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CITY OF  
**PORTLAND, OREGON**

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**OFFICIAL  
MINUTES**

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A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 2ND DAY OF JUNE, 1999 AT 9:30 A.M.

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

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

On a Y-4 roll call, the Consent Agenda was adopted as follows:

**CONSENT AGENDA - NO DISCUSSION**

- 751** Accept bid of MEC Digital, Inc. to furnish multi-channel logging recorder system for \$237,209 (Purchasing Report - Bid 99115)

**Disposition:** Accepted; prepare contract.

- 752** Accept bid of Schnauzer Construction, Inc. to furnish exhaust extraction systems for Fire Stations 20, 42 and 43 for \$68,641 (Purchasing Report - Bid 99168)

**Disposition:** Accepted; prepare contract.

- 753** Accept bid of Eveready Ventures/American Building Construction to furnish restroom renovations at Cathedral Park for \$52,897 (Purchasing Report - Bid 991462)

**Disposition:** Accepted; prepare contract.

**Mayor Vera Katz**

- \*754** Authorize interim financing for Urban Renewal areas (Ordinance)

**Disposition:** Ordinance No. 173416. (Y-4)

- \*755** Authorize contract with Richard E. Sherman & Associates, Inc. for actuarial services (Ordinance)

**Disposition:** Ordinance No. 173417. (Y-4)

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**Commissioner Jim Francesconi**

- 756** Accept contract with J.P. Contractors, Inc. for Hoyt Arboretum Overlook Trail as substantially complete, authorize final payment and release of retainage (Report; Contract No. 31881)

**Disposition:** Accepted.

- \*757** Grant Specially Attended Transportation permits to Associate Transport-T, ETL Transportation, Jay's Transportation, Royal Medical Transportation, Sisters Taxi and Unlimited Transportation (Ordinance)

**Disposition:** Ordinance No. 173418. (Y-4)

- \*758** Authorize the purchase of office systems and furniture by the Bureau of General Services for the Development Services Building and the Portland Building for approximately \$1.55 million and provide for payment (Ordinance)

**Disposition:** Ordinance No. 173419. (Y-4)

- \*759** Amend agreement with the Hoyt Arboretum Friends Foundation (Ordinance; amend Contract No. 50623)

**Disposition:** Ordinance No. 173420. (Y-4)

- \*760** Contract with Peter Walker and Partners for an amount not to exceed \$450,000 to provide architectural design services for South Park Square in the River District (Ordinance)

**Disposition:** Ordinance No. 173421. (Y-4)

**Commissioner Charlie Hales**

- 761** Accept contract with Dirtworx, Inc. for street improvements on the intersections of SE Division Street at SE 30th Avenue and SE 31st Avenue. as complete, release retainage and make final payment (Report; Contract No. 32134)

**Disposition:** Accepted.

- 762** Accept completion for improvement of NE Martin Luther King Jr. Blvd. from NE Beech to Failing, Sidewalk Project No. 5, and authorize final payment to Portland Excavating, Inc. (Report; Contract No 32207)

**Disposition:** Accepted.

- \*763** Authorize contract with Portland Excavating, Inc. for street construction on NE 27th and provide for payment (Ordinance)

**Disposition:** Ordinance No. 173422. (Y-4)

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- \*764** Authorize Change Order No. 11 with Benge Construction for the Sunderland Yard project (Ordinance; Contract No. 31936)

**Disposition:** Ordinance No. 173423. (Y-4)

**Commissioner Dan Saltzman**

- 765** Accept completion of the Tryon Creek wastewater treatment plant water systems upgrade, Project No. 5726, and authorize final payment to Triad Mechanical, Inc. (Report; Contract No. 31504)

**Disposition:** Accepted.

- 766** Accept completion of the N. Going sewer rehabilitation pilot project, Project No. 6280, and authorize final payment to K & R Plumbing Construction Co., Inc. (Report; Contract No. 31754)

**Disposition:** Accepted.

- \*767** Amend contract with Thomas/Wright, Inc. for design and services during construction of Fanno Basin pump station, pressure line and trail, Project No. 5761 (Ordinance; Contract No. 30824)

**Disposition:** Ordinance No. 173424. (Y-4)

- \*768** Amend the five-year contract with the East Multnomah Soil and Water Conservation District for public involvement and education services on comprehensive and holistic landscaping practices known as Naturescaping for Clean Rivers program for \$70,000 (Ordinance)

**Disposition:** Ordinance No. 173425. (Y-4)

- \*769** Approve agreement with the Corps of Engineers for participation in the Planning Assistance to States program (Ordinance)

**Disposition:** Ordinance No. 173426. (Y-4)

- 770** Contract with five consulting engineering firms for design-related services as needed in support of sewer, drainage and water quality facility projects and provide for payment (Ordinance)

