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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 17TH DAY OF SEPTEMBER, 1997 AT 9:30 A.M.

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

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

Agenda Nos. 1418, 1420 and 1431 were pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

**CONSENT AGENDA - NO DISCUSSION**

- 1419** Reject all bids for NW Davis and Everett Street sewer reconstruction (Purchasing Report - Bid 98025)

**Disposition:** Accepted.

**Mayor Vera Katz**

- 1421** Confirm appointment of Ann Johnson, Virginia Shea, Robert Smith, Margie Walling, Hoa Hoang and Shirley Sallee to the Portland/Multnomah Commission on Aging (Report)

**Disposition:** Confirmed.

- \*1422** Establish one Sr. Administrative Specialist position and one Gardener position in Parks and Recreation in accordance with the Personnel Rules adopted by the City Council (Ordinance)

**Disposition:** Ordinance No. 171590. (Y-4)

**Commissioner Jim Francesconi**

- \*1423** Call for bids for Eastmoreland Golf Course parking lot improvements (Ordinance)

**Disposition:** Ordinance No. 171591. (Y-4)

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**Commissioner Charlie Hales**

1424 Set hearing date, 9:30 a.m., Wednesday, October 15, 1997, to vacate a portion of N. Tyndall Avenue, N. Trenton Street and N. Delaware Avenue (Report; C-9939)

**Disposition:** Adopted.

\*1425 Authorize a contract and provide for payment for material and labor to remodel Peninsula Park restroom (Ordinance)

**Disposition:** Ordinance No. 171592. (Y-4)

**Commissioner Gretchen Miller Kafoury**

\*1426 Contract with Portsmouth Community Redevelopment Corporation for \$55,000 to support affordable housing development and provide for payment (Ordinance)

**Disposition:** Ordinance No. 171593. (Y-4)

\*1427 Accept Private Industry Council funding for \$20,000 to subcontract with an interim transition management consultant and provide for payment (Ordinance)

**Disposition:** Ordinance No. 171594. (Y-4)

\*1428 Contract with the Housing Development Center for \$114,346 to provide technical assistance to non-profit developers of affordable housing and provide for payment (Ordinance)

**Disposition:** Ordinance No. 171595. (Y-4)

**Commissioner Erik Sten**

1429 Authorize the City Attorney to intervene and participate in the Oregon Public Utility Commission's review of Portland General Electric's Customer Choice pilot program (Resolution)

**Disposition:** Resolution No. 35642. (Y-4)

\*1430 Authorize the Bureau of Environmental Services to purchase a fee interest in property under the City's eminent domain authority as an alternative to an easement interest in settlement of a condemnation case (Ordinance)

**Disposition:** Ordinance No. 171596. (Y-4)

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**1432** Authorize an Intergovernmental Agreement between Bureau of Environmental Services and Portland State University in the amount of \$119,191 to assist the Solid Waste and Recycling program in waste reduction activities (Second Reading Agenda 1403)

**Disposition:** Ordinance No. 171597. (Y-4)

**1433** Authorize an Intergovernmental Agreement with Multnomah County for Water/Sewer Bill Discount and Crisis Assistance program administration of eligibility verification (Second Reading Agenda 1404)

**Disposition:** Ordinance No. 171598. (Y-4)

**REGULAR AGENDA**

**1418** Accept negotiated bid of Nielsen Dillingham Builders, Inc. for Southwest Community Center construction and Gabriel Park renovation for \$8,939,508 (Purchasing Report - Bid 152)

**Discussion:** Cay Kershner, Clerk of the Council, said this should be heard in conjunction with the ordinance awarding the contract, scheduled for the afternoon session.

**Disposition:** Continued to September 17, 1997 at 2:00 p.m.

**1420** Confirm appointment of Doug Blomgren to the Portland Development Commission (Report)

**Discussion:** Mayor Katz noted that she is very pleased to add an appointee to the Commission who is truly committed to housing.

Doug Blomgren, new appointee to the Portland Development Commission (PDC), described his intent to implement PDC housing policies and goals already created and to expand the amount of real dollars provided for affordable housing.

