



CITY OF
PORLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,
OREGON WAS HELD THIS **24TH DAY OF JULY, 2002** AT 9:30 A.M.

THOSE PRESENT WERE: Commissioner Saltzman, Presiding; Commissioners Francesconi, and Sten, 3.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Ben Walters, Senior Deputy City Attorney; and Officer Michael Frome, Sergeant at Arms

		Disposition:
DUE TO THE ABSENCE OF TWO COUNCIL MEMBERS NO EMERGENCY ORDINANCES WERE CONSIDERED THIS WEEK ALSO, ITEMS WERE NOT HEARD UNDER A CONSENT AGENDA		
COMMUNICATIONS		
896 Request of Bill White to address Council regarding a simple prayer (Communication)		
		PLACED ON FILE
896-1 Request of Richard Koenig to address Council regarding his July 17, 2002 Communication (Communication)		PLACED ON FILE
TIME CERTAINS		
897 TIME CERTAIN: 9:30 AM – OSHA Safety and Health Achievement Recognition Program award to the Bureau of Environmental Services (Presentation introduced by Commissioner Saltzman)		PLACED ON FILE
898 TIME CERTAIN: 10:00 AM – Authorize the Office of Cable Communications and Franchise Management to establish and administer the Right-of-Way Agreement application procedure, including a deposit for reimbursement of costs for mobile telecommunications applicants (Resolution introduced by Commissioner Sten) Motion to delete the paragraph to establishing a trustee account for a publication deposit: Moved by Commissioner Sten and seconded by Commissioner Francesconi.		36089 AS AMENDED
(Y-3)		

REGULAR AGENDA

Mayor Vera Katz

<p>899 Reappoint Ernest L. Grigsby to the Building Code Board of Appeals for a term to expire June 30, 2005 (Report) (Y-3)</p> <p>900 Reappoint Kerrie Standley, Joel Burt, Jocelyn Cox and appoint Susan Pearce and Donna Steger to the Noise Review Board for terms to expire June 30, 2005 (Report) (Y-3)</p> <p>901 Authorize an Intergovernmental Agreement with the Oregon Department of Transportation for \$10,000 in Transportation Growth Management grant funding for the Pleasant Valley Concept Plan Implementation Project (Second Reading Agenda 892) (Y-3)</p>	CONFIRMED CONFIRMED 176744
<p>902 Refer to the voters, with a revised ballot title, a five-year local option tax levy for parks and recreation purposes (Resolution) (Y-3)</p> <p>s-903 Amend Title 17 Definitions, Transit Oriented Development System Development Charge (Ordinance; amend Code Section 17.15.020)</p> <p>Motion to accept the substitute: Moved by Commissioner Francesconi and seconded by Commissioner Sten.</p> <p>Motion to amend the substitute to send a notice to anyone who paid an SDC in a commercial zone: Moved by Commissioner Saltzman and seconded by Commissioner Francesconi.</p>	36088 SUBSTITUTE PASSED TO SECOND READING AS AMENDED JULY 31, 2002 AT 9:30 AM
<p>904 Amend Chapter 17.38 and Chapter 24.10 to revise stormwater management requirements for consistency with the City Stormwater Management Manual (Ordinance; amend Code Chapter 17.38 and Chapter 24.10)</p> <p>905 Amend a contract with Coffey Laboratories, Inc. to provide laboratory services and related administration for the Lead in Water Program (Second Reading Agenda 893; amend Contract No. 33890) (Y-3)</p>	PASSED TO SECOND READING JULY 31, 2002 AT 9:30 AM 176745

At 11:17 a.m., Council adjourned.

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WEDNESDAY, 2:00 PM, JULY 24, 2002

DUE TO THE LACK OF AN AGENDA

THERE WAS NO MEETING

GARY BLACKMER
Auditor of the City of Portland

By Karla Moore-Love
Clerk of the Council

For discussion of agenda items, please consult the following Closed Caption Transcript.

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Closed Caption Transcript of Portland City Council Meeting

This transcript was produced through the closed captioning process for the televised City Council broadcast.

Key: ***** means unidentified speaker.

JULY 24, 2002 9:30 AM

Francesconi: Here. **Saltzman:** Here. **Sten:** Here.

Saltzman: Mayor Katz is on vacation. Our first item, communications.

Item 896.

Bill White: Good morning, all.

Saltzman: Good morning.

White: I am not going to say a whole lot. I just ask the father to bless the city council and just bless the decisions they are going to make today, and we pray in your name, amen.

Saltzman: Thank you. 896-1.

Item 896-1.

Francesconi: We missed you but we didn't miss you that much.

