



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 20TH DAY OF JANUARY, 1999 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. 79 was pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 67 Accept bid of Andersen Pacific Contractors, Inc. to furnish John Luby Park improvements for \$359,400 (Purchasing Report - Bid 99071)

Disposition: Accepted; prepare contract.

- 68 Accept bid of Dirtworx, Inc. to furnish SE 30th/31st and Division Street intersection improvements for \$88,108 (Purchasing Report - Bid 99096-SMP)

Disposition: Accepted; prepare contract.

- 69 Accept bid of James W. Fowler Co. to furnish SE 26th and SE Cora Street sewer diversion and repair for \$211,593 (Purchasing Report - Bid 99106)

Disposition: Accepted; prepare contract.

Mayor Vera Katz

- *70 Amend contract with PublishRight Incorporated (Ordinance; amend Contract No. 31536)

Disposition: Ordinance No. 173016. (Y-5)

- *71 Pay claim of estate of Susan Wagor (Ordinance)

Disposition: Ordinance No. 173017. (Y-5)

- *72 Agreement with Multnomah County, acting by and through its District Attorney's Office, for detectives trained in child abuse investigations to work on evenings and weekends (Ordinance)

Disposition: Ordinance No. 173018. (Y-5)

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- *73** Appoint Mark Paresi to the position of Assistant Police Chief above the midpoint of the pay grade (Ordinance)

Disposition: Ordinance No. 173019. (Y-5)

- *74** Donation of a vehicle from the National Insurance Crime Bureau to the Portland Police Bureau (Ordinance)

Disposition: Ordinance No. 173020. (Y-5)

- *75** Authorize contract with Kinetic Computer Solutions for personal computer software training (Ordinance)

Disposition: Ordinance No. 173021. (Y-5)

- *76** Establish one position of Police Lieutenant, Bureau of Police, G.R.E.A.T. Program and one position of Senior Public Safety Specialist, Bureau of Police, East Precinct, in accordance with the Personnel Rules adopted by the City Council (Ordinance)

Disposition: Ordinance No. 173022. (Y-5)

Commissioner Jim Francesconi

- *77** Authorize City of Portland and Bureau of General Services employees to sign consent and authorization agreements with Motorola, Inc. allowing their participation in the development of marketing and training materials for regional data and radio communications systems (Ordinance)

Disposition: Ordinance No. 173023. (Y-5)

- *78** Contract with Northern Hardwood Co., Inc. for installation of the gymnasium floor in the Southwest Community Center without advertising for bids and provide for payment (Ordinance)

Disposition: Ordinance No. 173024. (Y-5)

- *80** Authorize contract amendment with Kenton Action Plan for the completion of the Stockyards Building/Heron Lakes Golf Clubhouse feasibility study (Ordinance)

Disposition: Ordinance No. 173025. (Y-5)

Commissioner Charlie Hales

- 81** Accept contract with James W. Fowler Co. for street improvements on SW Main Street between SW 1st Avenue and SW Broadway as complete, release retainage and make final payment (Report; Contract No. 31965)

Disposition: Accepted.

- *82 Authorize intergovernmental agreement with the Oregon Department of Transportation's Transportation and Growth Management Program to accept a grant in the amount of \$100,000 for the Barbur Boulevard streetscape plan (Ordinance)

Disposition: Ordinance No. 173026. (Y-5)

- *83 Contract with St. Vincent dePaul Rehabilitation Services, Inc. to provide electronic backfile conversion services for Bureau of Buildings Building Permit Appeal records (Ordinance)

Disposition: Ordinance No. 173027. (Y-5)

Commissioner Dan Saltzman

- 84 Accept completion of the digester rehabilitation Tryon Creek wastewater treatment plant, Project No. 5151, and authorize final payment to Diamaco, Inc. (Report; Contract No. 31088)

Disposition: Accepted.

- *85 Enter into an intergovernmental agreement with Metro to provide revegetation services, supplies and technical assistance to Metro to improve habitat, water quality and overall watershed condition in the greater Portland area (Ordinance)

Disposition: Ordinance No. 173028. (Y-5)

Commissioner Erik Sten

- *86 Amend loan agreement with Housing Authority of Portland for Richmond Place by extending the expiration date by 12 months to December 1, 1999 (Ordinance; amend Contract No. 31263)

Disposition: Ordinance No. 173029. (Y-5)

- *87 Amend agreement with the Workforce Development Board to increase compensation by \$71,426 and provide for payment (Ordinance; amend Agreement No. 31896)

Disposition: Ordinance No. 173030. (Y-5)

- *88 Contract with Southeast Uplift, Inc. for \$45,325 for the Kerns Target Area project in the Target Area Designation program and provide for payment (Ordinance)

Disposition: Ordinance No. 173031. (Y-5)

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***89** Authorize contract with Barney & Worth, Inc. to assist the Water Bureau in a bureau-wide assessment of public involvement programs and procedures (Ordinance)

Disposition: Ordinance No. 173032. (Y-5)

***90** Contract amendment with GeoEngineers, Inc. for development of a groundwater flow model to estimate the sustainable yield of the Columbia South Shore well field at a cost not to exceed \$20,000 (Ordinance; amend Contract No. 31477)

Disposition: Ordinance No. 173033. (Y-5)

***91** Authorize negotiations to acquire a parcel of land needed for the Hudson Road conduit intertie project and authorize the City Attorney to commence condemnation proceedings and obtain early possession, if necessary (Ordinance)

Disposition: Ordinance No. 173034. (Y-5)

92 Authorize a contract and provide payment for the construction of drainage improvements on the steep slopes above Reservoir #4 in Washington Park (Ordinance)

Disposition: Passed to Second Reading January 27, 1999 at 9:30 a.m.

93 Authorize a contract and provide payment for the construction of a replacement regulator vault at SW Vista and SW Park Place (Ordinance)

Disposition: Passed to Second Reading January 27, 1999 at 9:30 a.m.

City Auditor Gary Blackmer

94 Transmit the Certificate of Completion for the SE Water Avenue/Caruthers Street Local Improvements District (Report; C-9925B)

Disposition: Accepted.

***95** Assess system development charge contracts and Private Plumbing Loan Program contracts (Ordinance; Z0697, Z0698, T0016, P0039)

Disposition: Ordinance No. 173035. (Y-5)

REGULAR AGENDA

***79** Memorandum of understanding between the City and Metro, Friends of Forest Park and Logan Park Ramsey, Amanda Ramsey, Susan Ramsey, Maria Fe Ramsey and the estate of Margaretta Ramsey (Ordinance)

Discussion: Commissioner Francesconi said citizens have been working on this critical land acquisition in Forest Park for some time.

Harry Auerbach, Deputy City Attorney, said acquisition of this property has taken eight years to accomplish and this Memorandum of Understanding will allow the transfer of ownership to Forest Park. He noted the important roles Commissioners Lindberg, Hales and Francesconi played in bringing this about and also recognized that this never would have happened without the hard work of the Friends of Forest Park and the ability to use Metro 2626 funds to acquire the property.

Jim Desmond, Metro, said they are very happy that regional funds are available for this acquisition, which enables them to acquire the "hole" in Forest Park.

John Sherman, Friends of Forest Park, noted that the Friends are contributing approximately \$320,000 to this acquisition. Over 5,000 people donated money to this effort. He noted that one third of the acquisition is dependent on certain land-use approvals and some creative work will need to be done with Planning to make sure that happens in a timely manner.

Commissioner Hales said this is exactly what Metro's Greenspace measure intended to accomplish. This also indicates the important role citizens played, including doing a tremendous amount of fund raising.

Commissioner Saltzman said the Friends of Forest Park in particular made this happen.

Commissioner Sten said if people doubt the need for a regional parks program they should look at this. Metro has done an exemplary job here.

Mayor Katz thanked the Parks Commissioners who through the years have pushed this forward. It is a good example of why term limits are not a good idea so that people can carry through on the legacy.

Disposition: Ordinance No. 173036. (Y-5)

96

Honor Mildred Schwab for her contributions to the City of Portland (Resolution introduced by Mayor Katz and Commissioners Francesconi, Hales, Saltzman and Sten)

Discussion: Mayor Katz read the resolution in recognition of Mildred Schwab's service to the City.

Commissioner Saltzman said Mildred Schwab was a political mentor to him, setting a good example about the need to keep an eye on the bottom line and be honest and forthright.

Commissioner Francesconi said he admired her connections to both employees and citizens as those kinds of connections are what help turn visions into reality.

Commissioner Hales said what he liked about Commissioner Schwab was that she was never unclear or timid or boring.

Commissioner Sten said to be that ornery and that well loved is a great achievement.

Mayor Katz said she was always feisty and kept taxpayers completely apprised of what Council was doing.

Disposition: Resolution No. 35760. (Y-5)

Mayor Vera Katz

- *97 Accept a grant renewal award in the amount of \$363,830 from the Center for Substance Abuse Prevention on behalf of the Regional Drug Initiative (Ordinance)

Disposition: Ordinance No. 173037. (Y-5)

Commissioner Erik Sten

- *98 Authorize execution of agreements with the U.S. Department of Housing and Urban Development for a Section 108 Loan in the amount of \$8,000,000 and an Economic Development Initiative Grant in the amount of \$2,250,000 and other related documents (Ordinance)

Discussion: Commissioner Sten said this is a very innovative proposal that has been worked on jointly by the Bureau of Housing and Community Development (BHCD), the Portland Development Commission (PDC), Portland Saturday Market and a whole host of community players. He said there is a well known but very hard to use HUD program (Section 108) that allows one to borrow money from HUD for economic purposes. The City guarantees the loan with block grant funds. Both Mayor Katz and Commissioner Kafoury have tried hard to get more leverage with the block grants but because of all the regulations it has been difficult to find the right opportunity to use this program. Today Council is considering such an opportunity, one that would give the Saturday Market, which is in a difficult real estate position, an opportunity to buy some land it now rents and secure permanent space. It will not cost the City any money other than some staff time to track it, although the City is prepared to make good if something goes wrong. He is proud to support it.