Commissioner Kafoury said she is delighted to finally have a housing advocate serve on PDC.

Mr. Blomgren discussed with Council members some of the issues involved in spending money for multi-family rental units versus providing more opportunities for home ownership. He said while the Housing and Community Development Commission recommends housing policy to Council, which PDC then implements, strict lines between the policy makers and implementors are not a good idea. He

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noted the need to maintain the Housing Investment Fund, the City's most flexible housing tool, and said he would also like to see an independent trust fund established.

**Disposition:** Confirmed. (Y-4)

- \*1431 Authorize an Intergovernmental Agreement with Multnomah County Health Department for services related to implementation of the Lead Hazard Reduction program (Ordinance)

**Discussion:** The Council Clerk said Commissioner Sten's office had requested a one week's delay.

**Disposition:** Continued to September 24, 1997 at 9:30 a.m.

- 1417 **TIME CERTAIN: 9:30 AM** - Appeal of Taxicab Board of Review Order No. 16.40.120-5 redefining shuttle transportation (Report introduced by Commissioner Francesconi)

**Discussion:** Commissioner Francesconi said this appeal points up the need to find a balance between deregulating the taxicab industry completely to encourage competition or regulating the industry to the point where no competition is allowed at all. He said Portland is seen as one of the national models in achieving this balance but this appeal raises further discussion about whether the City is on the right track to finding that balance. He believes the Taxicab Board's recommendation favored deregulation too much -- it wants to make sure shuttles are available at the Airport to provide more competition, lower prices and more options. He agrees with that. However, the taxicab industry points up the need to distinguish between the regulated taxicabs and unregulated shuttles so that the shuttles do not have an unfair advantage. Commissioner Francesconi said the Bureau will present the Taxicab Board's position and he will then propose some amendments. If Council denies the appeal and the amendments, this tells the Airport to regulate the shuttles if it wants, but the City will stay out of it. Another option is to approve the appeal by the taxi industry, which would kill the shuttle industry, in his opinion. His amendments distinguish a difference between taxicabs and shuttles. The philosophy behind this is that citizens should have several options for airport transportation, depending on their ability to pay: 1) luxury sedans; 2) taxicabs, which cost less but still provide door-to-door service; and 3) shuttles going from point-to-point, which should cost less. It is also important that the door-to-door shuttles do not cherry pick the point-to-point hotel shuttles. In addition, some safety issues arose concerning such issues as background checks of drivers. Commissioner Francesconi said he proposes to delegate this back to the Taxicab Review Board now to work with the Port on this to determine whose responsibility it is and how much it should cost.

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Gary McGrew, Chair, Taxicab Board of Review, described the Board membership and noted that the Board is empowered by the Code to adopt and enforce taxicab regulations. In 1993, after extensive debate, the Board adopted a rule defining what is and what is not a taxicab by exempting from taxicab regulations a number of provider types, including luxury sedans, shuttles, specially attended transportation, etc. Shuttles are exempt from this rule provided they operate on a fixed route and time schedule. The Board recently adopted a new rule expanding the definition of shuttle transportation to allow door-to-door service to and from the airport. This new language is the subject of today's Council hearing. The Board believes door-to-door service can be allowed when provided in accordance with Airport regulations. The Board noted that such service is available to citizens in other cities around Portland and therefore should be available to Portland citizens as well. The Board also determined that expanding this service allows competition and response to market dynamics. It is also more environmentally correct, transporting more individuals with fewer vehicles. On the question of whether this should occur without additional regulation, the Board's new rule allows the service without additional regulations based on the Port being the primary authority over ground transportation at the Airport, affecting the entire region. Market forces also play an important role in addressing service quality issues. Federal ADA regulations mandate that equivalent service be provided to persons with disabilities. Finally, at this time, additional regulations have not been requested by either the public or law enforcement officials although they would be an option in the future.

