



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 12TH DAY OF NOVEMBER, 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.

Agenda No. 1720 was pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

1697 Reject all bids for a multichannel logging recorder system (Purchasing Report - Bid 98001)

Disposition: Accepted.

1698 Accept bid of Duke's Sales and Service for root control services for the Bureau of Environmental Services for \$1,067,407 (Purchasing Report - Bid 98049)

Disposition: Accepted; prepare contract.

1699 Accept bid of V.M. Pilip & Son, Inc. for waterproofing parking garages for \$219,350 (Purchasing Report - Bid 98065)

Disposition: Accepted; prepare contract.

1700 Vacate a certain portion of NE Holman Street south of NE Airport Way, under certain conditions (Second Reading Agenda 1660; C-9932)

Disposition: Ordinance No. 171745. (Y-5)

Mayor Vera Katz

1701 Confirm appointment of Denise Roy to the Adjustment Committee (Report)

Disposition: Confirmed.

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1702 Approve the application of Hazelwood Group, LLC for a ten year property tax exemption for a transit-oriented development project that includes 119 units of multifamily housing located near NE Glisan and NE 122nd Avenue, known as the Hazelwood Apartments (Report)

Disposition: Accepted.

1703 Approve the application of Hazelwood Group, LLC for a ten year property tax exemption for a transit-oriented development project that includes 119 units of multifamily housing located near NE Glisan and NE 122nd Avenue, known as the Hazelwood Apartments (Resolution)

Disposition: Resolution No. 35652. (Y-5)

1704 Approve the application of Russellville, LLC for a ten year property tax exemption for a transit-oriented development project that includes 282 units of multifamily housing located near SE 102nd and East Burnside Street, known as the Russellville School Project (Report)

Disposition: Accepted.

1705 Approve the application of Russellville, LLC for a ten year property tax exemption for a transit-oriented development project that includes 282 units of multifamily housing located near SE 102nd and East Burnside Street, known as the Russellville School Project (Resolution)

Disposition: Resolution No. 35653. (Y-5)

1706 Give preliminary approval for Revenue Bonds in an amount not to exceed \$13,000,000 (Resolution)

Disposition: Resolution No. 35654. (Y-5)

***1707** Establish one Financial Analyst position in the Office of Finance and Administration; one Secretarial Clerk II position in the Bureau of Purchases and Stores; one Facilities and Maintenance Supervisor, Project Management Specialty position in Parks and Recreation; and authorize one non-rep pay range change from Grade 5 to Grade 6 for the position of Emergency Communications Supervisor I in the Bureau of Emergency Communications in accordance with the Personnel Rules adopted by the City Council (Ordinance)

Disposition: Ordinance No. 171746. (Y-5)

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Commissioner Jim Francesconi

***1708** Authorize a contract with the lowest responsible bidder to furnish and install audio/video equipment for the Council Chambers in City Hall (Ordinance)

Disposition: Ordinance No. 171747. (Y-5)

***1709** Authorize agreement for acquisition of the Wallace-Williams property in southwest Portland between SW Menefee Drive and Terwilliger Boulevard in the Marquam-Terwilliger Local Share target area (Ordinance)

Disposition: Ordinance No. 171748. (Y-5)

***1710** Increase contract amount with KLB Construction, Inc. for the Forest Park landslide repair and restoration project (Ordinance; amend Contract No. 30936)

Disposition: Ordinance No. 171749. (Y-5)

Commissioner Charlie Hales

***1711** Amend intergovernmental agreement with the Port of Portland to share in costs for improvements at Rivergate industrial area (Ordinance; amend Contract No. 50493)

Disposition: Ordinance No. 171750. (Y-5)

***1712** Agreement with Oregon Department of Transportation to provide for additional funds for the construction of the N. Lombard Street rail overcrossing improvement project (Ordinance)

Disposition: Ordinance No. 171751. (Y-5)

Commissioner Gretchen Miller Kafoury

***1713** Authorize appointment of Catherine Briggs to the position of Program Manager II in the Bureau of Planning at a rate above mid-range (Ordinance)

Disposition: Ordinance No. 171752. (Y-5)

***1714** Amend Ordinance authorizing payment of \$50,700 from the Fire and Life Safety trust account for two helmet-mounted thermal imaging systems (Ordinance; amend Ordinance No. 171207)

Disposition: Ordinance No. 171753. (Y-5)

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- *1715** Contract with National Development Council for \$45,000 to provide professional services to the Bureau of Housing and Community Development and provide for payment (Ordinance)

Disposition: Ordinance No. 171754. (Y-5)

Commissioner Erik Sten

- 1716** Accept contract with Werbin West Contracting, Inc. for 12, 8, 6 and 4-inch water mains in SE 87th, 89th and 104th Avenues as complete and authorize final payment (Report; Contract No. 31097)

Disposition: Accepted.