**Disposition:** Passed to Second Reading June 16, 1999 at 9:30 a.m.

- 771** Authorize a contract and provide for payment for the construction of the Columbia Boulevard Wastewater Treatment Plant odor control project for the sewer cleanings unloading area, Project No. 6551 (Second Reading Agenda 736)

**Disposition:** Ordinance No. 173428. (Y-4)

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- 772** Authorize contract and provide payment for the construction of the Columbia Boulevard Wastewater Treatment Plant outfall pipeline rehabilitation project, Project No. 6405 (Second Reading Agenda 737)

**Disposition:** Ordinance No. 173429. (Y-4)

**Commissioner Erik Sten**

- 773** Reappoint Bob Kreinberg to the Mt. Hood Cable Regulatory Commission (Report)

**Disposition:** Confirmed.

- \*774** Authorize a contract and provide for payment for Bull Run bridges maintenance and seismic strengthening (Ordinance)

**Disposition:** Ordinance No. 173430. (Y-4)

**City Auditor Gary Blackmer**

- \*775** Contract with KPMG Peat Marwick LLP, CPAs for financial audit and other professional services, for FY 1998-99 and provide for payment (Ordinance)

**Disposition:** Ordinance No. 173431. (Y-4)

## **REGULAR AGENDA**

**Mayor Vera Katz**

- 776** Hear appeal of Steve Mansell to the Police Internal Investigations Auditing Committee, #98-10, per City Code 3.21.085(4)(d) (Report)

**Discussion:** Lisa Botsko, Police Internal Investigations Auditing Committee (PIIAC), said this appeal involves an individual who claims he was knocked to the ground by a bicyclist who later returned and tackled him, at which time he learned she was a bicycle police officer. He was charged with harassment because he slapped her and knocked out the window of a police car, charges he denied. Internal Affairs investigated and determined that he was belligerent to the point where he had to be restrained. It declined further investigation and the Citizens Advisory Committee felt strongly that the bicyclist who collided with the complainant was not a police officer. For that reason, it supported declination of this complaint.

Steve Mansell, appellant, described what occurred when he got up out of the potted plants outside the Marathon Tavern after being hit by a female police officer on a bicycle. He said he would have been happy with an apology but was instead tackled from behind and thrown into the police car, popping out the car window. He said the police report was a total falsification and asked the City to reevaluate the case.

Mayor Katz asked what PIIAC's policy is about cases that have gone to court in terms of further investigation.

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Ms. Botsko said generally the Citizens Advisors believe the courts are the proper venue for determining the validity of an arrest.

Commissioner Sten said the incident report states that the appellant was screaming obscenities at the officer, while he states he was blindsided by a bike. Why was there such a difference?

Sergeant Steve Bottcher, Acting Lieutenant, Internal Affairs Division (IAD), said he witnessed the incident and saw two bicycle officers, both in uniform, struggling with Mr. Mansell. He believes the accident he describes was clearly with someone else.

Mr. Mansell disputed Sergeant Bottcher's testimony and said he told officers he was willing to take a lie detector test. Later he was told that, because he pled guilty, the case had no merit for IAD investigation. He said the officer should not have investigated her own accident. He said he pled "no contest," which carries the same admission as a "guilty" plea and is now on bench probation.

Commissioner Hales moved to uphold the recommendation of the Citizen Advisors. He noted that Council does not act as a court of appeals, but merely decides whether an officer's conduct was appropriate. Because of the discrepancy in the two versions of the event, Council does not have a clear enough record to be able to say anything about the officer's conduct.

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

Commissioner Francesconi joined other Council members at this point.

777

Hear appeal of John Hreha to the Police Internal Investigations Auditing Committee, #99-03, per City Code 3.21.085(4)(d) (Report)

**Discussion:** Ms. Botsko said the incident between the appellant and police had to do with a neighbor with an ongoing dispute with Mr. Hreha, who called the police. The officers went to the neighbor's house to discuss the complaint and observed the appellant near their vehicle. Officer A thought the appellant had removed a pair of binoculars from the car and chased Mr. Hreha into his home. When they got into the home they found that the item in question was actually the appellant's camera. At that point police discussed the nature of the neighbor's complaint about noise, turned off the stereo, and left. The appellant believes the officers were out of line in entering and searching his home. The Citizen Advisor who audited this case found that the officers had probable cause to believe a crime may have been committed and that there was no conduct that rose to the level of misconduct. The Advisors recommend upholding IAD's finding of exoneration.

Commissioner Hales moved to uphold the Advisors' findings. Commissioner Saltzman seconded.

