



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 25TH DAY OF FEBRUARY, 1998 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. 199 was pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 190** Accept bid of Murray Chevrolet for three passenger mini-vans for a total cost of \$56,100 (Purchasing Report - PA No. 7462)

Disposition: Accepted; prepare contract.

- 191** Accept bid of Gresham Ford for six utility passenger vehicles for a total cost of \$167,400 (Purchasing Report - PA No. 7482)

Disposition: Accepted; prepare contract.

- 192** Accept bid of Russ Chevrolet for three police patrol sedans for a total cost of \$56,660 (Purchasing Report - PA No. 7503)

Disposition: Accepted; prepare contract.

Mayor Vera Katz

- 193** Confirm appointment of John Gale and Larry Holtz to the Healy Heights Radiofrequency Advisory Board (Report)

Disposition: Confirmed.

- *194** Authorize appointment of Joan Hamilton at a rate of pay exceeding the 20 percent differential allowable under the provisions of the Expanded Transfer Program (Ordinance)

Disposition: Ordinance No. 172011. (Y-5)

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Commissioner Jim Francesconi

- *195 Contract with the lowest responsible bidders to provide fiber optic cable and termination equipment for the City Hall renovation project and provide for payment (Ordinance)

Disposition: Ordinance No. 172012. (Y-5)

- *196 Amend agreement with Degenkolb Engineers for the Fire Facilities Seismic Rehabilitation Plan to provide for additional services and extend contract termination dates (Ordinance; amend Agreement No. 31560)

Disposition: Ordinance No. 172013. (Y-5)

Commissioner Charlie Hales

- *197 Authorize contract and provide for payment for the SW Fairview Blvd below SW Champlain Dr landslide repair project (Ordinance)

Disposition: Ordinance No. 172014. (Y-5)

- *198 Authorize continuance of the Bureau of Maintenance sidewalk repair program aimed at minority, women-owned and emerging small businesses (Ordinance)

Disposition: Ordinance No. 172015. (Y-5)

Commissioner Gretchen Miller Kafoury

- *200 Accept a contract between Multnomah County's Department of Community and Family Services and the City of Portland's Bureau of Housing and Community Development for coordination of the Marshall Caring Community and provide for receipt of payment (Ordinance)

Disposition: Ordinance No. 172016. (Y-5)

Commissioner Erik Sten

- 201 Accept completion of the Fairfield sanitary sewer system, Project No. 5054, and authorize final payment, except for \$25,000 retainage held pending completion of punchlist work, to Larson, Inc. (Report; Contract No. 30596)

Disposition: Accepted.

- 202 Accept completion of the Eastmont sanitary sewer system, Project No. 5055, and authorize final payment to S-2 Contractors, Inc. (Report; Contract No. 30995)

Disposition: Accepted.

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- *203** Enter into novation of certain power purchase agreements with Portland General Electric Company (Ordinance)

Disposition: Ordinance No. 172017. (Y-5)

- *204** Authorize agreements for the conveyance of property to the Bureau of Environmental Services, subject to certain conditions being fulfilled, and authorize acceptance of deeds and payments of expenses (Ordinance)

Disposition: Ordinance No. 172018. (Y-5)

- 205** Authorize contract to the lowest responsible bidder for storm water sediment disposal or recycling service (Ordinance)

Disposition: Passed to Second Reading March 4, 1998 at 9:30 a.m.

- 206** Authorize contract to the lowest responsible bidder for the construction of the Wet Weather Treatment Facility influent pump station (Ordinance)

Disposition: Passed to Second Reading March 4, 1998 at 9:30 a.m.

REGULAR AGENDA

- *199** Authorize a contract and provide for payment for Plaza Block improvements (Ordinance)

Disposition: Continued to March 4, 1998 at 9:30 a.m.

- 188** **TIME CERTAIN: 9:30 AM** - Establish a Parks and Recreation System Development Charge on new residential development applicable at the time of application for a building permit and adopt a new Chapter of the City Code (Ordinance; adopt Chapter 17.13)

Discussion: Commissioner Francesconi said this ordinance attempts to address the question of who pays for the cost of growth for the parks system. Is it the people who already live here or can it also be charged to newcomers? He said he appointed a committee which has come up with a recommended fee level on the cost of new residential development. The fees, however, do not cover the full cost. That would be in the area of \$5,000 per unit and the committee is recommending a fee of \$1,400. There is also the issue of residential versus commercial. He said at a recent informal a majority of Council indicated they would like a commercial System Development Charge (SDC) now but he has decided not to proceed with that portion at this point because there has not been enough involvement from the business community. This ordinance states that there is a nexus for a commercial fee for urban parks, trails and habitat, but not for neighborhood or community parks. He plans to propose an amendment later stating that Council will reestablish this methodology when Parks returns with the SDC ordinance for the commercial. That will give the business community and others the option of appealing even the nexus but the committee and Council felt it was important to proceed with this first step.

Mary Ann Cassin, Project Manager, Parks Bureau, said this has been a 14-month process and reflects concerns heard from every neighborhood about the parks system, including user conflicts

and available park land. As part of the process, an exhaustive analysis of the existing park system was done to establish a level of service which could lead to establishing a methodology. She noted that SDCs can only be tagged to growth and that deficiencies cannot be addressed through this method. She said the analysis broke the City into seven regions and looked at the various hierarchy of park types within each. The Bureau then determined that the City should provide the current service level into the future although in certain categories, such as golf courses, it was determined that no more will be needed even into the future. An acreage per 1,000 people for each of the categories was set to provide parks in projected growth areas. An access standard was developed for two categories -- neighborhood and community as it was felt that such parks should be available within one-half mile of every resident. Access barriers, such as rivers and freeways, were taken into account in setting the standard. She displayed a map to indicate the most park deficient areas, Outer Southeast and Southwest, the two areas where the most growth is expected.

Ms. Cassin said after determining the level of service, staff estimated how much it would cost, using Metro growth figures, to provide every type of park on a per person pro-rated assessment. That fee came close to \$5,000. However, taking into account the need to be competitive with SDCs in neighboring communities, the proposed fees are much lower -- \$1,419 for a single family unit; \$915 for multi-family and \$964 for manufactured homes. Over the 20-year life of this program, an estimated \$47 million would be raised, allowing Parks to purchase approximately 315 acres of parkland in every neighborhood of the City. The fees would be used only to pay for neighborhood and community parks and for trails and habitat. She said this ordinance is modeled after Transportation's SDC ordinance and takes into account operations/maintenance costs. Parks also compared the revenue from new residents with the acreage being incorporated and decided it was in close balance. The Bureau assumes a general fund commitment of \$53 million over the life of the program to cover deficiency costs. This assumption will be revisited every two years.

Mayor Katz asked if there is an assumption that new residents do not use existing parkland. She noted that growth also affects existing neighborhood parks but no money appears to be allocated for them.

Ms. Cassin said the SDC money can be used either to purchase new parks or improve existing parks if the improvements also increase capacity.

Mayor Katz asked how much of the new resources, if any, can be used to deal with current deficiencies in existing parks.

Ms. Cassin said deficiencies can only be addressed if they stem from growth. A park with one ball field, however, could get a second field as that would increase recreational capacity.

Mayor Katz said but if you add a ball field you may also need to add or improve existing toilets. She said the City could be creating a huge debt if it only thinks about new projects rather than thinking through how growth impacts the overuse of existing parks.

Ms. Cassin said the Bureau of Buildings expressed concern because of the rush of applications that went through after the Transportation SDC was approved. In this case, language has been crafted to make it as easy as possible to determine what a complete application is, etc. There is

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also a longer lead time and, because this SDC affects only residential development, there should not be the same level of pandemonium. Regarding SDCs on commercial development, Ms. Cassin said the Bureau only recently identified a good, legally defensible model that spread the costs to commercial and that is before Council today. She said the reason they want to do both together, even though they are not adopting the commercial fees at this time, is because the numbers affect each other, taking both the number of new residents and new employees into account. The committee did not have sufficient business representation and decided this was not a good time to impose fees on the business community. In the meantime, the residential portion is ready to go and an amendment is being proposed today regarding the 60 days citizens have to appeal the methodology. The business community was concerned that it was not given the same amount of time that residential interests had to review the methodology. The amendment states that the methodology has to be readopted later when fees are attached for businesses.

