and Stores, as the City's MWESB's liaison, was not funded for those programs, yet continued to work with prime contractors on an informal basis. As MWESB participation dropped, different approaches were tried, such as a first source hiring program to create MWESB employment opportunities, and contractors were encouraged to perform good faith efforts. Nevertheless, it became evident that MWESB participation was slowly declining. He said Mayor Katz established a Contracting Coordinating Committee (C3) in the first six weeks of her administration (early 1993) and gathered leaders from other regional agencies to work to move toward common contract requirements and delivery systems. By June, 1993 Mayor Katz announced a Fair Contracting and Employment Initiative to expand City contracting and job opportunities for minorities and women.

Mr. Chayer said much has been accomplished since. The Purchasing Bureau contracted with the State of Oregon to dispose of City surplus property and eliminate the City's Municipal Stores. Those savings were allocated to increase MWESB participation in City contracting. They focussed on a very limited contract compliance area, conducted mandatory site visits, held evening outreach meetings and again tried to impact the obvious disparity in City contracts. Agency participation has expanded Statewide, pilot projects have been tested, participation from all sectors of the business community has been included, a public procurement advisory group is functioning and a fair contracting and employment form is actively involved in the solutions. Finally, there is now an expanding sense of partnership between the public and private parties dedicated to this endeavor. Mr. Chayer cited individuals' contributions to this strategy and the following business organizations: Associated Builders and Contractors; the Black Contractors' Association; the Coalition of Black Men; Impact Business Consultants; Oregon Associated General Contractors; Oregon Tradewomen Network; Oregon State Building Trade Council; National Association of Minority Contractors; and Women Construction Owners and Executives.

Madelyn Wessel, Chief Deputy City Attorney, said the disparity study confronted the community with a sense of history and its role in minority and women's businesses. The apprenticeship and employment study, which was a part of the disparity study, showed a long-term history of both attempts and failures to improve the State apprenticeship and training system. Even when the barriers for people of color and women were removed there was a failure to provide an adequate training ground for those who wanted to move into this industry at a workforce level. Internally there were confusing and ad hoc program standards which were highly irritating to the community at large, not simply MWESB. Virtually all

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contractors suggested a number of improvements. There has been lax enforcement of simple anti-discrimination laws already on the books and unaffected by Supreme Court decisions and part of any core moral and ethical command in the community. Ms. Wessel said there was virtually non-existent tracking and reporting capacity. Some unusual, yet real and continuing, issues of outright discriminatory treatment were found both in the City's organization and the external community -- in apprenticeship, employment and the general business systems. Inadequate financial and technical support systems were in place so that MWESBs which had opportunities were often unable to take advantage of them as a result of the lack of an economic infrastructure, training or skills. In terms of the City's delivery of contracts out into the world, the designing and bidding of small prime contracts was poor.

Ms. Wessel said the study participants were forced to rethink what they meant by "justice," "equity" and "fair." Tracking by racial percentage has been the traditional way of measuring participation and success in this country and is the typical tracking of any agency. However, this is a poor way to measure economic justice. The work staff and Mason Tillman Associates developed tools to measure the meaning of success. She said hope is part of what the program entails and this study's recommended positive change is long overdue.

Dave O'Brien, Mayor's office, said that from a purely numerical standpoint the study offered almost 100 recommendations for the City of Portland alone. The recommendations targeted procurement systems spread out across 32 operating bureaus involving hundreds of employees that collectively procure \$200 million annually in goods and services from an estimated pool of almost 2,000 construction companies and 500 architecture and engineering firms. The study called for cooperation from nine other governmental bodies beyond the City and addressed financial, technical and bonding assistance issues which brought area banks, consulting and surety firms within its scope. During the strategy development process, the participants tried to ensure that implementation of the disparity study would fit the diverse business practices of the individual bureaus. Mr. O'Brien said C3 helped confirm that the programmatic elements of this strategy would be effective on a daily operational level throughout the City. City project managers and inspectors were asked for feedback on the strategy so the programs would run smoothly on-site, at the direct point of contact between the City and its contractors. The strategy was not developed in a bureaucratic vacuum and one of its greatest strengths is that it involved a large number of public contracting stakeholders. There was continuing feedback from the Mayor's Fair Contracting and Employment Forum and C3 held five community outreach meetings during the development process for additional external stakeholder feedback. Invitations to two community outreach meetings were sent to every certified minority, women and emerging small business in the Bureau of Purchases' data base to open the strategy development process to the group that would be most affected by its results. He said the scope of the study was grand, but the strategy has been looked at from enough angles by enough people to make it a truly effective response.

Sue Klobertanz, Manager of the Contractor Development Division of the Bureau of Purchases, said this strategy presents a program and funding plan, as well as defining roles and responsibilities to allow the City to respond to documented specific and persistent gender and racial discrimination. She said that in 1984 when she was manager of the Grants and Contracts Compliance Division there was a staff to do Equal Employment Opportunity (EEO) certification and certification of women and minority owned business. During the

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next four years, at the direction of the Council through budget hearings, the programs were basically dismantled with the responsibility for minority and women certification transferred to the State and the EEO program transferred to Purchases with no Full Time Equivalent (FTE) employee and only \$5,000 for a postage budget. Since the election of Mayor Katz the Council has taken a renewed interest in the problems defined by the disparity study. The Council adopted the Fair Contracting and Employment Initiatives a few years ago which recognized Seattle's experience: "racial toleration is meaningless if people are excluded from the vital, economic center and relegated to the margins." This strategy responds to a very difficult and complex problem and does not represent any quick fixes. She said to change an entire corporate culture requires a combined effort of other local governments and both public and private partners before reaching economic equity. The Bureau of Purchases is anxious to take these planning efforts and the never-ending strategy and move headlong into the let's-get-it-done stage. Ms. Klobertanz read the Vision Statement of the strategy. That Statement was followed by Values, Strategic Outcome Objectives and Performance Measures, which she said were unique for many governmental documents. She said, in reference to the contractor development program, there are four types of technical assistance necessary to make it work, as outreach and tweaking the procurement system is not enough: 1) general business assistance; 2) contract specific pre-award; 3) general bid assistance to anyone wishing to do business with the City; and 4) project-oriented technical assistance for eligible prime and MWESB contractors. Another integral part is the internal changes, how project managers and inspectors are trained and also how those managers work together across bureau lines. Sharing information and drawing on one another's experiences will improve the process. The charting in the study which may appear to some to be an overly bureaucratic and complex system is actually the synthesis of a very complex organization.

Commissioner Francesconi asked Ms. Klobertanz to elaborate on the financial and bonding situation.

Ms. Klobertanz said many of the pieces had yet to be developed. The disparity study pointed out that access to capital, bonds and the ability to get bonds at a competitive rate was often a problem for MWESB. The regional consortium of historically underutilized businesses (a consortium of local governments that has been meeting on this issue) has recognized this as an issue that can be better solved at a regional level. Those programs are still under discussion but, for example, Metro and Tri-Met are looking at a pilot program with Albina Community Bank where a contractor could have its contract assigned to a third party so it could borrow against the proceeds of that contract. Private banks are part of these discussions and have clearly indicated that they are interested in defining how to provide the resources cost-effectively and efficiently.

