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CITY OF  
**PORTLAND, OREGON**

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**OFFICIAL  
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 9TH DAY OF JULY, 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.

Agenda Nos. 1045, 1046, 1047, 1048 and 1058 were pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

**CONSENT AGENDA - NO DISCUSSION**

- 1041** Reject all bids for Wallace Park improvements (Purchasing Report - Bid 218)

**Disposition:** Accepted.

**Mayor Vera Katz**

- \*1042** Pay claim of Joseph Hart (Ordinance)

**Disposition:** Ordinance No. 171366. (Y-5)

- \*1043** Pay claim of Duane England (Ordinance)

**Disposition:** Ordinance No. 171367. (Y-5)

**Commissioner Jim Francesconi**

- \*1044** Authorize an agreement between the City of Portland, by and through its Bureau of Parks and Recreation, and Todd C. Knudsen for establishing correct property boundary (Ordinance)

**Disposition:** Ordinance No. 171368. (Y-5)

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**Commissioner Charlie Hales**

**1049** Accept contract with Copenhagen Utilities and Construction, Inc. for NW Cornell Road slide repair as complete, approve Change Order No. 1, make final payment and release retainage (Report; Contract No. 31029)

**Disposition:** Accepted.

**\*1050** Agreement with the Central Northeast Neighbors to provide neighborhood based Rideshare assistance (Ordinance)

**Disposition:** Ordinance No. 171369. (Y-5)

**\*1051** Designate and assign certain City-owned park property in Pier Park as a public street right-of-way for the North Bruce Avenue street improvement project (Ordinance)

**Disposition:** Ordinance No. 171370. (Y-5)

**\*1052** Contract with CH2M Hill, Inc. for professional services for Portland Brownfield Initiative (Ordinance)

**Disposition:** Ordinance No. 171371. (Y-5)

**Commissioner Gretchen Miller Kafoury**

**\*1053** Contract with Kenton Action Plan for \$36,000 for the Kenton Target Area Project and provide for payment (Ordinance)

**Disposition:** Ordinance No. 171372. (Y-5)

**\*1054** Amend agreement with Portland Women's Crisis Line to increase contract amount by \$2,787, extend term and provide for payment (Ordinance; amend Contract No. 30814)

**Disposition:** Ordinance No. 171373. (Y-5)

**\*1055** Amend agreement with the YWCA of Portland to increase contract amount by \$15,096, extend term and provide for payment (Ordinance; amend Contract No. 30868)

**Disposition:** Ordinance No. 171374. (Y-5)

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**\*1056** Authorize a contract and provide for payment for three fire apparatus (Ordinance)

**Disposition:** Ordinance No. 171375. (Y-5)

**Commissioner Erik Sten**

**1057** Accept contract with Alliance Corporation for 16-inch water main in SE 174th Avenue as complete and authorize final payment (Report; Contract No. 30840)

**Disposition:** Accepted.

**1059** Contract with Northwest Film Center to provide grant funds for public, educational and government access capital needs (Ordinance)

**Disposition:** Passed to Second Reading July 16, 1997 at 9:30 a.m.

**1060** Contract with Portland Public Schools to provide grant funds for public, educational and government access capital needs (Ordinance)

**Disposition:** Passed to Second Reading July 16, 1997 at 9:30 a.m.

**\*1061** Authorize an increase in the petty cash funds of the Water Bureau to \$900 (Ordinance; amend Ordinance No. 152321)

**Disposition:** Ordinance No. 171376. (Y-5)

**REGULAR AGENDA**

**\*1045** Contract with MIG for \$20,000 to provide planning services for the preparation of an open space and recreation plan for the River District (Ordinance)

**Discussion:** David Yamashita, Parks Bureau, briefed Council on the second phase of the River District study. The first phase identified the basic needs for parks, open space and recreation programs. This will more specifically address park locations, the connections between them and the kind of recreation services needed to serve the estimated 15,000 residents.

Mayor Katz stressed the need to come up with a flexible plan.

Commissioner Hales said this fills an important gap as neighborhoods need to be designed around parks rather than adding them as an afterthought. He hopes this kind of planning can be applied elsewhere in the City.