Commissioner Francesconi said the fee level for commercial will be established after further involvement by the business community as will the issue of whether any exceptions will be allowed. In its methodology the City will have to show a nexus with urban parks, trails and habitat. If there is no agreement about the connection, the business community will be able to appeal.

Commissioner Sten asked about the timing for this.

Ms. Cassin said the commercial portion will not be done until after the business income tax issue is settled, probably within the next six to 12 months.

Commissioner Sten said he believes Council should set a clear date.

Ms. Cassin summarized her testimony by noting that Parks studied the methodology long and hard and believes it is fair, needed and defensible.

Don Ganer, consultant to the Parks Bureau, said the fees can be used for any capacity-increasing improvement. New facilities can be added to existing parks if growth is increasing.

Mayor Katz noted that some parks cannot increase capacity because they are too small but their use might increase dramatically.

Ms. Cassin said the fees could be used to change a soccer field from regular to synthetic turf, for instance, because that would increase the hours and season of play. It cannot be used for a pure deficiency, however.

Commissioner Hales said the principle problem, however, is that the market will not support full collection of new development's share, or about \$5,000 per unit, rather than \$1,400. This will certainly not be a case of too many dollars chasing too few projects.

Ms. Cassin noted that the fee can also be used to purchase school parkland.

Ron Russell, Superintendent, David Douglas School District, said as density increases, there is a need for more open play areas for children and few can distinguish between a park and a school

playground. Anything that adds parks in parks-deficient southeast Portland would be very appropriate.

Linda Bauer, 6232 SE 158th, a member of the advisory committee, endorsed the plan.

Commissioner Francesconi read the proposed amendment: "Prior to imposing a parks SDC on non-residential development, the Council shall readopt the methodology for the non-residential portion of the SDC. The purpose of this readoption will be to incorporate any revisions the Council deems appropriate at that time and to provide a new opportunity for obtaining judicial review of the non-residential SDC methodology."

Kelly Ross, Metropolitan Homebuilders Association, said they still believe the additional charge on new residential development is not necessary and find it regrettable that there is not a fairer and more equitable way to pay for new growth than placing additional fees on new homes. SDCs are extremely regressive and add to the upward spiral of all housing costs. The Homebuilders support the proposed amendment as they believe commercial development should very definitely pay its fair share for park improvements and the methodology should be altered to reflect projected increases in employment. He noted that the number of new employees is expected to rise 218 percent more than the number of new residents and over the next 20 years the ratio between residents, who now outnumber employees by 18 percent, is expected to do a complete flipflop and employees will then outnumber residents by six percent. That change is not considered in the methodology and is based on 1990 census figures. The Association also believes the residential fee should be delayed until the commercial fee is established as neither should be considered in isolation. If Council is unwilling to grant this delay, the Homebuilders urge a reduction in the current charge per dwelling unit so that residential does not pay the full cost. Another recommendation is that the calculated cost per dwelling unit be reduced to reflect decreasing household size. They also question the reasonableness of a flat 10 percent compliance administration cost per dwelling unit. Finally, Council may want to consider a broader exemption for low income housing that takes into account some of Metro's incentives such as voluntary inclusionary zoning.

Rick Williams, Commercial Real Estate Economic Coalition (CREEC) and the Columbia Corridor Association (CCA), said this ordinance adopts a methodology that assumes that an SDC on non-residential properties is a foregone conclusion and this could focus all future questions on the methodology rather than the appropriateness of the SDC. They question the process the Bureau used and call for removal of all references to non-residential properties so that all can start with a clean slate when these properties and SDCs are considered. The non-residential community should be allowed to consider both the appropriateness of an SDC, its nexus and the methodology for establishing any future fees. He submitted a letter from ECO Northwest, which CREEC and CCA just recently commissioned to review the methodology and nexus issues.

Robin White, Executive Vice President, Portland Building Owners and Managers Association (BOMA), said from the outset the Parks SDC was aimed at residential development and the business community was assured time and time again that non-residential would be addressed later, not now. However, now Council is being asked to approve a non-residential fee and establish a methodology for it despite the fact that those impacted have never had an opportunity to raise any of the valid issues about the methodology or the nexus between non-residential

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development and parks. She said this ordinance should not be adopted today and all references to non-residential should be deleted until questions about its inclusion are aired in open public meetings. If Council believes that an essential nexus is established and the methodology is appropriate, then it can be adopted at that point. She said if Council does choose to go ahead with the ordinance, Commissioner Francesconi's amendment should be included. She questioned the appropriateness of making methodology appeals to LUBA.

Commissioner Francesconi asked Parks what the harm is in waiting to do both at once.

Mayor Katz said she needs more information on the nexus issue for non-residential.

Ms. White said there may well be a nexus for non-residential but businesses have never had an opportunity to explore that.

Lewis Marcus, 7318 N. Syracuse, 97203, said the methodology in this is grossly flawed and Council should not take action today. He said no members from North Portland served on the 18-member advisory committee, nor did any minorities. He said the map clearly indicates the flawed methodology used. For instance, Forest Park is withdrawn from consideration so people who live right next to it are considered park deficient. He said Council should recognize the perception of many that this pits east side residents against those on the west side.

Tom Cropper, Northeast Portland resident, opposed this because it does not include operations and maintenance expenses. He said this is the wrong way to get affordable housing.

Corrinne Paulson, League of Women Voters, said the League supports SDCs for funding Portland parks and recreation and applaud the exemption for low-income rental and owner-occupied housing. They urge that it be extended to commercial development as soon as possible. She said the fact that benefits accrue to commercial development as well as to residential cannot be dismissed.

Rose Marie Opp, outer Southeast Portland resident, said without more confidence and trust in the Parks Bureau's management of existing parks, she questions the need to acquire new land. She does not know where the City would get 315 acres of parkland, as property in a built-up city is almost impossible to acquire and very expensive to purchase. She said more time for public study of the proposal is needed. She questioned prior Parks Bureau actions, including use of Floyd Light Park for a community center and cutting down trees in parks. She asked for more accountability about the \$58 million raised by the bond measure before authorizing additional spending.

Ken Rust, Bureau of Financial Management, Office of Finance and Administration (OFA) said OFA is concerned about issues relating to the rehabilitation of existing parks, building new capacity and then taking care of those assets. One recommendation is for Parks to prepare a five-year budget to better address capital needs in a systematic way. As more facilities are added, there will be a cost and resources need to be found to deliver services beyond what the SDCs will bring in.

Mayor Katz asked where the \$53 million figure comes from.

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Mr. Rust said that is the Parks Bureau's estimate based on their methodology and is not unreasonable. There is a 20-year time frame to reconsider this and if a Parks bond measure is put on the ballot in November, OFA will ask Parks to define what part of that will address the deficiency elements of the SDC.

Mayor Katz asked if this ordinance is passed and the general fund is not able to cover operations and maintenance, will the money be spent to purchase parkland.

Mr. Rust said one could either ignore the ongoing cost consequences (not a good option) or decide not to expand the system if the City is unable to pay for it. That would reduce the service level. Or Council could make a determination to fund the program at a level that enables the operations and maintenance component to be maintained.

Commissioner Francesconi agreed that Parks needs a five-year operating plan. Regarding the unmet deficiency, he said the Parks bond measure, if it goes forward, would appropriate a range of about \$15 million to meet that. While \$53 million sounds like a lot of money, that is three bond measures over a 20 year period, if that was the sole strategy. Council could also decide that the City does not have the capacity to deliver parks in some parts of town. That is the alternative. Operating costs are a huge issue for parks because there is no dedicated revenue source. Parks indicates that an estimated \$2 million will be needed over 20 years to maintain the new parks. That is only \$100,000 a year and if the City cannot find that, it really has a problem.

