



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 18TH DAY OF NOVEMBER, 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. 1696 was pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 1687** Accept bid of Ken Leahy Construction, Inc. for Fanno Basin pressure line - Multnomah for \$1,780,726 (Purchasing Report - Bid 99022)

Disposition: Accepted; prepare contract.

- 1688** Amend the vacation of certain portions of SE Tacoma Street, SE 24th and 25th Avenues, under certain conditions (Second Reading Agenda 1659; C-9905)

Disposition: Ordinance No. 172866. (Y-5)

Mayor Vera Katz

- *1689** Pay claims of John L. Kimmel (Ordinance)

Disposition: Ordinance No. 172867. (Y-5)

- *1690** Authorize the purchase of various software licenses through the State Contract with Software Spectrum (Ordinance)

Disposition: Ordinance No. 172868. (Y-5)

Commissioner Jim Francesconi

- *1691** Amend contract with SERA Architects PC for architectural services for the City Hall renovation project to extend the contract termination date (Ordinance; amend Contract No. 29088)

Disposition: Ordinance No. 172869. (Y-5)

- *1692** Lease a small portion of the Auditorium Parking structure in downtown Portland from Mark Group No. 5 for the operation of public restroom facilities (Ordinance)

Disposition: Ordinance No. 172870. (Y-5)

Commissioner Charlie Hales

- 1693** Accept contract with CEMS, Inc. for renovation of April Hill Park as substantially complete, authorize final payment and release retainage (Report; Contract No. 31593)

Disposition: Accepted.

- *1694** Authorize a contract and provide for payment for the NE Martin Luther King Jr. Boulevard street improvements, Contracts 2-10 (Ordinance)

Disposition: Ordinance No. 172871. (Y-5)

Commissioner Gretchen Miller Kafoury

- *1695** Contract with Multnomah County Health Department for \$949,355 to provide program management for the Portland Lead Hazard Control Program and provide for payment (Ordinance)

Disposition: Ordinance No. 172872. (Y-5)

Commissioner Erik Sten

- 1697** Agreement with KPFF Consulting Engineers for \$300,000 for design and technical services for water main improvements and other design services as may be required (Ordinance)

Disposition: Passed to Second Reading November 25, 1998 at 9:30 a.m.

- *1698** Authorize amendment to agreement with Ace Consultants, Inc. to provide engineering services for the re-design of the 59th Place wastewater pumping station and to provide engineering services during construction (Ordinance; amend Agreement No. 30225)

Disposition: Ordinance No. 172873. (Y-5)

- *1699** Contract with Focus Point in the amount of \$37,500 for provision of services to assist Minority, Women and Emerging Small Business (MBE/WBE/ESBs), commonly referred to as Historically Under-utilized Businesses (HUBs) (Ordinance)

Disposition: Ordinance No. 172874. (Y-5)

- *1700** Contract with Hilton Farnkopf & Hobson LLC to perform a program review of the Bureau of Environmental Services Industrial Waste Pretreatment Program at a cost not to exceed \$59,220 (Ordinance)

Disposition: Ordinance No. 172875. (Y-5)

- 1701** Authorize an Intergovernmental Agreement between the City of Portland Bureau of Environmental Services and Washington County in the amount of \$11,460 to assist in undertaking a study of the commingled project (Ordinance)

Disposition: Passed to Second Reading November 25, 1998 at 9:30 a.m.

- 1702** Authorize construction contract for the Columbia Slough consolidation conduit, construction Segment 3, Interstate 5 to Northeast 13th Avenue (Second Reading Agenda 1670)

Disposition: Ordinance No. 172876. (Y-5)

- 1703** Agreement with Otak, Inc. for \$300,000 for design and technical services for water main improvements and other design services as may be required (Second Reading Agenda 1671)

Disposition: Ordinance No. 172877. (Y-5)

REGULAR AGENDA

- *1696** Authorize the director of the Bureau of Water Works to approve an Intergovernmental Agreement between Bureau of Water Works and Portland State for the development of a Bull Run reservoir system hydrodynamic and temperature model, at a cost not to exceed \$99,195 (Ordinance)

Discussion: Scott Wells, Portland State University, described the kind of modeling work he plans to conduct on the Bull Run River Reservoir system.

Commissioner Sten said a lot of exciting ideas have been announced about the Little Sandy in response to the Endangered Species Act listing. In discussions with Tigard and Wilsonville about future water supplies, some assumptions have been made that the City will put a new reservoir on the Bull Run. However, Council is far from knowing what its future water supply needs will be and nowhere near making a decision about any one specific step to take. He is asking the community to keep an open mind about dams, reservoirs, filtration plants or Willamette River water so the City can come up with the best regional system. Whether a third reservoir will be built is only being studied at this point.

Disposition: Ordinance No. 172878. (Y-5)

- *1684** **TIME CERTAIN: 9:30 AM** - Amend City Code to modify regulations governing discharge of industrial wastewater to City sewer system (Ordinance introduced by Commissioner Sten; amend Code Chapter 17.34)

Discussion: Commissioner Sten said this implements policies that have been discussed for quite a while. About 180 customers need a special permit to discharge into the sewer

system and currently the City charges \$75 for a five-year permit and \$50 for a five-year extension. The City would like to charge more for this service but still keep the price reasonable.

Sue Keil, Manager, Bureau of Environmental Services (BES), Industrial and Solid Wastes Division, said the first ordinance changes the local limits and some of the levels under which some industrial customers can discharge within the sewer system. The second ordinance relates to the fees charged permitted customers and is a move to bring the City in line with what surrounding jurisdictions charge. The change is revenue neutral as industrial customers are currently being charged for these services as part of the commercial flow charges. With passage of this ordinance, those will be backed out. The aggregate charges will pull about \$58,000 out of the commercial flow charges and move them to a permit fee. BES feels a sense of partnership with these large dischargers as they bring jobs to Portland and are part of the community.

Jerry Baumgartner, Industrial Source Control Manager, BES, described the goals of the three sections in the program -- industrial projects, industrial storm water and industrial permitting. The industrial permitting section focuses on controlling discharges to the sanitary and combined sewers in order to prevent problems in the collection system and wastewater treatment plants. The permits impose discharge limits and extensive monitoring requirements as well as conditions for implementing biosolid management plans and pretreatment programs. While violations can result in penalties up to \$25,000 per day per violation, he noted that the Columbia Boulevard Wastewater Treatment Plant has not had any for 15 months. Mr. Baumgartner described the many Department of Environmental Quality (DEQ) regulations and requirements BES must comply with and gave an overview of the local limits history, which began in the 1960s and placed limits on metals, non-metals and pH discharges. Organic pollutants are being considered on an individual basis. He noted that pollutant levels have been reduced significantly since the 1970s.

Miguel Santana, BES Environmental Supervisor for Industrial Source Control, described the Bureau's process for determining service charges for permitted industries. He outlined the permitting and monitoring process and noted that each permit has specific discharge standards and limits. Currently the City spends about \$180,000 on monitoring and does about 200 to 300 inspections a year. He noted the City's interest in educating and recognizing industries that are in compliance, thus avoiding violations and civil penalties. Mr. Santana explained the penalty structure and other requirements regarding industrial compliance. Under the current funding process, BES spends about \$350,000 to administer the permits, including monitoring costs. The proposed changes will eliminate the \$75 and \$50 permit charges, which actually cost more to collect than they bring in, and remove some of the costs of overseeing permitted industries from the general commercial customer base. They propose to recover service charges for permitted industries at a level consistent with those of other local and national jurisdictions and recover administrative costs for managing the nearly 300 per year non-routine, non-domestic batch discharges. The service charge structure is based on a ranking system for 180 individual industries, taking into consideration such factors as the probable size of the flow, nature of the discharges, amount of chemical storage, risk of accidents and regulatory compliance history. Their primary goal is to protect the sewer system.

Doug Marker, Chair, Public Utilities Review Board (PURB), Sewer Subcommittee, said the subcommittee supports the concept but has concerns about the process and believes more time is needed to examine the underlying foundation for the charge. He noted that the full PURB has not yet seen this proposal. He said the sewer subcommittee has laid out a work plan so it can get briefings on the particular issues that will be in the Spring budget and the full PURB is working very hard to set criteria for establishing cost of service principles for rate recovery. At first glance, the subcommittee found this charge to be exactly what it has been looking for as it is based on a specific set of services provided to a specific set of customers. However, it is a complicated structure and does not seek to cover the full cost, for reasons they do not understand. For that reason, they would like more time to work with the Bureau and then return to Council in support.

Mayor Katz asked how much more time is needed.

Mr. Marker said the full PURB meets the second week in December.

William Raycraft, Prism Industrial, Inc., said his small paint company has a non-discharge water permit because he modified his system so there is no discharge into the City's water system. His biggest concern is the staggering cost, which amounts to a 1,084 percent increase for his business. This means a raise from \$50 for five years to \$108 every year.

Chris Koback, attorney representing a permit-holding customer, expressed concern with the process as his client does not believe he yet has enough information to determine if the increase is justified and would like to be involved in more dialogue with the City about this.

