



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A SPECIAL MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 12TH DAY OF OCTOBER, 1999 AT 6:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Hales and Sten, 3.

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

1435 TIME CERTAIN 6:00 PM - Adopt the Interstate MAX Conceptual Design report with directions to evaluate design issues and to complete development strategies for station areas (Resolution introduced by Commissioner Hales)

Discussion: Mayor Katz said the City did not give up on its commitment to extend light rail as close to Vancouver as possible, despite the setbacks, but instead considered what financing opportunities might be available and how new investments in North Portland might become a reality.

Commissioner Hales said this is much more than just a light rail project. It is also a community development, housing development and an environmental project as it will improve air quality and enhance the area's parks. That is why there is so much support for it now. He noted that the design has incorporated very specific conditions requested by the neighborhood. These include having the City advocate for closed, paved trackways instead of open-tie and ballast through the majority of the alignment. They also want bicycle improvements and for siting of the Kenton Station at a location that will contribute positively to the revitalization of the Kenton Business District. Those instructions from the community have been taken as design assumptions, not options, to be built into the project from the beginning.

Commissioner Hales moved to amend the ordinance to accept a substituted agreement. Hearing no objections, the Mayor so ordered.

Fred Hansen, Manager, Tri-Met, said there has been substantial community involvement in this project and an openness by the players to make changes all along the way. He stressed that the issue of paved track between the old Kaiser Hospital and Kenton was a key issue. He said bus service was another concern and, as a result, Tri-Met has added a detail of planning that is unusual at this early stage and has been very favorably received by the community. The idea of no-net loss of service is tremendously important. He reviewed the time line and said they should have a fair idea of whether federal funding is available by next spring. In the meantime they will continue to develop the design, in partnership with the City and community.

Steve Iwata, project manager, Portland Office of Transportation (PDOT), said this resolution calls for adoption of the conceptual design report and requests the City Engineer to report back within 90 days on unresolved project issues, including the bicycle lanes and

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on-street parking along North Interstate. It also directs the Portland Development Commission (PDC) to complete specific station area development strategies. He explained what this resolution accomplishes and showed slides to indicate the alignment and illustrate what light rail will look like as it goes north from the Rose Quarter to the Expo Center. The location of the Kenton station was a major concern as the aim there is to create two major plazas and a more pedestrian-friendly environment.

Rick Williams, Chair, Interstate Max (IMAX) Citizens Advisory Committee, outlined some of the continuing concerns in four topic areas that need to be considered as this project moves forward. Those topic areas are: urban renewal, parking, bicycles and community involvement.

They fully support creation of an urban renewal district as a means of funding this project although they might differ on the amount of urban renewal money that should be spent on it. They believe urban renewal districts should be designed primarily to support redevelopment and revitalization of the corridor, not just support light rail. He also stressed the need to aggressively involve residents within the new urban renewal district in setting goals. Committee members heard over and over again about the negative results of prior urban renewal projects in this community and the partners must be sensitive to that. The City needs to make some strong statements in terms of how it will accomplish urban renewal, particularly in the area of condemnation. The committee also believes on-street parking is integral to the economic vitality of this corridor and that Metro needs to update the Expo Master Plan. In addition, if the light rail eventually goes to Vancouver, the whole concept of a park and ride at Expo needs to be re-examined. Finally, the committee has concerns about the mitigation efforts needed to deal with the infiltration of parking into the neighborhoods so local streets do not end up serving as park and ride lots. The issue of bicycle lanes was controversial but the consensus of the community is that bicycling is integral to the corridor and must be improved. However, the jury is still out on whether the lanes need to be on Interstate and further study is needed of the tradeoffs with parking, the width of the pedestrian paths and the effect of going to 10-foot wide sidewalks. Other corridors should also be considered and compared with Interstate. Regarding community outreach, the committee's philosophy was it had to go to the community rather than having it come to them. He said while the committee believes it has done an excellent job, more must be done to draw in people who have not participated in the past. He said the project must reflect the character and history of the neighborhood and the people who live in the Interstate corridor.

Individuals speaking in support, but many with reservations and concerns, included:

Ann Gardner, Association for Portland Progress
Joseph Ingles, Chair, Kenton Neighborhood Association
Amanda McCloskly, Community Development Network
Terry Parker, 1527 NE 65th Ave., 97213
Steve Rogers, Eliot Neighborhood Association
Lenny Anderson, Swan Island Business Association 4747 N. Channel, 97217
Alan Hipolito, Urban League of Portland
Mike Houck, Audubon Society and Coalition for a Livable Future
Eric Anderson, Kenton Neighborhood Association
David Eatwell, 2601 N. Willis, 97217
Julie Garver, resident, Vancouver, WA
Donna Hammond, Oregon Tradeswoman Network

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Deb Lippoldt, Oregon Food Bank
John Condon, 4386 SW Macadam, 97201, owner of the Kenton Hotel
Mark Kirchmeier, University of Portland, 5000 N. Willamette Blvd., 97217
Richard Ellmyer, 9174 N. McKenna, 97203
Peter Teneau, 2715 N. Terry, 97217
Lu Hodges, Housing Task Force, Elders in Action
Brenda Ray Scott, 8824 N. Hamline, 97217
Jose Rivera, Hacienda Community Development
Trevor Nelson, American Institute of Architects Urban Design Committee
Erik Palmer, 8207 N. Edison, 97203
Ross Williams, no address stated
Irwin Mandel, 1511 SW Park Ave., 97201

Supporters said they are pleased that one of the poorest regions in the City will not be cut off from improved transit access and the revitalization opportunities that this project can provide. However, concerns were raised about housing and business displacement, neighborhood gentrification and the impact of up-zoning on single-family residential areas. Questions were asked about how businesses along Interstate would remain viable if on-street parking was removed. Many stressed the need to mitigate for the congestion that will result from traffic diversion when two travel lanes are removed from Interstate. Others called for preserving and improving existing bus routes and protecting truck access to lower Albina and Swan Island. Other issues raised included the need to connect light rail to Vancouver as soon as possible and the need to review the Expo Master Plan with special attention to parking, the proximity of the station to the Expo entrance and the impact of a potential new amphitheater on that area. Many of those testifying stressed the importance of involving all sectors of the community, particularly residents who might not ordinarily attend the meetings. They also called for ensuring that community residents benefit from job training programs and that local minority businesses receive their fair share of contracts and representation on the work force. Mr. Mandel expressed concern about the number of additional trains that will be going across the Steel Bridge and through downtown and said Council should consider a subsurface route through downtown for a few miles.

Citizens specifically addressing concerns about the need for bicycle lanes on Interstate and other connections included:

Phil Goff, City Bicycle Advisory Committee
Peter Mye, 1955 NW Hoyt, 97207
Catherine Ciarlo, Bicycle Transportation Alliance
Todd Lasher, 5632 N. Atlantic, 97217
Mark Smith, 7114 N. Oatman, 97217
Lili Mandel, 1511 SW Park, 97201
David Hampsten, Portland State University Graduate Student

Most advocated for the addition of bicycle lanes on Interstate rather than on alternative routes and noted that, with or without bike lanes, bicyclists would use Interstate because it is the most direct route. Ms. Mandel called for using art funds to create an attractive design for bike storage areas.

Opponents included the following individuals:

Cathy Galbraith, 2128 SE 35th Pl., 97214, raised three issues in opposition. First, Tri-Met's analysis indicates there no difference in air quality between the no-build and the light rail option. Second, there is no justification to spend this much money to increase ridership by only an estimated 2,000 plus round-trip riders by 2013. Finally, urban renewal funds can only be used for capital projects and if \$30 million is taken off the top for light rail most of the rest of the funds will be used to mitigate traffic impacts, with the remainder used for affordable housing. She questioned why Interstate MAX is being promoted as the only way to revitalize the area.

