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CITY OF  
**PORTLAND, OREGON**

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**OFFICIAL  
MINUTES**

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A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 9TH DAY OF DECEMBER, 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; Ben Walters, Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

Agenda No. 1775 was pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

**CONSENT AGENDA - NO DISCUSSION**

- 1771** Accept bids of Pro Landscape, Inc.; Keen Services LLC; A-Line Enterprises, Inc.; David G. McLean dba McLean Landscaping Maintenance; and R & R Property Service, Inc. to furnish nuisance abatement services for \$207,340 annually (Purchasing Report - Bid 99058)
- Disposition:** Accepted; prepare contract.
- 1772** Reject all bids for two pumps for SE 112th pump station (Purchasing Report - Bid 99065)
- Disposition:** Accepted.
- 1773** Accept bid of J.R. Merit, Inc. for Tryon Creek Wastewater Treatment Plant primary effluent pump replacement for \$48,150 (Purchasing Report - Bid 99075)
- Disposition:** Accepted; prepare contract.
- 1774** Accept bid of Baseline Industrial Construction, Inc. for installation of the fuel cell power plant for \$199,474 (Purchasing Report - Bid 99090 SMP)
- Disposition:** Accepted; prepare contract.

**Mayor Vera Katz**

- \*1776** Establish the rules of procedure for allowing the City to negotiate with the apparent low bidder when all bids exceed the City's cost estimate (Ordinance)
- Disposition:** Ordinance No. 172912. (Y-5)

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- \*1777** Authorize the Mayor and Auditor to execute a labor agreement between the City of Portland and the Portland Police Commanding Officers Association relating to terms and conditions of employment of represented personnel (Ordinance)

**Disposition:** Ordinance No. 172913. (Y-5)

- \*1778** Create one Senior Engineering Associate position, one Technician II/Engineering position and one Public Works Construction/Inspection Supervisor position in the Bureau of Environmental Services in accordance with the Personnel Rules adopted by the City Council (Ordinance)

**Disposition:** Ordinance No. 172914. (Y-5)

**Commissioner Charlie Hales**

- 1779** Authorize an appeal to the Oregon Court of Appeals from a Multnomah County Circuit Court decision concerning Zoning Code sign regulations (Resolution)

**Disposition:** Resolution No. 35745. (Y-5)

- \*1780** Authorize a contract and provide for payment for Erv Lind Stadium improvements (Ordinance)

**Disposition:** Ordinance No. 172915. (Y-5)

- \*1781** Authorize a contract and provide for payment for Overlook House facility improvements (Ordinance)

**Disposition:** Ordinance No. 172916. (Y-5)

- \*1782** Authorize a contract and provide for payment for Pittock Mansion renovations (Ordinance)

**Disposition:** Ordinance No. 172917. (Y-5)

**Commissioner Erik Sten**

- 1783** Accept completion of the Inverness and Force main, Section "C" - Project No. 5836, and authorize final payment to Copenhagen Utilities & Construction, Inc. (Report; Contract No. 31274)

**Disposition:** Accepted.

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- 1784** Accept contract for the construction of the Capitol Highway pump station as complete for a total cost of \$705,499 and make no further payments or release retainage to J.W. Fowler Company (Report; Contract No. 30510)

**Disposition:** Accepted.

- 1785** Accept completion of the Fazio, Russellville and Airport Way pump stations, Project No. 6328, and authorize final payment to McCoy Electric Co., Inc. (Report; Contract No. 31528)

**Disposition:** Accepted.

- \*1786** Authorize a contract and provide for payment for the NE Alameda sewer reconstruction project, Project No. 6264 (Ordinance)

**Disposition:** Ordinance No. 172918. (Y-5)

- \*1787** Authorize a sole source agreement with Cornforth Consultants, Inc. in an amount of \$216,966 to investigate alternatives to control or reduce groundwater seepage from the Bull Run Dam #2 spillway approach canal and provide for payment (Ordinance)

**Disposition:** Ordinance No. 172919. (Y-5)

- \*1788** Authorize the Chief Engineer of the Bureau of Water Works to approve and accept easements and other real property interests and agreements needed for public water system purposes and provide for payment (Ordinance)

**Disposition:** Ordinance No. 172920. (Y-5)

- \*1789** Authorize the Chief Engineer of the Bureau of Water Works to release or dispose of easements and other real property interests and agreements no longer needed for public water system purposes (Ordinance)

**Disposition:** Ordinance No. 172921. (Y-5)

**REGULAR AGENDA**

- \*1775** Authorize Intergovernmental Agreement with the Oregon Department of Transportation and with the Portland Development Commission for the purpose of constructing and maintaining Willamette Greenway improvements on ODOT-owned property beneath the Marquam Bridge on the west side of the Willamette River (Ordinance)

**Disposition:** Continued to December 16, 1998 at 9:30 a.m.

**Mayor Vera Katz**

1790

Accept Second/Third quarter 1998 Police Internal Investigations Auditing Committee Monitoring report per City Code 3.21.085(5) (Report)

**Discussion:** Bob Ueland, Police Internal Investigations Auditing Committee (PIAAC), summarized the work of the Monitoring Committee, which he chairs. He said timeliness in handling complaints to the Police Internal Affairs Division (IAD) has steadily declined and the monitoring committee feels this seriously undermines the process. For instance, in one case a year elapsed between the time all the interviews were completed and the finding was issued. The committee believes IAD needs to implement better case management practices and perhaps Council should consider having the citizens advisors monitor open cases as well as those that have been closed. Finally, the monitoring committee believes the quality of investigations has been declining and that better training in investigative techniques is needed. The disposition letters to complainants should also contain more explanation. Another concern regards motorists left stranded after their autos are towed. If an officer demonstrates poor judgement in such instances it could expose the City to liability. The committee also believes officers and supervisors should adhere to bureau timekeeping procedures, particularly the recording of on- and off-duty time. The bureau can also improve its handling of service complaints that do not qualify as misconduct. Finally, the committee recommends that the Police Bureau seriously consider appointment of an ombudsman.

Mayor Katz asked about the advantage of auditing open cases.

Lisa Botsko, staffperson, PIIAC, said it is very difficult to assess why time lags have occurred after a case is closed. Allowing PIAAC to track the progress of cases would help it be more current and timely. There is nothing in the Code that restricts PIIAC from monitoring only closed or adjudicated cases.

Mayor Katz asked about the monitoring committee's statement that there was often a lack of corroborating testimony in the IAD reports and its assertion that unsupported opinion needs to be supported by some clear evidence.

Ms. Botsko described one case where an allegation had been made that an officer had caused an injury and where the examining IAD officer, in exonerating the officer, found the injury consistent with the Police officer's description of the incident. She personally does not have the medical expertise to determine if that is correct and would like to see the Bureau avoid this kind of statement.

Captain Bill Bennington, IAD, responded to the concerns raised in the report. He said many of these suggestions for more timely investigations have already been implemented. Regarding service complaints, he said that is a concept that just went into effect September 1st with the new General Orders and misconduct will now be handled through service complaints. Another big change is that the early warning system now includes misconduct complaints along with service complaints. A service complaint is investigated at the

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precinct level and if it meets certain criteria, then a performance review is conducted. The towing General Order gives officers discretion to issue tickets but they have limited discretion afterward and there may be special situations where this needs to be looked at. He described staffing shortages in IAD and efforts to overcome them, including adding a fifth investigator and hiring a retired sergeant to do intakes. He agreed that the current case management system is inadequate and a new one is needed to help them do better tracking. Captain Bennington said a recent nationwide study is underway of civilian advisory groups, in which Portland State University participated, and he believes the results will be positive.

Commissioner Francesconi asked if accountability for timeliness is coming from the top down, as PIAAC recommends.

Captain Bennington said yes. New time lines have now been established and, since the new General Orders went into effect in September, the average time for an inquiry has dropped dramatically.

Commissioner Francesconi asked him to respond to the recommendation to set timeliness goals for all phases of the investigative process.

Captain Bennington said the new General Order, which will take awhile to kick in, sets time lines from the date a complaint is made all the way through the investigation.

Commissioner Francesconi asked him a series of questions about how complaints are handled and how many each investigator is assigned.

Captain Bennington said investigators are assigned by precinct, with no cap on the number of cases, and explained why they believe that is a better way to handle them. He also described IAD's role in reviewing outstanding cases to determine their status and said the case management system should allow them to better address timeliness and other issues.

