



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 11TH DAY OF JUNE, 1997 AT 9:30 A.M.

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

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

On a Y-4 roll call, the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

845 Accept bid of Tec Equipment, Inc. for three 55,000 gvw cab chassis w/15 c.y. dump body for \$265,959 (Purchasing Report - Bid 167)

Disposition: Accepted; prepare contract.

846 Accept bid of Brattain International Trucks, Inc. for six 28,000 gvw cab and chassis w/dump body and tool/storage compartments for \$259,434 (Purchasing Report - Bid 194)

Disposition: Accepted; prepare contract.

847 Accept bid of Emery & Sons Construction, Inc. for NW 81st Place retaining wall and slide repair project for \$72,869 (Purchasing Report - Bid 202)

Disposition: Accepted; prepare contract.

848 Reject all bids for permit tracking systems software upgrade (Purchasing Report - Bid 208)

Disposition: Accepted.

849 Reject all bids for Portland Community Music Center phase II (Purchasing Report - Bid 210)

Disposition: Accepted.

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Mayor Vera Katz

850 Confirm appointment of Marcy McInelly and Richard Michaelson to the Portland City Planning Commission (Report)

Disposition: Confirmed.

851 Confirm appointment of James Taylor and Less Frank to the Police Internal Investigations Auditing Committee (Report)

Disposition: Confirmed.

***852** Agreement to provide photographic developing services to the Multnomah County Sheriff's Office (Ordinance)

Disposition: Ordinance No. 171240. (Y-4)

***853** Authorize contract with Innovative Care Management, Inc. (Ordinance)

Disposition: Ordinance No. 171241. (Y-4)

Commissioner Charlie Hales

***854** Amend contract with Henderson Young and Company for professional services for Transportation Systems Development Charge programs for the City of Portland (Ordinance; amend Contract No. 30336)

Disposition: Ordinance No. 171242. (Y-4)

***855** Amend Code Section 17.24.020, Fees for Street Use Permits, to provide for adjustments and establish an effective date (Ordinance; amend Code Section 17.24.020)

Disposition: Ordinance No. 171243. (Y-4)

Commissioner Gretchen Miller Kafoury

***856** Amend and extend Intergovernmental Agreement with the State of Oregon, Office of State Fire Marshal, for Regional Hazardous Materials Emergency Response Team Services (Ordinance; amend Contract No. 50575)

Disposition: Ordinance No. 171244. (Y-4)

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***857** Contract with the City of Gresham to implement activities under the HOME Investment Partnership Program and provide for payment (Ordinance)

Disposition: Ordinance No. 171245. (Y-4)

***858** Contract with Metropolitan Family Services for \$26,900 for Project Linkage Summer Yardwork project and provide for payment (Ordinance)

Disposition: Ordinance No. 171246. (Y-4)

***859** Community Development Block Grant float loan agreement with Housing Authority of Portland in the amount of \$575,000 to provide bridge financing for the commercial portion of a facility for homeless families and provide for payment (Ordinance)

Disposition: Ordinance No. 171247. (Y-4)

Commissioner Erik Sten

860 Accept completion of the Fiske B CSO storm sewer Project 5249 and authorize final payment to James W. Fowler Co. (Report; Contract No. 30651)

Disposition: Accepted.

861 Accept completion of the Insley Basin CSO sump project, Unit 3-Phase II, Project 5989, and authorize final payment to Brundidge Construction, Inc. (Report; Contract No. 31060)

Disposition: Accepted.

862 Authorize contract with EES Consulting, Inc. for consultant services to develop and provide water treatment operation training to treatment operators (Ordinance)

Disposition: Passed to Second Reading June 18, 1997 at 9:30 a.m.

863 Amend Westside Light Rail tunnel segment construction agreement with Tri-Met and provide for final payments (Ordinance; amend Contract No. 50056)

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Disposition: Passed to Second Reading June 18, 1997 at 9:30 a.m.

- *864** Authorize funds to execute an agreement with the Union Pacific Railroad for an easement and track construction for the Columbia Slough consolidation conduit (Ordinance)

Disposition: Ordinance No. 171248. (Y-4)

- *865** Authorize agreements for the conveyance of property to the Bureau of Environmental Services, subject to certain conditions being fulfilled, and authorize acceptance of deeds and payments of expenses (Ordinance)

Disposition: Ordinance No. 171249. (Y-4)

- *866** Amend Title 17 of the City Code to correct mathematical errors on the solid waste and recycling small multiplex rate table to be in accordance with rates established by the City Council effective July 1, 1997 (Ordinance; amend Code Chapter 17.102, Exhibit A)

Disposition: Ordinance No. 171250. (Y-4)

- *867** Authorize cooperative agreement with the Mt. Hood National Forest for maintenance of Bull Run roads during the remainder of federal FY 1997 (Ordinance)

Disposition: Ordinance No. 171251. (Y-4)

- 868** Authorize contract with CH2M Hill for laboratory services for microbiological and chemical analysis and related assistance for Information Collection Rule compliance (Ordinance)

Disposition: Passed to Second Reading June 18, 1997 at 9:30 a.m.

- 869** Amend contract with KPFF Consulting Engineers for professional services under Phase II of bridge repair project (Second Reading Agenda 833; amend Contract No. 29668)

Disposition: Ordinance No. 171252. (Y-4)

REGULAR AGENDA

- 843** **TIME CERTAIN: 9:30 AM** - Amend downtown business property management

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license fee to adjust rates, include management of new development and extend to management of certain residential properties (Ordinance; amend City Code Chapter 6.06; introduced by Mayor Katz and Commissioner Francesconi)

Discussion: Representatives of the Association for Portland Progress (APP) and others involved in the downtown Clean and Safe program described this program and the proposed changes, including charging fees to certain residential properties.

Speakers in support of the program included:

Tammy Hickel, APP Chair
Eric Parsons, Chair, Clean and Safe Advisory Committee
Carol Lentz, Executive Vice President, Portland Oregon Visitors Association
Lt. David Austin, Portland Police Bureau
Tim Greve, President-Elect, Downtown Retail Council
Jason Hickox, Property Manager, University Park Apartments
Billy Enfield, Central City Concern
Verne Stanford, Saturday Market
Sam Naito, 55 West Burnside

Commissioner Francesconi questioned Mr. Hickox about the inclusion of residential properties.

Mr. Hickox said they realize that business development is a marketing advantage for attracting new residents but would like to have further discussions about the ratio of funds coming from residential properties.

James Baxendale, Ambassador Condominiums, opposed assessing fees on residential properties for this program and questioned the policy basis. He said residents were not consulted about their inclusion and that the tax on condominium owners is completely out of balance with commercial businesses who can deduct the fee as a business expense or tax. He said the Hilton, with 455 rooms, is being taxed \$30,000 for the program while Ambassador condo owners are paying half that. He added that there is no reasonable connection between a Starbucks outlet and its need for these services and his unit, even though they will be assessed the same amount. Mr. Baxendale said while they appreciate the services they should be assessed equitably. He also said APP made no effort to talk to the Ambassador Condominium owners.

Geoffrey Wren, Vice Chair, Portland Plaza Condominium owners, also strongly

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opposed the inclusion of condominium owners. He said residents do not create a need for such services and pay for them already. He said the assessment for the Portland Plaza is \$33,000 while the Imperial Hotel pays only \$4,000. He said the issue is one of fairness and proportionality.

Others speaking in opposition to the inclusion of residential property owners included:

Ken Judd, Portland Plaza Condominiums
Trish Horten, Portland Plaza Condominiums
Bill Savard, Chair, Portland Plaza Condominium Association
Michael Golub, Property Manager, 1000 SW Broadway
John Wilcox, Portland Plaza Condominiums
Ray Baray, Portland Plaza Condominiums
Dick Emlaw, Ambassador Condominiums
Paul Benninghoff, part owner of the Fountain Plaza Apartments
John Groenward, Metro Multi-housing Association
Dave Linder, property manager, Ambassador Condominiums
Sheila Finch Tepper, Ambassador Condominiums
Gwen Barnard, Church of Scientology
George Reinmiller, owner of a building at 6th and Clay and
Portland Plaza resident

Opponents complained about the lack of notification and about the unfairness and inequity of the assessments. Many said they pay for the same services provided by Clean and Safe through monthly assessments by their building owners associations.

Mr. Parsons and Ruth Scott, Association for Portland Progress, explained their outreach programs to residential property owners. Ms. Scott said they contacted property managers and worked from water ratepayer and owners contact lists. In some cases, they never received replies. Mr. Parsons reviewed the total fees for some of the residential buildings, as well as the monthly rates per owner, and compared them with some of the larger commercial buildings.

