



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 21ST DAY OF JANUARY, 1998 AT 9:30 A.M.

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

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

CONSENT AGENDA - NO DISCUSSION

Agenda Nos. 52, 54 and 58 were pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

Mayor Vera Katz

- *53** Authorize extension of the current Targeted Severance Program funding for one position in the Auditor's Office (Ordinance)

Disposition: Ordinance No. 171935. (Y-4)

Commissioner Jim Francesconi

- *55** Amend contract with Silco Construction Co. to increase the contract for pool shell repair and new piping at Columbia Pool by \$34,414 (Ordinance; amend Contract No. 31493)

Disposition: Ordinance No. 171936. (Y-4)

Commissioner Charlie Hales

- 56** Accept completion of the improvement of the School Safety Project at various locations and authorize final payment to All Concrete Specialties, Inc. (Report; Contract No. 31189)

Disposition: Accepted.

- 57** Accept contract with G. R. Morgan for Sewallcrest Park as substantially complete and authorize the final payment with retainage to be released in full upon authorization of the Project Manager (Report; Contract No. 31222)

Disposition: Accepted.

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- *59** Accept, designate and assign twenty-one tax foreclosed properties granted by Multnomah County at no cost to the City (Ordinance)

Disposition: Ordinance No. 171937. (Y-4)

Commissioner Gretchen Miller Kafoury

- *60** Contract with Southeast Uplift, Inc. for \$20,000 for the Kerns Neighborhood Organizing Project in the Target Area Designation Program and provide for payment (Ordinance)

Disposition: Ordinance No. 171938. (Y-4)

Commissioner Erik Sten

- 61** Accept completion of the Robin Wood sanitary sewer system, 5053, and authorize final payment to James W. Fowler Co. (Report; Contract No 30730)

Disposition: Accepted.

- *62** Authorize a contract and provide for payment for the NE 92nd Drive and NE Marx Drive sanitary sewer extension, Project 5629 (Ordinance)

Disposition: Ordinance No. 171939. (Y-4)

City Auditor Barbara Clark

- *63** Assess system development charge contracts and Private Plumbing Loan Program contracts (Ordinance; Z0678, Z0679, Z0680, P0031)

Disposition: Ordinance No. 171940. (Y-4)

REGULAR AGENDA

- 52** Support and encourage the allocation of \$5 million to \$7 million in Convention Center Urban Renewal District tax increment funds to finance District infrastructure improvements associated with the Oregon Convention Center completion project (Resolution)

Discussion: Commissioner Francesconi said at some point Council should discuss what items are put on Consent as this is an item he thought someone might want to discuss. He supports this use of tax increment dollars for job generation and also believes it will help the Central Eastside.

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Commissioner Kafoury said Council did agree that a contribution to the Center would be made out of tax increment funds, not the General Fund. However, there are a number of projects Portland State University has been floating around for years that Council has never taken official action on. She is unclear about what puts this particular contribution in line ahead of any others in the tax increment fund.

Ruth Roth, Bureau of Financial Planning, said at the December Council Informal a funding package was proposed by the Metropolitan Exposition Recreation Commission (MERC) to be brought to Metro for approval as a bond measure on the ballot. MERC has already received approval from Multnomah County to increase the transit lodging tax by .05 percent and Council is being asked for a similar contribution. At the Informal, Council determined that use of tax increment funds for the Convention Center would be appropriate. At that time it was estimated that between \$5 and \$7 million of infrastructure costs were a part of the \$90 million improvements package. This resolution does not commit that money but asks the Portland Development Commission (PDC) to consider the allocation in its upcoming five-year budget plan.

Commissioner Kafoury noted that Council had also approved formation of the University District but no such signal has been sent to that community.

Chris Scherer, Director of Financial Services, PDC, said requests from Portland State University are undergoing the same budget deliberations and process as the Convention Center. His interpretation of this particular request is simply that it is Council's final statement that it wishes PDC to consider this a priority project.

Commissioner Francesconi said he supports this but would not mind going through the same process for job creation and return on investment, and engage the public in why these are important strategies.

Mayor Katz said a process is going on right now in the urban renewal areas, at PDC and in Council on all these projects. However, Council gave a green light earlier to placing this on the ballot.

Commissioner Hales said while raising general public interest is legitimate, at least as important is the fact that these tax funds are generated by a certain set of property owners, committed to improvements in that district. The people there must conclude this is a good and reasonable use of their funds.