- 1717** Accept completion of the SE 33rd Avenue and Sherrett Street sanitary sewer system, Project No. 5906, and authorize final payment to Copenhagen Utilities & Construction, Inc. (Report; Contract No. 31177)

Disposition: Accepted.

- *1718** Increase the Bureau of Environmental Services extra work authority to thirty-five percent of the original contract amount for contract with Triad Mechanical, Inc. for South Shore pump station (Ordinance; amend Contract No. 30729)

Disposition: Ordinance No. 171755. (Y-5)

- *1719** Amend agreement for public involvement services between the City of Portland, Bureau of Environmental Services, and Cogan Owens Cogan (Ordinance; amend Contract No. 30287)

Disposition: Ordinance No. 171756. (Y-5)

- *1721** Amend Title 21 to comply with State regulations regarding cross connections and backflow devices (Ordinance; amend Code Section 21.12.350)

Disposition: Ordinance No. 171757. (Y-5)

- 1722** Authorize contract for the demolition of the packaging resources building at the Columbia Boulevard Wastewater Treatment Plant (Second Reading Agenda 1682)

Disposition: Ordinance No. 171758. (Y-5)

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REGULAR AGENDA

- 1720 Amend City Code to modify Solid Waste and Recycling Regulations for residential and commercial haulers, businesses, multifamily complexes and construction projects (Ordinance; amend Code Chapter 17.102)

Disposition: Continued to November 19, 1997 at 9:30 a.m.

- 1694 **TIME CERTAIN: 9:30 AM** - Taxicab company permit application for Smart Cab, LLC (Report introduced by Commissioner Francesconi)

Discussion: Commissioner Francesconi said Council has three choices regarding this application for a new cab company. It may uphold the Bureau's recommendation to deny the permit, overturn that recommendation and issue the permit, or hold off on making a decision until the Bureau's needs assessment study is completed in late December and the ground rules are changed to make it easier for companies to compete. He noted that the current Code requires that any new applicant document a need for more taxis in the City and why, even if there is a need, the existing companies cannot meet that need by expanding. The Bureau felt Smart Cab did not meet the burden of proof on either of those points. Commissioner Francesconi said if the City wants to encourage competition without totally deregulating the industry, it should eliminate the requirement that applicants must show that existing companies cannot meet any documented need.

John Hamilton, Taxicab Supervisor, said the issue before Council today is whether to issue a taxi company permit to Smart Cab. The Taxicab Board of Review considered whether to forward a favorable recommendation to Council at its November 5 meeting and the vote was evenly split, with three in favor and three against. (The seventh member was absent.) Mr. Hamilton summarized the points against granting the application, including uncertain demand and the "first right of refusal" that existing companies have. Points in the applicant's favor rested on assumptions that inadequate service is being provided by existing companies, a belief that competition is good for the consumer and that the Code unfairly favors existing companies over new applicants.

Doug Van Dyke, attorney for Smart Cab Company, said it has been a long time since a permit was granted for a new cab company in Portland. Four taxicab companies currently exist and the question is whether there is any really good reason to regulate this market. He said the justification for keeping the market closed is slim as competition fosters innovation and usually tends to improve service and assure fair pricing.

Edward Trompke, attorney for Smart Cab Company, said the Bureau's reasoning offers slim justification for keeping the market closed.

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Kassa Teskone, co-applicant, described his background and qualifications for operating a cab company. He explained that Smart Cab wants to offer three types of service -- taxicabs, town cars and shuttles. Town cars and shuttles would operate on demand from the airport and a total of 15 operating vehicles are planned initially.

Tesfay Aleme, co-applicant, said he and Mr. Teskone have experience and a full knowledge of the industry as well as sufficient financial resources to operate Smart Cab.

John Tapogna, EcoNorthwest, 888 SW 5th, Suite 1460, 97204, said he examined the economic market for taxicabs in Portland and believes that, with the growth in employment and personal income, there is nothing to support the current limit on the number the City imposes.

John Charles, Cascade Policy Institute, supported granting the permit as intense competition makes the cost more affordable. The City's current standard makes it impossible for anyone new to enter the market and continues the cartel that now exists.