Kathleen Dotten, Executive Director, Portland Wastewater Treatment Association and also representing the Oregon Metals Industry Council, said there had not been enough time for sufficient discussion about the cost recovery issues and the allocation method.

Bob Okran, President, Portland Wastewater Treatment Association, said this is not a small increase as some of their members will see increases from \$80 to more than \$2,500 per year. Second, this is not an issue about which industries need permits but about those which already have them. The Association believes BES needs to increase the size of the universe as there are a number of industries which need, but do not have, permits. BES states this is a revenue neutral proposal but first it needs to determine what difference it will make to commercial and homeowner discharges. He suspects it will make no difference. He said it also does not make sense to impose this fee at the same time BES has requested a consultant to come in at a cost of \$60,000 to review the entire pretreatment program, of which this is only one component.

Mayor Katz asked what other companies should be paying permits that are not covered now.

Mr. Okran said he believes some companies are discharging contaminants in excess of the amounts that trigger the surcharges. He also believes there are both categorical and non-categorical industrial users out there which would qualify for inclusion in the industrial user pretreatment program. It is the Bureau's job to find those people.

Commissioner Sten said BES has two missions in regard to rates. The first is to lower the overall budget, an area where they have made progress, and the second issue is how to allocate the budget itself. He said he will ask the PURB to review this at its December meeting but he views this action as a means of implementing principles that the PURB has already clearly articulated. He cautioned those testifying that the PURB is likely to find that the fees are not high enough as the program costs \$350,000 to administer and BES is proposing to move it up to \$59,000. He will bring this back in January after the PURB has had time to process this but hopes in the future the PURB and BES can jointly agree to a work plan and timeline so that this kind of situation does not occur again.

Mr. Marker said in July the PURB developed a work plan with BES but this issue was not on it.

Ms. Dotten suggested holding a summit with BES, the industrial users and possibly the PURB on this and other sewer-related subjects of interest to industrial users.

Ms. Keil said staff has been working on a proposal to pull in users who do not currently pay extra-strength charges. The largest group of users not currently being charged is the restaurant industry and staff expects to pull in another 4,000 to 5,000 extra-strength customers so it will not be pointing at just the large users. Regarding other industries that should have discharge permits, staff has made a commitment to identify those by this April.

Mr. Okran said industrial users of the sewer system have seen their discharge rates quadruple in the last decade. He contended that all members of his organization (the PWTA), could leave the City and it would not make any difference whatsoever in what the City charges its customers because the lion's share of City expenses are associated with fixing a long-neglected system.

Tom O'Keefe, United Community Action Network, said he is glad to see more time given to this.

Disposition: Ordinance No. 172879. (Y-5)

1685 Revise industrial wastewater discharge permit fees and adopt service fees for batch discharges, effective January 1, 1999 (Ordinance introduced by Commissioner Sten; amend Code Chapter 17.34.150)

Discussion: See testimony on Agenda Item 1685 above.

Disposition: Referred to Commissioner of Public Works.

S-*1704 Adopt a City Inclement Weather Policy (Ordinance)

Discussion: Cay Kershner, Clerk of the Council, noted that a Substitute had been filed. Commissioner Sten moved adoption of the Substitute and Commissioner Hales seconded. Hearing no objections, the Mayor so ordered.

Mayor Katz noted that when she suggested that people stay home during a previous weather "event" it raised some critical policy issues, particularly those involving collective bargaining agreements. Council then asked the Bureau of Human Resources to review both the inclement weather policy and the use of City resources in light of the cell phone issue raised in 1997.

Gail Johnson, Employee Relations Manager, Bureau of Human Resources, said this authorizes the Mayor to declare periods of inclement weather but directs that employees follow their own bureau policies and directives, which can be more restrictive than the policy before Council today. Bureau policies, based on operational needs, may require that employees report to work. The policies may allow guidelines for late arrivals or early departures which do not conflict with City policies and applicable labor agreements. The City Code does not allow payment for time not worked and employees will have to use earned time if allowed by the individual bureaus. Employees may not use sick leave unless they are actually sick. She said her staff will be reviewing bureau policies to make sure they do not conflict with this policy.

Mayor Katz asked that she share with Council information about other bureau policies that may differ from this. She stressed that this policy only covers City employees, not Citywide emergency situations.

Disposition: Substitute Ordinance No. 172880. (Y-5)

1686

TIME CERTAIN: 10:30 AM - Presentation and review of police procedures and findings in the August 28, 1998 beach party case (Report introduced by Mayor Katz)

Discussion: Mayor Katz said this resulted from a rather unusual request by the Police Chief to return to Council to discuss the findings and review procedures on this particular case. She said the most critical pieces are the Commander's report and recommendations and the Chief of Police's report and recommendations.

Chief Charles Moose, Portland Police Bureau, said the Bureau is not asking for any action by Council today, only presenting its report. He cited his memo of November 18, 1998 to Mayor Katz and said the Bureau has been meeting with the Portland Police African-American Advisory Council regarding this incident. The Advisory Council formed a subcommittee which has reviewed the materials and made a number of recommendations. In response to Commissioner Kafoury's question as to whether it was proper to use the "bean bag" guns for crowd control, Chief Moose said its use complied with existing guidelines for General Orders 1050 and 635. Officers followed all procedures and were successful in influencing the crowd to comply with the dispersal orders given by the incident commander. He said General Order 635 (crowd control) will be amended, however, to require that deployment of this tool be authorized by the incident commander, thus ensuring that all involved officers know the discharge is going to occur. That level of communication was missing in this case. This decision is against the recommendation of the African American Advisory Council but again the use of the weapon was successful, caused little injury and is a much better choice than batons or other presently available weapons. He said the subcommittee raised concerns about the need for a proper process for filing complaints and the complaint forms have been attached to the report, including those in various languages. Complaints are taken over

the phone, by mail and through a third party. The subcommittee also requested that the Bureau develop a clear policy that allows officer trained in community policing practices to intervene initially with members of the crisis response team. He said all members of the Bureau are trained in community policing practices and authorized to intervene with team members. The subcommittee also called for use of response team members and community leaders when escalation from crowd to mob seems likely unless there is early intervention. He said this crowd formed without any advance notice or permit and, while they understand that the License Bureau was contacted, people were told that as long as they stayed on the sidewalk they did not need any permits and the License Bureau did not inform the Police Bureau that this might happen that evening. Without such advance notice, the Police were unable to contact the crisis response team or other community members to assist it. The subcommittee also asked the Police to provide specific training for law enforcement intervention when large numbers of young people are involved. He said the Bureau will explore its crowd control training with the subcommittee and see if they can provide more insight about what should be done differently.

Mayor Katz asked if the Bureau had discussed these recommendations with the subcommittee yet.

Chief Moose said no, but meetings have been scheduled to discuss his rationale for accepting or not accepting the subcommittee's recommendations. He said Bureau staff has already met with this group many times and will continue to do so to bring some sort of closure to this report. He also may at some point wish to return to Council and change his recommendations as a result of those discussions. With regard to the decision to close the precinct, the committee recommended that it not be closed without authorization by an assistant chief or higher. However, as long as civilian desk clerks staff the precinct those civilians need to have the authority to close it. Simply allowing people to come in and take it over is non-acceptable. The subcommittee also suggested that General Order 101020 prohibit the use of less lethal weapons in crowd control situations. He does not accept that recommendation but will modify it so that their use can only be authorized by the incident commander. The subcommittee also called for enhanced training recertification every 24 months on the use of less lethal weapons. He said presently the Bureau requires recertification every four months so there seems to have been some miscommunication there. The subcommittee also recommends that the use of less lethal weapons be authorized only by the incident commander. They accept that recommendation for crowd control situations but in other situations discretion will remain with the individual officer, although the directive requires that the sergeant be notified. The use of less lethal weapons has been very successful and has prevented the Bureau from having to use deadly force a number of times. The subcommittee called for Internal Affairs to treat the use of less lethal weapons in the same manner as the use of any fire arms. Chief Moose noted that a review process is already in place that has worked well for the use of less lethal and in any event Internal Affairs does not review fire arm cases. Currently reviews are conducted by the assistant chiefs and then by him. Another subcommittee recommendation is that the current communication policy be reviewed regarding requests for additional police support. He said he would like to discuss this further with the subcommittee as he is somewhat confused about what it wants the Bureau to do. He reviewed several other requests regarding better communications and the use of the enhanced safety enforcement program, particularly

traffic stops and searches. He noted that state law requires the police to have probable cause prior to any stop and search of automobiles.

Chief Moose said the Police Bureau will continue to work with the African-American Advisory Committee but added that personally he believes in using the less lethal tools and that a strong police presence at the beginning of a crowd control situation means police force is not necessary. He cited the Rodney King situation in Los Angeles as an example of what can happen when police pull out of the neighborhood and make no show of force. He questioned why the community seems to be more interested in his response to the beach party incident than it is about drug sales, the proliferation of adult clubs and prostitution or the killing of an African-American male by a security guard in Delta Park. He understands the northeast Portland community rates Mr. Bimm's annual birthday party as a very high priority and is happy to hear that the Northeast Coalition of Neighborhoods and the faith community will be involved in next summer's event. Because of the protest in front of his house, Chief Moose said he feels he can no longer encourage any police officer to live in a City neighborhood. He said he has come to believe that the decision he and his wife made to live in the neighborhood is a joke and a major mistake, noting that they have received hate mail and threats, both by phone and from people driving by his house. He has put up with all of that but does not find it acceptable that people can come and protest because a beach party with wet tee shirt and "bootie rumping" contests was not allowed to occur in the City.

