



CITY OF  
**PORTLAND, OREGON**

**OFFICIAL  
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 7TH DAY OF APRIL, 1999 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Hales and Sten, 4.

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

Agenda No. 447 was pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

**CONSENT AGENDA - NO DISCUSSION**

- 445** Accept bid of PHI Construction, Inc. for Eastmoreland Golf Course golf cart storage facility for \$80,080 (Purchasing Report - Rebid 99112)

**Disposition:** Accepted; prepare contract.

- 446** Accept bid of Phillips/Sisson Industries, Intersection Development Corp., Cascade Signal Corp., NW Signal Supply, Advanced Traffic Supply, Traffic Parts, Inc., Capital Enterprise & Engineering and McCain Traffic Supply for an estimated amount of \$1,137,023 (Purchasing Report - Bid 99139)

**Disposition:** Accepted; prepare contract.

- 448** Accept bid of JVC Contractors, Inc. to furnish 4th floor Portland Building renovations for \$65,868 (Purchasing Report - Informal Bid 991457)

**Disposition:** Accepted; prepare contract.

- 449** Vacate SW Montgomery Street between SW Fifth Avenue and SW Sixth Avenue, under certain conditions (Ordinance by Order of Council; C-9958)

**Disposition:** Passed to Second Reading April 14, 1999 at 9:30 a.m.

**Mayor Vera Katz**

- 450** Confirm appointment of Anne Davidson to the Adjustment Committee (Report)

**Disposition:** Confirmed.

- \*451 Pay claim of Timothy Shulze (Ordinance)

**Disposition:** Ordinance No. 173225. (Y-4)

- \*452 Establish a new classification and pay grade for Planning and Development Review Director and establish one position of Planning and Development Review Director in the Office of Planning and Development Review, in accordance with the Personnel Rules adopted by the City Council (Ordinance)

**Disposition:** Ordinance No. 173226. (Y-4)

**Commissioner Jim Francesconi**

- \*453 Authorize purchase of 13 New Generation Mobile Data Terminals from Data 911 for \$73,645 without advertising for bids and provide for payment (Ordinance)

**Disposition:** Ordinance No. 173227. (Y-4)

**Commissioner Charlie Hales**

- \*454 Authorize the use of payroll deduction for payment of transit passes for City of Portland employees (Ordinance)

**Disposition:** Ordinance No. 173228. (Y-4)

**Commissioner Dan Saltzman**

- 455 Accept completion of the N. Maryland/Webster sewer rehabilitation, Project No. 6279, and authorize final payment to Moore Excavation, Inc. (Report; Contract No. 31835)

**Disposition:** Accepted.

- 456 Accept completion of the Fanno Basin pump station surcharge, Project No. 6400, and authorize final payment to J. L. Arndt Construction, Inc. (Report; Contract No. 31981)

**Disposition:** Accepted.

- \*457 Contract with Brown and Caldwell for professional engineering services for pre-design and design elements of the Columbia Boulevard Wastewater Treatment Plant lagoon reconstruction, Project No. 6072 (Ordinance)

**Disposition:** Ordinance No. 173229. (Y-4)

- \*458 Consent to sub-contract of Jack Fleming Sanitary Service solid waste and recycling franchise to Moreland Sanitary Service, Inc. as a wholly owned subsidiary of Waste Connections, Inc., from April 1, 1999 and thereafter until June 1, 1999 or the effective date of the transfer of the franchise (Ordinance)

**Disposition:** Ordinance No. 173230. (Y-4)

- 459 Consent to transfer of Jack Fleming Sanitary Service solid waste and recycling ranchise to Moreland Sanitary Service, Inc. as a wholly owned subsidiary of Waste Connections, Inc. (Ordinance)

**Disposition:** Passed to Second Reading April 14, 1999 at 9:30 a.m.

**Commissioner Erik Sten**

- 460 Accept contract with Moore Excavation, Inc. for the Bull Run Lake access road, spillway and dike reconstruction as complete and authorize payment (Report; Contract No. 31764)

**Disposition:** Accepted.

- \*461 Authorize a contract and provide payment for the maintenance and rehabilitation of ground water wells 1, 6 and 11 (Ordinance)

**Disposition:** Ordinance No. 173231. (Y-4)

- \*462 Extend the contract with Cornforth Consultants, Inc. and increase from \$137,563 to \$148,063 for additional engineering services (Ordinance; amend Contract No. 31260)

**Disposition:** Ordinance No. 173232. (Y-4)

**REGULAR AGENDA**

- 447 Accept bid of Ken Leahy Construction, Inc. to furnish Progress Downs Golf Course remodel for \$3,048,132 (Purchasing Report - Bid 99141)

**Discussion:** Commissioner Francesconi said there has been a longstanding dispute with Progress Downs concerning Parks' failure to make certain repairs to the golf course. Negotiations have been underway for several months and substantial progress has been made. However, regardless of the negotiations, the City needs to keep its commitments to Progress Downs and the golf program. The money for the remodel is coming from past capital set-asides.

**Disposition:** Accepted; prepare contract. (Y-4)

- \*444 **TIME CERTAIN: 9:30 AM** - Contract with Recycled Technology, Inc. to manufacture a prefabricated rubber speed bump, collect sales royalties and authorize the City to purchase the devices from Recycled Technology, Inc. without advertising for bids (Previous Agenda 356 introduced by Commissioner Hales)

**Discussion:** Commissioner Hales said this a great example of something new under the sun and also advances, through new technology, Portland's interest in recycling and neighborhood traffic calming.