**Disposition:** Ordinance No. 171377. (Y-5)

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**1046** Accept completion of restroom renovation at Wilshire, Oregon and Grant Parks, make final payment and release retainage (Report; Contract No. 30362)

**Discussion:** Ed Wilson, Soledad Electric, said he is a subcontractor on this and the following two projects and has been waiting seven months to be paid.

Lee Pudwill, Parks Bureau, said the prime contractor will be able to pay as soon as these reports are accepted by Council. He said delays by the General contractor, Jim Miller Company, held up subcontractor payments and resulted in liquidated damages because the project was not completed on time. Payment was withheld to make sure the work was completed.

Commissioner Hales said tougher sanctions for failure to perform by general contractors may be needed. Incentives to pay subs on time is also a possibility.

Mayor Katz asked what was the problem with the contractor.

Mr. Pudwill said he was over his head in trying to manage three contracts at once and get all the operating manuals and reports back on time.

**Disposition:** Accepted.

**1047** Accept completion of restroom renovation at Custer, Duniway and Sellwood Parks and release retainage (Report; Contract No. 30393)

**Disposition:** Accepted.

**1048** Accept completion of restroom renovation at Glenhaven, Irving and Arbor Lodge Parks and release retainage (Report; Contract No. 30471)

**Disposition:** Accepted.

**\*1058** Amend contract with Johnson & Higgins of Oregon, Inc. to authorize the purchase of the City's insurance policies for the Owner Controlled Insurance Program (Ordinance; amend Contract No. 30955)

**Discussion:** Cay Kershner, Clerk of the Council, said this was filed a week too soon.

**Disposition:** Continued to July 16, 1997 at 9:30 a.m.

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**\*1038** **TIME CERTAIN: 9:30 AM** - Approve an Intergovernmental Agreement between the Parkrose School District and the City of Portland to outline responsibilities for implementation and long term care of the Parkrose Middle School water quality bioswale facility (Ordinance introduced by Commissioner Sten)

**Discussion:** Commissioner Sten said this is an exciting project being done with the Parkrose School District to try to take care of stormwater in that area.

Dean Marriott, Director, Bureau of Environmental Services (BES), said this will allow BES and the Parkrose School District to work together for the construction, maintenance and monitoring of a stormwater management facility. The bioswale will be located at the site of their Middle School and Metro has provided an \$18,000 grant to assist with this. This project gives the City an opportunity to demonstrate on the ground a way of dealing with stormwater quantity and quality problems. They hope this will be among the solutions available for use elsewhere in the City.

Dawn Hottenroth, BES, described where the swale will go and how it will work. This agreement calls for the School District to take over the long term maintenance, which the City will monitor.

Jackie Cottingham, Superintendent, Parkrose School District, outlined the educational advantages of this partnership, which allows students to actually practice the environmental ethic adopted by the Board and experience "being there" education. It has potential long term savings both for the District and the City.

**Disposition:** Ordinance No. 171378. (Y-5)

**1039** **TIME CERTAIN: 10:30 AM** - Accept the Stormwater Policy Advisory Committee's report on stormwater management guidelines for new development and direct the Bureau of Environmental Services to initiate implementation strategy (Resolution introduced by Commissioner Sten)

**Discussion:** Commissioner Sten said people do not understand why sewage continues to be dumped into the River. The answer is that the City's system is not big enough and on days when it rains, sewage goes into the river. This policy addresses new standards for what to do about stormwater as development occurs. The proposed standard is a lot stronger than the current one and based on a simple premise -- projects should take care of their own stormwater so the system is no worse off after development than before. He said it will actually be a very complicated standard to initiate, especially in places where the City wants to add density. Compliance is also a problem area.

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Commissioner Francesconi asked if it is important to adopt this today.

Commissioner Sten said yes as this just talks about the standard, which the report indicates not everyone can meet. The devil will be in the details.

Mayor Katz asked about the impact on single-family development and enforcement.

Mr. Marriott said the use of swales and similar solutions may be cheaper ways to deal with the problem than concrete pipes. Ratepayers are now paying for not dealing with the problem in the past and now the system is greatly eroded and the urban streams are polluted. The Bureau hopes to reverse this trend. He said a handbook is planned to provide a basic list of options that will encourage innovation in dealing with stormwater.