Larry Jones, 5501 N. Interstate Ave., 97217, opposed the design because of concerns about the congestion that will result when traffic is diverted from Interstate. He said there is nowhere for the traffic to go and questioned what had made Council change its mind from a year ago when it supported a crossover route because it thought then that the Interstate route was a bad idea.

Trinidad Alvarez (speaking through an interpreter), owner of a business on Interstate, said he fears light rail will put him out of business because there will no longer be parking spaces on the street. He is also worried about his business' survival during the construction phase.

Neil Brown, 2205 N. Skidmore Terrace, 97217, claimed the outcome of this process was rigged because the so-called citizens committee of 15 were hand-picked people generally in favor of this project. He said he was disappointed by the traffic study as traffic will not evaporate as it has nowhere else to go. The project also makes assumptions about train capacity that do not check out. He said placing bike lanes right next to cars going 45 miles per hour is dangerous and he would support them elsewhere.

James Bowles, 739 N. Killingsworth, 97217, said this should be sent back to the drawing board because a large segment of the population, especially African-Americans and low-income residents, have been left out of the process

Bobbi Gary, 2642 SE Tibbetts, 97202, expressed concerned about non-meetings with those who will be affected the most and need to be represented. She said the pattern in the past has been to uproot people where there is the least resistance. She said the residents are the experts here and people who are going to be damaged the most should be drawn in.

Staff returned to address some of the issues raised.

Mr. Iwata said those working on this project attempted to reach as many people in the community as possible, especially those who were suspicious and who had traditionally not been included.

Mr. Hansen noted that Tri-Met undertook substantial outreach efforts and provided daycare at the outreach meetings so parents could attend. They will continue to do so at future meetings.

Felicia Trader, Director, Portland Development Commission, (PDC), said right now PDC is at the beginning of its feasibility study and many of the concerns expressed tonight are its concerns too. She noted that while urban renewal funds have to be spent on the planning and execution of capital projects, that makes other funds available that could be used for business assistance or affordable housing. She said PDC will be looking at those issues as it puts together the financing plan.

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John Southgate, PDC, said one recurrent theme raised today is the need for significant public participation. He said PDC is putting together a balanced and diverse 40-member advisory committee representing 40 different groups. He said PDC will also retain an outreach consultant to advise about canvassing and other techniques. He said they anticipate an exhaustive process.

Mayor Katz noted that many residents are terribly concerned because of the history of urban renewal in this area (around Emanuel Hospital) and the City has to prove that those days are over.

Commissioner Sten asked if there are other ways for people to get involved if they are not on the committee.

Mr. Southgate said everyone on their mailing lists will be notified about all meetings and how to plug in.

Commissioner Sten said the biggest concern on the North Macadam project was that people who were active on one committee did not feel connected with the overall divvying up of money for different uses.

Mr. Southgate said the hope is that the 40-member committee, not some sub-committee, will look at two basic questions – where will the urban renewal boundary go and how should the money be spent.

Mr. Hansen said Tri-Met is absolutely committed to seeing that North/Northeast Portland residents benefit from this project and participate in its construction. Regarding the location of the station at the Expo Center, he said the Environmental Impact Statement identifies the location of the station as it is described now but they have agreed to look at other options through final design. Depending on the location of the proposed arena, different parts of Expo will become more or less convenient to the station. The Metropolitan Exposition and Recreation Commission (MERC) is also concerned about the potential loss of additional parking spaces. That is another tradeoff, plus the additional cost of any extension.

Commissioner Hales said there are opportunities for further conversations with MERC and Metro about their facility plans.

Mr. Hansen said it is not simply a matter of spending more money to make it better. There are real competing interests there that have nothing to do with cost.

Mayor Katz said she feels very strongly about the need to use minority, women and small emerging businesses on this project and knows that Tri-Met is committed to this too.

Mr. Hansen said Tri-Met feels fortunate in being able to build on the City's fair contracting program, which it believes is one of the best in the nation.

Disposition: Continued to September 13, 1999 at 9:30 a.m.

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- *1436** Authorize intergovernmental agreement with Tri-County Metropolitan Transportation District and Portland Development Commission regarding funding for Interstate MAX (Ordinance introduced by Mayor Katz and Commissioner Hales)

Discussion: Ms. Trader noted the need for a technical amendment (page 5) to add language that specifically describes the way urban renewal funds may be used. That way there is no misunderstanding about their purpose. Tri-Met and the other parties have agreed this is appropriate.

Mayor Katz noted that Council will vote on this on Wednesday morning.

Disposition: Continued to September 13, 1999 at 9:30 a.m.

At 8:30 p.m., Council recessed.

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Note: At 9:00 a.m. Wednesday, Council attended the Tax Supervising and Conservation Commission hearing on the City of Portland's Major Supplemental Budget for FY 1999-2000 in the Rose Room, 1221 SW 4th Avenue.

COUNCIL MEMBERS PRESENT WERE: Mayor Katz , Commissioners Francesconi, Hales and Sten, 4

TAX SUPERVISING AND CONSERVATION COMMISSION MEMBERS AND STAFF PRESENT WERE: Dick Anderson, Chair, Nancy Conrath, Anthony Jankans, Charles Rosenthal; Linda Bergerhaus, Director and Tony Barnes, staff person.

Council members and Office of Finance and Administration staff responded to questions about the corporate Geographic Imaging System (GIS), the Housing Investment Fund, the grant to the Portland Public Schools, the use of Systems Development Charges to purchase additional park land and the PERS bond issue.

At 9:30 a.m., the hearing was adjourned.

OCTOBER 13, 1999

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON
WAS HELD THIS 13TH DAY OF OCTOBER, 1999 AT 9:30 A.M.

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

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

Mayor Katz read a proclamation declaring October as gay and lesbian, bisexual and
transgender history month in Portland. Dr. David Lane, Director, Office of Neighborhood
Involvement and Amalia Alarcon-Gaddie, Metropolitan Human Rights Council, made brief
statements in support.

CONSENT AGENDA - NO DISCUSSION

- 1438** Cash investment balances September 16 through October 13, 1999 (Report)

Disposition: Placed on File.

- 1439** Accept bid of Hoffman Southwest Corp., dba ProPipe, to furnish closed circuit TV
inspection of sewers for estimate of \$137,170 (Purchasing Report - Bid 99242)

Disposition: Accepted; prepare contract.

- 1440** Accept bid of Eveready Ventures/American Building Construction to furnish Overlook Park
restroom renovation for \$38,981 (Purchasing
Report - Bid 99301 SMP)

Disposition: Accepted; prepare contract.

Mayor Vera Katz

- *1442** Authorize the Executive Director of the Portland Development Commission to execute an
Airspace Quitclaim Deed for the Police Block Associates property (Ordinance)

Disposition: Ordinance No. 173822. (Y-4)

Commissioner Jim Francesconi

- 1443** Accept contract with Platinum Construction Services, Inc. for Berkeley Park restroom
renovation as substantially complete, authorize final payment and release retainage (Report;
Contract No. 32193)

Disposition: Resolution No. 35831. (Y-4)

- *1444** Increase architectural services contract with Seder Architects AIA for the Child Care Center
project and provide for payment (Ordinance; amend Contract)

Disposition: Ordinance No. 173823. (Y-4)

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- *1445** Contract with ACDC Electrical Services for \$58,270 for Firehouse Theater electrical renovations (Ordinance)

Disposition: Ordinance No. 173824. (Y-4)

- *1446** Donate a 1967 water tender to Guadalajara, Mexico (Ordinance)

Disposition: Ordinance No. 173826. (Y-4)

- *1447** Apply for a \$300,000 grant from the United States Department of Justice for Portland Fire & Rescue (Ordinance)

Disposition: Ordinance No. 173826. (Y-4)

Commissioner Charlie Hales

- 1448** Support applications to Tri-Met for Portland Area Transportation Management funds from various organizations within the City of Portland (Resolution)

Disposition: Resolution No. 35830. (Y-4)

