



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 3RD DAY OF NOVEMBER, 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; Harry Auerbach, Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

On a Y-5 vote, Council adopted the Consent Agenda as follows:

CONSENT AGENDA - NO DISCUSSION

- 1529** Cash investment balances September 16 through October 13, 1999 (Report; Treasurer)

Disposition: Placed on File.

- 1530** Accept bids of Merchants Paper, Walter E. Nelson and W.W. Grainger to furnish janitorial supplies for \$227,620 annually for two years (Purchasing Report - Bid 99343)

Disposition: Accepted; prepare contract.

- 1531** Reject all bids to furnish NE MLK Jr. Blvd., NE Knott to Russell, for \$85,350 (Purchasing Report - Bid 99448)

Disposition: Accepted.

- 1532** Vacate a portion of N. Ziegler Avenue north of N. Bank Street under certain conditions (Ordinance by Order of Council; C-9965)

Disposition: Passed to Second Reading November 10, 1999 at 9:30 a.m.

Mayor Vera Katz

- 1533** Confirm reappointment of Jock Mills to the Portland Utilities Review Board (Report)

Disposition: Confirmed.

- 1534** Approve the 23rd Amendment to the Downtown Waterfront Urban Renewal Plan and the acquisition of the Biltmore Hotel located at 302-318 NW 6th Avenue, including by condemnation if necessary (Resolution)

Disposition: Resolution No. 35838. (Y-5)

NOVEMBER 3, 1999

- *1535** Approve intergovernmental agreement between the State of Oregon, State Board of Education on behalf of Western Oregon University and the City to allow Darrel Schenck to continue as Director of the Western Community Policing Center (Ordinance)

Disposition: Ordinance No. 193880. (Y-5)

- *1536** Agreement with the U.S. Department of Justice, Drug Enforcement Administration and the City of Portland to participate in a task force to address trafficking of narcotics and dangerous drugs (Ordinance)

Disposition: Ordinance No. 173881. (Y-4)

- *1537** Authorize the Mayor and Auditor to execute a labor agreement between the City of Portland and the District Council of Trade Unions relating to terms and conditions of employment of represented personnel (Ordinance)

Disposition: Ordinance No. 173882. (Y-5)

Commissioner Jim Francesconi

- 1538** Accept contract with Ruffin Construction for Powell Park restroom renovation as substantially complete, authorize final payment and release retainage (Report; Contract No. 32032)

Disposition: Accepted.

- 1539** Accept contract with Pacific Coast Construction for Pittock Mansion improvements as substantially complete and authorize final payment (Report; Contract No. 32085)

Disposition: Accepted.

- *1540** Authorize a contract and provide for payment for the construction of the Palmblad-Rugg Road portion of the Springwater Corridor (Ordinance)

Disposition: Ordinance No. 173883. (Y-5)

Commissioner Charlie Hales

- *1541** Designate and assign a strip of Portland Parks and Recreation land for public street area for the SW Falcon Street improvement project (Ordinance)

Disposition: Ordinance No. 173884. (Y-5)

- *1542** Authorize Mayor to sign application for loan from the Oregon Transportation infrastructure bank for Phase II of the Lovejoy ramps project (Ordinance)

Disposition: Ordinance No. 173885. (Y-5)

NOVEMBER 3, 1999

Commissioner Dan Saltzman

- *1543** Authorize the Director, Bureau of Environmental Services, to execute a sewer easement from the City of Portland over a portion of City-owned property (Ordinance)

Disposition: Ordinance No. 173886. (Y-5)

Commissioner Erik Sten

- *1544** Amend agreement with the Portland Development Commission to decrease the contracted funding amount by \$94,774 (Ordinance; amend Agreement No. 32146)

Disposition: Ordinance No. 173887. (Y-5)

- *1545** Contract with SE Works, Inc. project for \$25,000 for the SE Works operating support and provide for payment (Ordinance)

Disposition: Ordinance No. 173888. (Y-5)

- *1546** Authorize a sole source agreement with Organization Dynamics for the Bureau of Water Works and authorize payment (Ordinance)

Disposition: Ordinance No. 173889. (Y-5)