Chris Thomas, attorney representing the Association for Portland Progress, explained the basis for the fees: 1) elevator capacity; 2) square footage; and 3) assessed value. All are based on publicly-known data bases and APP felt it was better to use that system than one that would require expensive tax preparation and administration. Elevator use is based on the number of persons carried up and down and because residential elevators tend to be smaller, that proportion is smaller than for commercial.

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Commissioner Hales said he is sorry about the failure in communication although he believes APP made good faith efforts to make contact with all affected parties. He said APP must follow up with residential property owners as the consent of the taxed is very important. He believes downtown residents benefit from this program and should share the apportionment but is willing to review the issues. This is a reasonable burden, however, and should be reasonably shared. He said he supports moving ahead but would like to see if a higher level of consensus can be achieved.

Commissioner Sten said he thinks residential owners should pay but this should have had a larger hearing. He is also concerned about the rates paid by commercial uses versus residential, and the fact that Portland Plaza residents are paying more than the Hilton and cannot deduct it as a business expense rubs him the wrong way. He said the eight percent increase per person is comparatively small, particularly given the 15 percent drop in the property tax. However, he would like to see if a smaller formula for residents would be possible.

Commissioner Francesconi said he believes residents do benefit from this program but cares more about the relationship between residents and the APP than about the costs. His two concerns are a possible reduction in the rates for residents and the changing nature of the services.

Commissioner Kafoury asked to be allowed to abstain as she is a resident of the Portland Plaza.

Commissioner Sten said he too is very concerned about the relationship between APP and the residents. The current Clean and Safe District is expiring and a new one needs to be formed. He suggested setting a timeline for both parties to try to work things out and report back to Council.

Mayor Katz asked if the August deadline would need to be amended.

Mr. Thomas said they would like to settle this before the assessment notices go out in August. He said if changes are made before then they can restructure the dollar amounts.

Mr. Baxendale suggested going forward with the District without the addition of residents and then working with APP to resolve that issue. He urged Council not to enact this into law as presently proposed. He said residents are not opposed to paying a correct assessment.

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Commissioner Francesconi moved to adopt the ordinance with the addition of a representative of the residential owners on the Advisory Board. APP will be instructed to meet with residential owners to review the level and appropriateness of services and suggest possible fee adjustments. The parties should report back by July 15 and Council can then vote.

Commissioner Hales seconded.

Mayor Katz asked if they wanted to move forward with this or amend it to remove the residential piece and bring that back on a particular date.

Commissioner Hales said he does not want to amend the substance but to add instructions to Section B.

Commissioner Sten said voting on the current ordinance favors one side over the other and that is not a good way to reach consensus. He said the residential piece could be pulled out, negotiated and then put back in.

Commissioner Francesconi withdrew his motion.

Ms. Scott said if the residential piece is removed, APP would like to receive clear instructions about when it needs to return, such as by July 15.

Mr. Thomas noted that an emergency ordinance would then be necessary to make this effective in August.

Commissioner Sten suggested a July 2 return date and added that Council agrees residential properties should be included but with somewhat lower fees.

Ms. Scott said she would prefer that the rest of the district go through. She said for legal reasons the district must stick to public data bases for determining the assessments. They can change the rates but not the components.

Mayor Katz asked if there could be a differential rate.

Ms. Scott said yes.

Disposition: Continued to July 2, 1997 at 9:30 a.m.

844

TIME CERTAIN: 10:00 AM - Accept the Water Bureau's proposed plan for managing water supply resources during the 1997 peak summer/fall season (Report introduced by Commissioner Sten)

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Discussion: Commissioner Sten said the Bureau believes the water supply will be okay this summer although they do plan to implement well water into the system somewhat sooner than in the past.

Michael Rosenberger, Water Bureau, said this year's water supply plan is very similar to last year's with the one major difference being access to more well water so they will have a lower blend of well to Bull Run water. He said the Bureau has made great progress with the Department of Environmental Quality on use of the wells although there is still some contamination in one set.

Disposition: Adopted. (Y-5)

*870

Amend Intergovernmental Agreement with Multnomah County governing Metropolitan Human Rights Commission (Ordinance introduced by Commissioners Francesconi and Kafoury)

Discussion: Commissioner Kafoury said she has heard that a group of Metropolitan Human Rights Commissioners may be interested in doing the spin-off option, which is the model currently used by the Arts Commission, Aging Commission, Youth Commission and others. She is very encouraged by this as both she and Commissioner Francesconi feel that would be an appropriate model.

Lowen Berman, Chair, Metropolitan Human Rights Commission (MHRC), said the alternative mentioned by Commissioner Kafoury was considered not because people felt it was the correct alternative but because they felt it was the only alternative. He said at its last meeting MHRC heard testimony about alleged human rights abuses which occurred during "sweeps" conducted May 14 by the Portland Police Bureau and other law enforcement groups, including the FBI and the Immigration and Naturalization Service (INS). The "sweeps" resulted in many violations of civil rights and the arrest and deportation of dozens or hundreds of people, both legal and illegal immigrants. Last night, though lacking a quorum, the MHRC voted to request the City and Multnomah County to conduct an independent investigation of these allegations. He said such events should bring home to Council the need for the continued existence of the MHRC. Council may not want to question the police or INS and that is exactly why Portland needs the MHRC. Dismantling the Commission is not about Measure 47, money or ineffectiveness. It is really a question of Council's commitment to the protection of human rights. He asked Council to let the Commission live.

Mayor Katz asked if he had any proof of violations by law enforcement officers on

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the day of the "sweep." They were arresting people on warrants who had violated the law.

Mr. Berman said they would like the City and County to investigate the complaints they have heard.

Mayor Katz said, as Police Commissioner, she needs to see those complaints but has not seen any to date. She said many, if not all, of those arrested were illegal aliens selling or buying drugs on the mall. She needs proof that something was done wrong.

Mr. Berman said MHRC has that proof and that is one of the problems with getting rid of it.

Jerry Sandvall, Chair, Jobs for Justice, said they do have proof of violations by the INS. She said if the solution to disbanding MHRC means that people can then bring their issues directly to City Council then Council should hold night meetings so not just middle class white people can attend. They believe it is a mistake to disband the MHRC but are willing to work towards a solution.

Teresa Enrico, Director, Workers Organizing Committee, opposed abolition of the MHRC and changing the ordinance that initially set it up. The need to deal with hate crimes that first prompted its establishment is still urgent and MHRC is needed to help Council do its job.

Commissioner Kafoury said MHRC was formed in 1969.

Commissioner Francesconi said he agrees with a lot of what MHRC stands for and has done in the areas of human rights advocacy and anti-bigotry issues. That is why more staff resources will be devoted to anti-bigotry workshops and to holding community dialogues on race relations. He strongly believes in the concept advanced by the MHRC that communities beyond the confines of neighborhood association boundaries must be reached. He also agrees on the need for a place people can go with individual grievances and that reporting on research and human rights challenges is needed. He congratulated the staff for its excellent work on the sexual minority youth report. The workers rights initiative also needs to be advanced. However, Commissioner Francesconi disagreed about the effectiveness of the current model to address these issues. He said advocacy happens better when neighbors can form relationships with each other, as opposed to an isolated commission. He believes it does a disservice to people of color and poor folks if they are regulated to some commission when

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developers can come and talk directly to the City Commissioners. A system needs to be created where access is the same for everybody. He said more staff time needs to be devoted to such issues as opposed to staffing a commission. He said if people think government in the form of INS and police sweeps is the obstacle to focus on then his advice is to do that through an independent group and the City will give it some money to do that for the next 45 days to do so. While there is a place for that, he does not think it is the most effective approach or one that should be done within government. If the purpose is to advance human rights issues that Council needs to address, such as those of sexual minority youth, then the advisory group should work out of either the Office of Neighborhood Associations or the Affirmative Action office. This would give some impetus for citizens to form a committee to advise the City/County Affirmative Action office and the neighborhood associations. That is the way he would go.

Commissioner Sten said he has been troubled by this all along and believes that neither side is right. He does not agree with the Chair of the MHRC that keeping this vehicle alive will do any of the things his rhetoric would imply. He does not think the Commission has been as effective as it should have been, given the money put into it, but thinks it is a mistake not to have something structurally set up within City government to deal with these issues. He has not been able to find a middle ground, however, and both compromises are possibilities even though the difference between a commission and an advisory committee escapes him. There is some strength to being outside the government

but it is hard to find funding then. He will support the ordinance but hopes both sides will continue to work on these important issues as he believes the community needs a better vehicle than MHRC.