Mr. McGrew said the taxicab industry believes it is being unfairly treated because it operates under considerable regulations while the shuttles do not. The Code regulations on cabs however are not meant to dispose of competition nor promote monopoly service. Instead, the industry is encouraged to regulate itself and adapt to changing needs and economic market forces. Mr. McGrew said the airport shuttles and luxury sedans are primarily airport players while taxicabs serve the overall City transportation system and should not be primarily dependent on the Airport. He said while taxicabs are regulated they also enjoy some degree of market protection so that they derive some benefit from regulation as well. He said the Board has recommended that the appeal be denied.

Mayor Katz asked for a summary of the differences between the Board's decision and Commissioner Francesconi's amendments.

John Hamilton, Bureau of Licenses Taxicab Supervisor, said when the City talks about regulating the industry it means regulating and limiting market entry and rates. They also recognize the importance of service quality and safety issues. A dialogue between all the affected parties has refined the Board's original order to a point which recognizes that shuttles are on the low end of taxi service while luxury sedans are on the high end. There are also two kinds of shuttles -- fixed route and door-to-door. The need to define shuttles became clear to staff and the industry in order to enforce the Code. As a result, seven criteria were identified to define what

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a shuttle is. Mr. Hamilton described those criteria, including established rates that are consistently and substantially lower than the maximum meter rate allowed by taxicab regulations.

Steve Janik, attorney representing Broadway Cab, said the company appealed the Board's decision because under its recommended exemption for shuttles, one could not tell the difference between a shuttle and a cab going to and from the Airport. Under the Board's decision, drivers of personal vehicles could declare themselves to be airport shuttles on a part-time basis, picking off profitable trips at an unregulated rate, with no encouragement to have multiple passengers. The taxicab industry felt that was unfair. He said they proposed a number of changes, some of which were included in Commissioner Francesconi's amendments while some were not. However, overall, they support those amendments with some minor clarifications. He noted several small typographical errors in Commissioner Francesconi's memo ("safe" not "save" in Item 4-b and "on" not "or" in Item 4-d) and also asked for a clearer definition of what "substantially" means as it refers to lower rates in 4 (f). He said the taxicab industry had suggested inclusion of a ten percent factor. However, they do not need that as long as Council makes clear what substantial means.

Commissioner Francesconi said substantial does not mean one percent but whether it means 10, 15 or 20 percent should be determined by the Taxicab Review Board.

Steve Moskowitz, attorney representing New Rose City and Portland Taxi Company, said the Board's decision, as originally drafted, exempting shuttles from taxicab regulations, would have been unfair, undermining the City's goals of providing 24-hour a day universal service and creating a gypsy cab industry. He said these amendments go a long way towards minimizing that possibility. However, they do nothing to address the City-sanctioned economic advantage that this new service will have over taxicabs.

Bob Lucas, attorney representing Radio Cab Company, said exempt providers should operate under reasonable conditions regarding safety and have a defined role within the City's transportation plan. He said the Board order allowed the shuttles to expand into a role that emulated taxicabs and was of obvious concern. However, Radio Cab supports the amendments Commissioner Francesconi proposes and believes they apply a fair and appropriate standard.

Larry Scruggs, Vice President, Operations for Raz Transportation Company, said his company provides a fixed-route shuttle through a contract with the Port of Portland. He said their earlier concerns about preservation of a fixed-route schedule reflected their belief that the Board's ruling would have allowed others to pick off their customers. They also had concerns about price and safety requirements. These have since been addressed by these amendments, which they support.

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Commissioner Francesconi moved to deny the appeal and adopt his proposed amendments to the Board rule. He said, although the Taxicab Board of Review's order has not been strictly followed, its judgment influenced these amendments. He also appreciates the willingness of the Port of Portland to deal with enforcement and safety issues.

Commissioner Hales said this is a responsible compromise although the safety issues require a further look. He said other alternatives to cars must be provided to get people to the airport.

Mayor Katz agreed, saying that citizens need additional options to get to the airport.

**Disposition:** Order amended; appeal denied. (Y-4)

### Commissioner Jim Francesconi

- 1434 Direct Portland Parks and Recreation and Office of Finance and Administration to proceed with the steps necessary to acquire the OMSI building in Washington Park and relocate the Children's Museum to that site (Resolution)

**Discussion:** Commissioner Francesconi said this resolution lists all the steps which will be needed to finalize acquisition of the OMSI building for the Children's Museum. Some separate agreements will come later for Council approval but this resolution asks Council to commit \$2.6 million for purchase of the leasehold.