Ms. Klobertanz said the public will probably testify today that it is time for the City to get started and put some of these programs in place. The Developmental Tasks Timeline chart defines priority items and estimated completion dates, which are quite ambitious. The participants felt it very important to bring as many of the pieces of the strategy on line as possible by July 1, 1997. This chart also defines who has primary responsibility and support responsibility which is something the City has not had before.

Ms. Klobertanz said the disparity study took an in-depth look at the construction trade apprenticeship training system in the State of Oregon. Because the apprenticeship training

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system is outside the control of the City of Portland, the apprenticeship/employment portion of this strategy is an effort to expedite adoption of the appropriate study recommendations by the responsible agencies. This strategy indicates the City would achieve implementation of apprenticeship/employment through legal and political advocacy, partnerships and improvements in the City's employment programs. She noted it was difficult for her to talk about additional resources in light of the present budget season so, as the Mayor indicated, using existing City-wide resources is the emphasis of this funding plan. There are two types of fiscal impacts -- the contractor development division and the remaining City bureaus. The impacts on the contractor development division in the Bureau of Purchases include both ongoing and some one-time start-up costs. The funding plan indicates a search for resources to fund the strategy in three major areas: 1) special opportunity/special appropriation fund -- approximately \$300,000 annually for the past three years -- used to pay for the disparity study, supplemental legal assistance and some start-up costs for the central contracting data base in the contractor development division; 2) the possibility of consolidating existing stand-alone bureau minority contracting development efforts; and 3) the remaining expenses for identified costs would be allocated through the overhead distribution, assessments to capital projects or general fund allocations. Ms. Klobertanz said this ordinance authorizes use of a special appropriation fund balance to fund mid-year add packages. The review of the funding of next year's add packages would be completed as part of the normal budget process. In addition to the impact on the contractor development division, there is an impact to the bureaus to implement this strategy. Many of these programs have yet to be designed, such as the sheltered market or increased architectural and engineering requirements. Because of this, the potential fiscal impact on other City bureaus cannot be determined at this time. As these programs are developed, it is anticipated that the various, specific detailed fiscal analysis of the impact would be brought to Council. In addition to utilizing the internal resources to offset the impacts of both the contractor development division and the other bureaus, the funding plan assumes that many of the major programs will be developed and funded cooperatively with other external partners, both public and private. It is expected that the \$250,000 proposed for the mentoring program, the loan program and employment initiatives will be matched to create a program administered regionally in the most efficient and effective manner. Another type of supplement resource arises out of the entrepreneurial efforts. Currently, they are contracting with Multnomah County to do their EEO certification and workforce compliance, which is a fee-for-service arrangement and only provides a minor fiscal benefit to the City, but the arrangement does allow the retention of a critical pool of staff talent available to work on City projects.

Commissioner Kafoury asked if the increase in staffing would help do a better job of seeing that subcontractors got paid. The increase proposal did not reflect what the staff's tasks would be.

Ms. Klobertanz said most of the additional FTE would be geared toward compliance -- not only the data collection, but site visits and calling subcontractors to verify what they were paid.

Commissioner Francesconi asked Ms. Wessel to elaborate on the specifics of Oregon history that have led to this situation.

Ms. Wessel there are a few key points that go back to the very beginning of the State of

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Oregon, which had a legislative exclusion of minorities. She said our community is still one of the whitest in the United States. Oregon is also one of the last states to repeal overtly discriminatory laws, such as intermarriage. The State was very late to prohibit discrimination in public accommodations, housing and employment. Senator Hatfield is owed a great debt for pushing for anti-discrimination protections. During World War II, our war industries recruited people of color from other parts of the country and then excluded those very same people at the end of the war. Portland had extremely segregated housing patterns, leading to other types of isolation. Portland's own Community Development agency played a misguided role, unintentionally, in the 1960's and '70's by destroying the core of the black community. Oregon continues to have a very poor track record of simple enforcement and there has been very little legal clout or economic influence on civil rights enforcement. Minimal, if any, protection has been extended by the State Attorney General's or the U.S. Attorney's offices over the last 20-30 years.

Commissioner Francesconi noted that the poverty rate for African-Americans is 30 percent as opposed to 11 percent for whites, with similar statistics for Hispanic and Native American populations. He asked if the State's history is part of the reason for those figures.

Ms. Wessel said yes, the continuing economic disparities stem from overt exclusion, failure to enforce and a lack of a core base of capacity to nurture economic health in individual communities in the City and State.

Commissioner Francesconi said there was some concern about the monitoring going on in Purchasing.

Ms. Klobertanz said those concerns are probably based on the fact they have not had an organizational focus to produce the monitoring that should occur. It has only been since February, 1995, when Purchasing created the contractor development division, that the Bureau has been able to add staff and have resources to do that. With the resources requested today, they will have the ability to do the job. The performance measures for each of the objectives have been set with very high standards and they will have to work very hard to meet them.

Commissioner Francesconi asked about the role of community-based organizations and about the strategy to help build their capacity.

Ms. Klobertanz said the community-based organizations are a very important component of the entire strategy, particularly regarding the workforce. The latter is primarily being driven by the City's private partners. The connection must be made between the worker who is job-ready and getting him onto the worksite. The role the private partners will play is to come to the table for input and review with the City, obviously, having the ultimate responsibility.

Commissioner Sten asked about the specifics for the "technical assistance" part of the strategy. He said the line item for technical assistance is a critical piece, but how good is the strategy.

Ms. Klobertanz said that concept has as yet had no outside input, but the idea for the pre- and post-awards is a technology pool where experts would be on retainer so if contractors

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suddenly found they were making no profit because they bid it wrong or were having a technical problem, they would have someone to call for assistance. Having someone in a technical assistance position would free up the project managers to do their jobs more quickly and easily.

Commissioner Kafoury said she would be pushing to contract with some of the community-based people to provide the services.

Commissioner Sten asked if the technical problems would be handled much as large and small companies do, or are they looking at something different.

Ms. Wessel said a lot of work has been done over the last several years, such as the New York/New Jersey Port Authority Regional Alliance. A big difference in the design of this program is recognition that technical assistance cannot be just general and theoretical, it must be site, job and contract specific. In other words, tailored assistance.

Mona Goode, Bureau of Financial Planning, said her office has been working to refine and reduce the numbers. Ms. Goode said most of the money, such as the \$126,000 mid-year adjustment, is funded by the utilities, not the general fund. At this time there is about \$190,000 in the special appropriation, so there is essentially no net add. Of the \$420,000 in the 1997-98 appropriation, \$100,000 is one-time-only for the training program. The managers will be looking for some different kind of funding for the \$300,000, so hopefully there will not be a net add. If the start-up costs are taken out and the \$300,000 does not become a net add, the ongoing costs are essentially \$177,000.

Commissioner Kafoury said she appreciated Ms. Goode's note in the report to make sure to check about the other capacities in the City, such as business loan programs and things that Housing and Community Development and Portland Development Commission do now.

Ms. Goode said they hoped to do that type of evaluation.

Commissioner Francesconi asked if there might be savings when bureau duplications are identified.

Ms. Goode said that was possible and there is already a reduction in the current special appropriation ongoing funding.