Ms. Botsko explained the timeliness goals the monitoring committee would like to see adopted for each phase of the investigation so both staff and the committee has some sense of what is a reasonable amount of time between the first and last steps. She said that is not currently happening. Regarding the capping of cases, she disagreed that it would preclude the precinct commanders from being able to monitor cases for patterns and trends. That can be done without saddling one officer with 30 cases to handle all at once.

Mr. Ueland said a time sheet should be incorporated with each case so that the person performing the audit has some idea why a case might have taken 14 months or whatever. That has been a constant issue for the Advisors for at least three years.

Captain Bennington said that issue was addressed with the last change in the Bureau's internal operating procedures and explained the timelines they set out, along with their method for chronological record keeping.

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Mayor Katz said if the timeline cannot be met, that needs to be noted on the file.

Dan Handelman, Portland Copwatch, PO Box 42456, 97242, said he believes one reason for the drop in appeals is because the public has lost faith that elected officials have the final say after Chief Moose disagreed with Council in two recent cases and made findings that no misconduct had occurred. He said people also ought to be able to file their complaints with a review board that has independent investigative power, not with the Police. It is important that City Council have final say. He said the PIIAC Code revisions are taking too long and criticized the fact that the staff person is not working full time as promised. Deaths that occur in police custody and all shootings should come under PIIAC's purview, even if they do not go through Internal Affairs, as those are the cases which arouse the most citizen concern. PIIAC's recommendation that people whose cars are towed should get home safely should apply to everyone across the board. PIIAC ought to have ability to review open cases and he also requested that the Monitoring Committee's reports be placed on the Council's Time Certain Agenda. Finally, even though PIIAC cannot cover the cases that arouse the community, i.e. the bean bag shotgun case, it is important for someone to investigate whether police have the right to use them for crowd control as that is not a part of the current general orders.

Commissioner Hales moved to accept the report and Commissioner Francesconi seconded.

Commissioner Francesconi said he hopes the timeliness issues are resolved through the new General Order.

Commissioner Kafoury said the majority of Council support documenting why some cases take so long. To have a case take close to a year without any explanation is a disservice to the public.

**Disposition:** Accepted. (Y-5)

**\*1791**

Accept a \$2,044,330 grant from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance for various criminal justice programs (Ordinance)

**Discussion:** Dave Butzer, Police Bureau, said the Police Bureau feels fortunate to be the recipient of this grant which will allow it to distribute funds between the Bureau and other community partners. An oversight committee has been established to review and prioritize the funding request. He explained how the City's match of \$227,000 will be funded and what items, including equipment and overtime, the money will be spent on. He noted that grant funds will not be used to fund ongoing programs.

Commissioner Francesconi asked if there are any options that would allow the City to target crime prevention funds by geographic area.

Captain Butzer said there is no set formula about what is allowed and there are a lot of opportunities right now for using these one-time funds.

Mayor Katz said determining where the money goes will be a collaborative effort among the partners, which include the Multnomah County District Attorney and Sheriff.

**Disposition:** Ordinance No. 172922. (Y-5)

**\*1792** Accept a \$224,205 grant from the U.S. Department of Justice, Office of Community Oriented Policing Services (Ordinance)

**Discussion:** Captain Butzer said this grant allows the redeployment of officers to the streets by having them perform fewer non-supervisory tasks in the precinct. The difficult part of this grant is that it becomes an on-going expense to the City and needs to be included as part of the five-year financial plan.

Mayor Katz asked if the Bureau is still considering using civilians in human resources.

Captain Butzer said the Bureau is testing that out right now by rehiring retired officers.

**Disposition:** Ordinance No. 172923. (Y-5)

**\*1793** Approval for the Portland Police Bureau to establish a relocation loan policy for sworn officers and move forward to develop implementation (Ordinance)

**Discussion:** Mayor Katz said there is a crisis in the recruitment of qualified police officers. The Bureau needs 80 new officers by February and is trying to be as creative as possible in its recruitment efforts.

Captain Butzer said the job market is very tight right now and fewer and fewer local candidates have been applying. Because of the high number of pending retirements, the Bureau felt it needed to take some extraordinary steps, including hiring a recruiter to help market the City more effectively. The recruiter encouraged the Bureau to look beyond State borders and recruiting efforts are underway at military bases and other states, especially Hawaii. About 30 officers in Hawaii indicated they would be willing to relocate but Portland is competing for them with many other cities which offer higher wages. To be more competitive, the Bureau would like to establish a relocation loan fund, allowing new hires to defray moving costs. The ordinance has a sunset clause to reflect the unique situation facing the City at this time.

Commissioner Francesconi asked if some limited exceptions could be made to the college degree requirement if individuals have particular skill sets, i.e. military training or bilingual abilities.

Captain Butzer said the four-year degree does not seem to be an impediment to recruitment as Seattle only requires a high school diploma and it is having difficulty hiring enough recruits.

Dan Handelman, Portland CopWatch, said he hopes that this loan program also encourages

new recruits to become residents of the community so that Portland has true community policing. He expressed concern about recruiting people with military training as the goal of community policing is to move away from a paramilitary type of operation.

Commissioner Sten said he would support some additional incentives to encourage officers to live in the community although the City already has one such program with the banks.

Mayor Katz said the Bureau hopes to see the results of this recruitment outreach soon. She said the bureau wanted to increase starting wages as they are not competitive but the police union's executive committee did not approve that. Wages across the board will be one of the collective bargaining issues.

**Disposition:** Ordinance No. 172924. (Y-5)

**Commissioner Erik Sten**

**1794** Request the Portland Development Commission to update the River District Housing Implementation Strategy and monitor implementation efforts (Resolution)

**Discussion:** Commissioner Sten said when the River District Urban Renewal District Plan was passed several months ago, there were several requests to update the housing implementation strategy. In this case, the City has a lot more money to spend on housing so it is important to review the housing strategies and make sure the money is targeted to the right places and that the City comes up with a strategy to do housing at 80 to 100 percent of median income. This resolution speaks to the need for a more vigorous look at what categories of housing are being built and to examine the desirability and feasibility of subsidizing family-sized housing.

Margaret Bax, Portland Development Commission (PDC), said the housing department at PDC has reviewed this with the Planning Bureau and Housing and Community Development Commission (HCDC) to determine what level of public outreach is appropriate.

Bruce Allen, PDC, said they look forward to seeing what this update reveals because so much has been happening in the last five to seven years. He noted that the old housing strategy adopted by Council was based largely on the 1990 census so there may be some surprising findings which could not be anticipated back then. He said this kind of update should probably be done every five years.

Commissioner Kafoury said the updated housing policy scheduled to come to Council tomorrow calls for doing a housing management plan every two years. That will give the City a better handle on who lives downtown and who might move downtown. She noted that huge subsidies are required for large units and the City needs to determine if families with kids will really choose to live here.



Commissioner Sten said the River District is poised to become the most interesting mixed-income neighborhood in the country.

**Disposition:** Resolution No. 35746. (Y-5)

**S-1795**

Establish a standardized affordable housing exemption policy for City System Development Charges to provide equal access to exemptions for all developers of affordable housing (Resolution)

**Discussion:** Commissioner Sten moved to adopt the Substitute. Commissioner Kafoury seconded and, hearing no objections, the Mayor so ordered.

Commissioner Sten said when the Transportation and Parks System Development Charges (SDCs) were adopted it became clear that Council needed to have more discussion about their effects on housing prices. The Transportation SDC exempts non-profit developers and the Housing Authority of Portland if they build housing that is affordable at 60 percent of median income for rentals and 100 percent for home ownership. Rental units must also comply with the permanent affordability criteria. The Parks SDC uses a credit pool approach that is available both to profit and non-profit organizations while Water Bureau and Bureau of Environmental Services (BES) SDCs do not exempt either as they were in place before the issue of affordable housing became so pressing. He has tried to shape a standardized policy for all SDCs so that such charges are consistent across the board, rather than taking three different approaches to the same problem. He said the Utility Review Team (URT) and City managers have prepared a report which did not, however, come to a conclusion about what to do. There are both political and substantive issues he would like Council to discuss to see if it agrees on a policy. After that the policy would be sent to the City Attorney and the affected bureaus to work out all the legal and financial issues. His recommendation is to have a standardized exemption from all SDCs for developers, both profit and non-profit, who build affordable housing, using the 60 percent of median income for rental and 100 percent for homeownership as the base line. He also recommends standardizing the exemption process through PDC. Currently about 20 percent of housing subsidy dollars are being transferred back to SDCs so to some extent this is a matter of which pot the money comes from. While the cleaner way may be to transfer the money from the General Fund, money is just not available from that source. The Public Utilities Review Board (PURB) will look at some of sewer and water issues and while he does not expect it will concur with this approach, he would like its help on implementation. One recommendation is to implement the commercial piece of the Parks Bureau's SDCs so it will have a full funding base like the other bureaus. In the meantime, Parks has the credit pool as a source.