Chief Moose said people believe it was not Mr. Bimms' fault that he did not understand how to get a parks permit or do a party in a legal way. He said when people in northeast Portland say that white people have "The Bite" and they should be allowed to have something in their community, this indicates there are larger issues to deal with than just questioning the Police Bureau. He said Council should look a little deeper at the root causes, underlying conflicts and the lack of equal treatment that is occurring in Northeast Portland. The Police see abandonment, poverty and unequal treatment in Northeast Portland and try hard to make a difference. If the Council wants to abandon use of the "bean bag," the Bureau can do so and return to the use of deadly force when individuals fail to comply with police directives. Chief Moose said he hopes Council will find his present recommendations about the use of the bean bag acceptable and responsible.

Commissioner Sten said he agrees wholeheartedly that the protest was a symbol of something more than the Police response in this one case. In some ways Council has overemphasized the ability of the Police Bureau to solve problems in northeast Portland. He asked Chief Moose to describe what actually happened that day. While he believes the Police should use "bean bags," he is not sure why they should have been used that day.

Chief Moose said when the protesters were asked to disperse, one group did not follow that direction and continued to bear down on the police officers who had been told to hold the line. The officers then used the "bean bag" as an extension of a baton. They stated they felt threatened and needed to use this dispersement tool to encourage the crowd to turn and leave. The "bean bag" allows Police to influence people from a distance and is more likely to bring about crowd dispersement.

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Commissioner Sten asked what was happening that made the police decide that a line should be drawn beyond which people should not go.

Chief Moose said the group was disrupting traffic in the street and it was unclear what its next action would be. He said he and his wife felt extremely threatened by the crowd in their own house. The Police Bureau needed to move the crowd from in front of his house and off Going and MLK where it was disrupting the flow of traffic. Past experience has led the Police to believe that allowing the crowd to continue to build and feed off the energy of the group could encourage further unlawful behavior.

Mayor Katz asked Chief Moose to share with Council what happened along the perimeter, where there was an attempt to run an officer over.

Chief Moose said one officer felt he was at risk of being run over by a motor vehicle. There was an overwhelming possibility that the incident would continue to escalate and the Police were very relieved that no serious injuries or property damage occurred and the crowd did disperse.

Mayor Katz said the voice of the officer over the radio clearly reflected his fear that this was a real threat to safety.

Commissioner Francesconi said he believes the whole Council agrees with the "bean bag" strategy, the need for a police presence and the need to work with the community to resolve the broader issues. One lesson learned from this report is that commanding officers should give the order.

Chief Moose said deployment of less lethal weapons should be under the direction of the incident commander so officers clearly understand what is occurring and can coordinate communications a lot better.

Commissioner Francesconi said he heard concerns from citizens that they thought they were being shot at with live weapons. They did not know the source either. He asked if there is any way to alert the crowd to the fact that less lethal weapons are being used.

Chief Moose said when people think shots are being fired, it gets their attention and makes them willing to listen. He said he does not see how the Police can assure that everyone in a large crowd will have that kind of notification, although they always announce it before less lethal weapons are used.

Commissioner Francesconi said if the Police do not continue to advocate for such things as after school programs, the City will not get beyond race and poverty factors. How can the City bring this back together again?

Chief Moose said he was only expressing his personal frustration about the disproportionate amount of time and energy spent on whether or not Mr. Bimms could have an illegal birthday party in a public park. That is what seems to be the top priority in the Northeast community and he feels insulted about the amount of energy that has gone into this matter. He said not a single person called about the death of the man in Delta Park but people will not stop calling about the beach party.

Commissioner Hales said he does not think Chief Moose's priorities are wrong and hopes he remains committed to them as a lot of good work is being done in the northeast community, by the police and others, even though he agrees people sometimes focus on the wrong things. No one should operate on the mistaken belief that the Chief's house is City Hall and the place to go to protest. People should remember that he has a right to have peace and safety in his own home.

Chief Moose said if he has misjudged the community's priorities, he welcomes feedback but is very confused about them at this point.

Commissioner Sten said there is a long history of tension about the proper role of the police in this community and he believes Chief Moose has made great strides in this area. But he has heard concerns about how the police and community relate on things like parties. He noted the long-time belief that the police lean harder on gatherings in northeast than other parts of town. It is a fact that there is a higher police presence around MLK than other busy streets. He suggested using the Advisory Council to look at issues involving the role of police presence, the issue which rose to the top in this situation. He said the community made a mistake in trying to march on Chief Moose's street but he believes great progress has been made by the Police Bureau on some of the underlying issues and hopes that will continue.

Chief Moose said the Mayor and he are concerned about the greater incidence of violent crimes in northeast Portland and are committed to trying to change that and make it a safer place. It is a real struggle.

Commissioner Sten said if the crime rates are not changing in ways they should, the issue is how to best interact with the over 90 percent of the community which is law abiding.

Mayor Katz said the numbers are going down in northeast Portland, even to a greater extent than in the City as a whole, and this is the result of the work of both the community and Police even though the numbers are still too high.

Joanne Bowman, 3145 NE 15th Avenue, Chair of the Subcommittee appointed by the African-American Policy Advisory Council to review the Police Bureau's 800-page report, described her involvement in this incident, including a meeting with Commander Foxworth and the community. Both sides agreed at that meeting that some things could have been done differently and the Advisory Council agreed to review the actions of law enforcement officials and make recommendations in order to prevent a repeat of these events. At its next meeting, in September, the Council agreed to send a letter to Chief Moose requesting an independent investigation of the actions that occurred August 28 as they did not believe a report produced by the officers involved would satisfy their concerns. As of today's date, there has been no official response. The Advisory Council then convened a subcommittee to follow up on these incidents and make recommendations for policy changes. She listed the subcommittee's recommendations which are based on Police recommendations in the Bimms report, video tapes of the March 17 protest provided by Northeast Precinct and testimony from a community meeting on Tuesday, August 17. They made no attempt to evaluate the actions of individual citizens involved in these events.

Ms. Bowman said several points stood out for the committee during its deliberations. First, the Police had authority to close the Sellwood Riverfront park five days prior to the beach party but did not relay that information to the public. Many local young people would not have shown up if they knew the event was not going to take place. Utilization of the crisis response team and other community members early on may have prevented many young people from joining the protest. The subcommittee recommends a review of the role of the crisis response team and other community members in these types of activities. Better communication training for patrol officers is critical as calls for more officers to assist with a potentially riotous crowd prepare them for a different response than if less inflammatory language is used. If officers show up prepared for a riot that is what they will see, regardless of the actual circumstances. Officers should also take care to avoid derogatory language about individuals without a firm knowledge of them. Community policing strategies do not appear to have been utilized in this situation as, short of life and death situations, there should be no reason to attempt to forcibly snatch a baby from his mother's arms. The use of pepper spray on crowds when there are infants present should be specifically prohibited. Locking the precinct from those who wish to file complaints about police harassment was not appropriate and directly violates federal law.

Ms. Bowman said the subcommittee believes the report raises additional questions which may require additional policy changes. The subcommittee does not believe, as the police report does, that all actions taken were appropriate. The subcommittee has not yet had a chance to review Chief Moose's recommendations or the report but will submit additional recommendations once they have reviewed them. They recommend that the broader northeast community be informed of the findings and recommended policy changes as soon as possible and that representatives from Police Bureau and Police African-American Advisory Committee brief area newspapers. She thanked Commander Foxworth for taking responsibility for his actions in August and reviewed eight policy questions listed in the report. Ms. Bowman said the party itself is not the issue for the northeast community. The issues are the response, the respect and whether better decisions could have been made after the party was cancelled.

Commissioner Francesconi suggested that the subcommittee prioritize its list of recommendations and questions in order to get to closure.

Ms. Bowman said the subcommittee only had a week to read the 800-page report and expedited it at Chief Moose's request so that they could move forward.

Commissioner Sten said his goal is to see what can be done so these situations do not occur again. He is not sure what the next steps should be.

Mayor Katz said Chief Moose is willing to meet with the Council members individually or return to Council as a whole.

Commissioner Hales suggested continuing Agenda Items 1706 and 1708 one week rather than have people wait any longer to testify.

After some Council discussion, Mayor Katz continued both items.

Lewis Fontaner, Jr., 4114 N. Vancouver, Chair, African-American Advisory Council, said for the first time within the last three years, no one was either shot or stabbed in association with the beach party and the low-rider car show. The Police Bureau has taken the brunt from the situation this year and if this party continues next year a plan needs to be developed to minimize the risks to the northeast community. The planners of the beach party should be informed about their rights as well as their responsibilities so they get the proper permits and security and eliminate any negative impacts on the community. He said the Council will work with the Police on these issues and if this party happens next summer, hopefully it will be a peaceful event.

