



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 16TH 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; Harry Auerbach, Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

On a Y-5 roll call, the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 1073** Accept quotes of Alder Creek International, Inc. and Beaver Bark for furnishing barkdust, play chips and top soil for \$24,007 and \$23,750 annually (Purchasing Report - Informal Quotation)

Disposition: Accepted; prepare contract.

- 1074** Vacate a certain portion of NW Reed Street east of NW 21st Avenue, under certain conditions (Ordinance by Order of Council; C-9928)

Disposition: Passed to Second Reading July 23, 1997 at 9:30 a.m.

Mayor Vera Katz

- *1075** Authorize the purchase of propane gas through the Portland Public Schools price agreement for an estimated total amount of \$30,000 annually for a period of five years and provide for payment (Ordinance)

Disposition: Ordinance No. 171385. (Y-5)

- *1076** Pay claim of Aimee Paige (Ordinance)

Disposition: Ordinance No. 171386. (Y-5)

- *1077** Authorize the issuance and sale of Tax Anticipation Notes, Series 1997, in an amount not to exceed \$15,000,000 (Ordinance)

Disposition: Ordinance No. 171387. (Y-5)

JULY 16, 1997

Commissioner Charlie Hales

1078 Set hearing date, 9:30 a.m., Wednesday, August 13, 1997, to vacate an unnamed right-of-way north of SE Powell Boulevard and east of I-205 (Report; C-9902)

Disposition: Adopted.

***1079** Contract with OPTEC, Inc. to provide an extension to the Traffic Management fiber optic transmission system for \$128,206 and provide for payment (Ordinance)

Disposition: Ordinance No. 171388. (Y-5)

***1080** Contract with Construction Management & Inspection to supply qualified inspection personnel upon request and provide for payment (Ordinance)

Disposition: Ordinance No. 171389. (Y-5)

Commissioner Gretchen Miller Kafoury

***1081** Intergovernmental Agreement with the Department of State Police, Oregon Emergency Management, for Portland to provide training to local emergency management and disaster services personnel (Ordinance)

Disposition: Ordinance No. 171390. (Y-5)

***1082** Intergovernmental Agreement with the Housing Authority of Portland for \$63,609 for the cooperation of local government in the development of the HUD-required Consolidated Plan and provide for payment (Ordinance)

Disposition: Ordinance No. 171391. (Y-5)

***1083** Amend Intergovernmental Agreement with Multnomah County for fiscal year 1997/98 to prepare and update the Consolidated Plan and provide for receipt of payment (Ordinance; amend Agreement No. 30859)

Disposition: Ordinance No. 171392. (Y-5)

***1084** Authorize new consortium agreement with Multnomah County and the City of Gresham for participating in the U.S. Department of Housing and Urban Development's HOME Investment Partnership Program under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (42 USC 12701 et seq.) (Ordinance)

JULY 16, 1997

Disposition: Ordinance No. 171393. (Y-5)

Commissioner Erik Sten

1085 Accept completion of the St. Johns sewer extension No. 3, Project No. 5897, and authorize final payment to East Wind, Inc. (Report; Contract No. 31047)

Disposition: Accepted.

1086 Contract with Campbell DeLong Resources, Inc. in an amount not to exceed \$110,000 to assist in the administration and analysis of the Customer Profile and Analysis Study (Ordinance)

Disposition: Passed to Second Reading July 23, 1997 at 9:30 a.m.

***1087** Authorize a Memorandum of Agreement between the City of Portland and the District Council of Trade Unions granting a two-year personal leave of absence without pay to Samuel L. Gillespie for the purpose of pursuing outside employment (Ordinance)

Disposition: Ordinance No. 171394. (Y-5)

***1088** Authorize the purchase of property located east of North Interstate Place and immediately south of North Columbia Boulevard (Ordinance)

Disposition: Ordinance No. 171395. (Y-5)

***1089** Contract with TCI Cablevision of Oregon and Metropolitan Fiber Systems of Oregon, Inc. to provide a cable access television connection to Pioneer Square (Ordinance)

Disposition: Ordinance No. 171396. (Y-5)

***1090** Amend contract with Johnson & Higgins of Oregon, Inc. to authorize the purchase of the City's insurance policies for the Owner Controlled Insurance Program (Previous Agenda 1058; amend Contract No. 30955)

Disposition: Ordinance No. 171397. (Y-5)

1091 Contract with Northwest Film Center to provide grant funds for public, educational and government access capital needs (Second Reading Agenda 1059)

Disposition: Ordinance No. 171398. (Y-5)

JULY 16, 1997

1092 Contract with Portland Public Schools to provide grant funds for public, educational and government access capital needs (Second Reading Agenda 1060)