Ken Rust, Office of Finance and Administration (OFA), said his office raised some concerns about the timing of this issue with Commissioner Sten as there are a number of unresolved issues which it believes still need more work.

Mayor Katz asked if the amendment helps.

Mr. Rust said not especially because it still requires that bureaus prepare budget requests based on lower SDCs. They believe there are a lot of financial issues which should be fleshed out before the policy is adopted.

Dave Hasson, OFA Utilities Review Team (URT), said the team would like to see these issues addressed more thoroughly. These issues include whether support for affordable housing should go directly through the budget process or in this more indirect manner where it is not identified as a housing item in the budgets of the various bureaus because it is foregone revenue. They also do not know whether this will have any material effect on the supply of affordable housing. Will the benefits of exempting SDCs merely end up in the hands of the developers or will they support the tenants of these properties? How is the City to deal with the fiscal impacts to Parks and Transportation, bureaus with serious financial needs? These are not unresolvable issues but there needs to be more thorough discussion. There are a number of legal issues also. Finally, both the Sewer and Water Committees of the PURB were only just briefed on this so they cannot offer a recommendation today.

Commissioner Sten said he does not disagree with the issues raised by OFA and URT but believes that two thirds of the questions raised by Mr. Hasson were answered when Council adopted the policy on the Transportation and Parks SDCs, which already exempt the vast majority of affordable housing from these fees. Rather than reopening whether that is the right policy, his purpose is to determine if those exemptions should be extended to the small amount of affordable housing not already covered. He did not want to engage citizens in a lengthy process over a policy question he thought had already been thoroughly debated by Council. He does understand the questions raised, however, and that is why he wanted to refer it back for work on the legal and fiscal implementation specifics. This is simply a question of whether the policies should be standardized as he hears no one at Council wanting to repeal the exemptions, which is the heart of what Mr. Hasson is saying.

Mr. Rust said there are some substantial concerns for BES and Water, which have historically not exempted those SDCs and which have tried to allocate costs on a cost-of-service basis. Changing that could have some substantial financial and rate impacts, as well as legal and credit impacts and these are new issues that have not been fully discussed by Council as yet.

Mr. Hasson said the rate impacts to BES would range from one-half to two percent per year.

Commissioner Sten pointed out that the two bureaus in question (BES and Water) are ones he is in charge of and ones where he will be proposing the rates for next year. He has probably already had 20 discussions with the PURB on cost-of-services principles. He fully understands those issues but today he is making a policy recommendation. What Council will see in the rate proposal is a clear indication of the fiscal impacts. He said this rate increase should not be looked at outside the context of the entire rate proposal.

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Commissioner Francesconi asked if Mr. Rust favored all bureaus having the same policy in general.

Mr. Rust said not necessarily, as there are different philosophical bases for recovering costs and a "one size fits all" approach may not be consistent with the over-arching rate philosophies upon which the rate systems are built. While it may be convenient to be uniform, that may not serve the City's need to defend rates in a businesslike operation.

Commissioner Francesconi asked if this would apply to general fund bureaus as well as the enterprise bureaus.

Mr. Rust said there is a different cost recovery framework there. For instance, there are many Parks Bureau costs where they do not expect full cost recovery.

Commissioner Francesconi asked what happens if one city policy, promoting affordable housing, contradicts another one, such as taxing affordable housing.

Mr. Rust said that is a philosophical debate Council needs to have. He is uncomfortable saying that the City is going to run an enterprise like a business and then not charge for certain services in order to achieve a particular end. If Council wants to support affordable housing maybe the way to do it is not to change the cost recovery scheme for the enterprise bureaus but to assign it a higher priority within the General Fund, where it is not at odds with the cost recovery framework for the utilities.

Mayor Katz said Council had the same discussion when it talked about reducing the franchise fees. It is a legitimate question.

Commissioner Francesconi asked if the focus should be on the product rather than the producer of the product, i.e. distinguishing between profits and non-profits.

Mr. Rust said their only question is how to pay to achieve that goal. Is it appropriate to do that by increasing water and sewer rates and foregoing revenue? OFA's concern is with intermingling cost recovery concepts in a way that raises legal questions.

Commissioner Francesconi asked if the primary problem OFA has with this is how to finance water and sewers.

Mr. Rust said the biggest concern is what happens to the cost recovery framework for the utilities when the City starts providing discounts and waivers. He said when the bond ordinances for the Water Bureau were crafted, there was a lot of discussion about how much flexibility Council should be given to keep from providing free service. The bond holders have a big interest in making sure the City collects all the money it can from everyone who uses the system.

Commissioner Sten said it should not be implied that this small policy step will affect bond ratings.

Mr. Rust said bond holders are still concerned by the high sewer rates faced by the Bureau. This only increases the rate by one or two percent.

Commissioner Sten said implementation of this policy will not increase the rates by one or two percent. He said he knew the URT team would disagree about this but in the overall context of how rates are set, one Council decision out of context does not set the rates.

Mr. Rust said the URT team felt this kind of discussion would best be held in a work session so staff and Council can knock around some of these issues. That is why they think this process is a little out of synch.

Mr. Hasson said URT's concern is not focused primarily on the finances of utilities. It is also concerned about legal considerations across all bureaus and about the effectiveness of this policy. He said right now they do not have enough information or analysis to know how effective it will be.

Mayor Katz said she can understand the legal concerns with regard to the enterprise funds. She asked about the legal concerns with regard to the General Fund.

Pete Kasting, Senior Deputy City Attorney, referenced the November 10 report (pages 6-9) and noted that while there are differences between Enterprise and other funds, there are issues that would potentially apply across the board. For instance, ORS says one of the purposes of SDCs is to provide a uniform framework for their imposition so one could argue that if the City went ahead and did things that were not addressed in the statute, it is deviating from a uniform framework and from the legislature's policy. That is just an argument and there is no case law to indicate whether would be a serious defect or not, although an equal protection issue might be raised. Currently non-profit affordable housing developers are eligible for exemptions from Parks and Transportation SDCs but for-profit developers are not. If different groups are treated differently one must show there is a legitimate purpose that is being rationally furthered by the distinction. There is a rational basis for treating non-profits and profits differently as non-profits are by definition doing the public's work and that is why they are generally tax exempt. Regarding the enterprise issues, one concern is that the enterprise funds have sold large amounts of debt which was issued with covenants which are contractual promises to the bondholders and need to be examined to make sure the City's rate-making methodology remains consistent with them. For example, for Environmental Services, there is a requirement that the rate-making methodology be based on reasonable cost of service, operated in a sound, efficient and economic manner, etc. Whether those contractual requirements are met is a financial, economic analysis issue, not a legal one.

Commissioner Hales asked to what extent the City relies on SDC revenues in terms of bond repayments and assurances to bond holders as compared to the rates. SDC rates could drop because of the exemptions or they could drop because of a recession. Are SDC revenues relied on for repaying those bonds?

Mr. Hasson said the City does not rely on them a lot but a reduction would make a noticeable impact on the rate if the SDCs had to be covered by ratepayers instead.

Commissioner Kafoury asked if there is a difference between exempting fees for enterprise funds and the General Fund. She said what appeals to her about Commissioner Sten's proposal is that it provides consistency.

Mayor Katz asked if there are specific Code and Charter sections that apply to water and sewer rates.

Mr. Kasting said the Charter requires that expenditures of water funds be related to the expenses of the water utility and that sewer fund expenditures be connected with the purposes of the sewer utility. An argument can be made that foregoing revenues is an expenditure. The counter argument is that if those charges are not imposed in the first place no revenue is being given up.

Commissioner Kafoury asked where he fell on that.

Mr. Kasting said an argument can be made either way and there is no case law in Oregon to indicate how the courts would hold. These are not made up arguments as they have been brought up by the development community in the past.

Commissioner Kafoury said to her this is not a matter of expending money, just foregoing revenue.

Mr. Kasting said the purpose of the analysis in this report is to provide some guidance on the issues identified and existing case law. Dolan applies across the board to all the SDCs.

Commissioner Kafoury asked him if he could support exempting the fees in court.

Mr. Kasting said yes, although there are tests that have to be met and would require witnesses who can testify that the financial and economic tests have been met.

Mayor Katz asked what if it can be shown that rates have increased because of these exemptions for a portion of the community.

Mr. Kasting said he would defend Council's action, based on what argument is raised.