**Disposition:** Appeal denied. (Y-5)

778

Hear appeal of Robert Gartzke to the Police Internal Investigations Auditing Committee, #99-07, per City Code 3.21.085(4)(d) (Report)

**Discussion:** Ms. Botsko said both she and Robert Wells of the Citizens Advisory committee fully investigated this use-of-force complaint. There is a difference in the testimony as to what occurred. The appellant claimed he was pulled over for a traffic violation but that it took him several blocks before he could find a place to pull over. At that point the officers were very angry, pulled him through the car window by his hair and then beat him up, fracturing his arm and giving him a black eye. He gave a sample of the hair that had been pulled out to the police who tested it and concluded that at least some of it was forcibly pulled out. Internal Affairs obtained medical records which did not support the allegation that appellant's arm had been broken. The officers stated that the appellant ignored their request to pull over and drove quite a distance before pulling over, resisted leaving his car and had to be forcibly removed. They admitted there was a scuffle but denied pulling him out the window by his hair. The Advisors agree that the appellant sustained injuries but who caused them and how could not be determined. Internal Affairs made a finding of "insufficient evidence" and the Advisors agreed.

Mayor Katz asked if the driver was intoxicated.

Ms. Botsko said the officers did a drug analysis and the sample came back positive for cocaine.

Commissioner Francesconi asked if it is appropriate for a police officer to grab someone's hair in order to protect himself.

Ms. Botsko said yes, the Bureau permits any use of force necessary under the circumstances to effect the arrest. However, the officers testified that they did not pull the appellant out of the car by the hair.

Commissioner Francesconi asked what kind of collaborating evidence is sought when the testimony of police officers and complainants is at odds, so as not to make a finding of insufficient evidence.

Ms. Botsko said in this case there were no independent witnesses and the medical records did not support the extent of the appellant's alleged injuries, only that there were some injuries. Appellant's credibility is seriously at fault as IAD could easily have exonerated the officers.

Commissioner Hales moved to uphold the Advisors' finding. Commissioner Saltzman seconded.

Commissioner Hales said use of force cases are always important and in this case there was a scuffle and officers did use force. The fact that the appellant was under the influence of cocaine does make his remembrance less reliable than that of the officers.

Commissioner Sten said it is hard to make any judgment when the appellant is not present. There is no evidence the officers over-reacted.

**Disposition:** Appeal denied. (Y-5)

779

Hear appeal of Belinda Jackson to the Police Internal Investigations Auditing Committee, #99-12, per City Code 3.21.085(4)(d) (Report)

**Discussion:** Lisa Botsko, PIIAC staff person, said this complaint was declined after a preliminary review by Internal Affairs. The appellant had been contacted, along with her mother and sister, after her mother called 9-1-1, asking Police to come and "take her (Ms. Jackson) away before I kill her." When officers arrived, the mother claimed that the appellant struck her in the chest, causing her pain. They also interviewed the appellant's sister, who collaborated this. They then arrested the appellant, according to the provisions of the Domestic Violence Act which requires a mandatory arrest in this situation. The appellant felt the officers did not take the time to get her side of the story to determine what actually led up to the incident. They did not check her identification nor did they look into past activity, as they are required to do according to the Domestic Violence law. If they had done so, they would have recognized there were no previous incidents on her record. She claimed that her mother and sister lied to the Police and the Police were negligent in trying to sort through the story. She also stated there was a technical problem with arresting her for Assault Four although they verbally told her she was being arrested for domestic violence. Also, once she was booked they entered the wrong birth date - her sister's - which IAD later corrected. IAD declined to conduct any further investigation on the basis that the arrest in this situation was mandatory and officers were under no obligation to conduct a thorough investigation because they had probable cause to make an arrest, based on the mother's and sister's testimony.

Commissioner Hales asked if probable cause is the standard under this mandatory arrest provision.

Ms. Botsko said yes, and the Citizen Advisors have historically taken the position that the IAD and PIIAC process is not the appropriate venue to determine whether an arrest was valid. That is for the court to decide.

Belinda Jackson, appellant, 3908 N. Alaska, 97217, said her PIIAC case was not handled fairly and she wants to clear up several things. First, the Police Department maintains this was a mandatory arrest. If something is mandatory, the conditions and criteria for making it mandatory have to be in place. Those were not in place in this case and were wrongfully used. She said she went to Internal Affairs because Police officers arrived at a scene where there was no occurrence of any action. There was no argument or fight. As Ms. Botsko stated, her mother threatened her life over the phone. If the Police were to arrest anyone, they should have arrested Margaret Jones, not her. Another problem with the arrest is the fact that no one's identification was taken. The Police took the word of the two individuals they spoke with at the house but did not ask her one question or check her identification to see if she had a record. Nor did they check the other parties. She said the State statute makes it very clear that if officers are going to make an arrest, they must make an effort to find out that they are arresting the actual or potential assailant. If they had done that they would have found that her stepsister, Reva Jones, has a record and she believes her mother

