



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

NOTE: AGENDA ITEMS USUALLY HEARD AT THE 9:30 AM SESSION WERE CONSIDERED AT THE 2:00 PM MEETING

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 8TH DAY OF SEPTEMBER, 1999 AT 2:00 P.M.

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

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

Agenda No. 1292 was pulled from Consent. On a Y-4 roll call, the balance of the Consent Agenda was adopted as follows:

CONSENT AGENDA - NO DISCUSSION

- 1288** Accept bid of Danka to furnish one high-speed copier for the Bureau of General Services for \$409,100 (Purchasing Report - Bid No. 99212)

Disposition: Accepted; prepare contract.

- 1289** Accept bid of Stettler Supply Company, Inc. to furnish improvements to well sites 26, 29 & 32 for \$889,327 (Purchasing Report - Bid No. 99233)

Disposition: Accepted; prepare contract.

- 1290** Accept bid of Pro Landscape, Inc. to furnish Pendleton Park improvements for \$98,260 (Purchasing Report - Bid No. 99245 - Rebid)

Disposition: Accepted; prepare contract.

- 1291** Reject all bids for the groundwater monitoring well installation project (Purchasing Report - Bid No. 99261)

Disposition: Accepted.

- 1293** Accept bid of Design Construction NW, Inc. to furnish Portland Building 4th floor remodel for \$172,611 (Purchasing Report - Bid No. 99309-SMP)

Disposition: Accepted; prepare contract.

- 1294** Accept bid of McLean Landscaping-Maintenance to furnish NE Martin Luther King Jr. Blvd concrete pavers for \$54,796 (Purchasing Report - Bid No. 99326)

Disposition: Accepted; prepare contract.

- 1295** Accept bid of Modern Building Systems, Inc. to furnish temporary emergency operations modular building for \$191,683 (Purchasing Report - Bid No. 99348)

Disposition: Accepted; prepare contract.

Mayor Vera Katz

- 1296** Confirm appointment of Hilary Abraham, Jay Formick, Ann Nickel, and Bruce Broussard to the Portland Utilities Review Board (Report)

Disposition: Confirmed.

- *1297** Authorize Intergovernmental Agreement with the Metropolitan Service District for the processing of annexation to and withdrawals from the City (Ordinance)

Disposition: Ordinance No. 173727. (Y-4)

- *1298** Approve Intergovernmental Agreement between the City of Portland and the Portland School District No. 1 to provide supervisory services to school police (Ordinance)

Disposition: Ordinance No. 173728. (Y-4)

- *1299** Amend the Zoning Code and make minor corrections to the base zone design standards so that illustration numbering is consistent with Zoning Code numbering (Ordinance; amend Title 33)

Disposition: Ordinance No. 173729. (Y-4)

- *1300** Pay claim of Thanh Lap Son (Ordinance)

Disposition: Ordinance No. 173730. (Y-4)

- 1301** Amend City Code to allow for days and hours of work for seasonal or temporary/part-time employees of Portland Parks and Recreation (Second Reading 1233; amend City Code 4.12.010 and 4.12.030)

Disposition: Ordinance No. 173731. (Y-4)

Commissioner Jim Francesconi

- *1302** Authorize interim agreement with Pacific Real Estate Management Group, Inc. for property management services at The 1900 Building (Ordinance)

SEPTEMBER 8, 1999

Disposition: Ordinance No. 173732. (Y-4)

- *1303** Amend agreement with Donnoe & Associates for assessment centers for Portland Fire & Rescue, to extend the scope of work, increase the amount by \$9,000, and extend the completion (Ordinance; amend Contract No. 32130)

Disposition: Ordinance No. 173733. (Y-4)

- *1304** Amend agreement with George Austin Associates, increase the amount by \$10,000, and extend the completion date (Ordinance; amend Contract No. 32008, waive City Code Section 5.68)

Disposition: Ordinance No. 173734. (Y-4)

Commissioner Charlie Hales

- 1305** Accept completion for improvement of NE Martin Luther King Jr. Blvd. - NE Beech and NE Failing intersections project #6, and authorize final payment to Portland Excavating, Inc. (Report; Contract No. 32334)

Disposition: Accepted.

- 1306** Declare the purpose and intention of the City of Portland to construct street improvements in the NW Natio Parkway / Steel Bridge to NW 9th Avenue Local Improvement District (Resolution; C-9970)

Disposition: Resolution No. 35821. (Y-4)

- *1307** Amend contract with Kasey Cooper Excavating, Inc., to increase the amount for construction of the SE 17th Ave traffic calming program and provide for payment (Ordinance; amend Contract No. 32252)

Disposition: Ordinance No. 173735. (Y-4)

- *1308** Revocable permit to Portland Brewing to close NW 31st between Industrial and Luzon on September 17 through 19, 1999 (Ordinance - waive Code Section 14.24)

Disposition: Ordinance No. 173736. (Y-4)

- *1309** Accept grant from Oregon State Marine Board for \$96,300 and approve Facility Grant Cooperative Agreement for construction of Eastbank flush restroom (Ordinance)

Disposition: Ordinance No. 173737. (Y-4)

Commissioner Dan Saltzman

- 1310** Accept completion of the NE 138th Avenue pollution reduction wetland facility, Project No. 5700, and authorize final payment to Nutter Underground Utilities Corp. (Report; Contract No. 31960)

Disposition: Accepted.