Dr. Eleanor Ramsay, Mason Tillman Associates, said the fair contracting and employment strategy is an extraordinarily important move from a disparity study to actual implementation. The Supreme Court, in the City of Richmond v. J.A. Croson Company (January 29, 1989), decided that many traditional state and local affirmative action programs in the public contracting arena could be legally justified only by proof of systematic discrimination through statistical and anecdotal evidence. The impact of the new requirement was staggering. Local government needed to document business discrimination using statistics to show it was not awarding contracts to minority-, small- and women-owned businesses effectively. In short, cities, counties, special districts and states had to document that they were barring minorities and women from public contracting as a condition of maintaining a minority and women business program. Unlike most local governments that decided to do a

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disparity study, Portland partnered with other local governments to perform a regional study. An obvious benefit of this unique partnership was the potential to enhance the public contracting process and to more effectively stimulate the growth of small and emerging businesses. Growth in the number and capacity of businesses in a region can lower the cost of doing government business. Dr. Ramsay said her company had the opportunity to conduct the Oregon Regional Consortium Disparity Study. The study resulted in an eleven-volume report, rather formidable but containing useful information. The report is a careful and candid examination of how public contracting was done over a three-year period and measures the impact of these practices on minorities, women-owned and emerging small businesses. The recommendations are extensive and comprehensive. Dr. Ramsay said some of the strategies are unique and have not been employed in any other city, notably the sheltered market program and the direct contract and full construction services.

Jeanne Caswell, Project Manager, Bureau of Transportation Engineering and Development, said her work on the C3 committee was interesting as she is an implementer, not a strategist. She was on the committee to share how public works project managers and inspectors take the strategist's concepts and make them reality. From her perspective, the most important component is the project manager/inspector training, which also would give all the bureau managers a common perspective. Ms. Caswell said it is important to use the advice and counsel of the contractors the City works with.

Steve Sivage, Contract Coordinator, Bureau of General Services, said the study and their participation in it really raised their awareness of the problems and the proactive role the project managers can take. He emphasized the positive effect of ongoing peer review, with bureau projects being both similar and specialized. He also said the sheltered market element was excellent.

Harvey Lockett, Bureau of Environmental Services (BES), said the challenge to BES is in construction. The Bureau is currently working with the City Attorney's office and Purchasing to see if pilot projects drawn on these strategies can be implemented. A number of these projects are coming off the board this Spring.

Commissioner Sten said BES contracts will be hundreds of millions of dollars in the next several years. He said the City was under a Federal order to clean up the Columbia Slough and asked if there were something Council could do with the Bureau this Spring to make sure this strategy gets up and running.

Mr. Lockett said BES has surveyed the MWESBs to identify their interest, capability and capacity and has developed a matrix to superimpose on the types of work that appear in BES contracts. The business development technical assistance is very broad and complex. The project managers want to stay on budget and on schedule. They will be working through the details in the next several weeks.

Commissioner Sten noted that BES has set a precedent in trying to break up the big contracts into smaller components in a way that will not cost the ratepayers more money.

Mr. Lockett said they expect the Columbia Slough project to be about \$60-\$65 million and the project has been designed into smaller pieces so the local, majority contractors can

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respond rather than being so large that only international firms would be able to respond.

Commissioner Francesconi asked how many bids are made on these contracts.

Mr. Lockett said the Columbia Slough was a close example to what occurred on the light rail project. However, on the typical \$2 to \$5 million contracts, they get from eight to 10 or more bidders.

Commissioner Sten said they are prequalifying the big bidders and one of the qualifications is the ability to work on these strategy issues.

Jerry Walker, Multnomah County Contracts Administrator, said the Regional Consortium on Historically Underutilized Businesses includes most of the participating jurisdictions in the disparity study and several which did not participate. After the disparity study was released, they looked at the recommendations that they all had in common and which would be most effective to approach in a regional, collaborative way. Their focus has been on technical assistance, good faith efforts, contractor loan programs, workforce hiring and training issues, project management and effective training. Mr. Walker said they want to ensure they do not put up additional barriers for the contracting community by implementing programs that are so different the contractors would have to jump through different hoops.

Commissioner Francesconi asked if it were worth funding the implementation side of this even if it means more budget cuts by the bureaus.

Ms. Caswell said it was a worthwhile investment to implement a strategy that addresses how to improve contracting opportunities for MSWBEs and in upgrading the professionalism and quality of City staff.

Mr. Walker said in order to make sure MSWBEs have a fair shot at government contracting opportunities, efforts need to be funded.

Mr. Sivage said they know now that the good faith efforts were not working but do not know how much it was costing us.

Lawrence Dark, Urban League, said he lived in Richmond when Croson was going through the processes. He recommended taking the necessary risks with the budget and personnel and not just talking about it -- our talk has to match our walk. Mr. Dark said this was going to be the best opportunity to remove systemic barriers. He cautioned about not becoming weary and not to look for instant gratification and results, although there must be monitoring and accountability throughout. The questions he and people like him would ask are: do I trust you; are you committed; and do you really care about me.

James Posey, National Association of Minority Contractors of Oregon, said in his later years, Dr. Martin Luther King, Jr. knew as few leaders did at that time that racism is a byproduct of disparities in wealth and opportunities, which disadvantage whites as well as blacks. Mr. Posey said, as a community, we do not fully understand that profound statement. Portland has exceeded any other municipality to address these concerns, but elements of this strategy fall far short. All the parties who participated in this process are not equal stakeholders in the

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results. There is a mindset that minority contractors are really at fault -- the impetus of the problem -- but they did not cause the problem. It is a misconception that monitoring and data will correct the problem. There is denial that an experienced and competent staff operating independently and autonomously, with authority, is essential to correct systemic problems. Mr. Posey said the compliance issues must be dealt with aggressively. He and his group have provisionally approved acceptance of the strategy, although they have concerns such as the discussion of the contractor development division staff being responsible for communicating problems and other contract compliance issues to the project manager. In the field, that is the reverse of how this ought to work -- project managers should initiate reports to compliance staff. This would also save a lot of time and money.

Kevin Spellman, President of Emerick Construction, said he was speaking on behalf of Associated General Contractors (AGC), a 1,100 member trade association which includes contractors who perform about 40 percent of the commercial construction in the State. He said AGC by and large supports the concepts in this study; however they believe the work has hardly started and cautioned note that there is a huge task ahead in fleshing out the programs to effectively implement them. As experienced contractors, they can bring practical perspectives to increase effectiveness. It is, however, an industry where competition is fierce and the risk of failure high under the best of circumstances. Solutions must be long-term and focus on developing successful businesses which will compete and thrive in a tough environment.

Ted Aadland, President of F.E. Ward, Inc., said he a past AGC president who has and continues to work locally and nationally on programs to encourage minority and women's entry into the industry. He said the sheltered market will provide opportunity for minorities and women to build companies and capacity and education and training needs to be a vital part of that. The mentor protege program basically teams two mentors who are general contractors with a protege. Mr. Aadland noted that all those in the mentor protege program are offered free membership in AGC for as long as they are in the program, which allows them to get into insurance and other programs offered by AGC.