Commissioner Hales said he hopes the City's standards will be based on a higher standard and not designed to just meet federal regulations.

Mr. Marriott said a regional context is important.

Mayor Katz asked what other communities are doing to manage stormwater on- and off-site.

Cathryn Collis, Former Systems Management Director, BES, said the first time the EPA asked for permits, each jurisdiction was told to write their own application. In Oregon, the local governments got together and, as a result, all the permits are remarkably similar and consistent. Today, however, this talks about new development standards and how to manage, not just the drainage, but the water quality as well. She explained the committee makeup and said two issues are still unresolved. The first is what to do when a change of use results in increased amounts of pollutants after redevelopment even though there was no change in the amount of impervious surface. She cited Montgomery Park as an example. The second issue is what fee incentives might be offered when redevelopment occurs to induce developers to do the right thing about stormwater treatment. She said the goal is to avoid the impact of stormwater on streams and the policy is to manage it on-site as much as possible. However, high lot coverage requirements might require piping to a regional facility for off-site treatment prior to going into the receiving streams.

Commissioner Francesconi asked about the letter from the Columbia Corridor Association.

Ms. Collis said that refers to facilities which must meet DEQ regulations and the question is whether there should be further special conditions for moving to a regional facility for industrial users.

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Commissioner Sten said this should be dependent on the site.

Mr. Marriott said people are nervous that this will change their behavior but that is the whole point.

Commissioner Hales said the question for Council is consistency and how to recognize Council's goals for redevelopment and density without negative impacts on the environment.

Commissioner Sten said the assignment of costs is a big question. Who pays to treat stormwater, whether on- or off-site? The developer or the average rate payer? He said right now the rate payers are shouldering the cost and if water does not have to be piped, their costs will go down.

Mayor Katz noted that Metro 2040 goals are running into conflict with environmental goals, housing affordability and infrastructure requirements and the City may find itself unable to meet them.

Commissioner Francesconi said the City needs to set a higher standard and then find some mechanism to bring the rest of the region up to that level.

Mike Houck, Audubon Society, said he met with the environmental groups which overall strongly support this as a first step. He noted that this only talks about new development and redevelopment, not current problems. He said the whole 2040 plan is about balance, not about trashing environmental resources just to hold tight to the Urban Growth Boundary. He said there is a lot of public misperception that the City is willing to sacrifice natural resources in order to achieve growth. The impact on environmental zones is also of great concern and a clear statement of Council's intent is needed. Mr. Houck noted considerable disagreement on the committee about how to manage stormwater redevelopment and special planning areas, such as town centers. He said all opportunities to manage storm water on-site should be explored first. Also, because the danger of landslides will not allow on-site treatment, some areas may need to be downzoned as unbuildable. He also questioned the goal in the handbook which calls for a decrease in discretion. He said there is no way to get rid of it entirely, especially in the Southwest. He said more emphasis should be placed on less costly treatment approaches for redevelopment, such as those that have been successful at OMSI, KPTV and other sites.

Mayor Katz said the public does not understand the scope of the alternatives. Council also needs to become more knowledgeable.

Mr. Houck said he would like to have the model ordinance for stormwater treatment in Title 3 adopted. Metro has realized that wetland and steeply sloped areas should not be developed.

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Jerry Palmer, Alpha Engineering, said this addresses only development and adds a new definition of cost benefit that includes not just dollar amounts but also environmental impacts. He said the policy needs to give some degree of certainty to implementers and the handbook will have to define what is practical, as implementation is the most important element of all. Presumptive compliance with best practices is very important. Another area that needs to be addressed is conflicting regulations among bureaus.

Margaret Mahoney, Director, Bureau of Buildings, strongly supported the committee's work and added that the questions of whether there are conflicting regulations cannot be determined until the handbook is completed. The City also needs to move quickly to develop collector regional facilities.

Mr. Marriott said they hope to complete the handbook by September. In the meantime, DEQ requirements are in place. He noted that no streams in Portland except Balch Creek meet the designated beneficial uses as defined by the DEQ. He said the City's approach is to remove 50 percent of the pollutants from redevelopment. He acknowledged this does not go far enough but is satisfactory for the interim. Monitoring over time will be very important and the Bureau plans continued assessment.