- *1311 Authorize the Director of the Bureau of Environmental Services to execute a construction permit and right of entry with the Port of Portland for transfer of dredged material to Port property from the Oregon Slough in connection with the Hayden Island outfall project (Ordinance)

Disposition: Ordinance No. 173738. (Y-4)

- *1312 Authorize negotiations for the purchase of land and easements needed for a pollution reduction facility site located within the Columbia South Shore and authorize the City Attorney to commence condemnation proceedings (Ordinance)

Disposition: Ordinance No. 173739. (Y-4)

- *1313 Authorize the Director of Environmental Services to approve an Intergovernmental Agreement with Portland State University to provide services related to the Citizen's Watershed Stewardship Program (Ordinance)

Disposition: Ordinance No. 173740. (Y-4)

- 1314 Amend Wholesale Sewer Service Agreement with Clackamas County Service District #1 to include additional service areas annexed into the District (Second Reading 1251; amend Contract No. 26663)

Disposition: Ordinance No. 173741. (Y-4)

Commissioner Erik Sten

- *1315 Contract with Unity, Inc. for \$21,621 for the scattered site rehab project and provide for payment (Ordinance)

Disposition: Ordinance No. 173742. (Y-4)

- *1316 Contract with Franciscan Enterprise for \$57,500 for affordable housing development and provide for payment (Ordinance)

Disposition: Ordinance No. 173743. (Y-4)

- *1317 Contract with Cascade AIDS Project for \$362,592 in services to persons living with HIV and AIDS in the Portland eligible metropolitan area and provide for payment (Ordinance)

Disposition: Ordinance No. 173744. (Y-4)

- *1318 Contract with Outside-In for \$22,985 for the Outside-In needle exchange and provide for payment (Ordinance)

Disposition: Ordinance No. 173745. (Y-4)

- *1319 Contract with the Portland State University School of Business for \$100,000 to provide mentoring services to small businesses in Outer SE Portland and provide for payment (Ordinance)

Disposition: Ordinance No. 173746. (Y-4)

- *1320 Contract with Sabin Community Development Corporation for \$57,500 to support the development of affordable housing and provide for payment (Ordinance)

Disposition: Ordinance No. 173747. (Y-4)

- *1321 Authorize a contract with Rockwood Water People's Utility District for meter reading within its boundaries and provide for payment (Ordinance)

Disposition: Ordinance No. 173748. (Y-4)

- *1322 Authorize a contract with Powell Valley Water District for meter reading within its boundaries and provide for payment (Ordinance)

Disposition: Ordinance No. 173749. (Y-4)

- *1323 Contract with Unity, Inc. for \$121,320 for homeless outreach and provide for payment (Ordinance)

Disposition: Ordinance No. 173750. (Y-4)

- *1324 Contract with the Housing Development Center for \$120,245 to provide technical assistance to non-profit developers of affordable housing and provide for payment (Ordinance)

Disposition: Ordinance No. 173751. (Y-4)

- *1325 Contract with the Community Development Network for \$20,350 to support affordable housing development and provide for payment (Ordinance)

Disposition: Ordinance No. 173752. (Y-4)

- *1326 Contract with Legal Aid Services of Oregon for \$40,700 for Fair Housing Services and provide for payment (Ordinance)

Disposition: Ordinance No. 173753. (Y-4)

- *1327 Contract with Network Behavioral Healthcare, Inc. for \$27,500 for the creation of affordable rental housing and provide for payment (Ordinance)

Disposition: Ordinance No. 173754. (Y-4)

SEPTEMBER 8, 1999

REGULAR AGENDA

- 1292** Accept bid of Cummins NW Inc., to furnish two portable standby generators for \$55,630 (Purchasing Report - Bid No. 99297)

Discussion: Sue Klobertanz, Purchasing Director, asked that this item be returned to her office.

Disposition: Referred to Purchasing Director.

- 1331** Amend City Code to add drug-free zones, reauthorize and expand current zones and add procedural protections and variances (Second reading 1286; amend Title 14.100)

Discussion: Council members indicated their support for the expansion and continuation of the drug-free zones. Commissioner Saltzman said he is well aware of the controversies surrounding this but believes standards have been set that indicate the zones are being established in neighborhoods with significantly higher incidences of drug-related arrests. He said he is convinced an air-tight rationale has been provided and that ample thought has been given to the variance process.

Disposition: Ordinance No. 173755. (Y-4)

- 1332** Add City Code Section to regulate truancy in Title 14 of the Portland City Code (Second reading 1272; add Section 14.28.030)

Discussion: Commissioner Francesconi said this is a tool to supplement what the schools and Multnomah County are already doing to combat truancy. He said legitimate concerns have been raised by the Juvenile Rights Project but he is convinced this regulation cannot be classified as an arrest or a criminal proceeding.