Bob Shiprack, Oregon Building and Construction Trades Council, said his union wished him to speak to the apprenticeship and employment plan. They still do not support the use of public funds directly for apprenticeship programs, although for a long time they have encouraged the City to establish its own apprenticeship program. Mr. Shiprack said one should look at the entire program for EEO certification, which deliberately moves minority and women off public works into private works to gain the needed experience as governments do not have paper and steel mills and high-tech plants. The Trades Council also agrees that compliance is critical. He said his union itself needs to change how they recruit and retain women and minorities.

Connie Ashbrook, Director, Oregon Tradeswomen Network, said the Network is a nonprofit to promote women's success in the trades through education, leadership and mentoring. She said they very much support the apprenticeship and employment plan, as women deserve to do the high wage and satisfying construction work. Employers need the pressure and encouragement from the City to change their hiring practices.

Peggy Sue Ross, owner of Ross Business Development Group, said the compliance and

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training elements will be the backbone of the plan's success. The compliance person(s) must have the authority and responsibility to monitor and enforce MWESB policies and administrative rules and be involved from the bid throughout completion of the contract. The tracking and certified payroll processes need careful attention and enforcement of penalties must be constant. Change orders and late paychecks can economically hurt a small business very easily.

Bruce Watts, Coalition of Black Men, said while they support the entire Fair Contracting Employment Strategy, they are extremely supportive of the sheltered market and direct contracting components, both of which should include rotating opportunities. They strongly disagree with the designation of the contractor development division manager as a lead person on strategy-related efforts. Purchasing and Ms. Klobertanz have done good work, but this is a very important area and a local, regional and/or national search should be conducted for the best available person to lead this strategy, one who possesses the construction expertise along with the knowledge of the City's needs.

Grace Gallegos, President, Impact Business Consultants, said there was an inclusive representation of the community participating in the study. Although everyone wanted a goals program, data could not be gathered because of the systemic reality--the systems were not in place. She noted that the strategy is akin to a business plan. It offers a vision, provides goals, objectives and, importantly, a process. It will be difficult to implement due to the very major issues. The strategy's capacity-building demands and requires the challenges that will follow.

Bill Hart, president of a small architecture and planning firm, said this strategy is a bold effort to provide race and gender parities in the procurement of goods and services. His clients are interested and excited about encouraging women and minorities to become part of the development process and look forward to having more competitive contractors. He noted there was still a great deal of work to focus on the relationships of the general and subcontractors. The dispute resolution process will work well to resolve differences.

Bruce Wong, President of Wong Forensic Metallurgical Engineers, said he comes from the direction of scientific emphasis and this strategy handles just about everything he understands about contracting with the City. He noted that his company has an intangible "scientific" product and the City will ask them for information on how to do something and then give that information to someone else, which could not be done in private industry. This document will enable a way to track such dealings and companies will have some recourse.

Susan Dobrof, Swanson Thompson & Coon attorney and Board Member of Oregon Tradeswomen Network, said her firm does a lot of work representing people who have been discriminated against in public and private employment, including apprenticeship programs. The Tradeswomen Network involves women in the union and non-union sectors who try to bring experienced tradeswomen together with those seeking to enter the trades and apprenticeship programs. Ms. Dobrof noted that most of the testimony has focused on contracting and she urged emphasis on hiring and employment as well. City employment has made a good start in achieving a workforce that mirrors city population. At this time, however, there are attacks on affirmative action, as important as it is. It will be harder to make the contracts the City awards reflect and mirror the diverse population if the City's

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bureau personnel do not also reflect the population.

Denise Woodhouse, owner of EIR Electric, 2802-B NE 65th Avenue, Vancouver, WN 98661, said the study's 100 recommendations are very insightful. The EEO programs allow a foot in the door, which helped her, but they have no teeth. She hopes the direct servicing pilot program might address one problem with the City's outreach efforts: sometimes the scope of the projects is so small that it has cost the contractor money. Ms. Woodhouse suggested that a lump-sum award, representing several small works, could be made to a contractor participating in direct service contracting. As exciting as the sheltered market is, the continuing programs that address program graduates is even more so. The higher cost of financing and bonding is a concern as it decreases contracting opportunities and profitability but increases the cost to the City.

Will White, Executive Director, Housing Development Center, 2627 NE MLK Jr. Blvd., 97212, said the Center's contractor support program works largely with smaller residential contractors, primarily minority- and women-owned, in economically distressed parts of the City. Their goal is to leverage some of the \$25 million spent every year on housing to create economic development within these firms and keep that money in those neighborhoods. They have moved beyond the focus on a percentage of participation to actually providing project-specific technical assistance, before and during the actual construction. Mr. White said they assess a firm's strengths and weaknesses and provide help with the latter. In the first two years of operating on a small scale, they have helped firms in the program to obtain over \$1 million in actual contracts. One firm has gone from successfully carrying out \$80,000 rehabilitations to new construction in excess of one-half a million dollars.

Gail Leszar-King, 14920 NE Fremont Street, 97230, said she has been in the non-union apprenticeship program for four years. She should be ready to take the journeyman's test, but she has only worked six months each year. The only jobs she has been able to get are to help through a busy time. Upon lay-off from a recent job, the contractor told her he had no problem with her work, but told other contractors that she was slow and needed to be shown everything, which is not true as she worked alone for hours. Ms. Leszar-King said hiring women and minorities is fine, but contractors need to be encouraged to keep and train those people.

Darrell D. Simms, CEO of Management Aspects, Inc. and Sims Engineering, 16650 SW Heceta Court, Beaverton, OR, said he has been doing a best practices analysis on disparity programs all over the country (and this is the last time Council will get free information from him). This study focusses the leadership within a bureau, but every other major successful program has an autonomous office with a director. That should be done here and even go so far as to make it a City/county office as has been done with the Affirmative Action Office.

Lou Boston, President, Boston Training and Marketing Group, 3910 SE El Camino, Gresham, 97080, said his company specializes in developing strategic plans and process for participation for MWESB in the construction industry. His company is responsible for contracts being awarded not only in Portland but through the States. He said the rooted racism of Oregon has always been visionary and the first affirmative action program was in 1859 which legislated that only white people could live here, have jobs, own businesses, etc. There were also exclusionary laws for Asians and Native Americans. Certain issues in the

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study need to be prioritized, one of which is bonding. In 1993, a coalition of public and private entities looked at funding a business to promote the growth and participation of social and economically disadvantaged business enterprises. The coalition stressed the importance of bonding and want to incorporate a surety support program for bonding application.

Jim Worthington, 3232 SE 153rd, Portland, 97236, asked if putting this study into effect will cost the City and other governments more money for contracts. Although the study has merit, he is not in favor of anything that would increase the cost of contracts. Throughout the testimony, he only heard of meetings with general groups, not the public. He objected to the emergency clause on the ordinance and urged that it be brought before the public.

Commissioner Hales asked for some clarification on the issues of the office providing oversight and bonding.

Ms. Wessel said the argument to create an autonomous office to manage the proposed strategy and programs is reasonable and part of a model that other cities have employed. It is a financial choice to set up such an office and a philosophical choice about designating the integration of these functions into the City. She is convinced that one of the problems of historical, conventional affirmative action has been the creation of a "little, other" thing, separated from the core institution and bureaucracy, public or private, which is trying to do righteous things. Affirmative action, non-discrimination enforcement and compliance must be integrated into every single function within our bureaucracy. Core to the complaint of separating the office is -- does the City really mean business this time? Yes, with Council holding its staff and the community accountable through contract awards, monitoring performance and the benchmarks to be performed at every level of the City. A separate office could not do that as well as Council.