- *1449** Authorize a contract and provide for payment to Nutter Corporation for street improvements on NE Martin Luther King Jr. Blvd. (Ordinance)

Disposition: Ordinance No. 173827. (Y-4)

- *1450** Designate and assign certain Bureau of Maintenance land as public street right-of-way for the NE Sunderland Avenue west of NE 33rd Drive street improvement project (Ordinance)

Disposition: Ordinance No. 173828. (Y-4)

- *1452** Authorize emergency purchase order with Structured Communication Systems, Inc. for Portland Department of Transportation network equipment (Ordinance)

Disposition: Ordinance No. 173837 as amended. (Y-4)

Commissioner Dan Saltzman

- *1453** Authorize the Director of the Bureau of Environmental Services to extend a memorandum of agreement among members of the Portland Harbor Group and authorize the expenditure of \$10,000 to contribute to funding research to identify other parties who may be responsible for harbor contamination (Ordinance)

Disposition: Ordinance No. 173830. (Y-4)

- *1454** Amend contract with CH2M Hill for professional engineering services for Columbia Boulevard Wastewater Treatment Plant odor control project for solids processing areas and provide for payment (Ordinance; Contract No. 31066)

Disposition: Ordinance No. 173831. (Y-4)

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- *1455** Contribute \$31,250 towards the purchase price of the Brunkow Olson property in Southeast Portland adjacent to the Springwater Corridor and Johnson Creek in the East Buttes Regional Target Area (Ordinance)

Disposition: Ordinance No. 178832. (Y-4)

Commissioner Erik Sten

- *1456** Contract with Housing Our Families for \$35,000 for operating support for affordable rental housing and provide for payment (Ordinance)

Disposition: Ordinance No. 173833. (Y-4)

- *1457** Contract with Mt. Hood Community Mental Health Center for \$20,000 to provide housing placement services to mentally ill homeless individuals and provide for payment (Ordinance)

Disposition: Ordinance No. 173834. (Y-4)

- *1458** Contract with Outside-In for \$34,307 for transitional housing and case management for homeless youth with HIV/AIDS and provide for payment (Ordinance)

Disposition: Ordinance No. 173836. (Y-4)

- *1459** Contract with Portland Community Reinvestment Initiatives for \$35,000 to support affordable housing development and rehabilitation and provide for payment (Ordinance)

Disposition: Ordinance No. 173836. (Y-4)

- 1460** Contract with the U.S. Geological Survey for streamflow and water quality monitoring without advertising for bids (Ordinance)

Disposition: Passed to Second Reading October 20, 1999 at 9:30 a.m.

- 1461** Authorize an agreement with KCM, Inc. for an amount not to exceed \$75,000 to provide engineering services for miscellaneous professional services in the area of fiscal management and provide for payment (Ordinance)

Disposition: Passed to Second Reading October 20, 1999 at 9:30 a.m.

REGULAR AGENDA

- 1441** Authorize the City Attorney to file an application to appear *amicus curiae* before the Supreme Court of the State of Oregon in Johansen v. SAIF, 158 Or App 672 (1999), CA A100445 (Resolution)

Discussion: Jennifer Webber, Oregon Trial Lawyers, Workers Compensation Division, called on the City to be a responsible employee in providing workers compensation coverage and said the rights of injured workers have diminished in recent years because of

numerous reforms. She said this is a case in which a worker who was injured in 1993 and subsequently had a herniated disc could not get coverage. She said he won a challenge in the Court of Appeals but that decision has now been appealed to the Supreme Court.

Billy Washington, President, Work Place Injured, said he personally has experienced the problems of an injured workers and believes the system needs to be overhauled.

Dave Jorling, Deputy City Attorney, outlined the reasons why the City filed the amicus brief. He said the court's interpretation represents a very significant change as prior to this case an employee had five years to reopen a claim following an injury. However, if the court's interpretation is correct, the five-year period would be removed and an employer might have to deal with injuries arising 20 or more years after the initial one. He said the cost to the City could be substantial and only after a review by the Supreme Court review will workers and employees know what legislation to pursue.

Commissioner Francesconi said he is acutely aware of the problems associated with the five-year disability cut-off. He said while some reforms have gone too far, the solution is not a continuous five-year period every time there is a reinjury. He said there should be a legislative process to look at the right balance and the City should make sure that employers stand up for employees.

Disposition: Resolution No. 35831. (Y-4)

- *1451** Lease with the State of Oregon, by and through its Oregon Department of Transportation, for property to be used for the maintenance and storage facility for the Central City Streetcar project (Ordinance)

Discussion: Vicky Diede, Portland Department of Transportation (PDOT), said the lease agreement needs to be amended to make some language changes regarding who is responsible for hazardous materials that might be found on site during excavation.

Commissioner Hales moved replacement of the lease agreement to include that language. Hearing no objections, the Mayor so ordered.

Disposition: Ordinance No. 173837 as amended. (Y-4)

- *1437** **TIME CERTAIN: 9:30 AM** – Adopt a Supplemental Budget for FY 1999-2000 of \$563,850,313 and make budget adjustments in various funds (Ordinance introduced by Mayor Katz)

Discussion: Larry Nelson, Financial Planning Division, said \$437,000,000 of the total Supplemental Budget will go towards creation of a new special revenue fund which will be used as a staging area to record bond proceeds before transferring them to the appropriate location. Within the Supplemental Budget itself there are five major actions: 1) the recording and transfer of all urban renewal back debt; 2) the recording of PERS bond proceeds for \$284 million in pension obligation bonds; 3) recording and transfer of funds to

finance the Eastside permanent housing facility; 4) recording of bond proceeds to cover the grant to the Portland Public Schools; and 5) and cash transfer to four funds to pay off the line of credit by issuing long term debt. Another significant action results from the transfer of planning development review functions to the Bureau of Buildings. The final action noted is the increase of beginning fund balances within about 15 funds to reflect lower than anticipated claims payments within the health insurance funds and to also reflect capital project funds which were carried over to this fiscal year.

Ken Rust said these actions are an indicator of the complexity of the City's bond and financing program.

Disposition: Ordinance No. 173838. (Y-4)

- 1462** Adopt the Interstate MAX Conceptual Design report with directions to evaluate design issues and to complete development strategies for station areas (Previous Agenda 1435 introduced by Commissioner Hales)

Discussion: Commissioner Francesconi said this will provide an important link to the regional rail system and increase the likelihood of its eventually crossing to Vancouver. It will also continue the revitalization of Northeast neighborhoods by giving them a first-class transit system. It will give citizens access to jobs and connect them to the economy through the award of construction contracts to minorities, more opportunities for small businesses and youth training programs.

Commissioner Hales said this is not just a transportation project but the realization of hopes and dreams that these neighborhoods have worked on for years. Light rail can be the key to future revitalization and will connect North Portland to the rest of the region. This also represents an outbreak of common sense among agencies which were able to get results with 50 weeks, moving in a remarkably short time from defeat to this responsible proposal.

Commissioner Sten said this represents one of greatest opportunities the City will have for a long time. One of his biggest concerns, however, is displacement and whether people will be worse off afterwards. Unfortunately, this economic boom has not helped the working poor at all but, in fact, has made things worse. He said the City needs to do better here than it did in North Macadam, where it is meeting just 40 percent of its housing goals. He said it will be a dramatic challenge to address these issues as the level of complexity is very high but he believes it can be done.

Mayor Katz said about seven years ago she asked PDC to craft strategy to ensure that lower-income residents began to benefit from the formation of urban renewal districts and the resulting increased tax benefits. She said PDC was able to do that with the new urban renewal district in Lents and this is another wonderful opportunity to make investments that will benefit those along Interstate. She said the gentrification issue must be addressed to ensure that the same mistakes are not made now as were made in Northeast Portland with the last urban renewal project. She said PDC will need to focus on how to help small businesses along Interstate during construction as the goal is not to see any of them shut down. She predicted that light rail will eventually get to Vancouver also. She said another concern is the enormous expectations everyone has for this project. She noted that financing for three major projects – the Convention Center expansion, light rail to Airport

and this one -- has been arranged without increasing property taxes and said the lesson to be learned is that the City, and other jurisdictions, ought to stand back before they place measures on the ballot and think creatively about how to craft projects that do not increase people's tax burdens.