Mayor Katz said this tool will allow officers to stop youngsters and ask them why they are not in school and return them to the school building if they have no legitimate reason for being out of school. Additional resources have been allocated to New Avenues for Youth for those who appear to need the services of a social service agency.

Disposition: Ordinance No. 173756. (Y-4)

Commissioner Charlie Hales

- 1334** Tentatively approve, with conditions, appeal of Tim Ralston, applicant and overrule Hearings Officer's decision to deny a planned unit development, major land division with variances, and environmental review with adjustment, located at 7908 NW Gales Ridge Lane (Previous Agenda 1167; LUR 98-00882 PU SU EN)

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

Disposition: Findings Adopted. (Y-4)

- 1328** Establish management expectations and review schedule for bureau-based equal employment opportunity and affirmative action compliance strategies (Resolution introduced by Mayor Katz, Commissioner Francesconi, Commissioner Hales, Commissioner Saltzman and Commissioner Sten)

Discussion: Commissioner Francesconi said this introduces four elements to add more accountability to the City's affirmative action plan and make sure the workforce is representative of the changing population. The four additions include: 1) an updated compliance strategy; 2) development of review criteria to ensure that the performance evaluations of managers reflect their efforts in the outreach, recruitment, promotion and retention of minorities and women; 3) evaluation of apprenticeship training programs and networking efforts; and 4) additional assistance from Human Resources in crafting outreach, recruitment, promotion and retention strategies. He said what will really make this work will be regular reports back to Council on each of these areas.

Janice Deardorff, Director, Bureau of Human Resources, said this puts some teeth into what have been good intentions.

Commissioner Francesconi said Council will also be working on the whole issue of purchasing and how the City uses its buying power to accomplish some of its objectives. This resolution, however, is limited to the City's own work force.

Mayor Katz said she would like to see the issue of retention addressed and what might be happening inside bureaus that creates an environment for women and minorities that causes them to leave the City. The City also needs to train people to move up the career ladder. With this resolution in place, every bureau will identify its strategies and allow Council members to question them.

Disposition: Resolution No. 35822. (Y-4)

Mayor Vera Katz

- 1329** Direct City Bureaus included in the Internal Apprenticeship & Training Plan to complete a Bureau Performance Report and submit it to their commissioners no later than September 15, 1999 (Resolution)

Discussion: Mayor Katz said the City is looking at a variety of models for apprenticeship programs. She noted that Bureau plans to implement and fund their training programs need to be in the hands of their commissioners by next week and should be tied into the affirmative action reports.

Disposition: Resolution No. 35823. (Y-4)

- 1287** **TIME CERTAIN: 2:30 PM:** - Approve Freightliner Corporation's N/NE Enterprise Zone Precertification Application and authorize the Portland Development Commission to enter into an Enterprise Zone Contract with Freightliner (Resolution introduced by Mayor Katz)

Disposition: Mayor Katz said in 1996 Council renewed the North/Northeast Enterprise Zone program for a ten-year period and then in 1997, because of mixed feelings about its effectiveness, the program was put on hold to evaluate its effectiveness over the years.

SEPTEMBER 8, 1999

After review with the help of the North/Northeast Economic Development Alliance and the Workforce Development Board, it was determined that the program is an effective tool for creating jobs. In March of this year, Council voted to continue the Enterprise Zone program. She personally has never liked property tax exemptions but in this case the City has a major company with over 5,000 employees headquartered here which is willing to invest \$93 million to stay in the City. This is a program about keeping an employer and encouraging it to expand and providing the incentives for it to do the right thing, especially in areas that have a high level of unemployment. Freightliner has agreed to do some things that go far beyond what State law requires. She believes this program will also bring in a considerable amount of resources over the tax exemption period and she feels very comfortable about granting this certification.

Felicia Trader, Director, Portland Development Commission (PDC), said PDC, as a designated Enterprise Zone manager, is requesting approval of the first Enterprise Zone application since the policy was revised in 1996, when substantially higher requirements were added than what State law requires. The City would like companies seeking exemptions to provide childcare, public transit benefits, develop a procurement program with North/Northeast businesses, participate in the City's Minority, Women and Emerging Small Business program for construction activities, use the City's apprenticeship program and hire new and replacement employees through the First Source agreement process. Regular reporting requirements and penalties if goals are not met are also part of the agreement. She said Freightliner has agreed to meet all of the Council's policy objectives. Freightliner is one of the City's strongest manufacturing and headquarters companies and \$69 million of the \$93 million contemplated in this agreement will be invested in permanent new facilities, meaning that Freightliner will be a strong corporate partner in Portland for many years to come. Some people claim Freightliner would make these investments anyway but that is not relevant to the program before Council today. This is not a business recruitment program tool but instead is about providing a business-based motivation to expanding companies to meet public policy objectives which substantially exceed what Freightliner is doing now. One of the key factors is the tax effect per hire, in this case \$6,050, which is much below the \$10,000 maximum exemption allowed per job. The analysis done by the Office of Finance and Administration states that because of the extra tax revenues generated in excess of the abatement, the tax benefits to the City exceed whatever additional cost current service levels associated with the added jobs and population would be. She said she cannot imagine a better application and has every reason to believe the benefits will extend far beyond the five years the exemption is in effect.

