



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 2ND DAY OF APRIL, 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; Ben Walters, Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

Mayor Katz noted a request to pull 438, 439 and 440, returning 438 and 440 back to the Commissioners' offices.

REGULAR AGENDA

- *438** Request and accept one tax-foreclosed property from Multnomah County for park and recreation purposes and assign it to Portland Parks and Recreation (Ordinance)

Disposition: Referred to Commissioner of Public Works.

- 439** Formally request the transfer of certain Multnomah County tax foreclosed property to the City of Portland to be used as public street right-of-way and access control strips and for environmental projects (Resolution)

Discussion: Cay Kershner, Clerk of the Council, said an amendment had been distributed adding a piece of property for environmental projects.

Commissioner Sten moved to adopt the amendment. He said there is a piece of land near the Columbia Slough that could really enhance the area and they would like to add that now. Hearing no objections, the Mayor so ordered.

Disposition: Resolution No. 35595 as amended. (Y-5)

- *440** Authorize Development Agreement with P.C. Development Inc., dba Raintree Development Company, for improvements to intersection of SE Foster Road and SE Jenne Road (Ordinance)

Disposition: Referred to Commissioner of Public Safety.

Ms. Kershner noted additional requests to pull Agenda Nos. 429, 430, 431, 441 and 446 from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

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CONSENT AGENDA - NO DISCUSSION

Mayor Vera Katz

432 Recommend approval of State of Oregon Business Development Fund Loan for IPM Technologies, Inc. for \$20,000 (Resolution)

Disposition: Resolution No. 35596. (Y-5)

433 Approve a draft Drug & Alcohol Testing Policy for employees who operate commercial motor vehicles in order to comply with federal drug & alcohol testing regulations (Resolution)

Disposition: Resolution No. 35597. (Y-5)

*434 Pay claim of Chester Jennings (Ordinance)

Disposition: Ordinance No. 171037. (Y-5)

*435 Contract with Peregrin Medical Review to perform medical bill auditing and other related services for the Bureau of Risk Management (Ordinance)

Disposition: Ordinance No. 171038. (Y-5)

*436 Assign contract with U. S. Public Technologies, Inc. to U. S. Public Technologies, LLC (Ordinance; amend Contract No. 26013)

Disposition: Ordinance No. 171039. (Y-5)

Commissioner Jim Francesconi

*437 Increase Contract with Elevator Consulting Services, Inc., for additional services for five projects (Ordinance; amend Contract No. 27916)

Disposition: Ordinance No. 171054. (Y-5)

Commissioner Gretchen Miller Kafoury

442 Accept contract with Von Lom and Griffin as complete for renovations at the Fire Bureau Training Center and make final payment (Report; Contract No. 30694)

Disposition: Accepted.

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443 Contract with C. Wark Trucking for \$649,995 for soil remediation (Ordinance)

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

*444 Authorize a contract and provide for payment for emergency generator installation at two Fire Bureau locations (Ordinance)

Disposition: Ordinance No. 171040. (Y-5)

*445 Authorize a Private Lender Participation Agreement between United States National Bank of Oregon, the Portland Development Commission and the City of Portland (Ordinance)

Disposition: Ordinance No. 171041. (Y-5)

Commissioner Erik Sten

*447 Continue negotiations for the purchase of four permanent sewer easements and eight temporary construction easements required for construction of the Inverness Force Main Sewer Project, begin condemnation proceedings, if necessary, and obtain early possession (Ordinance)

Disposition: Ordinance No. 171042. (Y-5)

*448 Authorize a contract and provide for payment for the NE 29th Avenue, Skidmore to Mason Sewer Replacement Project, Project No. 5341 (Ordinance)

Disposition: Ordinance No. 171043. (Y-5)

*449 Authorize the settlement of *Portland Habilitation Center, Inc. v. City of Portland*, Multnomah County Circuit Court No. 9608-06597 (Ordinance)

Disposition: Ordinance No. 171044. (Y-5)

*450 Authorize a contract and provide for payment for the N. Willamette & Gay sanitary/storm sewer pipe, Project No. 6139 (Ordinance)

Disposition: Ordinance No. 171045. (Y-5)

*451 Amend contract with Black & Veatch Consulting Engineers to add \$65,000 for additional engineering services to include near-term operations strategies and water quality analyses in the Groundwater Treatment Study (Ordinance; amend Contract No. 29663)