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also was arrested once. She said it was a gross abuse of procedure that the police did not take testimony from her, the person whose life was threatened. During the same incident the police also allowed the person accusing her, her stepsister, to frisk her for weapons. That is also not procedure. She said when she asked for a copy of the police record she found she had been charged with both simple assault and domestic violence. The police maintain this was a mandatory arrest and they had to interlock the assault law with the domestic violence law which is incorrect. This is incorrect as each stands on its own and has criteria for a possible arrest if certain conditions are in place. She questioned why the officers did not ask for her identification or take steps to find out what was going on. She said this arrest was an attempt to intimidate and harass her because of allegations she has made against a federal law enforcement agency. The officers came out with the intent of arresting her because, otherwise, they would have determined that her mother was the aggressive one.

Mayor Katz asked if anyone needed clarification of the domestic violence law.

Harry Auerbach, Deputy City Attorney, said the statute requires that when a peace officer is at the scene of a domestic disturbance and has probable cause to believe an assault has occurred between spouses, former spouses or adult persons related by blood or marriage, etc., or one such person has placed the other in fear of imminent serious physical injury, the officer shall arrest the alleged or potential assailant. When a peace officer makes an arrest he is not required to arrest both persons but shall make every effort to determine who is the assailant or potential assailant by considering the comparative extent of the injuries, the seriousness of the threats and, if reasonably obtainable, the history of domestic violence of the persons involved and whether any crime was committed in self-defense.

Commissioner Sten asked Ms. Jackson if her complaint is because police arrested the wrong person.

Ms. Jackson said there was no domestic violence, only an argument, and she did not hit anyone. Her face was poked but her mom has poked her in the face before. She said this was contrived and she believes her mom was used with the intent to have her arrested.

Sergeant Steve Bottcher, Internal Affairs Division (IAD), said the police reports state that the officers had collaborating evidence from the victim of the assault and the step-sister. Police then determined there was probable cause to arrest for Assault Four. The mother stated that she felt substantial pain in her chest when the complainant pushed her and that meets the definition for assault.

Commissioner Hales noted that Ms. Jackson's mother had called 9-1-1 and said she needed to be arrested or "I am going to kill her." He said that sounds like serious non-physical stuff and he asked if the statute deals with both physical and non-physical harm.

Sergeant Bottcher said the statute, as he interprets it, also encourages police officers to refrain from arresting both participants, especially if it is a one-on-one assault so that officers would not be taking both a husband and wife to jail. In this case, there was an assault and a lesser threat, menacing.

Commissioner Hales said it was an alleged assault.



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Sergeant Bottcher said by definition assault occurs if someone receives substantial physical pain and that is what the mother reported to the police officers.

Commissioner Francesconi asked what happened to this case.

Ms. Jackson said she was incarcerated for two days but no complaint was filed.

Sergeant Bottcher said it was his understanding the mother did not wish to pursue charges against her daughter.

Mayor Katz asked Ms. Jackson what she meant by her statement that her "arrest was a show of force and intimidation by a group of crooked law enforcement agencies who utilized the local police department to carry out this ridiculous and threatening behavior. I recently brought charges of corruption and abuse of power against the federal law enforcement."

Ms. Jackson said she has been in contact with the U.S. Attorney's office and the FBI about intimidating and criminal activity that has happened to her in connection with a lawsuit she filed against a former employer.

Mayor Katz said she listened to the Citizen Advisor interview tapes, as Ms. Jackson requested, but did not get a sense of manipulation. She thought the questions were asked in a calm, non-intimidating manner. She said at some later date perhaps the two of them can listen to them together.

Commissioner Hales said he is most troubled by the basic incident itself but is unsure exactly what Ms. Jackson is seeking in her appeal in terms of police conduct.

Ms. Jackson said it is not right to be accused of something and then have the officer ask the accuser to check you for weapons. It is not right for officers to come to a scene and listen to two people tell their stories together, not separately, and then arrest another individual they have not spoken with, without checking identification. That is misconduct and not acceptable from officers who are 20-year veterans.

Mayor Katz asked what the General Orders are on this.

Sergeant Bottcher said they reflect the State law on domestic violence which requires that officers make an arrest if probable cause has been developed. He noted that the investigation was declined based on the facts of the complaint and police reports which indicated that the officers were doing what they were commanded to do by law.