Richard Koenig: Well, don't worry. I am responding to the request to get involved with the city. Good morning. Good morning, Portlanders. Last week I was extremely gratified to note city attorney's interest in my notice to use the streets of Portland. Before the gavel came down convening city council a copy was picked off of the clerk's desk and business regulations part two of the Oregon revise statutes had been consulted to confirm my right of claim. My claim to right. Unfortunately, many Portland police officers have never had the opportunity to similarly hold a copy of volume 15 of the Oregon revised statutes in their hands. Being forced to rely, instead, on the vehicle code handbook. The vehicle code is title 59, of business regulations, part '2but the context provided by the cover and the table of contents of volume 15 is distinctly absent from the vehicle cold handbook. Of course, if public servants had the time to read the vehicle code, even from the handbook, they would realize that title 15, 59 is business regulations. A poll of Portland police bureau members was conducted wherein the members were asked if they enforced business regulations part 2. Of the 12 officers interviewed, not one knew that they did, although they were quick to tell me that they did enforce the criminal code in the vehicle -- and the vehicle code. It is precisely this lack of knowledge on the part of Portland's finest that concerns me, and has moved me to give notice of my intent to use the city streets as a matter of right to police commissioner Katz. If the police commissioner, through her designee, as she's on vacation is not yet prepared to assure my safe passage on the streets of Portland, I will be glad to assume the civic duty of providing the necessary training tools for her bureau during these three minute spots over the coming months. Perhaps my work could even be presented when the district attorney makes the september review and update on new laws to the police bureau. Because of the respect the community naturally has for our police bureau, it is likely that many public members will hold views consistent with the average police officer who believes that he is not enforcing business regulations when writing tickets for vehicle code offenses. In this historic moment when Oregon's unemployment rate is at the top of the charts and spendable income declines in most communities, there may be some public interest in learning to use the highway as a matter of right so that the hundreds, and in some cases, thousands of household dollars that go to compliance with the vehicle code will be available for the general public's -- it will be retained to go for their other essential goods and services. I will be making an edited version of these segments that I am presenting here

available for the general public's education, and appreciate city council's assistance in referring interested parties to me in the future. The following will constitute a guide to future installments. First, doyle a historical overview of right of use, case law, reading the vehicle code in context, original legislative enactments with explanation of why language differs from the Oregon revised statutes. You guys have a nice week. City of Portland, all you have to do is ask karla moore for a copy of this, I think it's 25 cents a page, right? Thank you.

Saltzman: Okay. Thank you. Let's move onto our first time certain.

Item 897.

Saltzman: Well, I guess I will start things off here. Today gives me great pleasure to participate in the recognition of the bureau of services wastewater group for achieving the Oregon osha sharp status. Sharp stands for safety and health achievement and recognition program. This is a very prestigious safety program achievement. Dean marriott will discuss in more detail the significance of this designation to the city and to bes, and he will also introduce pete, the administrator of Oregon osha, who will discuss what it takes to qualify for sharp status and the benefits to the city of achieving and maintaining sharp status. I do want to point out that it is important that we are the first municipality in the state of Oregon to receive the sharp status. Many other private industries and businesses have the sharp status but we are the first city government to achieve that. Or county government, for that matter. Pete will also address a plaque to steve bareat and the safety committee and representatives who worked very hard to reach this milestone, and then we will have steve say a few words but right now I will turn it over to dean marriott.

Dean Marriott, Director, Bureau of Environmental Services: Thank you, commissioner Saltzman, members of the council, I am dean marriott, environmental services director for Portland.

As an employer, one of the most important things we can do is provide a safe and healthy workplace for our employees. It's been a key priority of mine since I took this job eight years ago, and i'm very fortunate to have staff that also believe with me that that's a very important task for us. I think that we do enjoy a safe and healthy workplace, but we also recognize that we can always do a better job of that, and so in that light is why we sought out the assistance of Oregon osha, the state organization responsible for encouraging and making sure that employers provide a safe and healthy workplace. Now, some may say that that's sort of like asking the irs to help you with your accounting or your taxes. I disagree. We went to the experts on occupational safety and health, and told them that we were interested in a partnership and they have a program that provides tremendous assistance to employers in this field, and we are very pleased to be here with them today to talk about this program and of course, to accept their safety and health award. And it gives me a great deal of pleasure to introduce pete, who is the administrator for Oregon osha, obviously, a very busy person with a lot on his schedule. I really do appreciate him taking the time to appear here today to underscore the importance of this event. Pete.

Pete DeLuca, Administrator of OSHA: Thank you. Members of the commission, it's very, a very great pleasure to me to be here today and I appreciate the invitation. This is the first municipality that has gotten this award, and we see it as very signature. So, our congratulations go out to the city of Portland, the bureau of environmental services, and to the wastewater group. Of course, somebody who takes Portland's dirty water and turns it into a product that can be run through the benson bubblers has got to be somebody who deserves an award. [laughter]

*****: And I am not sure if that's what you do or not. [laughter]

Saltzman: Doesn't quite work like that. Just to allay any concerns.

*****: I didn't know that that was part of the announcement. [laughter]

DeLuca: I would like to say I run a noncontroversial regulatory program down in salem, and I know that there are those people who would disagree with that, although i've been here for seven years doing this, and since i've been here, one of the things that we have tried very hard to do is to