Disposition: Resolution No. 35832 as amended. (Y-4)

- *1463** Authorize intergovernmental agreement with Tri-County Metropolitan Transportation District and Portland Development Commission regarding funding for Interstate MAX (Previous Agenda 1436 introduced by Mayor Katz and Commissioner Hales)

Discussion: Commissioner Hales moved the technical amendments to the agreement. Commissioner Francesconi seconded and, hearing no objections, the Mayor so ordered.

Disposition: Ordinance No. 173839. (Y-4)

Commissioner Jim Francesconi

- *1464** Approve intergovernmental agreement with Tri-County Metropolitan Transportation District of Oregon to contract for vehicle towing, storage and dispatch services (Ordinance)

Discussion: Marian Gaylord, Towing Coordinator, License Bureau, said this represents the last leg of an effort to develop a regional regulation of towing. Several other agencies have now come on board because they have seen the advantages of joining with Portland with regard to ordering tows and regulating fees.

Disposition: Ordinance No. 173840. (Y-4)

- *1465** Approve contracts for towing and storage of vehicles (Ordinance)

Discussion: Ms. Gaylord said the Towing Board has the authority to determine the terms of these contracts and the readiness of applicants for inclusion. She said the number of tows has almost doubled since 1993, largely due to new forfeiture laws. She outlined some of the changes that have been made since these contracts last came to Council, including a prohibition against carrying handguns in towing vehicles unless certain safeguards are in place. The fees have been raised to keep pace with inflation but are still in line with those of other jurisdictions. Ms. Gaylord also explained why two companies -- Lightning Towing in District 7 and Speeds Towing in District 5 -- were not recommended for inclusion

Disposition: Ordinance No. 173841. (Y-4)

Commissioner Erik Sten

- 1466** Grant a franchise to Level 3 Communications LLC for a period of ten years (Ordinance)

Discussion: Commissioner Sten said this is a routine franchise agreement.

Disposition: Passed to Second Reading October 20, 1999 at 9:30 a.m.

At 10:35 a.m., Council recessed.

OCTOBER 13, 1999

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 13TH DAY OF OCTOBER, 1999 AT 2:00 P.M.

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

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

- 1467 **TIME CERTAIN 2:00 PM** - Accept the West End Vision Plan created by the West End Steering Committee and direct the Bureau of Planning, Office of Transportation, Office of Planning and Development Review and the Portland Development Commission to develop a comprehensive evaluation and response to the actions proposed (Resolution introduced by Mayor Katz)

Disposition: Resolution No. 35833. (Y-4)

- 1468 Establish a West End Advisory Committee to provide advice and consultation to the Bureau of Planning, the Portland Development Commission, the Office of Transportation and the Office of Planning and Development Review in their development of a comprehensive evaluation and response to the goals and actions proposed in the West End Vision Plan (Resolution introduced by Mayor Katz)

Discussion: Mayor Katz said the Central City Streetcar, which will run along SW 10th, is almost ready to go and will be a catalyst for rethinking corridors in the Central City and the neighborhoods. She said at this point the West End Steering Committee is ready to bring its vision plan to the public for review and comment.

Cathey Briggs, Bureau of Planning, said once Council has adopted these resolutions, a public input process will begin to evaluate and price the recommended action items.

Marty Brantley, Chair, Association for Portland Progress, said the vision plan will help chart successful strategies for revitalizing this 60-block area which has not yet fulfilled the potential foreseen for it in the 1962 Central City plan. The vision plan focuses on creating a top-flight mixed-used area with an emphasis on housing for all income levels and for creating jobs.

Greg Goodman, West End Steering Committee, said this is an area where one element, affordable housing, is doing great while others, such as retail, jobs and owner-occupied housing are not. Although the West End has lagged behind in redevelopment for the past 27 years, that gives the area more of a clean slate and gives the City a chance to something very significant here. He said change can be created either through public subsidy, a significant amount of which is now going to affordable housing, or by creating market demand which makes people want to live there.

Michael Powell, West End Steering Committee, outlined the Plan's four major goals, five separate focuses and identified three subareas for special attention. The first goal is to apply more focus to an area with exceptional cultural assets, small businesses and restaurants. The second goal is to attract new housing and jobs with the streetcar as the backbone. He said some have expressed skepticism about the new job estimates but the redevelopment of the

Blitz property could generate 3,000 to 5,000 jobs. Goal three is to create an urban district that is stable, dense and diverse with home ownership and neighborhood stability as the critical links. Goal four is to connect neighborhood districts so that the area flows seamlessly from downtown to Goose Hollow and Portland State University to the Pearl District. He noted that one of the five actions called for mixed-used development which is very difficult to do successfully. Jobs and housing need to be developed concurrently, not separately. Other actions called for are to develop 10th Avenue as a great street and integrate the West End with other neighborhoods through I-405 capping, Burnside renovations and Park Block linkages. The final action calls for building public private partnerships to tackle these projects. The three subareas where special focus is called for are the South End (the cultural area), the Galleria quarter, and the Burnside triangle.

Lili Mandel, 1511 SW Park, 97201, said this is full of "feel good" rhetoric but there is no real plan. She said the real reason for this is to change the zoning and change surface parking lots in the West End into structured parking lots. She said she does not want to live in a "parking district" and choke to death on fumes.

Irwin Mandel, 1511 SW Park, 97201, said the Steering Committee assumes that only householders and not renters have a real stake in downtown. He said he was authorized by the Downtown Neighborhood

Association (DTNA) to say that it takes no position on whether the vision plan should be accepted or rejected but it would like to participate. Speaking personally, he is confused because one half of Council's brain seems to strongly advocate public transportation while the other half seeks to attract more cars into city. He is also uncertain about whether he now lives in the cultural district or the West End district

Ken Goodrich, no address stated, agreed that the DTNA has not had enough time to study this but does not want to attract more parking.

Tom Moyer, developer, said he is a member of a committee trying to raise money to buy the only 2-3/4 blocks left to complete the link of the Park Blocks. He urged Council to cluster retail on 9th and 10th Avenues, not across from the Park Blocks. He said Council needs to complete the Park Blocks vision if it wants to encourage people to move downtown.

Mayor Katz noted that accepting the report today is only the first step and the next one is to see how many of these recommendations are viable. She stressed that the group involved in the next step will have much wider representation and more bureau involvement.

Steve Naito, 15 NW 5th, 97209, said one of his father's big dreams was to connect the Park Blocks to the river and he supported forming a group to help finance acquisition.

Commissioner Francesconi said the West End has not participated in the growth other areas of the City have seen and he is glad this has now moved up on the priority list. While public funding is needed, this will also take market funding to work. He noted that three issues will be examined during the review period -- FARs, rezoning and the Central City Transportation Management Plan. He said Council's job is to take a larger view of how the West End fits into the whole city and come up with an overall strategic plan that addresses where housing and jobs should go and what the priorities are. Other questions concern how the West End connects PSU to the Burnside triangle and the future of the Park Blocks. He

added that retail activity and parks are not mutually exclusive if done correctly. These issues are among those that need to be opened up for public input.

Commissioner Hales said the Central City Plan is a beautiful plan but it does not work in this portion of town and the streetcar by itself will not make it work. While the conclusions of this study need further examination, he is excited about looking at some of the ideas presented here and hopes some can be accomplished before the next real estate downturn.

Commissioner Sten said the DTNA has time now to dig in and study these recommendations. This area is ripe for development and he shares the consensus that the key to the affordable housing component is to preserve what is already there. Two major buildings are being demolished as part of redevelopment and that housing needs to be replaced. Overall, he is very excited about this plan and believes things will happen quickly.