Disposition: Ordinance No. 171399. (Y-5)

REGULAR AGENDA

1070 **TIME CERTAIN: 9:30 AM** - Presentation of Police Internal Investigations Auditing Committee (PIIAC) Monitoring subcommittee's Second Quarter 1997 report per City Code 3.21.050 (Report introduced by Mayor Katz)

Discussion: Bob Ueland, Chair, PIIAC Monitoring Subcommittee, reviewed the second quarter report and the Chief's responses to their concerns about timeliness, declination of use of force complaints and clarification of the general order regarding officer identification. Of the five appeals the advisors reviewed, they found one complaint they believe was improperly rejected and should be sustained. A Council hearing on that appeal is pending.

Mr. Ueland noted that during the last quarter they also monitored the timeliness of mitigation and noted some unreasonable gaps in scheduling. He said they do not know why four mitigation hearings took so long and recommend a 60-day goal. He also noted one case in which the complainant was the direct supervisor of the Internal Affairs Division (IAD) Commander, creating an awkward situation. The Advisors recommend that a neutral body conduct the investigation any time a high-level bureau employee is investigated. Finally, in mitigation cases where the finding is changed, a protocol for "debriefing" and notifying the complainants is needed.

Emily Simon, PIIAC Citizen Advisor, said up until the last PIIAC meeting she always understood mitigation to involve a change in the amount of discipline, not a change in the finding. If findings are changed during mitigation, there is absolutely no way of telling why because mitigation goes on behind closed doors. It makes the Advisors wonder why they went through all their prior efforts to make a finding in the first place.

Captain Bill Bennington, IAD, said the policy is that the entire case goes up through review level, a recommendation is made and the Chief then agrees to the proposed discipline. The final mitigation hearing is the opportunity for additional information to be presented that might mitigate that proposed discipline. Normally this meeting is attended by the Personnel Commander and personnel analyst, the City Attorney and the IAD Commander. The Chief then takes all the information and makes his determination.

Mayor Katz asked if any of that information comes back to IAD or the Advisors.

JULY 16, 1997

Captain Bennington said it stays on the Personnel side as long as the findings do not change. If the finding changes, he would be notified and would then correct any earlier notifications.

Mayor Katz noted that the Advisors are discussing a policy change that would not close out IAD files until the entire process, including mitigation, is completed.

Captain Bennington said they have operated under three models. They ran into a problem when notifications to the officers and citizens in some cases were going out before Personnel was able to talk to the officer. So then they waited to notify until after the Chief has heard all the facts and approved the proposed discipline. That worked for years until recently when they have had a few cases where the findings are being changed from sustained to not sustained. They need to make sure that everyone is notified when this happens so that nothing falls through the cracks.

Mayor Katz said the Advisors' point is how do they tell a complainant that first their complaint was sustained and then later it is not.

Captain Bennington said they are working on a third model that calls for not doing the notification until after the investigation is complete and discipline has been finalized. They will present the three models to the Advisors for discussion.

Mayor Katz said she is not sure which model is best but the Advisors have identified the problem that IAD is working to resolve.

Ms. Simon said it concerns her when Captain Bennington says the Chief considers the full facts as those should be developed by the time the case gets to the mitigation hearing. The Advisors also need to know what goes on at the mitigation hearing if the findings are overturned. Theoretically then someone could not file a PIIAC appeal until after mitigation. That would work if mitigation happened promptly.

Commissioner Francesconi said he thought mitigation concerned the punishment, not the facts themselves. He questioned the timeliness of General Order 3400 and if this is outdated he does not understand how the Police can have a disciplinary system if practice does not reflect the rules. Another issue concerns the investigation of high-level employees and he would like more information on that. Finally, if disparate treatment is being evaluated by asking officers if they have treated people differently because of their race, that is a problem.

JULY 16, 1997

Commissioner Hales said he would like a follow-up on the concern Council highlighted in a recent case about the lack of action Police took after a drunk driving incident. He said the complainant appeared to be very intoxicated but was not tested or cited for DUII. The Police Chief said they would talk to the individuals involved but Commissioner Hales questioned whether there is a need to go beyond that and call for a change in procedures for the whole bureau.

Assistant Chief Dave Williams said no, this case was an exception as the Police take DUII cases very seriously.

Charles Ford, PIIAC Chair, applauded the work of the Advisors Monitoring Committee.

Commissioner Sten asked what steps are planned to address the mitigation issue.

Captain Bennington said the Bureau will formally respond to all the key issues raised in the monitoring report.

Mayor Katz noted that some of the Advisors' recommendations call for further discussions with the Police Chief and the monitoring committee. The Chief may not agree with all the recommendations but he will respond.