Mr. Rust said OFA is up to speed on these issues and will continue to work with Parks to come up with some sensible plans.

Commissioner Hales said the City has underfunded capital investments and maintenance for a long time, giving the illusion that there is more money in the general fund to spend for other things. He said every time an SDC is passed, one portion of the parks expansion is the responsibility of new growth while another portion is the responsibility of the community at large. Council has to identify each portion. With the Transportation SDC, general fund dollars were budgeted to pay for the match from the community with the understanding that Council would press the legislature to increase the gas tax to pay that match in the future. He is worried about relying on bond measures to do the community portion because if the City does not get that piece it cannot legally spend fees raised by the SDC. He sees the bond measure monies being used to catch the City up on 50 years of underinvestment, but not used to match the SDCs as well. Council should consider a resolution modifying the financial plan and allocate the match portion aside from the general fund.

Commissioner Francesconi said he is painfully aware of all the demands on general fund money and is willing to get some help through the bond measure process.

Commissioner Hales that is not wrong but perhaps there may be more than one way to pay for that match.

Mayor Katz said she assumes bond measure proceeds will go towards meeting some deficiencies. She is more concerned about operations and maintenance.

Mr. Rust said he did not mean to suggest that the only source of funding for the deficiency is a

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bond measure. This discussion points to the need for a more formal financial plan for Parks. The issue is whether, given all the unknowns, Council should proceed with this or wait until it can see the size of the problem. He said a financial plan would probably take three to six months and would provide information about sources and estimated increases in revenue, operational and capital requirements, and an understanding of where the imbalances are on a year-to-year basis. This will be difficult for Parks to do because its programs change a lot from year to year and more emphasis is being placed on those programs. The key elements are strategies to deal with deficiencies over 20 years and the nature of the improvements.

Ms. Cassin said Parks was very conservative in estimating \$53 million in operating and maintenance costs. It is based on no donations and implies that the City will go out and pay for brand new acreage. In coming up with the general fund allotment, they assumed the worst. Regarding operating and maintenance, Parks did an assessment based on 315 new acres and then looked at how many new residents were being added annually. It looked at the Bureau's share of general fund monies and compared that with the cost to take care of the acreage.

Charles Jordan, Director, Bureau of Parks and Recreation, said he would like to slow down on the five-year plan until the Bureau has had a chance to ask citizens if it is going in the right direction and what kind of parks system they want. He noted that a lot of user conflicts have arisen that need to be sorted out. But whatever plan is enacted, more land will be needed and the City needs to take advantage of opportunities to acquire it.

Mr. Rust said OFA does not necessarily disagree as the quality of the financial plan will be incumbent on the underlying information about what Parks is going to do.

Commissioner Francesconi said if Council decides not to do a bond measure, outside people will be brought in to look at the Parks mission. He said the question now is whether to go ahead and try to get resources to acquire land. Should the commercial portion be included in the three-to-six month process while the financial plan is being done or will this result in losing too many opportunities.

Mr. Rust said he believes the residential portion of the SDC should be adopted immediately because every day that passes there will be less money to do the things they know the Parks system is going to need. He said the process regarding inclusion of the commercial portion can also proceed. The financial plan is an issue beyond the SDC itself and will be valuable only if everyone understands what the Parks program requirements are going to be over an extended period of time.

Commissioner Francesconi asked why he is raising the need for a financial plan right now.

Mr. Rust said because everyone asks how OFA will deal with the operations and maintenance deficiencies and he has no good answer. But a financial plan does not have to be in place before this is implemented.

Commissioner Francesconi asked how long it would take to include the commercial in an appropriate process.

Ms. Cassin said the Office of Transportation took 18 months. She added that some commercial

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interests were represented on the advisory committee but there are so many people this would impact she does not think it could be done in three to six months.

Commissioner Francesconi asked why not just do a separate ordinance for commercial.

Ms. Cassin said the numbers change because employment numbers are taken into account in the residential methodology.

Mr. Ganer said if both residents and employment are considered, the numbers are very different than if only the number of residents is taken into account. This methodology includes employees. If that is changed the fee must be readjusted based on a change in the level of service that has been established now. Assuming that the commercial will be added later based on that level of service, the methodology will not have to be completely revised.

Mayor Katz asked what happens if the formula changes because a strong nexus cannot be made between the commercial and number of employees, i.e. in Airport Way or the industrial sanctuaries. There may be areas where there is almost no connection, while other areas have a strong one.

Mr. Ganer said right now the methodology is based on the assumption that one employee equals .32 of a resident. If certain types of facilities are exempted, that would change. Doing it this way acknowledged that there was a connection.

Commissioner Francesconi said he needs more time to think about this and talk to people. He wants to lay out the options for funding parks -- tax increment funding, a bond measure or an SDC. That process has begun. He said he has created confusion, however, with the business portion of this.

Mayor Katz asked if there is a relationship between where growth occurs and the flow of money in terms of purchasing parks.

Ms. Cassin said yes.

Mayor Katz said then the commercial portion becomes important because the City may find it is raising money from an area where there is no opportunity to buy or add to park capacity.

Commissioner Kafoury said she does not see any problem with proceeding with the residential piece today.

Mayor Katz said that if this is passed, however, Council should not be told later that it cannot make any alterations.

Ms. Cassin said the proposed amendment tries to make clear that the methodology is to be revisited and readopted. That is also why a review is called for every two years.

Mr. Ganer said the bulk of the proposal would not change as the nexus for neighborhood and community parks is only created for residential property. Those are the ones funded 100 percent out of the SDC. The portion that could be affected would be habitats and trails, a smaller piece.

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Ms. Cassin responded to some of the issues raised in the testimony. She said the 18 member committee was not meant to represent every neighborhood but an attempt was made to reach the people who would be affected the most, i.e. high-growth neighborhoods. There was some commercial representation from the very beginning.

Mr. Ganer said the household reduction issue was raised but the bureau used the 1990 census data because it was based on actual counts.

Mayor Katz suggested reviewing some of the census data now available for 1996.

Mr. Ganer said Metro has created estimates of household size based on building permits issued in the four-county area as a whole.

Commissioner Kafoury moved the amendment Commissioner Francesconi had proposed earlier regarding appeal rights on the methodology. Commissioner Hales seconded and, hearing no objections, the Mayor so ordered.

Commissioner Francesconi said he would like to hold this over before making a recommendation.

Commissioner Sten said he is comfortable moving forward now. He said growth has to pay some of the costs of providing green spaces and parks. This needs to be done and he sees no benefit in waiting although more thought needs to be given to the commercial portion side. He said the nexus between parks and commercial is clear to him.

Commissioner Francesconi said he is concerned with establishing a commercial methodology and needs time to review what exceptions might be granted.

Commissioner Hales said he too is ready to move on the residential portion. He questioned the proposed language on Page 10 which states that the decision to donate land instead of money rests with the developer. He said the Parks Bureau needs to have more discretion so it does not end up with scraps of donated land.

Disposition: Passed to Second Reading as amended March 18, 1998 at 9:30 a.m.

189

TIME CERTAIN: 11:00 AM - Accept report evaluating residential curbside recycling program and direct Bureau of Environmental Services to begin implementation of changes to recycling program (Resolution introduced by Commission Sten)

Discussion: Commissioner Sten said the proposal about commingling will be presented today and people will then have a chance to voice their concerns. Susan Keil, Bureau of Environmental Services (BES), will head up an implementation committee to review all the issues raised and return to Council before the Bureau moves forward with the program. Ultimately, he believes there will be some disagreements in the community about exactly how the recycling program should operate. Any changes made will have to improve the system, lead to less garbage, reuse and reduction of waste materials as well as increased recycling.