Chris Thomas, 2611 NE 12th, 97212, said one unforeseen effect of Oregon's land-use law is that it has contributed to making housing unaffordable by limiting the amount that is available. That issue needs to be addressed so the City can maintain its economic diversity. A recent report shows that the costs of new development are close to \$125,000 and there has been a trend for cities to try to capture the bulk of those costs through SDCs. Those factors have made it difficult to attract developers to build affordable housing. It is really important to provide some relief in that area but he believes it would be very

difficult to show that the relief provided through SDCs will actually produce more affordable housing. One has to assume that if the economic cost is substantially reduced, developers will be more likely to do it. He strongly supports SDCs as a good target for relief, especially coupled with a 60-year affordable housing obligation.

Mr. Thomas said then the question is where do the dollars come from? One can assume dollars will be lost due to the exemptions for Parks and Transportation and that either General Fund will cover those lost dollars so the projects can be done or the projects will not be done and there will be fewer Parks facilities and streets, depending on how much money is exempt. However, it does not work that way for Water and Sewer projects as those are projects that must be done to serve the development. Those projects will have rate impacts. His view is that this is not a cost-of-service issue but one related to tax policy. Essentially, to achieve affordable housing, the City will tax the rate payers. While that is not necessarily bad, he questioned whether water and sewer rate payers are the right group to tax. For instance, the largest rate payers include the Portland School District, the hospitals and the Parks Bureau, indicating that the amount of water one uses does not bear a connection to the proper basis for tax policy, which he believes is one's ability to pay. Regarding budget policy, he said the problem with having something absorbed within a rate base is that one tends to have a lot of things in there without having any discreet decision made in a budget process about how much the City is going to put into this function. Particularly in terms of helping low-income people, that is a problem. Right now there are many programs out there and no one can tell how many dollars the City puts into them or what proportion of the budget goes to them. The resolution is a good idea but the funds should come from the General Fund rather than the ratepayers.

Mayor Katz noted that Mr. Kasting made a distinction between revenues foregone and the use of sewer and water rate money for a tax policy.

Mr. Thomas said he has not read Mr. Kasting's document, which has to do with the Charter argument about what water and sewer funds can be used for. If he were defending this policy for the City on that basis, he would feel quite confident. Dolan is more difficult as most water ratepayers are paying a full SDC and then absorbing a part of someone else's.

Mayor Katz asked Mr. Rust to consider this as an actual expenditure in the budget rather than having it hidden.

Kelly Ross, Metropolitan Homebuilders Association, said it seems to the Homebuilders that the bottom line for the City's SDC policy is that there is an inconsistent policy based solely on a housing provider's status with the IRS. If the goal is to provide affordable housing it should not matter who is doing it. SDCs do hit harder on lower-cost housing and they believe that the City should strive to have a consistent policy that does not discriminate between providers.

Ed Marx, Well-Made Homes, a long-time home builder, said non-profits do excellent work but cannot produce nearly enough homes for those who need them. This proposal will

drive market forces to produce the kind of housing Portland needs so desperately. There is a need to produce about 80 percent in the affordable range and right now only about 20 percent is in this price range.

Jeff Fish, builder, said the only difference in profit and non-profit affordable housing is the price of the land. He believes both are doing the same kind of public work. He said he is now paying \$45,000 for a lot and struggling to produce homes at \$145,000. SDCs do have a significant impact on the number of people who qualify for home ownership because of the overall cost.

Commissioner Kafoury noted that Multnomah County is no longer getting tax foreclosed properties to give to non-profits so the non-profits are facing the same problems finding affordable lots.

Mayor Katz said she agrees with the need to have a consistent policy for both for-profits and non-profits but she does have questions about this approach. There is a tax policy question about whether to pay this with General Fund dollars versus exempting one group from SDCs. She is also a little bothered about the sewer/water rates issue. She said she is afraid the City will not be able to show this as an expenditure for affordable housing that is used to lower the cost. The City ought to be able to show that this includes this as a reduced cost to the developer. She asked if foregone revenue can be identified as an expenditure.

Mr. Rust said that would be a departure from standard budgeting practice. The same question has arisen with tax abatements so SDCs are not the only example where the City is foregoing revenue and subsidizing a particular Council policy goal. He cannot tell today just how foregone revenue can be included in the budget process. It would be easy, after the fact, to tell how many units were built of a certain type that received the exemption and calculate that impact on a particular bureau. But for budgeting, it would be hard to project. He said OFA could probably create a shadow revenue loss for something like this, knowing that those foregone revenues will have to be offset either with reduced expenditures or higher revenues. OFA could also look at broader tax policies where decisions are made that impose a revenue loss to the City, whether through the Enterprise Funds or the general fund, in support of a particular Council goal.

Commissioner Francesconi asked if OFA would be more comfortable if it clearly stated in the "further resolved" section that staff had to resolve the outstanding legal and financial issues before the next budget deliberations.

Mr. Rust said it would certainly be better to make the budget decision after they understood what those impacts are.

Commissioner Sten said he believes there is a legitimate reason why the Water and Sewer PURB committees and the URT team would not want to do this, even though he believes it is fiscally and legally solid. What he wanted to see was whether Council agreed with

him about a standardized policy and then return with the best legal way to do it. He said there should be a way to quantify the cost and if a legal reason arises to show that the City should not go forward with this policy, then it should not do so. No one will be exempted from anything until the implementing ordinances come through and he fully expects the PURB to oppose them.

Commissioner Francesconi said he thinks an informal discussion is needed to get more clarity on the legal and ratepayer issues. This also needs more work on the fiscal side. Regarding Parks, he said the commercial SDC may come in at a much lower rate if there is no nexus between community and neighborhood parks. That would be a significant fiscal impact on Parks. He interprets the last paragraph of the resolution as indicating intent but expressing the need to examine the legal and financial issues.

Commissioner Sten said he is personally asking Council members to affirm their desire to have a consistent policy for all four SDCs and offer affordable housing exemptions to both for- and non-profits if they agree to long term affordability guidelines based on price. Then they can work out the problems. He said he would withdraw this in a second if Council could come up with an ongoing source of housing money but after eight years it will not happen this year.

Commissioner Francesconi said he believes the policy is fine legally except as applied to sewer rates, where he needs more information. He asked if he is free to vote against the implementing ordinances if, after passing this resolution, he finds reasons not to support them.

Commissioner Sten said yes.

Commissioner Francesconi said if, for instance, 78 percent of Parks SDC revenues would be lost and a commercial SDC does not happen or produce much revenue, then the cut for the Parks SDC could be 50 percent. If that happens is he free to vote against the implementing ordinances.

Commissioner Sten said he is looking for help from the Parks Commissioner in finding the best way to implement this policy. If the commercial SDC does not pass, then the whole thing will have to be reconsidered.

Mayor Katz said she is still confused as she believes the third "resolve" should be the first "resolve" as while all Council wants to treat for- and non-profit builders the same, she wants to get the other issues resolved before putting the budget together.

Commissioner Sten said he has studied sewer and water issues in depth and will bring in a lower rate increase than was projected. This is not a major line item in the water or sewer budgets. He does not think any legal questions will be resolved until the City is sued and Mr. Kasting will then inform him about the best way to go forward.



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Commissioner Francesconi said a balance is needed between being aggressive and touching all bases and he does not believe that balance was quite achieved here. He said the City needs to have common policies across bureaus and there should be a minimum of policy conflicts. He also believes there is a crisis in affordable housing and there are not enough General Fund revenues to deal with it. However, he is still wrestling with the legal issue for sewer and water rate payers and the philosophical issue of what rate payers should pay. Regarding rate increases, no Commissioner has been as aggressive as Commissioner Sten in trying to keep the rates down.

Commissioner Hales said he thinks the Substitute is better and this has been a good discussion, which reflects some tension among the bureaus which the Commissioners then end up reflecting. Having worked on Blueprint 2000, he sympathizes with trying to get all the bureaus to agree on the same policy as they often get into huge thickets of detail. This resolution goes to heart of the issue of how to treat the utility bureaus and whether they are part of an overall structure of City bureaus or powers unto themselves. He believes that, within reason, it is appropriate to ask the Water Bureau or BES to advance the City's general agenda and share some of this burden. He is prepared to support the resolution, which affirms the policy, and then work on the details. He is still concerned about the specific impact, especially on Parks, and would rather work more on that than fail to enact a common sense policy. The homebuilders have made it very clear that Council should base its decision on common sense and not legal risk assessment.