Scott Batson, Bureau of Traffic Management, Traffic Calming Program, reported on the Bureau's successful development, working jointly with Recycled Technology, of prefabricated rubber speed bumps which can serve as an alternative to the asphalt ones. He

APRIL 7, 1999

listed some of the advantages of rubber speed bumps, including the need for fewer people to install them and the ability to remove and replace them. The rubber bump also has the potential to generate revenue because Recycled Technology will pay Portland a royalty on sales. Many jurisdictions have expressed interest in this type of device, including cities in Canada, South Africa and Israel. This project represents a

successful joint venture with a private sector company and the Bureau requests Council approval of the contract to manufacture the rubber bumps, collect royalties on sales and allow purchase of the bumps from Recycled Technology without advertising for bids.

Gary Jarmisch, President, Recycling Technology, said they have received lots of enquiries about this product from around the country. He said their relationship with the City has been excellent.

Commissioner Hales asked if this is the first large-scale product the company has made that can take this kind of abuse. It seems like an unusual use of recycled rubber.

Mr. Jarmisch said this is a new direction for the company as their main product is matting rubber mats for horse stalls.

Mr. Batson said each ramp is two feet wide by seven feet long. Two ramps, placed end to end, equal the 14-foot standard speed bump. If they are separated with panels they can be expanded beyond the 22-foot standard size. He said rubber works better than asphalt because asphalt is difficult to shape in a curved section.

Commissioner Hales asked how long these bumps would last.

Bill Olson, Recycling Technology, said about 10 years but it will depend on traffic, how many studs are used, etc.

Mr. Batson demonstrated how the bumps are secured and anchored to the roadway

Commissioner Francesconi asked if the City will be able to put in more speed bumps if these are cheaper than the asphalt ones.

Mr. Batson said the device is not actually cheaper than asphalt speed bumps, which cost about \$1,800. The rubber ones typically cost \$2,500 for 14-foot lengths but they have the advantage of being mobile and of a uniform shape and consistency.

Commissioner Francesconi asked if they could become cheaper over time.

Mr. Olson said that remains to be seen.

**Disposition:** Ordinance No. 173233. (Y-4)

463 Accept bid of Brant Construction, Inc. to furnish Woodlawn Park improvements for \$245,800 (Purchasing Report - Bid 99123)

APRIL 7, 1999

**Discussion:** Cay Kershner, Clerk of the Council, said the Purchasing Bureau had asked that this be returned to them.

**Disposition:** Referred to Purchasing Agent.

**Mayor Vera Katz**

- \*464 Authorize agreement with the Oregon State Police to participate in a multi-agency, Youth Gun Anti-Violence, Task Force to address youth violence and the illegal sale and distribution of firearms into the community (Ordinance)

**Discussion:** Andrew Kirkland, Acting Captain, Tactical Operations Division, said it has taken a while to get agreement on the language from all the agencies involved but everything has now come together. The intergovernmental agreements include provisions regarding compensation for overtime and personnel selections, etc.

**Disposition:** Ordinance No. 173234. (Y-4)

- \*465 Authorize agreement with Multnomah County Sheriff's Office to participate in a multi-agency, Youth Gun Anti-Violence, Task Force to address youth violence and the illegal sale and distribution of firearms into the community (Ordinance)

**Disposition:** Ordinance No. 173235. (Y-4)

- \*466 Authorize agreement with the Portland Public Schools to participate in a multi-agency, Youth Gun Anti-Violence, Task Force to address youth violence and the illegal sale and distribution of firearms into the community (Ordinance)

**Discussion:** Commissioner Francesconi complimented the Mayor's office for its effort to focus on youth anti-violence programs. He said the next piece will be to connect law enforcement with parole and probation programs and then connect all of them to education and employment opportunities. He said he and the Mayor will present a complete package within 30 days.

Mayor Katz commented that while it is hard to pull City bureaus together, it is even harder to get other jurisdictions working with one another.

**Disposition:** Ordinance No. 173236. (Y-4)

**Commissioner Jim Francesconi**

- \*467 Request and accept three tax-foreclosed properties from Multnomah County for park and recreation purposes (Ordinance)

**Discussion:** Susan Hathaway-Marxer, Bureau of Parks and Recreation, said of the 81 tax-foreclosed parcels on Multnomah County's list of properties available to jurisdictions that provide park services, the City found three parcels in park deficient areas. One parcel is at SW 62nd and Dickinson and the other two adjacent parcels are on NE 7th where the City can now add to an existing park. She said this is a great way to increase the park inventory without additional cost.

APRIL 7, 1999

Mayor Katz said she is pleased to see that the budget included with this ordinance covers the cost of maintenance. Will Council continue to see this?

Ms. Hathaway-Marxer said the Parks Bureau's new policy is to provide maintenance money for new inventory. Most of the land the City has obtained through this program in the past has been natural resource land that did not require much maintenance.

Mayor Katz noted that the budget, however, was outside the regular budget process.

Commissioner Francesconi said the Parks Bureau has a strategy as to what properties it acquires, i.e. in park deficient areas.