Mayor Katz said the subcommittee and then the whole Council will review this and hold additional discussions with the Chief on the issues raised.

Dan Handelman, Portland Copwatch, said they are particularly concerned about the use of the (bean bag) shot guns on black, unarmed activists. The only violence that occurred here was perpetrated by the Police who shot someone with pepper spray and pulled a baby out of its mother's arms. People have a right to assemble and protest and whether the Chief personally felt threatened in his house does not mean that riot squads should be called out. He said he does not know exactly when a crowd turns into a riot but there have been several incidents where the trouble starts when the Police show up in riot gear. He is not satisfied with the Bureau's answers and is alarmed that the entire committee did not have a chance to review the Police report and recommendations. These shot guns are not less than lethal when used at less than 25 feet and he disagrees with Chief Moose that such guns can be used for crowd control. However, the much larger issue is police harassment in the African-American community and an independent review board is needed to investigate Police conduct.

Travis West, 4535 NE Garfield Avenue, 97211, said he is very offended by Chief Moose's statement that the community made the beach party a priority. He said he was hit by the bean bag as he was walking away from an officer and his children were crying because of the pepper spray and because they did not understand what the police were doing. He said the protest was peaceful and the crowd was not out of control. He said it was frightening to hear Chief Moose say that perhaps the community wants the Police to go back to using Glocks or shotguns. He does not believe the police should use any type of gun to control crowds. The question in this case was who gave the order to fire and whether the policy in place was used that day. Using less than lethal weapons is not the way to solve problems in the community.

Commissioner Sten asked about the work the committee did on this and how both sides might do better in the future.

Mr. West said more community involvement is needed before talking to Chief Moose. He said the procedures for crowd dispersement need to be fixed as the Police gave no instructions to disperse in a specific direction. This incident has to have some closure.

David Rhine, 909 SW 12th Avenue, 97201, said the proper place for protest is before Council and when the process is hurried, it cuts off public involvement. The Council should watch its body language and speakers should be given proper attention and respect.

Mayor Katz said when people talk about the community, it is a much larger community than is represented here. However, the City needs to get to closure on this and everybody involved in this incident will be working together to make this a positive experience next summer.

Disposition: Placed on File.

Mayor Vera Katz

- *1705** Adopt a City policy on the use of City resources (Ordinance; amend City Code Section 4.01.030.G.11)

Discussion: Mayor Katz said this began with a question about the use of cell phones and then more issues were raised about the use of City resources in general. After discovering that every bureau had different policies, she asked Human Resources to make sure the City has a clear policy about the use of City property.

Gail Johnson, Employee Relations Manager, Bureau of Human Resources, said this policy covers all 5,000 employees and also recognizes time as a resource. Some bureaus may have more restrictive policies on some of the items identified, such as vehicles and cars. Computers and use of the internet is recognized but specific use and abuse is integrated into the Internet and Technology policy, which has already been given to all bureaus. This policy basically prohibits inappropriate use of City resources and gives examples of what is viewed as appropriate use. It also amends the prohibited activity section of the City Code by adding the inappropriate use of City resources as cause for disciplinary action.

Disposition: Ordinance No. 172881. (Y-5)

Commissioner Charlie Hales

- 1706** Consider vacating a portion of SE Knight Street west of SE 14th Avenue, as initiated by Resolution No. 35726, to help protect and add area to the Oaks Bottom Wildlife Refuge (Rescheduled Hearing; Previous Agenda 1530; C-9956)

Disposition: Continued to November 25, 1998 at 9:30 a.m.

Commissioner Gretchen Miller Kafoury

- 1707** Accept recommendations to the Port of Portland Citizen Noise Advisory Committee (Report)

Disposition: Accepted.

- 1708** Direct the Bureau of Planning in consultation with the Bureau of Environmental Services, Parks Bureau, the North Macadam Steering Committee and other interested parties to review and recommend changes to the FAR bonuses, Willamette River Greenway set-backs and heights along the entire length of the Willamette River within the City of Portland, with the intent of amending code language in a timely manner (Resolution)

Disposition: Continued to November 25, 1998 at 9:30 a.m. Time Certain

Communications

- 1709** Appeal of Eva Kovacevic of Urban Forestry Commission decision to deny a tree removal permit for a maple tree at 5844-48 SE Belmont (Hearing on Appeal)

Discussion: Eva Kovacevic, speaking on behalf of her mother, requested removal of a street tree without replacement because it has resulted in a cracked driveway and roots which have travelled into the sidewalk and yard. Because the tree is so close to the driveway, it is very difficult to back out onto Belmont, a very busy street, and the roots have also damaged sprinkler pipes. She said the tree is a hazard and she does not understand why the City will allow its removal only on condition that two trees be planted on a parking strip which they believe is too narrow. There are no other trees in the adjacent area so they do not understand why this is being required.

Commissioner Kafoury said she does not think planting two trees is an onerous requirement and moved to overrule the appeal.

Disposition: Appeal denied. (Y-5)

At 12:15 p.m. Council recessed.

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 18TH DAY OF NOVEMBER, 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; Pete Kasting and Kathryn Beaumont, Senior Deputy City Attorneys; and Officer Chuck Bolliger, Sergeant at Arms.

1710 **TIME CERTAIN: 2:00 PM** - Accept report by the American Society of Landscape Architects on the Bridge the Divide and Cap I-405 Vision Study (Previous Agenda 1569)

Discussion: Mayor Katz said she raised this issue because, as the City struggles with growth, it needs to determine where growth makes the most sense and where it will have the least impact on neighborhood livability. Downtown is a perfect example of where it makes sense. She said she personally saw what happened to the City when the I-405 freeway was built and has seen what has happened in other cities where this has been done. She said the American Society of Landscape Architects decided to focus on this issue even though there are many issues to be addressed before capping could occur. She noted that five public events were held to begin the community discussion about this concept.

Paul Marx, American Society of Landscape Architects (ASLA), reported on the outcome of the study. One vision was to reconnect the neighborhoods damaged by construction of I-405 in the 1960s and explore the potential of reclaiming housing and jobs. He described the review process that was conducted, including a study of capping projects in other cities, such as Seattle, which has now completed three. He noted the participation of other partners in addition to ASLA members, including several City bureaus and said almost \$250,000 in pro bono services were donated. Mr. Marx described the review process and local planning policies that could make this a success. He noted that a community open house attracted over 1,000 people, far more than had been anticipated. Three workshops were held in the neighborhoods, which came up with a whole list of critical issues and identified goals and benefits that would result from the capping. They also identified priorities, particularly reconnections between neighborhoods. A planning team then created a physical plan, incorporating all aspects of the design and construction. He outlined the projects as they were prioritized starting with NW Glisan and including reconstruction of West Burnside into a corridor gateway. The plan also calls for three connections to the Goose Hollow/Portland State University (PSU) area and reclaiming of the area near the tunnel on Highway 26. The final piece is the PSU/Duniway connection which will complete the connection of the South Park blocks. Over 30 potential projects were identified, each one independent enough to be self-sustaining. Their outcomes indicate the projects will provide a minimum of 1,000 additional housing units, 2,000 additional jobs, six acres of parks and 2,200 additional parking spaces to support the Pearl District and PSU. Four major themes emerged from

this planning exercise: 1) connectivity; 2) mixed use; 3) economic development; and 4) multi-modal transportation.

Mike Abbate, 3035 SE Lincoln, 97214, landscape architect, said this is a situation where there is an opportunity to provide new housing and jobs and generate funds for the entire City. The plan identifies priorities and does not commit to building the entire project at one time. Once people see the success of one portion, they are more likely to support the rest.

Lenny Anderson, 2934 NE 27th, 97212, said his first response was negative because he believes mitigating traffic on the east side is the key to the City's success. This is very exciting but does not address how to focus the City back to the Willamette River. The freeway loop through the City is a noose which needs to be loosened.

Art Lewellan, 3205 SE 8th, #9, 97214, said this does not look like a good transportation solution. The Burnside "bright lights" district is a good idea but he does not think putting an island in the middle of Burnside will be effective because it will be surrounded by traffic. He agrees with the traffic engineers who believe the Ross Island bridge should be connected directly with I-405 and that would also improve pedestrian flow.

Garry Papers, American Institute of Architects (AIA) Design Committee, said the committee supports many aspects of the report, including creation of a vertical recreation center, mixed-use buildings framing the light rail streets and many others. However, many design elements are of concern. One is the proposed museum and its isolated site. The Burnside Entertainment concept is good but the AIA does not believe a split roadway on Burnside is supportive of that. Some of proposals need to be subjected to rigorous financial feasibility tests to determine the true cost. He questioned whether the eight neighborhoods that would be affected are really struggling. Overall, the committee believes capping several blocks is a great idea whose time has not yet come. Planning for one block is okay but there are other more pressing transportation scars that need attention as the I-405 cut is one of the least offensive. As examples, he cited repairing the damage made by the Ross Island bridge connections, rethinking the upcoming Harrison connection and completing the Central Eastside transportation study which could recover 30 blocks.

Lili Mandel, 1511 SW Park, 97205, said this is a way to bury a terrible mistake. This is a perfect place for housing and there is a wonderful opportunity to do something creative with this space. What is missing now is a mixed-income population living downtown, not just 75 percent in the low income category.