Individuals opposed to granting the permit included:

Steve Entler, General Manager, Radio Cab
Jim Coon, President, Pacific Town Car
George Van Hoomisen, President, Broadway Cab
Arthur Palmer, President, New Rose City
Joe Mehuron, Radio Cab Company driver

Opponents said the facts do not support a need for more cabs at this time and throwing more into an already chaotic ground transportation system is a very poor idea and unfair to the existing companies. They said the last few years have been especially hard economically on individual cab drivers, particularly as the regulated taxicabs try to compete with the non-regulatory segment of the market, the town cars and shuttles. Mr. Van Hoomisen noted that the applicant is asking for 48 additional cabs and, if approved that would be the largest number approved in the last 20 years. He noted that in 1990 the City increased the number of permits to 40, all of which went to existing companies, and this was promptly followed by the bankruptcy of the largest cab company (Broadway Cab).

Commissioner Hales asked Mr. Van Hoomisen if neighboring jurisdictions licensed cab companies.

Mr. Van Hoomisen said there have been some limited attempts at regulation but basically the industry remain unregulated in the suburbs.

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Mayor Katz asked about the criteria for determining need.

Mr. Hamilton said every two years, existing companies can apply for additional cabs based on the biannual demand study conducted by the License Bureau. Criteria that are considered include changes in population, the number of airline passengers, number of conventions hosted in Portland, travel patterns within the region, the status of other transportation providers and the current number of cabs operating in the City. The current number of cabs permitted by the City at this time is 317. Mr. Hamilton also outlined the factors used to measure present taxicab utilization patterns.

Mayor Katz asked if the review included seeing if the companies are using their full capacity on the street. Where are the gaps and how long do customers have to wait?

Mr. Hamilton said staff relies on the industry and feedback from customers for that data. The Bureau does not have the funding to provide a sophisticated data processing system for monitoring utilization patterns. The Code calls for the industry to basically regulate itself with some City supervision. In response to a question from the Mayor, he noted the variety of transportation modes used by visitors and added that the hotel shuttles are the biggest providers of ground transportation at the Airport, other than private automobiles. Taxicabs are way down on the list.

Mayor Katz asked if all cabs currently authorized are on the street.

Mr. Hamilton said yes, although he has heard that some are operating more than allowed while others are not operating up to capacity. A major concern is accessibility for people with disabilities. All the cab companies are required to have 20 percent of their fleets accessible by July, 1998. He said he is not convinced any more cabs are needed but the demand study will show that.

Mayor Katz noted complaints regarding long waiting times for cabs during certain hours and on certain days. There have been allegations that not all authorized cabs are on the street and she would like to see some data that the Bureau does not get from the industry itself.

Commissioner Hales said no applications for new companies have been granted for about 20 years and noted that no fixed time is set in the Code for submitting an application. He asked what factors were used in 1976 to determine that conditions were ripe for a new cab company.

Mr. Hamilton said in 1976 there was a move on nationally towards deregulation and the approval represented popular sentiment at the time. Since then there has been a move back towards regulation.

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Commissioner Sten noted that existing companies can ask for more cabs only after the results of the demand study are released. He said there is a disconnect between the time new companies can apply and when existing companies can. He expressed concern that the increased population in the suburbs is not being taken into account by the Bureau in determining need.

Mr. Hamilton explained what was happening in the suburbs regarding taxicab regulation and said the airport shuttle market was opened up to erase the jurisdictional boundary between the City and the suburbs on December 17, 1997. That was the Board's effort to liberalize the market supply side. He supported the idea of having both existing and new companies make applications every two years based on the needs study.

Commissioner Sten asked how many cabs the applicant was seeking.

Mr. Hamilton said the company would start with 15, the minimum the Code requires, with an increase to 48.

Commissioner Hales asked whether the Bureau supports the 48 or recommends a lower number of cabs, if Council were to approve this.

Mr. Hamilton said he would start conservatively with 15, three of which would have to meet ADA standards.

Mayor Katz asked if he had the authority to limit the permit to 15.

Mr. Hamilton said Council does.

Commissioner Francesconi recommended denying the application and instructing the Bureau to complete the documented needs study and to remove the Code language placing the burden of proof on new companies to show that increased demand cannot be met by existing companies. He would also recommend taking RFPs from existing and new companies at the same time when a documented need is shown.

Commissioner Kafoury agreed. She said she tends to agree with Mr. Charles' view about letting the free market determine these things but is not sure that would best serve the public. Because the City has been so restrictive in the past, she believes the time is wrong to grant an application for a new company.

Commissioner Hales disagreed and asked when a good time would be. He noted the huge growth that has occurred since 1976, when the last cab company permit was granted. He said he is uncomfortable with the City acting as an entry barrier for business but if it is done, this Code gives Council fairly broad discretion and an opportunity to exercise common sense. After 23 years, it seems sensible to permit another 15 cabs.