Mayor Katz said the lesson to be learned here is the need to link land use, transportation policies, housing and jobs. With the development of the Pearl District and the new streetcar, one does not need to be a brain surgeon to see that the West End will be the next area to blossom. She said it is also time to look across Burnside and consider what opportunities redevelopment of the Blitz site presents.

Disposition: Resolution No. 35834. (Y-4)

Commissioner Jim Francesconi

- 1469** Liquor license application for Quality Food Centers, Inc. dba QFC/Quality Food Centers, 1835 NE 33rd Avenue, package store liquor license (new outlet); Favorable recommendation (Report)

Discussion: Commissioner Francesconi said over the last few years Council has seen conflicts grow as the City tries to strike a balance between viable neighborhoods and viable businesses. He said in this case he heard concerns from neighbors that allowing QFC to remain open 24 hours and sell alcohol until 2:30 a.m., would result in increased incidents of public drunkenness, late night noise, light pollution and litter. His office met with QFC representatives last week and they have agreed upon a list of 18 steps they are willing to take to alleviate neighborhood fears. Commissioner Francesconi reviewed the items on the list, including the installation of lights and surveillance cameras, regular litter pickups, employment of private security and work on traffic pattern.

Mike Sanderson, License Bureau, said the Bureau's favorable recommendation is based on the fact that the zoning allows this use and a police review found QFC had a good compliance record. He said there is no documentation to indicate this is a problem area although staff does not dispute that there may be some increased activity once the store opens. He noted that liquor licenses are granted annually and can be reviewed in one year if there are problems related to alcohol sales.

Commissioner Francesconi asked how late other stores in the area are open.

Mr. Sanderson said the Fred Meyer closes at 11 p.m. while the Safeway closes at 1:00 a.m. He said several 7 Eleven stores sell liquor until 2:30 a.m.

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Commissioner Francesconi asked what types of complaints have to be documented before the OLCC would limit the hours alcohol could be sold.

Mr. Sanderson said documentation of any alcohol-related problem stemming from the store would result in the OLCC taking action. He recommended that complainants call to the police or the OLCC and keep a log of their calls.

Bob Van Brocklin, attorney representing QFC, said 2:30 a.m. is the cutoff for selling beer and wine under state rule. He said QFC is a new higher-end grocery operation at the same location as the old Kienow's and with the same store manager. He said QFC has an excellent record of community relations and has had extensive experience in urban neighborhoods. What is different about QFC is that it is a 24-hour operation and will not sell malt or fortified wines in large containers as Kienow's did as these are the kind of products often used by problem drinkers. The store also has an extensive training program with respect to the sale of alcohol to minors, intoxicated and street drinkers. All their stores have rules for such sales that are more rigid than State law requires. He noted that this is a one-year license and believes QFC should be given an opportunity to show it will be a positive force in the neighborhood. Currently, the neighborhood assumes QFC will have an adverse influence but there is no evidence to show that.

Dave Hust, QFC, said after receiving a number of letters and a petition in opposition to this application, representatives of QFC met and talked with opponents, nearby residents and school personnel. The company is now proposing a number of actions and changes to respond to the concerns.

Commissioner Francesconi asked why it is not feasible to voluntarily limit the hours of alcohol sales.

Mr. Hust said QFC is new to the Portland market and believes all its stores should have the same hours. He said Portland is becoming a 24-hour City and people want to be able to shop whenever they wish.

Commissioner Francesconi asked what would happen if there are documented problems attributable to QFC alcohol sales after 11 p.m.

Mr. Hust said they would like an opportunity to work with all parties to see if the problem can be solved. If the problem cannot be resolved, the OLCC will then place a limit on the store.

Commissioner Francesconi asked if QFC would voluntarily agree to limit its hours if there are documented complaints.

Mr. Van Brocklin said there would have to be some evidence that the problem was coming from QFC.

Mayor Katz asked if there is any desire on the part of citizens to have a 24-hour operation.

Mr. Van Brocklin said the Grant Park Neighborhood Association vote on the 24-hours operation was 43 opposed to 34 unopposed. The vote to limit liquor sales hours was 60 in favor to 2, opposed.

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Joan Volpert, representing the Grant Park Neighborhood Association, noted that over 69 neighbors had written expressing concern about QFC's hours of operation and the sale of alcohol in a location surrounded by houses, not a strip mall. She said QFC has refused to work towards a meaningful relationship with the neighborhood and has a corporate policy of not compromising on hours of liquor sales. She said neighbors are concerned about noise and late night disturbances, street drinkers and drunk drivers. They are also upset because the store is located directly across the street from Fernwood Middle School. She said the neighborhood would like Council to forward an unfavorable recommendation but if it does approve it, would like to see restrictions placed on the hours of operation and hours of liquor sales. She noted a letter from Commissioner Saltzman in support of curfews on liquor sales in residential neighborhoods.

Others testifying in opposition to a favorable recommendation included:

Tom Miller, 3236 NE US Grant Place, 97212
Mark Holman, 3314 NE US Grant Place, 97212
Sheila Hamilton, 1907 NE 32nd Ave., 97212
Pat Gillen, 3204 NE Hancock, 97212
Bill Larkins, 2724 NE Tillamook, 97212
Klari K. Crabree, 2324 NE 37th, 97212
Anne Brett, 3510 NE Knott, 97212
Carlo Tiana, 1924 NE 38th, 97212
Clair Dwyer, Fernwood Middle School
Ron Saroff, 3432 NE Schuyler, 97212
Mike Jensen, 1543 SE Henry, 97202
Connie DeSilva, owner of Bistro, 3135 NE Broadway
Neil Mallng, 2443 NE 37th Ave., 97212
Tim Volpert, 3214 NE US Grant Place, 97212

Opponents said the store will attract hard core drinkers who will go to Fernwood School ball field to drink. Some said there is already a significant problem with transients, vandalism and litter in the area and this will make it worse. They noted that it is located in an area surrounded by houses and questioned the need for anyone to buy alcohol at 2:30 in the morning. They said they did not understand why QFC was willing to make so many concessions, as stated in their 18-point letter, rather than budging on the hours of operation and alcohol sales. While they understand the OLCC has the final authority, they believe Council's recommendation carries substantial weight and will be very helpful to the neighborhood. They also believe the OLCC has a great deal of discretion and can limit the operating hours of an establishment selling alcohol, in certain cases, as well as on the hour of alcohol sales.

Commissioner Francesconi noted that it is the OLCC, not Council that makes the final decisions while Council tries to make recommendations that are within the law. For instance, the Council has no legal authority to prevent a store from staying open to 2:30 a.m. and is also limited in imposing restrictions before there are any documented problems.

Mayor Katz said she believes the issue of 24-hours operation is of growing concern in many neighborhoods.

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Mr. Sanderson said if an operation is zoned for commercial use, it can be open 24 hours a day. He said while the OLCC could restrict hours that liquor is sold, it does not have the authority to restrict non-alcohol related hours of operation. The only time that might occur is as part of a settlement agreement for a licensee who is about to lose his license. The hours of operation are a matter determined by zoning.

Mayor Katz asked the City Attorney to check into who has the authority under our Code for the 24-hour permit.

Ms. Beaumont said there is nothing in the zoning code that prohibits 24 hours operation.

Mayor Katz asked Mr. Sanderson if he thought a Council recommendation restricting the liquor sale hours to 11 p.m. is in the public interest based on the character or environment of the neighborhood would hold up before the OLCC.

Mr. Sanderson said he does not believe so but, if Council is persuaded that selling alcohol between 11:00 p.m. and 2:30 a.m. will unreasonably impact this neighborhood, it can make a recommendation and then the OLCC administrative law judge then decide.