Commissioner Sten asked if Ms. Jackson had offered a different set of evidence as to what was going on at the house. He completely agrees that someone needed to be arrested and supports the domestic violence law wholeheartedly. Occasionally, when there is a law that is intended to stop further harm and recognizes the seriousness of domestic violence, there will be situations in which a person is arrested mistakenly. He is willing to live with that error, given the importance of trying to stop these incidents. What he is trying to get at now is whether the right person was arrested. The "I am going to kill her" call perhaps should

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have indicated that a look at both persons was needed to see who should be arrested. However, he has no dispute that someone should have been arrested once the call was made.

Sergeant Bottcher said he has responded to a lot of domestic violence calls and, generally, he will arrest the person who is assaultive rather than the one who is menacing.

Commissioner Sten asked if it was correct that there was a menacing call and also a witness who backed up the assault claim.

Ms. Botsko said the PIIAC Advisory Committee wholeheartedly supports a full investigation whenever there is potential for police misconduct and one thing they review in making that determination is what the General Orders say and if there is a possibility they have been violated. A misconduct complaint cannot be sustained if there is no specific violation. None of the General Orders say that an officer shall take steps A, B and C before making this kind of arrest. There is no requirement to check identification or interview every person at the scene. Officers are allowed a great deal of discretion and once they arrive at probable cause, they have to make an arrest. But how they get there is not mandated in the General Orders.

Commissioner Hales said that is why he is so troubled by this case as it may go to the heart of the reformed PIIAC process. These hearings are an opportunity for citizens to come in and either say that a particular officer behaved improperly or highlight some problem in the system. He thinks this case might lead to a motion on his part other simply affirming the decision not to investigate. His impression is that maybe no particular officer did anything contrary to General Orders but the way they work might cause an injustice. If someone is arrested who has not crossed the line of either physically assaulting a fellow citizen or a police officer, he is not sure the General Order is working out justly. He does not want to decide that today but is inclined to ask PIIAC and IAD to open an investigation into Ms. Jackson's contention that the police systemically overdo the mandatory arrest requirement in a confused situation like this. This looks like a policy problem that Council may want to look at.

Mayor Katz said there is really nothing to investigate. The issue raised about whether the General Order needs additional language to support the state law can be reviewed, however.

Ms. Botkso said it sounds more like a policy and procedural question that the Citizen Advisors should be monitoring.

Mayor Katz said the appellant is saying the police ought to have arrested her mother.

Ms. Jackson said that is not correct.

Commissioner Francesconi said that is what the appellant should have said. He said the statute is clear that the officer has to arrest if there is probable cause of assault. In this case, pushing, with an expression of pain, is enough for an assault. He said the domestic violence law basically says the officer's judgment cannot be trusted in a situation like this. It

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removes discretion and requires an arrest. If there is any fault here, it is that the mother was not arrested too. He is glad the case was dismissed but for Council to now second guess the officer does a disservice to the legislature and puts the officer in an untenable position.

Ms. Jackson said she understands the importance of the domestic violence law but does not think the police officers followed the criteria listed in that law in making their decision. These officers, who were experienced, did not use this mechanism and that is the misconduct. To be charged both for domestic violence and simple assault is a gross violation of procedure.

Commissioner Francesconi asked if her mother told the officer the truth.

Ms. Jackson said no.

Commissioner Francesconi said he thinks Ms. Jackson's problem is with her mother, not with the officer, given the statute requirements.

Mayor Katz noted her mother had called 9-1-1.

Ms. Jackson said it is the police officers' job to come out and, if there is chaos, they bring order or they make responsible decisions.

Mayor Katz said Commissioner Francesconi is right. She said one of the reasons this legislation was passed was because officers were not arresting enough people in domestic violence disputes and even today they are not writing enough reports. The Legislature stepped in and said: "We're not giving you any discretion," in effect telling the police they must make an arrest if there is a 9-1-1 call and evidence of domestic violence. If times have changed then the City needs to go back to the Legislature and ask for additional language in the statute but she does not think that is the case. She said in this case the officers had no choice. Whether they should have arrested more people is an issue she has no answer to right now. She said it was Ms. Jackson's mother who called 9-1-1 and her mother and sister both collaborated that a threat had been made when the officers arrived.

Commissioner Hales said the issue he is trying to get at is not the statute itself. The Police Bureau translates that into General Orders, or day-to-day procedures, and Council does not have hearings when those are adopted. However, the way a General Order works out in practice might cause friction and perhaps Council needs to look at the procedures in the field in situations like this. For instance, perhaps interviews should be conducted with all parties. He believes that when there is a mandatory arrest requirement, the City has to be extra complete in how that is implemented in the field.

Mr. Auerbach said it would be appropriate for Council to ask the Police Bureau to review its policies on implementing this statute to make it better but, in his experience, the end result is that there is no substitute for the officer's judgment. The statute requires an arrest if there is probable cause and officers end up in a classic situation where one person says one thing while the other says another thing. He said he does not know if a rule can be written that will help officers on the scene sort that out and make a judgment about which of the two persons should be arrested.