Irwin Mandel, 1511 SW Park, 97205, said while there are always other projects that can and should be done, this is a giant step forward. Middle-income housing is critical and should be a higher priority than the Burnside entertainment community. There is also an unnecessary amount of parking in the plan.

Ralph Stanley, 721 SW Columbia, 97201, said this establishes a bold and imaginative vision that is also achievable. He recommended that the next steps be to develop a realistic financing plan and then segment the vision, choosing one project that can be an early success.

Homer Williams, Hoyt Street Properties, said this is a great idea but what is most intriguing is that it can be done in steps. It can also be transferred to other parts of City and is a great idea.

John Carroll, Carroll Investments, 806 SW Broadway, 97205, said these are essential efforts because without a vision there is no destination. What was important about earlier plans is that they did not have to be done all at once and one could decide later what gets built first.

Commissioner Francesconi asked why development should not occur in the undeveloped west end first.

Mr. Carroll said development will continue in those neighborhoods but huge resources have been identified in this report which will encourage people to develop at greater densities.

Mr. Williams said the west end is a backwater area but once the City begins to connect the neighborhoods, things will radiate from there.

Tad Savinar, 3571 SW Council Crest Drive, 97201, member of the design team, said he was amazed to be involved in an issue which was not divisive and drew so much positive response. There is a wonderful spirit about this project and, regardless of whether density works or there is enough money, there is something significant in how the public embraced this project.

Ned Look, 770 NW Westover Square, 97210, said this is a vision and a dream and he cannot see anyone voting against a vision. He cited cases in the past where a lack of vision cost the City lots of money later.

Michael Powell, 1005 W. Burnside, 97209, said this project will greatly enhance the backwater of the west end, where there are great housing, business and cultural opportunities. People in that area strongly support the capping vision for the connections it will make. Why do the capping instead of developing the west end? The answer is to do both as it will enormously benefit the City. He said poor Burnside always seems to fall on the edge of every project and never gets any focused attention.

Ron Buell, 2817 NE 19th, 97212, said he was a proponent for removing the I-5 freeway from the east side, which Council did not agree to do. He believes that adding housing, retail and office spaces in this area would have important side effects on the neighboring blocks and increase tax benefits. He volunteered to put together a benefits statement as he realizes the project has enormous costs but believes the benefits will also be considerable.

Commissioner Francesconi said it may be due to his own lack of vision but he too is cautious about the timing. The strategy for the immediate future is how to link the central city with the Willamette and the east side. There is also the question of what kind of signal this sends about visions when so much infrastructure is needed in the neighborhoods, i.e. roads and parks, which Council is committed to doing now.

Council's efforts to preserve neighborhood livability need to be made clear and he is wary of raising expectations about things the City does not have the resources to accomplish.

Commissioner Hales said citizens need to understand that it takes time to move from vision to reality but one great thing about Portland is its willingness to try such things. He said he is struck by how a complete capitulation to the automobile has really screwed up the City and how many recent projects have been repair jobs to undo that damage. He said Council needs to look for opportunities to make the vision real.

Commissioner Kafoury said she had concerns about the propensity for planning projects like this as there are already so many on the drawing boards. She said resources have to be balanced between the neighborhoods and the downtown core. However, the energy and enthusiasm of the capping proponents has been contagious and has overcome her feeling that the City needs to attend to some other things first.

Commissioner Sten thanked the Society for its hard work. This is a tremendous vision although there is work to do in the community to meld the dreamers with those who voted down light rail. Council needs to take this dream and determine how some of its components can be done as he believes some day this will happen.

Mayor Katz said she also thinks this will happen and on the east side, too. Those who say the City has failed Burnside are right and now it is trying to repair what once was a great boulevard. People are beginning to think about a gateway from the Burnside bridge to SW 12th and for the connections between downtown and the rest of the neighborhoods. This is a vision to work on over the next 24 to 30 years, with much fine-tuning and changes down the line. But this is a grand starting point.

Disposition: Accepted. (Y-5)

Commissioner Charlie Hales

- *1711** Amend Title 33, Planning and Zoning, to change sign regulations to remove the distinction between painted wall signs and painted wall decorations (Ordinance)

Discussion: David Knowles, Director, Planning Bureau, reviewed some of the history behind the sign regulation issues. Two years ago Council, after hearing a report from a stakeholders task force, enacted new sign regulations that changed the previous relationship with the billboard companies and regulated billboards as freestanding signs. In 1997, the Bureau went to the Planning Commission to deal with the issue of painted wall signs and proposed that all signs be treated the same. At that time there was a wide variety of testimony and clearly no right answer from a public policy perspective because of the continued desire by the public to distinguish between art and commercial signage. At that point the Commission did not reach a decision. In December, 1977, because of a concern about the proliferation of wall signs, Council enacted a moratorium on new painted wall images and that was extended Citywide in August, 1998. This October, staff proposed to treat all signs as signs, including painted wall images, and at the Planning Commission level there was some testimony asking for the City to be more restrictive, particularly with non-conforming signs which many wished to eliminate or amortize. Others asked that the Planning Commission tailor the regulations to deal more

precisely with murals. The Commission wrestled with these issues and ended up asking the Planning Bureau to return with a series of options. During that time, a Circuit Court judge informed the City that he was prepared to invalidate portions of the City's Sign Code dealing with painted wall regulations because the distinction between painted wall decorations and commercial signage was not permissible. At the Planning Commission work session on November 3, the Commission ended up with the recommendation presented today. Mr. Knowles noted that the Planning Bureau made a different recommendation to the Commission than the one it adopted.

Stevie Greathouse, Planning Bureau, said the Planning Commission recommends amending the Code to treat all painted wall images as painted wall signs, regardless of content, to grandfather in all signs at their existing size unless they violate a moratorium and to exempt painted wall signs on certain building walls. Currently the Zoning Code distinguishes between painted wall signs and painted wall decorations, such as murals, and exempts painted wall decorations from the sign regulations. The judge now indicates that the City can no longer distinguish between painted wall decorations and painted wall signs, such as a Subaru sign. In order to ensure the City has a valid and defensible Code, the Planning Commission recommended regulating all painted wall images as painted wall signs but wrestled with how best to do this in terms of developing regulations that will work for the broad range of painted images now in existence, including both advertising and community murals. She showed examples of what the result would be for both commercial and non-commercial signs. Currently the zoning code regulates painted wall signs like all other wall signs, allows none to be larger than 200 square feet and sets a maximum square footage based on building frontage and the zone. The Planning Commission, in order to continue to allow creative use of otherwise blank exterior building walls, recommends allowing painted wall signs of unlimited size on certain building walls. In general, this recommendation would mean that painted wall signs in commercial, employment and industrial zones will be exempt from regulations when they are on walls where there are no ground floor windows. Painted wall signs in most residential zones and on walls with ground floor windows would continue to be limited by the existing sign regulations. Regarding non-conforming signs, the zoning code currently requires that they document legal establishment in order to be grandfathered in and that painted wall signs come into compliance when they change copy. Given the outcome of the court case with regard to existing sign regulations and, with respect to anything dealing with the content of particular signs, the Commission recommends grandfathering in all existing signs regardless of whether they can prove legal establishment and require permits only when painted wall signs increase in size. That would mean that there would be no requirement to look at the content of a sign when issuing a permit, as has occurred with the copy change permitting up until now.

Mayor Katz asked what the Planning Bureau recommended and why.

Mr. Knowles said their recommendation to the Planning Commission was to say that all signs are the same and that painted wall images would be subject to the same size regulations as other signs and included in the calculation of the total amount of signage allowed on a property. The Planning Commission did adopt the Bureau's other recommendation regarding non-conforming signage.

Mayor Katz asked what the City's legal position is regarding the Commission's arbitrary distinction between walls with ground floor windows and walls without.

Mr. Knowles said the mechanism the Planning Commission is recommending for distinguishing between secondary and primary building walls relies upon existing Code that defines the difference between the two. Technically it has to do with the kind of wall it is and the street it faces. Staff is comfortable that the mechanism is fine from a legal perspective. It is really a policy question as to whether the City wants to permit signage on the secondary walls.

Mayor Katz asked if this applied to signs on secondary walls in the Central City only.

Mr. Knowles said no, it would apply citywide. Signs on secondary walls would not be subject to any size limitation and would not count towards the amount of signage that site was entitled to under the zoning code. Effectively, painted wall images would not be regulated in those locations.

Commissioner Kafoury asked if they could be bigger than one building.

Mr. Knowles said they could be no bigger than the building itself.

Ms. Greathouse said the code currently distinguishes between painted wall signs painted directly on the walls and facia signs.

Commissioner Kafoury said this then would allow painted signs, including advertising on any wall that does not have windows on it.

Mr. Knowles said that is correct as they are not distinguishing between signage and art.

Commissioner Francesconi asked for an explanation of the Planning Commission's rationale.

Mr. Knowles said on balance the Commission thought that both art and signage contributed to the urban vitality of community and if they had to choose, they would choose not to restrict. They were uncomfortable with doing that but fell on the side of being less restrictive.