Commissioner Hales said since Parks is not keeping up even with the growth in population, he does not want to delay acquiring new resources simply to maintain what it already has.

**Disposition:** Ordinance No. 173237. (Y-4)

#### City Auditor Gary Blackmer

468 Assess property for sidewalk repair by the Bureau of Maintenance for billing processed through March 1, 1999 (Hearing Ordinance; Y1032)

**Disposition:** Passed to Second Reading April 14, 1999 at 9:30 a.m.

#### Communications

469 Appeal of Raymond Grey Cloud, representing Metro Management, Inc., dba Skidmore Saturday and Sunday Market, in its appeal of the City's denial of an application for Park permit (Hearing on Appeal)

**Discussion:** Harry Auerbach, Deputy City Attorney, explained the background regarding this appeal of a decision by the Parks Bureau Director to grant a park permit to Saturday Market, Inc., for the use of right-of-way property under the Burnside Bridge and secondarily for a portion of Ankeny Park. Since 1992, Mr. Grey Cloud's client, Skidmore Saturday and Sunday Market, has tried to gain access to that site, which Saturday Market has been permitted to use for many years. In 1993 Council granted a five-year permit to Portland Saturday Market, for both the right-of-way space and the adjacent park property. Last year, after that permit expired, the Parks Director made a commitment to continue to give it annual permits for that space for the next several years. Mr. Grey Cloud's clients then submitted a competing permit application, in the form of a letter to Commissioner Francesconi, who directed the applicant to the Parks Reservations Center, which has been delegated the authority to process park permits. It is that letter that is the subject of the appeal. Mr. Grey Cloud then submitted an application to the Permit Center but the fee was returned and it was explained to him that there had been a prior application for the space. Mr. Grey Cloud then wrote a letter to Commissioner Francesconi protesting that determination and received a letter in reply which did not change the determination of the Reservation Center. Neither that letter nor the determination of the Reservation Center has been appealed. He said the only thing for Council to decide today is the merits of Commissioner Francesconi's letter of December, 1998 directing the applicant to the Parks Reservation Center. That was an

APRIL 7, 1999

appropriate action for the Commissioner to take because that responsibility has been delegated to the Center.

Mr. Auerbach said the appellant has raised a number of questions as to the applicability of the Code criteria for permits and the failure to schedule this letter as an appeal within 14 days of its receipt. He said he will take responsibility for not scheduling this appeal earlier as it was not a denial, only a referral to the appropriate place to file an application. Mr. Auerbach said he expected that an appeal would be filed once the application was denied and was surprised when it was not. He said the problem with the current City Code criteria is that they do not resolve the issue of what happens when two applicants want the same space at the same time. Generally, the Parks Bureau gives preference to the first applicant. In this case, the first applicant was the Portland Saturday Market. He noted also that the City has an ongoing commitment to Portland Saturday Market for use of this space, at least in part because of its contributions to the improvement of the infrastructure.

Mayor Katz asked if the issue is the appeal of our Code which states that any person desiring a permit shall file a written application with the Commissioner-in-Charge. There is nothing spelled out in the Code when two people want the same place at the same time.

Raymond Grey Cloud, attorney representing Metro Management, Inc., contended that its application was rejected without consideration or evaluation, first by the Commissioner-in-Charge of Parks and then by the Reservations Center. He said this is a case about equal opportunity and following the rules of the City Code. He said the rejection of his client's application by the Parks Commissioner was improper because the specific procedures contained in 20.08.020 (a) were followed by Metro Management. While the Commissioner-in-Charge may delegate his responsibility he may not change the language of the Code. Secondly, rejection of the application by the Reservations Center was improper because no evaluation was done using the standards in the Code for deciding between competing applications. He said while there may be a conflict between the procedures of the agency and the Code requirements, it is the Code that controls. He said there was no notice of appeal filed for the subsequent actions because the first one was completely ignored and his client felt that filing further appeals would be futile. He said they believe the issues raised fall under the first notice as the Code allows an appeal of the rejection of Metro Management's application.

Mr. Grey Cloud asked Council to apply the seven standards listed in Subsection D to Metro Management's application and then make its decision. He said Metro Management's application justifies granting it a special use permit for Ankeny Park, and drew attention to the standard which asks if there is a demand for permits that exceeds the capacity of the park and, if so, whether the applicant has been granted any other permit for any date or period in the same calendar year. Metro Management has never been granted a permit for the use of Ankeny Park while Saturday Market has enjoyed its exclusive use on weekends for many years. He said no individual or group should be able to monopolize the use of a public park and Metro Management should have an equal opportunity to use it or, at least, the City should divide use between the two applicants. In response to Mr. Auerbach's statement that the permit is a debt owed by the City to Saturday Market, he said Saturday Market has no vested rights and any investment it has made has been repaid with interest as they have had exclusive use for years and pay significantly lower fees than those listed in the fee schedule. These circumstances demand further scrutiny by Council. The City took no action on this until after he filed a writ of review and no information has been disclosed about when the prior

APRIL 7, 1999

application was actually filed. The Commissioner-in-Charge has already stated that the decision of who qualifies for a park permit for Ankeny Park in future years has already been made. He read from Commissioner Francesconi's January 21, 1999 letter which states: "If your client wishes to go through the motions of applying each year and challenging the denial each year, that is their right." Mr. Grey Cloud said he believes his client is entitled to more than that. On December 17, 1998 Metro Management filed its notice of appeal and although the Code requires that a hearing date be set within 14 days, no action was taken until three months later, after a writ of review was served on the City. He said justice delayed is justice denied and asked for a fair and impartial evaluation based on the plain language of the Code and an equal opportunity to apply for a park permit.