Susan Keil, BES, said this commingling proposal would increase the ease of recycling for

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homeowners and contain costs on the collection and processing side. She said the current program is extraordinarily successful due to the cooperation of citizens, excellent service and cost control. The pounds of garbage disposed per household is the lowest among major cities and residents have reduced their garbage by 200 pounds since the program began in 1992. The rate has been kept flat for six years but all the savings have come on the solid waste side. Hauler productivity has increased, customers have thrown away less and Metro has reduced the disposal fee, all while recycling costs have been increasing. The proposal today to convert a 14-sort system to a three-sort system, with used motor oil still separate, has been under analysis by staff for two years. Staff has been discussing the change to commingling with the Solid Waste Subcommittee of the Public Utilities Review Board (PURB) and with the Bureau's Solid Waste Advisory Committee for nine months. Staff believes this proposal will result in increases in recycling performance although it realizes some issues still remain. An implementation work group has already been formed with broad representation from interested parties. Staff expects to return with a time line and strategy within the next few months.

Bruce Walker, BES, described the new program which calls for separation of all materials into two bins -- one for containers and one for paper/newspapers. The aim is to make recycling simpler for citizens and increase the amount. Among the reasons for the change are advances in sorting technology and added assurances that all recycled materials will get to a market. There will be no landfilling of any of the recyclables customers set out. The program will also reduce long term collection costs and, with a simpler system, they expect more customers will recycle materials that up to now they thought were too much of a hassle to bother with. The Bureau has been pleased with its ability to keep rates flat -- the only element that has increased in the last three years has been the recycling collection cost. Haulers are already having to mix some of the recyclables on route as no truck has 14 different compartments to handle the 14 different recyclables. Often they are forced to go off route to unload recyclables during the middle of the day, losing productivity. With 80 percent of the recycling trucks fully depreciated and in need of replacement, staff wants to make sure the right decisions are made to serve customers more efficiently and productively. Under the new system, far greater increases in productivity are expected with new trucks and commingling. He compared Portland's system to Seattle's, noting that their cart system leads to a higher level of contamination due to the addition of more non-recyclables.

Mr. Walker described how material recycling facilities operate, noting that they already accept commingled recyclables for sorting. Staff believes with the reduction in collection costs, the one element in the rate the City can control, there will be substantial savings but they want to make sure people understand that some of the sorting costs are being shifted from the driver to a processing center. Over time they expect rate savings, despite processing costs, because labor and vehicle collection costs will be lower. He said a poll conducted last month indicated that 89 percent of Portland customers would approve going to a simpler sorting system. Fifty-two percent of the six percent who do not currently recycle would be willing to give it another try. Concerns raised to date mainly concern glass collection, which represents 11 percent of the overall total. With commingling there will be some breakage. The local glass manufacturer cannot accept mixed colors so once the glass breaks 20 to 30 percent (or about three percent of what is collected in the curbside program) could not be recycled to that company. The committee will look at some of the ways to reduce breakage and make sure that 70 to 80 percent of the glass still goes to the local bottle maker. The local firm that handles sorting has had about 22 percent of bottle breakage over a nine-month period and has been able to market all that to

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other uses, including bottles and fiberglass insulation. Some people believe all the glass should go into bottles but staff believes recycling into insulation, another long-term use product, is also acceptable and that the private sector is best able to determine the best market.

Bruce Warner, Director of Regional Environmental Management for Metro, said these changes to the curbside recycling program could reduce collection costs for customers and increase participation. Although there are not a lot of initial savings, over the long term savings will continue to grow. He said Metro will be monitoring this very closely to see what impact it has on rates and on meeting State and regional goals for materials collection. Metro will be happy to work on implementation and on educating the public about the changes.

Gary Penning, Division Manager, Waste Management of Oregon, supported the commingling proposal. His company has not had a problem in the past marketing either newspaper or mixed waste paper. The mixed color glass that is broken is sent to their Seattle facility where it is further cleaned and then recycled back into beverage containers.

Bryan Engelson, Eastside Recycling Coop and Oregon Recycling Systems (a processing company), said Eastside supports commingling as a means to contain increasing costs and improve working conditions for their drivers. Their fatigue and productivity need to be considered. Regarding processing, he said Oregon Recycling Systems has been processing commingled containers since October for about 130,000 households. They have found that only one quarter of one percent of those containers end up in the landfill. All the rest is recycled to higher grade markets than traditionally experienced. Both companies agree to be held accountable for recycling what is collected curbside and find nothing wrong with that requirement being placed upon them.

Paulette Rossi, Chair, Public Utilities Review Board Solid Waste and Recycling Subcommittee, said the subcommittee believes the case for cost containment due to commingling may be overstated for three reasons: 1) decreased revenues because some materials can only be recycled once; 2) increased costs because some materials may go to the landfill; and 3) reduced market value for recycled items because of increased contamination. BES has assured the subcommittee that its desire for the following guarantees will be central concerns in the implementation process. The guarantees sought are that costs to customers will not increase for the next five years because of commingling; that the number of types of items currently collected will not decrease and that a maximum level of contamination be established. The subcommittee also supports formation of a broad-based stakeholders work group to establish best management practices for commingling. She said commingling has been the most troubling issue of all she has studied as a PURB member and, personally, she cannot accept balancing the potential for cost containment on the backs of those thrust into low-wage jobs as sorters. Access to quality jobs for all is one of Council's goals and should be respected. She proposed that the administrative rules for collection be changed to require all curbside separated materials be collected in a way that minimizes the need for sorters.

Valerie Gruber Hill, Gruber Sanitary Service, spoke on behalf of her company as well as Multnomah Disposal and Recycling and City Sanitary Service. They believe the six-year program is proven and effective and should continue as is. Concerns about recycling include the quality of the recycled materials, ease of assessing acceptability and handling contaminated items. Other concerns are loss of revenues from source separation, blowing materials and

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proposed labor savings. Any changes should be made only after input from many sources.

Robert W. Thomas, 4212 NE 62nd Avenue, said commingling will be much more convenient for consumers. He would do more recycling with commingling as it will save him a lot of hassle and be less time consuming.

Commissioner Sten said he has heard similar comments over and over from residents. People who know a lot about the system, like Ms. Rossi, have some very specific and legitimate concerns which basically revolve around contamination and how many recyclables will be lost. The average resident overwhelmingly likes the idea of two bins and will probably recycle a few more things with a simplified system.

Andy Rivinus, Weyerhaeuser Quality Sort Center, said his company needs a consistent supply of high-quality recycled products to feed their manufacturing facilities. If recyclables do not meet their standards, he cannot buy them. Today he buys over 3,000 tons of recycled products from the Portland Metropolitan area each month, which is 15 percent of his consumption. He is concerned about the processing infrastructure between the waste hauler and the take-away customer. The processors help ensure quality control and commingling may save costs at the waste hauler level but will add cost at the processor level. Processors will have to invest in capital, labor and upgraded facilities and, if they are successful, they will generate exactly the same revenue they do today. If unsuccessful, they will generate lower-value products and while secondary markets exist, they are very limited, over-saturated and very low value. The only way to recover the added costs is to charge back the efficiency savings gained at the waste hauler level and the data is conflicting. The City data seems to indicate a slight savings although a similar study for Tualatin suggests an increase in costs. He said the transfer of costs between the waste hauler and the processor should be more clearly investigated before a final decision is made.

Alexander Patterson, Southeast Portland resident, opposed commingling. He said the hauling industry supports this because it will reduce the cost of buying new trucks and the material recovery facilities that do the separation will get more business. What has been lost is that recycling is only a first step, not an end, in developing a sustainable economy. Commingling will prevent alternative uses for materials such as wine bottles in the future. Source separation also brings people's attention to what materials they buy that they can and cannot recycle and shows them they have to work to improve the system. Commingling will bring back the throwaway mentality and the City will not be able to change back if it is not successful.

Stan Kahn, 2521 SE Pine, opposed commingling. He cannot understand how one can expect to throw everything together and still get the same quality.