Commissioner Sten said he is very comfortable with this although there are many process issues to be worked out. He does not agree, however, with Commissioner Hales' description of tax increment funding as he views it as a

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loan from all the taxpayers to a particular district for public purposes that improve the tax value. He believes the role of the district in deciding where the money gets spent has been overplayed in the past.

Disposition: Resolution No. 35671. (Y-5)

***54** Authorize acquisition of the Hillary and Holland properties, adjacent to Forest Park and Balch Creek, and release of claims against the City (Ordinance)

Discussion: Commissioner Francesconi said this involves settlement of a lawsuit in a case where he believes the City has some underlying liability. The total exposure is \$652,000, of which the City has received \$575,000 in federal grant money. The difference will be paid by Risk Management and assigned back to the bureaus -- Parks, Transportation and Environmental Services. An additional \$300,000 is needed for restoration of the Creek bank and the three bureaus will have to determine which one is responsible.

Disposition: Ordinance No. 171941. (Y-5)

S-*58 Agreement with Oregon Department of Environmental Quality to fund portion of the "One Call for Brownfields" project of the Portland Office of Transportation (Ordinance)

Discussion: Cay Kershner, Clerk of the Council, said a substitute was distributed. Commissioner Hales moved the substitute and Commissioner Francesconi seconded. Hearing no objections, the Mayor so ordered.

Doug McCourt, Office of Transportation, said they were approached by a number of people, including utility companies, contractors, the DEQ and EPA, who felt there needed to be a better way than the current "One Call" system to notify excavators about the existence of contamination in areas slated for redevelopment. Notification is needed for two reasons: 1) to protect people digging in these areas; and 2) to let people know that conditions have been placed on the use of this property so that it can be redeveloped. He said Oregon is probably the only state that requires people to call "One Call" on any excavation over 12 inches or they may be liable for the cost of damaging utilities.

Don Gardner, Office of Transportation, said the earlier system the DEQ negotiated with PDC regarding one contaminated site worked very well but does not work so well when there are more. The "one call" system allows the DEQ to search its records and give contractors the information they need about contaminants.

Disposition: Substitute Ordinance No. 171942. (Y-5)

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- 64** Accept bid of Overall Laundry Service, Inc. for industrial uniform laundry services for \$66,997 (Previous Agenda 32; Purchasing Bid 98087)

Discussion: John Dunbar, American Industrial, requested a further delay in awarding the bid to Overall Laundry Service. He said his company is the actual low bidder if one considers the entire cost of a uniform program. He said Carlton Chayer, the Purchasing Agent, had requested additional information which has now been provided.

Linda Bidwell, Manager, Division of Purchasing, said Mr. Chayer has retired but requested that information from American prior to his retirement date so that he could evaluate it. Since the information did not arrive until after he left, Ms. Bidwell requested a week's continuance to give her a chance to review the information.

Disposition: Continued to January 28, 1998 at 9:30 a.m.

Commissioner Gretchen Miller Kafoury

- *65** 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. 171943. (Y-5)

City Auditor Barbara Clark

- 66** Assess property for sidewalk repair by the Bureau of Maintenance for billing processed through December 8, 1997 (Second Reading Agenda 50; Y1025)

Disposition: Ordinance No. 171944. (Y-5)

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

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 21ST DAY OF JANUARY, 1998, 1998 AT 2:00 P.M.

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

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

- 69 Appeal of Russell Neighborhood Association against Hearings Officer's decision to approve with conditions the application of Western States Chiropractic College for a conditional use master plan in order to expand, modify and upgrade the college at 2900-2916 NE 132nd Avenue (Previous Agenda 30; 97-00421 CU MS)

Discussion: Susan McKinney, Planning Bureau, said the main issue regarding the location of the parking lot was resolved at a meeting yesterday at which time three small issues were raised. She said when the new site plan came to her, a fence and landscaping were shown along the southern perimeter where the parking lot was originally. She erased that out and instead added a statement that all parking areas are to comply with the development standards of the Code for landscaping. She noted that a fence is not necessarily required along the property line and while landscaping is required for the parking lot, the college may place it wherever it deems appropriate. That should be one of the issues the college, the neighborhood and the monitoring committee work out together.

Jean Harrison, Office of Transportation Planning, said another issue arose relating to circulation. By moving the parking lot to the northeast corner of the site, it is possible additional cars will exit the north driveway to Morris Court. If that becomes a problem, Transportation is suggesting a new condition be added that would require the College to close the north driveway between the two parking areas to non-emergency vehicles. That is seen as a last resort as other, less severe options may be available to solve the problem.