beef up our consultation branch because they provide such a great service to the employers. And it's out of our consultation branch that these kinds of services come. Consultation, of course, is a program you can call in and have them examine your workplace and it's at no cost to the employer, and any difficulties that are found in the workplace, I was up to the employer to fix it, but this is not an enforcement activity. We do have an enforcement arm, but this is not our enforcement arm. One of the things that we did was, in trying to, to provide greater, both greater accountability and greater productivity for government, which I think are very, very important. I am a 25-year veteran of government service. One of the things that we all must do in government, we are all in this together, is to work for the credibility of government. But in trying to do that, what we have tried to do is create programs that will help employers to comply with our regulations. And one of our primary programs for doing that is the sharp program, safety and health achievement recognition program. In order to become a sharp employer, you have got to be in the top of your standard industrial mode that the top half of your, your government or business category in terms of illnesses and injuries in the workplace. But more importantly, you have got to have implemented a safe and healthful workplace by having a good program in place. And it's this program that we look at very carefully. When we get an application, then we send in a team, a team evaluates, and it's a little bit like going through a very, very tough inspection. And the, the wastewater group here in the city of Portland, asset inspection, and that's why we are here today. The benefits of being in the sharp program, of course, it recognizes leaders and achievement. It increases productivity of workers because they see that the employer is involved, cares about their daily lives. It forces vigilance and self-sufficiency, and I can't stress that enough because we have 80 compliance officers and 40 consultants in our organization. There are 80,000 businesses in the state of Oregon, and if at least some of them aren't self-sufficient, we will be in a world of hurt because we can't get around to see them all. Self-sufficiency is probably the number one goal in this program -- and this program needs right into that goal. The requirements of the sharp program are primarily a management commitment to safety and health. We have that here and also employee involvement. If we don't have both those elements, then no organization can be a sharp program, or a sharp organization. And we found those elements here in Portland. So we would challenge you, the city of Portland, to look at other sites and see what you can do to have them join in this program, as well. Although I have got to say, you have everybody apply at once, it's going to take us a real long time to go through the evaluation process, so we are going to need to figure out ways to do that, but one of the things that I get -- frankly the most professional pleasure out of, of all the things that I do is recognizing other governmental organizations because when any part of the government looks good, we all look good in government. So, I would like to introduce to you some of the staff who have worked on this, in the back row, here is steve morrison, and sitting next to me, jeff jackson. Jeff is going to talk a little bit about what the city has done in order to achieve this recognition.

*****: Thank you, pete and council.

Saltzman: If you could move closer to the microphone.

Jeff Jackson, Senior Industrial Hygiene Consultant: Thank you. Why are we here today? Actually, we are very excited to be here today. Bes has received this award on our first evaluation. Typically companies spend a lot of time working to achieve this status. And bes has assembled a successful management and employee team that has demonstrated a commitment to safety and health at the wastewater facility. The Oregon osha evaluation found multiple avenues for employees to participate with management to develop safety into a workplace culture value, and a day-to-day objective, with their operations. And what we saw through our six-day evaluation is strong employee participation and a safety committee and support by union representatives to implement effective safety programs. They were actively implementing behavior-based safety principles, which is an employee-driven program. They have established a strong subcontractor,

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safety and health accountability program for their construction projects, which have effectively controlled significant issues for high hazard projects, and involving contractor, improving contractor awareness for work site control. This is surely resulting in reduced liability for the city. Their process safety program, process safety management program for chlorine is a highly complex program which has successfully been implemented and co-managed with worker participation. Bes has established state of the art engineering controls that have substantially increased work site protection and public protection for chlorine exposure. Since 1999, bes facilitated a 66% reduction in the work loss incident rate, significantly improving safety for their workers and reducing injury to family and co workers. Additionally, with this reduction, they have seen signature reduction in the severity of injuries occurring now so people aren't getting hurt. We commend the agency for reinvesting workers comp bonus into additional engineering control including ergonomics systems such as pneumatic pumps and they have established a 5 year action plan to assure continuous improvement and safety, of the safety and health management programs with employee involvement. Several of these programs are managed directly by workers, including respiratory protection and confined space issues which are complex issues, and most importantly, the city has supported and committed professional safety and health staff, so we encourage the city of Portland to utilize sharp as a goal-post for overall success for your agencies. We would like to explore ways to work with risk management to determine the means to achieve the success. Thank you.

Saltzman: Thank you. Steve, did you want to say a few words?

*****: Yeah, absolutely.

Saltzman: Introduce yourself.

Steve Behrndt, Director, Wastewater Management, Bureau of Environmental Services: I am steve behrndt, the director of the wastewater management for bes. I got a couple of teenage kids and when they get something really, really great, they just say, this is just sick [laughter]

Behrndt: That's probably not the best word to use for safety recognition, but it's that kind of enthusiasm that I feel about, about accepting this award on behalf of the wastewater group, and recognizing the contributions of all the people that have been involved in making this happen for, for the city of Portland and for bes. So, I am, I am honored to be with you and accepting this award on behalf of the wastewater group, and, and we, we feel like this is a very signature accomplishment, and it's, it's a milestone in what we think is a continuous improvement process. This isn't an ending point for us, this is just a time that we can pause and reflect and then refocus and make plans on, on further improvements and safety and health of our organization, and something, something that we think is this big doesn't happen very quickly. Mike reiner has been working with, with the city for 15 years, and probably the most signature element of this accomplishment to us is building and sustaining a safety culture and mike has been working very hard at that, and that safety culture is, is what, what sets in motion the rest of the, of the signature pieces of this puzzle together. Those who are familiar with the wastewater group know we take a lot of pride in our operational performance and excellence of our operations, and we have plaques and awards that show our operational excellence, and this is important to us because safety and health is important, and what, what, what mike helped do, I think, and the rest of the safety staff is, is convince us that safety and health doesn't have to come at the expense of operational excellence. It can supplement that, and be part of that picture and we trust them and he was right and over the past ten years or so, we have seen very signature improvement in operational excellence and the safety and health excellence. They have gone hand in hand, and if that was a coincidence, we will keep reproducing those coincidences. Lastly, I have to say that it's, it's the employees that care, care about each other and care about the organization and appreciate their affiliation with the city and with the organization and with the union and have collaborated with us to make, make this happen as pete said, it really does take teamwork and collaboration and partnership to make good

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things like this happen. So, once again, thank you and thank you for making this something important enough to bring in front of council and thanks again to, to pete and the staff from osha. It has been great working with you. Thank you.