Commissioner Sten said he is prepared to restrict the hours of alcohol sales to 1:00 a.m. but believes most of the littering is done by Grant and Fernwood students and not from any one business. He also does not think one can necessarily conclude that those who buy alcohol after 11:00 a.m. are necessarily going to engage in criminal activity. The issue for him is whether people are specifically going to QFC because they cannot get alcohol anywhere else at that time, not the 24 hours of operation. He also does not believe this neighborhood is so different from others and believes both sides will lose if there is a contracted court battle.

Commissioner Francesconi said the problem here is that the law requires that problems be documented first. He suggested that Council formally adopt all 18 recommendations and forward them as conditions to the OLCC. In addition, he would require that this return to Council in a year, with quarterly reporting to the License Bureau to enable neighbors to document any problems.

Mayor Katz asked if the neighbors could come back before the year is over if problems are identified during the quarterly reviews.

Mr. Sanderson this is the first he has heard about quarterly reviews.

Commissioner Francesconi said QFC agreed, in its October 11 letter, to meet with the neighborhood on a quarterly basis and if the License Bureau and a member of his staff are present, they can document any problems. He believes the 18 items QFC has agreed to are significant.

Mayor Katz asked if it would still take a year before any action could be taken.

Commissioner Francesconi said yes but QFC has stated that if there are documented problems that are not resolved, it would voluntarily be willing to restrict its hours.

Commissioner Hales said the neighbors are passionate about the negative impact this store will have on them and yet Council has very narrow grounds on which to determine its

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recommendations. He noted that Council has been very tough when there have been problems but it must stay within the Code and document problems first, taking special care not to use its recommendations a substitute for zoning. He said perhaps all liquor sales should cease at a certain time and there should be a citywide policy about that. He said an argument cannot be made that this applicant needs extra scrutiny. He said he could support halting liquor sales at one a.m. but has to questions why this store and not others.

Commissioner Sten said the only reason he can find is that there is no comparable outlet nearby that does not close at 1:00 a.m.

Mayor Katz said she can support that also. She has more problems with the 24-hours issue in a residential neighborhood but that is a citywide problem.

Commissioner Francesconi moved to adopt the favorable recommendation of the License Bureau with two additional conditions: 1) ask the OLCC to incorporate all 18 conditions contained in the October 11 memo; and 2) require a report back in a year.

Mr. Sanderson said making a recommendation to the OLCC to require the License Bureau to bring that back will probably not fly as the Commissioner-in-Charge already has the authority to do that.

Commissioner Francesconi said, as Commissioner-in-Charge then, he will bring this back to the Council in a year for a full hearing.

Commissioner Hales seconded.

Commissioners Francesconi and Hales voted aye. Commissioner Sten and Mayor Katz voted nay, stating a preference for limiting alcohol sales to 1:00 a.m.

Commissioner Francesconi said on a two-two vote, this item will go to the OLCC with no restrictions of any kind.

Commissioner Sten then moved to forward a favorable recommendation that incorporates the 18 conditions and calls for liquor sales to cease at 1:00 a.m. Commissioner Hales seconded.

Commissioner Francesconi asked if Council could amend this to state that Council will look at this Citywide to see if a consistent approach can be developed.

Commissioner Sten said he would prefer to do that separately.

Commissioner Hales said the way to do that is to figure out what is reasonable and see if the City can apply the policy itself or whether it would require the involvement of the OLCC.

Mr. Sanderson said Council could request the OLCC to do it or it could develop a system that regulates the time, place and manner of entertainment and the sale of alcohol.

Commissioner Hales said he is interested in seeing if there is a nexus between traffic deaths and package store sales based on time of day. He said the question is what is reasonable.

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Mayor Katz asked if that nexus is shown, could it be extended to restaurants, taverns and bars. She said determining what is a reasonable time should probably be approached as a legislative matter.

Ms. Beaumont said the City Attorney's office would need time to explore a number of legal issues in the process of developing any new policy.

Commissioner Sten repeated his motion which calls for a favorable recommendation, incorporating the 18 conditions QFC agreed to plus the two Commissioner Francesconi proposed plus a 1:00 a.m. restriction on selling alcohol.

Commissioner Francesconi said he has to vote no as the City has no documentation of any problems at this point and it would be inconsistent and unfair to pick this one apart. Clearly, a Citywide policy is needed. If problems can be documented, he is willing to support closing earlier than 1:00 a.m.

Commissioner Sten said this indicates Council's concern about the impact but he continues to maintain that teenage drinking in Grant Park is the major issue and perhaps QFC could be a good partner on finding solution to that. He said there is a sense that people will go to this store to buy liquor between 1:00 a.m. and 2:30 a.m. if they cannot get it anywhere else. Council is probably unanimous in thinking that a recommendation to cease alcohol sales at 11:00 p.m. will not be sustained before the OLCC. He has no interest in saying that clubs cannot stay open until 2:30 a.m. but the question is how they interact with residential areas and the neighborhood. Probably the vast majority of alcohol sales between 1:00 and 2:30 a.m. do not result in problems as this is a City where people work a lot of different shifts. The interaction between commercial and residential uses is what is important here and that is why the 1:00 a.m. is a good compromise.

Disposition: Favorably recommended with restrictions. (Y-5)

At 5:00 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 14TH DAY OF OCTOBER, 1999 AT 2:00 P.M.

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

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

1470 TIME CERTAIN: 2:00 PM – Consider issues identified in remand from the Land Use Board of Appeals on the East Portland Community Center (Limited Evidentiary Hearing; LUR 96-00430 CU)

Discussion: Kathryn Beaumont, Senior Deputy City Attorney, said this is a hearing to address the one unresolved issue LUBA and the Court of Appeals identified when they remanded the Council's decision approving the East Portland Community Center. She said Rose Marie Opp appealed that decision alleging both substantive errors and an error in Council's handling of an ex parte contact. She noted that LUBA affirmed the City's decision on all substantive grounds and this was affirmed by the Court of Appeals. Regarding the ex parte issue, LUBA concluded Council may have erred in refusing to hear information about a potential ex parte contact and in not allowing an opportunity to rebut the substance of the contact. The Zoning Code states that a member of a land use review body may not communicate directly or indirectly with a person interested in the outcome of the matter before the review body. If this kind of communication occurs, it must be disclosed and an opportunity for rebuttal provided at the beginning of the hearing. At LUBA, Ms. Opp asserted that then Commissioner Mike Lindberg had an undisclosed contact with Dick Cooley and provided affidavits in support of this allegation. LUBA concluded a conversation took place between the two, but in the absence of any Council interpretation of the phrase "person interested in the outcome," it was unclear if a prohibited ex parte contact occurred. LUBA remanded the Council's decision to give it the opportunity to interpret the meaning of "person interested in the outcome" and to determine if Mr. Cooley is such a person. If he is, then Commissioner Lindberg must disclose the substance of that conversation and the Council must give interested persons an opportunity to rebut it. The purpose of today's hearing is to give Council an opportunity to address four issues: 1) the meaning of the phrase "person interested in the outcome;" 2) whether Dick Cooley is such an interested person; 3) if the answer is yes, to give Mr. Lindberg an opportunity to disclose the nature of his conversation with Mr. Cooley; and 4) give Ms. Opp and any others present an opportunity to rebut the substance of Commissioner Lindberg's disclosure. Following that, Council may take a tentative vote and direct staff to prepare an appropriate Order of Council. The Order should address the Council's interpretation, its application to Mr. Cooley, any disclosure and rebuttal and whether, as a result, Council has learned any substantive facts that would lead it to reach a different decision on the Community Center.

Ms. Beaumont suggested that Council first hear testimony on the proper interpretation of the phrase "person interested in the outcome" and then Council could apply its interpretation and determine if Mr. Cooley is such a person. If Council determines that he is, the second step is to give Commissioner Lindberg an opportunity to disclose his conversation at the October 16, 1996 hearing and give Ms. Opp and other persons an opportunity to rebut the substance of the conversation.

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Mayor Katz asked her to read her proposed interpretation (Exhibit 1, Page 1).