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Commissioner Kafoury said the City has consistently told the existing companies they could not add to their fleets and this does not seem fair to them.

Commissioner Hales said he does not agree that Council should change the current Code language which says that demonstrated need is not or cannot be accomplished as that gives Council the discretion to say it is not being accomplished. If the standard goes to "could not be accomplished by existing companies" and the burden of proof is on the applicant, then the existing companies will always be able to prove that it is feasible for them to expand and will never let another business into the market. He said he believes this is an extreme example of how a fairly stale set of regulations can distort the market place. He said he thinks the City can stand to have one more competitor with 15 cabs.

Commissioner Sten asked him to comment on the company's assertion that it will specialize in such areas as shared rides to the supermarket.

Mr. Hamilton said one reason people cannot get cabs during rush hour is because of traffic congestion that prevents cabs from picking people up. One goal is to try to get more people into fewer vehicles in order to reduce congestion during rush hours.

Mayor Katz said that argument is a little weak as no one can tell her how many cabs are on the street during a particular hour.

Commissioner Sten noted that this is a very small company trying to get into a fairly tough business. Is there a niche they are trying to serve that is not being served by the other cab companies?

Mr. Hamilton said they can do shared rides, airport shuttles and luxury sedans without a taxicab company permit.

Mayor Katz worried that 15 cabs, with three shifts a day, would mean there would only be about four cabs on the street. She questioned how a customer who called this company would be served if there are only four drivers.

Mr. Hamilton said New Rose Cab Company has 19 cabs on the road every day.

Mayor Katz said but the smaller companies are at the airport because they cannot meet service calls from customers.

Mr. Hamilton said utilization patterns are one thing the study will consider. He said they hope that with increased enforcement tools, they will get a better idea of what is going on. Right now, the City can issue sanctions only against the taxi industry and staff would like to see a more level playing field with luxury town cars, shuttles, etc.

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Mr. Van Dyke said the idea of a compromise is a good one. The Code only requires a balancing of the factors, one of which states that the taxicab industry should be allowed to operate without unnecessary restraint. It also states that it is not the purpose to displace competition with regulation or monopolize public service. Smart Cab wants to offer a service that is unique in the market -- town cars, group rides and taxicab service. He said the study Mr. Hamilton refers to is a routine one that has insufficient information and this is as good a time as any to grant this permit.

Mayor Katz agreed there is insufficient information and does not see how the company could operate with four cabs a shift.

Commissioner Francesconi said he agrees with the premise that more competition, innovation and growth in the taxicab industry is needed. If this is granted, with the evidence available now, then Council also has to grant the next application. He said he is trying to change the Code so that decisions can be made in a more balanced way and not force new applicants to prove that need cannot be met by the other existing companies. He said this is the first time he has seen any documented need presented but what is missing is information about what services are currently being provided by the unregulated side. That is why the study is needed. The other option is to just deregulate, which he is not ready to do given the experience of Seattle and other cities.

Commissioner Hales says the Code language Commissioner Francesconi refers to does not say that if the existing companies can meet demand, the application cannot be granted. The Code regarding demonstrated need for additional cabs includes the phrase "that is not, or cannot be met," and that gives Council the authority to decide.

Mayor Katz asked Commissioner Hales what data had been presented today that shows a need from the customer's standpoint.

Commissioner Hales said a 40 percent increase in hotel rooms and 100 percent increase in loadings at the airport sounds like data to him.

Commissioner Sten said Council has a problem when its procedures do not make sense and what the Code says is that new applicants can apply at any time and show the need. It does not say they have to wait every two years. His sense is that adding 15 cabs will not upset the balance and will give another company entry. He also believes there needs to be some leveling of the playing field with luxury town cars even though the lines between the two are blurring as it is. He said Council is obliged to follow the rules and make a decision now, not only when the City has an up-to-date study.

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Commissioner Francesconi agreed and said that is not a reason for denial. He said market entry has been blocked for 25 years because of the requirement that any demonstrated need first be met by existing companies. He noted that Council just voted to deregulate shuttles and now is not the time to let in more competition without clear standards.

Commissioner Sten said a lot more work needs to be done to make things fair and he would be surprised if the cab companies are not exploring the other market niches.

Commissioner Francesconi moved to deny the application and request that the Bureau complete the needs assessment, eliminate the Code language requiring that a new applicant must demonstrate that any additional need cannot be accomplished by existing companies and that the Bureau issue an RFP, if there is a documented need, to meet that need.