Charles Jordan, Director, Bureau of Parks and Recreation, said the Office of Finance and Administration (OFA) also has no problem with this.

Commissioner Francesconi said this would not have happened without Charles Jordan's vision or without the willingness of the Rotary Club to step up with \$5 million. He said the original purchase plan would not have worked and thanked OFA and Bureau of General Services staff for getting this thing to come together.

**Disposition:** Resolution No. 35643. (Y-4)

### Commissioner Charlie Hales

- 1435 Consider vacating a portion of SW Jefferson Street west of SW 18th Avenue at the request of First United Methodist Church (Hearing; Report; C-9930)

**Disposition:** Approved; City Engineer prepare ordinance (Y-4)

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- 1436 Consider vacating certain portions of an alleyway in Block 35, Irvington Park addition, at the request of Concordia College (Hearing; Report; C-9936; C-9938)

**Disposition:** Approved; City Engineer prepare ordinance (Y-4)

**City Auditor Barbara Clark**

- 1437 Assess property for sewer connection contract processed through the Private Plumbing Loan Program for the period ending September 8, 1997 (Hearing; Ordinance; P0029)

**Disposition:** Passed to Second Reading September 24, 1997 at 9:30 a.m.

- 1438 Assess property for sidewalk repair by the Bureau of Maintenance for billing processed through September 11, 1997 (Hearing; Ordinance; Y1022)

**Discussion:** The Clerk explained the amendment removing three properties from the assessment list.

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

**Disposition:** Passed to Second Reading as amended September 24, 1997 at 9:30 a.m.

- 1439 Assess property for sewer system development contracts for the period ending August 11, 1997 for the mid-County sewer project and non mid-County area (Hearing; Ordinance; Z0669, Z0670, Z0671, Z0672, Z0673)

**Discussion:** Pat Eccles, attorney for MM&A, Inc., said his client is requesting an extension on this system development charge (SDC), which is close to a year old. Frank Dufay, the current Assessment Manager, informs him that his office has no authority to extend an SDC for this long. However, the former manager, Dan Vizzini, agreed that the assessment would not be done until the project was able to obtain permanent financing of its construction loan. The problem his client has is that if the assessment is made right now it interferes with that construction financing. The project is built and is in the process of renting up and the company is 90 days from doing that. There is also a technical problem in that the original contract was signed by Mike Monaghan in his own name. At the time he owned the property in his own name but over time the corporation, which he now serves as president, ended up owning it. He is not trying to get out of the obligation but finds himself in a bind as an individual. Because an assessment at this time would conflict with the company's financing, he requested a 90-day extension before the assessment takes effect.

Frank Dufay, Assessment Manager, Auditor's Office, said when the SDC contract



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was signed last September, Mr. Vizzini agreed not to put it in the system until September, 1997. When he assumed Mr. Vizzini's position in July, he decided that the City could not continue to sit on the contract but needed to get it assessed right away. In the meantime, MM&A has asked for another three-month extension. Mr. Dufay said his office has no authority to grant the delay as it must assess the contracts 30 days after they get them.

Commissioner Hales asked if the City either charges the assessment or Bancrofts them.

Mr. Dufay said those are the options and the City has no deferral or waiver period that allows them to put a contract to one side and not assess it right away.

Commissioner Kafoury asked if Mr. Vizzini had been called. She said it sounds like the client got caught in the middle of something that was not their doing.

Mr. Dufay said that is true but he talked to the City Attorney's office and was told he had no authority to waive this again. The Bureau of Environmental Services issued a receipt and the client got a building permit based on the fact that the SDC was contracted.

Mr. Eccles said his client wants to Bancroft this but there will be a problem if it hits on the construction loan right now. They relied on this not being assessed until they were ready for permanent financing. He said he was only hired yesterday and does not know all the details.