Commissioner Hales asked if Mr. Grey Cloud would agree that the seven criteria were written with a more typical parks situation in mind and not for a peculiar situation like Ankeny Park.

Mr. Grey Cloud said he is unaware of any factual circumstances that would allow Ankeny Park to be treated differently.

Commissioner Hales said in his view Ankeny Park is a peculiar situation, one where Council might choose to adopt a different set of criteria.

Mr. Grey Cloud said to do that Council would first need to change the Code criteria and remove Ankeny Park from consideration under those criteria. That has never been done and when his client applied for the permit the regulations in 20.08.010 applied. It is too late now to change the rules in the middle of the process.

Dee Craig, Manager, Reservations Center, Bureau of Parks and Recreation, explained the practices involved in processing permit applications. She said the Bureau operates on a "first come, first served" criteria and it would be very difficult if event sponsors had to wait and see what other applications might come in. They have not, however, set a date by which every application has to be in.

Commissioner Francesconi noted that the Bureau does not give equal weight to each of the seven criteria. For instance, more weight is given to the first criteria, specialized purpose.

Ms. Craig agreed. For instance, Delta Park is primarily a sports facility and any permits for special events would be turned down. Permits are also generally not granted for commercial uses only, i.e. flea markets. She noted the permit to Saturday Market prohibits the selling of any food on the Ankeny Park block without special approval and calls for that area to be maintained as open space.

Commissioner Francesconi said the Bureau is not open to competitive bidding so someone can come and use the Park simply to make money.

Mr. Auerbach noted there is no provision in the Code for weighing the seven criteria. The Code is silent about what one does when there are two applicants for the same space. Parks procedures fill in the gaps unanswered by the Code. Criteria No. 7, which deals with requests for park use which exceed capacity, is designed for parks which are overused and allows the Bureau to limit the number of events and then make some evaluation as to who would get a permit if there are competing events. In this case, the Parks Bureau considered the fact that there was more than one application for the same space at the same time and



APRIL 7, 1999

determined that the historical association of Ankeny Park with Saturday Market outweighs the criteria allowing multiple users. The Code allows that determination.

Commissioner Francesconi asked if this situation has arisen before.

Ms. Craig said yes, often with softball or picnic permits. The Bureau always goes with the first applicant who meets the criteria, with top priority given to uses for which a park is designed. For instance, baseball would be given preference over soccer for use of a baseball field.

Mr. Auerbach said the Code places the responsibility for granting applications on the Commissioner-in-Charge but clearly the Commissioner has the authority to delegate that responsibility. Also, what is before Council is an appeal of a letter that directed the applicant to the Parks Reservation Center.

Mayor Katz asked which application came in first.

Ms. Craig said Saturday Market's application was received first in the Reservation Center. In addition, the Parks Director, Charles Jordan, made a decision a year ago that preference would continue to be given to Saturday Market for use of the park for the next three years. Metro Management was so informed at that time. While the fee charged is less than the published fee, the City often charges non-profit organizations less. The City sees Saturday Market as a partner in keeping the City clean.

Commissioner Hales moved to uphold the Commissioner's decision and deny the appeal. Commissioner Sten seconded.

Commissioner Francesconi said he did delegate his authority and believes the Code has been met. He will look into this further so Council can avoid being back in this spot.

Commissioner Hales said the Code has been properly interpreted and does allow for common sense and discretion. If this kind of action persists, the City may have to revise its process to avoid this kind of foolishness. He said Saturday Market, in his opinion, is more than a business. It is a cultural institution that has a long term relationship with the City and no one should get the impression that Council will start a bidding process with private businesses against a non-profit organization for the use of this space. He believes the current reservations process is adequate for people of good will and hopes the City will not have to write complicated Code to make that possible.

**Disposition:** Appeal denied. (Y-4)

At 11:05 a.m., Council recessed.

APRIL 7, 1999

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS WEDNESDAY, THE 7TH DAY OF APRIL, 1999 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Hales and Sten, 4.

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

**470 TIME CERTAIN: 2:00 PM** - Amend the Zoning Code to implement commercial restrictions in industrial and employment zones as required by Title 4 of the region's Urban Growth Management Functional Plan and amend the Comprehensive Plan Map and Zoning Map to change a portion of the Hayden Meadows site from EG2 to CG (Ordinance introduced by Commissioner Hales)

**Discussion:** Mayor Katz noted she had given staff 60 days to return with changes to this ordinance and they have returned in 77 days.