Disposition: Ordinance No. 171046. (Y-5)

- 452 Authorize Intergovernmental Agreement for the City of Portland to provide staff support services to the Regional Water Providers Consortium (Second Reading Agenda 410)

Disposition: Ordinance No. 171047. (Y-5)

REGULAR AGENDA

- 429 Accept bid of R & R Property Services, Inc. for \$47,246 and McLean Landscaping-Maintenance for \$50,841 for an annual supply furnishing nuisance abatement services (Purchasing Report - Re-Bid 72-A)

Discussion: Lewis Marcus, 7318 N. Syracuse, 97203, said he is concerned about any expenditures the City makes at the same time it is considering closure of North Precinct, something his community is up in arms about. (He repeated these comments as Items 430, 431, 441 were considered.

Commissioner Hales said Mr. Marcus is right and Council does need to raise the level of scrutiny over the Consent Agenda to make sure funds are not being spent that would otherwise be available. However, a lot of items on Consent now concern prior commitments the City made.

Commissioner Sten said the question of North Precinct is still up in the air but in the interim the City needs to continue to run.

Mayor Katz noted that she and the Police Chief made the decision to keep North Precinct open when they opened the new Northeast Precinct. The final decision will be made as work continues on the budget.

Disposition: Accepted; prepare contract.

- 430 Accept bid of C. Wark Trucking for Linnton oil fire training grounds remediation for \$649,995 (Purchasing Report - Bid 76)

Disposition: Accepted; prepare contract.

- 431 Accept bids Porter W. Yett Co. for \$1,379,429; Lakeside Industries for \$1,034,572; K F Jacobsen & Co. Inc. for \$689,714; and Pacific Rock Products LLC for \$344,857 for furnishing an annual supply of asphalt concrete (Purchasing Report - Bid 126-A)

Disposition: Accepted; prepare contract.

- *441 Authorize a contract and provide for payment for Laurelhurst Park improvements (Ordinance)

Disposition: Ordinance No. 171048. (Y-5)

446 Accept contract with Coffman Excavation for the Inverness Force Main, Section A Sanitary Sewer Project as complete, approve change orders and provide for final payment (Report; Contract No. 30468)

Discussion: Ms. Kershner said this needs to be referred back to make some corrections.

Disposition: Referred to Commissioner of Public Works

426 **TIME CERTAIN: 9:30 AM** - Transmit report on the Bureau of Fire, Rescue and Emergency Services Seismic Rehabilitation Plan from the Director of the Bureau of General Services (Report introduced by Commissioners Francesconi and Kafoury)

Discussion: Tom Feely, Fire Bureau, said completion of this plan is an important milestone as the Bureau began struggling with the seismic issues about five years ago. Consultants identified significant seismic problems and found that only one facility would survive a major seismic event. At that point the Fire Bureau sought help from the Bureau of General Services regarding retrofitting. They have jointly prepared this report and today seek approval for a continuation of Phases 2 and 3 of the seismic project with money currently allocated in the budget.

David Kish, Director, Bureau of General Services, said in the last six or seven years, the City has spent more than \$20 million bringing essential facilities up to a seismic level that will ensure they can perform during and after an earthquake. All the police precincts and the 9-1-1 center have now been seismically retrofitted now. Fire stations are the next group in line that need to be worked on and they want to make sure that work is not done to stations that may close or be relocated in a few years. This is probably a 10 to 15 year program, in the tens of millions of dollars. He said this is an investment in the community, not really an expense

Mayor Katz and Council laughed at the "not an expense" remark.

Mr. Feely said the Bureau is working on a long term financial capital plan.

Karen Kramer, Facilities Manager, described the method they used to prioritize all the stations on the basis of their operational and structural components. In that way they could concentrate on the key stations and fashion a systematic plan for upgrading. They also want to make sure that they can tie other planned improvements to these upgrades to make the buildings more sound. The work is planned in four phases; phase 2 and 3 have been funded and phase 4 has been partially funded.

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Steve Sivage, Property Management, BGS, described the work planned on the remaining phases. He said the next step is to develop performance expectations for each station so that they have a better idea of both the structural and non-structural costs.

Mayor Katz noted a comment by Mr. Kish that in a severe earthquake the soil under some stations could liquify. Would money be spent on those?