- 1547** Amend intergovernmental agreement with Marion County Department of Public Works to extend the contract time to conduct pavement assessment services of the Bull Run watershed roads (Second Reading Agenda 1522; amend Contract No. 31794)

Disposition: Ordinance No. 173890. (Y-5)

City Auditor Gary Blackmer

- *1548** Assess system development charge contracts and Private Plumbing Loan program contracts (Ordinance; Z0715, Z0716, K0014, K0015, T0030, T0031, P0047)

Disposition: Ordinance No. 173891. (Y-5)

REGULAR AGENDA

Mayor Vera Katz

- 1549** Authorize the City to initiate or join in legal action to resolve issues regarding Public Employees Retirement System (PERS) Board administration of PERS accounts (Resolution)

Discussion: Ken Rust, Director, Bureau of Financial Management, said this allows the City to proceed with litigation that may be filed either by the City or other jurisdictions with respect to the PERS situation. He noted that the City's unfunded liability with PERS is \$258 million and probably growing. Staff believes a lot of that liability is a consequence of decisions made by the PERS Board that it may not have had the legal authority to do. They

believe it is in the City's interest to determine if there is potential redress through the courts for the financial damages inflicted by the PERS board. The pension bonds issued by the City include an amount that should be sufficient to fund any litigation efforts over the next several years.

Disposition: Resolution No. 35839. (Y-5)

***1550**

Authorize contract extension for mediation program with Confluence Center for Mediation and Training, Mary Forst Associates (Ordinance)

Discussion: Madelyn Wessel, Chief Deputy City Attorney, said the contract extension involves about \$50,000 in City funds which have already been appropriated in last year's budget process. It is an extension of a program Council approved a year ago to provide some critical resources to fill a gap that occurred as a result of a lower court decision in Sims vs. Besaw's Cafe which called into question the City's private right of action under its civil rights ordinance. The program was developed to give people who have discrimination concerns based on sexual orientation and gender identity access to mediation. Ms. Wessel said she believes this program has been extremely successful even though huge numbers of people are not participating. Development costs of this program were fairly substantial last year as months were spent creating the procedures and protocols critical to setting up such a program. All that work has now been done and from this point forward expenditures for this agreement, which will extend the program another nine months, will be driven by actual use of the program. She believes this has been an extremely successful initial effort. She noted that the City is still waiting for guidance from the Oregon Court of Appeals as to the private right of action issue. While this issue is still in limbo, she hopes Council will continue this program, which can provide a needed service to the community.

Jan Carson, Associate Director, American Civil Liberties Union (ACLU), noted passage of the City's civil rights ordinance which extended civil rights to persons regardless of their sexual orientation. She applauded the City for creating a mediation program until the court decision is rendered. She said many people are confused about what their rights are and this program provides them a significant remedy, especially while the validity of other remedies is still unknown. This mediation program is clearly more user-friendly and a significant alternative to those who are intimidated by the legal process. She said in the future the ACLU hopes the program can be expanded to include other forms of discrimination, especially racial discrimination, as there is a need to increase available remedies to combat discrimination.

Mary Forst, Confluence Center Mediation Northwest, said this helped a smaller number of people than had been hoped but they found that mediators have helped people connect in ways that allow them to resolve their problems. She said there is a great deal of ignorance among people about gender identity.

Mayor Katz asked if the program gets calls from people it cannot help.

Ms. Forst said some cases need to be sent to the Bureau of Labor and Industry or concern racial discrimination complaints. Also, an employer may choose not to participate as is a voluntary program.

NOVEMBER 3, 1999

Mayor Katz asked if public embarrassment can be used as a tool to identify employers who are not willing to do mediation.

Ms. Forst said that has been a motivator for some employers but public embarrassment requires that the employees also be willing to give up their privacy and possibly be further victimized.

Mayor Katz said she would like to continue to look at that, especially if an employer does business with the City.

Ms. Wessel said they wanted to be sure the privacy of complainants is protected.

Commissioner Saltzman asked how people find out about this program

Ms. Wessel described the outreach efforts made by a number of City offices, including the Office of Neighborhood Involvement and Affirmative Action. A brochure has been distributed widely and a Continuing Legal Education class was offered for Oregon Bar Association members. Outreach, however, must be a continuing effort.