In response to a question from Mayor Katz, Ms. Trader noted that the company could also seek an Enterprise Zone property tax exemption directly from the State but the exemption would only be for three years and none of the benefits discussed would be included.

Sam Brooks, Co-Chair, North/Northeast Economic Development Alliance, said they believe their community will benefit from this exemption. Freightliner has agreed not only to abide by the tough new rules that have been built into this program but to work with the community on things like the creation of training and mentoring programs which will accrue benefits to the community even if the company should go away. He said the Alliance has had very elongated and productive discussions with Freightliner and believes its presence will help revitalize this community.

SEPTEMBER 8, 1999

Mayor Katz noted that when Council decided to take a hiatus on approving any more Enterprise Zones, it decided it would not act on any tax abatement program unless the request came from the affected community, not the Portland Development Commission. This request came from the Alliance which could easily have said no.

Mr. Brooks said the Alliance reviewed the application both on the basis of job creation and for the potential for new business opportunities in the community.

Scott Everett, Freightliner Corporation, said his company has its headquarters and two manufacturing plants in the City and believes it is the leading manufacturer in the industry in regard to both pay and benefits. He described the company's plans to expand and said Freightliner is prepared to invest \$93 million in the North/Northeast community. The company believes that over the five-year year period of this exemption, employment opportunities will approach 1,100, many of which they hope to fill from the Northeast community.

Commissioner Saltzman said he is concerned about what the company's final procurement plan will look like and whether it is substantially what the City seeks. He said he believes Council has to have more of a role in the final approval to make sure requirements are going to be met.

Mr. Brooks said the dialogue will continue but PDC already has a compliance review program in place to see if companies are living up to their agreements. PDC should make sure those compliance reviews are getting to Council.

Ms. Trader said this is the precertification phase, where Council gives its approval and then tells PDC to move forward and make it happen. She hears the concerns from Council about wanting to see results first. PDC can report back on the multi-party completed agreement, which it expects to have in 60 to 90 days. She said the agreement will include specific income level for the childcare and the procurement plan. She said there will be a higher threshold level for company support of childcare than is shown in the numbers Council has seen.

Mr. Brooks said he will recommend that the Alliance continue its oversight both on the job side and the business growth and development side.

Mr. Everett said Freightliner clearly recognizes its obligation to provide childcare. He said the company already provides mass transit support but realizes it will have to increase the level of support. They recognize the need to offer procurement but those details have not yet been worked out.

Commissioner Francesconi said he thought Council would have an opportunity to look over the specifics of the deal. He said while Freightliner appears to be doing the thing, Council seems to be giving it the money before it has the deal. He said Council does not know the number of jobs, the kind of procurement plan or whether there is a school-to-work program in the training component. Specifics about childcare also need to be addressed. He said all these details need to be fleshed out and questioned why it is okay to spend \$6.8 million of the taxpayers' money before these are known.

SEPTEMBER 8, 1999

Ms. Trader said it is up to Council to decide whether or not to approve the application. If it does not, PDC and Freightliner will not spend the money developing an agreement. She said Council has the policy criteria and has seen the details about how those criteria are expected to be met. Those are the details PDC expects to fulfill although there may be some adjustments, i.e. perhaps Freightliner will want to offer childcare on-site rather than providing a childcare subsidy based on income.

Commissioner Francesconi asked if Freightliner has any obligation to contribute anything to a training program. He asked if it would help fund the training center on Swan Island.

Ms. Trader said there is no requirement in the criteria to do that.

Commissioner Francesconi said but there is a workforce development requirement that needs to be fleshed out in the negotiations.

Ms. Trader said in the past workforce development has consisted of the First Source agreement which contains provisions for hiring, retention and training. Details of how the training is to be done have not been worked out.

Commissioner Francesconi said in exchange for \$6.8 million PDC should make sure there is a training component so the residents of Northeast will benefit from this.

Carl Talton, PDC, and Alliance member, said the community decided some time ago to focus on a four-pronged strategy to help generate wealth in inner North/Northeast Portland. The four elements are: 1) home ownership; 2) jobs; 3) business ownership; and 4) a community-based financial institution. Home ownership has increased and the Albina Community Bank has been formed, with the Alliance playing a significant role in attracting that organization to support the housing and business development goals. The two pieces that have not come along as rapidly are job creation and local business ownership. The Freightliner proposal offers an opportunity to address both those issues although he shares the concerns about job training. The procurement plan should help in promoting local community-based businesses. This is something new and he is chairing that effort for PDC now and when that is complete they will have a picture of what companies are out there that can support the Enterprise Zone businesses, the needs of organizations like Freightliner and what peculiarities it has that have to be overcome to make sure they can do business with local businesses.

Commissioner Saltzman asked if the plan will be in place for review in 30 to 60 days

Mr. Talton said yes, they have a plan already in place but not the level of detail Council is asking for.