Mr. Sivage said the worst one in that regard is the main station at First and Ash. They may need to move the station. He noted that all the soil studies have not been done.

Mayor Katz said that raises the possibility of closing some stations and this needs to be done in close coordination with anything else the Bureau is working on.

Mr. Kish said some property in the West Hills has been identified for a station and is in the proposed budget.

Commissioner Francesconi said as he understands it the Bureaus are asking Council to reauthorize two key projects in the 1996-97 budget -- \$133,000 in planning money for the seismic upgrade and start-up work at 27 stations costing \$600,000.

Mr. Kish said they would finish the first three phases and then begin some of the minor seismic work in conjunction with other projects, such as meeting ADA requirements or roof repair. This is a long term program that will be very expensive, \$20 to \$30 million, but includes relocating or building new stations.

Commissioner Francesconi said clearly there is a critical need here.

Disposition: Accepted. (Y-5)

S-427 **TIME CERTAIN: 10:00 AM** - Amend City Code to reset the City's waste diversion goals at 54 percent in 2000 and 60 percent in 2005 (Ordinance introduced by Commissioner Sten; amend Code Section 17.102.010)

Discussion: Ms. Kershner noted that a Substitute had been filed.

Commissioner Sten said when the garbage franchise agreement was considered several months ago, they decided that more work was needed on the recycling goals. The revised goals are to have 54 percent of garbage recycled by the year 2000 and 60 percent by 2005. The current level is between 46 and 49 percent, making the City one of the nation's recycling leaders. The original goal in 1991 was set at 60 percent by 1997 and did not reach that, partly because the compost facility at Metro never got going.

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Lee Barrett, Co-manager, Solid Waste Recycling Program, Bureau of Environmental Services, said they believe they would have been close to the 60 percent goal if the compost facility had been operable. They want now to match their goals with those of the region and State, which have selected 2000 and 2005 as the years. They reviewed the materials most available for recovery in the commercial/residential segments to see if higher levels of recycling are achievable. For instance, they believe they can get 60 percent of the cardboard, newspaper and office paper recycled by the year 2000. He said, as the greatest generators of paper, they plan to target commercial sectors. Although Council had previously set a waste reduction goal of 10 percent, no goal was set this time as they found no reliable way to measure it.

Mayor Katz said one reason may be because the bureaucracy never gathered the necessary information. She is disappointed that goal was dropped and wants the search for measurements to continue.

Mr. Barrett said they are not backing away from the programs but are reluctant to attach numbers. He noted that last year the City won an award for best residential curbside recycling program.

Paulette Rossi, Portland Utilities Review Board, subcommittee members, said the City needs to be more aggressive and not wait for Metro. The PURB supports these goals but with two recommendations. First, staff should return with a waste reduction program accompanied with rate impacts. Two, the City could become a model participant in waste reduction and not use recycling to justify continued use of wasteful products. Overall, waste diversion goals should be the City's most aggressive.

Jeanne Roy, Recycling Advocates, said the City should recognize the importance of composting food scraps and consider residential composting and low-tech smaller methods as an alternative to a major compost facility. She said if the City's goal is serious and not just a symbol then it needs to specify the plans and programs required to meet it. Along with funding and staffing, a plan is needed. The City should retain the 10 percent waste reduction goal and give it the highest priority.

Mike Hutchins, BES Solid Waste Advisory Committee, supported the ambitious goal contained in this recommendation.

Steve Apotheker, 1905 NW Going St., 97211, said the City's articulated goal can make this a model for the nation. He said the City needs to be aggressive in pursuing food scrap recycling, using smaller facilities. He supported the need for a waste reduction goal and development of a methodology for measurement. He said the City needs a long term vision, not little leaps, if it is to reach the goal of zero waste in 2040.

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Scott Klag, Metro Planner, supported the City's goals, which are consistent with Metro's.

Sam Oakland, 3446 NW Thurman, 97210, described a simpler method for composting which every home owner could do easily.

Rene Griffith and several other Whitaker Middle School Students, offered suggestions for increasing recycling efforts, including paying people to recycle.

Commissioner Sten said he agrees that a specific plan is needed and will seek public input as it is formulated. He said they took the solid waste recycling goal out because of the lack of measurement tools, but he is open to adding it back.

Mr. Barrett said it is the policy of the City to promote aggressive waste reduction.

Commissioner Francesconi asked him to look at the impact on rates.