Dan Handelman, Portland Cop Watch, PO Box 42456, said one of the chief issues is how PIIAC can possibly review an appeal if part of the investigation is secret because of the confidentiality of the mitigation process. One solution may be to follow PIIAC's recommendation that the letter that goes out from IAD include the word "preliminary" in describing the finding. He also questioned the ability of an appointed Police Chief to overturn the decision made by elected officials in Case 96-22 (involving the women dragged across the driveway) to send it back to the Chief for a sustained finding. He noted too that PIIAC investigated its first case of use of deadly force and he suggested involving IAD right from the start in order to make the investigation process better. General Order 312.50 needs to be changed regarding police identification and suggested that officers hand out business cards. Regarding the Chief's statement that there were no declination of use of force cases, he said it appears that IAD asks only a few questions about cases and then declines them. If they ask any questions they should either follow through with a finding or not start the investigation at all. Finally, he understands that the PIIAC reports have still not been brought up at the Chief's Forum.

Mayor Katz said she will check up on that.

JULY 16, 1997

Commissioner Sten noted that Council's vote is only advisory to the Chief and said he wants some explanation from the Chief when he overturns a majority Council decision.

Commissioner Francesconi said he will accept the report but asked PIIAC to give Council a status report on the issues raised the next time it comes before Council.

Commissioner Hales said Council needs to hold a work session with the Police and Advisors on some of the policies. He too is concerned about the Police Chief's administrative decision.

Commissioner Kafoury said it should be added to the Informal list.

Mayor Katz said Council also needs to work with the City Attorney to see what Code changes may be needed.

Disposition: Accepted. (Y-5)

1071 Hear PIIAC appeal #97-06 (Abe Weiner) and recommendations of the citizen advisors to PIIAC per City Code 3.21.085(4)(d) (Hearing on Appeal)

Discussion: Lisa Botsko, staff person to PIIAC, said the Advisors sustained IAD's decision not to investigate this case because of the length of time that had passed since the incident and because the complainant had a full jury trial on the matter.

Commissioner Francesconi moved to dismiss the appeal. Commissioner Hales seconded.

Disposition: Appeal dismissed. (Y-5)

1072 Hear recommendations of citizen advisors re PIIAC appeal #96-18, Jeff Clemenson, per City Code 3.21.085(4)(d) (Hearing on Appeal)

Discussion: Randy Weisberg, Citizen Advisor, said the citizen advisors disagree with the Police Bureau about the outcome of a case in which an officer was involved in a dispute with a neighbor regarding supervision of his children. The officer sent to the scene did not write up a complaint but the other officer wrote up a complaint regarding possible child neglect by his neighbor. The Advisors believe that was an improper action and a misuse of the officer's position. They feel officers should remove themselves from the prosecutor's process when personally involved and that the officer stepped over the line when he filed a Police report in a case where he had a personal quarrel with a neighbor. When the Advisors sent this case back to IAD, Captain Jensen

JULY 16, 1997

changed the finding to "sustained" but that was reversed to "unfounded" at command review level. The PIIAC advisors disagree with that finding even though they do not believe enormous discipline is needed.

Captain Greg Clark, Detective Division, described the event and said the officer does not mention child neglect in his report, only that some attention from the Children Services Division may be warranted.

In the Council discussion of this matter, Commissioner Sten noted that it would have been more prudent to have the responding officer write the report as this comes close to being a misuse of power by an off-duty police officer.

Captain Clark noted that the Police found that the complaining officer did not do anything to intimidate the neighbor but this reflects an ongoing and chronic problem the officer had tried twice to resolve without involving the police. He also noted that all officers are instructed to document what they do and that it was clear in the report the officer was not on duty.

Police Officer Dave Williams said this was reviewed at command level which came to the same conclusions as Captain Clark. They did discuss this also with Captain Jensen, although that may not be documented, and his input was what led to the command level review.

Mr. Weisberg said the report was filed in the midst of an ongoing dispute with the neighbor and, to the Advisors, it was a clear case of coercion. In this case the proper thing would have been to have the other officer write the report. He noted that the officer had captioned his report "child neglect" and done everything he could to trigger a CSD review.

Captain Clark said the officer did not write an incident report but rather sent his report to records, a more passive recording of the information. He said there was no attempt to prosecute or take any official action.

Ms. Simon said clearly the officer was using his official position when he wrote child neglect on the report.

Commissioner Francesconi moved to recommend to Chief Moose that the advisors' finding be sustained as this is a case where the officer abused his power. Commissioner Hales seconded.

Commissioner Hales said he can understand the provocation and agrees that discipline does not need to be severe.