Martha McClennan, BHCD, said the first and third ordinances (98 and 100) are basically housekeeping items related to a previously-awarded Section 108 loan and the companion economic development initiative grant. These two funding sources provide \$10,250,000 to fund a commercial revitalization loan fund for economic development activities in the enterprise community. The primary focus is to stimulate the creation of new jobs within the Northeast enterprise community. They are beginning to process applications under the commercial revitalization loan program and will return to Council with progress reports on how that fund is doing. The Saturday Market project (Agenda No. 99) authorizes a new

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application to HUD for a new Section 108 loan. This was technically eligible to be funded under the commercial revitalization loan program but because it serves a different need in the community they wanted to apply for new funds for this project, which supports acquisition of the Skidmore Fountain Building by Portland Saturday Market, Inc.

Ms. McClellan said Saturday Market currently leases the surface parking lot for part of its operations but has been informed that its lease will be discontinued, threatening its continued existence at the current location. The Market also operates a significant portion of its activities on a street right-of-way underneath Burnside Bridge, for which it has a street permit. The owner of the Skidmore Fountain Building had taken action, prior to beginning this conversation about selling the property to Saturday Market, to reverse or terminate that street use permit. Saturday Market believes the combination of not having the lease renewed for the surface parking area and the possible loss of access to the street right-of-way would seriously jeopardize its ability to continue operating at the current location. The operators felt they would either have to shrink their operations or relocate somewhere else, which they felt would be very difficult. Subsequently, when this property became available they began to negotiate for its purchase and the BHCD program will allow them to remain where they are, secure the site for a more stable operation and retain jobs they would otherwise lose if forced to reduce operations or relocate. She said this basically entails having the City borrow the money from HUD and then make a loan to Saturday Market for acquisition of the property. She explained how Section 108 works, noting that the money is private funds secured by HUD and guaranteed by the City's future block grants which are then loaned through the City to the project sponsor.

Mayor Katz noted that the loan will be repaid to the City with the revenues generated but if Saturday Market should default then the City would back up the loan with block grant funds.

Ms. McLennan said in this case the rental income stream from the property is sufficient to repay the loan and the property is also secured in terms of an assignment of the leases and rents as well as a title position with respect to the property. If there was a default, the City could take over the assignment leases and make the debt payments to HUD from that. It could also look at the property to see if it continued to be economically viable or needed to be sold.

Commissioner Saltzman asked if the City had to worry about the project not being tied into the block grant neighborhoods.

Ms. McLennan said block grant rules require that the project meet one of HUD's national objectives and the one that applies in this case is that it benefits low and moderate income people by retaining jobs that are otherwise threatened or would be lost. The grant money can be spent either to benefit the people or a neighborhood. In this case it will benefit the low-income vendors and employees of the Market.

Mayor Katz asked if a change was needed regarding the street vacation.

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Ms. McLennan said the City Attorney did not feel that was necessary. She described the steps necessary to process the application through HUD and the actions Council will need to take. She said HCDC believes it has a good project that is financially sound and meets HUD criteria. Some additional due diligence steps will be taken before the application is submitted to HUD, including a property appraisal and documentation as to the income levels of vendors and employees. An independent economic analysis is being done on the job retention question.

Commissioner Francesconi said the presumptive test for jobs (on page 7) sounds a little loose in terms of making sure the jobs actually happen.

Ms. McLennan said the HUD rules in an enterprise community do not require individual income verifications of employees. HUD presumes that jobs in an enterprise community are held by or benefit low income people. HCDC will take some additional steps to ensure that benefit in fact exists but will rely on the presumption in their report to HUD.

Commissioner Francesconi asked what those additional steps will be.

Ms. McLennan said they will continue to work with the Market to document the income status of their employees and vendors.

Commissioner Francesconi asked what happens if they find out that it does not benefit low-income people.

Ms. McLennan said HUD rules for job retention require that current employees are held by low and moderate income people so it is a matter of looking at the current work force. But if the income levels do not meet the standards at that point they could negotiate with the project sponsors to ensure that the next hires will be. However, her belief is that the current employment force will meet the standard and if it does not then the question arises as to whether the City should be doing this project.

Commissioner Hales asked if any physical changes to the building are planned.

Ms. McLennan said the Market intends to relocate its vendor storage operations into this building. They will continue to honor all current leases and, as those transition, they hope some vendors will be able to move into some of the retail spaces in the building. She said the Old Town/Chinatown Vision Plan envisions a seven-day operation but the immediate goals are to achieve a few efficiencies in business operations and storage and provide incubator opportunities while basically keeping market operations the same.

Verne Stanford, ex-General Manager and Executive Director, Saturday Market, said before he left to take a new position the Board decided to do comprehensive, long-range strategic plan and a big part of his job was negotiating seven different leases for the spaces the Market operates in. He said every one of those leases had a 30-day clause and noted that in the Market's 25 year history it had no long term access to property. Two of the major goals in the long-range plan were to improve the restroom situation, which has recently been

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accomplished, and give the Market a permanent location. He said Market businesses gross slightly more than \$10 million and there are 500 members. Mr. Stanford said the Board explored a number of other locations but felt none provided all the benefits the current location does, primarily because of the reputation it has built here but also because of its loyal customer base and good public access. He noted that the Market, however, has had a difficult relationship with one neighbor and that was one reason it was driven to explore other locations.

Individuals speaking in support of the Saturday Market included:

Jean Carpenter, Saturday Market vendor for 23 years
Dottie Dracos, Saturday Market vendor, 33470 Tide Creek
Road, Deer Island, OR 97054
Charles Houtchens, vendor, 915 NE 65th, Vancouver, WA 98665
Rhia Weinhaus, vendor, 1907 SE 39th, Portland, OR 97214
Karen Moore, Old Town/Chinatown Neighborhood Association,
123 NE 2nd, 97209
John Tess, President, Old Town Historic Business Association
Josie Richie, Saturday Market vendor
Marianne Dabritz, Saturday Market vendor
Laurel Thorton, Saturday Market vendor
Marilyn Moore, Saturday Market vendor
Ed Archer, Saturday Market site manager

They stressed Saturday Market's importance as a major destination point in the City and its contribution to the economic vitality of Old Town. Many testified about its need for a permanent home and stressed the loss to downtown if the Market were to move to a new location. Supporters noted that Saturday Market also acts as an incubator for small businesses which then move elsewhere as they expand. A number of vendors, especially single mothers, mentioned the importance of being able to work flexible hours.

Paul Verhoeven, new Director for Saturday Market, 927 SE Lambert, 97202, said his first priority was to find a permanent home for Saturday Market and this project will accomplish that.

Commissioner Francesconi said approval of such projects rests with the answers to three questions: 1) does it encourage a diversity of people coming together; 2) does one expenditure of taxpayer dollars accomplish multiple objectives; and 3) are talented people making the request. The Market adds spark and character and brings a diversity of people right to the heart of the City. This also builds on something the City already has and supports both small businesses, through an incubator strategy, and low-income vendors. He thanked Mayor Katz and Mr. Stanford for their work on this and noted that unless one can control the land, gentrification will force out small, low-income folks and rob the City of a diversity of uses and people. That is ultimately what this creative financing mechanism does and at no cost to the taxpayers.

Commissioner Hales said it is clear from this testimony that Saturday Market is very important in the lives of those who work there. It also gives focus and identity to this neighborhood and is an important community institution, especially at a time when retailing is increasingly homogenized and boring. He said this will give the Market certainty and a basis to build on.

Commissioner Saltzman said he is very happy to support this and suggested that perhaps a farmers market could become part of it as well.

Commissioner Sten said he is a big fan of the Market and delighted the Market and the City have been able to put this together without costing the taxpayers anything. This has also helped Council nail down a way to use the Section 108 program in a way that can be replicated elsewhere. He believes this will have a ripple effect throughout community and thanked the Mayor for her efforts. He said trying to leverage City money in creative ways like this is going to very important in the future.

Mayor Katz said this has been a long journey, from bathrooms to street musicians, and she is pleased with this solution. She noted that the loan program got off to a difficult start at first but the City, in giving Saturday Market a home, is now using those resources well. She said while Council loves to build new buildings, it also needs to protect the gems it already has. She said Council members talk about creative services such as advertising, video and internet design but artisans are also a part of such services. She is very glad the Market did not move out to Troutdale as it is an important part of Old Town/Chinatown.

Disposition: Ordinance No. 173038. (Y-5)

- *99** Authorize application to the U.S. Department of Housing and Urban Development for loan guarantee assistance under Section 108 of the Housing and Community Development Act of 1974, as amended, in the amount of \$3,300,000 (Ordinance)

Disposition: Ordinance No. 173039. (Y-5)

- *100** Contract with Portland Development Commission to administer the loan program component of the Economic Development Initiative/108 program (Ordinance)

Disposition: Ordinance No. 173040. (Y-5)

City Auditor Gary Blackmer

- 101** Update on Hearings Officer activities for the year 1998 (Report)

Discussion: Elizabeth Normand, Hearings Officer, said the issues she might otherwise have included in this report are being addressed through the land division rewrite and the Blueprint 2000 project.

Commissioner Hales said Council appears to disagree with the Hearings Officer only about

25 percent of the time, which seems like a reasonable amount. He asked Ms. Normand if she scratches her head about some of Council's decisions.

Ms. Normand said not recently as there seems to be consistent pattern regarding the appeal decisions Council makes.

Mayor Katz asked what policies drive her decisions when discretionary calls are involved.

Ms. Normand said the issues that come up most often concern meeting City connectivity policies and complying with its density and infill efforts. She is also driven to assess the City's role in protecting the process and a big piece of that is enforcement, especially when applicants are before the City multiple times and each case builds on the other. She wants people to believe that when conditions are imposed they will be implemented.

Mayor Katz asked if it would be appropriate for her to be present when Council hears land-use appeals so she could answer questions if they arise.

Commissioner Saltzman noted that is done at Multnomah County.

Ms. Normand said she does not recommend adopting the same process as the County. She said she used to come to Council to see if there were questions but there never were so she stopped coming. She also does not want to be put in the position of having to defend her decision as she believes her written decision does that, especially when staff recommends differently.

Mayor Katz suggested that when the Bureau of Planning recommendation differs from the Hearings Officer's, Council might want her to appear as there may be questions. The Mayor said she takes the Hearings Officer's words very seriously but does have questions in some cases.

Commissioner Hales said he would prefer to protect the distance between the Hearings Officer and Council. He asked if there is anything wrong with a Commissioner calling the Hearings Officer if he/she has questions about what is meant.

Ms. Normand said she is very nervous about having private conversation with Council members and would prefer to have her comments on the record. If the Bureau of Planning and the Hearings Officer disagree on a case, that usually indicates a high degree of controversy. She said she would certainly not object to a request to come to Council.