Mr. Barrett said staff will report back to the PURB on specific programs for reaching the goals and Council can review them also.

Commissioner Sten noted that the bulk of the reduction has to come from commercial organizations but that help from advocacy groups is important too.

Mayor Katz said she would like to have waste reduction benchmarks continue to be included.

Commissioner Kafoury moved the Substitute. Commissioner Sten seconded and, hearing no objections, the Mayor so ordered.

Commissioner Hales said the success of the program is based not just on a program but on a community acting on its values. This program gives people an easy means to act on them and the next step is to get the business community to act on them as well.

Disposition: Substitute passed to Second Reading April 9, 1997 at 9:30 a.m.

428

TIME CERTAIN: 10:20 AM - Accept informal procedures for reducing nighttime noise related to garbage and recycling collection (Report introduced by Commissioner Sten)

Discussion: Commissioner Sten said through this informal process they hope to resolve complaints about garbage noise at night.

Anne McLaughlin, BES, said this is a follow-up to complaints they received last summer about noisy garbage collectors in the early morning hours. A procedure

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has since been developed for dealing with conflicts between the collectors, who do garbage pickups at night to avoid daytime traffic congestion, and the residents. She described the procedure and said the response has been good to date.

Mayor Katz said asking people to go out of their houses at 4:30 a.m. to see what hauler is making the noise, is asking a lot. She does not believe this will work.

Ms. McLaughlin said, however, staff needs to know who they are complaining about.

Carol Broderick, NE Sandy resident, said businesses on the same street may have different haulers, making it hard to identify the companies at fault. She said she does not know how this procedure can be enforced.

Dave White, Chair, Tri-County Council (representing haulers), said they would be happy to work with BES staff on this.

Jennifer Erickson, no address stated, said she found it easy to identify the truck and solve the problem. She noted that it is difficult to serve downtown during the daytime because of traffic problems.

Commissioner Hales said this informal approach is worth a try though it takes unusual effort by residents and staff, especially as the boundary between commercial and residential areas grows fuzzier.

Mayor Katz said this is better than nothing but she is not sure it will work.

Disposition: Accepted. (Y-5)

453

Authorize the filing of application for municipal water use permits with the State of Oregon Water Resources Department (Resolution introduced by Commissioners Francesconi and Sten)

Discussion: Commissioner Sten said the Water Bureau and Parks are filing this joint resolution to allow the City to use Willamette River water for parks. Such use could save 330,000 gallons of Bull Run water daily and also save \$50,000 in Parks' water bills. He said the water is safe for irrigation purposes and this is a way to protect Bull Run water for drinking.

Rose Marie Opp, 1113 SE Yamhill, 97211, questioned the need to water the parks, contending that they can survive pretty well with just rain. She also said there are health risks associated with bringing contaminated water into the parks.

Rosemary Seminara, 5433 N. Olympia, 97203, said parks are always viewed as the first place to save money.

Commissioner Sten said saving Bull Run water, not money, is the primary goal here.

Tom Cropper, no addresss stated, said a third dam is needed in Bull Run to protect the drinking water. He said conservation will not work if more people are attracted to the area.

Commissioner Francesconi said it is nothing but good sense to do this.

Commissioner Sten said the City needs another source of water and he does not support drinking Willamette River water. They hope to begin having more industrial users draw from the River but piping is the issue there.

Disposition: Resolution No. 35598. (Y-5)

Mayor Vera Katz

***454** Authorize the Mayor and Auditor to execute an amendment to a labor agreement and approve a revised letter of agreement concerning the implementation of new pay rates for ECO Trainees, between the City of Portland and AFSCME, Council 75, Local 189, relating to terms and conditions of employment of certain represented employees of the Bureau of Emergency Communication (Ordinance; amend Ordinance No. 171009)

Discussion: David Rhys, Bureau of Personnel, explained the small changes this amendment makes to the agreement Council recently approved.

Disposition: Ordinance No. 171049. (Y-5)

Commissioner Jim Francesconi

***455** Authorize an agreement between the Bureau of Parks and Recreation and David Douglas School District 40, Multnomah County, Oregon for joint use of facilities (Ordinance)

Discussion: Commissioner Francesconi said this is an issue of how parks relate to schools. What has been done here is to formalize what has been done informally up to now.

Ron Russell, Superintendent, David Douglas School District, said this solidifies the School District's good relationship with the City.