Saltzman: Thank you.

DeLuca: Certainly it is our pleasure. Maybe with the current meltdown on wallstreet and what's going on with business, we in government can begin to think that we won't hear quite so often people saying that we should run government like a business with more of this, maybe we can hear people saying that business should run more like government so I will present this plaque to steve and dean, and my congratulations. This is a great accomplishment and you have done a great job here.

*****: Thanks very much. [applause]

Saltzman: We will pick up, we have a 10:00 time certain, we have a minute or so to kill. Do you have your people here? [inaudible]

Saltzman: Since we have about seven minutes until 10:00, can we take the -- since we have until 10:00, can we take the regular agenda up? Does anybody have any objection to that?

Item 899.

Saltzman: Nobody -- anybody care to testify on this? Okay. Karla, please call the roll.

Francesconi: Aye. **Saltzman:** Aye. **Sten:** Aye.

Item 900.

Saltzman: 900.

Saltzman: Anybody here to testify? Okay. Do we have any appointees here? Okay. Karla, please call the roll.

Francesconi: Aye. **Saltzman:** Aye. **Sten:** Aye.

Saltzman: 901.

Item 901.

Saltzman: This is a second reading. So, please call the roll.

Francesconi: Aye. **Saltzman:** Aye. **Sten:** Aye.

Saltzman: 902.

Item 902.

Saltzman: Mr. Francesconi --

Francesconi: Well, we just have to change some of the language because what happened is we made the cuts, so the language didn't, doesn't reflect that we have got to restore the cuts that we made, so that's, that's the only change.

Saltzman: Does anybody wish to testify on 902? Okay. Karla, please call the roll.

Francesconi: Please vote for this. Aye. I am not talking about the council. Aye. [laughter]

Saltzman: Aye. **Sten:** Aye.

Saltzman: 903.

Item 903.

Saltzman: Do we have --

Francesconi: Don gardner, if you could come up. Let me introduce this. With our sdc programs, we really have three goals. One is to provide some resources for infrastructure, and in this case, for transportation infrastructure but we want to make sure that our sdc's are also competitive with other jurisdictions, but that they are also fair in particular applications. So, in looking at this, it's known as the pizza man issue, in looking at it more closely, as the sdc has applied to this particular case, it looked to me and to don gardner and the bureau that it was unfair in this particular application, so we have been doing some pretty intense work to see if we could make some modifications to this sdc to make it more in line with what should have been charged when we looked at the intent of the regulations in the first place. And in looking at this particular case, it looked like we could make an

adjustment and don will explain how we got there in a way to reduce it substantially by 10,000 and make it more in line with what some of his neighbors would pay. So, that's what I am proposing, that we do right now. The second thing is, we are looking at all the sdc's for the whole city under process led by the mayor and sam adams, but we are also, pdot is looking at our transportation sdc's to make sure that they are competitive with the region because the last thing that we want to do, of course, is to drive business outside the city. Our preliminary look at the sdc's are that there are many jurisdictions that are, that are higher. When we make this adjustment, that we are proposing today, there's only four or five that would be lower than us in the

whole region, but we still think that it's the right thing to do, and it's a way that we can bring some relief right now by passing this ordinance without having to wait six months for the whole process to play itself out. So, there's also some technical issues that have arisen since that is going to require a substitute amendment. The bottom line here is, we can make this charge fair right now. We can reduce the charge to this particular business, and we can set up a process to look at the system development charges to make sure that they are appropriate and fair for other business owners. And that's what I am proposing we do. Don.

Don Gardner, Manager, Bureau of Transportation Engineering and Development: Good morning, council members. I am don gardner, the manager of bureau transportation engineering and development. When this case came up, we took a look to try to understand, along with commissioner Francesconi, what was the intent when the sdc ordinance was passed, and how was it being applied. It was being applied technically correctly, but when we looked at what was happening is that Portland's transportation sdc is unique in the country in that it gives transit oriented discounts to deal with small, businesses that are in transit related areas or have done a certain intensity of development. The goal was to protect neighborhood business areas, to encourage the reuse of buildings and to encourage transit or other nonmotorized transportation. What we have done is we have done one adjustment in the definition of transit-oriented development. The definition as read before was that 30 housing units to an acre or 1-1 floor ratio. We didn't anticipate at the time that there would be a unique circumstance like this on belmont, where the building happens to have a small piece of property that's not accessible by auto, automobiles at the back the building. It's a 50-by-100 lot and the