Disposition: Ordinance No. 171253. (Y-5)

871 Reject all bids for furnishing an annual supply of decorative fountain maintenance for \$111,108 (Previous Agenda 812; Purchasing Report - Bid 166A)

Discussion: Cay Kershner, Clerk of the Council, said the Purchasing Agent had submitted an amended report requesting that all bids for this project be rejected. Commissioner Sten moved to adopt the amended report. Commissioner Kafoury seconded and, hearing no objections, the Mayor so ordered.

Disposition: Accepted as Amended. (Y-5)

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Mayor Vera Katz

872 Per City Code 3.21.085(4)(d) hear Loren Long's appeal to the Police Internal Investigations Auditing Committee (PIIAC #97-08) (Hearing on Appeal)

Discussion: Lisa Botsko, PIIAC staff person, said in this case PIIAC extended the deadline for filing a complaint because the appellant had medical problems. The appellant alleges that officers arresting him for assaulting his neighbor with a lawn edger unnecessarily threw him to the ground. However, according to witnesses, it was the neighbor who took Mr. Long to the ground, not the officers. The advisors concur with the decision of the Internal Affairs Division to decline the complaint as the preponderance of evidence indicates the alleged force did not occur.

Commissioner Kafoury moved to uphold the Advisors and deny the appeal. Commissioner Sten seconded.

Disposition: Appeal denied. (Y-5)

873 Amend FY 1996-97 Spring Supplemental Budget to the Multnomah County Tax Supervising and Conservation Commission (Resolution; amend Resolution No. 35613)

Disposition: Resolution No. 35620. (Y-5)

Commissioner Jim Francesconi

***874** Authorize purchase of property located at 9320 NE Sunderland Avenue (Ordinance)

Disposition: Referred to Commissioner of Public Utilities.

***875** Contract with 21st Century Towing for towing, storage and disposal of abandoned vehicles (Ordinance)

Disposition: Ordinance No. 171254. (Y-5)

***876** Accept a grant in the amount of \$48,831 from Bonneville Power Administration

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for FY 97-98 for summer 1997 Hands-On Science Camps to benefit 4th, 5th and 6th grade Portland low income youth (Ordinance)

Disposition: Continued to June 11, 1997 at 2:00 p.m.

***877** Accept a grant from the Metro Central Community Enhancement Fund in the amount of \$9,100 for Johns Community Garden (Ordinance)

Disposition: Ordinance No. 171255. (Y-5)

Commissioner Charlie Hales

***878** Intergovernmental Agreement with Multnomah County for preliminary engineering and cost estimates related to the potential for future streetcar accommodation on the Hawthorne Bridge (Ordinance)

Disposition: Ordinance No. 171256. (Y-5)

Commissioner Erik Sten

***879** Authorize application to the Oregon Economic Development Department Waste/Wastewater Program for a grant and loan package in the amount of \$1 million for Brookside Wetland and Stream Enhancement project (Ordinance)

Discussion: Commissioner Sten said this is a public hearing as required by law. The City has applied to the Oregon Economic Development Department (OEDD) for a \$1 million grant for the Brookside project in Lents. This was actually approved October 26, 1996, but the required public notice was not done then. This grant loan package allocates \$1 million total to construct the Brookside Wetland and Stream Enhancement project. Of that, \$700,000 is a loan and \$300,000 is a grant. The project dollars will be used to construct flood storage, improve water quality and enhance fish and wildlife habitat. The project is located in the Lents area and will include community amenities such as trails, picnic spaces and a play area. This grant provides the City with a unique opportunity to acquire \$300,000 in grant money by borrowing \$700,000 through OEDD. The terms and rates of the loan are comparable and not more stringent than the existing loans and bonds the Bureau of Environmental Services (BES) uses. BES can only get the \$300,000 grant by using this opportunity to borrow the \$700,000. He asked for public comment.

Yvonne Dowsett, no address stated, asked how the City planned to pay back the \$700,000 loan.

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Commissioner Sten said this is a BES project that reflects legal requirements to deal with floodwater on Johnson Creek. What BES typically does is sell bonds that are paid back through the sewer bills, the same as if they had borrowed it through a bond sale.

Ms. Dowsett asked if that would raise sewer rates.

Commissioner Sten said sewer rates are going up about 10 percent next year and this is a small piece of it. What is driving the increase is a number of projects, the most notable of which are the Combined Sewer Overflow projects on the Willamette and Columbia Slough.

Mayor Katz said during the budget process Council reviewed all the BES projects and a lot were pulled off the table in order to keep the sewer rate increase down. This project, however, was one everyone thought should stay on.

Commissioner Sten said he feels strongly that the City needs to do the work on Johnson Creek before the next flood.

Disposition: Ordinance No. 171257. (Y-5)

City Auditor Barbara Clark

880 Assess property for sewer connection contracts processed through the Private Plumbing Loan Program for the period ending June 4, 1997 (Hearing; Ordinance; P0027)

Disposition: Passed to Second Reading June 18, 1997 at 9:30 a.m.

881 Assess property for sidewalk repair by the Bureau of Maintenance for billing processed through May 8, 1997 (Hearing; Ordinance; Y1018)

Disposition: Passed to Second Reading June 18, 1997 at 9:30 a.m.

882 Assess property for sewer system development contracts for the period ending May 8, 1997 for the mid-county sewer project and non mid-county area (Hearing; Ordinance; Z0659, Z0661, Z0662)

Disposition: Passed to Second Reading June 18, 1997 at 9:30 a.m.

Communication

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883 Request of several East Portland area residents to address Council regarding the proposed closure of Fire Station No. 45 and Rescue Unit No. 2 (Communication)

Discussion: East Portland Residents testifying against closure of Fire Station No. 45 included:

Susan Booker, Chair, Glenfair Neighborhood Association
Kay Collier, Hazelwood Neighborhood Association
Jim Worthington, 3232 SE 153rd Ave., 97236

Residents said the presence of five mobile home parks and three manufactured home parks and the increased density that is occurring in this area requires adequate emergency services, not cuts and longer response times. They also said that this violates the promise to continue the level of service provided by Fire District #10 which was made to residents when the area was annexed.

Commissioner Kafoury said both she and Chief Wall will meet with residents on June 24 to discuss these issues. She finds it very sad that certain City employees are fanning the fires and spreading misinformation about the situation.

Mayor Katz noted that some sound, and some not so sound, decisions were made under Measure 47. Rather than restoring everything back with one-time money, the City may want to see if there is anything it would like to do that is not currently in the budget.

Fire Chief Robert Wall said the proposed closure was not a quick decision. While the station serves both Portland and Gresham, Gresham has not been willing to share in the expenses. He said the City's analysis shows the Bureau can serve the area with existing units, although there will be some change in the service level. This will be monitored very closely and no area will be left without coverage.

Commissioner Kafoury noted that Gresham had been badly affected by passage of Measure 50 and, given that financial reality, has done a good job of providing service.

Mayor Katz said some legislative action may be in the works that will give Gresham added resources.

Disposition: Placed on File.

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At 12:50 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 11TH DAY OF JUNE, 1997 AT 2:00 P.M.

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

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

***876** Accept a grant in the amount of \$48,831 from Bonneville Power Administration for FY 97-98 for summer 1997 Hands-On Science Camps to benefit 4th, 5th and 6th grade Portland low income youth (Ordinance; Continued from June 11, 9:30 a.m.)

Discussion: Commissioner Francesconi said the Bureau wants the ordinance passed today.

Disposition: Ordinance No. 171258. (Y-5)

S-884 **TIME CERTAIN: 2:00 PM** - Establish a Transportation System Development Charge on new development applicable at the time of application for a building permit and adopt a new Chapter 17.15 of the City Code (Previous Agenda 708)

Discussion: Paul Shirey, Office of Transportation, reviewed the 12 major amendments that are proposed and were distributed earlier. He said they respond to many of the objections raised earlier and reflect additional data that has been gathered since the first hearing.

Mayor Katz asked how much revenue loss is estimated because of these amendments.

Greg Jones, Office of Transportation, said many of the amendments involve no loss of revenue. The ones that could potentially affect revenue are the additional credits for qualified public improvements required as part of development activity. However, at the same time the City is obtaining system capacity improvements. Other jurisdictions have similar language regarding such credits and have not experienced significant revenue losses as a result. Another possible

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impact on revenue could be the threshold change from 10 to 15 percent.