Commissioner Kafoury seconded. She said his recommendation would liberalize the Code quite dramatically.

Commissioner Francesconi said he would encourage Smart Cab to reapply if his motion carries. Then the City will have clear ground rules and still have some regulation.

Commissioner Hales voted no, stating that he would rather grant the permit with a limit of 15 cabs. He said the rules do not call for granting the permit after studies are completed or the Code is changed. The question is whether the applicant has complied with the standards and he believes it has.

Commissioner Sten voted no, while noting that it will be a hard row for the company to operate with 15 cabs. He said the City needs to work on its regulations as the gripes about town cars are legitimate. He said the question is how to regulate a business so the handicapped and short-trippers can be served.

Mayor Katz said there is probably a need for additional cabs even though the City does not know what is happening with existing companies. She said she does not think Council has the data necessary to decide today.

Disposition: Denied. (Y-3; N-2; Hales and Sten)

1723 Confirm appointment of Noell Webb to the Portland Development Commission (Report)

Discussion: Mayor Katz asked that this item be reconsidered and heard on the Regular Agenda. Council agreed.

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Mayor Katz said Ms. Webb's background as a small-business owner involved in development and as a former member of the Planning Commission will make her an outstanding addition to the Portland Development Commission (PDC).

Carl Talton, PDC Chair, said Ms. Webb will be especially helpful in helping the Commission wrestle with workforce development issues.

Disposition: Confirmed.

***1695** **TIME CERTAIN: 10:30 AM** - Revise Taxicab Regulations (Ordinance introduced by Commissioner Francesconi; amend City Code Title 16)

Discussion: Commissioner Francesconi said this adds some new enforcement tools to the Code.

Gary McGrew, Regulatory Manager, License Bureau, said this will help even the playing field for cabs which are competing for business with the luxury town cars. The revisions are recommended by the Bureau and by the Taxicab Board of Review.

John Hamilton, Taxicab Supervisor, said these changes are really needed.

Individuals speaking in support of the revisions included:

Jim Coon, President, Pacific Towncar
Steve Entler, Radio Cab
George Van Hoomisen, Broadway Cab

Supporters said enforcement of the current rules is a joke and that it places a very unfair regulatory burden on the cab companies to have so many regulations while the new luxury town car companies and others have none. They noted that some of the town car companies, which are supposed to charge higher rates, are undercutting taxicab fares.

Mr. McGrew explained how the Bureau plans to increase enforcement by shifting existing resources from other areas such as the liquor license section.

Commissioner Francesconi said the City must enforce the regulations or it will lead to a totally unfair situation for the cab companies.

Commissioner Hales said he is not sure how the City can enforce these regulations.

Disposition: Ordinance No. 171759. (Y-5)

***1696 TIME CERTAIN: 11:15 AM** - Authorize the negotiation and execution of an agreement to purchase a condominium interest in an office building at 1900 SW 4th Avenue with Gerding/Edlen Development Company and to exempt the purchase from competitive bidding requirements through an alternative selection process (Ordinance introduced by Commissioner Francesconi)

Discussion: David Kish, Director, Bureau of General Services (BGS), said currently the City leases office space in six different locations. All these leases expire in the fall of 1999 at which time BGS believes it would be best to consolidate all the development agencies together in one building. He noted that originally the Portland Building was meant to be the permit center but it has become increasingly difficult for customers to find parking there. Mr. Kish said the bureau put out an RFP and received nine proposals, which were then narrowed down to four. The unanimous choice of the selection committee was Gerding/Edlen Development Company. Their proposal calls for payment of \$26.5 million in two phases to purchase a building, at a cost of \$200 per square foot, including demolition and site acquisition. He said the overall impact on the general fund will be \$600,000 in the first year.

Linda Barnes, architect serving on the selection committee, said this building will help extend an urban feeling to what has been a suburban-appearing area.

Mayor Katz expressed skepticism and said she believes the whole building needs to be redesigned.

Commissioner Hales agreed and added that the City wants an urban building that meets the City's highest design standards even if it costs more.

Mayor Katz said the University District is going to be a reality one day and more retail is needed that does not close at 5 p.m.

Lloyd Anderson, selection committee member, agreed that the proposal, which the committee felt was by far the best it received, clearly needs to be revised, given Council comments. He said cost was a factor for the committee as was the internal working of the bureaus.

Commissioner Hales noted that the Code calls for having 50 percent or more of the ground floor be in plate-glass retail.

Commissioner Francesconi said he was even more concerned about the cost and asked if the leases had escalator clauses. He also questioned what happens if the space projections are off.