Mayor Katz disagreed with the other Council members. She said she sees no violation and when kids are unsupervised outside at 3:00 a.m. in the morning,

JULY 16, 1997

the red flag the officer raised was appropriate. This is the kind of information that can matter and be used to arrive at solutions.

Disposition: Recommendations of citizen advisors sustained. (Y-4; N-1, Katz)

Commissioner Gretchen Miller Kafoury

1093 Declare support for continued funding for the National Endowment for the Arts in FY 1998 (Resolution)

Discussion: Commissioner Kafoury said she is outraged at this Congressional attack on the National Endowment of the Arts and wants to send a strong statement from the City to the Senate. She said it does not involve a massive amount of money: last year Oregon received a total of about \$800,000.

Bill Bulick, Director, Regional Arts and Culture Commission, pointed out the importance of the federal funds in leveraging the amount given by other organizations many times over. However, the NEA is still the largest single organization in the country in its support for the arts.

Disposition: Resolution No. 35629. (Y-5)

Commissioner Erik Sten

***1094** Amend contract with Montgomery Watson Americas, Inc. for \$110,000 Phase III - Services During Construction, professional consulting and engineering services, to accommodate compliance with the EPA's Lead and Copper Rule (Ordinance; amend Contract No. 29580)

Disposition: Ordinance No. 171400. (Y-5)

***1095** Authorize contract with The Private Industry Council to hire 51 youths in work experience positions in the Water Bureau and provide for payment of \$130,000 (Ordinance)

Discussion: Commissioner Sten said this is not just "make work" and now incorporates a science education component. The hope is to build a workforce of persons from disadvantaged areas who will have the skills to move into positions in the Bureau of Environmental Services (BES) as older workers retire.

JULY 16, 1997

Mayor Katz said she hopes other bureaus, such as BES, Water and Parks, will initiate apprenticeship programs so they can begin early on to get people ready for skilled jobs.

Disposition: Ordinance No. 171401. (Y-5)

City Auditor Barbara Clark

1096 Assess property for sidewalk repair by the Bureau of Maintenance for billing processed through June 10, 1997 (Hearing; Ordinance; Y1019)

Disposition: Passed to Second Reading July 23, 1997 at 9:30 a.m.

1097 Assess property for sewer system development contracts for the period ending June 10, 1997 for the mid-county sewer project and non mid-county area (Hearing; Ordinance; Z0660, Z0663, Z0664)

Disposition: Passed to Second Reading July 23, 1997 at 9:30 a.m.

Communication

1098 Request from Art Lewellan to describe innovations regarding the South/North light rail project (Communication)

Discussion: Art Lewellan, 3205 SE 8th, #9, 97202, said provision for the streetcar needs to be included in the planning for the South/North light rail project. He recommended leaving light rail on the Southern Pacific corridor in order to lessen the number of turns and increase its efficiency. He said trolley buses should be used to go up and down hills while the streetcar would be more appropriate in the inner City and near the Clackamas Town Center. He said light rail should stay on the east side and cited the advantages of a "trackless trolley system."

Mayor Katz asked if his proposal (LOTT), had been reviewed by Commissioner Hales' office.

Commissioner Hales said not yet but he will do so and get an official response back to Mr. Lewellan.

JULY 16, 1997

Mayor Katz said a lot of these ideas make very good sense to her. If federal dollars jeopardize the future of the South/North light rail project then Council needs to get a fresh perspective on what is possible.

Disposition: Placed on File.

At 11:25 p.m., Council recessed.

JULY 16, 1997

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 16TH 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; Adrienne Brockman, Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

Commissioner Kafoury recognized participants in the Woman Build project for Habitat for Humanity. She said participants have included women employees in the Bureau of Buildings who have raised money for the project through bake sales.

Commissioner Charlie Hales

1100 Tentatively grant appeal of Arnold Creek Neighborhood Association against Hearings Officer's decision to approve application of Palatine Heights Associates for an environmental review for placement of in-stream structures and riprap within an environmental zone without proper land use review located between SW Arnold Street and 27th Avenue, north of Leah Court (Findings; 96-00141 EN)

Discussion: Commissioner Hales moved the adoption of findings. Commissioner Kafoury seconded.

Disposition: Findings Adopted (Y-5)

1099 **TIME CERTAIN: 2:00 PM** - Appeal of Metro Washington Park Zoo and Portland Parks and Recreation, applicant, against Hearings Officer's decision in approving the Master Plan to deny adjustment to waive development standards for the employee parking lot at the Washington Park Zoo at 4001 SW Canyon Road (Hearing; 97-00127 CU MS)

Discussion: Adrienne Brockman, Deputy City Attorney, outlined the guidelines for testifying and addressing issues in appeals before Council.