Mr. Shirey described the six amendments that had been proposed by Steve Pfeiffer, attorney representing the Economic Development Coalition. He said Transportation does not oppose the first four amendments but does object to amendment five, which would require the City to respond within seven days of the submission of an application as to whether the information is correct or not. He said this sets up an elaborate legal procedure staff believes is unnecessary, as it would be better to handle this administratively at the counter. Amendment six requests that projects eligible as qualified public improvement credits include those on the five-year capital improvement program list, not just those on the two-year list. The standard procedure is to fund two years of projects, with the remainder of the list unfunded. Transportation staff believes this should not be approved as the projects are not yet funded.

Mr. Jones said potentially there would be a fairly large loss of revenues if this larger category were included as eligible for credit.

Mr. Shirey then reviewed other issues raised by Council, including Council's concern that the SDC's effect on development costs will lessen its competitiveness within the region and ultimately mean that Portland will be unable to meet its growth and development goals. He said staff checked SDC rates for other retail uses, land values in the region, the cost of City design reviews and business license fees and the cost to maintain the projects once they are built. He said they found that the City is very competitive except for quick food restaurants. The Retail Task Force continues to believe the rates in this category are too high and should be adjusted. Staff has told them that if they can present data in support of this argument, they will then administratively adjust the SDC rate for this use. They have also found that Portland's land costs are not much higher or lower than elsewhere. In summary, staff believes the proposed rates will not create an unacceptable burden on development costs in Portland as the fees are competitive with its neighbors and this will give the City the means to keep up with growth. The second issue deals with technical changes to the rate study methodology. They have been separately addressed in the written report but the bottom line is that the methodology is sound and defensible. Finally, the Homebuilders Association asked that a higher number of new housing units be considered for the City, arguing that the 70,000 units proposed by the Planning Bureau should be applied instead of the 58,000 applied here. Applying this higher figure would reduce overall SDC rates but it represents a capacity estimate as opposed to a growth estimate. Staff will continue to rely on the 58,000 which is the accepted growth estimate for the City.

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Mr. Shirey noted that staff worked closely with the development community on this proposal and only a few minor problems remain unresolved. Exempting low-income housing and transit oriented development from these charges should be retained as they advance other City policies. He urged Council approval of the resolution and ordinances. In so doing, it will be adopting the changes as outlined as well as the revised SDC rate study.

Commissioner Hales said the degree of agreement that has been reached with those who will be paying this fee is remarkable.

Steve Pfeiffer, attorney representing the Economic Development Coalition, reviewed the five suggested amendments the Coalition has prepared. Only two unresolved issues remain today. First, regarding the five year Capital Improvement Plan (CIP), he noted the language he has inserted which states: "at the sole discretion of the City." He said staff persuaded him that adding the five-year plan to the two-year plan adds many improvements the City may ultimately want but has no immediate need for. What they have in mind is that if there is an improvement in the five-year plan which a developer proposes to build that is very high on the five-year priority list, then the City should allow it to be built "at its sole discretion" and give credit for it. The only other issue he would raise is the vesting language. While they are happy with the discrete list of what constitutes a complete building permit application, it still is subject to some subjectivity. Rather than trying to make it objective, which is impossible, they suggest that when an application comes in it be related to the original date of submission. Mr. Shirey has indicated he would do this administratively but they prefer a process that would give staff time to review an application, get back to the applicant about what is incomplete and grant a limited amount of time for resubmission, relating that back to the original submission date. As his letter states, the Bureau of Buildings would remain completely free to modify or add requirements later. However, they are trying to eliminate arguments that may result later about whether something is missing and they are not told about it until the 91st day.

Commissioner Hales noted that the vesting will go away after 90 days and for that reason he believes it best to do vesting administratively and not encumber the Code with that. The City has no interest in trying to trap anyone.

Mr. Pfeiffer said this has been a remarkable process that could provide a model for other areas such as stormwater regulations and Parks Service Development Charges. Finally, he urged that Mr. Shirey and Mr. Jones should be kept in the loop to provide continuity.

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Commissioner Hales asked why staff is against adding the "sole discretion" language.

Mayor Katz said this might be a way to provide incentives for developers to do the right thing ahead of time.

Mr. Pfeiffer said it is not the word "discretion" but the word "sole" that they want to emphasize.

Tim Warren, President, Three Oaks Development Co., representing the Columbia Corridor Association, said rather than setting the date the SDC is paid as 180 days from the date the building permit is issued, they believe it makes more sense to make the payment when the Certificate of Occupancy is issued. He said it is fairer to make the payments when trips actually hit the system. Other jurisdictions do this and it also does not add an additional layer of bureaucracy by going after people on the 181st day to collect it.

Jeff Sackett, President, Triangle Development Co., President of the local chapter of the National Association of Industrial Properties, and member of the Economic Development Coalition, also supported timing the payment to coincide with the Certificate of Occupancy. This is commonly done and administratively not as cumbersome for the City because it simply adds just one more point to the Certificate's checklist. Regarding the definition of "complete" in terms of vesting, they are concerned that two reasonable people on opposite sides of the counter will disagree about what is complete. The list has now been vastly improved and they remain concerned only about the occasional, unreasonable interpretation, which is why they have suggested the language in Mr. Pfeiffer's letter so they have a reasonable amount of time to correct any incompletions. They believe this solution is reasonable.

Mr. Pfeiffer said no amendment language has been proposed yet for Certificate of Occupancy language.

Ty Wyman, attorney representing the Retail Task Force, said they concur with the coalition's position except regarding the proposed rate for quick service restaurants. The rate staff is recommending is based on a new trip rate of 40 percent and is significantly higher than any other jurisdiction, raising a serious competitiveness issue. He also cited two sources which show a significantly lower new-trip percentage, about 20 percent, than the City shows. Regarding competitiveness, the rates for a 4,000 square-foot quick service restaurant in adjoining areas are: Washington County, \$16,000; Clackamas County \$57,000; and Gresham, \$69,000. Portland's, at \$106,000, would be double the average of

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the other jurisdictions. He said while those other localities do not have the transit and bike lane element that Portland has added, that should only account for about 15 percent of the difference. He suggested adjusting the rates to reflect the 20 percent trip rate and to more closely match the regional average.

Thomasina Gabriel, representing the Institutional Facilities Coalition, said none of the amendments reflect the fact that the trip calculation rates on which assessments are based will result in institutions counting trips by each mode. The language in the original ordinance calls for reducing the future assessment by any trips saved on a mode-by-mode basis. But the way that works out, the per-trip cost for a non-motorized trip is \$183, compared to an auto trip of \$87. An institution such as Portland Community College with a strong transit demand management program that encourages people to use buses will be penalized, if they use the alternative method of assessment, by paying higher fees and would be better off if they did nothing. Her organization has asked for a different allocation for assessment of those modes. She realizes that these numbers were used to calculate the total number of trips rather than per-trip at which point these numbers become immaterial. If the City assesses mode-by-mode it should use a different spread so institutions are not penalized for reducing auto trips because they increased pedestrian and bicycle trips.

Dorothy Gage, Ash Creek Neighborhood Association, said the neighborhood opposes the current list of 10-year project improvements outlined in the ordinance. Ash Creek questions the unilateral addition by Commissioner Hales of SW Vermont between 30th and 65th and recommends replacing it with the improvement of SW Taylors Ferry between Barbur Boulevard and the City limits at 65th. This is a neighborhood collector which is far more deserving of improvements. Ash Creek Neighborhood Association requests delay in passage to allow proper input by Southwest neighborhoods regarding the Southwest portion of the Portland project list or, as an alternative, to substitute SW Taylors Ferry for SW Vermont. She said the improvement list should reflect neighborhood priorities, given its substantial needs.

Mr. Shirey responded to the suggestions. He said the qualified public improvements definition includes a two-year list but a five-year list was added at the request of the Coalition to try to broaden the opportunities for credit. He said currently no guidance is given, allowing staff to exercise unbridled discretion and giving rise to appealable issues. They also believe that with the new definition for "qualified public improvement" any project on the five-year list would be creditable under those conditions.

Commissioner Hales said some basis is needed for diverting from the list and

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unbridled discretion is too broad.

Commissioner Francesconi asked if no credit would be given for anything on the five-year list.

Mr. Shirey said they would give credit for a capacity-expanding improvement that provides more than is necessary to meet the local impacts. Those improvements could be on the five-year list or not but the credits can be captured under those provisions.

Commissioner Hales said if someone wanted to build light rail to the Airport, for instance, they could under the capacity-increasing definition, even if it is not on the five-year list.

Mr. Shirey said the distinction is that the City would condition it as a requirement for issuing the development permit.

Mr. Jones said another distinction with the five-year list is that it changes annually, making it somewhat cumbersome to use.

Commissioners Hales said the decision to build the project is in the hands of the applicant and that is a legitimate policy choice but it means that if an applicant can find a reference for a capacity-increasing improvement in the neighborhood they can build and get credit for it, at the sole discretion of the City.