Mr. Kish said the City has the option to add more floors. He said if Council would prefer, the Bureau could go with a rental scheme but the study conducted by Grubb and Ellis showed that would be the most expensive option.

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Commissioner Sten said the Permit Center could be considered retail space.

Mr. Kish said BGS does consider the Permit Center as retail but he is unclear about how much is glass.

Commissioner Hales said since the Permit Center closes at 5 p.m. he is not sure it meets the Code requirements for retail.

Mr. Kish said it is open some evenings and as housing increases in the area, more demand for retail operations will be created.

Bob Gerding, Gerding/Edlen Company, said the design is very fluid at this point and he sees no problem in extending the amount of retail.

Nels Hall, architect, outlined some of their design goals in terms of flexibility and tying the exterior to the surrounding area. He said the building costs are not based on the exterior skin of the building.

Commissioner Hales urged Gerding to design to what "will be," not what "is" and to aim at enlivening the street. He said he would like to see some collaboration with the Urban Plaza project.

Commissioner Sten said if the price changes due to the redesign, he would like to review that. He said he wants the Permit Center to be as user friendly as possible and having a coffee shop is not his main objective.

Commissioner Francesconi said he supports this for three reasons: 1) its reasonable cost; 2) the way the building will function; and 3) his belief that the design needs can be met.

Disposition: Ordinance No. 171760. (Y-5)

Mayor Vera Katz

1724 Confirm authority of the City Attorney to file an appeal in Sims v. Besaw's Cafe in which validity of private right of action under City of Portland Civil Rights Ordinance, City Code 23.01 has restricted (Resolution)

Discussion: Charles Carnese, attorney representing Beesaw's, said this is not a case involving gay rights or discrimination based on sexual orientation. He noted that when the City passed its civil rights ordinance it did not make a violation a criminal offense or set up a hearings procedure. Instead, it contracted with the Bureau of Labor and Industry (BOLI) to do investigations to see if violations had occurred. He said in this case BOLI did a thorough investigation and concluded that the employee who filed the discrimination suit had been terminated for lawful reasons. That should be the end of the matter

as far as his client is concerned. He said the question in this case revolves around the private right of action mentioned in the ordinance. That is a unique legal remedy, not very often granted even by the State, which authorizes a citizen to bring a case whether or not there is any evidence. In this case the Court ruled that a City does not have the authority to give a new tort remedy to an individual. The City can pass and enforce its own ordinances but another citizen cannot walk into a courtroom and say that someone violated the ordinance even though Portland has found him innocent. Does the City want every municipality to be able to enact whatever ordinances it wishes and grab access to State courts?

Commissioner Francesconi said since there is no Statewide remedy in this case, Council has chosen to provide one to citizens regardless of sexual preference. The Judge's ruling affects all citizens in the City.

Commissioner Kafoury said the City did not add the private right of action provision to its ordinance lightly but, because of the failure of the State to pass appropriate legislation, wanted this particular classification of complainants to have access to the Courts. She is sorry, however, about which cases end up being the test cases.

Mayor Katz said the Council's action has nothing to do with Besaw's personally. This is the City's response to the private right of action issue raised by the court.

Disposition: Resolution No. 35655. (Y-5)

***1725** Accept a \$100,000 grant from U.S. Department of Justice, Drug Enforcement Administration for Operation Weed and Seed (Ordinance)

Discussion: Police Sergeant Steven Shardem said this allows the police to target specific areas where neighborhood livability is a problem. This will bolster staffing and be used to pay officer overtime.

Disposition: Ordinance No. 171761. (Y-5)

Commissioner Jim Francesconi

***1726** Approve agreement with the Oregon Department of Transportation to jointly contract for vehicle towing and storage and for dispatch (Ordinance)

Disposition: Ordinance No. 171762. (Y-5)

Commissioner Charlie Hales

- 1727 Consider vacating a portion of NW Hilltop Court east of NW Hilltop Drive at the request of Robert and Linda Maletis (Hearing; Report; C-9916)

Discussion: Gregory Allen, Office of Transportation, said the purpose of this vacation is to allow the redevelopment of the surrounding property. Some planning issues arose but a satisfactory solution has been found that meets those concerns. The Planning Commission pushed for added density and its consideration of this request ended in a tie. Transportation, however, believes adding density in this area is unwise, given the topography and the existing development pattern.

Christie White, attorney representing the applicant, said NW Hilltop Court is an unimproved cul-de-sac which Transportation has no desire to improve. The vacation was requested because the cul-de-sac is on the most level portion of the land. She noted that many conditions of approval have been placed on the development plans and if it is ever subdivided the applicant is required to provide public right-of-way.