Commissioner Kafoury said she appreciates seeing this brought forth before she leaves office but pointed out there is still no money for housing in the budget. She proposed to show across the board what all the bureaus are spending each year on affordable housing so Council can judge the impact. PDC has also worked very hard to get more data as to what it costs the City in terms of tax abatement. In the meantime, the City is falling behind in producing housing and there is no permanent fund to pay for it. However, significant progress has been made since the first Transportation SDC project was proposed, which had no exemptions at all for even the non-profits. The City simply has to find a way to keep the cost of producing new housing down.

Commissioner Sten said the future of the City is dependent on keeping blue collar people within the City. He said after applying exemptions for affordable housing to the Transportation and Parks SDCs, he felt it would be hypocritical not to apply them to Water and BES as well, despite the legal arguments. When those SDCs were originally put in place, the City did not have an affordable housing crisis which is what has prompted Council to make these exceptions. He believes the policy is relatively clear, though controversial, and appreciates the Council's stand on this issue.

Mayor Katz said she never understood why there was a distinction between the two affordable housing classes in the first place. She said she would have voted no on the first resolution but thinks the Substitute provides better safeguards before the budget is put together. The process is important as the policy needs a thorough review by the PURB, which should have an opportunity to present its side. She asked for a memo from Mr.

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Kasting about the legal implications for sewer and water rates, which Council has argued about over and over. She sees this as an expenditure issue for affordable housing and believe OFA should look at all the expenditure issues, including tax abatement and foregone revenue, so Council can see how much money is actually spent on affordable housing.

**Disposition:** Substitute Resolution No. 35747. (Y-5)

**Communications**

**1796** Request of Jeffrey Shaffer to address Council about Zest for Life (Communication)

**Disposition:** Continued to December 16, 1998 at 9:30 a.m.

At 12:05 p.m., Council recessed.

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 9TH DAY OF DECEMBER, 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; Ruth Spetter, Senior Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

**Commissioner Jim Francesconi**

- 1797** Liquor license application for Belmont Inn, Inc. dba Hollywood Bar & Grille, 3634 NE Sandy Blvd., Dispenser Class A liquor license (change location), Favorable with Letter of Caution recommendation (Report)

**Discussion:** Mike Sanderson, License Bureau, explained the applicant's proposal and the neighborhood's issues, parking being the major concern. While the applicant points out that there is parking on both sides of Sandy the neighbors contend patrons are more likely to park in the neighborhood. Another concern for neighbors is the 2 a.m. closing time. Mr. Sanderson noted that the applicants have 32 years of experience and have prepared a plan to take care of problems as they arise. They have offered to call patrons who park in the neighborhood and will post signs asking patrons not to do so. The Bureau has found no legal basis to warrant an unfavorable recommendation but in recognition of the neighbors' concerns, the Bureau believes it is fair to add a caution that there is a potential for problems.

Mayor Katz asked if hours can be restricted.

Mr. Sanderson said OLCC has the ability to do so but one has to provide a case for the restriction.

Mayor Katz said Portland is trying to be a family-friendly city.

Mr. Sanderson said they do ask some outlets to voluntarily roll things up at 1 a.m.

Commissioner Francesconi asked why parking is not a legal reason to deny licenses.

Mr. Sanderson said the City does not have ordinances that say if a business serves alcohol, it must adhere to a higher standard for parking.

Matthew Traxler, stockholder in Belmont Inn, said they envision a high-end operation

which will respect its closeness to a neighborhood. They will offer top shelf liquors and imported beers to keep people from drinking a lot of beer. They expect 60 percent of their sales to be in food.

Rico Diordano, 3671 NE Senate Street, Laurelhurst Neighborhood Association, said the business also offers video poker and pool in addition to liquor and stays open until 2 a.m. He said the neighborhood feels this type of operation is inconsistent with City livability probabilities and will be a step backwards for livability, especially as a traffic study is underway and the City will be spending a lot of money to deal with those problems. Adding one more liquor outlet to Sandy Boulevard will also likely reverse the progress the City has made in ridding the area of prostitution. The applicant says there are 20 off-street parking spaces but those are shared by four businesses. There are actually only about 15 spaces in a very small parking lot with only one access and Sandy is unlikely to be used for parking because it is extremely difficult to cross. Realistically, it is impossible to determine where people are parking and the applicants made no response to neighborhood concerns about noise and odor.

John Calcagno, 3734 NE Senate, 97232, said the Inn will begin serving liquor at 11 a.m. in the mornings and there is a concern that people who have been drinking will be leaving the Inn at the same time children are released from school.

Mark Traxler, part-owner and builder of the project, described the steps the applicants had taken to meet the neighborhood's concerns, including foregoing putting up a billboard and taking care of a problem with the owner of an adjacent motorcycle shop. He said the owners have put a lot of money into the building and this should be a quality operation.

Sammy Kahl, half-owner of the property, said they have owned the property for many years and believe the parking is very safe. He said his son and daughter live right in back on 37th and he would do nothing to jeopardize their safety.

Bradley Traxler, co-applicant, said he has lived in Laurelhurst for 35 years. They approached this on the basis that if all the permits were done correctly they would get their license and had no idea this would cause such an uproar. He said they understand people are concerned about prostitution but do not feel they will add to the problem.

Commissioner Kafoury moved to approve the application with a letter of caution. Commissioner Sten seconded.

Commissioner Francesconi said while parking appears to be a huge issue it does not provide legal grounds to deny a liquor license.

Commissioner Hales said Council cannot itself decide to deny or grant a license and the City does not want to be in the position of having the OLCC deny its recommendations. The City must be careful to stay within the confines of its authority and not use liquor license applications as a basis for making land-use decisions.

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Mayor Katz said the applicants have a good track record and meet the criteria for a liquor license but she hopes there can be more conversations between the owner and neighborhood. Currently Sandy Boulevard is not what anyone wants it to be and the City does need conscientious businesses there to improve it.

**Disposition:** Favorably recommended with letter of caution. (Y-5)

At 2:35 p.m., Council recessed.

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 10TH DAY OF DECEMBER, 1998 AT 2:00 P.M.

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

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

**1798**      **TIME CERTAIN: 2:00 PM** - Amend Goal 4, Housing, of the Comprehensive Plan by replacing the Goal and Policies 4.1 through 4.9 with a new Goal and Policies 4.1 through 4.15 (Ordinance introduced by Commission Kafoury)

**Discussion:** Commissioner Kafoury said this is a very big day for all the people, especially Cathey Briggs, who have worked so hard on this. Today Council is being asked to consider the housing policy recommended by the Planning Commission, which updates the Comprehensive Plan's housing policy for the first time in 20 years, and to also adopt a resolution dealing with implementation.

Cathey Briggs, Bureau of Planning, presented the Planning Commission's recommendation to amend the City's Comprehensive Plan housing goal, one of 12 goals in the plan which together provide a policy framework for neighborhood livability, land-use planning and housing assistance programs. She said the housing goals are organized around four issues: 1) supply; 2) safety and quality; 3) opportunity; and 4) affordability. She indicated how the long-term housing goals link to other Comprehensive Plan goals and explained that specific strategies have been designed to reach those goals and keep the policy alive. Those strategies must be flexible to respond to changing economic and market conditions as well as housing needs. She stressed that there are no zoning or Comprehensive map changes involved. She said the Planning Commission, Portland Development Commission (PDC), Housing Authority of Portland (HAP) and Housing and Community Development Commission (HCDC) held a joint public meeting and then met separately to discuss and approve the policy. The Planning Commission has forwarded the policy with some proposed amendments addressing two key issues. The other Boards and Commissions have been advised of the amendments and, in general, support them. The first amendment addresses the relationship of housing policy to public schools and adds an objective that calls for supporting a vital school system by attracting a proportionate share of the region's families. The other objective supports increasing the school population as a way to prevent widespread school closure. It reflects the Commission's belief that Council may wish to look at school policy overall. Another issue they discussed at length was Policy 4.7, which calls for balanced communities and the creation of housing opportunities through economic diversity. The Planning Commission wanted to establish a regional benchmark against which to measure income distribution, housing diversity, etc. This will rely on

implementation of regional growth management plans and fair share strategies. In addition to bringing the policy up to date and making it consistent with other policies, the policy sets a preferred direction and a long-term vision for the future in the face of a changing environment. The policy is intended to provide constancy through the ups and downs of economic cycles and allow flexibility. That is why the policy has been separated from the strategies which will change as housing needs and market conditions change. The policy recognizes that housing issues cross jurisdictional boundaries and that housing availability is a function of both production and preservation of existing housing. Other concepts call for a diversity of housing to meet the needs of an increasingly diverse population. Housing affordability is of increasing concern as is the need to look at housing availability across a continuum, ranging from emergency to transitional to permanent.