Michael Angus, no address stated, opposed commingling and called for more citizen involvement. This proposal should expand the number of materials collected, mandate consistent application of recycling rules by the haulers, discourage landfilling of recyclable

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materials, enforce mandates for business and commercial recycling, encourage retailers to sell products in recyclable packages and encourage individuals to make responsible purchasing and disposal decisions.

Shawn Kirkland, Owens Brockway, said this glass manufacturing company has been a vital link to the State's recycling program and in 1997 purchased over 75,000 tons of glass. Glass is 100 percent recyclable but when it is broken the smaller pieces cannot be recovered and a much lower percentage can be used. Commingling will breach the integrity of the recycling program and he believes the best time to do the sorting is at the curb. He said they have a mandatory recycled content rate which is 35 percent at this time and in 2000 it will be raised to 50 percent. This new program will threaten his company's ability to reach that rate.

Mayor Katz asked what his company would do if the City passes this.

Mr. Kirkland said his company will still demand that glass be source separated and if the supply is reduced, they will have to use virgin materials such as limestone and soda ash.

Kay Durtschi, 2230 SW Caldew, said Portland's recycling system works because it has been made easy, a very important factor. Commingling will make it even easier and more convenient, reduce offloading and make conditions safer for the haulers. She also asked that the hilly terrain charges be reexamined.

Disposition: Report accepted; Resolution referred to Commissioner of Public Works

Commissioner Jim Francesconi

207 Amend the Business License Law to increase the gross receipts exemption and index the owners compensation deduction (Second Reading Agenda 181; amend Code Chapter 7.02)

Disposition: Continued to February 25, 1998 at 2:00 p.m.

Commissioner Charlie Hales

***208** Revocable permit to Portland Saturday Market, Inc. to use that part of W Burnside under the Burnside Bridge for market operations and to close parts of SW Ankeny, SW 1st, SW Naito Parkway and NW Naito Parkway during certain hours (Ordinance)

Disposition: Continued to February 25, 1998 at 2:00 p.m.

Commissioner Erik Sten

***209** Accept a \$20,000 grant from PacificCorp's Earth Stewards Program as part of their partnership with the Portland Energy Office in the Green Neighborhood Network (Ordinance)

Disposition: Continued to February 25, 1998 at 2:00 p.m.

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 25TH DAY OF FEBRUARY, 1998 AT 2:00 P.M.

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

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

Commissioner Jim Francesconi

- 207** Amend the Business License Law to increase the gross receipts exemption and index the owners compensation deduction (Second Reading Agenda 181; amend Code Chapter 7.02)

Disposition: Ordinance No. 172019. (Y-4)

Commissioner Charlie Hales

- *208** Revocable permit to Portland Saturday Market, Inc. to use that part of W Burnside under the Burnside Bridge for market operations and to close parts of SW Ankeny, SW 1st, SW Naito Parkway and NW Naito Parkway during certain hours (Ordinance)

Disposition: Don Gardner, Office of Transportation, said this is a five-year revocable permit for Saturday Market to use the space underneath the Burnside Bridge. It also closes Ankeny to vehicle traffic on weekend periods for loading and for pedestrian movement through the area. This is the 25th year Saturday Market has operated and the third five-year permit. Prior to that the permits were for shorter periods of time but once light rail was completed in 1983, Council extended the permit for a long enough period to allow the market to plan and do its marketing. Representatives of Saturday Market and the owner of the Skidmore Fountain Building, the adjacent property, have issues they wish to bring to Council.

Verne Stanford, Executive Director, Portland Saturday Market, said the Market's 25th anniversary was part of the motivation to produce its first long-range plan which recognizes that the Market must find a long term, if not permanent, home. While the City, the Naito family, Multnomah County and others have been supportive, the Market is reluctant to invest heavily in a site to which it only has five year's access. Last month the City approved grant monies for renovation of the public restrooms, which are now under construction. One question that arose then was the Market's continued presence in the current location. Now the Market seeks approval for a five-year permit to use the streets for set-up. This is essentially the same ordinance that expired two months ago, with one small exception. Mr. Stanford said the Market would prefer a ten-year term as it expects to be in this location as long as it runs.

Mona Hashem Farhard, General Manager, Skidmore Saturday and Sunday Market and part owner of the Skidmore Fountain Building, said seven years ago they organized the market with a group of vendors, many of whom had operated in the Saturday Market neighborhood for a long

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time and felt they had been ripped off by the general manager. This action scared business owners in the neighborhood who developed a consensus to prevent the neighborhood from losing its historic flavor and protect the interests of businesses who relied on the Saturday Market concept. The Skidmore Saturday and Sunday Market, the safeguard, was developed by negotiating leases and contracts and providing Saturday Market Inc. its consent for the street closure and use of the public rights-of-way. It also agreed to exchange lots to create the desired separation and obtain distance between the two markets. Even though the Skidmore Market of 250 vendors has never made a profit beyond operating expenses, it has provided an opportunity for surrounding properties to maintain a higher retail rental rate and lower vacancies. It has also created many new business opportunities and sent a message to Saturday Market to grow up, shape up and operate like a business. She said thanks to the Skidmore Market and its spirit of free enterprise, the Saturday Market is the healthiest it has ever been. Ms. Farhard said the City should treat both markets equally and not discriminate or interfere in business relations.

Elizabeth Brooker, operator of a small business in the Skidmore Fountain Building, said unfortunately there have been some problems in the past between the Saturday Market and the Skidmore Market and it would be nice to resolve them. As taxpayers, they want to be treated fairly and equally.

Mayor Katz said she would like to identify the specific issue the Skidmore Market is complaining about.

Mike McGuire, 50 NE 202nd, said he could not sell his product at Saturday Market because it was not handmade even though he can identify store-bought items there. However, the Skidmore Fountain people accepted him and he has been selling hot sauce there for the past two years. He said his income went from \$40,000 to \$12,000 and he could not find employment for medical reasons. Thanks to the Skidmore Market, his financial bleeding stopped.

Mayor Katz asked if he opposed the permit.

Mr. McGuire said no, not unless they put up a No Trespassing Sign. He said last year he was stopped from using Saturday Market's portable toilet because he did not belong to it.

Mr. Gardner said they are not aware of any issue like that. The issue before Council today is closure under the Burnside Bridge to allow the Saturday Market to operate and the closure of Ankeny Street to vehicle use to allow pedestrian use and market loading and unloading. The issues raised to staff by owners of the Skidmore Fountain Building are: 1) their consent was not required for the street closure; 2) their request was for a three- instead of five-year lease; and 3) five years ago when the last permit was renewed, the Skidmore Foundation property owner did not consent to the closure of Ankeny so Council determined that consent was not legally necessary. However, the City did state that should the Skidmore Fountain undergo a major renovation, substantial change in operations or be sold, then it could petition Council to either modify or revoke the permit. Today's ordinance has exactly the same terms and language as the earlier one. The Market wanted a ten-year term while the Skidmore Foundation people wanted three. The City opted to stay with five.

Mayor Katz said the issues are changing the time span and consent.

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Mike Hashem, one of many owners of the Skidmore Fountain Building, said they do not oppose the ordinance for Saturday Market, which they understand operates on both private (Mr. Naito's and theirs) and public property, including a public park to which the Market was just granted a three-year use permit. In the past it was for five years but this time it was done by revokable permit for only three years. Mr. Naito has a five-year lease granting approval for the street closure of the area affecting his property. He therefore supports a five-year ordinance. Skidmore Fountain has a three-year lease with Saturday Market to use its parking lot and close the street for use as a market. They supported the Saturday Market and offered them a 10-year lease but they said no, they wanted to stagnate (sic) the lease and the ordinance. He read a letter from the Market stating that "a three-year term would cause the ordinance to expire at the same time as our private agreement to swap lots. We have always worked through negotiation to assure that this never happens." The issue is the City Council does not have to put itself in a position where it might be liable for Saturday Market's way of doing business. This is the taking of a private property right. The Council today can grant the three-year permit and they are 100 percent positive Saturday Market will be here three years from now to petition and be granted a new one. Skidmore Fountain believes their permit process should be done properly and the City should not force a five-year ordinance or dictate to the property owners, giving them no option but to live with the five-year ordinance.