Ms. Klobertanz said for the past two years, City staff has been researching the bonding issue. A Request for Proposal (RFP) was even put out for a combined technical assistance/bonding program and the response brought nothing new. When the disparity study was released, a regional consortium of local governments decided that was an issue of interest, did additional research, interviewed surety firms and concluded that if a firm's business sense and contract performance improve, it becomes more bondable, with more competitive rates. Therefore, the consortium's recommendation was to put initial efforts into technical assistance.

Commissioner Hales asked, aside from some administrative costs and some added project costs, whether the overall effect, with a wider pool of bidders, will have a favorable effect on the City's construction costs.

Ms. Wessel said the premise of the system is that competition increases benefits: there are lower prices with more competition. Today there are some contracts with about 10 bidders, but there are a lot with only two or three.

Commissioner Francesconi said he first testified at Council 10 years ago on the first source hiring agreement in construction and other contracts. Despite his good heart and intentions, it was not effective as they did not do the hard work it takes to actually deliver. He supports this strategy for several reasons: 1) stakeholders with experience and different backgrounds came together with comprehensive solutions; 2) the comprehensive approach includes

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sheltered workshops, direct contract, bonding and technical assistance; 3) it will reduce costs, as when only two firms/people compete for a contract, it will cost more; 4) this is a mechanism to consolidate what different bureaus are already doing; 5) we must figure out how to spend more dollars in our own communities; and 6) recognize the historical reality where, even today, the playing field is not level. He committed to monitoring the contracts and apprenticeship program.

Commissioner Hales said in talking about City business in different parts of the country, some things are tangible but Portland also tries to practice the politics of consensus. Regarding Oregon's racist history, he said that to try to change institutional behavior is like trying to turn a big ship.

Commissioner Kafoury said as a long-time government official, she knows disparity has been with us from the beginning and the answers have been elusive. She was a county official when the Croson decision was announced and they scrambled to try to find a way to continue what, at that time, they believed were pretty effective programs. The numbers and participation of minority and women contractors declined significantly after 1989 when preferential response in bidding was not allowed. She is most concerned with how this internal process is integrated with community-based contracts and, critically, the private sector must be involved more than in the past. Particularly in bonding.

Commissioner Sten said this has taken three years as it is so complex. However, the implementation should not be as complex. As Commissioner for the Bureau of Environmental Services, he sees great opportunities there. He recommended a close look at the issue of having an autonomous office, although he does not favor that over the Purchasing Bureau handling it.

Mayor Katz said not every community would expend these resources for a disparity study at the time affirmative action was in question. Council is to be commended for standing behind the commitment and expenditures. She said this is really a change on how the City does business, even though they do not have all the answers and there may be failure on some items. Mayor Katz said her personal commitment is to continue C3. She has found in her public service career that there are no quick fixes.

Disposition: Ordinance No. 170951 as amended. (Y-5)

*269

Authorize the settlement of Hussey, et al v. City of Portland, United States District Court No. 92-1302-FR (Ordinance introduced by Mayor Katz and Commissioner Hales)

Discussion: Terry Thatcher, Senior Deputy City Attorney, said this is the Southeast Portland annexation case and the proposed settlement is straightforward in its components. The Ninth Circuit decided that the City annexation and sewer program was wrong. Council directed the City Attorney's Office to try to settle this case short of having this area leave the City.

Jim Worthington, 3232 SE 153rd, Portland, 97236, said that when discount sewer rates first came out he said that it was illegal. It was buying votes. He was in one of the last big annexations and testified before the Boundary Commission that if all the signatures of the people who signed consent forms because of being promised a discount rate were voided,

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there would not be enough to proceed with the annexation. Since the issue was taken to court, he has attended numerous meetings. Commissioner Hales, in a meeting with the plaintiff's lawyers and a group of citizen leaders, wondered what money it would take for the mid-county citizens to be satisfied with the issue. Some people feel that one bribe is being settled with another, which is his view.

Commissioner Sten said it is the other ratepayers who provide the discount to mid-county. He asked if Mr. Worthington's position is that mid-county should pay full price for sewers and a vote be taken.

Mr. Worthington said that was correct.

Commissioner Hales said this is a time when all three counties in the metropolitan area have said they are getting out of the urban services business. As this is going on, the settlement means that the people living in these neighborhoods will still get reliable police and fire services, parks and other basic urban services.

Commissioner Kafoury said whenever this subject comes up and Mayor Katz rolls her eyes at her, she frequently feels she needs to apologize for her vote on this program. The East County dynamics were not simple. Hundreds of citizens, specifically in mid-county, demanded that something be done about the cost of the sewer bills. She said there is an obligation to the rest of the City ratepayers.

Mayor Katz said she did not mean to make Commissioner Kafoury feel guilty about her vote. She is glad the issue is behind them and they are moving on to continue to provide services to East county.

Disposition: Ordinance No. 170952. (Y-5)

Commissioner Gretchen Miller Kafoury

- *270** Agreement with the Oregon Community Foundation for \$200,000 for the funding of the Neighborhood Partnership Fund Development Fund administrative operations and provide for payment (Ordinance)

Disposition: Ordinance No. 170953. (Y-5)

Commissioner Erik Sten

- 271** Grant a franchise to Worldcom Network Services, Inc. for a period of ten years (Second Reading Agenda 101)

Disposition: Ordinance No. 170954. (Y-5)

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City Auditor Barbara Clark

- 272** Assess benefitted property for the cost of street, storm sewers, sidewalks, street lighting, water, sanitary sewer and other improvements in the NW 11th Avenue/NW Hoyt Street Local Improvement District (Hearing; Ordinance; C-9894)

Discussion: Dan Vizzini, Auditor's Office Liens and Assessments Manager, said this is the first project in what they are calling the River District Local Improvement District. Property owners are now living in what were once vacant warehouses. At the request of the City Engineer, the Auditor's Office is requesting a continuance of this hearing until March 12th. The City Engineer is investigating an issue raised by a property owner just yesterday, although it is not a remonstrance.

Commissioner Kafoury moved a continuance to March 12, 1997, Commissioner Sten seconded.

Disposition: Continued to March 12, 1997 at 9:30 a.m.

- 273** Assess property for sewer connection contracts processed through the Private Plumbing Loan Program for the period ending February 10, 1997 (Second Reading Agenda 224; P0023)

Disposition: Ordinance No. 170955. (Y-5)

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

Discussion: Dan Vizzini, Auditor's Office Liens and Assessments Manager, said Paul Raynor, 6723 SE 18th Avenue, has had several conversations with staff since last week about sidewalks. The recommendation of the Maintenance Bureau and the Auditor's Office on Mr. Raynor's remonstrance is that his assessment is correctly calculated. The estimate notice is lower than the final assessment notice, in part because the assessment fee is added at the end. The cost of the work itself increased only \$38. Of the batch of sidewalk repair bills reviewed by Council last week, 78 percent had higher estimates than the final assessment bill.