Ms. Briggs said the new recommended Goal 4 calls for providing housing of different types, tenures, density, sizes, costs and locations to meet the needs, preferences and financial capabilities of current and future households. It accommodates many of the State requirements for Goal 10, which requires that housing be provided for people of different income levels. It also puts the City's policy in a regional context. She reviewed the individual policies, which show no preference for one income group over another even though very low income renters are currently feeling the brunt of the changing housing market. All the policies will be adopted as an interim measure since the Planning Bureau is going through the process of categorizing all the Comprehensive Plan goals, policies and objectives in order to respond to some land-use cases. The housing policies and objectives are balanced internally not just within the housing goal but also with other goals and policies. Regarding the housing strategies, Ms. Briggs noted that the Planning Commission did not vote on the appropriateness of the strategies but has provided advice on how policy conflicts might be resolved during implementation. She said at the workshops people showed the most interest in implementation and this policy attempts to provide a consistent and rational system for evaluating various implementation strategies.

Rick Michaelson, Portland Planning Commission, stressed how unique an opportunity it was to work with all the boards and commissions and get a balanced picture of all policy aspects. He said it is important to continue this collaboration.

Neil Barros, HCDC, 1613 SE Elliott Avenue, Gresham, said this has been an amazingly cooperative process and HCDC thoroughly supports adoption. There is still the unsolved problem, however, of how to prioritize the strategies, which sometimes conflict, especially in certain geographic areas. He said while they appreciate the Planning Commission's concern about schools they question whether this is the proper place to state it. HCDC would like to take an active role in prioritizing the policies.

Mayor Katz said she had just learned that the number of first-time homeowners has declined in the City.

Ms. Briggs said the home ownership rate is as high now as it was in 1970s and over the last seven years many more homeowners have been added, many of them first-time home

buyers. Many housing programs are geared to first-time homeowners so she has not heard anything about a decline in the numbers.

Mike Saba, Planning Bureau, said it may be that the percentage of first-time home buyers is smaller but in general the amount of home buying has boomed because of favorable interest rates and other factors. In terms of absolute numbers, Portland's population is almost 200,000 larger than it was in the 1970s so he would guess there would be more first-time home buyers as well.

Commissioner Francesconi noted an American Housing Survey which indicates that first-time home buyers in Oregon actually declined from 33 percent in 1986 to 17 percent in 1995.

**Disposition:** Passed to Second Reading December 16, 1998 at 2:00 p.m.

**1799** Accept Section III (Policies, Objectives and Strategies) of the Comprehensive Plan Housing Policy Report to Council from the Planning Commission and accept the preliminary recommendations from the Housing Policy Steering Committee on Housing System Improvements (Resolution introduced by Commissioner Kafoury)

**Discussion:** Commissioner Kafoury said she is certainly aware of the conflicting values in the housing policy and that it is somewhat meaningless without an implementation strategy. The next step is to connect the programs with the policy. This is not the point at which Council sets budget priorities but some housing system improvements will be required. She is very happy to see that, for the first time, all four groups are talking collectively about housing.

Ms. Briggs said everyone recognizes the policy is dependent on implementation and many people have expressed a need to know the City's short list of housing priorities. Exhibit D in the resolution is the Planning Commission's attempt to deal with implementation and recognize the potential conflicts. The commission felt it was important to be explicit about what the trade-offs are when there are conflicts. Exhibit E contains the preliminary recommendations from the Housing Policy Steering Committee about how to keep coordination efforts alive. The Committee focused on three key functions that need to be coordinated: 1) problem solving; 2) housing data collection; and 3) housing planning and delivery, which involves research and evaluation. The Committee also talked about a comprehensive housing budget that gives a clear picture of what the City is doing.

Steve Rudman, BHCD, said this resolution forges a framework for action on the policy. While it is important not to let the policy sit on the shelf, it is also important to acknowledge how marginal City intervention is regarding the housing market. He said housing groups need to think of ways to stimulate private investment and fill the gaps as well as build on the many past recommendations. BHCD also hopes to coordinate these efforts with Blueprint 2000.



Baruti Artharee, PDC member, said one way to meet the continuing need to tighten coordination is to expand the Steering Committee to include the Office of Finance and Administration (OFA) and the Bureau of Buildings. He said this policy framework will be helpful in setting priorities, resulting in a more coordinated effort.

Denny West, Director, HAP, said this policy requires active management. The report assumes housing policy is complex and volatile and that the market is really the key factor, making the City's role somewhat problematic. This also means the City is much more caught up in trade-offs as well and some sort of mechanism is needed to manage these. Because the commission form of government is less stable than some, it is important to counterbalance it with some kind of structure. HAP's primary focus is at the project initiation stage where it is very important that all players are brought to the table to make sure there are no conflicts between bureaus or with Council policies. Overall, this set of proposals makes a lot of sense.

Commissioner Kafoury said the City needs to be ahead of things more than it has been. She presented a housing action plan prototype that Ms. Briggs has prepared.

Ms. Briggs said the prototype proposes a way to evaluate a long laundry list of priorities in order to come up with a short list and appropriate budget allocations. She said the prototype has not yet been through the prioritization process.

Commissioner Kafoury said the City has had a rough strategic plan for some time but this will allow it to adopt a clearer overall policy. At this point it was decided it was not worth trying to pull all the organizations together structurally even though there are still issues of accountability.

Mayor Katz said she appreciates knowing the priorities but stressed the need for flexibility so the City can respond quickly to opportunities which may come along.

Mr. Artharee said he feels comfortable with the recommendations in Exhibit E and looks forward to continued discussions with all the players, including OFA, on the action plan's priorities as well as working on improvements to the housing delivery system.

Commissioner Francesconi said he likes the emphasis on rehabilitation, regional housing policy and the section on humble housing. He said the public needs more education about the necessity for regional investment in housing.

Commissioner Sten said this is a tremendous piece of work and provides a remarkably better framework to work with. He likes the focus on developing more resources and believes the City needs to tell the financial institutions what it would like them to do. The organizational suggestions work well, probably because the people in the organizations have reached a higher level of cooperation. Unfortunately, however, housing trends are not where they need to be, so having this framework is important.

Mayor Katz said this is one of Commissioner Kafoury's lasting legacies to the community.

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She appreciates the effort it took to form this team and is committed to its continuation after Commissioner Kafoury leaves office.

**Disposition:** Resolution No. 35748. (Y-5)

## **REGULAR AGENDA**

### **Commissioner Charlie Hales**

**\*1800** Amend Section 34.30.030.B.7 of Title 34, Subdivision and Partitioning Regulations to be consistent with Title 33 to allow land divisions creating lots less than 50 feet wide (Ordinance; amend Title 34)

**Discussion:** Cary Pinard, Planning Bureau, noted that Council had already dealt with this issue once but, because the Bureau discovered a problem with its first notification, this is back again. She said the original purpose of this amendment was to correct a conflict between Titles 33 and 34 regarding lot width sizes. In Title 33 in the "a" overlay zones it was possible to build to the R2.5 density in certain cases, getting two units on 5,000 square feet instead of one. Council has made that policy clear ever since it was adopted as part of the Albina Community Plan. However, there is a provision in Title 34, which staff was not aware of, that requires a 40 by 40 building footprint, not counting the required setbacks, even though Title 33 says it is okay for the footprint to be much smaller than that. She gave several examples of situations where this has created conflicts. She noted that in order to encourage infill Council changed the Code to allow people to create a 4,000 square-foot lot in R5 zones if the overall density is not exceeded. A lot, for instance, that is 40 feet wide is not wide enough to include the side setbacks and would therefore not comply with Title 34. The proposed amendment would state that this requirement in Title 34 would no longer apply but Title 33 would. The original ordinance passed in September said the 40 by 40 requirement in Title 34 was not intended to apply in certain cases and that it would be changed. In 1991, when staff changed Title 34 to comply with periodic review for Goal 5, it tried to set clear and objective standards for some environmental, landslide hazard and flood plain areas. As it was written, it accidentally applied to other areas, such as the examples she has cited. When staff returned to the Planning Commission the second time, there was more opposition and the Planning Commission's recommendation changed somewhat. The amendment recommended by the Planning Commission would still allow some land divisions that would result in narrower lots, as promoted by Title 33, but with the condition that no adjustments be required, whether for density adjustments or anything else, on the infill lots. It would also apply to the "a" overlay zone, as long as there were no adjustments to R2.5 requirements and the 40 by 40 requirement would continue to apply in environmental zones, landslide hazard areas and land in the floodplain.