Rod Monroe, Chair, David Douglas School Board, said this has been carefully crafted to make sure everyone is in support.

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Susan Hathaway-Marxer, Parks Bureau Property Manager, said the bottom line is that this provides the best public benefit.

Rosemary Seminara questioned why an ordinance is needed if something has been working so well. She said no one should be on the public school grounds except on business and she believes mixing up the schools with the parks is a very bad idea.

Tom Cropper said he is shocked to find that construction has already begun on the Floyd Light Community center.

Rosemarie Opp, 1113 SE Yamhill, said citizens in East County are losing full use of their parks. She said this agreement takes away from the public's use and opens the way for adding parking lots and cutting trees. She asked (referring to Item 457) what the words: "and other agreements related to the property" meant.

Lewis Marcus, 7319 N. Syracuse, 97203, said he agrees with Ms. Seminara, Ms. Opp and all the other activists in the community who support protection of the parks.

Commissioner Francesconi said the Parks Bureau is reviewing park and non-park use for the whole parks system but putting parks near schools is a wise decision. This is a very good agreement, central to the Parks' mission.

Commissioner Hales said it is good not to have a boundary between the parks and schools.

Mayor Katz said Council is always hearing about the need for 24-hour schools and this agreement is one part of it.

Disposition: Ordinance No. 171050. (Y-5)

***456** Contract with Pioneer Courthouse Square, Inc. for \$236,000 to renovate and make improvements to Pioneer Courthouse Square and provide for payment (Ordinance)

Discussion: Commissioner Francesconi said this contract was held up until after completion of an audit of the Square. That has been done and he is now confident that the problems identified are behind them.

Arnold Cogan, Chair, Pioneer Courthouse Square Board, said they have now completed a very extensive audit and are confident they can move ahead with these improvements now.

Sam Oakland, asked Council to consider making the Pioneer Courthouse post

office a part of the Square. He said the federal government is still planning to close it down.

Disposition: Ordinance No. 171051. (Y-5)

Commissioner Charlie Hales

***457**

Authorize an agreement between the Bureau of Parks and Recreation and David Douglas School District 40, Multnomah County, Oregon for exchanging land and designing and constructing facilities for the East Portland Community Center (Ordinance)

Discussion: Harry Auerbach, Deputy City Attorney, said the words cited by Ms. Opp regarding "other agreements" in the first parage of Page 1 of the agreement only means that the City wants to cooperate as it anticipates shared use of the space. As other actual uses are identified, more agreements may be needed but there is no hidden agenda here. This indicates that as the new community center is built, the school district and City can jointly use the facilities to maximum benefit.

Mayor Katz noted the reference on Page 2 to the purchase of an additional 1.5 acres.

Mr. Auerbach said that refers to the wooded area within the environmental zone where no development is foreseen. The School District is interested in trading it for other City property but no property has yet been identified. At this point the City does not know if it will do a trade or agree to purchase the property.

Ms. Hathaway-Marxer said the School District is interested in a trade of equal size.

Mr. Russell said the School District owns 1.5 acres that should be part of the park and which it would like to exchange at some point.

Mr. Monroe noted that the property is a steep, wooded area and will remain that way.

Mr. Marcus asked why this is an emergency ordinance when the community center is already under construction.

Mr. Auerbach said this was not done earlier because the land-use application was under consideration. The emergency clause is appropriate because there is no reason to hold this up for another 30 days.

Ms. Seminara said the land swap has already happened and the City is asking authorization to do something they are already doing. She questioned where the

money for upkeep was coming from.

Ms. Opp said it will cost \$600,000 to operate the community center and questioned why the David Douglas gym could not be used. She said now the Floyd Light Park is being destroyed for development but later the City will probably return with a plea for more money to buy new parkland.

Ms. Hathaway-Marxer said they had hoped to bring this to Council earlier but the surveying work took an extra long time to complete.

Mayor Katz said she understands why citizens get upset when they see construction begin before an agreement is approved. She said she hopes to see a new policy on when Parks sells or gives away land and will not approve any more swaps until that policy is in place.

Mr. Auerbach said they needed to get going on construction because of the commitment to have athletic facilities available. They have sought input from the community and will approve no land exchange without discussion.