Jack Orchard, attorney for the College, said the new site plan resolves the outstanding issues about the location of the bulk of the parking and meets the neighborhood's approval. The College is prepared to go forward with this as its Master Plan for the parking and circulation areas on campus. The condition described by Ms. Harrison has been accepted by the College, although in the

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findings the intermediate steps will be described. The final issue is the additional traffic counts the neighborhood wants. If the City wants to do additional counts, the College has no objections.

Karen Rutledge, Russell Neighborhood Association, said the Association is very happy with the plan as presented and also agrees with Ms. Harrison about the access road on the north. They also understand the college is willing to do two traffic counts per year but the neighborhood would like the ability to request that the City also do two traffic counts per year, but only if the neighborhood believes there is a problem.

Commissioner Hales read the proposed additional condition that would essentially do that. He moved to uphold the Hearings Officer's decision to approve the Conditional Use Master Plan but add new conditions and findings as submitted by the Office of Transportation in its January 21, 1998 memorandum and as shown in the new site plan submitted today. Commissioner Francesconi seconded.

Ms. McKinney said the condition about the traffic count was crafted as a finding, not a condition. She said if that can be added as a finding, there would be no need to continue this.

Commissioner Francesconi thanked both sides for working this out.

Commissioner Hales said while this was a grueling and protracted process for both parties, this is an example of planning and mediation at its best, meeting the legitimate interests of both the college and the neighborhood better than any of the other alternatives. The plan crafted here really makes sense and will result in a good physical relationship between the campus and the neighborhood. He hopes the discussions here will also result in a better personal relationship as well.

Commissioner Kafoury said she reviewed the tapes and does not feel as warm about this case as the rest of Council. She would like further discussions about how land-use hearings are run because she did not think this was appropriately done. She was prepared to accept the report presented last time as she felt it met all the criteria but, in the spirit of compromise, she will vote aye today.

Commissioner Sten said he is glad the parties worked it out.

Mayor Katz said the land use quasi-judicial process is cumbersome and puzzling for citizens who need to know that Council must make its decision based on whether certain legal criteria are met and nothing else matters, even though they may be things Council considers important. She said the whole process needs to be rethought. She added that perhaps this two/two vote was nice because it forced everybody together out of fear, not knowing how

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Commissioner Kafoury might vote. She said the College probably went beyond what it needed to do but its relationship with the community is critical.

Disposition: Appeal denied; Hearings Officer's approval upheld as amended. (Y-5)

Commissioner Charlie Hales

- *68** Amend the Comprehensive Plan and change the zone of property at 3286-3292 SE Hawthorne Boulevard from R1, Medium Density Multi-Dwelling, to CM, Mixed Commercial, Urban Commercial designation (Ordinance; Findings; Previous Agenda 29; LUR 97-000866 CP ZC)

Discussion: Commissioner Hales moved adoption of the findings and Commissioner Francesconi seconded.

Disposition: Findings Adopted. Ordinance No. 171945. (Y-5)

- 67** **TIME CERTAIN: 2:00 PM** -Appeal of Corbett/Terwilliger/Lair Hill Neighborhood Association against Hearings Officer's decision to approve with conditions the application of BRD Restaurants LLC for design and greenway reviews in order to construct a hotel, condominium and spa building at 4640 SW Macadam Avenue (Previous Agenda 28; 97-00996 DZ)

Discussion: Mayor Katz noted that at the last hearing, a straw vote indicated there were three votes to deny the application. The resolution at the end of that meeting was that Council would review findings in support of that tentative decision. The City Attorney has now requested that this be delayed for two more weeks for further review of the findings prepared by Planning staff. Meanwhile, there may be other options Council may want to consider.

David Knowles, Director, Bureau of Planning, said conversations have been underway between the applicant and the neighborhood regarding the concerns raised by Council and the process that might be followed if Council wants to do something other than deny this particular application. He described what those options might be. In addition to granting additional review time to the City Attorney, if Council members are interested in a review of some changes to the building, they could direct the Planning Bureau to see if this could be referred back to the Design Commission. He said the record Council is hearing is the one made at the Design Commission and therefore, if new evidence is introduced and the record reopened, that has to occur where the record was created in the first place. Staff believes this could be referred back to the Design Commission for another recommendation to Council but would like more time to review this option over the next two weeks.

Mayor Katz asked if the new design would be considered more than tinkering.

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Mr. Knowles said he has not seen the design but if the changes are more than minor, that new design has to be reviewed by the Design Commission in order to get it into the record.

Commissioner Francesconi asked about public involvement at the Design Commission level.

Mr. Knowles said staff anticipates that the Design Commission would reopen the record and hearing and take public testimony. Effectively, it would be a new hearing on the design.