Mayor Katz noted that Council members reported no ex parte contacts or conflicts of interest.

Sue Donaldson, Planning Bureau, described the Master Plan and the issues on appeal. Metro, one of the applicant/appellants, owns the land within the Zoo boundaries, while the City owns the parking lot, which is part of the Master

JULY 16, 1997

Plan boundary. A major increase in visitors is projected due to new facilities and upgrading. Metro is asking Council to overturn denial by the Hearings Officer, based on lack of evidence, of an adjustment request to waive a requirement to pave and stripe an employee parking lot. Since the hearing, Metro has introduced documentation to support its request and staff now recommends approval of the adjustment. A second issue on appeal dealing with management of the parking lot and a proposed change to a fee lot has been dropped by Parks.

Ms. Donaldson said the Parks Bureau also appealed the decision, based on the failure of the Master Plan to show a public pedestrian easement between the Hoyt Arboretum and the light rail station that crosses zoo property. She showed slides of the existing path, which is steep and not ADA accessible, as well as the proposed location of the new connection, across the ravine at the north end of the existing Oregon exhibit in the Zoo, which would require a long bridge and involves significant environmental restraints and design issues. The Hearings Officer found that the approval criteria did not allow the City to require such a connection and approved the Plan without it. She basically found the transportation system is capable of safely supporting the proposed use. Parks contends there is a safety issue here which this path would satisfy and notes its long term goal to provide a more direct, accessible route. Aside from the Master Plan, there is no obvious vehicle for achieving this connection as one requirement of a Master Plan is to show possible future uses. Metro opposes this, noting that the connection is not appropriate because there are too many unresolved issues involving animal safety and environmental impacts. In addition, there is no real nexus for the requirement given the approval criteria dealing with pedestrian safety and the ability of the existing system to provide that. Planning Bureau staff has recommended that the Master Plan be allowed to proceed this summer but that resolution of this issue be required within one year to the satisfaction of both parties.

Ms. Donaldson said to show a strong nexus, the evidence would have to show there is a safety issue that would justify making this requirement.

Adrienne Brockman, Deputy City Attorney, said to create a nexus a relation to one of the approval criteria must be shown. One of the approval criteria does call for the project to be evaluated from the perspective of pedestrian safety. The Hearings Officer did not say that pedestrian safety in the path was not possible. She said there was not evidence in the record to show that this trail was needed for safety reasons. If the evidence today shows to Council's satisfaction that this is needed for safety purposes, the City Attorney would feel comfortable defending a LUBA appeal based on that position.

Commissioner Francesconi asked if there was evidence in the record now.

JULY 16, 1997

Ms. Brockman said no, the Hearings Officer said there was not but, as this is a de novo hearing, new evidence on that point could be introduced.

Ms. Donaldson said she would like to modify her earlier recommendation because it does not give Parks the assurance it needs that the Zoo and Metro will continue to actively find a solution. The Planning Bureau supports the concept of the path and believes it meets City policies for connectivity and accessibility and supports alternative modes of transport. Therefore, it is appropriate to indicate the connection as a possible use on the Plan although not requiring its construction at this time. If it is on the Plan it will eliminate the need for a future amendment if an agreement is reached. Because the proposed path crosses an environmental zone any proposal would be subject to a further environmental review in any case, thus providing further opportunity for public review. An easement would not have to be required at this time.

Commissioner Francesconi asked what the advantage would be to Parks to show it as a possible future use if Metro can move ahead with the Master Plan but not be required to build the path.

Ms. Donaldson said it would acknowledge that the possibility is alive and the City is prepared to explore all the options. She said a lot of work still needs to be done and because there is nothing really specific it is difficult to say this will not work. One disadvantage to Metro is supplying an easement it is not at all altogether sure it wants.

Commissioner Kafoury said the original appeal was based on some other issues that seem to have been worked out. This seems a bizarre thing to bring to Council.

Ms. Donaldson agreed but this is the only vehicle Parks has to make this demand because, by appealing this, the Zoo Master Plan can be postponed. No one likes this situation but it has been difficult to come to some consensus.

Commissioner Sten encouraged Parks to withdraw its appeal and negotiate through the Commissioner.