Disposition: Ordinance No. 171052. (Y-5)

City Auditor Barbara Clark

458 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 (Second Reading Agenda 419)

Disposition: Ordinance No. 171053. (Y-5)

At 12:43 p.m., Council recessed.

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

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi (late), Hales, Kafoury and Sten, 4.

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

- 459** **TIME CERTAIN: 2:00 PM** - Appeal of Winmar Pacific, Inc., applicant, against Hearings Officer's decision to deny application for a zoning map amendment to remove the environmental zone from a portion of the site, and a mapping error correction to move the boundary of the environmental protection zone at NE 181st Avenue and Airport Way (Hearing; LUR 96-00775 ZC)

Discussion: Commissioner Hales moved to accept the appellant's request to withdraw this appeal. Commissioner Kafoury seconded. Hearing no objections, the Mayor so ordered.

Disposition: Withdrawn.

- 460** Amend the Comprehensive Plan Map and change the zone of property between N. Columbia Boulevard and Bank Street, Barr Street and Oswego Avenue from OS (Open Space) and R5 (Residential) to R2 (Residential) (Return Agenda Item 77 for procedural correction; LUR 96-00234 CP ZC SU)

Discussion: Ruth Spetter, Senior Deputy City Attorney, said after this land-use case (known as Johnswood or Host) was appealed to LUBA, and at roughly the same time the City realized that Council had not specifically mentioned the word ordinance on the last day this item was discussed. She said the City Attorney thought it was best to bring this back simply to have those who voted initially to approve the request to specifically vote on the ordinance. The ordinance has always been in the record and was referred to at the first hearing. There were so many hearings, however, that by the time it came before Council on the final day it was simply not mentioned. She said the three people who voted initially need to reaffirm their vote of January 15, 1997, adopting the findings provided on that date and amending the zone and comprehensive plan as was before it on that date. Prior to voting, the reference to the emergency ordinance needs to be deleted and direct the Council Clerk to prepare the necessary ordinance and Council Order. An issue has been raised about citizens' right to testify on this matter. She said this is a land-use matter and the record is completely closed. The matter is at LUBA and this is not an opportunity to go back into the facts of the case. She said when she made her motion to LUBA and spoke to the petitioners she specifically promised them this was not the purpose of the City's

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request. This is the same as Council adopting findings, at which time it usually does not take testimony. If Council wishes to take testimony on the procedural aspects, it could. However, she strongly recommended that the City not get into the facts because the record is closed.

Lewis Marcus, Cathedral Park Neighborhood Association, raised a point of order, stating that Ms. Spetter's statement is inaccurate and that this is a motion for reconsideration from LUBA. He asked to be allowed to testify on this procedure and that Council reconsider this case.

Ms. Spetter said the City asked LUBA to stay the item while it adopted this ordinance. It never requested reconsideration. LUBA chose to call this a motion for reconsideration but the City is not reconsidering anything.

Commissioner Kafoury moved that the record remain closed and that Council take no testimony today. Commissioner Hales seconded.

Dennis Keepes, St. Johns Neighborhood Association, raised a point of order and said the Association has the right to be heard.

Commissioner Hales said Council can either hold a hearing on the substance again, close the record and take action without testimony (as Commissioner Kafoury has moved), or take testimony on only the procedural question.

Ms. Spetter said people could testify as to whether or not they liked the fact that the City had gotten permission from LUBA to return and ask Council to adopt the ordinance. But Council should not get into the facts of the underlying case. She said she was told by an attorney representing St. Johns that the purpose of the testimony today was to an attempt to get back into the facts and change people's minds.

Commissioner Hales said the only reason to reopen the testimony would be to raise questions about the record. The City Attorney has indicated there is a problem with the record which needs to be corrected but the real review will happen at LUBA.

Ms. Spetter said their intention was to have that happen automatically but LUBA changed her request into a motion for reconsideration. That will require that the appellants will have to reappeal although they would not have to pay another fee.

Commissioner Hales said if procedural arguments are to be made, the place to make them is at LUBA.

Ms. Spetter said appellants can challenge what Council is doing today at LUBA too.

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Commissioner Hales said he sees no reason to take public testimony as the City, as a party to this case, is only correcting its record fore LUBA.

Mayor Katz asked about allowing testimony on the procedure alone.

Ms. Spetter said testimony should be limited to the procedure for bringing this back to Council for readoption and whether this is an appropriate request.

Commissioner Hales said he believes in correcting the record and moving on as the decision has already been made.