Commissioner Kafoury moved to overrule the remonstrance and Commissioner Hales seconded.

Commissioner Francesconi asked what the assessment fee was for.

Mr. Vizzini said it paid for the process to bring this to Council: all the accounting work to calculate the bill, record it in the City lien docket, mailings and notices.

Commissioner Francesconi asked if they were having any luck in reducing the assessment fee by getting Council out of this process.

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Mr. Vizzini said they tried in 1993. He recommended putting time into looking at the bigger picture on sidewalks and coming back with a comprehensive fix. Whatever the cost to fix someone's sidewalk, the cost to move the paper through the system is the same. The rates are currently set by Code on a percentage basis of the original work performed.

Disposition: Remonstrance overruled. Ordinance No. 170956 as amended. (Y-5)

275

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 (Second Reading Agenda 226; Z0645, Z0646, Z0647)

Disposition: Ordinance No. 170957. (Y-5)

At 1:00 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 26TH 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: Britta Olson, Acting Clerk of the Council; Kathryn Beaumont, Senior Deputy City Attorney; Chuck Bolliger, Sergeant at Arms.

- 278** Tentatively deny appeal of Downtown Community Association against Hearings Officer's decision and 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 (Findings; Previous Agenda 227; 96-00880 PR)

Discussion: Commissioner Hales moved to adopt the findings. Commissioner Kafoury seconded.

Commissioner Francesconi said he asked the City Attorney for Code clarification on the legal effect. The answer he got back was that it was not clear in the Code and the word "removed" was not defined. He said, because it was not clear, he would vote aye to encourage development of surface lots.

Mayor Katz asked Ruth Spetter if anything in the findings altered significantly enough to flag for the audience or Council.

Ruth Spetter, Senior Deputy City Attorney, said no.

Disposition: Findings Adopted. (Y-5)

- 276** **TIME CERTAIN: 2:00 PM** - Appeal of Centennial Community Association against Hearings Officer's decision to approve application of Kerry Angelos, et al, for a zoning map amendment from R7 to R5 in compliance with the Comprehensive Plan Map designation at 14207 SE Center Street (Hearing; 96-00818 ZC)

Discussion: Kathryn Beaumont, Senior Deputy Attorney, delineated the two sets of guidelines: 1) the testimony and 2) issues pertaining to the substance of the testimony. She noted that it was an on-the-record review and in respect to the testimony, as this was not an evidenciary hearing, those persons addressing the Council must limit their remarks to the evidenciary record compiled by the Hearings Officer.

Mayor Katz asked for declarations of conflicts of interest or ex parte contacts by Council members.

Mayor Katz said she had met with the Codys to discuss the issue of the trigger and the conflict which seemed to arise because of some misunderstanding, but she did not discuss this particular property or zone change.

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Commissioner Francesconi said he had read two letters that were not before the Hearings Officer -- Commissioner Hales' letter of January 13th and the Codys' response of February 24, 1997.

Nan Stark, Bureau of Planning, presented slides of the site. The request was to change the zoning to R5 in compliance with the Comprehensive Plan (CP) Map designation, which allows single detached dwellings on 5,000 square foot lots. A six-lot subdivision was approved by the Hearings Officer in December, 1996 and is contingent upon this zone change. Two approval criteria apply to this proposal: 1) compliance with the CP map, which is met and 2) the primary criterion, adequacy of public services -- water supply, transportation systems structure and capacity, police and fire protection, sanitary waste disposal and stormwater disposal. Ms. Stark said the various service bureaus' response is that their services are adequate to serve six lots, although the Bureau of Transportation Engineering recommended a few conditions. SE Center Street is a local service street without sidewalks, so they would be required.

Ms. Stark said Pages 6 and 7 from the Centennial Neighborhood Plan are the basis of the Association's appeal, although they were legislatively adopted with the Outer Southeast Community Plan and the Centennial Neighborhood Plan early last year. The Hearings Officer's decision said that the change to R5 was a City policy decision and the Hearings Officer had no authority to modify that designation. She reiterated that action item H6 only gives the Planning Bureau authority to implement the new CP designations on a legislative basis and only if certain conditions are not met by 2005. The neighborhood also challenged the proposal on the approval criteria regarding adequate services, particularly transportation capabilities.

Louise Cody, 1515 SE 151st Avenue, 97233, representing Centennial Neighborhood Association (CNA), said it opposes the zone change. She said the CP designation was created when CNA and the Planning Bureau entered into an Outer Southeast zoning amendment agreement. Some areas were to be upzoned at once and a reserve area was set up for delayed upzoning and higher density as a guarantee that the Centennial neighborhood would meet half of the City's 1,000 housing units goal in ten years. She said the CP designation was a mechanism chosen by the Planning Bureau and CNA was never told of its implications. CNA opposes the change for these reasons: 1) the CP designation should not be on the map or available at all to developers at this time; 2) its presence on the map violates the Outer Southeast amendment agreement and the Centennial Neighborhood Plan as it allows access to a reserve area which will not be available for ten years and only then if 500 housing units have not been built; 3) the immediate application of the CP designation on the map by the Planning Bureau was a unilateral decision made without Centennial's knowledge, consent or support; 4) neither the neighborhood or steering committee members were ever notified that developers would have access to higher density zoning at once by means of the CP designation; 5) withholding this and other pertinent information from CNA broke City Code 3.19.607.ONA; 6) the agreement said the H6 trigger would be placed as an objective which has legal weight in land use cases, but it was placed as an action which does not; 7) in the December, 1995 Outer Southeast amendment request report, Council was told agreement was reached between CNA and the Planning Bureau, which it was not; and 8) CNA believes that Council was unaware the CP designation would be immediately put on the map.

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Ms. Cody said the trigger is intended to kick in the CP designation for certain areas at a later date. The trigger is based on housing units built and would be enacted by December 31, 2005 if Outer Southeast as a whole has grown by at least 7,000 units but Centennial has not grown by 500. Map request No. 29 says to remove the A overlay in areas within a quarter mile of Stark, Division and Powell and to remove the A from these sites until the trigger goes off. The trigger cannot go off for ten years. She said there was an effort a year ago to break the amendment agreement by placing the A everywhere, despite the agreement calling for the A only within a quarter mile of Stark, Division and Powell. CNA expected their agreement to be modeled on the Albina Plan which said developers could not have a high-density residential CP designation for the strip along the proposed North/South Light Rail until the Light Rail facility is assured. In the adopted Neighborhood Plan, the Planning Bureau withheld the time frame from the housing action H7 chart which now appears for the first time as "adopt with the Plan." Because this time frame was not previously submitted to Council or CNA, it is not legally adopted, only added to the Plan after it was passed. This is the first and only indication that the CP designation could be applied earlier than the ten-year trigger. Planning gave the Hearings Officer a letter which explained action H6 and Planning's intent. The letter indicates that action H6 was never intended to stop zone changes and compliance with the CP designation which allowed the reserve area to be put under siege. The letter said CP designation zone changes should be evaluated by Code Title 33, the availability of public services, not Centennial's trigger. Ms. Cody said to state that CNA knew and was told that property owners could apply for CP designation zone changes and that legislative zone changes, policies, objectives and actions would not preclude this is false. The Hearings Officer took into account Planning's intent, overlooking the neighborhood's intent.