Mr. Jones said a developer could request to build an improvement on the list that was not adjacent to or serving his project. It would be staff's discretion as to whether that was acceptable.

Mr. Shirey said the City then has the ability to acquire the improvement as a condition of approval for the permit.

Commissioner Hales and Commissioner Francesconi said they prefer leaving this in, even though they are not sure how often it will be used.

On the issue of assessing the fees when the Certificate of Occupancy is issued rather than at the end of 180 days, Commissioner Hales said he did not think Certificates of Occupancy were issued for single-family houses so that will not work for all developers. It works for commercial and industrial development, however. He said he would rather stick with the 180 days and revisit this later. The point is to be as reasonable as possible with the people who are paying this fee as the cash flow is not that important. But they have to have certainty about

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the collection date.

Commissioner Sten said Certificates of Occupancy are appropriate for big institutions, who may undertake projects that take a lot longer than 180 days, particularly if there is no cash flow issue.

Commissioner Hales said perhaps there should be a separate provision for residential and commercial development.

Regarding the fast food differential, Mr. Shirey said it is true the rates are higher because of the additional cost of the non-motorized transit portion.

Mr. Jones said they are asking for a new-trip generation rate reduction from 40 to 20 percent. He said the ITE manual Transportation uses sets the rate at 40 percent. Information submitted regarding the Taco Bell Study, specific to one use, has a different rate and may be accurate but has not yet had ITE peer review.

Commissioner Hales said he is inclined to stick with the City's 40 percent rate. First, Washington County discounted its trip generation rate for commercial development as a matter of policy in order to encourage development. Second, quick service restaurants would also be subject to transit-oriented discounts if they built in those locations. Under the City's current zoning there will not be many more detached one-story fast food restaurants built as there is less and less zoning where that is permitted. The quick service restaurants, however, are finding ways to adapt to an urban environment.

Commissioner Francesconi said the trip generation seems to be a different issue than the differential rates charged.

Mr. Jones said the rates charged are based on projects the City is trying to fund as well as the kind of improvement that is being covered. Other jurisdictions charge solely based on auto trips while Portland is also charging for other modes.

Commissioner Francesconi said he understands that but the way the trip-generation is figured, they are being asked for more than 15 percent. Is this a policy decision the City is making to force them to pay more because it wants to discourage them?

Mr. Jones said the rate per square foot that Gresham charges based on auto trips is very close to Portland's. But when you add in the other modes, that adds to the charge.

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Commissioner Hales asked whether institutions are being penalized for shifting to other modes.

Randy Young, Henderson and Young Company and author of the rate study, said the information for institutions is collected on a per trip basis rather than a per student or per hospital bed or per square foot basis. That is what the other SDCs are based on. Ms. Gabriel's analysis is correct that the non-motorized trip generated would be higher than the motorized trips they have reduced. The total investment from these SDC projects for non-motorized travel and for transit is about the same amount the City is proposing to put into motorized improvements. When it comes to calculating how to distribute those costs they are divided by the number of trips in the appropriate mode. There are lots more car and truck trips so the cost per trip is pretty small, less than \$100. So if the institution is successful in reducing one auto trip, the only real savings the City would experience would be that \$100. At the same time the cost per trip in the other modes is much more expensive because there are so many fewer trips on those modes. If the City chose to reward institutions for promoting other modes, it would need to write a special statement into the ordinance or direct a special calculation in the rate study that either caps the SDC for institutional development or offers a credit to reward certain kinds of behavior. This would be a policy matter.

Commissioner Hales said while it is contrary to City policy to offer disincentives for pedestrian, transit and bicycle trips, these fees are imposed because of development. For instance, the institutions may avoid the cost of building a parking space. Still, it is hard to say to people to pay more because they did the right thing.

Commissioner Francesconi suggested a bonus of some sort for institutions. Mayor Katz agreed.

Commissioner Hales suggested adding a cap provision to the ordinance.

Mr. Jones said the simplest way would be to pick a cost per trip for institutions and apply it to the fees identified in the ordinance (\$87 to \$268) and use one or the other for the total cost of the trip. That would give them a credit as a result.

Commissioner Sten said that makes sense but if the institutions save on the number of parking spaces they have to provide it puts them way ahead on the real economics. The real cost to the City's system of a bus or bike trip is more than a car trip but the real cost to the institution is quite a bit lower. If the City

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wants to charge one fee to institutions per trip that makes sense but it should be more than \$87.

Commissioner Hales said since the whole SDC code is new he would prefer to see how this works in practice with the institutions for the first year before changing it.

Commissioner Kafoury agreed with Commissioner Hales as she does not like to make important changes at the last minute although she is open to doing so in the future.

Mr. Young said institutions who do not elect this special process revert to the rate table that has been calculated. When that route is chosen, instead of paying on a cost per trip basis, they would pay on a per student basis. Because a student generates a lot of car trips but few transit or bike and pedestrian trips, this rate schedule would actually act in reverse of the other process. Institutions would get a \$200 credit per student while paying only \$60 for a transit trip or \$44 for non-motorized trip.

Commissioner Hales said since two tracks are available the institutions can try them both out and report back in a year.

Mr. Jones said the last issue concerned substitution of Taylors Ferry for Vermont Street on the capital improvement list. He said both are collector streets on the arterial street system. The Vermont Street project has been on Transportation's wish list since about 1980 but never funded. While it may not have the same level of transit service today that Taylors Ferry does, there is a developed plan and new development in Southwest justifies its inclusion.

Mayor Katz asked under what conditions changes to the list occur.

Mr. Jones said staff returns to Council on an annual basis and it can then choose to add new projects and extend the time period. Deleting a project is a little more complex.

Mayor Katz asked what would happen if a future Council decides not to continue with the South/North light rail project.

Mr. Jones said a project would have to be substituted on the list that provides roughly the same kind of public benefit.

Mayor Katz said what you are saying is that you cannot change the original

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policy intent of Council but you can substitute projects. What about public input?

Mr. Jones said that can occur when staff returns on an annual basis with the list.

Commissioner Hales said the principle job of Council in the future will be adding projects as over time others will be funded and built.

Commissioner Sten asked if the community had been allowed to comment on the choice of Vermont over Taylors Ferry.

Mr. Jones said the projects were taken from the capital improvement program. He said they looked at a number of projects in Southwest and took those to Southwest Neighborhoods, Inc. although it did not comment at that point. Some residents near Vermont have testified in support of that project and the City, as part of its Gabriel Park improvements, decided to invest in that location. The Vermont improvement also ties directly into the Hillsdale Town Center project so there are some very strong reasons for its selection.

Commissioner Francesconi said Citywide citizen involvement in the capital improvement project process needs a whole lot of work. He said an informal is needed on this.

Mayor Katz said there should be a clear understanding that the public gets to make their case before Council spends a dime.

Mr. Jones said once the System Development Charges are enacted staff will return on an annual basis to Council for review. They will spend some money on projects prior to that however.

Commissioner Hales moved the Substitute containing the amendments proposed by staff plus amendments 1, 2, 3 and 4 as submitted by Mr. Pfeiffer of Stoel Reeves on June 11. Commissioner Kafoury seconded.

Pete Kasting, Senior Deputy City Attorney, said that Mr. Pfeiffer's amendment 1 needs added language to make it consistent with other language within the ordinance. He said the specific language should be adopted today unless Council wants to extend this another week.

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Dan Kearns, attorney for Preston Gates & Ellis and a member of the project team, said if Mr. Pfeiffer's first amendment is adopted there is parallel language in section 17.15.060 (A) (2) (4) regarding how improvements are valued for credit purposes. He suggested deleting the words from "there is a rebuttable presumption" to the end of that paragraph and adding Mr. Pfeiffer's wording beginning with "there is a rebuttable presumption that improvements built to the City's minimum new standards are required to serve the applicant's new development and mitigate for transportation system improvements attributable to the applicant's new development."

Commissioner Hales revised his motion to adopt the Substitute with the amendments described by staff, adopt amendments 1, 2, 3 and 4 as submitted by Mr. Pfeiffer and further amend Section 17.15.060 (A)(2)(4) as described by Mr. Kearns.

Commissioner Kafoury seconded.

Roll was called on the Substitute and amendments.

Commissioner Francesconi complimented staff for this effort but expressed concern that the cost of growth is being unfairly apportioned in favor of commercial over residential property owners.