Mayor Katz said her tendency was to allow testimony, sometimes on a much broader basis than Council wished.

The vote on whether to take further testimony was Y-2 (Commissioners Hales and Kafoury); N-1, Katz. (Commissioners Francesconi and Sten did not participate because they were not on the Council when this case first came to Council).

Paul Richmond, no address stated, said the City attorney's use of the word "usually" regarding the taking of testimony was ambiguous, opening the City to charges of arbitrary behavior.

Ms. Spetter said her statement was "usually when Council adopts findings, it takes no further testimony."

Because of the split vote and some confusion about the need for three affirmative votes on a procedural matter, moved to reconsider and on a Y-3 vote decided to allow testimony.

Citizens testifying in favor of full reconsideration of this case included:

Lewis Marcus, 7318 N. Syracuse, 97203
Dennis Keepes, St. Johns Neighborhood Association
Sam Oakland, 3446 NW Thurman, 97210
Rosemary Seminara, 3433 N. Cynthia
Rose Marie Opp, no address stated
Cherry Holenstein, 6141 SE Steele

Anthony Boutard, 2640 SW Davenport, 97201, the lead petitioner in one appeal before LUBA, said the City Attorney's office assured him the record would not be reopened and that only the minor technicality would be addressed. He urged Council to abide by that so this can move forward as he does not believe Council is open to full reconsideration at this point.

Ms. Spetter said remand has a bigger impact. This choice was made based on the City's request.

Cay Kershner, Clerk of the Council, noted the removal of the emergency clause. She said Council should also move to amend the ordinance to approve the amended findings adopted by Council January 15, 1997.

Commissioner Hales made that motion. Commissioner Kafoury seconded.

Commissioner Hales asked what the difference is between a voluntary remand and LUBA's decision to send this back for reconsideration.

Ms. Spetter said this was the choice LUBA made based on the City's motion. It was not based on anything LUBA thought about this case. As she understands this has to be reappealed again.

Ms. Kershner restated the amendment to Subsection A. Roll was called on the amendment (Y-3; Commissioners Francesconi and Sten abstaining).

Disposition: Passed to Second Reading as Amended (Y-3; Commissioners Francesconi and Sten abstaining).

Commissioner Jim Francesconi

461 Liquor license application for 3100 Sandy Blvd. Inc., d.b.a. Shaughnessy's Bar & Grill, 3100 NE Sandy Blvd., Dispenser Class A liquor license (Change of Owner); favorable recommendation, with Letter of Caution (Report)

Discussion: Mike Sanderson, License Bureau, noted that the applicants, Robert Rice and Peter Goforth, are also owners of the property and have operated many restaurants and liquor outlets in the City. The prior tenant offered nude dancing and was a source of irritation to nearby neighbors. That business has closed and the landlords have taken it back, operating it with no nude entertainment. As property owners, however, the applicants are unwilling to guarantee that in the future one of their tenants may not want to revert back to the nude entertainment format. To address these concerns, applicants have agreed not to let a future tenant change to a nude outlet format without first allowing the City's liquor endorsement process to complete itself. The License Bureau supports this because it will provide an opportunity for the City to oppose any change in format under the problem area rule of the Oregon Administrative rules. The business is inside a prostitution-free zone and there have been multiple arrests nearby for prostitution. For these reasons, the License Bureau believes the City can successfully oppose a change back to the old nude dancing format. The staff recommends a favorable endorsement with a letter of caution stating that the applicants operate as proposed.

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Robert Rice, applicant, 6850 SW Gable Parkway, 97225, said his company recently retook these premises and restored them to an operation consistent with their other restaurants. They understand the concerns about activity on Sandy Boulevard and have stipulated to neighbors and the License Bureau that they never intend to be in the nude bar business and their business plan addresses these issues.

Commissioner Sten asked him if he was willing to make that a legally binding commitment.

Mr. Rice said as operators, yes. But nude dancing is a legal business and they are unwilling to waive their legal right on behalf of some future operator. From a practical standpoint, however, the reason they are back in as operators is because, as landlords, they did not want to deal with that anymore, either with the neighborhood or as a landlord.

Mayor Katz said as the property owner and business operator, you are not willing to state you will not lease to someone else who might operate such a business.