Ms. Beaumont read her interpretation of an interested person and outlined the subjects on which testimony will be taken today. Testimony will be taken first on the meaning of "person interested in the outcome."

Mayor Katz noted that on Page 7 of Ms. Beaumont's report, there is a dissertation on Mr. Cooley's relationship to this issue.

Arnie Rochlin, a party to the appeal, said this is an ad hoc procedure that Council has never done before and the situation calls for a negotiated procedure. He said the procedure was devised by a person (Ms. Beaumont) who represented the applicant in this case.

Ms. Beaumont said the issues on which the Council would accept testimony were clearly identified in the notice.

Mr. Rochlin said he has procedural arguments on the adequacy of the scope of review as provided in the notice. He also believes there is a conflict of interest and that both Council and the public are entitled to have an unbiased City Attorney.

Mayor Katz said she would like to hear from Ms. Opp on the first issue and then see if Council wants to open this discussion up further to hear from Mr. Rochlin.

Rose Marie Opp, chief petitioner, said the term "interested" was not defined in the Code at the time of Mr. Lindberg's ex parte conversation with Mr. Cooley so the dictionary definition should be accepted. Any new, special definition of that term should not be applied retroactively. She noted that the dictionary defines "interested" as having a material or general concern and read the definition from the Oxford English Dictionary. She said of the two definitions, having a general concern seems the most appropriate. If the term "interested" was restricted to only persons with a material concern, Commissioners would be restricted from having ex parte contacts with applicants for development but not with people with a non-material or general interest. She does not believe ex parte laws were intended to have such restrictions.

Commissioner Hales moved to declare that Mr. Cooley be declared an interested person as he does not think Council disputes that. Commissioner Francesconi seconded. Mayor Katz agreed but said she believes Council has to agree what an interested person is.

Commissioner Hales said Ms. Beaumont's proposal is adequate for him and he would like to move on.

Mr. Rochlin said it would be better not to adopt any definition and if no one of those present object to that, then no one of them can appeal it.

Ms. Beaumont said LUBA is asking Council to interpret what the phrase "person interested in the outcome" means in the Code and apply that to Mr. Cooley.

Mr. Rochlin said the City Attorney's proposed interpretation is not unreasonable but it attempts to legislate, going beyond interpretation. There is nothing in the Code that concerns "aggrieved persons or persons adversely affected" and the exemptions Ms.

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Beaumont lists in her proposal are not something that can be derived from the Code. He noted that the Code states that words in the Zoning Code have their normal dictionary meaning unless "listed below." That means that the dictionary meaning should be adopted since "interested" is not defined in the Code and the only interpretation that can properly be made is a person who seems to have a concern.

Mayor Katz said Council has to make a choice between Mr. Rochlin's simpler definition and Ms. Beaumont's which came from a reading of case law in other jurisdictions.

Ms. Beaumont said she surveyed case law and other jurisdictions to decide who had been determined to be a person of interest for purposes of ex parte contact law. She said it would be all right for Council to adopt Mr. Rochlin's very simple definition, which is someone with a general interest in the outcome of the proceedings.

Mayor Katz asked if Mr. Rochlin's definition includes staff and bureaus.

Mr. Beaumont said yes but state law does exempt contacts with governing body and other planning commission members and staff from the definition of ex parte.

Commissioner Francesconi said he favors the interpretation of the City Attorney as he does not think general concern is much different from interested party.

Commissioner Sten asked what happens, in a case like the amphitheater, where people stopped him everyday to state their opinions. If he forgets that person's name and does not disclose it as an ex parte contact, could anyone who overhears them get this remanded. He said he talked to hundreds of people on that issue and there is no way he could list all of them. That is why he would like to get the right definition.

Ms. Beaumont said her proposal tries to capture that group of people who would logically be considered persons interested in the outcome of a pending land use matter. There is some open-endedness in the part of her definition that refers to "other persons adversely affected or aggrieved." Otherwise she tried to identify those people who logically have an interest or a relationship to the outcome.

Mayor Katz said she believes Council will unanimously find that Mr. Cooley was an interested person. The question is whether to deal with a very broad definition today and return with a refined one later or deal with the refined one today and leave it at that.

Commissioner Francesconi suggested that Council accept the City Attorney's definition today and refine it later if necessary.

Ms. Beaumont said both the City Attorney and Planning Bureau acknowledge that the ex parte contact provision of the Code needs to be amended. She urged Council to adopt the interpretation recommended today and have it incorporated into any future Code amendment.

David Schwabe, who identified himself as the citizen who overheard Mr. Lindberg's conversation, said Council should accept the general definition proposed by Ms. Opp and Mr. Rochlin for the time being and then take this up at a later time.

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Commissioner Hales announced that he had to leave the meeting.

Commissioner Francesconi moved to adopt the interpretation of a person interested in the outcome that is listed in Exhibit 1, Page 1 and further declare that Mr. Cooley meets that definition. Commissioner Sten seconded.

Mayor Katz read the definition proposed by the City Attorney and said Council will return to review that in short order.

Roll was called on Commissioner Francesconi's motion, which carried (Y-3).

Ms. Beaumont distributed copies of affidavits filed by the City at LUBA concerning ex parte contacts.

Mike Lindberg, former City Commissioner, said the conversation he had with Mr. Cooley occurred three years ago and he has since tried to reconstruct the conversation but the details remains a little vague. He said at the hearing there was some additional information he wanted the Park Bureau to present about whether there had been an increase or decrease in the amount of Parks land and during a break he approached John Sewell and David Judd from the Parks Bureau to ask them to get that information. As he did so, he saw Dick Cooley, who he considers a friend. He has tried to determine what they talked about but frankly cannot recollect it. He said he knows absolutely that he did not convey anything to Mr. Cooley about how he was going to vote nor did he elicit any opinions from him about the Center. No information from that conversation was used in making his decision or attempting to influence anyone else's vote and Mr. Cooley presented no facts that influenced his decision.

Mr. Schwabe noted that LUBA had already ruled that Commissioner Lindberg had a conversation with Mr. Cooley. Since Commissioner Lindberg does not recall the purpose of that conversation, Ms. Opp has nothing to rebut. The next issue then is to schedule a plenary rehearing on this appeal. Mr. Schwabe noted that he had filed an affidavit relating the nature of the conversation he heard between Commissioner Lindberg and Mr. Cooley. He said the Code requires that any undisclosed ex parte contact, regardless of the content, deserves a remand. There is no question in his mind that, from the part of the conversation he overheard, Commissioner Lindberg was discussing the case with Mr. Cooley.

Mayor Katz said, since no one is rebutting Mr. Lindberg's testimony, Council members have to indicate whether they have heard any relevant facts in this hearing that would lead them to change their minds.

Mr. Rochlin said Mayor Katz is reading from a script prepared by the City Attorney and he believes that is a mistake. He said Ms. Beaumont's first response in this case was as the representative of the applicant, the Bureau of Parks and Recreation, not as counselor to the Council and then she proceeded to give legal advice to the Council and wrote its final decision and conclusions. She also represented Council before LUBA and the Court of Appeals. She represented Mr. Lindberg's position to LUBA when he was a private citizen and made representations as to what he knew and when he knew it. Commissioner Francesconi asked Mr. Rochlin where he is going with this.

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Mr. Rochlin said Council has narrowed its scope of review because of its reliance on the City Attorney about what the scope should be. He disagrees strongly with Ms. Beaumont's position and believes it is colored by the history of her involvement.

Commissioner Francesconi said going after the lawyer is not the right way to approach this. He asked Mr. Rochlin if he had any other argument to present.

Ms. Rochlin said yes, but his argument is procedural. He said this is how Council got in trouble before where, in order to save a minute, it cost hundreds of dollars later. He said the case law on this is that if there is not timely revelation of an improper ex parte contact, then there must be a plenary rehearing.

Commissioner Sten asked if he wanted a whole rehearing on this, from top to bottom.