Bob Alexander, Enterprise Zone Manager, PDC, explained that 70 percent of the community's contribution from existing Enterprise Zone programs will be allocated to workforce training and 30 percent to small business supplier development. He said the intent is to connect suppliers in North/Northeast Portland to Enterprise Zone companies and the contracts are already out to start that process. They expect to be able to have actual matches between suppliers in the North/Northeast and Enterprise Zone companies within several months. The contract Freightliner will enter into for the procurement plan will have to include a list of its needs and how it will increase the percentage of its purchases from

SEPTEMBER 8, 1999

Northeast businesses each year during the exemption period. He noted that most of the details will be set out as performance standards, not specific numbers. He said ongoing compliance review will enable the parties to modify and make mid-course corrections as the process goes on. He said the childcare program Commissioner Saltzman referred to simply calls for development of a program for low-income employees. He said some companies have used a sliding scale while others have used a two-tiered approach and what Freightliner decides to do is still being negotiated.

Commissioner Saltzman asked if PDC finally signs off on all these details.

Mr. Alexander said yes and added that it does not come to Council. PDC said most of the details are performance related and do not set specific numbers. Performance will be monitored and mid-course corrections may be made as the process goes along.

Mayor Katz said this is the process Council agreed upon for Enterprise Zone applications. If Council members want to change it, they should do so for the next one and call for the parties involved to work out all the details first. She said she does not think it is fair to change the rules for Freightliner now.

Commissioner Saltzman said he would like to have a discussion about changing Council's role right away.

Commissioner Francesconi said when Council discussed this before he wanted to know what the details of the agreement would be. He thinks PDC is doing the right thing in getting new jobs for citizens who need them the most and believes tax abatements are a good strategy for getting them. However, he wants to make sure the City knows what it is getting. For instance, yesterday Mr. Alexander told him the number of jobs estimated to be filled by Northeast Portland residents is 280. He said a 25 percent goal for hiring for Northeast Portland would translate into 100 of the 400 new hires being in Northeast plus 180 others. That would mean that it would cost \$25,000 per job (280 jobs divided by \$6.8 million) plus, with an estimated retention rate of 50 percent, that translates into 140 permanent jobs. None of that is addressed by the policy Council adopted. He thought PDC was to negotiate with Freightliner and then present the agreement back to Council to authorize it.

Mr. Alexander said that is an estimate only, based on the performance of previous companies. He said it was his understanding that Council would set the policy and then PDC would negotiate the contract. He said PDC can speculate on how many jobs would be filled by North/Northeast residents but what it was asked to do was to look at what has been committed to by State law and Council policy in the past, which was actual number of hires, not just new jobs but replacement jobs as well. In the case of Freightliner, that is a significant advantage as some 600 to 700 replacement jobs could also be filled by North/Northeast residents.

Commissioner Francesconi said that was included in the numbers he used. Since Freightliner will be expanding anyway, then the tax revenues will be there, too. He asked if the Enterprise Zone regulations allow corporate headquarters expansions.

Mr. Alexander said yes, that would qualify under both the old and the new State law.

SEPTEMBER 8, 1999

Commissioner Francesconi asked if the City is setting a precedent for other companies that may want to expand their headquarters.

Mr. Alexander said he believes that getting additional corporations to locate and expand their headquarters in North/Northeast would be a good thing. He noted that PDC has had inquiries from several smaller companies who are waiting for the policy to be clarified.

Ms. Trader noted that any application for an exemption of less than \$2 million can be approved by PDC without Council approval.

Mayor Katz said if Council wants to change that threshold, it can as she wants everyone to have a high level of comfort with this.

Ms. Trader said, regarding the training program, the policy sets out minimum job quality thresholds a company must meet. It calls for any hirers through the First Source program to have access to adequate training and advancement opportunities, which will be determined by Work Systems, Inc. She said they have not yet worked out what the training requirements will be for the new positions created by the company.

Sheila Holden, Land Use and Trans Chair, North/Northeast Economic Alliance, said the issues raised by Commissioners Saltzman and Francesconi are good ones and ones the community is concerned about as well. In the next phase the Alliance will add measures of specificity that tie directly to the goals of the community and are performance based. She said they are committed to making sure the details reflect what the community wants. That is also the expectation of PDC.

Commissioner Saltzman asked if that means the Alliance will in essence have a chance to buy off on the agreement.

Ms. Holden said yes.

Bernie Foster, The Scanner, said for years companies have promised good things to this community, with no positive results. He said Council should not adopt this until those details are provided.

John Ball, Work Systems, Inc., said his company sees this as a good opportunity to target jobs in Northeast although there are legal restrictions against monopolizing services in a specific geographic area. He said they are interested in building training infrastructure across the labor market. While all the details are not spelled out, everyone is aware that this application, the first one out of the box, is a test of Council's policy. He said it is impossible for anyone in a policy position to delineate all the issues that might arise and put restrictions on a company that takes away its flexibility. Work Systems, Inc. knows any agreements will be scrutinized by the community, Council and the company. He said asking Freightliner to participate in the Swan Island Training Center will be a subject for discussion, although that may not be the only possibility that meets the community's needs. He will return to Council if there are problems with the training component but hopes Council has some faith in their ability to interpret both the Council's policy and the community's expectation about what a reasonable agreement would be. It would be difficult to involve companies in this process if they felt that over an extended period of

SEPTEMBER 8, 1999

time one or another of the Commissioners might raise individual objections outside the bounds of the policy.