Commissioner Francesconi asked if any other alternatives were considered.

Mr. Knowles said yes but they found that either they were not legal or that the policy result would not be good. Some pushed for no regulations at all while others were concerned about primary building walls, building fronts and historic structures. There are only a limited number of options that are within the law. One end of the spectrum is no regulations and the other is to prohibit them or treat all signs the same.

Commissioner Francesconi asked whether height limits were discussed.

Mr. Knowles said it was discussed but there was no clear consensus. There was concern about murals but the Commission did not end up with the option of exempting the first story of a building.

Jeff Rogers, City Attorney, reviewed the legal framework and noted that State law prevents the City from regulating commercial speech differently from art, such as murals painted by school children. This leads to unfortunate results in a number of areas, including signs. Most people have no trouble distinguishing between art and advertising for profit and many favor placing few restrictions on non-commercial art while placing reasonable regulations as to the time, place and manner of commercial advertising. During the past year, while these code regulations have been under consideration, the Planning Commission and others have been struggling with a way to make those distinctions but Oregon courts, under Article I, Section 8 of the Oregon Constitution, do not allow this which affects many areas of public policy, including limits on public expression not desired in neighborhoods or near schools, opening public buildings to use by non-governmental groups, and door-to-door and telephone solicitations, etc. As a result, to some extent, good policy is bad law and that is what everyone has been struggling with in recent years. Regarding signs, the easiest way to deal with this would be for the sign companies to step back and recognize the public value in liberally allowing murals and other art and decide not to litigate every distinction the public wants their elected officials to make. But some sign companies have shown little inclination to take a less confrontational approach. Therefore, the City has been forced to take a second approach and while defending the extensive litigation filed by AK Media, the City is also urging the courts to refine their interpretations of Oregon's free speech provision in general as it believes the Supreme Court could allow reasonable time, place and manner regulations of speech, as is done in other jurisdictions, in a manner consistent with past Supreme Court decisions and the Constitution. Such an approach would allow good policy regarding signs and many other subjects affecting quality of life, while still fully protecting freedom of expression. Meanwhile, however, the fewer distinctions the City makes among signs of any sort, the more legally sound and defensible its regulations will be.

Mayor Katz asked about the enforcement of illegal signs once the moratorium is lifted.

Eloise MacMurray, Public Art Director, Regional Arts and Culture Council (RACC), 620 SW Main Street, 97205, asked for a solution that will both enable the community to support murals and yet protect Portland from becoming a City of signs. She shares the concern of many that Portland can become blighted with advertisements and has come reluctantly to favor some regulation of painted walls in the central City while recognizing that an adjustment process exists which might make possible the commissioning of murals such as the one on the Oregon History Center building. She supported the Planning Commission's suggested resolution reflecting the City's desire to differentiate between murals and signs should future law clarify how this might be done. She said a solution is needed which protects and encourages community murals, whether by describing what kinds of walls may have murals or at what height they may be painted. The City needs to take a position which tells citizens it welcomes their creative expression and, in particular, values community mural projects for youth and youth at risk. RAAC has found that kids who engage in constructive and creative activities are much more apt to stay out of trouble. She called for protecting the aesthetic quality of

the central core, preserving the adjustment process for murals and painted walls and facilitating the ongoing contribution community murals make.

Keith Claycomb, 3326 SW 14th, speaking on behalf of the Oregon Roadside Council, said they recognize that many large scale, non-commercial signs are attractive and are reluctant to see them classified as advertising, although there seems to be no choice. However, they would like them to be limited in size, particularly electronic signs. The Roadside Council adamantly opposes grandfathering and legalizing illegal signs which were erected during the moratorium or are in violation of existing ordinances. He said this grandfathering occurs every time the zoning code is amended which raises the question of why any sign company should follow the regulations when they know enforcement is lax or lacking.

Remedious Rappaport, Cosmo Graphics, 4402 SE 76th, 97206, said a lot of the creative ideas for dealing with painted wall signs have been omitted from what Council members have seen so far. She said it is very important that a painted wall image is indeed painted. She said the definition of a painted wall image is any wall surface with a message or application created with paint. This would exclude any previously created substrate or material attached mechanically to the wall, i.e. giant digital vinyl stickers. She said use of such materials excludes the artists, taking work away from them and reducing the quality of the images. Ms. Rappaport said her second issue regards non-complying older buildings but she believes that has been taken care of and there would not be a problem painting those, based on the Planning Commission recommendation, which is a good effort to create space for painted walls. However, while it is wonderful for artists to have the freedom and space to be as creative as possible, she is disturbed about the lack of limits as she also does not want to see the City covered by advertising. Therefore, she is proposing a height limit of 24 feet because that is the upper area of two-story buildings. This would allow good treatment for the murals and would be easy to implement, giving people the creative freedom to work and giving the business community an opportunity to share that space with muralists and having some on-premise signage that promotes the businesses. It would then be very difficult for off-premise advertisers to really dominate the visuals in that space. Third, if that seems unpalatable and Council would like to see more restriction within the 24-foot height to sidewalk area, it could require that signs between 15 and 24 feet get a permit and create a ratio of one to six feet per sidewalk space. The square footage would then be regulated and related to the size of the building for that upper area. Painters would have to get a permit and a signature from the building owner. The majority of work in those upper areas is done by professional muralists who contract with the building owner and they could deal with that process but still provide an opportunity to have murals that are not just postage stamps.

Laura Feldman, Southeast Uplift Coalition and a founding member of Metro Murals, supported Ms. Rappaport's proposal for a height limit as a way of restricting large advertisements while protecting the mural space. She opposes the regulation of murals as signs because it will functionally make it impossible to paint community murals, which are vital assets to the community. She said she gets at least two requests a month for community murals from either a business which wants it as a graffiti abatement device, a neighborhood association or youth group. She said murals are great organizing tools and

of great value in building community. She asked for Council support in establishing some middle ground such as the height restriction.

Commissioner Kafoury asked what the City can do given court interpretations that it cannot differentiate. She said height will not prohibit all other advertisements.

Ms. Feldman said she does not understand why a height restriction cannot be instituted as it will certainly prohibit the big, horrible ones.

Commissioner Francesconi said some argue that if you do not regulate at 14 feet or below it does not have much commercial value. But is that legal?

Commissioner Hales asked for a review of what litigation the City is in right now concerning signs.

Frank Podany, 715 NE Everett, 97212, submitted legal documents for the record.

Mr. Rogers said everything in the Sign Code and the moratoriums are in litigation now. The current Sign Code has been held unconstitutional in part and there are proceedings before LUBA attacking various actions the City has imposed.

Commissioner Kafoury asked Mr. Rogers if it would be better not to have the height limitation.

Mr. Rogers said he believes the height limitations are constitutional but somewhat less easily defended than an approach which makes no distinction based on height, type of wall, etc. The easiest path for the City to defend is to regulate every sign to the same extent, no matter what type or on what type of structure or wall. The Planning Commission recommendation and the height limitation are both constitutional but do open up more room for legal challenges from those who contend that they create unconstitutional distinctions based on content.

Commissioner Kafoury asked about different regulations in different parts of the City.

Mr. Rogers said they are all right as long as all signs are treated identically within an area.

Commissioner Kafoury asked about design requirements.

Mr. Rogers said that was explicitly not addressed by the court in the present litigation so at the moment those requirements remain in effect. That is an area that AK Media has at least implied it may challenge.

Commissioner Kafoury wondered if there is a way to have height limitations or design requirements within certain districts.

Mr. Knowles said one could distinguish height limitations based on geographic area but staff would recommend relying on design regulations. Council could take the more

conservative position now with respect to sign regulations and change them as the courts rule about what the City can and cannot do.

Commissioner Kafoury asked if the City can differentiate between painted walls and vinyl?

Mr. Knowles said no. If they are able to say that all images are treated the same, they do not have to get into whether vinyl is treated differently than something painted. That is why the Planning Bureau recommended that all images be treated the same. If categories are created, then the Code becomes less easily defensible.

Mayor Katz asked whether it is appropriate to discuss this now, when the City is in litigation on this issue.

Mr. Rogers said this overlaps so closely with policy decisions and there is no secrecy here about what the City is trying to do.

Bob Frederickson, 2806 SE 75th, 97206, urged Council to take the most restrictive approach possible to limit the proliferation of signs and the size, even though he likes most murals. The City in various areas needs to have a complete inventory of painted wall signs and billboards and a list of what is legal and what is not. The City should also adopt a plan to amortize commercial signage wherever it can and to take much stronger enforcement efforts in all sign areas.

Chris Thomas, representing On-Site Advertising (a painted wall sign company), said the amendments are not clear as to whether signs that would be permitted under them that are in design review zones have to go through design review. If so, that will be a big problem as design reviews call for very subjective judgments based on artistic content and the standards under which design review are conducted are nowhere near what is constitutionally required to regulate speech. He also believes the moratorium is not valid and if someone wanted to challenge it they could contend that anyone who attempted to file a sign application during the moratorium and was rejected is entitled to have it considered as though it were filed at the time Council adopts the new ordinance. If that is true they are entitled to have the application evaluated based on the now current and valid sign regulations for painted wall signs. In his company's view there are no regulations and he believes the court agrees with that. Finally, there is a technical drafting error regarding how one establishes proof that they have an exempt non-conforming sign (page 39) where it says one piece of evidence that can be submitted is a building land-use or development permit. It should say a permit that was granted or for which an application was pending as of December 16, 1997. That protects someone who had an application pending as of the first moratorium date but who did not paint the sign while this discussion was going on.