Commissioner Hales said that may be the best way to go. He asked Ms. Normand if, after watching the process for 12 years, she had seen any changes in terms of how educated and well-informed citizens are about the process, whether operating independently or through their neighborhood associations.

Ms. Normand said people's understanding of the process and their role in it have increased over time, although there is a high turnover of leaders in the neighborhoods. She believes

some of that is because she has been there for 12 years and thus provided some consistency. She said more controversy arises when a policy becomes highlighted.

Commissioner Francesconi said he did not find the annual report helpful in pointing out policy conflicts. He said Council should be aware of those so it can discuss the overall issues, rather than trying to address them through the particulars of an individual land-use case.

Commissioner Sten said the more feedback Council can get on policies that need clarification the better. However, he finds Ms. Normand's work very clear and helpful.

Mayor Katz said Council sometimes frets over what do in a particular case but does not want to overturn a Hearings Officer's decision, only modify it. She asked if remanding a decision back to the Hearings Officer is appropriate and whether an applicant then has to go back to start. She said it might be helpful to review what options Council has when it disagrees with the Hearings Officer.

Ms. Normand said in general she uses her annual report to raise policy issues but this year those really connect with the land division rewrite and Blueprint 2000 and she did not want to raise them here since those processes are already underway. If they do not get resolved to her satisfaction, however, she will let Council know. She said she is more than willing to experiment with how the Hearings Officer can be of more help when Council has questions about appeals.

Commissioner Hales said he thinks Council is better served by an arms-length relationship with the Hearings Officer and a clearly segmented process. He wants the real show to be at the Hearings Officer's level, not at Council.

Commissioner Francesconi said it would be helpful to know what the Hearings Officer's opinions are on the underlying issues in the rewrite and Blueprint 2000.

Disposition: Accepted. (Y-5)

102 Assess property for sidewalk repair by the Bureau of Maintenance for billing processed through December 11, 1998 (Second Reading Agenda 62; Y1031)

Disposition: Ordinance No. 173041. (Y-5)

At 11:15 p.m., Council recessed.

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 20TH DAY OF JANUARY, 1999 AT 2:00 P.M.

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

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

103 **TIME CERTAIN: 2:00 PM** - Liquor license application for Paragon Restaurant Ventures Limited Partners, dba Paragon Restaurant and Bar, 1309 NW Hoyt Street, Dispenser Class A liquor license (renewal); Unfavorable recommendation (Report introduced by Commissioner Francesconi)

Discussion: Commissioner Francesconi said this case is a little different because the neighborhood livability law has been applied here, which the City lobbied the legislature for so local jurisdictions could consider factors such as noise and disturbances in the neighborhood in a liquor application. There are also some underlying policy issues stemming from increased density and more mixed-use neighborhoods, which result in more conflicts. Residents in mixed-use neighborhoods should expect more noise than in strictly residential zones but if more housing is to be added to the Central City, commercial operators should expect to provide reasonable accommodation to those living nearby. He said Council can take three approaches. First, it can support the License Bureau's request for an unfavorable recommendation to the OLCC. Or Council can reverse the Bureau and make a favorable recommendation. Finally, he is contemplating a third option which would involve Council making specific recommendations to OLCC to put restrictions on the license. He said he has crafted some restrictions but will wait until he hears the testimony before moving to adopt them.

Mike Sanderson, License Bureau, said soon after Paragon opened, the Bureau began receiving complaints numbering in the hundreds from neighbors about loud noise, public urination, intoxicated patrons, illegal parking, etc. Based on those complaints and by numerous independent observations by OLCC as well as Police and License Bureau personnel, staff is convinced that the neighbors' tolerance for urban late night noise is quite high and that their complaints are very creditable. The neighborhood livability law specifically classifies these types of problems as serious in nature and in this case they are also persistent. The licensee has had many opportunities to address the problem but, despite all efforts, the licensee has not been able to find a fix or allow the OLCC to work up a compliance plan. The licensee has not met the willingness and ability requirements needed to avoid cancellation under the livability law. The Irving Street Lofts Homeowners Association, Pearl District Neighborhood Association and Police Bureau all oppose the renewal of this license. In addition, Paragon has received two notices of violation from the

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OLCC under the State's neighborhood livability statute. Either is a basis for cancellation. Similar City Code provisions would apply. Staff views Paragon as a poor risk for future compliance and therefore submits an unfavorable recommendation.

Commissioner Hales asked what led to passage of the livability law.

Mr. Sanderson said there were a number of cases where the destructive activities of patrons could not be held against the licensee. Under the livability law, licensees are required to take some action to get those under control.

Commissioner Hales asked if the livability law relates to renewals and cancellations. Does this recommendation rely on the livability law or on City Code provisions?

Mr. Sanderson said the livability law can apply to both renewals and cancellations. The recommendation is based on City Code as well as State law.

Mayor Katz asked for a review of the conditions not met by Paragon.

Mr. Sanderson said Paragon signed a good neighborhood agreement with the Pearl District. The Pearl District points out that Paragon has not lived up to the strict letter of that agreement. The most important conditions were the closing hours and days that live music is offered.

Mayor Katz noted that, according to Chief Moose's memo, the licensee refused to enter into a voluntary compliance plan with the OLCC and stated its view that the continuing noise, public urination and other problems are simply the result of placing Paragon in a mixed-use neighborhood. That memo also argues that proposed solutions are ineffective, too burdensome or too expensive.

Mr. Sanderson said when the problems first arose a lot of joint meetings were held between Paragon and the neighbors. The neighbors became disenchanted when there was no follow through on the remedial measures, i.e. promised levels of security, no music on certain days, etc. Paragon has always said they would do certain things but still want to retain flexibility if they deem something no longer necessary or effective.

Officer Bryan Steed, Police Drug and Vice Division, said the OLCC compliance plan was rejected by Paragon. He outlined the basis for the unfavorable recommendation, including City Code provisions. He described some of the documented problems and noted that other liquor licensees in the area have not had the same number of complaints about their operation.

Tim Harmon, Paragon Restaurant, said with so many patrons there will be occasional problems but there have been no serious problems such as serving visibly intoxicated persons or violations of City noise ordinances, etc. He said Paragon is a well-managed and well-run restaurant whose employees have many years of experience. He said the owners have tried hard to solve the problems as they have invested nearly three-quarters of a

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million dollars in this restaurant and do not want to lose their liquor license. They have hired more security and doormen, reduced the amount of live music, added soundproofing and aggressively monitored the premises for loud and disorderly conduct. They remain committed to solving the problems and have recently implemented several new steps to deal with them. He said the City wants to rejuvenate the Pearl District but making it a lively and busy place will not make it resemble a nice, quiet bedroom community. He asked Council for a favorable recommendation.

Mike Reid, attorney for Paragon and former OLCC regulator, said the livability law was primarily concerned not with noise, but with criminal activity. In this case there was not even one allegation of illegal, criminal activity. He said there have been no cases where the OLCC had applied the livability law to a licensee when no public safety issues were involved. He said Paragon is continuing to make serious efforts to remedy the situation. Based on his own observations, he made a recommendation that security and doormen act more aggressively and they have already done so. He described a series of other actions Paragon has taken and said they expect to submit a compliance agreement to OLCC very soon.

Paul Romain, attorney for Paragon and an investor in the restaurant, said when this first came up he learned that the Bureau of Environmental Services was getting the same complaints from people about noise due to early-morning garbage collection and complainants were told this was an urban area and to be expected. He said Council should consider the nature of the complaints. While some are serious, others have to do with the nature of the area itself and any restaurant open past midnight or 1:00 a.m. is likely to receive exactly the same kind of complaints. He asked if there is some kind of compromise that can be reached.

Mayor Katz cited OLCC regulations which do allow a decision to be made based on non-criminal activities.

Mr. Reid said his point is that no case had been decided on that basis alone.

Commissioner Saltzman asked if Paragon had entered into a compliance agreement with the OLCC.

Mr. Reid said it has not been completed yet.

Commissioner Francesconi asked why Paragon, given this record, had not taken action earlier to hire Mr. Reid and begin working with the OLCC and the neighborhoods.

Mr. Harmon said they started immediately after receiving the initial compliance complaint from the License Bureau. They never said they did not want to sign a compliance plan but the initial one basically said Paragon was guilty and they wanted a chance to have a hearing first.

Commissioner Francesconi said in its initial conversations with the neighborhood, Paragon

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said it would emphasize food service. However, the emphasis appears to be on liquor over food.

Mr. Harmon said what he told the neighborhood was that Paragon was not going to be a nightclub, but a restaurant and bar. Even though alcohol sales are higher than food, it is predominately a restaurant.

Mr. Romain described some of the changes Paragon had made to respond to neighborhood concerns, such as cutting back on live music and hiring more security and extra doormen. The initial manager was also replaced with someone more experienced. He said they never misrepresented how big the bar would be, however. The main question is whether there is a way to make competing commercial and residential uses work. He said the only complaints about Paragon have come from Irving Street loft residents and OLCC investigators.

Neilson Abeel, President, Pearl District Neighborhood Association, said the Association voted 14 to 2 to support the unfavorable recommendation. He said the neighborhood understands mixed use but does not understand law breaking and noted that the area has 15 liquor licenses, several of which are as large or larger than Paragon, and there have been no complaints about any of them. He said negotiations for compliance and remedial measures have failed and the neighborhood wants the OLCC to determine if it can bring Paragon into compliance.

Mayor Katz asked if he would prefer restrictions to be imposed by the OLCC than by the City.

Mr. Abeel said they believe the OLCC is the proper authority. He said the neighborhood is not trying to close down Paragon but to bring it into compliance. He said Paragon attracts a particular crowd that arrives late, stays until closing and is probably over-served.

Wayne Palioca, Chair, Irving Street Homeowners Association, said residents do realize they live in an urban neighborhood but were originally told this was going to be an upscale restaurant but that later changed. He said residents dislike seeing drunk customers drive away, public urination and unruly behavior. He said Paragon promised that the problem would be fixed and OLCC gave its owners a chance to enter into a compliance plan but they refused. OLCC then gave the owners a chance to come up with their own plan and they again failed to do so. He said this should go to OLCC, which has the authority to impose and enforce restrictions. He ended by noting that some Irving Street renters have left because of the problems with Paragon.

Mayor Katz asked if they wanted to close Paragon down.