Mayor Katz asked about continuation of the Advisory Committee.

Mr. Marriott said some current members are exhausted and a technical committee is being formed to work specifically on the handbook now. Then they will consider continuing with a long term Advisory Committee.

Ms. Collis said more technical than policy people are needed to do the handbook.

Mayor Katz said the technical committee, however, should check in periodically with the Advisory Committee and Council before it is too late to make changes.

Anne Nickel, Columbia Corridor Association, noted that 70 percent of the vacant industrial land in the Columbia Corridor drains directly into the Slough. She said industrial uses have different needs and if there is no differentiation, it will be impractical to divide the land. She said ponds and swales may not always be best for industrial uses and the City may not want to encourage recreational use there, either. Ms. Nickel said many companies already have to go through the NPDES process and questioned why they would have to go through both a state and city process. She also noted that there is no recognition of the drainage district in the area. The development standard should clearly state the maximum standard practical.

David Lohman, Port of Portland, said the Port is more concerned with stakeholders than with handbook technicalities. He questioned the makeup of



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the committee, saying he wished there had been more technical input. He said the Port wants an opportunity for input at this stage as it does not want to end up with no flexibility. He said type of use should be a consideration.

Mr. Houck disagreed, saying he had not heard any good reason why the City should differentiate between industrial, commercial or residential property.

Commissioner Sten said that is his preference too, but there may be issues related to the drainage district.

Mayor Katz asked about double permits from the DEQ and the City.

Mr. Marriott said he will look at that. He noted that "to the maximum extent practicable" is both the State and City standard. The drainage district issue will come to Council, as landowners pay drainage fees to it.

Commissioner Sten said the City is investing millions to try to fix the Slough and the drainage district's mission is to try to prevent floods. He said he thinks the potential conflict with industrial uses can be overcome.

Commissioner Francesconi said both a technical and policy committee are needed. He said the larger picture is how to integrate this with job creation, housing and holding to the Urban Growth Boundary (UGB). He said this is a tough balancing act that will require regional planning.

Commissioner Hales said unless a good job is done in crafting the rules, the details will come to Council. He said it is important not to send mixed messages, particularly given the very different topography all over the City.

Commissioner Kafoury said she shares Ms. Mahoney's desire for clear rules. There are many choices for Council re balancing, including political tradeoffs and judgments.

Commissioner Sten said the City will not be able to address density in Southwest unless it can deal with stormwater. The entire City was built on the premise that rainwater runoff was no problem. He said the details will not be easy but he will keep the Advisory Committee going as well as the technical committee.

Mayor Katz said rate incentives to do the right thing are a key component. Political tradeoffs will be needed if expansion of the UGB is to be avoided.

**Disposition:** Resolution No. 35627. (Y-5)

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**\*1040 TIME CERTAIN: 11:00 AM** - Apply for a \$2,087,836 grant from U.S. Department of Justice, Office of Justice Program, Bureau of Justice Assistance (Hearing; Ordinance introduced by Mayor Katz)

**Discussion:** Mayor Katz said this is a local law-enforcement grant, not a social service grant. The City shares its grant with the District Attorney, District Court, Multnomah County Sheriff and the City Attorney's office because what the Police do impacts their work load and their system. An Advisory Committee made the recommendations. Most of the money will go to pay overtime although the Metro District Attorney's office and police clerical position will be kept open at the Lloyd Center.

Police Chief Charles Moose described allocation of the grant monies. He said an expanded committee of interested parties reviewed and expanded the initial proposal, resulting in the final list of allocations. The money from the federal government is good news but the Police Bureau is also requesting matching funds which, for the City, total \$209,982. The jurisdictions outside the City which receive money will also pay their share of the match.

Commissioner Kafoury asked if the match was included in this year's budget.

Chief Moose said no.

Commissioner Kafoury said she does not understand that as the City is getting additional money to pay for overtime.

Mayor Katz said she believes OFA decided to take the money out of contingency rather than taking it out of the ending balance the Police Bureau returned to the general fund.