Mayor Katz asked if what he wanted is for the ordinance to run for the same three years as the parking permit.

Mr. Hashem said they are giving Saturday Market the permit to close the street, the area under the bridge, that is their public right-of-way and how they access their property. Saturday Market was offered a long-term lease but they wanted to (stagnate) stagger it to gain an advantage.

Elizabeth Hashem, co-owner in the Skidmore Market, read her letter of February 13th into the record. The letter contends that when the Saturday Market ordinance was passed five years ago, Transportation staff misstated some facts to the Council, causing Commissioner Blumenauer to propose an amendment changing the permit from three to five years. Although Skidmore Market considered this a misrepresentation and illegal taking of property rights it decided not to appeal the amended ordinance to allow some time to pass and clarify the information stated incorrectly. The new ordinance has the same problem as the earlier one as it improperly takes away the rights of adjacent property owners, interferes with contractual relations, limits the Skidmore Fountain Building's ability to market its property or profit from it and denies tenants the right to access their businesses and more. The ordinance creates an unfair advantage for Saturday Market, Inc. which will develop into a legal liability for it and for the City. She asked Council to break the pattern of discrimination that favors Saturday Market and to amend this ordinance to grant the permit for the street closure for three years, reinsert the language that protects adjacent property's rights, as provided in all ordinances predating 1992 and consistent with all ordinances relating to street closure.

Mayor Katz asked if the basic issue is the three-year permit.

Ms. Hashem said yes.

Russell Bennett, property manager for the Skidmore Fountain real estate, said the Saturday Market is trying to negotiate a longer term lease, giving them leverage and negotiation when it

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comes time for Skidmore Fountain to renew its agreement with the Market. They believe this is not fair or in their best interest and that only a three-year agreement should be considered. Otherwise, it will be discriminatory. Prospective purchasers of the property question the validity of the purchase because of the five year agreement, almost to the point where the deals will go away because of that fact.

Mayor Katz asked if the property was up for sale.

Mr. Bennett said that has been researched.

Commissioner Hales asked if the prospective purchasers are implying that the presence of Saturday Market hurts the value of the property.

Mr. Bennett said it is not the presence of the Market but the term of the lease. If they have a three-year agreement with the Market but the City then grants it a five-year permit, Saturday Market would then still have a two-year easement locked into place.

Commissioner Hales said that means there are thousands of people on the street ready to conduct commerce, some of which will be conducted with people in Saturday Market and some with your tenants. Is there a prospective purchaser who would say that the presence of the City's agreement with Saturday Market is injurious to Skidmore Fountain's value? Commissioner Hales said he realizes they want more leverage in the negotiations but does not see how the lease could in any way hurt the value.

Mr. Bennett said if the three-year agreement with the Market for use of the parking lot expires, then their parking lot is not usable because of the agreement with the City which does not allow access to that lot. It basically landlocks it.

Commissioner Hales said the City would obviously be willing to reopen this discussion if Saturday Market for some reason disappeared.

Mayor Katz asked if anything in the contract allows for this to be reopened if Saturday Market leaves.

Mr. Gardner said the City's permit is with Saturday Market for a five-year term which allows the market to operate. It also allows the abutting property owner, in this case Mr. Hashem, to return to Council if his building changes hands or its use changes significantly. If the Saturday Market goes away then there is no issue.

Commissioner Sten said if Saturday Market kept operating but there was a change in use, then Mr. Hashem has the right to return to Council.

Mr. Hashem said that is not accurate because they really do not have the right to appeal this ordinance. This permit goes beyond what Transportation does on every other street closure where the property owner's permission is required. There is a prospective buyer who does not oppose the Saturday Market but does oppose buying property without the right to access it. The buyer does not want to put himself in a position where he has to petition the City Council to gain access to the property.

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Ms. Hashem said even when the lease expires, Skidmore Fountain would not have access to the lot.

Mr. Gardner said access is a range of rights. There is always access to the lot -- pedestrian ways, sidewalks, the light rail. The access that would be restricted is motor vehicle access to a small portion of the property where there are no loading docks or anything now. It is presently set aside for market use and there would be no motor vehicle access during the period the market is open, from 6 a.m. on Saturday morning to midnight on Sunday. What you could not do is put motor vehicles there for parking purposes. He said Transportation does not go out and get abutting property owners' consent every time they close a street. Traditionally on special closure permits, it does ask for abutting owners' consent when the events happen one day a year and this serves as a notice. That had always been included in this ordinance in the past but five years ago owners of the Skidmore Fountain Building refused to grant their consent and Commissioner Blumenauer then offered an amendment that did not require consent, which Council supported, and also added the conditions regarding change of use or sale.

Mayor Katz asked if the potential buyer did not want to come to Council when the property is sold.

Mr. Bennett said he would prefer not to. He said Skidmore Fountain by no means wants Saturday Market to go away, it only wants the agreements to end at the same time, the three-year term.

Catherine Archibald, a relative of the building owners, said if someone owns a building, he should be able to say what happens to it and have access to it. There should be no problem making the permit three years.

Debra Bennett, operator of a business in the Skidmore Fountain Building, said it is not good karma to have problems like this going on between the two markets and thinks they would want to negotiate this in private. However, if you own something it seems like you should be able to have a say about what happens on it.

Keith Davidson, attorney for the two adjacent property owners, said only one of the two properties affected by this ordinance is currently up for sale. He said Transportation and Saturday Market, Inc. are almost indivisible and you cannot tell the difference between the two. Mr. Gardner only advocates Saturday Market's position rather than representing all the people in the area. Diversity is what the City is built on and what the other market advocates. No one should be blocked or prevented from getting anywhere. If the resistance by Mr. Gardner's office, which has been going on for years, continues, that will be a separate matter.

Commissioner Francesconi said Saturday Market wants the permit for 10 years. Transportation is saying five years. What is the legal harm to your client?

Mr. Davidson said prior to an ownership interest expressed by a potential buyer, he attempted to meet with the board of Saturday Market and discuss a ten-year lease. The building owners want high retail space leasing and that is accomplished by having a very diverse market out there, not just a particularized type of goods in one particular niche. The owners of the building want all the spaces filled to draw people in, so in that spirit he tried to convince Mr. Stanford and his

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associate Mr. Archer that their presence is desired but they do not want them to get a handout from the City that affects the property rights of Skidmore Fountain. Saturday Market got \$55,000 for a bathroom from the City but no one was concerned about bathrooms for the other market or the fact that those public utilities have to be maintained. The Market has its advocates within the City, particularly Mr. Gardner.

Commissioner Francesconi said that was not his question. What is the legal harm to your client about having five years instead of three?

Mr. Davidson said two things are involved. There is an ownership right to access the building. It is a public right-of-way and the owners have a right to get there. The Transportation Department in almost every other case seeks permission to close off streets even when it is a short event. But when it comes to these property owners, that is not done. Unless this continued conduct is understood, it will be difficult for Council to make the change needed here. Five years ago when Commissioner Blumenauer made the "Saturday night massacre" amendment, he convinced Council that the owners did not have an existing property right and that those streets should be closed and the permit in place at that time (which was a five-year permit but an agreement had been struck to make it three years) should be ignored and the five-year permit should be granted, also taking away a property right which he represented the property owners never had. The 1988 ordinance which expired in 1992 gave the Skidmore Fountain Building the right to petition the Council for any reason to revoke the permit. That was removed and three very specific conditions were inserted instead so a property right was taken. It was a permit, a temporary taking, and nothing was done at that time. He asked Council to grant the permit for three years so the process can be resolved the way it should be.

Commissioner Kafoury said this seems to cry out for some mediation.