Commissioner Hales said he is committed to further work on the issue of vesting so that people can get a very definitive signal from the City during the critical 90 days as to whether their applications are complete and they are vested. Regarding institutions, he wants to see if the alternative method is used and make sure they are not penalized for doing the right thing as far as transportation demand management. He believes the City is being fairly generous in giving credits for qualified public improvements and is unprepared at this time to go to the five-year list. He said the whole Transportation capital improvement project process needs to be accessible to citizens. He thanked staff, the consultants and especially the coalition for working together on what will be a very expensive, difficult change for its membership.

Commissioner Kafoury said amending things at the last minute makes her very nervous because of the need for more study.

Mayor Katz said the Coalition should keep an eye on the City's competitiveness in the region and on timing and permitting issues.

The motion carried. (Y-5)

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Disposition: Substitute as amended passed to Second Reading June 18, 1997 at 2:00 p.m.

At 4:05 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 12TH DAY OF JUNE, 1997 AT 2:00 P.M.

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

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

885 **TIME CERTAIN: 2:00 PM - Tax Supervising and Conservation Commission hearing on the FY 1996-97 Spring Supplemental Budget (Hearing introduced by Mayor Katz)**

Discussion: Charles Rosenthal, Chair, Tax Supervising and Conservation Commission (TSCC) introduced the Commission members and staff. Members had no questions regarding this item.

David Agazzi, Director, Bureau of Financial Planning, said the largest dollar amount in this budget results from the need to sell \$84 million in pension obligation bonds in the event that they are needed to support the Fire and Police Disability and Retirement Fund. The remaining amounts are marginally related to debt operations and carryover amounts.

Courtney Wilton, TSCC staff director, asked if the \$630,000 was to cover the bond issue costs.

Larry Nelson, Office of Finance and Administration budget analyst, said yes.

There were no other questions and the hearing was closed.

Disposition: Placed on File.

886 **Tax Supervising and Conservation Commission hearing on the FY 1997-98 Approved Budget (Hearing introduced by Mayor Katz)**

Discussion: Mayor Katz said the City is uncertain at this time about the impact legislative implementation of Ballot Measure 50 will have on this year's proposed budget. Consequently decisions about how to spend the one-time funds the City expects as a result will not be made until Council holds further discussions about its priorities for a livable community, probably some time in September or October. A general decision was made to buy back "the bridge," about \$4.1 million, and that will now be permanent funding. Once that is gone the City has

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available \$3.6 million in ongoing resources and \$11.5 in one-time monies.

Mr. Agazzi said that largely results from the fact that FPD&RF is now taken care of and that amount can be subtracted out of the adopted budget.

Commissioner Kafoury said there are some other legal uncertainties, such as a number of lawsuits, that make Council cautious about gobbling up the money right now, even though critical services are being cut.

Anthony Jenkins, TSCC Commissioner, asked what issues Council sees as priorities, i.e. schools.

Mayor Katz said she will make some recommendations for the Police Bureau and there are some uncertainties in the Fire Bureau. Some anticipated revenues generated by the Parks and Fire Bureaus may not be realized. Council is feeling very cautious at this point about authorizing expenditures unless they are absolutely necessary.

Commissioner Kafoury said some shortage of revenues is projected by Multnomah County in emergency services money for shelters and domestic violence programs. There are serious concerns at the City about the implications of this.

Dick Anderson, TSCC Commissioner, asked about the impact of Measure 50 restrictions on the backfilling of certain items with fees. He asked if the fee increase in this budget in Planning, Parks and the Fire Bureau are thought to be subject to those.

Mayor Katz said Council asked the City Attorney and budget office to review any of those fees to see if they violate Measure 47. Those that are planned do not. No decisions about whether the City will go to the ballot will be made until the legislature determines what the City's allocations are.

Commissioner Kafoury said some of the revenues projected from the fee increases may be over-optimistic as well.

Commissioner Francesconi said any park fee increases will be limited to cost of living increases to keep the services competitive and make sure people are not precluded from using them because of the fee increases.

Mr. Rosenthal asked about the City's strategy for handling and funding ongoing maintenance.

Mr. Agazzi said the original five-year financial forecast plan was to increase the capital set aside amount by \$1 million annually. It is currently at \$3 million and

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was to increase by \$1 million in each of those five years. The Council has since retreated down to the \$3 million level. Significant onetime funds will be available in the fall and that will be one of the items up for discussion then, as it remains a priority. He said that the set-aside is only intended for general fund bureaus that have no other funding source. All other bureaus have maintained their maintenance reserve balances.

Commissioner Francesconi said this is significant for Parks as the bond measure only took care of 30 percent of its maintenance and capital needs. Metro Open Spaces has purchased land it would like to turn over to the Parks Bureau but it does not currently have the funds to maintain them.

Commissioner Kafoury said there is also an issue with seismic upgrades for the fire stations plus the possible addition of two new stations on the west side.

Mr. Rosenthal asked what amount would be necessary for the City to keep up with ongoing maintenance.

Council laughed, acknowledging that \$3 million just scratches the surface.

Mr. Wilton said he understands the City plans to dip into its reserves but does not see an amount budgeted from the rainy day fund into the general fund.

Mayor Katz said because of reductions in the total general fund expenditures not as much had to be used to meet the 10 percent reserve requirement. With passage of Measure 50, adjustments are being made and they will not have to touch their reserves at all and will continue to meet the 10 percent set-aside requirement. However, a review of the reserve policies is planned to see what is necessary.

Mr. Rosenthal asked how the City planned to accumulate capital costs needed to fund construction of the Central City Streetcar as well as operating funds.

Mayor Katz said there has been no commitment on operations at this time. Most of the construction money would be raised by private contributions, through the Local Improvement District process along the line, private utilities and federal funds.

Commissioner Sten said he does not support using Water and Sewer funds to build the actual streetcar as there are already a lot of pressures on those funds and he is uncomfortable with the notion that they should support growth for growth's sake.

TSCC Commissioner Jenkins asked about any increase in City System Development Charges (SDCs).

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Commissioner Sten said Water and Sewer are looking at such charges right now and hope to have the work done by fall so that any changes would appear in next year's budget. A SDC for Transportation was just adopted yesterday and one for Parks is under consideration. He said he is not counting on such charges to bring water or sewer rates down dramatically. He noted that affordable housing in the sensitive income levels was exempted from the Transportation SDC, which is estimated to be about \$1,000 for a single family home.

TSCC Commissioner Jenkins asked about taking the whole cost of the Tanner Creek project out of the sewer funds. He said some of it seems to be beautification that benefits the River District.

Commissioner Sten said there is \$1.6 million in next year's budget for functional work. By restoring Tanner Creek, they hope to move stormwater out of the west hills, rather than treating it as sewage. Over time this will save a lot in stormwater costs. Plans for an amenity like the Tanner Creek basin are not now budgeted and are not in the rate base.

TSCC Commissioner Anderson asked how the reorganization of the development review process into a one-stop shop is working.

Mayor Katz said Council gave it a green light and the reorganization is underway.

TSCC Commissioner Anderson said the community seems to believe that economic development is the least deserving of City funds and yet the budget indicates a healthy increase in urban development bonds.

Mr. Agazzi said there are no numbers in the budget being approved today to support additional urban renewal debt or projects. That is because of the uncertainty in Salem about how this process will operate or whether the City will have the authority to levy them.

Commissioner Sten said urban renewal funds pay for everything from traffic improvements to affordable housing. What he heard from the community about economic development was its desire to cut direct support to corporate interests for things businesses should be doing for themselves.

Commissioner Francesconi said part of the problem is that some areas such as Southeast Portland that badly need infrastructure are not in an urban renewal districts. One option is to use onetime funds to do some projects in those areas.

TSCC Commissioner Jim Raleigh asked how comfortable Council is with the restructuring of the police management structure.

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Mayor Katz said there are concerns in several bureaus due to increasing the span of control. She said her other concern is having fewer officers on the street as of July 1.

TSCC Commission Roger McDowell asked why there is \$27 million in the City's internal health and welfare fund when the potential liability is only about \$5 million.

Mr. Agazzi said in the past few years health care costs have sunk from double to single digits or even negative numbers so the amounts agreed to in earlier contracts with employees turned out to be significantly higher than actual costs. In addition, City staff has done a tremendous job reining in costs. There are now more reserve funds than probably necessary and they anticipate that issue will be addressed in the next round of contract talks. Right now, the City does not have much flexibility because those amounts are locked into the labor contracts.

Mr. McDowell said logic would seem to dictate that if you did not need that much, those funds should go back to the City for other uses.

Mr. Agazzi said unfortunately that would mean the whole contract would have to be opened up and renegotiated.

Mr. McDowell asked what controls Council has over decisions of the board of Fire and Police Disability and Retirement Fund (F&PD&RF) to make specific expenditures.