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Mayor Katz noted that Lt. Smith, the current head of IAD, was formerly head of Domestic Violence, and she has no problem sitting down with him to see if the General Order needs to be reviewed. This is more of a monitoring and General Order issue than it is one that needs further investigation.

Ms. Jackson asked if the Mayor found nothing wrong with the fact that three officers arrived at her house, where there was no ongoing action, and allowed a citizen to pat her down for weapons and misused the law based on judgement. Shouldn't the officers be told that they should not behave in this manner? If Council does nothing, this behavior will continue.

Mayor Katz said the officers did not do anything in violation of the General Order, which is what Council needs to review. The issue Ms. Jackson and Commissioner Hales have raised is whether more clarity or detail is needed in the General Order. That is a legitimate policy issue for IAD to review. But the officers did what the statute mandated them to do.

Ms. Jackson said they did not follow the criteria.

Commissioner Saltzman said the part that gives him some problems is the pat-down by a non-police officer.

Sergeant Bottcher said he speculates the police officers were all males and entrusted the pat-down to the civilian woman who was there.

Commissioner Sten asked Ms. Jackson to briefly summarize her belief that the criteria were not followed.

Ms. Jackson said the criteria state conditions that make the law mandatory for arrest. If those conditions are not in place there is no mandatory arrest. One condition is seriousness of injury. Supposedly her mother complained of chest pains after being pushed but she does not know where the officers got that story. Her mother never complained of chest pains and she never pushed her. Another criterion is history of domestic violence. There was none between the people and the officers would have no way of knowing that because they checked no one's identification. Another criterion is a threat of life, which has lightly been referred to as menacing. When someone threatens your life, not only to 9-1-1, but in front of the officers, you have to think there is some rage there. Such conduct is against the law and not very smart. Ms. Jackson said she was falsely arrested despite the fact she met none of the criteria in place and was falsely imprisoned.

Sergeant Bottcher said he thinks the criteria were met and there was probable cause, as borne out by the police officers' reports.

Commissioner Francesconi moved to uphold the PIIAC findings. Commissioner Saltzman seconded.

Commissioner Sten said he thinks Ms. Jackson has a reason to be upset but, unfortunately, it is with her family members. Her mother testified that she had been assaulted and the sister collaborated that, which under the statute gave the officers reason to believe them, although

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ultimately the complainants did not press charges. That leads him to believe there is a very good chance Ms. Jackson is telling the truth and her family perhaps manipulated the situation. However, because he supports the domestic violence law, no chances can be taken with people dying. It is common that once the phone call comes in, the story changes by the time the officers get there. That is the reason for the mandatory arrest. Perhaps the police in this case arrested the wrong person but not through a fault of their own. It was Ms. Jackson's family members who created that situation. He would rather have occasional mistakes and have a mandatory arrest happen when it shouldn't than what used to be the case before the law. He is not positive any further investigation will accomplish anything at this point and although it is worth Mayor Katz taking a look at the General Orders with the police.

Mayor Katz said there may have been circumstances particular to this case but the legislation was written based on a policy of mandatory arrest. There is case after case where officers walk into a scene after a 9-1-1 call has been made and then may not make an arrest or write a report. However, she believes the City needs to make sure there is action occurring on the scene. She agrees with Commissioner Sten that Ms. Jackson has an issue within her family. She is very willing to review the General Order to see if some clarification is needed but she will not deviate from the mandatory arrest statute.

Commissioner Hales said he believes Ms. Jackson has raised a legitimate issue and that Council owes it to the community to look at how this mandatory arrest requirement is being used systemically. He moved to direct the Police Bureau to review how General Orders and procedures are being used to implement the mandatory arrest requirement and report back to Council after a reasonable time.

Commissioner Francesconi seconded.

Mayor Katz suggested that it also be included in the monitoring report.

Roll was called on Commissioner Hales' motion.

Commissioner Francesconi said it probably is a good idea to talk to both sides, even though the officers do not have to.

Commissioner Hales said he has never been arrested but has had loud arguments with his teenagers and fortunately no one called 9-1-1 and no one pushed anybody. He cannot see a whole lot of difference between that situation and this one. If police power is used to arrest people, it has to be used very carefully and he thinks that deserves a look.

Commissioner Sten said he thinks this was an unfortunate situation but has no evidence that police are not enforcing the mandatory arrest policy correctly. This was not a neighbor calling about noise. It was Ms. Jackson's mother calling to say she had been assaulted and that she might kill her daughter. That is clearly a domestic violence call, with at least two of the three family members saying it happened. He does not want to get this confused with

the need to be very serious about domestic violence calls. While it is always good to look at the General Orders, he would have to see a lot more evidence that it is being manipulated purposely to get family members arrested.