Commissioner Hales said he would support that as he is embarrassed by this hearing. In this case there is a market that has contributed immeasurably to the value of life in the City and substantially to the property around it. About six months from now, the region will open a one billion dollar transportation extension that will drop off more customers at this stop. There is every cause for celebration and for people to be working together here. This ordinance continues the status quo and he did not hear a convincing answer to Commissioner Francesconi's question about the harm. He recommended adoption of the ordinance.

Mayor Katz asked if there was a particular reason why this permit did not match the Parks permit time frame of three years.

Mr. Gardner said he does not know.

Doug Archer, site manager, Portland Saturday Market, said the Parks permits over the years have generally been year to year and 1992 was the only time it was done by revokable permit. Now the Parks Department says it is doing three-year permits across the board. Saturday Market's agreement with the Skidmore Fountain Market is an agreement to actually trade properties. Saturday Market trades property on the west side of the tracks for property on the east side.

Commissioner Francesconi asked the City Attorney if there is a legal harm.

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Linda Meng, Chief Deputy City Attorney, said they do not believe there is a substantial legal harm at this point and if there was a substantial change in use as provided in the permit and the Skidmore Fountain owners could show some harm, they could ask Council to change it then. Regarding the five-year period, she advised Transportation that, because the last two permits have been five years, they stay with that rather than change in response to anyone's request in order to avoid trying to give an advantage to one side or another.

Commissioner Francesconi asked why it would be an advantage to Saturday Market to extend it to ten years. And what is the advantage to the other side (for the lesser amount)?

Ms. Meng said she is not sure she understands that but both somehow think it is an advantage in their negotiations.

Roll was taken on the ordinance granting the permit.

Mayor Katz said she cannot believe that two occupants with the same interest at heart are having these discussions for ever and ever and ever. If it is not this issue, it is something else. One of these days Saturday Market will say it has had enough and move somewhere else. If that happens, it will be a disaster for everybody. The two markets complement each other very nicely and the fact that two corporations with the same interests cannot survive in the same geographic area is something she cannot comprehend.

Mr. Hashem said after this ordinance passes, they will be in court and suing each other for the next five years.

Disposition: Ordinance No. 172020. (Y-5)

Commissioner Erik Sten

***209** Accept a \$20,000 grant from PacificCorp's Earth Stewards Program as part of their partnership with the Portland Energy Office in the Green Neighborhood Network (Ordinance)

Disposition: Continued to March 4, 1998 Time Certain at 9:30 a.m.

210 **TIME CERTAIN: 2:30 PM** - Appeal of Downtown Developers, applicant, against Hearings Officer's decision to impose Conditions B and G in approving a parking review in order to construct a new building with ground floor retail space and 400 parking spaces located between SW Washington and Stark Streets, east of 3rd Avenue (Hearing; 97-01007 PR)

Discussion: Ruth Spetter, Senior Deputy City Attorney, outlined the procedures to be followed.

Rebecca Essau, Bureau of Planning, said many of today's issues are transportation-related and outlined the approval criteria for a Central City Parking Review (CCPR).

Rich Cassidy, Office of Transportation, showed slides of the site and noted that this proposal is for preservation parking in a 400-space parking garage with ground-floor retail. The Hearings Officer approved the proposal with conditions. Two of those conditions, B and G, have been appealed by the applicant. The parking is intended for existing buildings and the applicant has

agreements to serve 10 existing buildings in the area which have little or no parking, many of them historic landmarks. In Condition B, the Hearings Officer stated there should be no access on SW 3rd Avenue. The applicants believe the Hearings Officer has no authority over driveway access there. The City's transportation classification study designates 3rd Avenue as a traffic access route which means that automobile access is permitted in many situations. However, this case involves a discretionary land-use review in which there are approval criteria which the Hearings Officer felt needed to be satisfied before a positive evaluation of SW 3rd could be made. The original plan included driveways on all three street frontages. This was modified by the applicant at the hearing to eliminate two of the driveways on the Stark and 3rd Avenue frontage. The Hearings Officer's decision allows no driveway on 3rd Avenue and two-way traffic on SW Stark and on SW Washington. Applicants contend that their modified proposal works from a traffic operations standpoint and their analysis supports that. However, that is centered primarily on moving cars on and off the site and through nearby intersections. The Hearings Officer, in approving Alternate C, stated that approval criteria A and B require the City to look at the entire transportation system, not just cars, and consider the pedestrian/bicycle environment as well as the streetscape along SW 3rd. Transportation staff agrees with the Hearings Officer that the City has the authority to regulate driveways and that her decision reflects the conclusion that cumulative effect of three driveways did not meet approval criteria A and B. The applicant further states that if Council agrees that the Hearings Officer did have jurisdiction to look at driveways on SW 3rd, it would contend that the Hearings Officer failed to consider the proposal in its entirety and omitted the terms "significantly lessen" from her evaluation of criterion A and misread Policy 14 of the Central City Plan.

Mr. Cassidy said while the Hearings Officer did not use the term "significantly lessen," staff believes it was clear that this was her conclusion and her reason for adding conditions B and C. Her intent regarding Policy 14 was clear although she referenced the wrong policy. Finally, staff believes the decision shows that the Hearings Officer did evaluate the proposal in its entirety although the broad nature of the criteria requires staff and the Hearings Officer to look at more specific things, such as driveways, the function of the entire garage, access points and pedestrian/bicycle safety. She concluded that the third driveway presented too great a conflict to meet the intent of Criteria A and B and relied on considerable evidence about how other garages in the area work well with fewer driveways. He showed slides to illustrate that point. One of the key things in the Hearings Officer's decision is that every vehicle access point increases the number of locations where vehicles will cross the paths of pedestrians and bicyclists. Three driveways on three street frontages represents too many conflicts.

Chris Kopca, Senior Vice President for Downtown Development Group, said their appeal is based on two parts. They have legal questions about the Hearings Officer's actions and also believe their proposal is better than that of the Hearings Officer. He noted that currently the half-block site has three large driveways, Stark, 3rd Avenue and Washington. All three streets bordering the site are traffic access streets, which means driveways are permissible. The southern half of the site is within the City's retail core while the northern half is outside. He noted that the garage will allow cars to exit off the Morrison Bridge and enter on Washington Street, freeing up the rest of the road system for other purposes. He described the approaches from other directions and how traffic comes to the site along 3rd Avenue. Staff indicates four ways in which cars cross the sidewalk, two driveways in and two out. The applicant also proposes two in and two out, but with one ingress on 3rd Avenue, rather than Stark. Given the way traffic comes to the site, applicant believes it is most logical for one of the entrances to be on

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3rd Avenue, rather than taking them out of direction onto Stark, which is not perceived by the public to be a good access street. Those are the reasons they believe 3rd Avenue is a better option.

Mr. Kopca said the driveway proposed on 3rd Avenue is outside the designated retail core. Almost 90 percent of the street frontage of the garage will be devoted to retail or elevator access to the garage. The City standard is 50 percent non-blank walls and the retail requirement only applies in the retail core, where the applicant plans to be 100 percent retail. And while they have a driveway, there are no greater number of crossovers than the City proposes today. Mr. Kopca said while Transportation Planning suggested the alternative imposed by the Hearings Officer, Transportation Management supported the applicant's proposal because they realize it causes less traffic in the area. For these reasons, the applicant believes its proposal is better.

Commissioner Hales asked why its proposal was better for pedestrians as opposed to not having an entrance on 3rd Avenue.

Mr. Kopca said it reduces traffic coming down 3rd Avenue by providing parking for the public at this point. He noted other garages with entrances on 3rd Avenue and said it is a street where people expect to find parking. The City's policy says 3rd Avenue is an acceptable place to have a curb cut. The Hearings Officer's decision takes people off the normal path.

Commissioner Francesconi noted that applicant's priorities for driveways, SW Washington, SW 3rd Avenue and SW Stark, in that order. He asked why just two -- SW Washington and SW 3rd Avenue -- were not considered.