Susan Hartnett, Planning Bureau, said this project was initiated nine months ago to make changes to the zoning code needed to bring the City into compliance with the Urban Growth Management Functional Plan requirements of Title 4. Metro's Title 4 requires that all jurisdictions place a limitation on large-scale retail in industrial and employment areas. The changes needed to bring the City into compliance are relatively minor as there are already some limitations on both retail and office uses in the industrial areas. These have been applied for some time because of the potential negative impacts and conflicts that can occur when office and retail uses are located in industrial and employment areas. Examples include increased numbers of passenger automobile trips, conflicts between auto and truck movement and the escalation of land values which can price industrial users out of the area. At this time all the City needs to do is tweak those regulations a little bit. However, the Bureau of Planning wanted to take this opportunity to see if there were additional changes that would benefit the City but went beyond what Title 4 required. Ms. Hartnett said they knew that any additional changes needed to be applicable on a Citywide basis and beneficial to all the industrial and employment areas affected by those regulations. In preparing the initial proposal for the Planning Commission, the Bureau conferred with a variety of industrial and business organizations as well as the Portland Development Commission (PDC) and the Portland Office of Transportation (PDOT). They then proposed a package of regulations to the Planning Commission in November, 1998 at which time the Commission heard conflicting testimony, a lot of which was based on the perceived needs of the individual industrial and employment areas. The Commission thought it best to forward a recommendation to Council that only made the changes necessary to comply with Title 4.

Ms. Hartnett said Council held its first hearing on the Commission's recommendation on January 21, 1999 and, based on the public testimony and its own concerns, asked staff to return with a second report reflecting the Bureau of Planning's original proposal. Council also asked for a Comprehensive Plan Map amendment and zone change related to non-conforming uses created by these zoning code amendments in the Hayden Meadows area. Ms. Hartnett said the Bureau is now returning with this and has also included a new

APRIL 7, 1999

conditional use option that will allow offices with a manufacturing component to locate within the IG1 zone of the Central City. That was originally proposed in November with input from both the Central Eastside Industrial Council (CEIC) and PDC. Ms. Hartnett said because this is a new regulation which tries to define cutting-edge businesses, they will not know how well this will really work until a few proposals actually come along. She added that the City's use categories as a whole need some attention and it would be better to address that through a use category description than by creating a strange conditional use option.

Jill Grenda, Planning Bureau, referred to a summary chart of the actual and proposed regulations on Pages 16 and 17. She said the proposal takes a tiered approach, offering the most protection for the City's Heavy Industrial (IH) zone. The proposed language prohibits retail uses over 12,000 square feet and applies the same limits to office uses. The next tier offers moderate protection for the City's General Industrial 1 (IG1) zone and the recommended changes allow retail and office uses between 3,000 and 25,000 square feet through a conditional use process. In addition, in the Central City Plan District, office uses between 3,000 and 60,000 square feet may be allowed through special criteria to promote businesses with both office and industrial components. This provision is intended to promote creative service businesses which are currently classified as office uses but have certain characteristics and spatial needs similar to industrial uses. The next tier in the proposal offers moderate protection for the General Industrial 2 (IG2) zone where the proposed language would prohibit retail uses over 25,000 square feet and apply the same limit to office uses. The last tier calls for minimal changes to the General Employment 1 and 2 (EG1 and 2) zones. The language there will establish a conditional use process for retail uses only over 60,000 square feet. This is the minimum action required in the employment areas by the Functional Plan. She said the Bureau is not recommending changes to the regulations for office uses under the assumption that such uses are an important part of the City's employment base and therefore appropriately more common and perhaps more compatible with the overall intent of the Employment Zones. The language includes the minimum required changes to the Columbia South Shore Plan District. That would prohibit retail uses over 60,000 square feet in the IG2 zones. Staff believes that the Columbia South Shore Plan District has already addressed retail and office uses with recent amendments. Finally, at Council's request, staff included a Comprehensive Plan Map Amendment and Zone Change for a portion of the Hayden Meadows property from EG2 to CG (General Commercial). This change avoids the creation of a large area of non-conforming uses there. In summary, the proposal complies with the Functional Plan, strengthens the City's industrial areas, offers opportunities for new types of industries while promoting adaptive re-use and responding to the concerns of industrial business associations.

Steven Daneman, Alliance of Portland Neighborhood Business Associations (PNBA) and the Columbia Corridor Association, addressed four concerns: 1) planning needs; 2) business associations as resources and partners; 3) Metro rule implementation; and 4) rezoning in the Columbia Corridor area. He thanked Council for recognizing the need for funding to support a review of the Northwest Industrial Neighborhood Association (NINA) Plan and for directing staff to take a serious look at creating zoning flexibility in the CEID area. He thanked Council especially for reducing the negative effect of creating non-conforming conditional uses in the Hayden Meadows area. He said the key to successful planning in increasingly complex mixed-used districts lies in coordinating divergent City bureau policies and goals through a process that includes stakeholders in a meaningful way. As an example he cited the CEIC proposal to give more flexibility in order to attract new businesses to their district. It is not sufficient for the Office of Transportation to respond that there may not be

APRIL 7, 1999

enough traffic capacity. They need to be involved in a problem-solving approach to figure out how to meet the City's goals for adding new jobs in the district. Regarding business associations, he said the City needs to improve efforts to work with these organizations and recognize that these volunteer groups are a limited resource to be used wisely. There is a great depth of expertise available from people who ultimately have to live with the rules that are passed and the City should avoid needless fire drills which sap energy and good will. With regard to the implementation of Metro rules, this has not been a good model as several extraneous issues have been included that go far beyond Metro's requirements. While those may need to be addressed, this process has failed to do a good job of doing that. For example, he fails to see the connection between restricting big box retail in industrial areas and restricting (in the draft recommendation) exterior display in retail use to 3,000 square feet combined. Little attention was given to the increasingly complex issues relating to mixed uses and this process has been very weak in terms of public participation and timely notice to all impacted parties. Regarding the Hayden Meadows rezone, the proposed boundary excludes several existing retail and office buildings and therefore fails the test of not creating non-conforming and conditional uses for existing operations without good cause. Unfortunately, these excluded businesses did not receive notice. This is "drive by" and "stealth" zoning based on a cursory, windshield survey rather than a thoughtful, deliberative public process. It is stealth zoning because this process is below the radar for almost all the affected businesses which will only find out about this later when they try to grow and find they cannot. He urged the City to continue to work with the business associations to make Portland a model for good planning.