Mayor Katz said there is nothing wrong in taking a look at this but as Charles Ford (PIIAC Citizen Advisor Chair) said, when a senior citizen calls 9-1-1, it is serious business. When it is a senior citizen who is the mother of the appellant, it is very serious business and she does not want officers to do anything but what they did in this particular case.

**Disposition:** Appeal denied; (Y-4; N-1, Hales). Review General Order (Y-5)

- 780** Authorize an agreement with the Portland Oregon Visitors Association, waive the provisions of City Code Chapter 5.68 and provide for payment (Second Reading Agenda 744)

**Disposition:** Ordinance No. 173432. (Y-5)

**Commissioner Charlie Hales**

- 781** Authorize the Bike and Walk Bucks Commute Program and amend Title 4 of the City Code (Ordinance; amend Code Title 4)

**Discussion:** Commissioner Hales said this ordinance will allow the City to provide incentives for all alternative modes of commuting. He noted the City has supported bus pass purchases since 1994 and that the City is way over its targets for compliance with the State Employees Commute Options Rule. Of 1,300 downtown City employees, excluding Police and Fire, 65 percent of all work trips are taken on transit, 15 percent in car pools, 6.5 percent biking or walking and only 14 percent by single occupant vehicle.

Commissioner Saltzman asked if the use of pretax dollars to reimburse employees is a result of Congressman Blumenauer's efforts.

Commissioner Hales said yes, he convinced Congress to start providing transit passes for its employees.

Mia Birk, Bicycle Program Manager, Office of Transportation, said this did require some changes in the tax code that they worked on with Representative Blumenauer. It also supports the Central City Plan and housing and transportation goals. She said Metro has a similar program and now over 10 percent of its employees are bicycling to work year round. She said the City expects a very positive response to its program to promote more bicycle commuting.

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

- 782 Tentatively approve revised application by the University of Portland and overrule the Hearings Officer's denial of Conditional Use Master Plan Amendments and Adjustments at 5000 N. Willamette Boulevard (Findings; Previous Agenda 672; LUR 98-00812 CU MS AD)

**Discussion:** Commissioner Hales moved adoption of the revised findings. Commissioner Saltzman seconded.

Douglas Hardy, Office of Planning and Development Review, said staff has reviewed the findings prepared by the applicant's representative and finds that they are basically complete and accurate, fairly reflecting Council opinion.

Commissioner Francesconi said he appreciates the modifications the University made in order to make this happen.

**Disposition:** Findings Adopted. (Y-5)

**Commissioner Dan Saltzman**

- 783 Codify existing ordinance relating to use of polystyrene foam packaging by food vendors (Second Reading Agenda 735; add Chapter 9.28)

**Discussion:** Commissioner Saltzman said when the polystyrene regulations were passed by Council in 1989 someone forgot to put them in the Code. This action remedies that. When the Cascade Policy Institute saw this on the Agenda they asked to testify. He said if Council wishes, it may revisit the ban, although he is comfortable with keeping it, despite some changes in the intervening years. Polystyrene foam is no longer made with ozone-depleting fluorocarbons and land-fill capacity is no longer an issue. However, the ban is still relevant as the Council has a goal to begin recycling food waste by July 1, 2001. On balance, the Bureau of Environmental Services believes paper products will be more compostable into the food waste stream and allow the City to achieve broader waste reduction and at a more local level, rather than shipping it to California to be recycled as one has to do with polystyrene.

John Charles, Environmental Analyst, Cascade Policy Institute, said an analysis of the 10-year track record of this ordinance raises several questions. The first question is why should the City regulate this product out of the thousands it could regulate, such as tobacco, state-sponsored gambling and Sports Utility Vehicles, all products that bother some people at some level. The City should not pick winners and losers, transferring wealth from one sector to another. The second question concerns the empirical track record of this product. In this case, because of this ban on polystyrene, more energy is being consumed, more pollution is being created and costs are higher because the product the City is mandating, paper products, is inadequate as insulators. Because people routinely burn their hands, coffee vendors, for instance, routinely offer double cups. This defeats the environmental purpose. It appears that use of paper products results in 40 percent more water pollution, 46 percent more air pollution, 75 percent more industrial waste and 30 percent more energy consumption. He said this ban does not appear to be solving an environmental problem, only making it worse. The Cascade Institute is not calling for repeal now but believes

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Council should consider this as a sunset review issue, putting the burden of proof on the proponents.

Commissioner Sten said if Mr. Charles' analysis is correct he has simply shown that Styrofoam cups are less bad than paper ones. He asked how a better product than either might be developed using free market strategies.