John Sewell, Parks Bureau, said he would like to proceed as people are here from the Hoyt Arboretum Foundation and the Vietnam Veterans Memorial who have been negotiating this for several years. The issue of a safe, pedestrian access was brought up before the Hearings Officer but she did not want to require it because it had not been through environmental review. He noted also that Parks had appealed on two points and has reached an understanding about the spillover parking lot but not the safe access issue. He said their appeal is based on the finding that says that the public transportation system is capable of safely supporting the proposed use in addition to the existing uses in

JULY 16, 1997

the area. Parks contends this has not been satisfied, specifically in regard to access requirements and pedestrian safety for a pathway from the zoo parking lot to the Arboretum. He said Parks would like to build an access bridge across Zoo property as otherwise access is only along Knight's Boulevard which has no sidewalks and too much grade for disabled access. The proposed location provides the only accessible and convenient access. They believe the Master Plan should show the pedestrian linkage to the Zoo, parking lot and light rail station, as well as the Arboretum and Washington Park trail system. This is particularly true in light of the anticipated increase in the number of visitors. The link will be included in the Master Plan for the Hoyt Arboretum which will be finished this fall but if it is not shown in this Plan it will never become a meaningful link. Metro will argue that this requirement will impose security and aesthetics problems and may be a blight in this drainage area. Parks understands those concerns and would only proceed if they can be met. He requested that some language be included in the Plan to require that Metro grant an easement if the concerns are satisfied.

Commissioner Francesconi asked what the safety concern is.

Mr. Sewell said providing safe crossings at Knight and Kingston as well as access for the disabled.

Commissioner Francesconi asked the City Attorney if there is a requirement for a safe connection between the Zoo and Arboretum.

Ms. Brockman said the criteria states that the City must find that the transportation system is capable of safely supporting the proposed use in addition to the existing uses in the area. Among the factors to consider is pedestrian safety, especially for those who are disabled.

Martin McMurtry, representing mobility impaired citizens, said the current three-crossing pathway to get from the Zoo to the Arboretum and the steepness of the path pose significant safety problems for them. The sky bridge would increase safety for disabled individuals and make it much easier to access those areas. He said the increased safety this bridge would provide for the disabled definitely outweighs Metro's concerns.

Members of the Hoyt Arboretum Friends Foundation speaking in support of including the pedestrian bridge in the Master Plan included:

Carolyn Boutard, 1640 SW Davenport St, President, Hoyt Arboretum
Friends Foundation

Sean Hogan, 2827 NE 11th Avenue

Josephine Pope, 1852 SW Highland Rd., 97201

Suzanne Millis, 1717 SW Montgomery Dr., 97201

JULY 16, 1997

Jill McDonald, 15700 SW Wilsonville Rd., Wilsonville
Marlys Chapman, 3425 SW Heather Lane, 97201

Supporters said they feel a responsibility to make the Arboretum open and safely accessible to as many people as possible, including many school children. With light rail, they anticipate much heavier use and want to make sure that the Zoo's future plans do not destroy the Arboretum's future plans to provide more convenient access to nature. They are looking for a mutual solution and need Council's help in advocating for the public's interest in Washington Park as a whole. They reminded Council that the ravine over which this footbridge would go is land turned over to the Zoo by the City for \$1.00 to help this process.

Bob Pinson, 501 NE 2nd Avenue, representing the Rotary Club and Washington Park Children's Playground, said Rotary is very supportive of providing additional access within the Park for pedestrians. He said he is dismayed that there is no comprehensive plan to provide this and said he believes this is the first volley in many that Council will hear in a fight over parking. Council should consider providing handicapped access from any area of the Park to any other area.

Barbara Walker, 14001 SE 38th St., Vancouver, said to make light rail work there must be safe pedestrian access, particularly in this location. This bridge would be a godsend, not just for those in wheel chairs, but for the many children, elderly people and others who use the area. To spend a fortune on a light rail station at the Zoo without providing safe pedestrian access is unfathomable. She said the Zoo has not indicated any interest in negotiating other than saying no and Council needs to state that safe access is a priority.

Berit Stevenson, attorney representing Metro and the Washington Park Zoo, said they are also sorry to be here today and have tried to resolve these differences but have not been able to do so. Metro and the Zoo have serious concerns about the footbridge. The Zoo Master Plan got in the way of the discussions they have been having with Parks and the Arboretum and their Master Plan states Metro's desire to connect the Arboretum with light rail and their strong commitment to continue to try to make this connection work. However, they cannot agree to actually place the bridge across their property as they believe this is an inappropriate condition which conflicts with the Dolan case. They believe there are other possibilities that will provide a safe, wholly accessible pathway that does not require a footbridge.

Mayor Katz asked for an example.

Jim Maxwell, project manager, Washington Park Zoo, said the area in question is at the edge of a very steep precipice and the proposed footbridge is between

JULY 16, 1997

180 and 200 feet approximately 50 feet above grade. Zoos typically spend a tremendous amount of money trying to create a natural viewshed that helps portray the connection between animals and the environment. Here a beautiful viewshed naturally exists. The zoo is concerned with disrupting that view and about the safety of animals below when things can be thrown from above. They believe there is a safe, alternative route that does not cross the street three times. In response to a request from the Mayor, he traced that route.