Jim Worthington, 3232 SE 153rd Avenue, 97236, CNA Land Use Chair, said CNA only got a copy of Nan Stark's November 14th letter in the middle of December. He said they are not against a regular process of zone changes. He noted that a previous owner of the property was turned down for development although the Hearings Officer recommended that the owner get a CP designation and this occurred before the Outer Southeast Plan became effective. Mr. Worthington said no new maps are available for all the zoning on the Outer Southeast Plan.

Donovan Scheer, 15300 SE Main Street, 97233-3343, said he opposed the higher density zoning proposed for his neighborhood.

Linda Bauer, President, Pleasant Valley NA, 6232 SE 158th Avenue, 97236, said at their last meeting her neighborhood association had voted unanimously to support Centennial in this case.

Dale Marx, PO Box 565, Gresham, OR 97030, consultant for the applicant, said they had met every condition they were asked to and have worked with the Planning Bureau for over a year on this.

Kerry Angelos, 14900 SE 119th Avenue, Clackamas, OR 97015, applicant and property owner, said he had attended more than one CNA meeting, discussed these issues with them and was told CNA did not have a problem with his project, but that they were concerned with the overall plan. He said he feels as if CNA has used him as a guinea pig to get their case to Council and his project is taking a long time with numerous delays because of it. He

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noted that CNA actually starts east of his project.

Commissioner Francesconi asked how much delay there was.

Mr. Angelos said their hearing with the Hearings Officer took place in early November; Mr. Worthington stated CNA's interpretation of the Plan and they agreed to a seven-day setover. Mr. Angelos agreed to extend that even further so he could, out of courtesy, attend a CNA meeting.

Mr. Marx said the project is compatible with and meets every characteristic of what is going on in the area.

Commissioner Francesconi asked if the delay cost them money.

Mr. Angelos said of course it does but the neighborhood association does not consider that and is taking advantage of its free appeal. He has done what the code called for and has two other same-sized lot projects within 200 feet of this one that have not been appealed.

Commissioner Hales asked if this project's street would be connected to the immediately adjacent, county-approved subdivision's private street.

Mr. Marx said they tried to utilize the existing private streets, but the owners have continually denied those attempts.

Commissioner Hales clarified that this would, in effect, be a wider than normal single cul-de-sac street with no gates.

Mr. Worthington said that this project was just within the Centennial boundaries, on an R7 lot and had this been done properly, they would not have had any questions. He said people are not getting proper notification, such as the neighbor immediately to the east who shares a common driveway, and this was brought to the Planning Bureau's attention. He said CNA wants to get rid of the CP overlay which should not have been there in the first place.

Ms. Cody said the applicant's lots are not compatible because it is an R7 neighborhood and Center Street is inadequate for pedestrians or bikes. They are sympathetic to Mr. Angelos who has gone out of his way to come to meet with them. As this area is more than a quarter mile from a transit street, the increased density will not support the transportation system.

Mayor Katz noted, in reference to Centennial's policy issue, that this is not the proper process to bring such issues before Council.

Commissioner Hales said since the Outer Southeast Plan was adopted there have been at least two instances where CNA has come to him to point out how something is working in practice versus perception and a solution was reached. This case utilizes the same tool that Centennial agreed to in other cases.

David Knowles, Planning Bureau Director, said it is important to separate the policy issue from this immediate land-use case as the developer is entitled to the certainty provided by the regulations. He said the Planning Bureau did explain the A overlay incorrectly,

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admitted that they did and within 30 days of recognizing it brought an amendment to fix that mistake. Normally when Planning does a community plan they conform the zoning map to the CP map. In this case, they made an exception to that and left the zoning map at the lower density while they changed the CP map. That also means that individual property owners are able to ask for an amendment in conformance with the CP map and the test for that is primarily the existence of services. Mr. Knowles emphasized the point that the Planning Bureau did not take unilateral action as the Bureau cannot act unilaterally -- it was a legislative change and was in front of the public. There only was a misunderstanding of how that mechanism worked.

Mayor Katz said she would like a clear explanation on how the Planning Bureau interpreted this issue and why the Bureau appeared to interpret it differently than the neighborhood association. The policy issue should be brought back to Council at another time.

Commissioner Hales said this was an honest misunderstanding, but a way to avoid this in the future needs to be figured out. In this case, the mechanism exists today and he moved to deny the appeal and uphold the Hearings Officer's decision. Commissioner Kafoury seconded.

Disposition: Appeal Denied. (Y-5)

Commissioner Charlie Hales

277

Appeal of Multnomah County, applicant, against Hearings Officer's decision to deny application for a conditional use permit and adjustment to expand the existing Inverness County Jail at 11540 NE Inverness Drive (Previous Agenda 201; 96-00756 CU AD)

Discussion: Mayor Katz noted that Council granted additional time to see if the two parties could reach a compromise regarding the parking lot and structure around the new jail site.

Commissioner Kafoury said she was not present at the original hearing and probably should not vote.

Sandra Duffy, Multnomah County counsel representing the Sheriff's office, said they met twice with neighbors to reconsider the proposed parking lot design. Stormwater runoff and water quality were of particular concern. A design drawing attached to the memo from Marguerite Feuersanger (Planning Bureau) is the result of those meetings.

Bob Nilsen, Facilities Property Management, Multnomah County, said there were questions about why the parking structure was not shown on the revised submittal. The original plan called for a parking structure but once they began receiving the cost estimates, it became apparent they could not afford one. At the same time they also faced environmental issues regarding the setback lines, etc. That is why the recent memos on the conditional use show the surface lots instead of the parking structure.

George Drake, engineer with URS Consulting, said they have worked with Bureau of Environmental Services (BES) staff to understand their concerns and have now provided the concept that is attached to other materials. Important aspects of the concept provide for stormwater treatment of the water coming off the paved surface via vegetative swales. The

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water is conveyed via pipeage to the existing pond which also provides additional water quality benefits by taking and removing additional contaminants from the water prior to its discharge into the Columbia Slough. Stormwater filters are specific elements of the City's stormwater guidance document on this issue and the concept plan meets that. The swales and pond provide a maximum ability to remove the contaminants from the stormwater and all concerns of BES staff have been met on that.

Multnomah County Sheriff Dan Noelle said they entered into an agreement with the State to have the new jail ready to operate by January 1, 1998. They thought they would have their building permit three months ago but because of an error by City staff, the County ended up redesigning the building. Twenty-eight beds have been knocked out of the design as a result of the meetings with environmental groups, who were absolutely and morally right about the (environmental protection) line. The County has now met their needs. Regarding the parking structure, he was originally worried about cutting the proposed separate two-story structure back into a surface lot. To meet concerns about surface lots, County staff met with those concerned and a plan has now been designed to allow, as best they can with limited dollars, for water runoff and swales. He said the contractor has been sitting in a trailer for three months waiting to get started. He said the County has demonstrated good faith in dealing with these issues and has tried again, in the last two weeks, to meet the concerns raised. They will continue to work with people on the landscaping, tree locations, etc. He pleaded with Council to instruct the Planning Bureau to at least sign the site and utility permit so they can get going on the actual construction.