Commissioner Francesconi asked if a fact-finding mechanism is included or if this is just an effort to get the parties together.

Ms. Forst said they do no independent fact-finding or investigative work. Their emphasis is on resolution.

Commissioner Francesconi said it is most important to get the court to rule and once that happens, he questions whether the citizens of Portland should have more access to mediation than those who live elsewhere. He is not ready to say this is a function of City government.

Disposition: Ordinance No. 173892. (Y-5)

- *1551** Accept an additional \$101,250 from Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms for the G.R.E.A.T. program grant (Ordinance)

Discussion: Police Sergeant Kevin Modico, Tactical Operations, said this is a continuation of funding until the grant allocations can be awarded in January, 2000. He said one quarter of that amount has now been allocated by the federal government to allow the Police to continue this program.

Disposition: Ordinance No. 173893. (Y-5)

- *1552** Accept a \$15,000 grant from the Oregon Association Chiefs of Police and Oregon Department Transportation (Ordinance)

Discussion: Officer Jack Powell, Traffic Division, said this is the third renewal of Oregon Department money that has come from the federal government and is now being administered by the Oregon Association Chiefs of Police. It is double the last grant received and part of a nationwide seat belt compliance effort. Oregon has 85 percent compliance with seat belt regulations, the highest in the country.

Disposition: Ordinance No. 173894. (Y-5)

- *1553 Accept a \$20,000 grant from the Oregon Association Chiefs of Police and Oregon Department of Transportation (Ordinance)

Discussion: Sergeant Gary Cerotsky, Traffic Division, said this is another renewal of previous grants, in this case, for increased DUII enforcement. This will augment routine patrol efforts.

Officer Powell said the Bureau's arrest rates are consistently high and while this is a very small amount of money, it has gotten the City's foot back in the door as last year the Bureau operated primarily on Multnomah County's DUII grant.

Commissioner Saltzman asked if any data collection will be done.

Officer Powell said it is a requirement of both grants. Data on the status of driver licenses is available but officers are currently unable to call up that information on their individual computers.

Disposition: Ordinance No. 173895. (Y-5)

Commissioner Dan Saltzman

- *1554 Accept a grant from the Oregon Dispute Resolution Commission in the amount \$24,196 for FY 1999/2000 and FY 2000/2001 to support community enhancement programs of the Neighborhood Mediation Center (Ordinance)

Disposition: Ordinance No. 173896. (Y-5)

- *1555 Accept a grant from METRO in the amount of \$3,900 for FY 1999-2000 to support delivery of services by North Portland Neighborhood Services to conduct the Network North Portland Community Building Conference (Ordinance)

Disposition: Ordinance No. 173897. (Y-5)

Commissioner Erik Sten

- *1556 Contract with Portland Community Reinvestment Initiatives for \$50,000 for the Tenant Child Care and provide for payment (Previous Agenda 1496)

Discussion: Commissioner Sten said he needs to abstain from voting on this because his wife works for the contractor.

Disposition: Ordinance No. 173898. (Y-5)

At 10:00 a.m., Council recessed.

NOVEMBER 3, 1999

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 3RD DAY OF NOVEMBER, 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; Ruth Spetter, Senior Deputy City Attorney; and Officer Chuck Bolliger, Sergeant at Arms.

1557 **TIME CERTAIN: 2:00 PM** – Amend the Portland Comprehensive Plan and official Zoning Maps to reflect periodic review (Ordinance introduced by Mayor Katz)

Discussion: Colleen Acres, Bureau of Planning, said these are proposed corrections to the Albina and Outer Southeast Community Plans where zoning errors were made on seven privately-held properties. There are also 192 publicly-held vacant sites that the Portland Planning Commission has recommended for open space zoning designations. In all these cases, the Planning Commission was unanimous on forwarding these recommendations to Council. She described the seven sites where a change has been considered and recommended: 1) SE 143rd and Division; 2) SE 152nd and Division; 3) NE Holgate and I-205; 4) NE 156th and Glisan; 5) SE 75th and Powell; 6) NE 13th and Fremont; and 7) NE 92nd and Everett (Cascade College).