Mr. Palioca said they would leave that up to the OLCC.

Mayor Katz asked if they had discussed their proposed restrictions with Paragon.

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Mr. Palioca said if Paragon closed at 11 pm the problem with late night live music would go away rather than waking up everyone at 1:30 a.m. He said while Paragon says it is not a night club, he has witnessed 200 people listening to jazz there.

Commissioner Sten asked if he thought a bar/nightclub could exist in a mixed-use neighborhood and if people should be able to go to it after 11 p.m.

Mr. Abeel said there is one nightclub, the Zoot Suit on 13th, and there have been no complaints about that. It depends on the type of operation and the nature of the clientele, which seems to be unique to Paragon in the late night hours.

Mr. Palioca noted that both Bima and Oba have similar operations. He said at first Paragon indicated the music would be light jazz but dancing on the bar to a saxophone is not light dinner music.

Commissioner Saltzman asked if anyone asked Irving Street Lofts to draw up a compliance plan

Mr. Palioca said no, but they have made numerous suggestions.

Rhetta Deason, City Crime Prevention Specialist, described her attempts to work with Paragon and the neighbors to resolve the concerns.

Carol Smith-Larson, Chair, Pearl Neighborhood Livability Chair, outlined a history of meetings with the licensee, affected residents and the committee. She called for denial of the license and noted that, while residents accept street life and city noise as part of the Pearl District, neither Oba and Bima, similar establishments nearby, have a history of problems.

Individuals testifying in support of Paragon included:

Steve Deaton, resident, Irving Street Lofts
Joe Moreau, Paragon general manager
Nicole Huberty, Paragon employee
Steve Cridland, Pearl District business owner,
Michele O'Hara, Nerve employee, 600 NW 14th
Gina Barriquence, Nerve employee, 600 NW 14th
Tom Hendrickson, 2004 NW Irving
Ryan McGarran, bartender in the Pearl District
David Schwabe, 1231 NW Hoyt, Suite 303
Claire McNally, no address stated

Supporters said Paragon was being unfairly painted as a bad neighbor and should not be forced out of business. Many said they had not seen the problems opponents have complained about. Employees described their efforts to deal with the concerns of nearby residents. They said nearby residents must realize they live in a mixed-use neighborhood.

Individuals testifying in support of an unfavorable recommendation included:

Marlin Darrah, Irving Street Loft business owner and resident,
representing 70 loft residents
Mika Sunago, Irving Street Lofts resident
Wilbur Larson, 405 NW 9th, 97209
Bernie Reed, Irving Street Lofts
Dean Stearman, Irving Street Lofts
Kim Rivard, Irving Street Lofts
Denise Grimes, member of the Pearl District Livability
Committee
Maynard Tye, Excelsior Property Management and manager of
the Irving Street Lofts

Supporters of the unfavorable recommendation expressed frustration with how Paragon has dealt with problems concerning excessive noise, late night music, public urination and litter.

Lonnie Dicas, Irving Street Lofts, said she supports Paragon but would like to see it reach a constructive agreement with the neighborhood as so many residents have problems with the way it operates.

Commissioner Francesconi asked for the License Bureau Manager's thoughts about mixed use and the underlying policy issues.

Dennis Nelson, Manager, License Bureau, said the livability law was hotly debated at the legislature as it was a new restriction on liquor licenses, making them responsible for patrons outside their establishments. The question is whether the problems at an establishment are serious and persistent. The License Bureau found that in this case they were and the evidence in the record indicates the unwillingness or inability of the licensee to address these problems. He noted that as the City creates more mixed-use neighborhoods, the potential for conflicts increases. He said in this case Paragon has not bought into a good neighbor agreement and the Bureau recommends an unfavorable recommendation to the OLCC which has the option to either cancel the license or restrict it. He added that the OLCC does listen carefully to the City's recommendations.

Mayor Katz said the question is whether the City is better served by placing restrictions on Paragon or by simply denying the license and having OLCC determine the restrictions. Or would it be better to say that the parties need to resolve this and the City will not get involved until they do?

Mr. Nelson said the Bureau tried for over 14 months to get resolution but failed to do so. He believes Council needs to forward an unfavorable recommendation because that is what the law says the City should do. It has no power to restrict the license, only the OLCC can do that and then enforce it. He is comfortable with a recommendation stating that the licensee should not be renewed.

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Commissioner Saltzman said he is intrigued by Mike Reed's new compliance agreement which no one has seen. Should Council take a look at that first and then make a decision?

Mr. Nelson said whether the City is willing to negotiate should be addressed by the neighbors. He said he does not see why negotiations cannot be continued even after Council's recommendation has been forwarded.

Commissioner Saltzman asked if Council is allowed to change its decision if it is presented with something the neighborhood buys into.

Mr. Nelson said probably not. The OLCC as part of its decision process will take into consideration this recommendation and anything that results subsequently.

Commissioner Francesconi said, based on the testimony and the record, he believes there are grounds to not renew the license. He reviewed the options before Council and then proposed a series of restrictions on Paragon's license to respond to some of the objections raised in the testimony. These include shortened hours of operation, requiring uniformed security between 10 p.m. and closing, limiting live music and, most important, establishing effective communication channels with the neighbors. He moved to adopt these restrictions and said he would support an unfavorable recommendation if these are not placed on the liquor license.

Commissioner Hales seconded and roll was called on these restrictions.

Commissioner Hales voted no as he believes a liquor license is a privilege, not a right. He said this application gives Council chance to articulate a standard for mixed-use neighborhoods by forwarding an unfavorable recommendation. He noted that two City bureaus -- Licenses and Police -- found a pattern of violations, a history of noisy disturbances and an uncooperative attitude.

Commissioner Saltzman voted aye as he believes the restrictions strike a good balance between the two extremes.

Commissioner Sten voted aye as, while he does think it appropriate to have late-night venues, he supports the substantial restrictions in this case because of Paragon's poor relationship with its neighbors. He said this is mixed-use area and Council needs to strike a balance between the uses as this dispute will continue in many other locations.

Mayor Katz voted aye. She said she would normally vote with Commissioner Hales as she is unsure whether these are the right restrictions or strict enough. She said Paragon does

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have a responsibility to be a good neighbor and work out a good neighbor agreement. However, the City wants vibrant neighborhoods and she is willing to go along with these restrictions although, if Paragon does not meet them, she will request the Crime Prevention people to enforce the chronic nuisance law and shut Paragon down.

Disposition: Unfavorably recommended unless restricted. (Y-4; N-1, Hales)

At 4:30 p.m., Council recessed.

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A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,
OREGON WAS HELD THIS 21ST DAY OF JANUARY, 1999 AT 2:00 P.M.

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

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

104 **TIME CERTAIN: 2:00 PM** - Amend the Zoning Code to restrict retail uses in industrial
and employment zones as required by Title 4 of the region's Urban Growth Management
Functional Plan (Ordinance introduced by Commissioner Hales; amend Title 33)

Discussion: Susan Hartnett, Bureau of Planning, said the primary purpose of this ordinance is to implement Title 33 Code changes to bring the Code into compliance with the Urban Growth Management Functional Plan requirements of Title 4. Both Planning staff and the Planning Commission want to make sure the changes are consistent with the City's Comprehensive Plan policies and previous planning decisions and that they are appropriate to Portland's interests and needs. The Functional Plan requirements set out the minimum that regional jurisdictions can do but there is nothing to prevent them from better tailoring the regulations to the needs of their own communities. The standard is substantial, not lock-step, compliance. One concern voiced is that many of the City's employment and industrial areas would benefit from an area-specific planning effort. Staff also heard that some use category descriptions need updating to better reflect current business practices, i.e. the distinction between office and manufacturing/production work and between retail and wholesale. Planning staff agrees that both area-specific planning and reexamination of use categories are worthy efforts but not as part of this project, particularly as it has neither the staffing or resources to do so at this time. Both staff and the Planning Commission struggled to bring forth a recommendation that met the needs of the compliance work but did not put the Bureau in the position of doing inappropriate things.

Ms. Hartnett reviewed the Code changes recommended by the Planning Commission, specifically the retail and office use restrictions in industrial and employment areas which are intended to avoid conflicts. There are also some special restrictions which apply to the Columbia South Shore Plan District. The concern for all categories is that both retail and office uses can have the same kind of negative impact on industrial and employment areas. They increase traffic and change traffic patterns, creating a lack of tolerance for the kinds of activities that take place in industrial and employment areas. For EG1 and EG2 zones, the Commission is recommending establishment of a conditional use process and criteria for uses over 60,000 square feet per site. For IG1, IG2 and IH zones, a cap on retail of 60,000 square feet is also proposed. There is currently a requirement for conditional use review if retail uses are over 3,000 square feet. There is a minor change for the IG2 in the Columbia South Shore, also placing a 60,000 square-foot cap there so that it will comply with Title 4.

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Mayor Katz said it was appropriate for the Planning Commission to make relatively simple decisions so the City could comply with Title 4 but noted that the Bureau went a little further. She asked for an explanation of those differences.

Ms. Harnett said staff took a tiered approach to the restrictions on retail for the industrial zones and also included office zones, although Title 4 does not require that. The restrictions exist for both uses because both have the potential for negative impacts. When staff went before the Planning Commission they asked that the most sensitive area, the IH zone, receive the most protection and proposed a limitation of 12,000 square feet as the maximum cap for the conditional use for retail and office. They proposed 25,000 square feet for IG1 and IG2 and 60,000 square feet for EG1 and EG2. They also proposed a modification of the approval criteria for office uses in the IG1 zone in the Central City in response to a suggestion from the Portland Development Commission (PDC), which wanted to allow more creative service industries to locate in those areas. By acknowledging that offices with a manufacturing component should be treated differently, an opportunity is created for more software and internet companies to locate in those areas. That would still require a conditional use with a cap of 60,000 square feet but with specific approval criteria that would allow combined manufacturing and office uses.

Mayor Katz asked if the Commission discussed that or just did not want to deal with it. She said this is a critical issue for a targeted industry.