Frank Parisi, representing Home Depot, said his company believes the ban on their kind of retail use is poor public policy. He referred to pictures of the Clackamas Home Depot store and said Council would probably agree from looking at them that this is not a retail use. It is a building supply warehouse which sells such items as cement mixers, bags of concrete, lumber, doors and insulation. He said Home Depot builds houses but sells them in little pieces. It is in the homebuilding business and its customers are contractors. However, the Code describes this as a retail use and states that anyone who does not sell primarily to contractors and has a retail orientation is a retail use. Mr. Parisi said Home Depot has five stores in the metropolitan area and three are being planned. Six of those eight stores are in industrial zones. They also have two they would like to bring to the City but they cannot because this limitation bans them. That means that they will have to locate outside the metro ring and force people in the City to drive out there to shop at Home Depot. That is not what the City wants. Other businesses this would hurt, if they did not already exist, include Powell's Books, Rejuvenation Hardware, Montgomery Park, the REI flagship store in Seattle, Import Plaza and Fisherman's Marine Supply. All of these are big, efficient stores which people like but they would be banned if they had to come in now. He believes this is poor public policy. Home Depot wants to bring in mixed-use projects to the City that are larger than 60,000 square feet but have housing with them. They cannot do that anymore. He does not think Home Depot is the kind of company the City wants to exclude as every place in which it locates is glad to have it and Portland is the only city that has started a ban on large-format stores.

Todd Sadlo, attorney also representing Home Depot, requested three amendments to the proposal. The first is to the restrictions on commercial use in employment areas. He said employment areas are supposed to accommodate commercial uses and they do not understand why the City wants to make it impossible to put large retail outlets in those areas. The original staff proposal went far beyond what Metro requires and claims to be the minimum

APRIL 7, 1999

required by Metro. But it is not the minimum. He said the only provision in there that is required by Metro is the one concerning traffic. The other three are extras and were added by staff. One, in fact, was added after the October draft, at a time when the Planning Commission had asked for staff to come up with a proposal that just did what Metro required and nothing more. He said the phrases that were added have a lot of subjective buzz words in them and are vague and fuzzy. He said he has written a lot of findings in his day and frankly does not know how anyone could write findings that address those criteria. He asked that Council delete a, c, and d of Section 33.815.128 (Page 47). The only provision required by Metro's Title 4 is the one on traffic. Unless Council is really trying to prohibit these uses outright in employment zones under the guise of a conditional use process, he urged that they be deleted. He said Home Depot has two other proposals. One would help provide mixed-use developments of an urban scale and design in industrial areas as there are sites on the edges that are appropriate for these uses. What they propose would allow them to participate in that process and bring the resources that a big retailer can bring to design those uses. This is not a time to have regressive, Euclidean kinds of zoning which exclude major players from the table. Their last proposal is to allow retail uses in industrial and employment zones under a conditional use process if the floor plate of the proposed building does not exceed 60,000 square feet. This would accommodate Home Depot and stores that include structured parking, a multi-story format and, alternatively, housing on top of retail. Home Depot believes that can be done within the language of Metro's Title 4 and urged Council to allow that. For all of these proposals, they would really like to have a dialogue with Council and staff to design something that is better than what the City has now. He agreed with an earlier speaker that there has not been enough input on this and it is even worse when Metro does things that are less scrutinized by the public and less likely to be seen by the people who are affected.

Connie Hunt, President, CEIC, said they have been working with PDOT and Planning staff and appreciate their attention to the CEIC's special needs. In those discussions they were assured that some of the issues they brought to Council in January would be addressed in the DAS plan. They feel comfortable signing off on this today, knowing that Council agrees to look at those specific issues through that plan and also encourage Parks to join as the Eastside Esplanade was really the catalyst for getting them going in that specific geographic area.

Al Solheim, 1231 NW Hoyt, Suite 201, 97209, said there is a huge parking crisis in the Pearl District as parking spaces are being taken out of production at the same time demand is outstripping the existing supply. In addition, projects like the Lovejoy ramp may eliminate about 100 parking spaces and three new Hoyt Street Properties projects will bring 250 workers into the area. Weiden and Kennedy may also need about 75 additional parking spaces when they locate here. While he applauds the efforts of Planning staff to liberalize the IG1 use regulations, they may not have moved far enough in trying to find supplemental parking, particularly in the conditional use process. He said the enormity of this problem may cause some businesses to leave because of the parking shortage.

Commissioner Francesconi said this is not an unforeseen problem as the City has put a lot of investment into that area, including removal of Lovejoy ramp. He asked what the plan is to handle that.