Mr. Dufay said the contract is for \$35,000 and granting this extension puts the City in the position of floating an interest-free loan to the developer. The company signed the contract but, for whatever reason, Mr. Vizzini delayed putting it into the system. The issue for the developer is having the lien on the property before permanent financing goes into effect.

Commissioner Francesconi asked if this is an isolated case.

Mr. Dufay said yes, he has not come across any other ones.

Mayor Katz noted there is no legal standing for the extension.

Commissioner Francesconi asked if the City had any legal liability if an agreement to delay charging it was made.

Mr. Dufay noted that Mr. Vizzini's original agreement was to extend it only until September. Now the company is asking for another 90 days.

Mr. Eccles said his client understood the extension would last until it was rented up. There is nothing in writing.

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Mr. Dufay noted that there is also a remonstrance, which is not really a remonstrance but a request to get the initial rates in effect in 1992. That does need to be overruled, however.

Commissioner Kafoury moved to overrule the remonstrance. The motion was seconded and, hearing no objections, the Mayor so ordered.

Mayor Katz noted that there was nothing Council could do in regard to Mr. Eccles' request.

**Disposition:** Remonstrance overruled; passed to Second Reading September 24, 1997 at 9:30 a.m.

At 10:40 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 17TH DAY OF SEPTEMBER, 1997 AT 2:00 P.M.

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

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

**1440** **TIME CERTAIN: 2:00 PM** - Present Pollution Prevention awards (Presentation introduced by Commissioner Sten)

**Discussion:** Dean Marriott and Mayor Katz presented awards to the following Bureau of Environmental Services and Water Bureau employees and private individuals and companies:

Yone Akagi and Teri Liberator, Portland Green Team  
Janet Senior, Water Resource Protection Projects  
Cindy Dietz, Regional Water Supply  
Ken Finney, Columbia Slough Revitalization  
Ivy Frances, Stormwater/Flood control  
Coca-Cola Fountain - Bob Daniels, Darrell Arola & Joseph Phillips  
Greg Wheeler, Oregon State University Industrial Assessment  
Center

**Disposition:** Placed on File.

**1441** **TIME CERTAIN: 2:15 PM** - Introduction of Classical Chinese Garden architects from Suzhou (Presentation introduced by Mayor Katz)

**Discussion:** Kuang Zhen Yan, Senior Architect of Suzhou and head of the design team for the garden described the vision and scope of Portland's classical Chinese Garden to be built in Northwest Portland.

Mayor Katz recognized the contributions of Mr. Tong, an honorary citizen of Portland, in making this long dreamed-of project possible.

**Disposition:** Placed on File.

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1418 Accept negotiated bid of Nielsen Dillingham Builders, Inc. for Southwest Community Center construction and Gabriel Park renovation for \$8,939,508 (Purchasing Report - Bid 152)

**Discussion:** (Testimony on both 1418 and 1442 was heard together.)

Commissioner Hales reviewed the status of the 114 Parks bond projects. He noted that a few projects came in at a cost higher than projected and this was one of them. For that reason, the City selected the lowest bidder and entered into negotiations with them to reduce the cost through value engineering. That process has been completed and the City can now move on to begin construction.

Zari Santner, Bureau of Parks and Recreation, described the negotiating process which kept two goals in mind. The first was not to change the size or programmable spaces. The second goal was to ensure that the quality of the facility was maintained. Slightly over \$1 million has been cut from the project and some money will be drawn from other GOBI (General Obligation Bond Improvements) monies to make up the difference. A construction contingency fund has also been set aside and if that is not used, those funds will be used to repay the GOBI contingency money.

Mayor Katz asked if any projects were reduced, since none were eliminated. She also noted that the project is still \$239,000 over budget.

Ms. Santer said they are able to carry out what they promised the public and more. She said the extra cost will be taken from contingency.

Commissioner Francesconi asked for an explanation of the cost overruns.

Ms. Santer said land-use uncertainties extended the time line and delayed the project, forcing them to go from a very favorable bidding climate to a very difficult "hot" one in which they could not find enough subcontractors willing to bid because they were so busy.

Commissioner Francesconi asked if these changes will affect maintenance costs.

Ms. Santner said no.