Ms. Pinard said basically what the Planning Commission is saying is to fix this situation but only on sites where there are no adjustments. That revision is shown in Exhibit B.

Commissioner Hales said he has tried to untangle this situation but not with much success. He asked how long the 40 by 40 regulation has been in existence, what was its original purpose and how does that fit with current housing policy. Does it still make sense?

Ms. Pinard said the 40 by 40 regulation has been in effect in Title 34 since 1991.

Sarah Bradley, Planning Bureau, said this regulation was not applied, except in environmental zones, landslide and flood plain areas until December, 1997. Then staff took a closer look at it and decided it should apply to all sites. In July 1997, the Hearings Officer ruled that variances could not be granted to the 40 by 40 requirement because undue hardship could not be shown. That left them with no way to address the 40 by 40 requirement.

Ms. Pinard said the original 40 by 40 regulation was intended to solve some problems the Land Conservation and Development Commission said needed to be fixed regarding natural resource areas. The 40 by 40 regulation applies only to minor land divisions, not regular subdivisions which go through a more extensive discretionary review. To her, the regulation was a ball park thing which said while there may be some hazard areas on your land, if you can find a 40 by 40 chunk it is all right to go ahead and divide the minor partition. When staff read the language more closely in 1997 they realized that was not exactly what it said. At that point staff said if Planning was going to enforce exactly what it said until the Title 34 rewrite is completed, it had better tell people they needed a Title 34 variance in these situations. Those variances were being granted in cases where they felt the regulation was not intended to apply until the Hearings Officer denied one, ruling that the hardship criteria could not be met. Ms. Pinard said in the Title 34 rewrite they are treating buildable sites in hazard areas in a different way and no 40 by 40 requirement is planned.

Commissioner Francesconi asked if staff's recommendation is different than the Planning Commission's.

Ms. Pinard said the Planning Commission was not comfortable with the readoption of the original ordinance and had additional concerns. The Planning Commission proposed some amendments which at the time staff felt would be okay but upon reflection realized would be very difficult to enforce. For example, the Commission proposes no adjustments for density or for any other adjustments on that lot. Upon review, staff felt uncomfortable prohibiting all future adjustments and it was unclear from the Commission's discussion whether this restriction was to apply only the first time someone applied to build a house. She said houses are often not built until quite some time after the minor partition is granted, making this difficult to track and enforce. It also seems unfair if someone needs a slight adjustment some years in the future when they remodel. It would be easy, however, to tell people they could have no density adjustments when they do the division. She assumes that would be the regulation in place until the new Title 34 is presented. Staff recommends that the prohibition be limited only to density adjustments, not all adjustments.

Amanda Fritz, Portland Planning Commission, said the Planning Bureau's proposed amendment illustrates the difficulties of trying to promote infill goals and protect neighborhood character at the same time. Development is not always planned at the same time land division occurs so if a lot is divided that can go forward as a separate process while what kind of house will go there is determined much later. A major tenet of the proposed Title 34 rewrite is that since one does not always know what will go on the lot, there needs to be some certainty that there will be room for a reasonably-sized house on any that are created. The Planning Commission leans towards believing that setbacks and the distance between houses are a definite part of neighborhood character. In Title 33, when there are substandard lots in single-family zones which allow you to create two lots, you have to meet specific standards in another part of the Code for those substandard lots, including adjusting the setbacks between the existing home and the new home to make sure they are the same distance apart as the rest of the neighborhood. She said 80 percent of lot divisions are three lots or less and many are minor partitions. This is not a minor amendment as it affects a lot of the lots being created. It is more than density. She said a suggestion that only adjustments for density be prohibited was not supported by the Commission.

Mayor Katz asked what she would recommend.

Ms. Fritz said she supports the Planning Commission's recommendation. She said she is interested in doing something different in the "a" overlay than on R5 lots where the cumulative impacts of dividing those lots has not been examined. She said while it seems reasonable to divide one lot into two -- one 6,000 and one 4,000 square feet -- if you start allowing adjustments to setbacks and density, that may not be reasonable. She said she wants to wait for the Title 34 rewrite so everything will mesh together. Right now the 40 by 40 regulation acts as a safeguard in the R5 area as without it one cannot tell what the approvable minimum dimensions for an R5 lot would be.

Nancy Donner, Ash Creek Neighborhood Association, said she does not know whether she is for or against this but more time is needed to think about it. She urged Council not to act today.

Christine Cook, attorney for five neighborhood associations and 15 individuals, said this amendment should be rejected until the entire Title 34 rewrite is adopted rather than wasting the City's resources to consider and reconsider this small piece. This proposal and the recommendations from the Planning Commission and staff are all inconsistent with that rewrite as it does not make sense to create a window of opportunity for some developers who could build under this amendment but would then be precluded from doing so in a few months when the Title 34 rewrite goes into effect. She said this amendment is justified by staff as meeting the original intent of the requirement but that is not substantiated in the language of the ordinance that adopted it. She said this requirement has been on the books for seven years and need not be changed now to be consistent with some theoretical original intent. Staff suggests that the amendment is

justified by the notion that Titles 33 and 34 have to be exactly the same but this is not true as they ask different questions. She urged rejection.

Commissioner Sten asked what her clients' aim is. He noted this started as a fairly modest cleanup for a few buildable lots where there was not much opposition.

Ms. Cook said without the 40 by 40 regulation, the adjustments to Title 33 allow land divisions that are not consistent with neighborhood character. She said in the Title 34 rewrite there is a buildable area requirement for 40 by 55.

Commissioner Francesconi noted that the Planning Commission amendment would allow no adjustments. What would be the concern there?

Ms. Cook said the Planning Commission recommendations are certainly more desirable but her concern is that they do not fit in the context of the Title 34 rewrite and there is a buildable area requirement in that which is not addressed in the Planning Commission's recommendation.

Commissioner Kafoury asked if the contention that the new Code will contradict this proposed change is wrong.

Ms. Pinard said it is partially wrong and partially right. The reason staff wants to make this change now is because the Bureau has been processing the 40 by 40 requirement for most of the time it has been in effect, in the way they thought it had been intended, not as it turns out to have been written.

Ms. Bradley said when staff discovered that the original amendment Council passed had a procedural error, they were in the middle of processing 15 different applications that are waiting at this point.

Commissioner Kafoury noted that these applications came in under a certain set of rules and that is why these changes are recommended. People have acted in good faith and bought property or made plans thinking the rules were a certain way.

Susan Feldman, Development Review, Planning Bureau, described some of the confusion and frustration that applicants seeking adjustments to their land divisions have experienced as a result of this conflict between the two Code titles. When people applied for the adjustments this summer their applications were rejected and then when the new amendment was adopted in October they reapplied. Then, when staff found there was a procedural error, those people were asked to withdraw their applications a second time.

Commissioner Francesconi asked how many of them needed setback adjustments.

Ms. Bradley said they do not know because unless there is an existing house on an existing lot, staff would not know if setbacks are needed until the developers come in for building permits. The adjustments are only for width, depth or lot size density.

Commissioner Francesconi asked what staff would think if Council said no adjustments would be allowed either for density or setbacks.

Ms. Pinard said density adjustments are easy to administer because they come up when a developer does the minor partition but setbacks are difficult to track because often no house is proposed on the vacant lot when the application is made. Adjustments allow one to balance certainty with flexibility through a discretionary process, on a case by case basis, to determine whether the intent of a requirement can be met in some other way. Staff does not want to assume an adjustment request is always wrong. Many times adjustments result in better design and staff is reluctant to make a blanket prohibition on them.

Jack Reynolds, 5246 SE 111th, said his application for a minor partition on two lots adjacent to a new development has been pending for over a year. He supported the Planning Commission's revised recommendation. He said people should not be left in limbo while the Title 34 rewrite is completed. He disagreed that good looking houses cannot be built on shoehorn lots.

Will Stevens, Land-Use Co-Chair, Beaumont Wilshire Neighborhood Association, said all the confusion justifies setting this aside until the Title 34 rewrite is completed. There is not enough understanding about its overall impact. If a procedure has been sailing along for a specific period of time and all of a sudden the neighborhood associations take issue with that procedure, Planning staff's response is to change the law, which he thinks is wrong. He said an immense amount of consideration is given to developers but much less to the neighborhoods. This amendment will directly impact the livability of the neighborhoods. The Planning Commission amendment will allow neighborhoods to preserve the historic quality of adjacent lots and prevent shoehorning, which can have many dire consequences on a neighborhood. He noted that the Planning Commission initially supported this amendment in October but when it was brought back for reconsideration, the result was a split vote, three to three.