Mike Shrunk, Multnomah County District Attorney, thanked Chief Moose and the committee for its good dialogue, which recognized that a lot of the criminal justice actions are driven by the Police Bureau.

Mayor Katz said both the City and County wanted to fund the curfew program out of this grant but were told it did not qualify.

Commissioner Francesconi said he understands the money cannot be used for curfew sweeps, either for the City's overtime or for County parole and probation staff.

Chief Moose said there was a specific request to use the money for detention purposes in the Juvenile Department but the guidelines clearly state that the money can be used for violent juvenile crimes. To give the money to staff detention of non-violent juveniles falls outside the guidelines.

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Commissioner Francesconi asked if adjustments in the allocations can be made now.

Chief Moose said the grant application had to be filed for approval by the Governor's Office and is due in Washington D.C. tomorrow. There is no time now to get adjustments approved by the Governor's Office but they might be made later.

Mayor Katz said the curfew proposal was in the recommendations until the very end but after finding out it did not meet the guidelines, the City will have to come up with its own funds to make that happen.

Commissioner Kafoury said she has two issues. One is working with the County more closely so there is a connected and balanced program. She is confused about why the City is getting a lot of additional money for overtime when the City has to pay a match out of contingency.

Mayor Katz said the interconnection between the Police and the County system is obvious. She said that is why they are looking at functional consolidation because it is very difficult for two jurisdictions to manage interconnected systems yet make separate policy decisions within them. She keeps reminding the County that the City is not going to stop picking up people who are breaking the law. The District Attorney tries everything he can to accommodate that in the court system, as does the Sheriff. She realizes, however, that it is hard for a jurisdiction whose prime purpose is social services to give the same weight to the correctional system.

Commissioner Kafoury said the County Commissioners have never lacked for pressure from the corrections/law enforcement community.

**Disposition:** Ordinance No. 171379. (Y-5)

**Commissioner Charlie Hales**

**21062** Support the recommendation of the South Willamette River Crossing Study (Resolution)

**Discussion:** Commissioner Hales moved the amendment he distributed to the resolution. Commissioner Kafoury seconded and, hearing no objections, the Mayor so ordered.

Commissioner Hales said this is a study underway at Metro to consider a variety of alternatives to solve the problem of traffic circulation and transportation connections across the Willamette River. He said the City has a particular concern about the impact of this decision on the Sellwood/Moreland

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neighborhood. His amendment further reinforces his belief that it is not in the community's interest to have a main street blown away by higher volumes of regional traffic. A four-lane bridge across the Willamette to replace the Sellwood Bridge would do just that.

Steve Dotterer, Office of Transportation, said the Metro study presents a mid-point recommendation. He said Metro has looked at a long list of alternative river crossings from the Marquam Bridge to Oregon City. As the area urbanizes it makes sense to look at additional crossings to increase connectivity in the region as a whole. Metro's short list recommends a number of alternatives for the Ross Island and Sellwood Bridges plus three new bridge locations in Clackamas County. Metro is asking for the City's endorsement of those alternatives so it can proceed to examine them in more detail and in combination. The next phase, expected to last about one year, will look at those options and return with recommendations for further efforts. No funding has been set aside for implementing any solutions at this point.

Mr. Dotterer said the amendment clarifies the importance of the existing City transportation policy which states that the Sellwood Bridge is designed to serve as an inter-district connection between Southwest and Southeast neighborhoods and is not intended to serve long-distance regional traffic. There is concern that a four-lane option might promote that use.

Art Lewellan, Brooklyn neighborhood resident, showed Council some maps to illustrate his work on the crossing study. He said the first option should be connecting McLaughlin Boulevard to the Marquam Bridge. That would relieve congestion on both the Ross Island and Sellwood Bridges. He said there should also be a streetcar across the Sellwood Bridge in the future, going along Ochoco rather than Tacoma.

Mr. Dotterer said use of the Marquam Bridge has been reviewed but the weave there is very difficult and expensive. In this study, the objective is to study changes to allow those movements at the Ross Island bridge because they would be cheaper and more direct. If that does not work, then they can restudy the Marquam Bridge. None of the City's current streetcar proposals show a route going over the Sellwood Bridge so Metro has not been asked to include that at this point.