Mr. Rice said they have agreed in perpetuity as the business operator not to operate as a nude bar but have not agreed to extend that prohibition to another legal user of that property in the future. While they have qualms about sexually-oriented businesses they do not want to say it would never happen. There have been issues where someone comes in, changes the business and with a temporary letter of authority, somehow escapes the City licensing process. They have agreed to forbid that.

Mayor Katz asked how the City could protect against a switch, if this operation is leased to another tenant.

Mr. Sanderson said there is no guarantee except the written representations of the applicants that they would not allow, under a temporary letter of authority, a change that would include nude dancing. There is no guarantee about what happen if they sold the property and a new owner took over although the City has some informal protection through identification of this as a prostitution-free zone. It is unlikely the OLCC would allow a unilateral change of format there without first contacting the City.

Commissioner Hales asked how Council could reopen consideration of a license if a new owner takes over.

Mr. Sanderson suggested that the License Bureau write a letter to the OLCC advising them that the City opposes any change in format to nude dancing in a prostitution-free zone. He said giving the City prior notice is clearly within OLCC authority. Favorable with restrictions carries with it a hearings process

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but he is not sure it would be binding on the property owner. He said there is no basis now for an unfavorable recommendation at this time.

Commissioner Sten said there would be substantially more protection for the neighborhood if the property could not be sold to a nude dancing bar that has alcohol.

Commissioner Francesconi asked if its being in a prostitution-free zone did not provide a legal basis against opening a nude bar.

Mr. Sanderson said yes, that would provide a basis. The question then begins whether the plan as submitted in the staff report is sufficient to prohibit such operations or whether restrictions would be the cure.

Commissioner Francesconi asked Mr. Rice whether he would prefer to agree not lease out or sell it to somebody that would have nude dancing or a favorable with restrictions recommendation.

Mr. Rice said he believes they have come to terms with the neighborhood, although neither achieved everything they wanted.

Commissioner Sten said he is leaning towards a favorable with restrictions recommendation at this time. He noted that last week Council turned down the application for Club Cocoa and he wants to be consistent with that decision.

Mr. Rice said they are currently operating on a temporary letter of authority and have spent thousands of dollars to turn this around. That letter expires in three days. He said any recommendation to the OLCC other than favorable with letter of caution, will be kicked up to the Oregon Liquor Control Commission itself and they would go out of business until the Commissioners met.

Commissioner Sten said he cannot speak to what other Council members think but it would certainly surprise him not to put the restriction on that was stipulated in applicant's letter to the neighborhood, even though that is an agreement not a liquor license.

Mr. Sanderson said favorable with restrictions is an option. Any restrictions placed on the license by the OLCC would apply only to these applicants as operators, not as landlords.

Mr. Rice said the applicants have already agreed to have no nude dancing and the OLCC is unlikely to extend restrictions on the property into the future since the licenses cannot be sold. Any new owner would be considered a new licensee.

Commissioner Sten said he would like to require that no change in operations be made unless a new application is filed.

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Mayor Katz said the issue of the next tenant will be addressed in the letter of caution.

Susan Marshall, 321 SW 4th, #800, 97204, said Mr. Rice's company does rent to nude businesses and this agreement, prohibiting buyers of the business from significantly changing the format during a 90-day letter of authority, offers the neighborhood just a modicum of protection against future leasing to a sex-oriented business. She asked Council to require the applicants to add a clause to any future lease or sales agreement restricting any change in format to include sexually-oriented entertainment. She said she reluctantly supports the License Bureau's recommendation.

Sharon Ward, Chair, Kerns Neighborhood Association, said the neighborhood wants assurances against the possibility of a nudie bar opening up at this location as they have heard rumors that the operator is looking for lessees.

Bill Lenertz, Land-use Chair, Kerns Neighborhood Association, said adult businesses have a chilling effect on development in this neighborhood and that is why they are so concerned.

Alison Stoll, Central Northeast Neighbors, 4430 NE Sandy, 97213, said there are five neighborhoods in this prostitution-free zone and the livability of the neighborhood needs to be protected.

Commissioner Francesconi moved to accept the License Bureau's recommendation of favorable with a letter of caution. Commissioner Kafoury seconded.

Commissioner Francesconi said this operator has a good history and because it is in a prostitution-free zone Council will have another chance for input if the owners choose to lease or sell the property.

Disposition: Favorably recommended with letter of caution. (Y-5)

At 3:15 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council