building is 80 feet deep and it's only a one-story building so he doesn't make the 1-1 floor ratio so I would change the division, if you are located in a commercial zone that doesn't require parking and you don't provide parking, you should also qualify for transit oriented discount. The sec thing is to do this in a fair way, to make it retroactive so that we could reimburse people who have already paid these fees. The things that we have done in this substitution were, were basically to give direction to the staff on how to make the reimbursements, which would be if you paid cash, you get cash. If you did credit, if you paid with credits, you get credits, and if you have a loan with us, we adjust the loan. Also, gives direction to the auditor to allow us to adjust the loans for the, for the contract installments. Gives direction to the staff on who gets the rebate because it's a little unusual in that sometimes it's paid by the property owner and sometimes it's paid by the applicant, sometimes it's the tenant, sometimes third party agreements so, we have given direction to the staff on who takes the, who can we take an application from and who can we give the money back and also says that, we have this direction if there is third party agreements between the parties, with the tenant and landlord, that's their agreement and they have to work it out. They have already made their agreement and the other one, we want to arbitrate those decisions but those are the basic things. I think what it does is meets the intent when we wrote the transit-oriented discounts to insure these businesses are taken care of and these situations, and it gives us a system for making the reimbursements. The other thing that we intend to do is that we have already talked with the small business representative at pdc, and we will be working with her to try to get notice out to

these kind of businesses, as we go back through our records trying to figure out who might have been affected by this, and who should have notice and who should we work with to try and get them expedite and had get this handled. So, that's the sum of it.

Saltzman: Necessity questions? This is great that you have been able to figure out a way not only to help the pizza man but other businesses who are similarly affected, and there is one minor wording I did want to add, and that is the last point you testified to that talks about we are going to set up this process for doing rebates. But it doesn't say we will affirmatively notify the perspective.

People who paid this charge over the last 18 months who may be eligible so I did want to add in paragraph 9 that, that the system development charge shall notify all property owners by mail, applicable property owners by mail, just to make sure that, that everybody does, in fact, do this.

Gardner: I am going to be honest with you, commissioner. I believe what you are saying and that's why we are going to try and work it out with pdc to find affirmatively every party who may have been subject to this, means going through 8,000 building plans to take a look at everybody building plan to see the site, to see what exactly was there. We felt that if we went out through pdc, through the business alliance, through the small business groups, tried to get that information out, I think that there would be enough press on this one to get information out that we should be able to get, get the information out, and I mean, I emphasize, we want to get to the people --

Saltzman: All businesses that are in a commercial district?

Gardner: The problem is you have to go through -- they have to go back through every case to see where was it, what was it, and what was actually the building site. And it would be a case-by-case review. And that -- I don't want to sound like we are, we are, we are trying to be recalcitrant but that's --

Saltzman: It couldn't simply be those who were in a commercial zone where no parking is required?

Gardner: That's what will get it but to find them means going back through every case, through every building permit, applications where, where --

Saltzman: You do have list who had paid sdc's.

Gardner: We know who is paid but we know the name of the business, or the payee and we know what they were assessed. We know what, what classification they were assessed in. But, we don't know all of the information on those without actually looking at every building case file.

Saltzman: Could we error on the side of being conservative and just mail to those that list in a commercial district, paid an sdc in the last 18 months.

Gardner: We could do that. That would be fine but to find a specific cases is going to be difficult. We will make any effort to try to make sure the people who we believe should be subject to this reimbursement are notified.

Saltzman: Okay. So, if I put language in there, the administrator shall notify by mail --

Francesconi: It really helps if we see this he ahead of time. I haven't seen the language. Can I see the language? The concern that transportation has is that we are reviewing permits, as part of our function, and we don't have -- want to pull people off from reviewing permits because that's going to slow down the permitting process.

Saltzman: I am not asking for that, I am saying let's send a letter to everybody out there because not everybody is as aggressive as the pizza man and bringing their case before us. But there are a lot of people who will not read the papers or watch the tv, and they are not going to know about this opportunity unless we somehow get a piece of paper in their hands. Letting them know about it. And it seems to me that just, if we just limit it to the univers to those in a commercial district where no parking is required who have paid an sdc in the last 18 months, that universe cannot be that large.

Gardner: We will find some way -- let's be careful about how we exactly word it, just say that we will send it to anybody who has paid a commercial sdc. that's easier because to define the zoning, then you have to go through every case. It's better if we just do a blank letter. If you are in a commercial zone we will send you a notice. That works.

Francesconi: Let's do that, and I think that you can do that under your amendment. So let's just go with that.

Saltzman: All right. Any other questions? Anybody that wants to -- oh, we have a substitute.

Moore: We have a substitute, and then amend the substitute.

Saltzman: Okay. Anybody want to move to amend the substitute?

Francesconi: Yeah, I am sorry. I was thinking of something else. I will move the substitute.

Sten: Second.

Saltzman: We will call the roll and substitute.

Moore: On the amendment, we want to --

Saltzman: Okay.

Moore: We want to move to amend the substitute.

Saltzman: I will move the amendment to substitute.

Francesconi: Second.

Saltzman: Okay. So, we will call the roll, call the roll on the amended substitute. Oh, that's right, anybody want to testify on this? Okay. Roll call.

Moore: This is a nonemergency. So it moves on to next week.

Saltzman: Moves onto second reading next week.

Francesconi: I want to say two things. I want to thank don gardner because you were -- I put some pressure on you to deliver rapidly, and you know, you are not used to me, you are used to pressuring others but I want to personally thank you for responding in such a quick fashion, and the second thing that I want to say, it's not often that government actually gives money back, especially retroactively, so we have tried to do it because it is the right thing to do in this circumstance so, thanks for your help.

Saltzman: Well, thank you very much, commissioner Francesconi, and don gardner. And now let's, it's 10:07 so let's go back to the 10:00 time certain and then we will come back and finish up the two items on the regular agenda.

Item 898.