Mr. Solheim said it was not unforeseen but everything has converged at one point in time and there was no specific plan to handle the problem. He cited several examples where parking is being lost because of redevelopment, leaving far fewer spaces for business people to park.

APRIL 7, 1999

Neilson Abeel, President, Pearl District Neighborhood Association, said the Pearl District has approximately 18 blocks of IG zoning in an area that abuts an EX zoning of nearly 100 acres designated for high density and mixed-use development known as the River District. Council has recognized that this IG area has steadily lost real manufacturing uses and probably needs to transition to EX zoning, permitting most of the existing warehouse, light manufacturing and freight forward uses to continue. But the trend will be to upgrade and convert to office and residential use. The proposed changes to the IG1 zoning make it more difficult to create parking for non-manufacturing uses. While nearly every new building or converted warehouse has created sufficient on-site parking, they have removed parking resources for business, office, retail and light manufacturing, putting the area in a desperate squeeze. Even the long-awaited Central City streetcar will further remove parking and commercial, semi-industrial and office use is going to be crippled until the parking problem is solved. Mr. Abeel said with residential becoming the dominant use, the other uses will wither without adequate parking and public transportation. The Pearl District Neighborhood Association Planning, Design and Transportation Committee recommends tabling a decision today, ordering a comprehensive parking study of the River District and making adjustments for the special interim needs. The neighborhood will be happy to work with the Bureau to solve this extreme problem.

Commissioner Hales asked why that should be linked to a citywide zoning Code effort dealing with maintaining the viability of true industrial areas, especially as everyone acknowledges that the industrial area in the River District is not going to remain as such very long. He said no one is going to build parking structures under the old Code. He asked what the old Code will do that the new Code takes away.

Mr. Abeel said he understands the further restriction of IG1 means one can only create parking lots that serve manufacturing uses.

Commissioner Hales said no one is going to create more parking lots in the River District. The problem is that people are converting parking lots to buildings.

Mr. Solheim said he does believe there is an opportunity to build parking lots in the IG1 area north of Lovejoy.

Mr. Abeel said land in that area can now only be used for manufacturing uses.

Steve Pfeiffer, attorney at 900 SW 5th, 97204, supported the staff recommendation for the rezone at Hayden Island as this solution meets the needs he expressed last time. Regarding the Pearl District, he said he fully understands there will be some review of the mapping patterns for the 18 blocks to the north and that some equivalent of Exd zoning can be predicted there, which will mean more offices will occur over time. Presumably that process could result in a solution to the parking problem as well. But there is an interim of between 18 to 24 months before the policy and mapping issues are effectively resolved. The question then is whether there is an opportunity to create parking resources, both short- and long-term for new office uses in the Pearl area only. Under the current Code, developing parking to serve an office use in an IG zone is the same thing as trying to develop office use in an IG zone. It requires a conditional use. In every instance when someone comes forward with an office or retail use in an industrial zone, he must meet criterion D which is very difficult to do. That criterion states that the proposed use needs to be located in an industrial area because

APRIL 7, 1999

that is the primary market for the facility or because it is an industrial need. He said one simple solution would be to eliminate criterion D instead of subjecting parking facilities to the full set of five conditional use criteria. There would be no adverse effect on the industrial area as such uses would still need to show that they are consistent with the transportation system capacity, meet the scenic resources criterion and did not significantly alter the character of the area. A surface parking facility is an interim use so no new building would be added, precluding future conversion to office. There would be case by case review but with criteria that even a new office building could reasonably meet if it fulfilled the City's infrastructure standards. Rather than not going forward with this today, if Council agrees there is a problem and this solution is worth looking at, it could ask staff to return with a review and proposed solutions.

Commissioner Hales said the Mayor has funds in her proposed budget allocated to reconsider the zoning issues just described. Mr. Pfeiffer's suggestion will be moot if there is no IG zoning to put parking in. That might be a likely decision if people agree that this industrial enclave in the middle of the Central City is outdated. In that case, there would be a solution all dressed up with no place to go.

Mr. Pfeiffer said it is the interim problem the neighborhood is worried about.

Commissioner Hales said he would rather look for interim solutions to interim problems than trying to solve every problem in the Code. He said Code changes about parking in general, another Metro compliance issue, will be before the Planning Commission soon. This discussion illustrates that industrial areas in different areas of the City are different and their parking needs are also different, as may be the solutions. For example, the North Macadam area, which has little access, will have a different problem than the Pearl District. The City will have to figure out ways and means to adjust to that in the Central City Transportation Management Plan portions of the Code. But to try to do that in the base zone standards and conditional use requirements does not seem to be the right vehicle.

Commissioner Francesconi agreed with Commissioner Hales and asked what the next steps would be.

Commissioner Hales said one step is Council's action on the budget which calls for a look at this area. He would also like to have the Office of Transportation take a look at a parking study in that area and, finally, the Citywide parking changes coming before the Planning Commission in May will have some effect on this also.

Mayor Katz said she got an E-mail this morning on this issue and she knows that Bill Graham (in Transportation) has been trying to deal with some of the Pearl District parking issues. But she thinks a little more time is needed as Council does not want to start stuffing more things into this ordinance.