Ms. Harnett said the Commission heard testimony that the middle-of-the-road proposal did not go far enough for some of the industrial groups but went too far for others. The Commission struggled with whether a citywide regulation was appropriate. Staff felt everything they proposed moved in the right direction and did no harm anywhere so while the Northwest Industrial Neighborhood Association (NINA) asked for a more restrictive proposal, staff proposed that it be done citywide on the basis that restricting retail even more in the IH areas would not harm Rivergate or Lower Albina. The Planning Commission felt it did not get a clear message that the citywide application crafted by staff would satisfy all the groups it heard from. She said it comes down to the difference between trying to do something citywide and trying to do something that is area-specific. She personally believes the City could do both because nothing the staff proposed did any harm. It moved in the right direction for all the groups but still allowed them to return when resources are available to do a more specific-area approach.

Mayor Katz said the City probably does need a more detailed plan for many of the industrial sanctuary areas but she does not want to wait until those are done to deal with some of these critical issues. If Council decides it wants to make some amendments now, but not all of those suggested by staff, to the Planning Commission recommendation, then she would like to bring some of the others back at an appropriate time without waiting for a whole detailed plan review.

Ms. Harnett said that is possible. Staff could bring back some of the elements of its original proposal relatively easily. She said the two areas that want very specific plans are NINA and the Central Eastside.

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Commissioner Francesconi said one question for him is whether it is good City policy to carve out an exception for one part of town. A second question is whether 60,000 square feet is adequate protection for some of the heavy industrial areas. He does not think it is.

Ms. Hartnett said there is a requirement in the IG1 and IG2 zones that office and retail uses over 3,000 square feet go through a conditional use review but there is no cap on that. That has been something of an invitation and NINA and the staff would like to send a very clear message that there should be no speculation in IH zones about whether land is appropriate for large office and retail developments. That is why staff took a tiered approach where it set the least amount ever approvable under a conditional use in IH at 12,000 square feet. For IG1 and IG2, that number would be somewhat higher but not as much as would be allowed in an Employment zone.

Commissioner Francesconi asked if one compromise might be to add the protection NINA wants to all the IH zones and then defer the rest until there is more study.

Ms. Harnett said staff proposed doing something that would not only further NINA's interest but would also further the Central Eastside Industrial Council's (CEIC) interest in expanding the opportunity for office and manufacturing use. They tried to offer everybody a little something without giving them everything they wanted.

Mayor Katz said change is occurring in the Central Eastside at a much faster pace than in most of the others. If Council does not take that up now, she does not want to wait until the plan for that specific district is completely overhauled.

Ms. Harnett said some of the things Central Eastside proposes would be of real concern to the Portland Office of Transportation (PDOT). Transportation and transit availability in the Central Eastside is prefaced on the understanding that it is an industrial sanctuary. If one starts allowing too much office and retail use, the transportation system could become unmanageable. She said staff tried to carve a little opening without going too far.

Mayor Katz said it is difficult because if an area is ready to change it would want other policy changes as well.

Commission Saltzman said in the summary of recommended changes for EG1 and EG2, the reference is to capping the conditional use at 60,000 square feet.

Ms. Harnett said that is for the Industrial zones where a new requirement is being created for conditional uses for any retail use over 60,000 square feet. Right now there is a limit of 1:1 (Floor Area Ratio) FAR so that if one has a small site one could end up with less than 60,000 square feet while a large site could end up with a lot more under the current regulations. She said Council will be hearing later about a case in Hayden Meadows where the 1:1 FAR allows a tremendous amount of retail to be developed.

Commissioner Sten said he is interested in exploring the cap of 12,000 square feet in IH, which is what Planning staff originally recommended. He believes that is a smoother way

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to get at what NINA has requested.

Dale MacHaffie, ESCO Corporation, said he has been involved in the fight to protect the Northwest Industrial area from large commercial development since the first Costco fight in 1990. He said the proposal approved by the Planning Commission places a limit on big-box retailers of 60,000 square-feet in industrial-zoned areas. This is the same limit that Metro requires in its Functional Plan but he believes this is too large for a retailer and traffic generator in the Northwest Industrial area. He said there are potential commercial endeavors considering locating in the area now which would require 60,000 square feet and which would create problems for their industrial neighbors if allowed. Thus, the threat to the Sanctuary is imminent. He said Council should review the NINA plan and recommendations for strengthening the zoning requirements on NINA and other appropriate IH-zoned land. That review, however, will take some time and money while the Metro requirements must be acted upon shortly. He proposed a three-pronged solution to protect the area in the interim. First, Council should limit retail development to 10,000 square feet in the IH zone, land north of Vaughn and within NINA. Second, there should be adequate funding to allow Planning staff to review the NINA plan and its recommendations. He said there is an add package in next year's budget to cover that work. He said the hard work of the plan was done earlier by Cogan and Cogan with input from Michael Harrison of the Planning staff and many concerned citizens. The money to fund this effort was raised by NINA from its members. Third, a time certain should be set, hopefully by December, 1999. He said many people have contributed time and money to bring a unique product to Council which will significantly strengthen and enhance industrial areas in the Northwest which currently supplies high-paying family wage jobs within the City and close to employees' homes.

Mayor Katz noted that NINA has submitted detailed recommendations for IH zones which, if Council wants to adopt, first need an explanation from staff.

Commissioner Hales asked Mr. MacHaffie if his amendment would still be needed if Council chose the Planning Bureau's recommendation over that of the Planning Commission's. Why should Council care about the difference in square feet?

Mr. MacHaffie said he thinks NINA would be happy with the Planning Bureau recommendations but does not want to speak for the other districts.

Warren Rosenfeld, President, NINA, said this has been a nine-year process beginning with the first Costco hearing in 1990, a second one in 1995 and direction from Council to undertake exactly this process of trying to lay out a long-term vision for the Northwest Industrial Sanctuary. Through a two-year intensive process, four neighborhoods -- Linnton, Pearl, Northwest District Association and NINA -- joined together to resolve their independent and combined interests. What has emerged is a plan district proposal for NINA that identifies what is unique about the Northwest Industrial Sanctuary. Regarding the Planning Commission recommendation, he said what is needed is a rifle shot approach that recognizes that the term Industrial Sanctuary is not the same for every neighborhood with that name. For the Northwest Industrial Sanctuary what is unique is its

conglomerative economics. It has a wonderful collection of wide streets, highway, railway and water access which provides a truly unique and enviable industrial neighborhood inside a City. He said the Plan District characterizes clearly the difference between IG and IH. He encouraged Council to bring this nine-year process to an end and at least add this interim fix while the other pieces can be built. They understand the reluctance of Council to quickly pass the NINA plan district but they would like to know that some action is underway.

Commissioner Hales asked Mr. Rosenfeld if he has any concerns about the staff approach, given that there is only a slight difference between the Planning staff's original recommendation for IH zones and what the NINA amendment proposes. The staff approach would basically change the specifications for the IH zone while the amendments call for applying those restrictions on specific map sections, with a 2,000 foot difference in where the target is set.

Mr. Rosenfeld said he has no concern regarding the difference between 10,000 and 12,000 square feet. He said the four neighborhoods have learned to talk to each other before signing off on anything because they recognize how inter-related they are.

Commissioner Hales asked if NINA is concerned about interim protection until the planning work is done but would regard the staff recommendation as adequate interim protection.

Mr. Rosenfeld said yes.

Connie Hunt, CEIC President, said for the Central Eastside Industrial District (CEID) to achieve mutual job opportunity goals, it needs to reassess and possibly redefine what industrial really means. Its concern is to protect existing businesses, recruit new ones and, most important, retain those which need to expand. Maintaining the unique characteristics of each industrial sanctuary is paramount. This is most important to the CEIC because of its immediate plans for the Lower Burnside project and a Development Opportunity Strategy (DOS).

Mike Bolliger, CEIC Vice President and Land-Use Committee Chair, said CEIC supports the Planning Bureau recommendations but is concerned with meeting the 2040 objectives for employment growth. Currently some businesses are leaving the Central City because of frustration about upgrading the facilities they have. Likewise, new businesses coming into the District are frustrated for the same reasons. He said after many meetings the Land-Use Committee has forwarded four amendments which relate specifically to the CEIC. He said the committee met with NINA and is in total agreement with what it is trying to do with its boundaries but that industrial sanctuary is very different from the CEIC in the type of business that wants to locate there. CEIC does not have smokestacks and heavy industry but is instead an area of light industry and the IG zone needs to be updated to reflect the more modern kinds of business that would like to locate there.

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Mayor Katz noted Council's concern about conflicts with other policies if it does what the CEIC has requested, specifically regarding the request to allow up to 100,000 square feet for office headquarters.

Mr. Bolliger said they are not advocating a broad-based approach to other industrial sanctuaries. It is important that CEIC have the flexibility to locate businesses in its district that do not compete with heavy industrial areas such as NINA. Of the four proposed amendments, two have to do with modernizing old buildings already there. The 1:1 FAR would allow some ground-level parking in an area where there is not a great deal of open space. They also have older buildings that are multi-story. After talking with commercial realtors, the 100,000 square foot number is simply a dart on the wall. They recommend that the number be increased to at least 80,000 or 100,000 square feet to handle larger buildings and complexes that may want to locate there.

Commissioner Francesconi asked if there is some particular reason why this needs to be addressed right now if the City can find the resources to study this in a more holistic fashion. What is the urgency?

Mr. Bolliger said the zoning draft the Planning Bureau distributed got CEIC started thinking about the problems in its districts and the frustrations of trying to get new businesses to locate there. Plus some businesses are leaving, i.e. Promotional Products, Inc. CEIC believes that this language could be included in the draft with small expense, if any.

Mayor Katz asked Planning staff if it had reviewed these recommendations.

Ms. Harnett said yes, but PDOT has some significant concerns about the traffic impacts that could result from allowing 100,000 square feet of office in the middle of the CEIC. There could be negative consequences in terms of retaining some existing businesses as it could create traffic conflicts between larger delivery trucks and increased automobile traffic, especially in an area with poor access to public transit.

Commissioner Hales said he understands the issues CEIC is raising but believes this is the wrong vessel for resolving them. He personally prefers the staff recommendations to those of the Planning Commission. The purpose of the amendments is damage control, to avoid messing up viable traditional industrial areas with retail and office uses, and not to do a plan for the Central Eastside or NINA. A process is needed to rethink the future and character of the Central Eastside, but trying to stuff that goal through this hole in the wall will really make a mess. He said there is a whole bunch of issues that go along with allowing 100,000 square feet office buildings in the Central Eastside. Offices are supposed to go where there is transit and that is why there are high FARs for office uses in the Central City along the transit mall. If the Central Eastside wants to be an office district that is different than being an industrial district. It cannot be an office, industrial and retail district all at once. He said while PDOT raised the issue, more than transportation is involved.