Commissioner Francesconi asked if he had said anything outside the bounds of the policy?

Mr. Ball said no, but he is speaking about specific areas now that are not contained in the policy. Those are issues that will be raised in the course of negotiations with the company to come up with something that works for both parties. In the final analysis they are creating a partnership with a company and if the community is not able to train workers who can successfully fill the jobs, there are an endless number of mechanisms the company can use to end run any specific agreement. If successful partnerships are not created, the agreements do not save them.

Ms. Trader said PDC will not agree to any provisions if the Alliance does not also agree with them as the entire purpose of the exemption is to benefit the Northeast community. Given the construction process, PDC does not expect the abatement to kick in for two to three years, when the facilities are constructed. But now is the time to provide Freightliner with the assurance of an abatement if it is in compliance with the agreement.

Commissioner Francesconi said he cannot support this because there is no guarantee that actual economic development will occur in North/Northeast Portland. He said before he can vote yes he has to know what the deal is and that will not be known for 30 to 60 days. He said he has to know the goal for hiring minorities, for instance, and he does not believe hiring 25 percent from residents of North/Northeast is enough. He said specifics about procurement, training and child care also need to be in place. He suggested that by waiting another 30 to 60 days, PDC would have more leverage to make sure the community benefits.

Commissioner Hales said he has not rubberstamped prior PDC proposals and has supported past efforts to change the way PDC does business. However, he has supported every application for Enterprise Zones and will support this one too. He believes the policy framework strikes a reasonable balance between policy and management oversight. It is a mistake to believe that if Council knew all the details, it could control all the outcomes. He said it is not normal for big American cities to have growing industries and a flourishing manufacturing base and Portland is a happy exception. He believes Council has laid out very good expectations and that the combination of community oversight and competent management will ensure the City is getting a good deal.

Commissioner Saltzman said he has made clear his concerns about this process and strongly believes it is incumbent on Council to ensure that such agreements are exceptional. He would like to see the details and hopes the whole process will be revisited but thinks it is unfair to raise this with Freightliner at this point. He said PDC has placed tough requirements on Freightliner and he believes the company will take them seriously. However, he will be looking at the agreement to make sure some of his concerns are addressed.

Mayor Katz said she wishes Council could have the same conversation regarding all the property exemptions granted to churches and non-profit organizations to measure the benefits they provide. PDC has several times said no to companies because they did not meet the required threshold and those proposals have not even come to Council. She said she has faith that PDC will negotiate this with the community and that the community will

insist the City put together a contract that will benefit it, within legal bounds. The issues raised by Commissioners Francesconi and Saltzman are very legitimate ones for further discussions about whether the process should be restructured.

Disposition: Resolution No. 35824. (Y-3; N-1, Commissioner Francesconi)

- *1330** Agreement with Multnomah County for pass-through funds from the Juvenile Accountability Incentive Block Grant from the State of Oregon (Ordinance)

Disposition: Ordinance No. 173757. (Y-4)

- 1333** Liquor license application for Zupan's Belmont, Inc., dba Zupan's Market, 3301 SE Belmont St., Package Store liquor license (renewal); Unfavorable recommendation (Report)

Discussion: Judy Ritt, License Bureau, listed the basis for the unfavorable recommendation. She said, in this case, during a 13- month period clerks at Zupan's Belmont sold alcohol on four different occasions to minor decoys participating in OLCC and City sting operations. Ms. Ritt also noted that last year staff brought forward unfavorable recommendations for three convenience stores, based on the sale of four or more sales to minors within a two-year period. In those three cases Council unanimously voted to forward an unfavorable recommendation to the OLCC, setting a clear standard. This year Zupan's is the only one of 445 package store outlets in the City that staff is bringing to Council with an unfavorable recommendation. On March 17, 1999, OLCC regulatory staff recommended cancellation of Zupan's license and that decision is now pending. She added that sale of alcohol to minors is a serious offense and while staff is aware of the substantial neighborhood support for Zupan's, today the issue is the liquor license and the fact that outlets must know they will be held accountable. Ms. Ritt said this case provides a clear opportunity for Council to send a consistent message to the OLCC.

Police Officer Bill Calder, Drug and Vice Division, said the stings have shown how easy it is for minors to buy alcohol in all kinds of stores. He said after the fourth violation, Zupan's attorney attacked the sting operations as illegal. While the store did implement changes, they were obviously too late to be effective.

Commissioner Hales asked how many establishments have been subjected to four or more stings.

Officer Calder said probably 100. About 450 establishments have been stung, but some only once.

Captain Jim Ferraris, Drug and Vice Division, said Zupan's four sales to minors reflect a pattern of violation. Council has been extremely clear in its message to other stores about the necessity of preventing alcohol sales to minors.

Officer Kevin Warren, Neighborhood Response Team, said despite the efforts of the store's management, Southeast Precinct believes four violations are cause for an unfavorable recommendation.

Mayor Katz asked why this application is before Council now since OLCC regulatory staff has already made a decision.