Sten: Come on up. David and mary beth are coming up, I will give a couple of words of introduction. This is a report back to the council on some changes that were, that we are proposing in terms of how the city works with wireless, or cellular companies to get their, to get their coverage that they need in the city. It's, it's a new approach, and I think that hopefully a common sense approach. There will be some issues to talk about, and we want to, to present it to the council and the public and get some feedback today from the council. A little background, essentially, there's now about 175,000 cell phone users in the city of Portland. About half of the households in Portland use a cell phone. In one form or another, and I think that it's probably safe to say that cell phones are basic utility these days, like telephone poles and electricity and everything else. They are commonly used. We have, in obligation under federal law, to provide, make sure that the coverage is universally provided in our city. That law is very strict, and very specific, and we are not allowed to take into account a lot of things that, I think, people have a right to worry about. Things like health issues and a lot of the aesthetics and other things that bother people about cell phone towers are not within our jurisdiction, and I think that it's words point that go out. That does not mean that they are worth arguing about, it's just a federal issue rather than a local issue. We have had a lot of, of pretty heated discussions about large cell phone towers going into neighborhoods and I think it's safe to say that, that council has a general aversion to putting large

towers in neighborhoods, and, but it's something that we need to do to have cell phone coverage and I think that at this point, you know, it's pretty clear and there's a lot of talk about business environment and the economy these days, that you have got to have seamless cell phone coverage for a good economic climate these days. You also, from a public safety standpoint, need to have good cell phone coverage. I have been working for a few weeks with the bureau of emergency communications and I think that last week I looked to just check it out. About half the calls that came into 9-1-1 came in on a cell phone so there's a public safety issue. So, and I won't try and walk through the technical details but we are essentially doing a process now where we are not asking cell phone companies to franchise in the way that we do telephone communications companies but essentially, to work with us on an agreement of, a voluntary agreement to use the right-of-way, and in return for that, and I think as part of the new strategy, we are proposing making it legal to put cell phone extensions onto telephone poles. In most cases, in some ways the technology is getting better so what used to be kind of enormous, sometimes 100-foot poles needed throughout the city, we believe most of the cell phone coverage can be reached with, without 10-foot extensions onto the telephone poles, and in my estimation there is no perfect way in terms of visual clutter and aesthetics to add poles to get more coverage, but we have to do it, I think it would be short sighted not to do it from an economic and public safety standpoint and to my estimation, putting extensions onto telephone poles is far less obtrusive than building really large new towers in the neighbors. I don't know that everybody will agree automatically with that but essentially, that's the basis of our strategy is that we already have the telephone poles, using them to extend the cell phone coverage seems to me to make more coverage than a building. Many large new poles as we have in the past. So the strategy is to try and make it simpler. Try and make it more predictable, try and at least cluster the clutter onto the existing poles and hopefully come up with a predictable arrangement to essentially give that access to the cell phone companies, and also charge a small but reasonable fee for use of the right-of-way along the way. It's our estimation that, and there are companies like qwest who believe the right-of-way is theirs, but it is still showing that the right-of-way belongs to the citizens and we believe that trying to find a reasonable fee, which also is in return for using the right-of-way and is cheaper than building new poles could be, and I think is kind of a better meeting of the economic and city needs than the current system. So I will turn it over to dave and mary beth to walk the council through a short presentation on this proposal.

Mary Beth Henry, Deputy Director, Office of Cable Communications and Franchise

Management: Thank you, commissioner. Good morning. My name is mary bath henry, I am the deputy director of the office of cable communications and franchise management. With me is dave soloos, who has been the staff lead for the wireless policy development for the city. I have a few introductory remarks and then dave will make a short power point presentation. We are happy to answer any questions you may have, either during or after our presentation. First I wanted to be clear about what we are asking city council this morning. The resolution before you directs staff to establish and administer wireless right-of-way agreements with wireless carriers. The policy will allow wireless carriers to use city right-of-way, otherwise known as streets. Attached to the resolution is a model template that will guide staff in negotiating agreements with individual companies. Once we have reached an agreement with any given individual company, we will be coming back to city council for ratification of those agreements. So, today is the policy direction and in the future, we have up to seven carriers who may be interested in placing facilities in the right-of-way. Second, we have a minor amendment to the resolution. We propose to delete the paragraph in the resolution that refers to establishing a trustee account for a publication deposit, our city charter requires that agreements of this kind be published in the daily journal of commerce in the Oregonian at the expense of the company. The cable office already has this authority through trustee accounts set up for franchises. So, we don't need that paragraph in the resolution.

Saltzman: You want to delete the entire resolve.

Henry: Yes, delete the entire paragraph.

Saltzman: That one, okay.

Henry: Third, one issue that you will here about today, that arose through our public process in the neighborhoods, is that of aesthetics. There is a desire by some citizens to underground the poles and wires in the city in some areas. Wireless is a line of sight technology. It has to be above ground. The funds that will be generated by this process go-go into the general fund as do all the funds generated by our office through the franchising process. The cable office is neutral about the deposition of these funds. We believe it's the city council's responsibility to decide where moneys should go. Finally, wireless use is proliferating in Portland with 33% of our citizens using cell phones. As commissioner Sten mentioned last week, the bureau of, of emergency communications indicated that over 50% of 9-1-1 calls are coming from cell phones. We have a tech savvy population in Portland. And their use of wireless technology will continue to grow. As wireless internet service is launched, the growth will be even more incredible. With the increased use of wireless technology comes the need for additional cell sites. Staff's recommending that the city council allow wireless carriers into the right-of-way in order to meet this burgeoning demand that we see on the horizon. We feel that the policy before you today is forward looking and will help the city plan and manage wireless attachments in the right-of-way. Now, dave has got a power point.