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Mr. Bolliger said the concern CEIC has is not having a definition of what manufacturing is in the 21st Century. For instance, what is the classification for a modular manufacturer with computer chips? If the City is not going to define what manufacturing is because of the prohibitive cost and time a planning process would take, then some advocate for going in the other direction to ensure that modern businesses are not lost while older industries and businesses leave because they find they cannot modify their current spaces.

Ms. Hunt said passage of their request would send a clear message to the CEIC that Council is very interested in an area where action needs to be taken.

Commissioner Francesconi asked if there is anything in the Planning Commission or staff recommendation that will inhibit the CEIC vision.

Ms. Bolliger said the CEIC is supportive of both recommendations but is trying to take them a little further.

Mayor Katz said she understands the transportation issues but also appreciates the need for the CEIC to move a lot faster than Council may be ready to move. The question is whether CEIC has to wait until there is money in the budget to do its plan before these issues can be resolved. Would that be a year or two years? Many opportunities may be lost over that time.

Ms. Harnett said there is nothing in the long-range planning budget to address an update for the Central Eastside. Regarding priorities, she said there is a lot of interest in looking at implementation strategies for the 2040 growth concept, which does not exclude the Central Eastside but does not place it high on that list. She noted that the Central Eastside was part of the Central City Plan done 10 years ago while there are places like St. Johns and NINA that have had no planning at all. It is a matter of how far a staff of 28 people can be stretched.

Commissioner Hales said the City has not been hearing this message from the CEIC for very long.

Ms. Harnett said the Central Eastside is an excellent example of an area which has been impacted by changes in how business is done.

Mayor Katz asked staff to put together a budget add package so Council can take a look at it. The CEIC may want to add some of its own money.

Commission Saltzman asked if that was to be in lieu of the recommendations before Council today.

Commissioner Hales said no, the CEIC would still need a plan even if Council adopts these amendments.

Commissioner Saltzman asked about the CEIC amendment proposing that office and retail

of up to 10,000 square feet be allowed as long as it was in conjunction with an existing manufacturing use. Does that cause any problems?

Ms. Harnett said that is not of as much concern as the 100,000 square feet for office use.

Commissioner Saltzman asked if there was a specific reason for arriving at the 10,000 square feet.

Mr. Bolliger said that was the number recommended by the commercial and industrial retailers. They felt the infrastructure would be fine because it would control itself.

Mark Teppola, past CEIC president, said he was part of original efforts in the 1970s to address the deterioration of this area. He said retaining businesses there is still tricky and there is some urgency as other areas try to raid some of them. He described how his business, National Builders Hardware, has changed to reflect changes in the industry and distribution methods. The Zoning Code needs to be in step with those changes.

Peter Fry, CEIC, said the Central Eastside has been planned extensively since 1978. He said CEIC is not asking for another land-use plan but simply to fix several things left over from the Central City Plan. It also wants to do an economic development plan to attract firms into the district. The CEIC is asking for some minor changes to the zoning, some of which have been before the Planning Director for six or seven years, especially the issue of artist lofts. He said Metro's Framework Plan anticipates dramatic growth and the Central Eastside believes that if these modifications are not made now, by 2010 no one will want to be there because of the tremendous conflicts that have arisen as the district tries to meet the Metro goals. The changes need to be made now so growth can occur in a slow manner. Regarding the policies, he said the Planning Bureau already addressed them in its draft and he does not believe any of the CEIC proposed changes conflict with City policies or the Comprehensive Plan. He said they could provide findings within the next two weeks to that effect. He said Portland's zoning is sophisticated and can treat NINA differently from the Central Eastside and from the Columbia Corridor, as it does now. He said the IE zone around OMSI is limited to a 1:1 FAR and the CEIC is asking for 4:1 in this employment zone. A second change, in IG1, requests that operational headquarters in conjunction with manufacturing be allowed as a conditional use. The third change concerns retail offices like Franz Bakery's retail outlet and the fourth is addressed by the first two. Basically, the Planning Bureau's draft is adoptable now with two changes, taking the 1:1 FAR to 4:1 and the 60,000 square feet to 100,000. He said this is not the time for Portland to sit back as all the suburban areas have zoning that allows businesses to site there through a conditional use process. The transit system is excellent, one of the best in the City.

Commissioner Hales asked him if he thought the Central Eastside needed any zone changes to achieve its goals.

Mr. Fry said he thinks the Code needs to be modified now to allow operational offices as a conditional use in IG1 and allow up to 4:1 FAR in the Employment zone. The Planning

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Bureau draft does that.

Commissioner Hales said what you are recommending calls for fuzzing up what can be done in each zone so the CEIC can do what it wants in the Central Eastside.

Mr. Fry said that is what the City has been doing for the last eight years anyway. If you look at any of the Plan Districts, such as Gateway, they specifically modify the base zone language for that area. The CEIC has the Central City Transportation Management Plan for example which does not exist anywhere else in the City and which modifies parking restrictions there. He is saying that what has been done for eight years should be continued now.

Commissioner Hales said you are talking about sites with Industrial zoning where you want a 4:1 ratio for offices. He questioned what kind of parking ratios will be needed if eight-story office buildings are allowed and how many people will arrive by cars. He said this sounds like a much bigger deal and is not sure this is good public policy.

Mr. Fry said the Central Eastside already has ratios on offices in the area north of Hawthorne which is in the CCTMP. There is also a state rule which requires any business over 50 employees to have a transportation plan. He noted that the City is treating North Macadam, which has no transit, differently. He said he understands the concern but believes the conditional use process for the IG1 zone addresses that concern as approval could not be granted unless transportation is addressed. The IE zone would apply to only two sites and there are conditions there which address these concerns also.

Commissioner Francesconi asked if the CEIC wanted artists lofts.

Mr. Fry said yes, they want to recognize artists as a manufacturing, production use, allowing them to live there as an accessory to a primary use. The Code allows every primary use to have a residential use or caretaker as an accessory use. The problem lies with the Planning Bureau, which currently views this as allowing one caretaker per site, not per use.

Frank Bird, President, NWDA, said NWDA is 100 percent behind NINA's request. He sees a need for some exception triggers. For instance, NINA has unique geographic limits so if the 60,000 square-foot cap were to go forward one could conceivably have four or five retail businesses half the size of Costco. It all boils down to transportation and carrying capacity.

Steve Pfeiffer, attorney representing TMP Development, owner of Hayden Meadows, asked Council to consider his very specific solution to a problem arising from a very specific set of circumstances surrounding this property, which is in the EG2 zone. He said Hayden Meadows has long existed as a large retail center of 750,000 square feet with three separate tenants. Only four of its 16 buildings are in excess of the 60,000 square-foot cap proposed by Metro. The EG2 zone has one restriction, the 1:1 FAR cap, except for the Columbia South Shore where the City adopted a 25,000 square-foot cap. He said that 1:1

cap as applied to this mostly built-out site, would render all but the 60,000 square feet of the 750,000 square feet non-conforming. Second, virtually any square footage added to that site would in turn trigger a conditional use review. The City's proposal diverges from the Metro proposal by encompassing a 60,000 square-foot cap on a site, which is defined as common ownership. Thus any retail in excess of 60,000 would become non-conforming. He said the solution he proposes is that for large-lot employment zones (EG2), of which he believes Hayden Meadows is the only one where it would apply, Council adopt the Metro definition of a cap of 60,000 square feet for retail per building or user. That would mean the 750,000 would become conforming in its entirety with the exception of four buildings. The rest of the center, however, would be conforming and because it is essentially already developed it would retain its current status. That is not inconsistent with Title 4 which does provide an exception process for substantially developed retail uses. He asked Council to be consistent with Metro Title 4 in the EG2 lands to solve this problem. He said non-conforming status becomes a problem when an owner tries to obtain financing or lease to tenants. The only other option is a zone change to CG but that would open that site to redevelopment at uses and intensities of a retail nature far in excess of what he is proposing.

Commissioner Hales asked what the difference is between the current development pattern and CG. This is commercial and has a shopping center.

Mr. Pfeiffer said the problem with changing the zone to CG is that there is no assurance that the current buildings would not then be leveled and a series of larger box retail stores would come in. To avoid that, you place a cap on building size of 60,000 square feet and anything over that would be a site-specific conditional use.

Commissioner Hales said in reality this is a bunch of strip malls, developed with parking lots and stores, and it looks like CG to him. Making changes to the Employment zones makes him very nervous, even though Mr. Pfeiffer assures him they will not affect any other properties very much. The simple answer would be for TMP to apply for a shopping zone designation rather than torture the Employment zone to make the shopping zone legal.

Mr. Pfeiffer said he discussed that with Planning staff but still feels compelled to put this option before Council, even though it is tortured. He fully realizes Council would find a zone change the better course. If Council believes that is better, his client will do that. This is simply another way that requires less work.

Mark Whitlow, attorney representing the Retail Task Force, said the Task Force's concern is with the non-conformity issue as it wreaks havoc on marketability, lendability and the ability to redevelop. He said they asked Metro to exclude certain areas, which it did, and craft a policy to exempt other areas. He said until today he did not realize there were only a few areas that might become non-conforming but to the extent there are, including Hayden Meadows, the Task Force is concerned. They would like to see more advantage taken of the regional model as a lot of thought was given to that. There is a big difference in the scope of the regulations proposed at the 60,000 square-foot level. There was a lot of

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debate about that at Metro and he is not sure why this ordinance proposes this big leap from single use or building to site. He said centers with large buildings in excess of 60,000 square feet were deemed by Metro to be part of the problem from a traffic perspective or because of usurpation of employment opportunities. The idea was that centers that had an anchor in excess of 60,000 square feet would have a regional draw and thus a traffic impact. He asked Council to consider the benefits of having consistent regional regulations that more closely mimic Metro's.