Bruce Robinson, Kittelson & Associates, 610 SW Alder, Suite 700, 97205, representing Home Depot, discussed the nature of retail trips, which he believes have been oversimplified in the staff report. He said he has specific observations about retail uses greater than 60,000 square feet and their trip-making characteristics. First, Exhibit 1 (in his letter) regarding variation by specific retailers shows quite clearly why generalizations about retail uses are dangerous. Large goods retailers, such as lumber, hardware and even furniture retailers, retail more space per customer transaction or trip than does a supermarket that sells many

APRIL 7, 1999

goods. This results in lower trip rates per unit floor area. Also, those large goods sellers may need delivery vehicles and so may be better suited locating next to industrial areas. Regarding Exhibit 2 (variation of size by development), it is a fairly general trend in Transportation literature that as the size of a retail use goes up, such as a shopping center, the trip rates come down because of efficiencies of scale. More trips are caused when retail uses are chopped up and having customers travel to more and smaller stores may cause trip length to increase as well. Another thing not mentioned in the staff report is the fact that mixed land uses tend to be more compatible in terms of transportation. First of all, parking can be shared because of the different peaking characteristics of the different stores. For instance, manufacturing and office are different and retail does not have morning peak times so that infrastructure is available to other users. He said retail trip types are not all new trips and the way staff has used employees rather than square footage to draw analogies and comparisons between the different uses is not the best way to go.

Mayor Katz asked staff to respond to the issues raised, noting that Council did open up the door in terms of trying to find more than one solution. She said two issues need a response, especially parking issues within the Pearl District and the large retail stores.

Commissioner Francesconi said he would like to know whether there are other locations in the City outside the industrial zones where large retail can locate.

Ms. Hartnett said, regarding the second issue, the Functional Plan requires a limitation per building or business. As she explained in January, the Zoning Code regulates use by site not by building or business as it is very difficult to then regulate the zoning if there is a change in ownership or tenant. Staff believes making a change in that approach for these particular regulations is not a good idea. If there is a large site, you could have many 60,000 square-foot buildings or businesses, all of which are retail uses and, if they are located in the employment and industrial areas, they would defeat the purposes of the existing regulations, never mind what the region is hoping to gain. There are other zones in the City that are geared towards large retail uses. General Commercial (CG) is probably the best example. She agreed that there are fewer large CG sites available than there are large EG sites. She will also acknowledge that of those large sites, most are not vacant and there are more vacant industrial sites than commercial ones. But that is not a reason to allow the industrial and employment land to be used for commercial uses. Both PDC and Council are concerned about making sure adequate land is available to provide family wage jobs and service sector retail jobs are often not in that category.

Mayor Katz said the City is asking the Legislature to request a requirement for a 20-year supply of industrial land.

Regarding the second issue, Ms. Hartnett said the existing regulations raise the same concerns that were voiced to Council. If you are an office use, whether a primary or accessory use such as parking, and you want to locate in an IG1 zone in the Central City, you must meet Criterion D. She said one of the reasons they would like to continue that is because it is an encroachment into the industrial area that is probably not appropriate. She understands that Mr. Pfeiffer is suggesting a little tiny application to a little tiny area but she agrees strongly with Commissioner Hales that if the City is going to do a zoning study then it should be done appropriately, not through a zoning code tweak that then later requires changing what has just been changed. The concerns of the River District go beyond the



APRIL 7, 1999

scope of this project and she would be reluctant to open this up. If Council wants to pursue the type of amendment Mr. Pfeiffer proposes she would like time for further study to make sure something is not added to the Code that is inappropriate or poorly written.

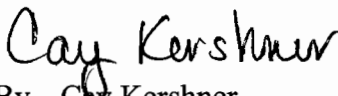
Commissioner Hales said he feels strongly that Council should thank staff, pass this to Second Reading and then adopt it. First, the earlier hearing and this one demonstrate that there really may be a Pandora's can of worms, as Gordon Shadburne once stated. And that once it is opened, you cannot get things back where they should go. The more problems you try to solve in a vehicle like this the crazier it gets so at some point you have to say enough. Second, the discussion today goes back to the very basic purposes of why this is being done in the first place. Two things are different about Oregon and every time Council hears from a formula development interest, whether it is residential or commercial, that is reinforced. First, in Portland one does not put retail on farmland, so it still has farmland. Nor does it put retail in industrial land, so it still has industry. In Portland they still make steel and box cars and silicon wafers in the City and the City has to be pretty aggressive when it comes to both farm and industrial land if it wants to keep either. Does that mean that there are side effects in the retail industry and that citizens give up some convenience or cost advantage? Yes. That is the flip side of the Urban Growth Boundary. If the City still wants jobs within its boundaries it has to do this stuff even if it hurts a little and even if it has to keep working with the side effects as they will differ from one industrial district to another. The answer is not to weaken the Code but to work on other strategies to deal with the side effects, whether it is a parking garage or a road connection.

Mayor Katz said she tends to agree. She knows there will be a Costco in the urban area eventually, when they figure it how to do it and she hopes solutions can be found for some of the other issues raised. She thanked staff for its work and for being flexible.

**Disposition:** Passed to Second Reading April 14, 1999 at 2:00 p.m.

At 3:10 p.m., the Council adjourned.

GARY BLACKMER  
Auditor of the City of Portland

  
By Cay Kershner  
Clerk of the Council