Regarding the correction at SE 75th and Powell, the O M Seafood site, Ms. Acres said residential zoning was applied there because the City had no knowledge at the time that a commercially approved building permit had already been issued. She also described the proposed open space sites throughout the City.

John Sewell, Senior Planner, Bureau of Parks and Recreation, said a lot of the designated open space properties are very small and were picked up through foreclosures. Many will be used as community gardens.

Ms. Acres said the Planning Commission failed to forward two specific requests for zone changes. In both cases, the Commission felt that neither reflected a need for corrections and that this arena was not the appropriate vehicle for considering requests for Comprehensive Map amendments and zone changes. The Commission felt they should be considered in a quasi-judicial arena.

Ruth Spetter, Senior Deputy City Attorney, said Kathryn Beaumont in her office was asked whether a decision by the Planning Commission not to make changes on these two sites was appealable to Council. Her answer was no. She was also asked if there could be an opportunity for one of the property owners, Ms. Walsh, to speak. The answer was yes. Then she was asked if Council could initiate a Comprehensive Plan amendment and zone change for Ms. Walsh. The answer was yes, if Council so desired. Regarding appeals, Ms. Beaumont noted that State law says that a decision not to adopt an amendment to an acknowledged Comprehensive Plan is not appealable to LUBA.

Mayor Katz asked the reason for the first response.

NOVEMBER 3, 1999

Ms. Spetter said City Code Section 33.740 (e), indicates that if the Commission decides no legislative action is appropriate, that matter is terminated. There is no appeal of the Commission's decision.

Commissioner Hales said he showed up to work today on the assumption that Council is doing periodic review and would have the authority to make legislative changes that either uphold the Planning Commission's recommendation or take a different tack. He is perplexed to hear that Council is in some sort of appellate proceeding in which the Planning Commission makes decisions and, depending on what decision it makes, Council gets to review it. He thought the Planning Commission did legislative work and that Council took its recommendations and either adopted, rejected or modified them. He thought this was a legislative proceeding, based on periodic review, not a quasi-judicial review of a bunch of individual parcels where someone has applied to do something.

Ms. Spetter said Code Section 33.740 (e), entitled legislative procedure, indicates that such a procedure is to provide for modification of land use plans, policies, regulations and guidelines and includes public hearing by a designated commission. In Section 33.740.020 (e) it states that if a commission decides a matter is terminated, there is no appeal of that decision.

Mayor Katz asked for clarification in writing from either Ms. Spetter or Ms. Beaumont.

Commissioner Hales said in his opinion there either is or should be a process by which Council periodically reviews and makes changes to the Comprehensive Plan and zoning map as part of the periodic review process with the State Land Conservation and Development Commission. He thinks that is a legislative process in which Council should be free to make changes to recommendations from the Planning Commission. If the Planning Commission simply decides not to address something, then Council may have to go through a two-step process where Council disagrees with the Commission's decision and requests initiation of a legislative change. He does not know what Council will decide on the matter before it today but he showed up on the assumption that it can make decisions on legislative matters and does not want to be told that it cannot.

Ed Sullivan, representing Kathleen Penn-Welsh, said the City mistakenly thought her property was residential and thus rezoned it from commercial. Ms. Penn-Welsh was living in New York at the time the Outer Southeast Plan was approved and was unaware of the zone change. At the Planning commission hearing, she was asked if General Commercial (CG) was the only zone acceptable to her and mistakenly said yes. He said while the Commission suggested that Ms. Penn-Welsh could seek a change by requesting a quasi-judicial plan amendment, the fees for doing that are excessive and he believes Council can hear this and make an adjustment, as it did during the environmental zone process. He said Council is not obliged to change the zone in this case but it is the right thing to do because of its historical use as commercial property. He suggested a Mixed Commercial (CM) zone designation which would allow both commercial and residential uses. He concluded by acknowledging that Ms. Penn-Welsh missed her opportunity to present her case in 1996 and made an error in testifying before the Planning Commission.

Mayor Katz said she thought Council should wait for the City Attorney's response.