David Soloos, Program Coordinator, Office of Cable Communications: Thank you. I have never been part of a process where there's been so much confusion before, so I wanted to start out rather than saying what we will do, what we won't do because it seems to have been more effective in the public process, and what you see here, thanks to a consultant is a slide of obviously something that we absolutely are not going to do. What we really are, are going to do is just the antennas is all we are talking about. So here's the typical cell tower, probably 100, 110 feet tall. This is not what we are talking about. This is not going to be in right-of-way. It's not what we are allowing in the right-of-way. Here's a typical building application, side of a building. There is also a roof-top. Here is what we are talking about, have an existing utility pole, and what we are talking about is placing some antennas on that utility pole, and thereby, avoiding having to build this tower. Hopefully. A couple of national statistics to show, again, reinforce what mary beth and commissioner Sten have mentioned, your cell sites are going up 20 to 22% a year. Wireless minutes of use are about 500 million, estimates that are they will exceed wire line minutes of use in three years. Wireless subscribers, again, the trend is probably more important than just the raw numbers, up, up, up. And that's at the u.s. level. In Portland, according to the industry, pretty much mirror, if not slightly exceeds the national averages for subscribership. And the right-of-way, currently we have 50 or so wireless -- sorry right-of-way users that are office administers of agreements with various kinds, railroads, cable, other telecommunications. Water, sewer. And in the market there are currently six wireless providers, facilities-based wireless providers. The singular, the asterisk next to singular is because they are preparing to enter the market. They are not here yet and they will be later. Some information that, on, on Portland's market penetration is here. I set this up a few months ago, and as you can see, I said then that 40% of the 9-1-1 calls are made from cellular and wireless and as you heard last week, it's now 50%, and I think that gives an indicator of kind of what we are looking at. On the right side, you can see there are about 600 cell sites in Portland now. That's, that's cell tower and building mounts combined. So about 500 buildings, about 120 on towers. Why the right-of-way? A couple of years ago industry approached us, asked how they could utilize it. Sites are becoming harder to find. They were looking for sort of a master license type of situation, so approvals are much quicker. As commissioner Sten mentioned, wireless is now a basic service or basic utility. That's typically where utilities typically

do go in the right-of-way. One thing that was surprising to me from transportation was that right-of-way is, is 22% of Portland's land area and this is fairly typical for the city of Portland. I often get asked, how many antennas will we be looking at. The industry has indicate that had they will each need 15 to about 35 sites over the next three years, so we are looking at 210 to 220 sites total, that's not just in the right-of-way. That's just in Portland. And compare that with what we have in the right-of-way now. Millions of miles of wire, 35,000 or so transformers, cable boxes and et cetera on 125,000 or so existing utility poles. So, with that, we begin to submit our approach to how we would allow wireless in the right-of-way and we decided that we would like to open it to them and use existing right-of-way principles that we developed through the right-of-way agreements for 100 years. And of course, to involve our stakeholders, some of whom are here to speak with you today.

Here's a quick list of who they are. And I won't really summarize the industry concerns here because they are here today to do that themselves. But, suffice it to say that we want a fair and reasonable compensation. We did do and disagree as to what that is that is not surprising. The franchise requirements are, are, the principles are carried over as they are with all right-of-way agreements. We are calling this a right-of-way agreement, if you will, and not a franchise. Government agencies had their interest, obviously the 9-1-1 center and emergency complexes police, fire, and so forth did not want -- and emergency, police, fire, and so forth did not want to have the signals bounced so there is a noninterference clause in the agreement. We would like to see reduction of pressure to build more, more towers. The other right-of-way users, the folks in the right-of-way now, need to make sure that they were not interfered with. And that the wireless attachments on these poles would, would still be safe. And that they would all basically get fair treatment. We did do a public process. We had three public meetings. Among other things, we have had extensive e-mail, voice mail, telephone conversations with various members and groups of the public. As commissioner Sten mentioned for the potential human health risks, there is a federal law there that precludes state and local governments from either conditions or denying the sighting of wireless facilities based on human health exposure. We did work very, very hard with opdr to minimize the visual impacts and some regards, this agreement is more restrictive than the, the zoning code would be. The respect, we heard all over the map about the heights some, wanted them the same, some wanted all the utilities underground and some wanted the poles taller to get them out of the way. As far as the undergrounding, obviously, wireless is a line of site technology and that was not available to us. And the public also was clearly wanted fair compensation for private use of the right-of-way. There's a list of some of the outreach that we did. Again, the three public meetings, industry review involved all the city bureaus and developing it, we did a major policy action review after that. The terms of the agreement. The initial agreement will be a three-year initial term, and after that, we would like to go to 5-5. There is a 5,000 per year annual fee. That covers our offices's cost to administer any agreement, \$3000 per pole per year, and this is proposed to just have the antennas or the equipment boxes on them. The speed is not applied to poles that simply carry co-axial cable or fiber from one antenna to the next and to the next. Rather than putting in a cpi inflater, we felt it was easier to put a 4% annual escalator in this, and there is a one-time, \$2000 construction permit application fee, and that will go to transportation for their review dealing with the drawings and the permit process to install the site. This agreement meets the city's policy for co-location. Again, we are reducing the demand to build more towers. The triangular top head antennas, the triangular facility and the early slide, those will not be allowed. Typically, the antennas will be flush mounted to the poles. The mounting device can either extend 10 feet over the top of an existing pole or the companies can replace that pole once with a pole that's 10 feet taller. If they replaced the pole that's taller they will get another 10 feet for the mounting device. The horizontal promotion is the crossarms and that's totally consistent with the zoning code, what it allows now and the equipment available must be used, which fortunately is becoming kind of a