Citizens speaking in support of awarding the contract and proceeding with construction of the community center included:

John Alland, 10463 SW 53rd Avenue., 97219  
David Gens, 10644 SW 42nd Avenue, 97219  
Kay Durtschi, 2230 SW Caldew, 97219  
Nichole Lynch, 6117 SW 40th, 97221  
Mary Becker, 2726 SW Nevada Ct., 97219

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Robert Archer, 7302 SW 51st Avenue, 97219  
Deborah Stryker, 1440 SW Broadway Dr., 97201  
Katherine Woodward, 6234 SW 30th Avenue  
Candi Palmer, 3620 SW Nevada Court, 97219

Supporters said now that the LUBA Appeal has been settled successfully in the City's favor, it is time to build this much-needed and long-promised facility in Southwest. Several supporters emphasized the great need for a swimming pool in this area. They said that no site is perfect and that it is better to site the center in a residential area than in a busy commercial area. Ms. Stryker, a member of the Citizens Task Force, said she would never serve on such a committee again because of the vengeance and hostility displayed by the opponents.

Opponents of the siting the center at Gabriel Park included:

Wesley Risher, 6840 SW 7th Ave., 97219  
Don Baack, 6495 SW Burlingame Place, 97219  
Anthony Boutard, 1640 SW Davenport, 97201  
Martie Sucec, 7005 SW 34th, 97219  
Susan Girouard, 6915 SW 33rd Pl., 97219  
Rosemary Seminara, 8433 N. Olympia, 97203

Opponents asked Council to delay construction until the Court of Appeals has heard their appeal from the LUBA decision which supported the City. They contended that this is an unacceptable location for a majority of Southwest residents, one that residents have been bullied into accepting, and that this portion of Gabriel Park should be preserved as valuable open space. They criticized the lack of transit access in this area and questioned where the City would find sufficient funds to cover its operating costs. Several speakers cited the \$1.5 million increased cost over what was initially predicted and called for an independent, outside audit of the GOBI funds and for a market analysis.

Commissioner Francesconi asked how long the Court of Appeal review might take and the possible outcome.

Kathryn Beaumont, Senior Deputy City Attorney said she believes the chance that the Court will support LUBA's decision to be very high. If it does not, the City would have the option of petitioning the Supreme Court for further review or of correcting any deficiencies the Court wants addressed. She said the Court of Appeals process usually takes about five months.

Commissioner Francesconi said he will support this contract because of the overwhelming need for such a facility in Southwest and the fact that no reasonable alternative is available. He believes the legal challenges are unlikely to succeed and it is time to move on and begin to restore trust. He noted the conflict in values between Open Space and more active recreation and said he hoped that the public

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process in future decisions of this type can be improved. He said a citizens Task Force cannot be expected to take this kind of heat if significant opposition emerges and Parks needs to do a better job of public involvement. Council, he also believes, needs to do a better job on making siting decisions outside the land-use process so it is not constantly having to figure out whether an issue is in or out of the record and appropriate for Council consideration.

Commissioner Hales thanked the Task Force for taking more heat and time than it should have.

Commissioner Kafoury said these have been painful hearings involving conflicting values that she does not think can be addressed with just a process. But at some point the City needs to move on and although she can understand the passionate opposition she will vote to approve.

Mayor Katz said she senses an enormous amount of fear based on the enormous of amount of change that is occurring in the community. She said she fears the conflict in values will accelerate but it basically comes down to the quality of life issue, with some believing the community will be better with more people while others do not. She said the City is using outdated means of public involvement and needs to find ways to be more inclusive and involve the public in real discussions.

**Disposition:** Accepted; prepare contract. (Y-4)

**\*1442** **TIME CERTAIN: 2:30 PM** - Contract with Nielsen Dillingham Builders for the construction of the Southwest Portland Community Center and improvements to Gabriel Park in the amount of \$8,939,508 (Ordinance)

**Disposition:** Ordinance No. 171599. (Y-4)

At 4:00 p.m., Council adjourned.

BARBARA CLARK  
Auditor of the City of Portland

*Cay Kershner*

By Cay Kershner  
Clerk of the Council