NOVEMBER 3, 1999

Michael Harrison, Bureau of Planning, said staff discovered in consultation with Ms. Penn-Welsh that her property was inappropriately zoned during the Outer Southeast Community Plan process. The aerial maps they relied on did not indicate that the residential homes on the property were in commercial use. The Planning Commission had been looking for sites along 82nd where they could break up the pattern of strip commercial zoning and saw this as a suitable location for residential housing. The Commission may or may not have agreed to CM zoning but it felt very strongly that it had made the right decision in 1995 and voted to retain the residential zoning. Council could change the zoning but he is not sure if there should be a delay in notice.

Commissioner Sten asked Mr. Harrison if he had any opinion or factual feedback on the merits of CM zoning.

Mr. Harrison said CM zoning is much more desirable than CG because it does not kick in the no-net housing loss requirements raised by CG zoning. CM zoning, which ultimately would allow for redevelopment of the property into mixed use could be seen as much more consistent with the Comprehensive Plan and more consistent with the Planning Commission's directive in 1995 about breaking up strip commercial development in this area.

Mayor Katz said the question Council needs answered by the City Attorney is not whether it should respond but how it should respond if it wants to make the zone change.

Bob Rosholt, 409 NE 156th, 97230, supported the recommended zone change on this property (BR-7). He said it has long been intended for multi-family development. The neighborhood association also unanimously approves the correction.

Clay Moorhead, PO Box 3311, 97208, addressed the zoning change on the Cascade College (A-7) property. He said when the College initiated its Master Plan process, it found that approximately two acres of the ten-acre campus was in R2.5, rather than IR, institutional. He said that having two different zoning designations would make the Master Plan process very confusing and that the Planning Commission was unanimous in its support of the change. He noted several letters of concern about noise and traffic on this property but said those issues will be addressed in Master Plan and the neighbors will have an opportunity for input at that time.

Christopher Koback, attorney representing Tak Sum Ho, owner of O.M. Seafood, 3514 SE 76th Avenue, said Mr. Ho bought the property in 1995 when it was zoned CG and then in 1996 his property was rezoned residential as part of the Outer Southeast Community Plan. Mr. Ho did not participate in this process but believes an error was made because the property was assumed to be vacant and not in commercial use. During the notice process the neighbors expressed some concerns about current operations which may not be relevant to today's hearing but which Mr. Ho has attempted to address by entering into an agreement with the neighborhood association.

Commissioner Hales said Council should exercise its full authority and take every opportunity it has to tune up its Comprehensive Plan and Code.

Mayor Katz asked Council members if they wanted to approve the zone change requested by Mr. Sullivan for his client.

NOVEMBER 3, 1999

Council members responded that they did wish to approve it and wanted the City Attorney's office to figure out how best to do so.

Disposition: Continued to November 10, 1999 at 2:00 p.m.

Vera Katz

***1558** Waive Title 33, Planning and Zoning, to continue implementing a temporary Shared Parking pilot project in Northwest Portland (Ordinance)

Discussion: Susan Hartnett, Bureau of Planning said this allows area residents and employees to use the parking structures in the Good Samaritan medical center. It is being managed jointly by the North/Northwest Neighborhood office and the Nob Hill Business Association. About 90 residents are currently using this program and it has been fairly successful although it took some time to get off the ground. The long-term goal is to address this through the zoning change but this is a worthy project as it provides the City information about what works and what does not. She said staff continues to look for other opportunities to relieve parking and traffic congestion.

Steve Fosler, Nob Hill Business Association, said this is a worthwhile project that they are anxious to continue. He said both management groups have systems for issuing parking permits to legitimate users and have had no complaints. The program has also been working well for Legacy which does periodic monitoring to ensure it has adequate parking capacity.

John Bradley, Northwest District Association, said they continue to publicize the availability of these places and people are overjoyed to have place to park. NWDA has not seen any significant impact on traffic or livability. Regarding outreach, he believes NWDA did a door-to-door campaign as well as mailings.

Mr. Fosler said all three entities have agreed to encourage people to use other transit modes than automobiles.

Commissioner Hales said these people have done a great job of managing a scarce resource and jokingly suggested they take over the management of the handicapped parking permit program from the State as well.

Disposition: Ordinance No. 173899. (Y-4)

At 3:00 p.m., Council adjourned.

GARY BLACKMER
Auditor of the City of Portland

Cay Kershner /bo

By Cay Kershner
Clerk of the Council