Commissioner Francesconi asked if that path exists currently.

Mr. Maxwell said a good part of it does and the rest could be paved and graded at much less cost.

Commissioner Hales asked if that alternative had been discussed with Parks.

Ms. Stevenson said not yet. To date they have talked mostly about the bridge.

Commissioner Francesconi asked if Metro could live with Council approval of the Master Plan with a requirement for a pedestrian connection without specifying exactly where it was.

Steve Poland, architect and author of the Conditional Use Master Plan for Metro, described some other alternatives to the bridge. He said any potential routes will have to traverse a vertical rise to some degree. The route with the three crossings does meet ADA requirements as there is nothing unsafe about the grade itself. Tri-Met in designing the station, had to address City design standards about safe pedestrian crossings and they have done special paving and signage to indicate pedestrian right-of-way. The additional crossings could be designed so as not to be a safety hazard. Because of these alternatives and because of the Zoo's concern about the effect of a pedestrian bridge on their viewshed, the Master Plan documents the issue and states that the Zoo is open to more discussion although it does not believe there is anything in the proposal that would prevent a conditional use application on behalf of the Arboretum from going through. The reason Metro did not physically draw the bridge or another route is because it is not comfortable with the one that has been designed and believe it is not the Zoo's obligation to propose a bridge for someone else's use.

Ms. Stevenson said the Zoo would be willing to indicate the alternative route in the Master Plan.

Commissioner Hales asked if this had been before the Metro Council and reviewed by some committee.

Ms. Stevenson said it has not been through the Metro Council.

JULY 16, 1997

Commissioner Hales asked if they had undertaken a land-use appeal without authorization by the Metro Council.

Ms. Stevenson said they discussed it with the Executive Office, Director of Administrative Services and General Counsel.

Commissioner Kafoury noted that Parks appealed without Council approval.

In rebuttal, Mr. Sewell said Hoyt Arboretum has presented two different alternatives and while it may not be Metro's responsibility to design this, Parks has never seen what has been presented today. Discussions with Metro have been underway ever since the Hearings Officer's decision and without some way of compelling a decision here, resolution will not occur. He said it seems that it is always Parks' solution that does not work.

Mayor Katz asked if Parks was wed to the bridge design.

Mr. Sewell said no, they are open to a solution that works for both organizations. Mr. Sjulín said without having seen the other design it is hard to say.

Commissioner Hales asked if both parties now agree to waive the paving and stripping requirement of the employee parking lot.

Ms. Donaldson said originally the Hearings Officer denied this request because of the lack of evidence to show it met the purpose of the regulation having to do with dust, mud, etc. The applicant then supplied information to show that requiring the paving would not improve existing conditions.

Commissioner Hales moved to tentatively: 1) approve the adjustment to 33.266 regarding the paving; 2) uphold the Hearings Officer's decision to waive previous condition of approval requiring a Type II review to evaluate spillover parking impacts from converting the existing parking lot to fee parking on the theory that those issues will be resolved in the lease negotiations; and 3) reverse the Hearings Officer's decision to approve the Master Plan without showing a public pedestrian easement through the Zoo property and require modification of the Plan to include a proposed pedestrian path.

Commissioner Kafoury seconded.

Commissioner Hales said the Code provision that matters is the one indicating that the Transportation system is capable of safely supporting the proposed use, specifically dealing with access and pedestrian safety. In other cases, Council has been willing to oppose the Dolan doctrine and say there is a public right of access through property. This case involves two public agencies and public land

JULY 16, 1997

owned by the same people and it is more than a little frustrating to have them in here doing this, especially when one of them cites the Dolan decision. He hopes that Metro, which is urging local governments all over the region to do a better job of pedestrian access, and Parks, which may have gotten a little too wedded to one particular solution, can get together and figure out a way to solve the problem. He said the requirement is general enough that a full review of the Master Plan will not be needed if agreement is reached and they will not need to return to City Council.

Mayor Katz asked about a time line.

Commissioner Sten asked if an easement would be required.

Commissioner Hales said he would be open to requiring an easement if that was the only feasible solution. He said he cannot tell now but does not think the bridge is the only feasible solution.

Mayor Katz said there should be something that is legally binding.

Ms. Donaldson said Planning would like to include a condition which says any path be consistent with the purpose of the Master Plan so that an amendment would not be required. Drawing a swathe is a good idea so that people do not become wedded to a particular design. Timing is an issue.