Kevin Downing, Chair, Transportation Committee, Sellwood/Moreland Neighborhood Association, noted their concerns about the potential for the Sellwood Bridge to serve as a dagger at the heart of the neighborhood, rather

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than an enhancement. They hope a four-lane bridge would fail on its merits because of its damage to neighborhood land use patterns. They support the resolution as amended.

**Disposition:** Resolution No. 35628 as amended. (Y-5)

**\*1063** Authorize application to the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development for several grants in an amount up to \$2,231,000 for transportation and growth management programs (Ordinance)

**Discussion:** Commissioner Kafoury said she is pleased to see Transportation funds married with block grant and other funds to help revitalize some of the neighborhoods.

Mr. Dotterer proposed to amend Item 22 to correct the fiscal year and to change the number of grants in Direction "a" from 13 to 14.

Commissioner Kafoury moved those amendments. Commissioner Hales seconded and, hearing no objections, the Mayor so ordered.

**Disposition:** Ordinance No. 171380 as amended. (Y-5)

**Commissioner Gretchen Miller Kafoury**

**\*1064** Authorize settlement in Lugo v City of Portland involving Equal Pay Act and Title VII claims of BOEC 911 dispatchers (Ordinance)

**Discussion:** Cheryl Whittemore, Director, Bureau of Emergency Communications (BOEC), said this ordinance authorizes a settlement in this case.

Madelyn Wessel, Chief Deputy City Attorney, said this case resolves long standing concerns about pay disparities between BOEC dispatchers and former dispatchers in the Fire Bureau. The City went through a very long process of consolidating dispatch in one new center and this should bring closure to the last remnants of concern about pay issues. The City faced very substantial liability in this lawsuit and staff believes this is a very economical resolution.

Commissioner Kafoury said both Mary Danforth and Ms. Wessel have done outstanding jobs in reducing the City's substantial financial exposure.

Mayor Katz said her initial reaction was to fight this lawsuit all the way but she is now convinced this is a good solution.

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Commissioner Francesconi said he is very impressed by the legal work done on this case and believes this settlement is in the City's best interest.

**Disposition:** Ordinance No. 171381. (Y-5)

**Commissioner Erik Sten**

- \*1065** Agreement with the Department of Environmental Quality to coordinate well field pumping and cooperate on ground water remediation (Ordinance)

**Discussion:** Commissioner Sten said he will defer a discussion about the well fields to the informal on Water Bureau regulatory issues.

**Disposition:** Ordinance No. 171382. (Y-5)

- 1066** Grant a franchise to Portland LFG Joint Venture for a period of 20 years (Ordinance)

**Discussion:** Commissioner Sten said they have worked hard with the Energy Office and Cable Franchise office to create energy sources good for the environment. The St. Johns landfill produces a lot of methane gas and this will allow an industrial user to run a pipe line through the right-of-way to collect it.

**Disposition:** Passed to Second Reading August 13, 1997 at 9:30 a.m.

- \*1067** Authorize negotiations for the purchase of a permanent sewer easement and a temporary construction easement required for construction of the Southeast Portland sanitary sewer extension project #1, authorize the City Attorney to commence condemnation proceedings and authorize the City Attorney to obtain early possession (Previous Agenda 1032)

**Disposition:** Ordinance No. 171383. (Y-5)

**City Auditor Barbara Clark**

- 1068** Assess benefitted property for the costs of street and other improvements in the NE Mason Street Local Improvement District (Second Reading Agenda 1035)

**Disposition:** Ordinance No. 171384. (Y-5)

At 12:25 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 9TH DAY OF JULY, 1997 AT 2:00 P.M.

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

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

**1069** **TIME CERTAIN: 2:00 PM** - Liquor license application for Le Rho Chateau LTD, dba King Food Mart, 3510 NE Martin Luther King Jr. Blvd., Package Store liquor license (renewal); Unfavorable recommendation (Report introduced by Commissioner Francesconi)

**Discussion:** Mike Sanderson, License Bureau, outlined the reasons behind the Bureau's unfavorable recommendation, noting that this year the renewal is also opposed by the Police Bureau, the Eliot Neighborhood Association and nearby neighbors. He cited the lack of effective security and the sale of alcohol and drug paraphernalia to minors as among the reasons for the bureaus' opposition. He said while some believe that many of the problems at this location are not associated with liquor, staff disagrees.