Mr. Charles said in a competitive market there are constant incentives to reduce waste and become more efficient over time.

Commissioner Sten said in this case Cascade seems to be saying it likes this bad product better than that one and he is disappointed not to see any suggestions about how to solve the fundamental problem of one throw-away cup or another.

Mr. Charles said there are lots of things people throw away and it is not his job to pass judgment about which are bad and should be improved. He if a food vendor has paid the fair market value to have these cups hauled away, there is no externality on that end. Cascade does advocate charging manufacturers for emissions on products which pollute the environment.

Mayor Katz asked why polystyrene was banned by Council originally.

Mr. Charles said the issues then included ozone depletion, land-fill closures, post-consumer waste, litter and threats to wildlife. Most of those are no longer issues.

Commissioner Sten asked him if he found anything wrong with the disposable nature of products as long as more space can be found to land-fill them. He said the polystyrene ban does send a strong message about trying to change things but it is unfortunate that a better product than the plastic-coated paper cup has not been developed. He said he fundamentally disagrees that as long as there is land-fill space available there is no externality to disposable products in any amount.

Mr. Charles said he personally tries to live lightly on the earth but is bothered about using the police powers of the State to impose his vision and turn these things into moral crusades.

Paulette Rossi, 3710 NE 147<sup>th</sup>, 97230, said educating people about how to reduce waste and consume less is more important than a continuing ban on polystyrene. She said the ban did not stop litter and, instead of discussing polystyrene foam, the Council should debate packaging.

Jeanne Roy, 2420 SW Boundary, 97201, said the ban grew out of grass-root efforts by Recycling Advocates and other organizations which wanted to inform retailers about the unseen environmental costs of using polystyrene. People were also reacting to trends in the packaging industry towards more excessive and non-biodegradable packaging. Ms. Roy noted that the City allowed retailers a year's grace period before the ban went into effect and during that time it was challenged by McDonalds and Kentucky Fried Chicken which said the City should allow foam to be recycled. After the City won those lawsuits McDonalds made a lot of changes in its packaging nationwide. The City should be very proud of passing that ordinance, which said that there is a limit to the extent it will allow



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environmental costs to be passed onto the public. She noted that polystyrene is non-biodegradable and crumbles. She believes products should be sustainable, either recyclable or bio-degradable, rather than being sent to land-fills.

Rob Guttridge, Recycling Advocates, said while some of the reasons this was a good idea 10 years ago have shifted, it is still a good idea, especially as the City begins to look at recycling food waste. This expresses a local vision that makes the City stand out.

Steve Apotheker, 1905 NE Going Street and Metro Senior Recycling Analyst, said in 1995 the region adopted a recycling recovery goal of 57 percent for the year 2005 and the City adopted a 60 percent goal. He said opportunities for residents to recycle polystyrene have been going down over the last few years because the market for it has disappeared. He described some of the progress that has been made in developing more recyclable paper cups.

Commissioner Francesconi asked why this product should be banned and not others that are even more harmful to the environment.

Mr. Apotheker said this product symbolized what was perceived to be a problem at the time. Other industries were sent other kinds of signals and were forced to take action as a result. For instance, a law was passed requiring publishers to add recycled content to their newspapers.

Larry McIntyre, AJP Northwest (a wholesale paper distributor), 1120 SE Morrison, said since 1992 they have been recycling polystyrene food service products from many schools and companies outside the City of Portland. While there are problems, his company is committed to seeing that this product is recycled. While Portland's ban did drive the industry to resolve certain issues, the practicality of recycling polystyrene was not evident in 1988. Today there is not one market segment of the recycling business that is healthy.

Commissioner Francesconi said he heard no objections to the ban from the industry itself today and believes this government action 10 years ago helped educate both citizens and the industry. He believes it is not a good idea to go backwards today even though it makes sense to take actions to make sure the true costs are borne by present consumers. This sends a signal that the City is concerned not only about present consumers but about future children.

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

**Commissioner Erik Sten**

**\*784** Authorize the adoption of revisions to Title 21 of the Portland City Code regarding the Bureau of Water Works (Ordinance; Substitute Title 21)

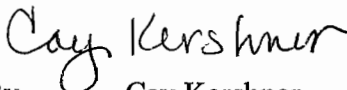
**Discussion:** Commissioner Sten said this simplifies some of the language in the Water Bureau's code to make it easier to understand.

**Disposition:** Ordinance No. 173433. (Y-5)

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At 11:16 a.m., Council adjourned.

**GARY BLACKMER**  
Auditor of the City of Portland

By  Cay Kershner  
Clerk of the Council

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**WEDNESDAY, 2:00 PM, JUNE 2, 1999**

**DUE TO THE LACK OF AN AGENDA**

**THERE WAS NO MEETING**