Mr. Kopca said that was one of the six options they proposed and which staff evaluated. He said Stark Street is not a comfortable street to enter from but 3rd Avenue is, as the public knows it can find parking here. With this decision, the City is asking this garage not to line up in the same way that the other garages do.

Commissioner Francesconi asked if they could get along without a driveway on Stark, if an entrance on 3rd Avenue was allowed.

Mr. Kopca said everyone agrees there should be two in and two out lanes. The question concerns placement of one of the in lanes. The inbound movement is what is important.

Commissioner Sten asked if the applicant was willing to give up the Stark out lane and place it on 3rd Avenue.

Mr. Kopca said they would be willing to do that.

Mr. Cassidy said the parking facility will be used mostly by monthly parkers, not the general public. The 3rd Avenue entrance issue was raised before the Hearings Officer in connection with how to get the general public there when the garage is not filled with commuters and during non-peak hours.

Commissioner Hales asked if the option of dual entry and exit on just Washington and 3rd

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Avenue, but not Stark, had been explored. He noted that the Hearings Officer felt that three parking orifices were one too many.

Jamie Charbonneau, Office of Transportation, said the applicant did not explore the option of having no access on Stark and limiting access to 3rd Avenue and Washington. She said Transportation's concerns were with the possible impact on 3rd and Alder, which leads up to the Morrison bridgehead.

Commissioner Hales asked if they were concerned about the distribution of traffic leaving the garage.

Ms. Charbonneau said yes and that was not discussed or modelled. The analysis the applicant showed indicates that 3rd Avenue and Washington are at Service Level D for every scenario considered. If all the traffic exited onto 3rd it might kick up to an unacceptable level. She agreed with Commissioner Hales that traffic will stay at Service Level E or better if the entrances and exits are on Washington and Stark.

Steve Janik, attorney representing the applicant, said the Hearings Officer presumes an authority to regulate matters she does not have. This is a case where the property owner has some discretion within the Code requirements. Staff told the applicant it did not like an exit onto 3rd Avenue because it wanted to create 200 feet of uninterrupted retail. However, there is no policy or Code requirement to that effect; it is only a staff preference. Staff also suggested, but the Hearings Officer disagreed, that cars should be forced to go further south toward the City garages. However, the Hearings Officer assumed that under a Central City Parking Review (CCPR), the City regulates where driveways go. The only reference in the CCPR to driveways deals with their proximity to light rail. Therefore, it is not a matter regulated by the CCPR. Mr. Janik said the Code states that 3rd Avenue is a driveway access street so there was no basis for the Hearings Officer to take on the regulation of a driveway when there are no Code standards under the CCPR. The CCPR does require the Hearings Officer to apply a general standard of acceptability as to whether the proposal would significantly lessen the desired character of the neighborhood. Part of what creates the desired character here is designation of 3rd Avenue as an automobile-access street. He said staff has admitted that the Hearings Officer never applied the "significantly lessen" criteria and it is not good enough to say that was her intent. She also said that the 200 feet of unbroken retail is "better from a commercial, safety and aesthetic standpoint." That may be her opinion but it is not a Code standard. He said the Code calls for 50 percent of the street frontage in the retail core to be retail, not 100 percent. And for that portion of the applicant's site outside the retail core, there is no requirement for any retail or any limitation on driveways. Finally, the Hearings Officer has no findings or evidence in the record regarding the "significantly lessen" conclusion. It is merely staff and the Hearings Officer's opinion, a matter of preference. If not regulated, the property owner has the discretion to make a decision about the driveway.

Commissioner Hales asked if the Central City Plan and the Central City Transportation Management Plan, which encourage multi-modal transportation system and the ease and safety of pedestrian circulation, would apply here. If so, the Council might conclude that the pedestrian circulation system is a factor in Central City Parking Review and the number of driveways could affect pedestrian circulation.

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Mr. Janik said the City has more specific language regarding driveways and he does not believe it would be permissible for the City to use a generalized standard to override the far more specific criteria in the Code.

In response, Ms. Essau said Criterion A calls for development that is pedestrian-oriented, safe and attractive, in keeping with the desired character of the CX zone. These are not personal preferences but part of the Code as is Criterion B, which has been completely ignored. That Criterion calls for a transportation system that is capable of safely supporting the proposed facility in addition to existing uses. This includes access and pedestrian/bicycle safety considerations. The applicants' emphasis is on vehicle circulation with little consideration given to bicycles and pedestrians.

Mr. Janik said the transportation report said applicant's proposed driveway access system was perfectly safe for pedestrians. Transportation staff agreed with that analysis and there is no contrary evidence to show that something bad will happen to the pedestrian environment.

Mayor Katz cited Page 7 of the Hearings Officer's decision which references the earlier Park Plaza land-use decision in which Council found that the desired character surrounding that proposed garage was defined by the general policy statement in Policy 14 of the Central City Plan. Thus, there are some findings that support the CX zone and Policy 14 regarding friendly pedestrian streets and streetscapes.

Mr. Janik said that is only part of the statement about desired character. The City has gone beyond those generalized words and adopted regulations dealing with the distance of driveways from light rail and designating certain streets as being driveway-access streets. That more accurately reflects the desired character.

Commissioner Hales said one does not have to be a traffic engineer to conclude there would be potential harm to pedestrian circulation on streets with parking entrances.

Commissioner Kafoury noted that the bike lane would be on the other side of 3rd Avenue so there would be no conflict with bike circulation.

Commissioner Hales said the issue is pedestrians. He believes Mr. Janik is right that the City cannot in the CCPR itself talk about the amount of store front retail. But the question is whether this is a multi-modal or single-modal transportation system.

Commissioner Francesconi said two criteria are raised here, the desired character of the area and the capability of the transportation system.

Ms. Essau said it only takes one criteria that is not met to give Council the authority to deny the proposal.

Commissioner Francesconi said he has some difficulty with Mr. Janik's logic, given the broad language regarding the desired character of an area and parking regulations that do not make it clear that only certain regulations can be applied.

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Ms. Charbonneau reminded Council that this will primarily be a commuter garage. The people who use it will know where it is.

Mr. Kopca said in their original proposal 90 percent of the 3rd Avenue side was storefront or elevators to serve the building. He said if Council wants the applicant to explore using 3rd Avenue in exchange for giving up Stark and having only two access points, they would like to ask for a setover to do more analysis.

Mayor Katz asked if this is a major change from what was discussed by the Hearings Officer.

Ms. Charbonneau said it could be considered a major change because that alternative was never modeled so there is nothing in the record to reflect that option.

Susan McKinney, Planning Bureau, noted that this is an on-the-record appeal and no 120-day waiver has been signed. Any new proposal is not in the record.

Mr. Janik said if this is sent back to the Hearings Officer to explore that option, the applicants will agree to waive the 120 days.

Commissioner Hales moved to remand this appeal to the Hearings Officer for further review of additional options to meet the spirit of the Hearings Officer's and staff concerns with respect to the number of building faces penetrated by automobile orifices. Commissioner Francesconi seconded.

Mr. Janik asked what other alternatives they are to explore.
Commissioner Sten said that motion is not specific enough for him.

Commissioner Hales said he believes the option of 3rd and Washington deserves further analysis. Alternative C, which is staff's recommendation, is also a legitimate way to solve the problem and that is still before the Council as an option because it is already in the record. He is also willing to consider a compromise between the alternatives.

Commissioner Kafoury said a traffic analysis is needed, as going out the 3rd Avenue exit could add a lot more traffic and she is not totally comfortable saying that two are better than three. Alternatives E or C might solve the problem.

Ms. Spetter said the applicant has agreed to help pay the mailing costs for renotification.

Commissioner Francesconi, in the vote on Commissioner Hales' motion, said he believes there should be two rather than three driveways and hopes the parties can work out where they should be.

Disposition: Remanded to the Hearings Officer (Y-5)

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At 3:40 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council