Commissioner Hales said he would be open to adding a time limit, i.e. one year.

Ms. Donaldson said six months should be sufficient.

Ms. Brockman asked what happens if nothing is settled at the end of six months. She suggested a condition which states that the Zoo must provide safe pedestrian access and meet ADA requirements from the light rail station to Hoyt Arboretum and that access must be identified prior to the issuance of building permits.

Ms. Donaldson said once the Master Plan is approved, however, the incentive to resolve this issue can go away. On the other hand, six months is probably not long enough to come up with a really specific design. Because building permits are in process right now, holding up the Master Plan six months essentially loses this year's construction.

Commissioner Hales said there still should be some leverage and if all building permits have been secured then the Master Plan is not much good for resolving this problem.

JULY 16, 1997

Commissioner Francesconi asked if he entered into negotiations with Metro right now would he be disqualified from voting on this.

Mr. Brockman said that puts you in a dual role and all ex parte communication would have to be disclosed and the negotiation would have to be impartial.

Commissioner Kafoury said if he has already made a tentative vote, findings could be requested in 60 days.

Commissioner Hales said the findings could address the general location of the agreed-upon path.

Mayor Katz asked if specific agreement on the path is doable in 60 days.

Commissioner Francesconi said he would need more time.

Ms. Donaldson said another way to handle it could be through phasing the building permits.

Ms. Stevenson said she was not sure what Council intends here.

Commissioner Hales said the Hearings Officer said this path did not have to be shown in the plan. He is recommending that a path be designed, whether or not it crosses the ravine, that results in a reasonably short and safe trip for pedestrians from the MAX station to the Hoyt Arboretum. There are probably a number of options less expensive and less intrusive than the bridge but if there are not, he is willing to say build a bridge.

Mr. Sjulín said they are looking for some certainty in dealing with the problem in a collaborative manner and are willing to consider the possibility of a path that does not include a structure. He said Parks would agree to the six-months time line so the Zoo's building permits already applied for would not be held up. Permits applied for thereafter might become an issue.

Commissioner Kafoury asked why has the alternative route not been discussed.

Ms. Stevenson said the Arboretum and Parks staff have really been fixated on the bridge and the Zoo has been really fixated on not having it. So not much time has been spent looking at other routes.

Commissioner Kafoury said this is an embarrassment.

Commissioner Sten said he is not willing to vote for a motion that stipulates that these two parties must agree. All he cares about is that there is a safe path. To allow one side to veto the other side by not agreeing is not a good idea.

JULY 16, 1997

This should go to Planning and if Planning says it is a safe path and meets ADA standards, that is good enough.

Mayor Katz asked Commissioner Hales to incorporate in his motion the addition of a six months time line and reporting to the Bureau of Planning.

Commissioner Francesconi said he is concerned with the hammer in case there is no agreement. Would the idea be that no building permits could be issued after six months if there is no agreement.

Commissioner Hales said it is a several years process.

Ms. Donaldson asked what Council wants them to come back to the Planning Bureau with. She said Metro would have to apply for environmental review of any final proposal but that would occur only after there is enough detail to know exactly where the path will be.

Commissioner Hales suggested having them come back with an addendum to the Master Plan that identifies a general location for the pedestrian path.

Ms. Donaldson said that would work.

Commissioner Francesconi said the pedestrian path that is there now is not safe so the burden switches to Metro to come up with a safe plan.

Commissioner Kafoury said it is not through their property, however.

Ms. Donaldson said Parks and Hoyt Arboretum are prepared to produce a design and what they want is some engaged reaction from the Zoo and Metro.

Commissioner Hales offered an amendment to his previous motion that would reverse the Hearings Officer's decision to approve a Master Plan without showing a public pedestrian easement through the zoo property and require modification of the plan as follows: 1) within six months Metro, with the support of the Parks Bureau, will submit an addendum to the Master Plan which meets the transportation criterion and ADA requirements to the satisfaction of the Planning Bureau. Failure to comply invalidates the Plan and no more permits could be issued.

Ms. Donaldson said this should also state that the final plan still needs to go through environmental review to be approved.

Commissioner Kafoury seconded.

JULY 16, 1997

Commissioner Francesconi said it is in the self interest of all the organizations located in Washington Park to work together to have a pedestrian walkway. He said he hopes further negotiations can ease the strained relationships witnessed today and satisfy everyone.

Commissioner Kafoury encouraged Commissioner Francesconi to negotiate an agreement.

Disposition: Tentatively grant appeals with added conditions for pedestrian pathway; prepare findings for August 6, 1997 at 2 p.m. (Y-5)

At 3:25 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council