Commissioner Francesconi asked what the difference would be if Council denied the application and the applicant chose to go through the process again.

Mr. Knowles said it would take more time and the applicant would have to pay the fee, which for this application was approximately \$15,000.

Jeff Joslin, Planning staff, said by statute the City is prohibited from charging more than the reviews cost.

Mayor Katz said but staff would do the same amount of work.

Mr. Joslin said yes, in terms of the time lines and Code requirements but, in terms of real work, probably not. Presumably they would charge a minimum major review fee, which is a little over \$3,000. The delay would probably be weeks, not months.

Commissioner Francesconi said he would like to know if the public would get the same notice under either scenario.

Mr. Knowles said certainly there needs to be adequate notification about the proposal and hearing. Staff will develop that information over the next several weeks.

Mayor Katz said she could have called roll and the applicant would then have had to go through the process again. On the other hand, the process can be a barrier to all parties. Her concern is that the end result is not compromised. If this is sent back to the Design Commission, she does not want to hear only that the new design is better than the first two. That begins to compromise the process as it comes to be viewed from a different mindset. She wants to view any redesign as if it is a brand new project.

Mr. Knowles asked Council members to state the concerns they think need to be addressed.

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Commissioner Kafoury said while some Council members were not comfortable with the recommendations from the Planning Bureau and the Design Commission, at least two others felt the applicant met the criteria that were in place at the time. If these are the operating guidelines for the greenway right now, they need to be respected and she does not quite understand the need to start over. She said while some felt the criteria were not met as well as they could be, she does not know why Council would want to go back and say this is coming back out of the blue when it has been approved by both the Design Commission and Planning.

Mayor Katz said three Council members are not happy with that. A lot of the Design Commission review process is subjective and when one sees a building that is denied because it has characteristics that do not meet the objective or subjective criteria and then a second one comes in that is a little bit better, it masks the kind of analysis that is needed. When this comes back again, Council will measure whether it has met both its subjective and objective criteria. Over the next two weeks, staff will determine if the City is on sound legal footing and can refer this back to the Design Commission, especially if the design is more than tinkering. Council will then have an opportunity to hear from the public again and make a final decision on the project.

Mr. Knowles said in two weeks Council will have a chance to either deny this based on the final findings or to use an alternate method and refer it to the Design Commission.

Commissioner Hales asked if this automatically returns to Council if it is remanded to the Design Commission.

Mr. Knowles said Planning will operate on the assumption that Council wants it to come back for the final decision. Council could decide to let the Design Commission's decision stand, except on appeal, but he believes it will probably come back anyway.

Commissioner Sten said he is in the minority on this but noted that since the Design Commission already approved this the chances of a new design being declined by the Commission seem very small. It already approved the design the neighbors did not like. If the majority of Council refers this back, it owes the players some indication of what it would approve. It is not the Design Commission that is worried about this proposal, it is three members of Council.

Mayor Katz said that is why she wants the findings to be prepared for everyone to review. Council can make it very clear what its expectations are.

Mr. Joslin said he thinks the Design Commission will respect those guidelines and adjust its process accordingly.

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Commissioner Hales moved to continue the matter for two weeks. Staff will return at that time with findings to support a denial and recommend a process for remanding the decision to the Design Commission for further review of Council's issues before returning to Council for final approval. Commissioner Francesconi seconded and the motion carried.

Commissioner Francesconi said the Willamette River greenway is a public space and how to establish a graceful transition to it has to be addressed. The other issues are access to the neighborhood and the proportions of sun, shadow and shade. A forum to allow all interested parties to participate is needed too. He asked if it was appropriate to get input from the public over the next two weeks on the way to proceed.

Mayor Katz said the City Attorney had confirmed that Council can deny the application if just one approval criterion is not met. It is up to the applicant to meet all the criteria. She wants to make sure the public has an opportunity to testify and that the same high standards that would apply to a brand new applicant would apply here.

Commissioner Kafoury asked for clarification about public input on the process issue.

Adrienne Brockman, Deputy City Attorney, said Council can always ask for public input although there is no standard. The public could be asked what it thinks but she worries that this would imply some sort of land use decision and possible appeal to LUBA. Staff will try to follow procedures that are in the Code.

Mayor Katz asked for a review of the legal implications so that Council can make a decision about whether it wants to hear from the public or not.

Disposition: Continued to February 4, 1998 at 2:00 p.m.; tentatively uphold appeal and prepare findings; explore further review process.

At 2:40 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland



By Cay Kershner
Clerk of the Council