Mr. Thomas noted that he has been involved in almost every major City project for the last 25 years and really cares about what the City looks like. As a lawyer, he believes government has to have a commitment to comply with the law as it the only way to legitimately explain to the public why it acts as it does. It also provides a way for people to change laws it does not like. In this case, what is at stake is one of the most fundamental parts of the Oregon Constitution. The cases where the controversy have

arisen were decided quite a number of years ago and several years ago the voters had an opportunity to amend this exact provision of the Constitution and chose not to change it. He would be willing to bet that most people who do not like the signs voted to keep the constitution as it is and the City needs to take the good with the bad. The reason why there is a problem with so many painted wall signs now is because when this issue was first discussed by the City several years ago, staff knew there was this problem out there. They wanted to protect murals but to prevent signs and took a calculated risk to keep the sign regulations on the books as a kind of deterrent, but not one they would enforce, because they knew the regulations probably would be declared invalid. Mr. Thomas said that was huge mistake as, if the City had resolved the issue then, it would have far fewer problems now. There were several opportunities over the last 1-1/2 years for the City to resolve this so there would be fewer signs up than there are now. He does not condemn staff for that but they were not able to bring themselves to say yes to any limited number of signs when they had the chance to do it. The result was that people kept putting up signs and the deterrent effect of what was on the books has waned and almost become non-existent at this point. He asked Council to adopt something now that the City believes is legal. Do not try to distinguish between something vinyl and something painted as it will not survive legally. He said people will litigate such matters and the City will have to go through this same process again and again. It is not worth it and the City will end up with something worse than what it wanted.

Commissioner Sten asked what his position is on the Planning Commission proposal.

Mr. Thomas said it is practical more than anything else. At least for those applications pending as of December 16, those walls will be available for signs. The Planning Commission proposal acknowledges that situation and attempts to regularize it rather than fighting this constant battle. One of the problems with the suggested 14-foot limit is that it might be valid if the reason for doing so is proper but it is really clear that the reason the City wants to do that is not valid. The City wants to do it in order to distinguish between two types of communication but he does not believe the City can do something simply because it dislikes commercial painted wall signs. For legislative and regulatory reasons, they must be treated the same as murals.

Commissioner Francesconi asked about the Planning Bureau's recommendation.

Mr. Thomas said the Bureau's recommendation is basically to regulate murals the way signs are regulated. He said you run into a similar problem there because the reason for that is not that there is something wrong with community murals larger than 200 square feet. The basis for the regulation is clearly that it is okay to have something that big but the City just does not like advertising. That is not a valid basis for the regulation as it is an attempt to ban all speech because you do not like the content of some of it. The reason Council is having this discussion really does not have to do with size but rather with its dislike of a portion of the regulations which involve commercial speech.

Mayor Katz noted there seems to be a difference of legal opinion between the former and current City Attorneys.

Commissioner Francesconi asked how all these legal issues can be resolved and asked if might help to have a third legal opinion about who is right.

Mr. Thomas said he would not recommend an outside legal mediator because you will just get another lawyer. Some of these things have to be resolved by a judge. If Council adopts the Planning Bureau's recommendation, with the grandfathering clause, is there then anyone left to litigate? He said there is always a new player who sees a new opportunity and wants to litigate the issue of whether you can have a 200-foot limit as long as you have grandfathered in what is already there. The history of signs in Portland is that any disputed issues will ultimately be resolved in court. That is why he believes Council should adopt something it is confident is legal, rather than something it is just moderately sure about which defers the legal battle to future litigation. That strategy has not worked.

Kurt Wehbring, 3333 NE 18th Avenue, Chair of the City Club Billboard Committee but speaking today as a citizen, urged Council to take a firm position against wall signs and not adopt the Planning Commission's recommendation. Once a wall sign is up it will be there for a long, long time and Council should hold the line now and then work out something. There is a lot of tough litigation going on, with the City being challenged on everything and this is not the time to allow, as the Planning Commission recommendation would do, wall murals practically everywhere in town except for three districts. The City should not allow wall signs at the full height of buildings throughout the City as is proposed.

Kristie Willis, Community-Based Murals, 2946 NE Davis, said Council should also consider the other side of the issue, which is the role murals can play in involving youth in positive activities and promoting community values. She expressed support for the height restrictions but concern that the more complex the Code regulations are, the less likely it will be that community-based murals can happen in Portland. She hopes there comes a time when it will be appropriate to distinguish between community murals and advertising and questioned why people keep talking about the easiest solution rather than the best one for the community. She said her organization has found community-based murals are very effective in organizing a community and in preventing graffiti.

Commissioner Sten asked if she is comfortable with the height restrictions contained in the Planning Commission's approach. Will that leave enough places to work?

Ms. Willis said yes. She believes that a lot of those spaces are not really competing with advertising. Also, above 15 feet one has to deal with scaffolding and insurance issues.

Lee Littlewood, 2915 NE 21st, sign painter, said the legal world is so strange that any recommendations he has on this subject seem useless. He said the height limit sounds useful if it can be legally defended as keeping things down low will be useful for community murals and many commercial signs. Regarding the differentiation between painted walls and applied substrates, he said it would be nice to maintain that differentiation. For one thing, painted wall signs age well and change.

Mayor Katz said she too has seen a change in wall signs and some of more recent ones are absolutely horrible.

Paul Leistner, Research Director, City Club, said the City Club has long supported efforts to limit the negative impact of large out-of-scale signs in the community. In light of that, the Club believes the Planning Commission's proposal is inappropriate because it opens the door wide to a proliferation of signs all over the community. A good public policy is needed on this issue but this is the time for the City to be cautious. He said the Planning Bureau's proposal to the Planning Commission was a compromise that made an exception for 200-square-foot signs at a height of 14 feet or less to allow community murals. He said the City should try that first and then open the door wider at a later time if the need arises. He said the City should also consider getting some control of the easements on the sides of walls, i.e. at the end of Morrison Bridge, and turn those over to RAAC so the arts community can control what goes up on a few key walls. Regarding non-conforming signs, it is very important to maintain the distinction that they are still non-conforming. Amortization is a key issue because once these signs go up they are sometimes up for many years. Currently billboards pay property taxes on a value that is way below what those companies would want to be compensated for if they were amortized. The Multnomah County Assessor's office is interested in this issue and it is also coming up in some of the litigation where the City is having to decide the value of a billboard. The City should work with the County to come up with a defensible methodology for assigning the value of a billboard structure and this may also apply to painted walls signs. That will finally give the City a way to move forward and try to take some of the signs down and rectify the imbalance caused by trying to justify telling other people they cannot have signs when there are already 800 large billboards. Small communities all over state are dealing with this same issue but have no resources to develop these legal precedents if a large outdoor advertising company threatens them with a law suit. He said the sign industry is very happy to play hard ball with the City and it is time for the City to play a little hard ball itself on behalf of the public interest.

Arnold Cogan, prior chair of City Club billboard committee, 6436 SE Morrison, said this proposal does not comply with the Club's proposal to remove the non-conforming signs through amortization, a well-tested process throughout the country. He said passage of this ordinance will allow painted wall signs and murals in almost all parts of the City with no restrictions on height or size and would also grandfather in existing signs. These changes will proliferate more large painted wall signs. Unfortunately, combining the idea of controlling murals and wall signs sends the wrong message, throwing out the creative murals along with the unwanted signs. The City Attorney spoke of the failed option of appealing to the good will of the sign companies, but the lack of a public-spirited point of view by the larger companies appears to be a fact of life. Council faces a decision that will potentially degrade the visual quality of the town. He urged that this be returned to the Planning Bureau and Planning Commission to see if they can do better.

Alex Pierce, 650 NW St. Helens Rd., said the Planning Commission's recommendations will not end the sign companies' continual court actions but will instead give them more grounds for litigation as the recommendations create an even greater disparity in regulating all signs alike. What is the rationale for restricting most signs to 200 square feet while wall painted signs are allowed unlimited size. Also, why are some signs restricted to a maximum height of 25 feet while wall painted signs are without height restrictions. There are approximately 80 billboard applications requesting signs as high as 70 feet. He said the Planning Commission's latest actions are incredible considering its own statement in 1996 calling for "a decrease in sign size, height and number allowed

in commercial employment and industrial zones and for the promotion of more pedestrian-oriented development in a more human scale environment." If the City ever attains defensible sign regulations, grandfathering illegally placed signs will be outrageous as this will reward those who flaunt the Code while penalizing those who observed the ordinances. He said without a demand to remove the illegal signs, now estimated to number between 3,000 and 5,000, they will be added to all the previously grandfathered illegal signs and mark the beginning of yet another generation of "to be grandfathered" illegal signs. If these recommendations are passed today, the Council is playing into the hands of the sign industry which has threatened to destroy all Portland sign regulations not designed to give boundless liberties to the industries products and their placement.