Mayor Katz said, quite frankly, Council has none. She is represented by a non-voting board member but her input is very limited.

Mr. McDowell said since those are tax dollars there should be some control on the part of elected officials in dictating how those are spent. Someone has to be responsible.

Mayor Katz said good luck. She said Council was told by the City Attorney that, based on the Charter, it has very limited control over the actions of the Board.

Mr. McDowell asked if Charter could be changed.

Mayor Katz said yes.

TSCC Commissioner Jenkins asked about the effect of budget cuts on meeting 2040 goals.

Mayor Katz said that reduction was very painful. But without reducing 2040 funds Council would not have been able to get where it wanted on the housing

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fund. Council may want to look at that again later.

TSSC Commissioner Anderson asked about closing Fire Station 45 and the benchmark for response times.

Commissioner Kafoury said the Bureau conducted a station location study to help it figure out response times. The benchmark is to respond to 90 percent of calls within four minutes. She said the City is not currently meeting that standard but does continually monitor the results. The decision about Station 45 was made long before the budget became such a critical issue and where the response times are really long is on the west side of Portland. Land has been purchased on Skyline for a new station and the City is working with Tualatin Valley Fire and Rescue on the possibility of joint facility location.

Mr. McDowell asked about the progress of City/County consolidation.

Mayor Katz said while some Council members wanted to move very quickly to take legal action on consolidation, it was decided to first do the work that a Charter Commission would have to do anyway. A threshold study to identify specific savings is planned but has not yet begun. At the same time, however, they are exploring functional consolidation, such as contracting with the County to provide river patrol services on Sauvie Island. Some major changes regarding procurement services may also occur.

Mr. Raleigh asked about the number of police on the streets.

Mayor Katz said while the total number in the bureau will be reduced, they will work to make sure they continue to have more officers on the street.

The hearing was closed at 2:55 p.m.

Disposition: Placed on File.

***887** Adopt a Supplemental Budget for FY 1996-97 of \$174,054,783 and make budget adjustments in various funds (Ordinance introduced by Mayor Katz)

Disposition: Ordinance No. 171259. (Y-5)

Commissioner Charlie Hales

889 Adopt Natural Resources Management Plan for Peninsula Drainage District No. 1 and amend official zoning maps (Second Reading Agenda 842)

Disposition: Ordinance No. 171260. (Y-5)

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888

TIME CERTAIN: 3:00 PM - Appeal of Buckman Neighborhood Association (BNA) against Hearings Officer's decision to approve application of the Housing Authority of Portland for a zoning map amendment in compliance with Comprehensive Plan map in order to construct the Eastside men's homeless shelter at 1403-1415 and 1427 SE Martin Luther King Blvd. at Hawthorne (Hearing; 96-00131 ZC)

Discussion: Mayor Katz noted some procedural issues that were raised by the Buckman Neighborhood Association which should be disposed of first.

Kathryn Beaumont, Senior Deputy City Attorney, reviewed her memo regarding the three procedural issues raised by the BNA. The first request is to postpone the hearing date, based on the assertion that neither the association nor the chairperson received notice of the Council hearing date. Ms. Beaumont said the association was timely notified in care of Don MacGillvray, the BNA representative who testified at the Hearings Officer level. She said the zone change is subject to the 120-day time limitation, which the applicant has not waived and only about one month's time remains. Finally, this would normally be a hearing on the record presented before the Hearings Officer, not one in which people need additional time to marshal new evidence. Ms. Beaumont outlined the various options open to Council.

Larry Bissett, Vice Chair, Buckman Community Association, said the Planning Bureau erred in that it did not consult with both sides in setting the date for this hearing and made no effort to contact them. He said Mr. Eisman as the Chair of the Association should have received notice but did not.

Susan Feldman, Planning Bureau, explained the Bureau's procedure in setting hearing dates and said it is not common practice to accommodate the appellant if the 120-day limit is in effect. The applicant did not wish to postpone the hearing or waive the 120-day requirement.

Mr. Bissett said Mr. Eisman's name was on the appeal so notice to anyone else was irrelevant. Second, the applicant loses nothing by waiving the 120 days.

Ms. Beaumont noted that the 120-day time period is established by State Statute and can only be waived by the applicant at the outset. The neighborhood association has no legal right to waive the 120 days.

Commissioner Francesconi asked Mr. Bissett why they wanted a delay other than on procedural grounds.

Mr. Bissett said they came upon contradictory evidence that they would like to have time to verify. They also would like to negotiate further with the applicant and reach some accommodation.

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Commissioner Francesconi said unfortunately that is not legally sufficient to justify a delay.

Mr. Bissett said the City, not the Housing Authority of Portland (HAP), is really the applicant here and could waive the 120 days.

Commissioner Kafoury moved to deny the request for a postponement. Commissioner Sten seconded and, hearing no objections, the Mayor so ordered.

Ms. Beaumont said the BNA also requested that the hearing be "de novo" but because there was no waiver of the 120-day requirement, this hearing should, following Council's standard practice, be "on the record." It was understood by all parties that the hearing before the Hearings Officer was the point at which all parties were to present evidence. The allegedly erroneous information regarding the site selection process raised by the BNA, which they believe violates two City ordinances, is not relevant to the approval criteria for the zone change. She recommended denial of the request.

Commissioner Francesconi asked what recourse there is if new evidence is discovered after the hearing.

Ms. Beaumont said on occasion the parties have asked the Hearings Officer to reopen the record to allow the addition of new evidence. The only time Council has changed an on the record to a "de novo" hearing is when the affected parties have reached a settlement.

Commissioner Francesconi asked what recourse there is if evidence is found to be wrong after the hearing.

Ms. Imperati said for better or worse all parties live or die by the record created before the Hearings Officer.

Mayor Katz said she never has liked that answer. She asked what the remedy is if a Code violation is involved.

Ms. Beaumont said a complaint could be filed with the Bureaus of Planning and Buildings or the parties could go through the Code Enforcement process.

Mr. Bissett said there is nothing in the actual Code that supports this on-the-record practice and he believes it is prejudicial to the rights of the appellant. He said it should be left up to Council's discretion.

Ms. Feldman said a Council directive adopted last year states that the applicant is told that the case will be heard on-the-record unless the 120-day requirement is waived, in which case any appeal will be de novo. She said

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people are notified right at the beginning that the Hearings Office's hearing is the only place they can introduce evidence.

Commissioner Kafoury moved to deny the request for a "de novo" hearing because the material the appellants wish to submit is not relevant to the zone change approval criteria.

Mr. Bissett said Council should not rule out considering factual evidence that involves very serious incidents regarding the present men's shelter that has never been discussed.

Commissioner Kafoury said zone changes are based on the public services provided.

Mr. Bissett said the new information is very relevant to that issue and whether the City is able to provide the services necessary to overcome the problems.

Mayor Katz said Council members can ask any questions they wish although she agrees with Commissioner Kafoury that is not a criterion for a zone change.

Commissioner Sten said the system is supposed to be fair not just to appellants but to applicants too. The Hearings Officer ruled in favor of the applicant and they have a right to move forward at this point.

Mayor Katz noted there was no objection to the motion.

Ms. Beaumont then noted the request of BNA to amend its appeal.

Commissioner Kafoury moved to deny that request.

Mr. Bissett said he has now been told that request was not necessary as the ordinances they want to draw attention to can be referred under the rule for taking "official notice." He withdrew the request.

Ms. Beaumont said taking "official notice" of matters adopted by ordinance, however, is a decision for Council. She outlined the procedures to be followed for an on-the-record hearing.

Commissioners Kafoury and Francesconi and Mayor Katz described site visits and "ex parte" contacts.

Nan Stark, Planning Bureau, showed slides of the site for this 90-bed men's shelter which is an allowed use in an EXd zone if all development standards are met. The criteria for zone changes is adequacy of public services, including water, sewer, transportation, fire and police. The Hearings Officer's decision of

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approval was based on responses from City bureaus indicating that adequate services will be provided to accommodate this use. The BNA appealed the decision based on its claim of inadequacy of police services to meet the demands of the shelter. She cited the applicable approval criteria.

Andrew Eisman, BNA President, said they believe the information presented to the Hearings Officer was misleading and resulted in an erroneous decision. They also are unhappy that the City and the applicants are unwilling to sit down with the community and police to negotiate a workable solution. He said budget cuts undergone by the police will drastically affect their ability to respond to the needs of the shelter, particularly with the reduction in the number of officers in the Central Eastside Industrial area from three to two. Also, the BNA received erroneous information at the hearing from Peter Fry about the nature of incidents at The Shack who testified that there were no serious incidents. He asked to enter police incident information from Exhibit 1, LUR 97-00131 ZC, as part of the record as it shows that The Shack currently could be closed down under the City's own nuisance ordinance, even though it is next to a police station. He also referred to a letter from Commander Stanley Grubb which anticipates that the shelter will place new demands on the Southeast precinct and states that they are working with other parties to minimize the impact. Unfortunately, good neighbor agreements are not part of determining whether the facility will have an impact. He said they are very concerned about Police ability to respond.