Commissioner Hales said this is a close call but he believes the City Engineer's recommendation is sound. He moved to approve the request and ask the City Engineer to prepare an ordinance. Commissioner Kafoury seconded.

Commissioner Francesconi said a substantial portion of the site is environmentally zoned so that the buildable portions will be on the vacated streets.

Disposition: Approved; City Engineer prepare ordinance. (Y-5)

- *1728 Accept a State Historic Preservation Office grant of \$17,000 to augment a program to obtain owner's consent for historic designation (Ordinance)

Disposition: Ordinance No. 171763. (Y-5)

- *1729 Amend the Comprehensive Plan Map and change the zone of property at 1529 SE Hawthorne Boulevard from R1, Residential, to RH, Residential, with an Adjustment (Ordinance; LUR 97-00676 CP ZC AD)

Discussion: Nan Stark, Planning Bureau, said the adjustment waives the requirement for two parking spaces. She said this property was originally built with 12 units and three were added later that are non-conforming. The owner now wishes to legalize that situation as well as to waive the two required parking spaces. She said the amendment is supported by the Office of Transportation as it believes this is an inner urban neighborhood with adequate transportation alternatives. The conditions of approval include

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requirements to provide eight long term and eight short-term bicycle parking spaces, require a building permit to legalize the three units and upgrade the water service if necessary.

Disposition: Ordinance No. 171764. (Y-5)

Commissioner Gretchen Miller Kafoury

- 1730** Authorize application to the U.S. Department of Housing and Urban Development for a Section 108 loan in the amount of \$8,000,000 (Second Reading Agenda 1655)

Disposition: Ordinance No. 171765. (Y-5)

City Auditor Barbara Clark

- 1731** Assess property for large lot deferral contracts through October 6, 1997 (Hearing; Ordinance; L0051)

Disposition: Passed to Second Reading November 19, 1997 at 9:30 a.m.

- 1732** Assess property for sewer connection contracts processed through the Private Plumbing Loan Program for the period ending November 3, 1997 (Hearing; Ordinance; P0030)

Disposition: Passed to Second Reading November 19, 1997 at 9:30 a.m.

- 1733** Assess property for sidewalk repair by the Bureau of Maintenance for billing processed through October 6, 1997 (Hearing; Ordinance; Y1023)

Disposition: Passed to Second Reading November 19, 1997 at 9:30 a.m.

- 1734** Assess property for sewer system development contracts for the period ending October 6, 1997 for the mid-County sewer project and non mid-County area (Hearing; Ordinance; Z0674, Z0675, Z0676, Z0677)

Disposition: Passed to Second Reading November 19, 1997 at 9:30 a.m.

- 1735** Assess benefitted property for the cost of constructing street, storm sewer and water main improvements in the Brentwood/Darlington HCD District No. 1 Local Improvement District (Second Reading Agenda 1688; C-9895)

Disposition: Ordinance No. 171766. (Y-5)

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Mayor Katz noted that an item had been filed on the Four-Fifths Agenda and asked for Council consideration.

Four-Fifths Agenda

- *1735-1** Authorize a contract with V. M. Pilip & Son, Inc. to waterproof exteriors of four parking garages and provide for payment (Ordinance introduced by Commissioner Francesconi)

Discussion: Commissioner Francesconi said they brought this under the Four-Fifths Agenda because of a pressing deadline to complete the waterproofing.

Disposition: Ordinance No. 171767. (Y-5)

At 12:45 p.m., Council recessed.

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

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

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

***1736** **TIME CERTAIN: 2:00 PM** - Amend the Comprehensive Plan Map and change the zone of the majority of the property at 5055 N. Greeley Avenue from Institutional Residential to Office Commercial (Bess Kaiser Medical Center) (Ordinance introduced by Commissioner Hales; LUR 97-00685 CP ZC)

Discussion: Kathryn Beaumont, Senior Deputy City Attorney, outlined the procedures to be followed.

Steve Gerber, Planning Bureau, showed slides of the site which will no longer be used as a medical facility after August, 1998. He outlined the approval criteria and other relevant Plans that apply to this application which would remove the Institutional zoning and replace it with Office Commercial (CO) and Office Commercial 2 (CO2) in order to allow redevelopment of the facilities. He also reviewed the Hearings Officer's decision which recommended approval.

Steve Pfeiffer, attorney representing Bess Kaiser Foundation Hospitals, urged support of the Hearings Officer's decision except for placement of an R2 zoning designation on Tax Lot 17. That designation on the lower parking lot causes the lot to become a non-conforming use, a big disadvantage in the eyes of lenders.