Commissioner Hales clarified that Mr. Pierce's objections are to the Planning Commission's approach. He said the Planning Bureau's recommendation does not ban murals -- it limits them to 200 square feet, which is a big mural although not as large as some would like. No one is happy about having to put murals and signs in the same category but adoption of the Planning Bureau's recommendation does not mean the end of murals. What "the sign is a sign is a sign" approach does is force property owners to decide how they want to use their square footage. They have to decide whether to use their 200 square feet to advertise their business, some other business or serve some community purpose. That is one reason he supports the Planning staff recommendation instead of the Planning Commission's recommendation because it is simple, clear, consistent and more legally defensible. It also still allows some life to happen in terms of murals and other creative work. But it would force a downtown building owner to decide whether they want to advertise their business at street level or advertise some other business at 40 feet up.

Mayor Katz asked Mr. Rogers and Mr. Knowles about the status of conforming and non-conforming signs before and after the moratorium.

Mr. Rogers said wall signs applied for before the moratorium are allowed by the court order. Signs applied for after the moratorium are still prohibited, even though he suspects that will be litigated, because he believes the moratorium is not a content-based restriction and the City would have a pretty good chance of successfully defending enforcement against those signs.

Mayor Katz asked if both the Planning Bureau and Planning Commission recommendations addressed that.

Mr. Knowles said yes.

Commissioner Hales said he would like to consider some amendments today but questioned the technical provision on Page 39 cited by Mr. Thomas.

Mr. Kasting said that would be the amendment to clarify (in Subsection A-1) that evidence of non-conforming signs would include an application for a development permit. He believes that is the intent of this language which at least implicitly recognizes that an application qualifies as evidence for purposes of non-conforming status.

Ms. Greathouse said that provision lists the types of proofs sign companies could use to prove a sign or image existed prior to these Code changes and thus are grandfathered and do not require proof that they were legally established. She believes that language is sufficient.

Mr. Kasting agreed.

Commissioner Hales said there are several potential technical amendments plus the major question of the Planning Bureau's recommendation versus the Planning Commission's recommendation.

Commissioner Kafoury asked if there was a third option, perhaps mediation or the method used to pick the Pope, i.e., putting all the parties in one room until the white smoke comes out.

Commissioner Hales said there is plenty of smoke but not the kind Commissioner Kafoury has in mind. He distributed some suggested amendments.

Mr. Knowles said there are two technical amendments that staff recommends. First, in the definition of sign there is some language that needs to be amended to clarify the City's intention that its regulation of signs be content neutral.

Mr. Rogers said the language was submitted in a memo from Pete Kasting on November 16.

Commissioner Hales said one of the amendments states that: "a sign is material placed or constructed so they can be viewed from a right-of-way or another property and which convey a message or image."

Mr. Kasting said that would replace the definition of sign on Page 27 of the recommended draft.

Commissioner Hales said the amendment would replace a more verbose definition that strays into the question of content. That is one amendment he wants to put on the table.

Mayor Katz suggested that Council take up the amendments now and that if any Council member does not agree with them, a vote will be taken. Otherwise, they will be agreed to based on consensus.

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

Commissioner Hales said the other technical amendment also removes some content-based language in the River District design guidelines and is contained in his memo to Council of November 18. He moved that language. Commissioner Kafoury seconded and, hearing no objections, the Mayor so ordered.

Hearing no objections, the Mayor ordered passage of Commissioner Hales' amendment.

Commissioner Hales said the real question now is whether to take approach suggested by the Planning Commission, the Planning Bureau, or some other approach. He moved to substitute the Planning Bureau's recommendation for the Planning Commission's recommendation. Commissioner Francesconi seconded.

Mr. Knowles said the essential difference between the two is that the Planning Bureau recommendation is to treat all images exactly the same within the sign regulations, no matter what material is used or where it is placed. A sign is a sign is a sign. The Planning Commission's recommendation was to allow painted wall images without limitation on secondary but not primary walls.

Mayor Katz asked the City Attorney if he felt comfortable with the Planning Bureau's recommendation legally, compared to the Planning Commission's.

Mr. Rogers said from a legal point of view he is more comfortable with the Planning Bureau's recommendation than with the Planning Commission's recommendation because it makes no distinctions between signs. The Commission's recommendation, for instance, has the effect of allowing very large painted signs but not very large vinyl signs on the same wall. Those kinds of distinctions open the door for arguments that this favors one sort of speech over another. While he believes the City can defeat that argument, it is more complicated, makes more distinctions and is more likely to be litigated. If you start with a uniform approach it can always be relaxed later as the City sees what decisions the court is making.

Commissioner Hales said people are all very frustrated about this issue as in this situation the decision cannot be based on livability and common sense. First, because of the constitutional provision that ties the City's hands and feet and, second, because the City is in a constant legal battle with an adversary that shows no willingness to sit down and negotiate. He said he does not believe the City has any grounds to give ground here.

Roll was called on Commissioner Hales's motion to adopt the Planning Bureau's recommendation.

On the roll call, Commissioner Francesconi said as an active lawyer he tries to apply the law. In this particular case, because of the effectiveness of murals in helping youth, he tried to find a way to compromise on 14 feet, which is the amendment that he had drafted but is not offering. In listening to Mr. Thomas talk about having to apply the law whether Council liked it or not, he remembered zoning for adult businesses, which he thinks the City should have the power to regulate, but it was easy for him to say no because the constitution does not allow it. His amendment, whether constitutional or not, was clearly to allow murals and he now realizes he cannot do that. However, he disagrees with Mr. Thomas' legal opinion on the second point. He believes the City is treating signs the same and that this is legally constitutional and also the right thing to do. He said people have a right to disagree about what the Constitution is and businesses who provide advertising have a right to file lawsuits and be aggressive in protecting their businesses. That is the way the system works and he has no problems with that. With all the lawsuits out there and with the strategy the City is adopting, he is uncomfortable about the effect on art and murals despite Commissioner Hales' clarification on the 200 feet. Changing the dance at this point for wall signs is not something he feels

comfortable doing and that is why he is voting for this alternative. While he has avoided involvement until now, he will now try to help find a way to resolve this, in a way that still protect the artists, etc. He does not, however, have a preconceived notion of what the ultimate result should be.

Commissioner Kafoury said there has been at least 15 years of wrangling over this issue and she finds this huge litigious battle appalling. She will support this and say a "sign is a sign" but is very concerned about the effect on art, as to her there is an obvious difference. She is outraged that people cannot sit down and resolve some of these issues together. However, government has probably been overzealous in trying to get a handle on this and imposing its design values on the community and this has truly been a non-productive exercise. She voted aye.

Commissioner Sten said while Council would like to find some distinctions, the reality is there is no distinction so it must choose between three options: 1) limit all the signs; 2) limit signs to 200 feet (which is what the majority has already done); and 3) place limits, not on size but on the type of building. It is a basic trade off between more and larger murals in return for many more advertisements. He thinks Portland's very zealous approach from citizens and government on aesthetics is a lot of why this is such a great City but does not share the enormous disdain for these signs that has fueled this never-ending legal battle and he is not willing to place a limit on the size as some of his favorite art is larger than 200 feet. He voted nay.

Mayor Katz said the way Portland looks is a very important value and the City works very hard to maintain the visual aesthetics and support the notion of public art in public places. Unfortunately, the City is in a legal battle and without that she believes something could be crafted to satisfy everyone. But it cannot. Mistakes have been made in the past and the City is now paying dearly for them because the illegal signs are now going to stay and will proliferate and proliferate. She voted to support this in order to give the City the most restrictive position possible so the issue can be addressed once and for all. Another possibility is to have a conversation with the building owners, especially in areas where the City provides some financial support to improving the district. For instance, in the Central Eastside industrial area owners have indicated they would seriously consider moving the wall signs in their community if the City committed to helping make their Burnside a grand boulevard. If the City can provide incentives, then in return it could ask building owners to begin saying no to these wall signs. She will try to pursue that.

The vote on Commissioner Hales' amendment passed. (Y-4; N-1, Sten)

Council then voted on the ordinance itself after determining that was appropriate.

Commissioner Sten said he does not support this ordinance but will vote aye to respect Council's will that this take effect tomorrow.

Disposition: Ordinance No. 172882 as amended. (Y-5)

- 1712** Declare the City's support for murals where they can be encouraged without also allowing a proliferation of painted wall signs (Resolution)

Discussion: Mr. Knowles said this resolution was forwarded at the request of the Planning Commission and states the City's interest in being able to make a distinction between art and commercial signage.

Commissioner Francesconi asked if this is needed.

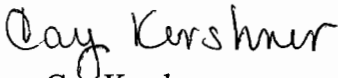
Mr. Knowles said it was forwarded as part of the Planning Commission's recommendation to Council.

Commissioner Hales requested that this be returned to his office.

Disposition: Referred to Commissioner of Public Safety.

At 5:20 p.m., Council adjourned.

BARBARA CLARK
Auditor of the City of Portland


By Cay Kershner
Clerk of the Council