Steve Daneman, commercial real estate broker representing the Alliance of Portland Neighborhood Business Associations, said he has three main points. First, he believes the process to get to this point was fatally flawed and that Council should approve the Planning Commission recommendation adopting only the minimum Metro requires. Second, the purpose of this action is to meet Metro implementation rules which must be enacted next month. One of the reasons the Commission recommended doing only the minimum was because of its frustration with a process that had to be done quickly in order to implement the Metro regulations but that then had a whole lot of changes added which Planning staff thought might be appropriate even though there was neither the time or money to do this the right way. Without more study he is afraid the real meat of the matter may come out half-baked. Proposals are flying left and right for one zone and another but there has been no process to really work with the business associations or businesses to figure out what the City's industrial sanctuary policy should be. This is not a new question but is important enough to merit the time it deserves. The third point he raised with the Planning Commission is not to harm existing businesses unless there is a real reason to do so. That applies to non-conforming and conditional use aspects of taking businesses which went into those areas under an allowed zone and have been there a long time but are now being told they are not wanted there and are labeled a conditional use. That impacts financing and property values and should not be considered lightly. If this must be done today because Metro requires it, then the City should do only the minimum, as the Planning Commission recommended. Then the City should take the time to do the study that is needed. He said Hayden Meadows should be zoned differently, either as EG, under which it was built and should be allowed to continue, or the zoning should be changed to acknowledge that it is a retail center that does not have a negative impact on the adjoining industrial areas. He said he testified against the Lutz rezoning because he felt that creeping rezoning would be damaging to the industrial sanctuaries but what he has seen today is that industrial sanctuaries are different and they need to be treated differently. He asked for additional funding to study zoning and to think carefully about the conditional use issue. He said the City had to work long and hard to clean up the problems caused non-conforming use designations on Belmont.

Commissioner Francesconi asked if going to the IH zone will create many situations for non-conforming use.

Mr. Daneman said he does not know for sure as that is one of the things that has not been done.

Commissioner Francesconi asked if he thought the NINA recommendations make sense.

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Mr. Daneman said yes. NINA and the CEIC made it clear at the Planning Commission that they did not want their plans shoved down the throats of the other business associations if they would be harmful. They told the Commission they would rather forego their changes than implement the wrong solution. He hopes, however, that they can get some of the changes they need today. He said the process has been so difficult he is fearful the end result will not be a good one.

Commissioner Hales said he thought the CEIC was supportive of either the Planning Bureau's original recommendation or the Planning Commission's.

Mr. Daneman said they supported the changes but their testimony at the Planning Commission was against implementing the changes because the process had been so badly managed that it would not be a good result overall for the industrial sanctuaries.

Commissioner Francesconi said he believes some issues need special attention which Council should not deal with here.

Mr. Daneman said the question is whether the City is implementing the Metro rules or doing a zoning change study. He has been told this is being done only to implement Metro rules but then all these other amendments are being proposed. At the same time, people are told there is not enough time to study those changes but they will be put through anyway. He said different business districts have different needs. In some, hotels may be negatively impacted while others are concerned about car rentals.

Commissioner Francesconi asked if he thought the Planning staff recommendation went too far because there is no process behind it.

Mr. Daneman said he thinks it is ill-considered because the process behind it is bad. It is not as well developed as it should be, given the importance of the issue.

Commissioner Francesconi asked him if he would be okay with going to 12,000 square feet in the IH zone.

Mr. Daneman said if one could find out which businesses are impacted and if there are none, that would certainly strengthen the industrial sanctuaries in the heavy industrial zones, where they need the most protection from retail.

Todd Sadlo, attorney representing Home Depot, 1532 SE 36th Ave., objected to the proposal as it is broad-brushed in general and, as others have testified for other reasons, while the City's industrial and employment areas are in all cases very different, and in some cases unique, Home Depot is one of a handful of retail outlets which is targeted by this proposal. Home Depot cannot build a store under 60,000 square feet. Since in Portland the only undeveloped parcels and available areas large enough for a Home Depot store are in industrial and employment areas, this proposal forces it out of the Portland area. He said Home Depot is big but economies of scale are what bring prices down and that is what consumers ultimately want. By forcing it out to the fringe, the city does not

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stop consumers from wanting to shop there. They will come anyway, even if they have to drive for miles because prices are so low. The City then ends up with exaggerated traffic impacts on the fringe as consumers trek out to find a bargain and haul it back. The success of the Urban Growth Boundary has led to dramatic levels of home improvement and infill in the City and if inner Portland consumers were not clamoring for the products sold by Home Depot, he would not be here today urging rejection of this proposal. He said Home Depot needs to find three sites within the City. This proposal cuts them off as it includes virtually all of the large tracts available for development. He said it is the market that continues to drive Home Depot into the City and the City in turn drives it back out with rigid development policies. He said a great deal of money is lost on both ends. The City loses money spent processing Comprehensive Plan and zone and amendments and Home Depot loses by not being able to site stores near its consumers.

Mr. Sadlo said he would be back again. He said big retail can bring things to industrial and employment zones, including money for redevelopment, mitigation of brownfields, money for infrastructure and innovative mixed-use developments. He said Home Depot brought some of those development proposals to David Knowles (Planning Director) and while none of those flew, he believes Mr. Knowles would agree they were innovative proposals. Home Depot stores do not all have to look the way they do now. They can be made compatible with their surroundings whether they are in commercial, industrial or employment zones and, if allowed to remain at the planning and development table, Home Depot can facilitate mixed development and the accompanying infrastructure the City needs. Regardless of what label is attached to the zone, broad restrictions clearly discourage thoughtful, site specific and area specific planning. He said Home Depot would prefer not to be pushed out to the fringes or into the Comprehensive Plan and zone amendment process.

Commissioner Hales said he appreciated Mr. Sadlo testifying with a smile on his face as otherwise Council would have to restrain Mr. MacAffie.

Commissioner Saltzman asked why he testified that Home Depot cannot do anything less than 60,000 square feet. Is that corporate policy?

Mr. Sadlo said the lumber area alone is 20,000 square feet while the garden center is 27,000 square feet. There is a potential to stack these on multiple stories and there is potential to take care of the areas that now take up a lot of space for parking but even then, one of these stores cannot be squeezed into a 60,000 square-foot total.

Neilson Abeel, President, Pearl District Neighborhood Association, said the Pearl District has examined its own area of the industrial sanctuary and determined that the Pearl District should be excluded from any further industrial restrictions. Its neighboring associations have agreed to this so that in the future the Pearl District may look to the transition of its industrial land to other uses, which would be in keeping with current uses and more compatible with the emerging residential, mixed-use development of the River District. He said the Pearl District has 18 blocks of IG zoning, north of Lovejoy from NW 12th to the River. That was excluded from the major zone change to EX which permits the whole

build-out of the River District. They support NINA's position calling for an upper limit of 10,000 square feet or 10 percent of the site, whichever is less, for sales, service or office uses in IH zones. The prospect of a 60,000 square-foot retail facility, even in the EX zone, would be completely out of scale in the Pearl District and would require excessive reliance on vehicular traffic, which the representative of Home Depot just admitted. He asked Council to support that change and proceed to finalizing individual neighborhood plans.

Bob LeFeber, Commercial Realty Advisors, speaking for the International Council of Shopping Centers (ICSC), said they only recently heard about this from Steve Pfeiffer and are a little frustrated that neither Mark Whitlow nor representatives of ICSC were consulted about an ordinance that goes way beyond what Metro Title 4 requires or what was agreed to then. He said he is not familiar with Portland's zoning but knows people are concerned about how they are going to supply retail to this growing community. He said one sees all the major chains in the suburbs where people have lots of options. The City of Portland does not. Home Depot, Walmart, Waremart and others would love to put units in the City but find it impossible to do so. These may not be places where Council members want to shop but he can guarantee these are places the community wants to be able to shop. When Walmart opened at Eastport Plaza it was one of their top five openings in the entire country. Clearly it served an unmet need in the community and there are other retailers who would like to do the same. He would like to have staff spell out exactly what the impact of this proposed change is. How many acres of potential retail land are being taken off the table by this proposal. He said perhaps the EG2 zone is limited to Hayden Meadows but what about EG1 and all the other land that is going to be taken off the map that would have been available for development in the community. He does not understand why the City is going way beyond what Metro requires. Already they have heard about the dilemma of applying the restriction to one particular site and the potential damage that causes. He said Council should more closely follow Metro's rules and apply it strictly per building or business and not per site. He said he hopes landowners of EG1 and EG2 properties in the Columbia South Shore were notified about this ordinance as it could possibly make their properties non-conforming. If they are not aware of this the City may not be complying with the recent notification law. Under Title 4, one has the ability to make exceptions for substantially developed areas and staff should have developed such an exception for areas like Hayden Meadows and made that part of the adoption. Council would not have to worry about a rezone then, only an exception for an area substantially developed like Hayden Meadows already is. He said the Metro 60,000-square-foot cap was arrived at because they did not want this to necessarily restrict the ability to develop grocery-anchored centers. By applying the 60,000 square-foot cap by site, the City will cause that restriction to occur.

Rick Williams, Melvin Mark Companies, representing the Commercial Real Estate Economic Coalition, said they agree with the testimony of Mr. LeFeber, Mr. Pfeiffer, Mr. Whitlow, Mr. Fry and others. The Coalition wants to do the minimum and do no harm. It has long had a concern about the issue of non-conformity, particularly as it relates to the definition of site, and this proposal goes way beyond that, particularly as it impacts existing businesses which provide both employment and opportunity. The issues of marketability, finance ability and value are of extreme importance to them. He said so

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many properties in Portland are taxed or burdened because the City's definition of site is different than Metro's definition of a building or specific business. An improvement to a site has negative and financial consequences to other properties owned by a common owner that have no relationship to the site being developed. Metro's definition is much more reasonable and having a more consistent definition in the City's zoning Code would go a long way in making it an attractive place to do business.

Mr. Williams said the nature of industry is changing and his organization is currently conducting a regional industrial land inventory within the Metro Urban Growth Boundary in partnership with the Portland Development Commission, the Oregon Economic Development Department, the Port and Metro. He said there are types of industry occurring on industrial lands that do not fit the definition of industry of five years ago. They need to take time to get a handle on what the inventory is doing, how it performs now and in the future, and the type of business and industry that will locate on that type of property. They expect to be done with the study in April or June and will then have a clearer understanding of how the industrial inventory is performing and what is available. Right now they do not even know what is being taken out of the supply for retail or industrial because they do not know, regionally and within the City, how that supply is operating. He urged Council to adopt only the Metro version of this, be cognizant of the needs of existing business and take the time to understand what the inventory is doing.