Commissioner Sten asked about lots in Beaumont as an example.

Mr. Stevens cited a situation on NE 41st Avenue with an existing structure where the division line would be a shared driveway. The neighborhood is concerned about what kind of structure could be put on the property to the left of the driveway that would preserve the character of the neighborhood. The property was bought by two real estate developers.

Commissioner Sten said he has seen beautiful houses on 7th and Graham street that are pretty skinny and he believes their compatibility with the neighborhood is more a matter of design than size.

Mr. Stevens said the base zone design standards are also important but there will be a detrimental impact on the neighborhood if houses are shoehorned into R5 neighborhoods

which do not already have such skinny lots. One cannot ensure every home on those lots will be well designed and in character with the rest of the neighborhood.

Commissioner Sten said you could also have a beautiful skinny house instead of a vacant lot.

Mr. Stevens said he would not consider the property on 41st as a vacant lot but as part of the existing property, which they propose to subdivide. It does not meet the density standard.

Mayor Katz asked when Council could expect to see the design standards.

Ms. Pinard said about the same time as the Title 34 rewrite.

Steven Yett, Vice Chair, Cully Association of Neighbors, said this reflects a series of mistakes on the Planning Bureau's part and in this case more deliberation is in order. While the lots affected by these portions of Title 33 and 34 are only a small part of development in Cully, they tend to draw the most ire from citizens as they are seen as examples of bad planning for the sake of infill. Planning staff has gone to the wall on this issue for the developers but citizens deserve just as much consideration. This is a thorny issue that would best be addressed later in the Title 34 rewrite.

Kirsten Crane, 4848 NE 41st Ave., 97211, said fixing the problem only seems to be making things worse. She does not have a clear feeling one way or the other on the issue but is concerned about the built-in safety factors that would disappear if this amendment is approved. She agreed with staff that the Planning Commission proposal was not thought through as it would be a bad idea never to allow any variances on a lot, even 20 years from now. That amplifies why this issue deserves greater study before moving forward. She also sympathizes with the property owners but believes they were given misinformation by the City and in order to rectify that, the City has decided to change the law rather than change the information. Lot size does not dictate good or bad design but getting rid of this requirement now does not leave any safety net in place for the neighborhoods, which are trying to ensure good design.

Matt Carter, Land-Use Committee, Central Northeast Neighbors, said the fact that developers were told they could apply and then they could not is not the fault of the neighborhoods. He said this project has been a disaster where nothing has gone right and he sympathizes with everyone involved. In the beginning staff went wrong because there was no public involvement, which violated Goal 1. He said it was only after the neighborhood associations appealed to LUBA that staff decided not to go forward with an illegal law and proposed to amend it. He said a lot of time has been wasted both by staff, the citizen volunteers and the developers, who have been yo-yoed around. He asked Council to retain the current language in Title 34 and let this be fixed properly in the rewrite.

Harry Schumacher, one of the applicants caught up in this yo-yo process, described some of the problems he has had because of this situation. Regarding the partition on NE 41st with the shared driveway, he said this accomplishes one of the City's goals, which is to build houses that are not overcome by garages. He said Council should do the right thing and allow the applications in limbo to proceed under the policy in place at that time, rather than waiting for the Title 34 rewrite. If these applications need adjustments the neighborhoods will have input at that time. The Planning Commission amendment will not work as it will make the existing 40 by 100 lots in many of the neighborhoods he works in illegal.

Frank Hebbelin, 4041 NE 41st, said he owns the oversized lot next to the lot on 41st that has been described and there is no way someone can build a house there that will fit in the neighborhood. The lot is not vacant. He said the neighborhood is firmly against this kind of infill and questioned why the City cannot wait.

Jeff Fish, representing Fish Construction and the Homebuilders Association, said no one likes infill in their own neighborhood but the City does have a series of regulations that allow lots to be split off of larger lots. There is one glitch, the 40 by 40 requirement, which should be fixed. He urged Council to pass the amendment and allow the adjustments. When a developer applies for a partition to split a property, a notice is sent to the neighborhood which then has a chance to respond. Once a person receives a lot division, then the person doing the building has to get a building permit and, if he needs an adjustment, there will be another review. If adjustments are not allowed, more problems may be created and the neighborhood may not get what it wants. He noted that at least 15 people are currently hung up in the process and the 40 by 40 rule has been in effect for seven years without hurting anybody. He sees no reason not to go forward with this since the rewrite and base design standards are not yet in effect.

Barry Daigle, 2204 NE 16th, said he believes he was misled by Mr. Knowles regarding the neighborhood's position that environmentally sensitive areas, as defined by Title 34, should include conservation and historic districts. Mr. Knowles assured him at one point that the neighborhood's goal to ensure that any future development be compatible with neighborhood character could be met by creation of a plan district. But he was later told that plan districts are not likely to be approved unless the criteria can be applied to all the land within them. He believes the Title 34 provision regarding lot size in environmentally sensitive areas should include the less than 1,300 acres that are classified as conservation or historic districts.

Corbin Shays, land development consultant, 2123 SE 12th Ave., said his company does quite a few infill projects and he sees an increasing number of partitions that this 40 by 40 requirement will throw right out the door. Title 33 has an adjustment process that takes care of seeing that an intelligent design goes in on these smaller lots. Each case will be reviewed and there is no reason for this one piece to stop the whole process.

John Wolz, Land-Use Chair, Irvington Neighborhood Association, said the issue here has



nothing to do with density. What the neighborhood is worried about is the ambiguity and the lack of clarity about whether front setbacks will be included in the 40 by 40 calculation. Title 34 needs to pass as one document, not as a lot of individual amendments.

Mayor Katz asked if design is dealt with during the adjustment process.

Ms. Pinard said when adjustments are requested the approval criteria look at the purpose of the original requirements and at the impact on neighborhood character so to the extent that the impact from an adjustment can be mitigated with a design solution, design can be considered. For instance, if an adjustment is requested to place something closer to the street, closer attention is paid to the front facade.

Mayor Katz said she would like to separate the issue of the applications in limbo from this but is not sure that is possible.

Commissioner Hales said he does not think that is possible.

Linda Meng, Chief Deputy City Attorney, said if Council does anything other than readopt the previous amendment, the City Attorney's office would like additional time to evaluate the issue of the pending applications.

Mayor Katz said if Council is not prepared to act today, it should close the testimony and leave the matter on the table until the City Attorney reports back on the pending applications.

Commissioners Hales and Kafoury agreed.

Commissioner Sten asked if that meant three Council members planned to change what was adopted on October 7, which gave those property owners certain rights. Waiting implies that Council wants to change that ordinance.

Commissioner Francesconi said he thinks staff has tried to deal with the situation and not allow adjustments for density, thereby giving more protection to the neighborhoods without hurting the people who have applications pending. He is leaning towards allowing that but would first like to see how much harm that would do to those applications.

Commissioner Sten asked what Council is asking the City Attorney to bring back.

Mayor Katz said some Council members are concerned about the applications in limbo and also concerned about density, neighborhood character and the lack of design standards for infill. They want to know the legal implications if they do not act today.

Commissioner Sten said Council cannot know the legal impacts until it knows exactly what it is adopting. He asked what information he will get on the various proposals between now and the date the vote is taken.

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Ms. Pinard said the City Attorney does not need any further review if Council simply readopts the decision it originally made on October 7. The readoption fixes the procedural mistake that had been made.

Ms. Meng said that means people who applied previously could reapply as they have the same status as if they had applied under the original amendment.

Commissioner Francesconi said if Council votes to wait for the Title 34 rewrite, which is what the neighborhoods want, that creates an unfair trap for some of the developers. He is leaning towards the staff recommendation, rather than the Planning Commission's, both of which seem to give more protection to the neighborhoods. However, he is not prepared to vote until he and the neighborhoods have more time to analyze this. Two other Council members indicated they would prefer to wait a week to review the staff and the Planning Commission's recommendations before deciding if they wish to adopt either of those or reaffirm their previous decision.


Commissioner Hales said staff and the City Attorney may do more work on this but he does not want the Planning Commission to spend one more minute on this at the expense of working on the new subdivision Code and infill design regulations.

Mayor Katz said no more public testimony will be taken but Council will deliberate in public next week.

**Disposition:** Continued to December 17, 1998 at 2:00 p.m.

At 4:45 p.m. Council adjourned.

BARBARA CLARK  
Auditor of the City of Portland

  
By Cay Kershner  
Clerk of the Council