Perry Christianson, Police Bureau, Drug and Vice Division, described a number of incidents to indicate the chronic problems at this location, including repeated sales of liquor to minors and of pipes used to smoke crack cocaine.

Other police officers who testified in support of the unfavorable recommendation included:

Alan Orr, Commander, North/Northeast Precinct  
David Barrios, Police Gang Enforcement Unit  
Charles Pender, Northeast Precinct.  
Keven Fraser, Northeast Precinct  
Jim McCaslund, Northeast Precinct

The Police officers testified that this is a sore spot in the community and a congregation point for gang members. The continuing problems affect public safety and add to the vulnerability of children and seniors who live nearby.

Kenneth Edwards, Northeast Neighborhood Office, said he has written at least six reports in response to complaints about the situation here. Residents are tired of it and they are the ones driving the City to do something about it.

Tom Walsh, attorney representing the applicant, questioned whether the

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problems attached to this area can be attributed to this store without any nexus established between the two. He noted that the application is supported by the King Neighborhood Association and that 600 residents have also signed letters of support. He outlined all the steps his client has taken to decrease the problems, including meetings with the OLCC and the neighborhood associations and termination of the employees who sold alcohol to minors or sold drug paraphernalia. He said it is unfair to base an unfavorable recommendation on two incidents of sales to minors and said the homicide at this location had nothing to do with the store or employees. He said ORS 471.375 states that any persistent problems have to be related to the sale or service of alcohol. He said two violations (sales to minors) since 1988 are not that bad and that in both instances the OLCC found mitigating factors and reduced the fine because the licensee agreed to take OLCC law classes and prepare a set of procedures on sales of alcohol to minors.

Elaine Rho, applicant, acknowledged that she has had problems at this location, as did the businesses before her. She said during the 11 years she has operated this business, she has worked with the OLCC to resolve any problems and will continue to do so.

Commissioner Hales asked if Ms. Rho had any counter-proposal between the recommendation for denial and having things go on as they are.

Mr. Walsh noted that his client had asked Council to suspend its decision so that she can work with the agencies to implement their suggestions and see if that will address the concerns. Some suggestions have been implemented since the beginning of summer, including the addition of security on the premises 12 hours a day, seven days a week. Also, OLCC policies have been written to address the problem of selling to underage drinkers.

Commissioner Hales asked if there had been a request to mark the containers sold at the store in order to see if street drinking in the area was traceable to this particular outlet or was a general problem.

Mr. Walsh said insurance companies have indicated they would not insure markets who labelled their containers because of liability concerns.

Commissioner Francesconi asked if Mr. Walsh's legal argument was that the Bureau has not proven the incidents are alcohol-related, except for two. He asked if the City would see the same number of complaints two years from now if the license denial was upheld.

Mr. Walsh said he does not know. Every time one eliminates a source of alcohol within a certain radius there probably will be less problems. But that shifts the problems to other areas.



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Commissioner Francesconi asked Mr. Walsh if he agreed with a statement from Fred Stewart stating that they feel that the absence of liquor sales will decrease the number of altercations at this establishment, the number of people congregating in the parking lot and make this a much safer place.

Mr. Walsh said if the liquor license is eliminated the store will go under and there will probably be an empty lot there. He noted that two prior tenants, including a McDonalds, did not sell alcohol and also had problems. That corner is a magnet area.

Commissioner Francesconi said in 1988 Ms. Rho agreed to carefully check i.d. and refuse sale to minors.

Mr. Walsh said yes, except that with the turnover of employees, it is hard for the owner to monitor every sale. The two incidents cited involved short-term employees who were subsequently terminated. Only two violations between 1988 and today is a pretty good record.

Commissioner Francesconi asked whether security guards had been added since 1988 and whether police had been called for assistance when there was a problem.

Ms. Rho said yes. They also limited in-coming calls on the pay phone at that time, too.

Mr. Walsh said they also cordoned off a third of the parking lot in the back to limit access.