Ms. Ritt said Zupan's license expired in June, after the OLCC decision.

Mayor Katz asked if the OLCC is considering expanding the number of violations to six from the current four.

Ms. Ritt said that was part of a temporary rule which expired the end of June. Last week a responsible member program was approved but what form that will take is unknown at this time.

Commissioner Francesconi asked what kind of evidence it would take to allow mitigation for the length of suspension.

Ms. Ritt said they would consider the circumstances of each offense and the steps the outlet has taken to remedy the situation. OLCC Regulatory staff determined that mitigation was not sufficient to overturn its ruling.

Commissioner Saltzman asked if the OLCC can choose to suspend the cancellation process going on right now.

Terry DeSylvie, attorney for the applicant, said the fact there is no decision yet on the March 17 OLCC hearing is indicative that the administrative law judge is struggling with this particular case. To call Zupan's a nuisance and a detriment to the public health and welfare is a stretch. He asked those who testified at the OLCC hearing, as part of the cross examination, if they were aware of any policy or training this applicant could have used that was not. They said no. In other words, the applicant has taken reasonable steps to prevent sales to minors and probably has done more than most small stores. Employees who did not follow policy were terminated and every violation was the result of a sting operation, not a complaint from the community about sales to minors. The only thing the applicant can do is to institute a procedure, do the training and terminate anyone who violates it. Zupan's cannot survive if it loses its license to sell alcohol, even though alcohol sales amount to only 15 percent of the total sales. Mr. DeSylvie said this is the first time he has ever represented an applicant where there was not one member of the public who did not support them. He said Zupan's is a vital part of the revitalization effort in the Belmont community and noted a petition in support signed by 362 individuals calling for Zupan's to be allowed to retain its liquor license.

Commissioner Hales asked if it was correct that a total of 13 sting operations had been conducted at this property since the first unsuccessful sting.

Mr. DeSylvie said yes, that is what they are aware of.

Mayor Katz asked if he did not believe companies should be held liable for acts of employees.

Mr. DeSylvie said there has to be some wrongful conduct on the part of the company.

John Zupan, 2645 NW Buehla Vista, 97210, said in 25 years Zupan's business has had only one other liquor violation. He said the company has an extensive training process and its cash machines are programmed to transmit the birth date of the purchaser. He said clerks at

SEPTEMBER 8, 1999

Belmont are reminded daily about the seriousness of these procedures and he has no answer for why these mistakes have been made. He said Zupan's is a credit to the community and an integral part of the neighborhood.

Commissioner Hales said Council is hung up here because it has been very consistent in forwarding unfavorable recommendations when there is there is a pattern of violating the law. He asked Mr. Zupan what else he can do to stop these violations from occurring.

Mr. Zupan said he does not know as he believes their policies are as good or better than any in the industry. He said in a large store such as theirs, it is not possible to have the manager approve every liquor sale, check every ID or have separate check out lines for those who purchase liquor. He said Zupan's will abide by any recommendations the City or OLCC has. He is not trying to make excuses for these sales but the store's policies are such that if the clerks do not abide by them, he is personally put in peril.

Joe Gilliam, representing the Oregon Grocery Industry, said House Bill 2140 addresses the level of accountability of a storeowner for its employees. Key sections will raise the penalty from \$500 to \$5,000 for sales of alcohol to minors and, if an employee is stung, the store must complete a reeducation program by a set deadline. If a licensee participates in and implements all the OLCC suggestions and is then stung, its license cannot be cancelled because they have shown good faith. However, they can still be fined, suspended, etc. If retailers choose not to go into the responsible owner program, they are not protected. One of the biggest issues is age verification and the OLCC agreed that if a store is fined and then installs age verification equipment to scan alcohol sales, it may allow the store to do that in lieu of the fine. Everyone recognizes that one cannot guarantee 100 percent compliance despite the number of rules but they have tried to set up levels that come close. Zupan's has gone above current required levels in two areas. It checks ID for those aged 35 and under and each employee has to sign a pledge every day that they will not sell alcohol to minors, with termination as the price for not complying.

Commissioner Francesconi asked when this statute is effective and why it is relevant to this procedure.

Mr. Gilliam said sometime in December and he has explained the provisions for informational purposes and not as a way of saying that the Association does not care what Council thinks.

Mayor Katz said it does raise the question of what role the City has now.

Carter McNichol, partner in Belmont Limited Partnership, said they are aware of the violations and consider them serious but believe it is a stretch to consider Zupan's a public nuisance. Zupan's took a considerable risk in locating a grocery store here and demonstrated that a large mixed-use project can be an asset to the community. Mixed-use is a delicate balance and the success of the housing and retail are interdependent. He asked Council to take into account Zupan's outstanding contribution to the community.

Commissioner Francesconi said the City has a well-established policy about four violations and this conflicts with its revitalization policy. He said an argument could be made that an establishment that uses City resources should have fewer violations. However, he noted that Mr. McNichol is arguing that Council should make an exception because of the public

SEPTEMBER 8, 1999

benefits. He asked how much weight Council should give to these factors if there are more violations.