Mike Houck, Audubon Society of Portland and, as a member of the Columbia Slough Watershed Council, a participant in the mediation, noted that at the last Council hearing he expressed some concern about the parking structure in particular but agreed there was consensus among those who signed the letter that the remainder of the project was acceptable, with various caveats. He said he came today because last time he specifically said he wanted the County to get together with BES to resolve the water quality issues on that parking lot. He noted his interest also in looking at structured parking to see if the footprint and runoff can be reduced. He did not participate in the meetings but reviewed the designs with BES staff and believes the County has lived up to the spirit of the request. They did what they were asked. One concern, however, is that the reason so many parking spaces are proposed is because the City requires them. He said Council, in view of Metro 2040, ought to review that policy to see if that number is really needed.

Linda Robinson, 115 NE 135th, said she attended both meetings held since the last Council hearing. The parties discussed at some length the parking structure versus a surface lot and the County pretty much persuaded them why it cannot build such a structure. The County agreed to try to redesign the surface lot to make it as "green" as possible and has gone out of its way to do so, proposing 32,000 square feet of landscaping instead of the required 4,200 square feet. They have also agreed to use native plants as much as possible.

Alice Blatt, Chair, Wilkes Community Group and East Portland Neighborhood Office representative to the Watershed Council, said she readily agrees with Mr. Houck and Ms. Robinson about the meetings and is grateful to the County Commission for making it possible to meet with the Sheriff's Office and arrive at this mitigation, repairing what might have been very damaging. She said those who worked on the Natural Resources Management Plan (NRMP) for the last eight years are well aware of the value of early

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mediation. She noted the woeful inadequacy of the initial Plan which Council passed, despite Commissioner Lindberg's reservations, rejecting a compromise plan offered by concerned citizens. After winning an appeal which took three years and cost countless taxpayer dollars, the neighbors got the protection plan the City now has, which in essence is no different from the compromise they had asked for originally. Ms. Blatt noted that at the last hearing Commissioner Francesconi stated that one reason he would grant this appeal was because of Hearings Officer Elizabeth Norman's incorrect statement. They agree that it was incorrect but object to granting this appeal based on one erroneous statement within her whole and highly-credible decision. Her decision was based on a statement that a mapping error should not take precedence over all the other existing evidence. She referred to the Plan District documents which indicate that they are preeminent in the Code. Also, there are no less than seven references to a figure in the protection plan that clearly defines the resource as the Slough Channel. That anyone could not define where this resource was defies credibility. A statement in that document clearly says that the transition area is the outer 50 feet of the environmental zone except as shown on Map 515-5, which clearly defines the only exceptions to that rule. In the figures it says clearly that the natural resource is the main Slough channel, including the banks and the riparian areas (albeit degraded). This should have been very clear to everyone, including the Planning Bureau and the Sheriff's office. The Council should not validate a mistake and accept it as a reason for allowing development when the recourse is to find that aerial maps are the basis for the zoning maps. They are in the appendices and were clear and accurate. She said she wants Council to approve this proposal but not to make one planner's mistake the basis for abrogating all its obligations for policy and agreements.

Commissioner Hales noted that the staff recommendation was for 275 parking spaces and the Sheriff originally proposed to build 350. He asked Sheriff Noelle how many are proposed now and if that is enough.

Sheriff Noelle said 260 are proposed and they believe the number of spaces is fine. They will make sure the lot is capable of accommodating Tri-Met buses too.

Ms. Duffy said the City told them 252 was the minimum required.

Commissioner Hales said he will soon be proposing that the City get rid of parking minimum requirements.

Lyn Mattei, representing Northwest Environmental Advocates, 133 SW 2nd, #302, 97204, Portland Sierra Club and Northeast Environmental Defense Center, said the parking solution is fine and the mediation was very productive. However, she expressed concern about benching along the Slough, which was proposed as mediation. Page 4 of the mediated agreement (number i) says the repair and benching work will occur over a 385-foot reach of the Slough starting 60 feet east of the laundry building, a total of 199 feet of slide repair area within the 385-foot reach, at three separate locations. To do that the elevation of top of bank will be lowered somewhat to reduce the steepness of the slope. This was agreed upon in consultation with Oregon Department of Fish and Wildlife and the US Fish and Wildlife Service and members of the mediation group. However, the County's commitment to this appears to be sliding and now they want to bench only portions of that area. The banks there are extremely steep in some cases and in the past debris has been dumped into the Slough, with dirt on top of that. This has caused a very dangerous slide condition and many

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involved in the mediation believe the benching will help mitigate the losses of the p zone, stabilize the banks and create a wildlife corridor. She asked Council to make benching of the entire 385 feet part of the approval. Also, the top of bank has a gas line on it that looks like it could be moved at no cost, making the benching easier and stabilizing the slope. The County, apparently, will not deal with moving it.

Ms. Mattei objected to having Council base its decision on the Hearings Officer's statement that "the zoning maps are not considered part of the zoning code." She said taken in context that statement has nothing to do with her finding that the aerial maps control over the zoning maps. There are a lot more reasons why her opinion is correct and it is not wise to base rejection of such a well-documented opinion on one sentence. Ms. Mattei said she believes the Hearings Officer meant to state, instead, that the zoning maps are not considered part of the zoning code for the NRMP. That is because she goes on to state that the adopting ordinance for the NRMP adopted the maps and text separately and that they are amended separately. Ms. Mattei said the Hearings Officer's mistake does not appear to be a fatal error. She referred to her November 12, 1996 comments (33.700.070 (f)) which give a much more valid solution when there is a mapping problem. Finally, a Citizens Advisory Committee was supposed to be formed for all development in the Columbia South Shore. This was not done. If it had been, some of these errors would have been resolved.

Marguerite Feurersanger, Planning Bureau, said the proposed benching is not part of this proposal. She assumes it would include work in the resource area, in the bank, and that would be reviewed as a resource enhancement proposal, requiring the County to go through a Type II environmental review.

Jim Worthington, 3232 SE 153rd, supported the latest proposal and agrees with Ms. Blatt that Council needs to review some policy changes and separate them from this issue. He said the County needs to go ahead with the jail.

Helen Cohen, Wilkes Community Group, said the NRMP and the Columbia South Shore District Plan are all part of the City's agreement with the State regarding Goal 5. Because of the mediation there have been many changes to the good. She asked that City staff send Wilkes a copy of the building permit when it is submitted and keep them apprised about the status of the plantings.

Mayor Katz left the meeting and Commissioner Hales assumed the chair.

Commissioner Francesconi moved (with input from Commissioner Hales on the wording) to tentatively grant the appeal, overturn the Hearings Officer's decision, approve the application with modified conditions based on the mediated compromise agreement and instruct City staff to issue the site and utility permits immediately.

Commissioner Hales noted that findings would be heard in one week.

Commissioner Sten seconded. Roll was called and the motion carried.
(Y-3)

Disposition: Tentatively grant the appeal with modified conditions (Y-3, Kafoury abstaining, Katz absent); Applicant prepare findings for March 5, 1997 at 2:00 p.m.

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At 3:45 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Britta Olson

By **Britta Olson**
Acting Clerk of the Council

Cay Kershner

Cay Kershner
Clerk of the Council