Mr. Bissett said the issue of over-concentration of social services in the close-in Central Eastside has been a long-standing concern and is reflected in the Buckman Neighborhood Plan which Council adopted by ordinance in 1991 and which is a component of the Comprehensive Plan. He cited Policy 8 of the Neighborhood Plan which calls for ensuring that social service agencies do not cause adverse impacts on the community. Policy 8.1 advocates for equitable redistribution of social service agencies throughout the City to reduce the concentration in Buckman. Therefore, the zone change does not conform with the neighborhood plan. A second ordinance, adopted in 1993, deals with homeless shelters.

Mayor Katz said this is totally outside the evidentiary record and not a criterion.

Ms. Beaumont said the appeal statement alleges that the rezoning is in clear violation of the City-approved Buckman Plan. However, the Plan itself is not a criterion for approval. The criterion requiring compliance with the Comprehensive Plan says a zone change needs to be requested to the Comprehensive Plan Map designation. The Zoning Code criteria do not otherwise require compliance with any other policies of the Comprehensive Plan.

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Mr. Eisman said they were instructed by Council that when the applicant applies for a use it cannot be separated out from any evidentiary hearing.

Mr. Bissett asked if the ordinance establishing the location of homeless shelters is irrelevant. He said one of the conditions that ordinance establishes is that a homeless shelter cannot go into an impact area, which is clearly defined. Any siting of a shelter should satisfy that criteria and also allow five days during which a siting decision can be appealed. That has not been done so what there is now is a zone change for a facility which has not really been led through the established process.

Commissioner Sten said he reviewed the evidence submitted that was not in the record regarding police incidents at The Shack and found there was an average of 1.5 calls a month that involved the police. He asked the appellants if they thought that police assigned to inner southeast were incapable of responding to that additional burden.

Mr. Bissett said there is a police facility immediately adjacent to the existing Shack so they do have questions about the police capacity to respond.

Mr. Eisman said he currently runs the City's most successful foot patrol and has found police response inadequate to issues involving homelessness, public urination, drug and alcohol use and dealing. For instance, not one person has been arrested for dealing heroin although police agree that the needles found in the park contain heroin. In addition, every person rejected by the shelter becomes a community problem and police statistics do not track those problems.

Commissioner Francesconi asked if the BNA would enter into a good neighbor agreement.

Mr. Eisman said they have been meeting informally with the applicant to address their concerns but are not yet willing to become signatories on a good neighbor agreement because they have found that if they do it takes hundreds of hours deciding if people are in or out of compliance. That is not where they want to spend their volunteer effort. However, they want both the process and the facility to run as best it can.

Mr. Eisman said the applicant has not really included the community in determining how best to make this facility work.

Jim Morton, 1305 SE MLK Blvd., an owner of Associated Furniture Manufacturers, a business next door to the proposed site, said transportation and parking are an issue here as 32,500 cars travel on MLK every day, mostly between three and six p.m., and many of the homeless will have difficulty

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crossing this hazardous street. Also seven parking spaces are inadequate for so large a facility. The number should be 45 as originally proposed.

Helen Barney, Deputy Director, HAP, said in January, 1997, Council asked HAP to acquire the site and to act as developer and owner of the project. Since then they undertook an expanded community process which the Portland Development Commission and the Bureau of Housing and Community Development had begun in selecting the site. Their efforts included letters to over 200 residents to involve them in the design process and in the draft of a good neighbor plan. Those efforts will continue. She said it is as important to HAP as to the neighbors that adequate police protection be provided. The Police have indicated they can provide that protection but, if experience proves changes are needed, they will work to resolve any problems that arise and hope that the BNA will be involved in those efforts.

Commissioner Francesconi asked for more detail about the police presence.

Ms. Barney said the only details they have now was submitted to the Hearings Officer in the record.

Peter Fry, 2153 SW Main, #104, land-use consultant under contract with the Portland Development Commission to assist in the zone change process, said they were advised by the City Attorney that no new evidence would be allowed and no new issues would be raised beyond those in the appeal. Twice his name has been tied with information that is not reflected in the hearing. The evidence raised as new information today was actually presented in HAP's application of December 17, 1996. The accuracy of police incidence reports was not addressed at the Hearings Officer's level and is not admissible now. He said everyone knew the rules at the hearing and that was the appropriate place to raise those issues. The Police Bureau itself said services are adequate to support the zone change and it would be able to accommodate additional demand.

John Gilbert, attorney for HAP, said they are restricted in their testimony to what is already on-the-record unless Council opens up the hearing. He asked for five minutes to review the appellant's materials to see if they have objections.

Mayor Katz said if the material was not submitted to the Hearings Office, then it will not be considered.

Ms. Stark said all of what is here is in the record.

Clark Schenkenberger, Executive Director, Central Eastside Industrial Council (CEIC), said he is speaking neither in support or opposition. The CEIC's policy regarding the homeless shelter is a matter of record but they request to maintain their standing as the process continues.

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Mr. Eisman said the police exhibits do not say anything as to whether the services are adequate. They do anticipate, however, that the homeless shelter will put new demands on Southeast Precinct resources and announced their intent to mitigate this impact. That mitigation is not part of this record however. He said Mr. Fry's testimony (Exhibit A-1 LUR 97-00131 CZ) regarding five fire calls can be referenced as it was referred to as evidence at the hearing. Furthermore, Mr. Fry's statement that "no serious incidents occurred" appears on Page 6 of his testimony.

Mr. Gilbert said he would still like five minutes to review the material.

Mayor Katz asked if there was any response to the transportation issues.

Ms. Stark said transportation services were judged adequate based on the Office of Transportation's response stating that it had no concerns and that it found services to be adequate.

Mr. Eisman objected to the Bureau of Housing and Community Development statement that there were adequate services as this was not in the record and should be struck. He also objected to use of the word "mitigate" in a memo from by Peter Fry regarding police services.

Mr. Fry said those words were the ones he stated before the Hearings Officer.

Mayor Katz said she will accept that the memo does not say "mitigate." There were no objections by other Council members.

Mr. Gilbert said he has no objection to the first three pages submitted by the BNA but objects to the rest.

Ms. Stark said she believes the Portland Development Commission location policy is in the record but agrees that the census information is not.

Mr. Gilbert withdrew his objection to inclusion of the last four pages. He then requested deletion of testimony relating to cooperation with the neighborhood, the cut in police officers from three to two, the critical incidence report and the Kukla/Cleary conversations. All objections were granted. He then objected to inclusion of all testimony not before the Hearings Officer, including the good neighbor agreement, the Buckman Neighborhood Plan, the location of the shelter, impact areas, Commissioner Sten's testimony regarding Police records, the foot patrol, and assertions that the site selection process had not been an open one. He also objected to the Associated Furnace testimony as not being an issue of appeal.

Ms. Stark said that issue, however, was in the record.

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Mayor Katz denied the last objection.

Ms. Beaumont confirmed that all the other objections raised by Mr. Gilbert had been granted.

Commissioner Francesconi said this is a case where the land use process was used to raise other siting issues. He said it is time to move on and address the siting process rather than pitting Mr. Fry against the other citizens. He said he has concerns about the effect on economic revitalization there but the decision has been made and the facility is a good model and badly needed.

Commissioner Kafoury said the notion that the City is not willing to work with the neighborhoods is hard for her to accept, given the hundreds of hours of involvement over siting that have occurred.


Commissioner Sten said he finds it depressing that Council has spent 1-1/2 hours on technicalities in hearing this case. He said no one really wants a shelter near them but this is not a bad site and there have been no applications for use of this property, which is under the bridge, since 1966. He said it is not true the City did not involve Buckman although it is very understandable that the neighborhood does not want it. He said the City's intent to site a men's shelter on the East side has been known for a long time. There is no question but that it meets all the land-use criteria.

Mayor Katz said this meets all the criteria for approving a zone change. Police services will be addressed on a larger scale later as the City hopes to return the number of police officers to the previous one per 2,000 in population. She said the temporary shelter, The Shack, was well run and it is far better for people to sleep here than in doorways or under bridges. The shelters have been spread pretty evenly between the east and west sides and the real issue now is how well they are managed.

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

At 4:50 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland


By Cay Kershner
Clerk of the Council