Mr. McNichol said his point is that Council should have room to look at broader issues, not that the violations should be treated lightly. He said he is quite satisfied that Zupan's is trying to do everything it can to mitigate problem. In the meantime it continues to do fantastic things for the neighborhood, which he believes provide mitigating circumstances in this case.

Other individuals speaking in support of Zupan's included:

Ben Merrill, Property Manager, Belmont Dairy Project
Randy Wells, Manager, Zupan's Belmont Store
Joe Zimmerman, Manager, Sweetwater's Jam House
Katie Bretsch, 3336 SE Yamhill, 97214
Stuart Sugarman, President, Belmont Area Business Association

Supporters said John Zupan has acted in good faith and done everything possible to prevent the sale of liquor to minors. They asked Council to see if something can be crafted to avoid revocation of his license as they do not believe it is possible to eliminate every element of human error. They noted that Zupan's was the key entity in making the Belmont Dairy project viable and they believe its continued success may be tied to that of Zupan's. Several testified that while there is a problem with alcohol sales and street drinkers, no one has ever indicated that Zupan's was responsible and that taking away Zupan's license will do nothing to rectify that problem.

Mayor Katz noted that the owner of Plaid Pantry was penalized for the actions of a franchisee. She asked staff what more Zupan's must do.

Officer Calder said too often the clerks are overriding the age verification check, something the Police see happen often, especially at major stores. Also, supervisors are not watching carefully enough to see that the clerks actually do the age verification. He said machinery is available that can read a customer's driver's license although it is expensive.

Mayor Katz said some Council members question why Council is involved in this when the OLCC is the final arbiter.

Commissioner Hales questioned staff about the number of sting operations conducted at this store and commented that it was hard for him to understand why a main line grocery store merited nine stings. He questioned whether this was a good use of City resources when neighborhood livability problems are not involved

Officer Calder said each precinct selects which stores are to be stung. Big stores versus little ones have always been an issue and at first the big stores were ignored. When the Police began stinging the bigger stores they were surprised to find they flunked at the same rate as small stores in the beginning. He said once a store fails a sting, it will be checked again. The OLCC says if a store flunks once, then they will return twice. One of the stings that Zupan's failed was done by the OLCC. He added that the little stores are doing a better job now and may even be a little stricter about alcohol sales than the big ones.

SEPTEMBER 8, 1999

Officer Ferraris said the established standard of four sales within 24 months should not be compromised. This is clearly a community safety issue affecting neighborhood livability.

Ms. Ritt said alcohol sales to minors is not easily seen as a problem by neighbors who express more concern about street drinkers.

Jim Wadsworth, Director, Bureau of Licenses, said this was a very difficult decision for the Bureau. Zupan's Belmont had four occurrences of illegal sales to minors in a 13-month period. There were 400 other places that did not. He said they tried to do everything to mitigate this but the Bureau's recommendation is not to approve this renewal.

Commissioner Francesconi moved to forward an unfavorable recommendation. Commissioner Saltzman seconded.

Commissioner Hales said he believes it would be a case of foolish consistency to recommend denial here. Council gets involved in liquor license applications because it is supposed to be a watchdog for community livability issues. His preferred outcome would be to allow Zupan's to continue but hold it to the highest level of performance as, on balance, one cannot say livability issues will be advanced by denying a license in this case. He said he also has some concerns about the use of stings.

Commissioner Saltzman said he regards the stings as very serious and as a very useful enforcement tool. He is troubled by the good faith efforts as he believes there is a lot of implicit denial contained in the belief that if one just fires an employee, the problem is over. He said he does not believe the only time sales were made to minors was when these stings were made or that the demeanor of the minors who acted as stings changed the way the clerks reacted. He said his preferred outcome would be suspension of the license but that decision rests with the OLCC.

Mayor Katz said this is a difficult decision but noted that the Council forwarded an unfavorable recommendation earlier for Plaid Pantry which offered the same rationale as Zupan's for one of its franchisees caught selling alcohol to minors. She asked how one would determine there were sales to minors if sting operations were not conducted. She believes they are a valuable tool and hopes their use will continue. She said the Council is struggling here because it needs to be consistent and not make decisions based on the status of a company. She said it is her hope that the OLCC will suspend the license.

Disposition: Unfavorably recommended. (Y-3; N-1, Commissioner Hales)

Commissioner Erik Sten

- *1335** Authorize a sole source contract with Rapidigm, Inc. for the Bureau of Water Works, and authorize payment (Ordinance)

Disposition: Ordinance No. 173758. (Y-4)

- *1336** Authorize a sole source contract with EMA Services, Inc. for the Bureau of Water Works, and authorize payment (Ordinance)

Disposition: Ordinance No. 173759. (Y-4)

SEPTEMBER 8, 1999

City Auditor Gary Blackmer

1337 Assess property for sidewalk repair by the Bureau of Maintenance for billing processed through August 3, 1999 (Hearing; Ordinance; Y1035)

Disposition: Passed to Second Reading September 15, 1999 at 9:30 a.m.

At 5:45 p.m., Council adjourned.

GARY BLACKMER
Auditor of the City of Portland

Cay Kershner

By Cay Kershner
Clerk of the Council