Jim Winkler, President, Winkler Development, said the conversion of this hospital to a modern office campus is serious and difficult work. Because of the challenges the redevelopment poses, his company needs all the flexibility it can get. He said the site is an inferior place to put housing and is best suited to a single user. He said the 537 parking spaces would provide a ratio of under 2.5 to 1, nowhere near suburban parking ratios. He said placing a narrow sliver of R2 into the very center overcomplicates things and handicaps the viability of the project.

Mr. Pfeiffer noted a letter and petitions in support from the Overlook Neighborhood Association which believes the CO2 is a better choice as it supports both office and housing uses. An R2 zone would preclude joint use or combined office/residential.

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Commissioner Hales asked if concern about the parking ratio rises from the Code or from market conditions.

Mr. Winkler said they fear if they lose parking they will not be able to market the property. He discussed with Commissioner Hales the prospects of placing housing there at some future time.

Sandi Hansen, President, Overlook Neighborhood Association, spoke in support of the C02d zone designation requested by the applicant. She said this will allow as much flexibility as possible as they do not wish the developers to walk away from this project. She said Mr. Winkler has been very committed to working with the neighbors and a petition in support, signed by approximately 150 people, has been submitted.

Marylou Munroe, Madrona Hill resident, supported the application. She said the neighborhood looks very favorably on the plans for meeting rooms, a day care center and a restaurant that is open to the public.

Joseph Manley, 2454 N. Humboldt, said he represents the property owners abutting Tax Lot 17. He said the applicant has not provided any arguments of merit against the Hearings Officer's decision and is beating the parking issue on Tax Lot 17 to death. He said a non-conforming use cannot be lost unless it is not used for two years and it is inconceivable it would not be used for that length of time. He said the applicant will suffer no harm from the R2 zoning designation and it would encourage "right-sized" housing rather than the unacceptably dense amount called for under C02 zone.

Commissioner Francesconi asked about design overlay.

Mr. Manley said R2 zoning would eliminate the need for it and design review is a non-issue. He said the applicants do not explain the housing density that could be built under the C02 zone designation and people in the neighborhood did not understand what they were supporting when they signed the petitions.

Commissioner Hales asked him if his prime objection to the CO2 zoning was related to the potential number of housing units.

Mr. Manley said his main objection is to the excessive total square footage of the buildings.

In rebuttal, Mr. Pfeiffer said the intensity of the CO2 is there for a reason and the design overlay will resolve any serious issues and provide controls over what development occurs here. He said the applicant did not stimulate circulation of the petition and contended that people did know what they were signing. He said lenders have a real concern about non-conforming use status when leases are involved.

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Commissioner Sten asked about the sliver the City owns, which he wants to remain open space.

Mr. Pfeiffer said he had no problem with that designation, which was placed on the property as a result of the Albina Plan. The Hearings Officer did not place a conservation zone on it because it was paved.

In summary, Mr. Gerber said the Planning Bureau's issue is not with housing or parking. Rather it is with scale. R2 zoning creates more options for housing and the use of alternate modes of transportation. He said housing would not be precluded here simply because this is a busy street.

Commissioner Kafoury moved to tentatively uphold the appeal and replace the R2 zoning with C02.

Commissioner Hales said the risk of this project not happening outweighs the possible damage to the neighborhood. He added that recycling these old buildings will be difficult.

Commissioner Francesconi supported Commissioner Hales's remarks and commended the applicant and neighborhood association.

Disposition: Tentatively uphold Hearings Officer's recommendation as amended; applicant prepare findings for December 3, 1997 at 2:00 p.m.

1737 **TIME CERTAIN: 3:00 PM** - Present the 1997 Mayor's Spirit of Portland awards (Ceremony introduced by Mayor Katz)

Disposition: Council members presented Spirit of Portland awards to the following organizations and individuals:

Businesses of the Year: The Bike Gallery, PGE and Renaissance Market

Volunteer Non-Profit Organization: Outreach Ministry in Burnside

Neighborhood Office Employee: Sylvia Bogert, Southwest Neighborhoods, Inc.

Best City Employees: Officer Jim McCausland and Officer Doug Halpin

Neighborhood of the Year: Kenton Neighborhood Association

Volunteer Recognition Awards:

Lila Estes
Don and Mary Gilbertson
Betty Hedberg
Doreen Jamison

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Robert Jones
George Karlson
Mark Lakeman
Celeste Lewis
Paulette Rossi
Mark Sieber

Employee Recognition Award: Emmanuel Paris

Mayor's Award: Growth Management Committee

Disposition: Placed on File.

At 4:15 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council