Mayor Katz said the City could probably shut this place down completely under the chronic nuisance law, not just based on the sale of alcohol. The Police have tried to work with the owners to assist in making the place better but that does not seem to have worked out quite as well as expected.

Commissioner Hales said he believes the Code allows denial based on whether this site is a problem in terms of frequent criminal activity. The Code does not just call for a nexus.

Mr. Walsh said he was only responding to the grounds presented to him on which cancellation was based.

Ms. Rho said she became full manager of the store in 1997 so she knows exactly what is going on. In June, 1996 she asked for help and has been talking to the OLCC many times about the problems.

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Individuals testifying in support of Ms. Rho and for a favorable recommendation included:

Thomas Edward Mullen, 47-7 N. Killingsworth,  
Jesse Hill, 105 NE Fargo, 97212  
James Jeffrey, no address stated  
Craig Boehm, 3726 NE Grand Ave., 97212  
Harrison Bruxton, 3818 N. Mallory  
Robert Shaw, 3127 NE 10th  
Robert Parmer, 3812 NE 8th, 97212  
Jim Anderson, King Neighborhood Association  
Anthony Abah, 4714 NE 16th, 97211  
Robert Barnes, 2311 SE 66th  
Fred Stewart, King Neighborhood Association, 5802 NE Mallory, 97211  
Larry Green, 3617 NE 6th Ave., 97211  
Rocky Pascal, 246 NE Fremont, 97212  
Latrell Woods, 3634 NE 13th  
Kenneth Jesse, no address stated  
Randy Barfield, no address stated  
Charles Rose, King Food Market employee

Those testifying in support of Ms. Rho said this corner is a "hot" gathering spot and the problems here are not all attributable to her operation of the store. They criticized the OLCC's lack of cooperation with the neighborhood in its operation of a liquor store two doors away and said gang members are also a problem at the Chevron station across the street where no alcohol is sold. They said Ms. Rho has done everything that has been asked of her and has put her whole life into making this a successful and clean operation in a location rife with problems, such as prostitution and drugs that are not alcohol-related. Things are much better now than they were before. Many also suggested an increased police presence at the corner.

Aviva Groner, Land Use Chair, Eliot Neighborhood, supported the Bureaus' unfavorable recommendation. She said the nexus between the sale of alcohol here and the problems in the area has been demonstrated. She said the store devotes six or seven shelves to alcohol and if that was reduced it could relieve a lot of problems in a scary neighborhood.

Commissioner Sten said he is not sure things will get better if the store closes down.

Mr. Sanderson said an unfavorable recommendation from the City often drives a negotiated settlement with the OLCC. An example of such a settlement is The Gypsy.

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Commissioner Francesconi said he believes Ms. Rho is in over her head in managing the place and is worried about the future. He moved the unfavorable recommendation.

Commissioner Kafoury seconded. She said a liquor license is a privilege and regulations should not be disregarded because this is a problem area. The whole corridor has had some terrible problems and she would like to see the retail grocery side upgraded. If that is successful, Ms. Rho could reapply for a license later.

Mayor Katz said she does not want to settle for second best in this area. She said the City may be able to provide economic assistance to Ms. Rho in changing her business.

Commissioner Hales noted that the store owner, as shown by today's testimony, has a lot of community support. He said if the denial is upheld by the OLCC there is a good chance this store will go out of business without a liquor license. An empty corner could be an even bigger problem. However, he will support the unfavorable recommendation because of the need to come down on the side of public safety.

Commissioner Sten said if the applicant had an alternative plan worked out with the OLCC, he would support a favorable recommendation, as he does not think taking away the license will change behavior and that the City could actually see more problems here. He said he thinks it is patronizing to take such action and then offer to help her open some other kind of business.

Mayor Katz said this business could be cited as a chronic nuisance and Ms. Rho has a responsibility to manage the activity in the parking lot and make sure people behave. The community will not tolerate excusing this just because it has always been a problem. Good changes are occurring in this area and she hopes to see them continue.

**Disposition:** Unfavorably recommended. (Y-5)

At 4:10 p.m., Council adjourned.

BARBARA CLARK  
Auditor of the City of Portland

*Cay Kershner*  
By Cay Kershner  
Clerk of the Council