Mr. Rochlin said there could probably be a negotiated compromise on that but they are starting out with a City Attorney who is setting out the narrowest possible construction of the issues Council can cover. There are other people who argue that if there is a contact, it is revealed and then time is given for rebuttal at the next evidentiary session, not the same one, because people are entitled to consider what they heard. He admitted, however, that in this case they heard nothing.

Commissioner Francesconi said the Court of Appeals decision clearly states that the City must allow petitioner an opportunity to rebut the substance of the Commissioner's communication with Mr. Cooley as described in Mr. Schwabe's application. That is what Council is doing and what he needs to hear is how whatever Mr. Lindberg said to Mr. Cooley influenced his decision and influenced the Council. That is separate from anything Ms. Beaumont has said.

Mr. Rochlin said Mr. Lindberg said he does not remember what he said but is certain that he did not say what he does not remember. However, this ex parte contact was treated as if it was a dark, secret thing. But Council had to have been involved in this case long before there was an application for it and it is unlikely that Council members would not have had ex parte contacts. There is nothing wrong with the contacts, the problem is the lack of records and timely disclosure. If Commissioner Lindberg cannot remember his conversation, he then cannot say how much of his impassioned argument in support was influenced by his conversation. Nor can one say how much the other Council members were influenced.

Mayor Katz asked him what he wanted.

Mr. Rochlin said he does not want to undermine his colleagues by speaking out.

Mr. Schwabe said the only reason he is here is because he overheard the conversation and thought it seemed wrong. He said Ms. Opp should have time to prepare a rebuttal at another time and then as per Horizon vs. Newberg, the City has to give the appellant in this case a full and plenary rehearing of the case. They recognize that will be very difficult and the City does not want to do that but case law and State statute indicate that is the path it should take.

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Ms. Beaumont said she disagrees with the reading of the law Mr. Rochlin and Mr. Schwabe have provided. State law says that when an ex parte contact occurs, disclosure of that contact and the opportunity for rebuttal shall be provided at the first hearing after the contact occurs. That assumes the contact occurs during some interim between public hearings and that when one gets to that public hearing the disclosure is made and opportunity is provided for rebuttal on the spot. That is what is typically done in quasi-judicial land use hearings in the City.

Mr. Schwabe said in the first evidentiary hearing Ms. Opp mentions clearly the Horizon vs. Newberg case .

Commissioner Francesconi asked to hear from Ms. Opp.

Ms. Opp said she wants to make it clear that what she says now is not a rebuttal because according to ORS a petitioner's right to rebuttal must be made at a hearing subsequent to the hearing at which the disclosure is made. She said she has not prepared to response to Mr. Lindberg's disclosure as she had no idea what it might be and needs time to prepare a response.

Commissioner Francesconi asked if she had read Mr. Lindberg's September, 1999 affidavit and if she was then surprised by his testimony today.

Ms. Opp said she did read the affidavit but did not want to be drawn into a rebuttal.

Mayor Katz asked Ms. Opp what she would be able to tell Council even if it gave her extra time.

Ms. Opp said she took 1-1/2 pages of notes.

Commissioner Francesconi asked Ms. Beaumont if she was comfortable with proceeding at this time or does Council have to grant more time for rebuttal.

Ms. Beaumont said there is no harm in giving the appellants additional time but she does not believe Commissioner Lindberg said anything different today than what was said in the affidavit.

Commissioner Francesconi suggested giving them another week just to eliminate another avenue for appeal.

Ms. Opp said since Mr. Cooley has been found to be an interested party, she is entitled to a full plenary hearing.

Commissioner Sten said it is clear to him now that there is no negotiation going on. He recommended setting this over for a week and granting the appellants three minutes then.

Mr. Rochlin said setting this over for rebuttal will not resolve this matter. He waived his right to rebut but still believes there is a right to a plenary rehearing. If Council is going to refuse the rehearing, he suggested that all waive the right to rebuttal that will save time.

Ms. Opp said case law clearly calls for a rehearing.

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Mayor Katz said there is disagreement as to the next step but if those here today want to appeal this further, it is their right.

Ms. Beaumont said Ms. Opp argued to both LUBA and the Court of Appeals that, based on the Horizon case, the proper remedy is to remand for a plenary hearing. The judge who wrote the opinion on the City's case was one of the three judges who heard the Horizon case. Neither LUBA nor the Court of Appeals agreed with her that a plenary rehearing was the appropriate remedy.

Commissioner Francesconi clarified that the parties were waiving their right to rebuttal but want to argue again to the courts for the right to a plenary hearing.

Mr. Rochlin said he sees no purpose in rebutting that testimony when there is a right to a full rehearing. He said he absolutely waives the right to appeal on the grounds that he did not have a timely opportunity to rebut Mr. Lindberg's testimony.

Ms. Opp said that is not her position. She wants it stated on the record that she is entitled to a plenary rehearing. She said she will not close the door to appealing on the rebuttal issue although there is not much to rebut.

Mayor Katz said since Council is not going to grant the plenary rehearing, then Ms. Opp will probably appeal Council's decision.

Commissioner Francesconi offered those testifying a chance to rebut.

Ms. Opp said she had made her statement.

Mr. Schwabe said since Mr. Lindberg has offered nothing to rebut he sees no reason to do so.

Mayor Katz said Council now needs to determine whether it has learned anything that would cause it to change its mind about whether the community center complied with the conditional use approval criteria. Neither Commissioners Francesconi nor Sten were there when the original decision was made.

Ms. Beaumont suggested continuing this for a week until there is an opportunity for them to review the record and determine if they heard anything that would change their minds.

Commissioner Sten questioned how he could change his mind when he was not there and never formed an opinion.

Ms. Beaumont said he could review the record and determine whether he heard any evidence today that would indicate that decision was in error.

Commissioner Francesconi asked if he should assume he was on the Council then or is he looking to see if there is any disclosure today that unduly influenced those decisions.

Ms. Beaumont said since Council approved this before, this Council can make determination as to whether it heard any facts today that would suggest that decision was incorrect.

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Commissioner Sten said it would take hours to review that record and no rational person would conclude from today's testimony that there was ample evidence to say that a deliberative body

should change its mind. There is not one fact that is not completely in dispute. Is he supposed to read the whole record to conclude that Mr. Lindberg does not remember having a conversation?

Ms. Beaumont said the most significant thing to do is to review the findings.

Commissioner Francesconi asked her to look at case law for what happens when an elected body changes. He said he would rather read the record before making a motion about a tentative decision.

Ms. Beaumont said it should be continued to a date when the same three Council members are present.

Commissioner Francesconi said he needs to read the record but he agrees with Commissioner Sten that there is nothing in Commissioner Lindberg's testimony that would change any reasonable person's mind. In reading the affidavit from Mr. Schwabe, he quotes Commissioner Lindberg as stating that "I need more testimony." And that means there was no evidence that this conversation influenced him.

Mayor Katz said if Commissioners Saltzman and Hales need to review the record too, let them know.

A five minute recess was called at this point at the request of Mr. Rochlin. At the end of that time, he announced that he had nothing to report.

Council agreed to return on November 24.

Mr. Schwabe asked if Council would accept a letter from him suggesting an alternative.

Commissioner Francesconi said no, if Mr. Schwabe has an alternative he would like to know it now.

Mr. Schwabe said Ms. Opp believes by law she has the right to a plenary hearing and that is substantiated by the Horizon vs. Newberg case. Everyone recognizes that no one wants to go through that and nothing is likely to be accomplished by doing so. But Ms. Opp could probably negotiate limiting the scope of the hearing, perhaps finding an alternate venue for that information.

Mayor Katz announced that she is closing the evidentiary record at this point.

Disposition: Continued to November 24, 1999 at 2:00 p.m.

At 3:30 p.m., Council adjourned.

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GARY BLACKMER
Auditor of the City of Portland

Cay Kershner / 60

By Cay Kershner
Clerk of the Council