Commissioner Hales said because of all the conflicting viewpoints, this hearing makes it clear why the Planning Commission chose to do the minimum. This was a big deal at Metro which chose a standard of 60,000 square feet so as not to disrupt life in the suburbs too much. The City can decide whether it wants to do better than that in its industrial districts or whether it wants to sink to a regional common denominator. That is a tough call. He said Metro got into this issue because a lot of governments, particularly in the Metro area, have zoned areas for industrial use and then diluted the job production and viability of those areas by allowing a lot of retail uses. Portland has done a little of that but, because the way the Code is written, it has done less. A really graphic example of that can be seen on the west side of I-5 where a land-use plan for Woodburn was drafted which zoned an area west of I-5 for industrial use. Woodburn made a case to the Land Conservation and Development Commission that this land was needed for industrial land in the future but now there is a gigantic outlet mall under construction next to a new car dealership on a large portion of that land. That will generate enormous amounts of auto traffic and no one will get there by any other means than a car. That is the problem Portland is trying to solve. Also, Council has heard the argument today that the City should never create a non-conforming use when a zoning decision is made. He disagrees with that and it is a good thing that approach was not taken when the Albina Community or Outer Southeast Plans were adopted. If the City adopts a standard of never creating a non-conforming use, one never changes anything.

Mayor Katz asked Ms. Harnett to respond to the issues raised and to make some recommendations as to the timeliness of future actions by the Planning Bureau so that if Council chooses not to go beyond what the Commission or the bureau recommended, it knows what the timeline is.

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Ms. Harnett said the Bureau is in the process of preparing its Functional Plan compliance report which is due to Metro the end of February. They will ask for some time extensions for several items, such as the parking minimums and maximums. She does not think Council needs to look at completing that work by February 26 and getting it on the books. If Council passes what the Planning Commission recommended, it will be on the books by then but she believes staff ought to take the time, even if it takes 30 or 60 days, to do a little tweaking to make Council more comfortable with what the City is doing. She does not think that will be a problem for Metro although it would delay other planning efforts somewhat. The things being talked about here are not huge unless one is talking about implementing NINA's full plan district.

Mayor Katz summarized that if Council wants to tweak recommendations which go beyond those of the Planning Commission, then staff will come back within 60 days with a more careful review of the recommendations made by those who testified today.

Ms. Hartnett said yes, especially if Council is going basically in the direction staff initially recommended to the Planning Commission. Nothing Council has heard today could not be accomplished by using staff's proposal as a starting place. Regarding the Central Eastside, she said Item 1 in the CEIC request asks that floor area allowed for office space in employment zones be increased from 1:1 to 4:1. She said there is very little employment zoning in the CEID, mostly around OMSI, but it is an area that is pretty remote from access to good public transit. A 4:1 FAR for office is pretty significant and she cautioned Council about that one. The second CEIC request is for 100,000 square feet of office as a conditional use in IG1. Their letter of January 14 refers to operational headquarters and she is not certain what is meant by that. However, their original letter to the Planning Commission said office uses in conjunction with manufacturing and distribution should be allowed up to 100,000 square feet through a conditional use process. That is basically the same as Bureau staff proposed to the Planning Commission, although staff's proposal was for 60,000 square feet. She believes using office in conjunction with manufacturing can be done without causing too much problem. She does want to double check with PDOT, however, before jumping into that one. She thinks Council can implement the NINA proposal for IH citywide as it will meet its needs and not cause harm in other areas. She does not believe there is a significant number of existing retail uses in the IH zones. The places where that exists are in Rivergate, Swan Island and the lower Albina industrial area. The types of retail there right now are typically lunch counters and such, which are well below 12,000 square feet and are already conditional uses right now. Ms. Hartnett said this project sent notices to its entire legislative list and she assumed that Mr. Whitlow and Mr. LeFeber were on that list as they have been so active in City planning issues. She said staff talked to the Port, which controls a lot of IG and IGH land, and it is fine with the staff proposal. Finally, the idea of placing a limit on retail in EG either per business or per building is a bad approach. Where there are large sites in EG, such as the area north of the Banfield between 60th and 68th, each one of the warehouses there now could be subdivided for retail use if the cap was 60,000 square feet per building or business. She does not believe that is something the City wants to encourage as she agrees strongly with Commissioner Hales' comments that the Functional Plan language was developed as a regionally acceptable approach. That does not mean Portland should do it. She

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understands Home Depot's desire to find additional locations but commercially zoned land is what they need. Perhaps they should talk to Mr. Pfeiffer.

Mayor Katz said perhaps they should consider a store designed in more of an urban form.

Ms. Hartnett said she has had lengthy conversations about the situation at Hayden Meadows and they talked about actually including a recommendation to rezone the Hayden Meadows area to CG because it is a place where the City has lost the opportunity to create the kind of employee uses the EG zone is intended to do. She does not think a rezone to EG would open up a floodgate of tremendous development that could not exist right now. In fact, EG1 has no height limitation and a 3:1 FAR while CG has a 3:1 FAR limitation and a 45-foot height limitation so actually the building envelope is more restricted in CG. Different uses are allowed in CG so that is another issue.

Commissioner Francesconi asked her if she thought changing the definition to building or user just for that property in order to take care of the non-conforming use is a bad idea.

Ms. Hartnett said yes, although she realizes it is a problem for Mr. Pfeiffer's client because the City defines site as contiguously-owned property. While that is the only site of this nature she knows about, she cautioned Council about doing something for a specific property and a specific property owner. If there is another one out there the City does not know about, it creates something of an equity problem although she does not know the full legal ramifications.

Commissioner Hales said approving that here would make an exception through a legislative process instead of in a site-specific zone change process.

Commission Saltzman said he would like to move ahead with the NINA recommendation for IH zones and modify that to 12,000 square feet rather than 10,000 square feet. He sees no reason to wait as he does not need to be convinced that commercial uses do not belong in the Northwest industrial sanctuary.

Commissioner Hales said he is inclined to go with the original Planning staff recommendation instead of the Planning Commission's.

Commissioner Sten said he would go with the staff recommendation as it takes several steps in the direction desired by the Central Eastside and takes care of NINA on a permanent basis. However, he is open to taking several more weeks to look at this as he thought Mr. Fry made a compelling argument about several specific sites where there would be no harm to anyone else. He said there are some unique sites around OMSI he is willing to look at and he is personally open to Mr. Pfeiffer's argument because of the contiguous ownership issue there which puts the owner in a situation that almost no other comparable parcel is in.

Commissioner Hales noted that Planning staff had recommended earlier that a zone change for that site be included in the package. He is much more comfortable doing that than

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changing the regulations to suit the needs of one property owner. If there is Council consensus, Planning staff should be directed to return with language that incorporates that and if there are issues where there is still disagreement, Council can vote on those. Subjects for consideration include the operational headquarters issue in the Central Eastside and Hayden Meadows. If Council accepts the staff recommendation, the NINA amendment will not be needed.

Mayor Katz asked if the one remaining CEIC issue is its desire to go up to 100,000 square feet.

Commissioner Sten said he is prepared to support a motion to allow some more time to get these things ironed out rather than not have a vote and potentially leave a lot more things on the table.

Commissioner Hales moved to direct staff to return with an amended proposal that incorporates the Planning staff's October 8, 1998 original draft and calls for review of a change to allow headquarters in the Central Eastside to have either a 60,000 or 100,000 square-foot cap as well as a review of the rezoning of the Hayden Meadows site to CG.

Ms. Hartnett said the Central Eastside's original letter to the Planning commission requested that office uses in conjunction with manufacturing or distribution be allowed up to 100,000 square feet through a conditional use process. The staff proposal was for up to 60,000 square feet. In the CEIC's letter of January 14, 1999 that has been changed to say "operational headquarters." Ms. Hartnett said she is unsure what that means but wants to clarify that it is the combination of office and manufacturing that the City is trying to promote there. She said in its staff recommendation to the Planning Commission, staff proposed that the same restrictions would apply to office as apply to retail as both have the same potential negative impacts on industrial areas. Thus in the IH, both office and retail would be limited to 12,000 square feet. The only place they would not be applied is in EG where office uses would be allowed up to a 1:1 FAR. She asked if Council wanted to include that as well.

Council members said yes.

Commissioner Sten asked if there was any interest in looking at the 4:1 ratio on EG for the four sites in the Central City.

Commissioners Hales and Francesconi said they are not because this is not an appropriate place to make that decision.

Ms. Hartnett said if and when South/North light rail is approved that area is slated to be a station community. She believes she can bring back language for the zoning code changes in less than 60 days but if the zone change for Hayden Meadows is added, it might take a little longer.

Mayor Katz said she should have the flexibility to do them separately.

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Commissioner Hales said he thinks there is a sound basis to do something unusual in Hayden Meadows and sweep a site-specific zone change into a legislative process. Mr. Pfeiffer has made a case that this is an anomaly and, although he did not like his suggestion for solving it, there is another one he can live with. There is a need for some notice and opportunity to comment.

Mayor Katz asked if all the Council members' issues had been taken care of.

Commissioner Francesconi said he likes extending the protection of the IH citywide and would also like to clean up the Hayden Meadows issue. With regard to the Central Eastside, however, he believes that Council may be piecemealing things there.

Ms. Hartnett said what Central Eastside really seems to be interested in is an economic development plan which addresses how to bring businesses in and how to retain existing ones. They see allowing office in conjunction with manufacturing up to 100,000 square feet as a small piece in opening those doors. Both PDC and Planning staff agreed with that. She agrees with Mr. Fry that there probably is not a need to do a full-blown land use review at this point and that what really matters is an economic development plan that would help the Central Eastside sell this new opportunity.

Mayor Katz said if Council is going to adopt the recommendations from the Central Eastside, then staff should rethink the package.

Ms. Hartnett said she will talk to Mr. Fry about how PDC might be able to help. She said Council may wish to direct that suggestion to PDC.

Mayor Katz asked her to come up with something Council can look at.

Commissioner Hales moved to direct staff to come back with amendments to deal with the package of proposed changes as described. Commissioner Sten seconded and roll was called (Y-5).

Mayor Katz noted that these were conceptual amendments that will come back within 60 days.

Ms. Hartnett asked if Council wanted to rehear this matter in 60 days or if it simply wants to hold a discussion.

Commissioner Hales said there has been a pretty thorough hearing today.

Mayor Katz said if the zone change is proposed, Council will have to hold a hearing.

Disposition: Continued for review of proposed amendments. (See April 7, 1999)

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At 4:10 p.m., Council adjourned.

GARY BLACKMER
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council