nonissue as equipment gets smaller and smaller. And smaller. The replacement pole issue, raised concerns with the public, as well, as I mentioned in residential cells, they can go ten feet over existing and that's one-time. They can't stair-step it, in other words, you can't replace a 30-foot pole with a 40-foot pole this year, come back next year and go from 40 to 50 and is on. Just one-time. And institutional, I am sorry, industrial employment and commercial zones will allow those poles to be replaced 20 feet taller. Because the impacts will, will be less. All zones, there is a maximum pole replacement pole height of 80 feet. Pge and pp&l have poles taller than this now so the companies can attach to them with pge with approval but those poles cannot be replaced with taller poles for wireless facilities. This slide basically shows that we are adhering to the city of Portland right-of-way management principles, bonds, insurance, permit fee, cover costs and no at-grade equipment, et cetera. Here's some advantages to industry of this agreement, is more access to potential sites as I have indicated earlier, there is 125,000 poles, 4,100 miles of right-of-way, 82% of the city. The cost of towers, and a very simple and quick permit process as opposed to 12 to 18-month cell tower sighting, which also refers to the time to be up and running. The advantages to the city, that have already been mentioned. Enhances the wireless coverage. We would love to eliminate dead spots because of the emergency communications among other reasons. And we get fair and reasonable compensation for the right-of-way, so why should we have this? Which is the tower with the triangular top did so-head antennas when we can have this, this is currently existing on west burnside or this. And that concludes my presentation.

Sten: Questions from the council?

Francesconi: Well, I had two questions. I only have one now. One, one of the carriers asked about the retroactivity phase, but you explained to my staff that they were told ahead of time that this was going to happen. And that there was a two-year process. You let people use the telephone poles, but there was an understanding, and explicit understanding that people were going to be charged for it. So that answered that question. You are nodding your heads that my, my -- yes.

Soloos: Correct.

Francesconi: So the other one comes, one of the carriers, there's this issue of per pole versus per site. I thought this had been negotiated and that they had explain this had concern to you. But, apparently, this was news to you, that this never even came up during the negotiations. Is that right? Pole versus per site?

Soloos: We visited many different compensation schemes before we settled on the one that we have now. We met with a carrier in question, and I provided that core responds to your staff yesterday.

Francesconi: They gave it to us.

Soloos: And in that core responds they had not raised that issue explicitly. The reason we didn't go on a per site basis as opposed to per pole is because with today's technology, I was speaking with one of the other carriers, engineers several months ago, and with today's technology, one station theoretically could support wireless gear on 60, 60 poles, and so, we have some carriers, for example, that could come in under a flat compensation and they would be using then 60 poles, where you have other carriers that may be using one, and they pay the same. And that seemed inequitable. So we went back to a basically a pay as you go, the more poles you use, the more you would pay, and that seemed equitable, and it's also very consistent with the way we treated other users of the right-of-way.

Francesconi: From the materials you gave me, that's consistent with seattle, which is per pole, but I think you gave me materials saying that california has a per site basis where you charge. My issue would be that we determine, we, the city, determine the site, not the carrier.

I guess my request, and there's no -- it may not make any sense but if, as you are negotiating, if it does make sense where the city -- if you want to give a per-site definition that we define, not the

other site, as a way of, of addressing the price issue, I mean, we could define it in such a way, you are free to do that through the negotiations, which you haven't, haven't yet come back to us, if it makes sense, what I am trying to say if, the issue is new,

which it may not be, but if it is, and it makes sense for us to determine a per-site and take that approach, do it. If it doesn't, don't. That's my only request. If that makes any sense.

*****: Thank you.

Saltzman: Just one question, and that is, could you just give us a brief overview of the public involvement process that's been associated with bringing this proposal forward?

Soloos: The public brought this issue to us because they found poles that they would leave home for work at 8:00 in the morning with a 30-foot pole out front or 40-foot and they came back and it was 70 feet. So the commissioner office got calls. Those were referred to our office and at that point, we took -- did some investigation and later this summer, we did do those three public meetings. They were well advertised. We used the notification as we have since.

Saltzman: So you did --

Soloos: Three public meetings last summer.

Saltzman: Last summer.

Soloos: Last summer in, north-northeast Portland, southeast and southwest. So, we took those comments and built them into the agreement as best we could. At that point, we didn't go to them with a draft, but an outline of what we were thinking, and we used the comments commence to develop what we have developed here. The primary concerns that they had were the high -- well, we went through them, make sure whether the city received fair compensation for the use of the right-of-way, and there was the visual issue and the health and safety concern. Which were precluded from dealing with. And we built that into this agreement as best we could by being consistent with the, the adjacent zoning code. By adjacent, I mean the land that's adjacent to the right-of-way, how it's zoning would operate. So, the public process continued. We did make some presentations at, when some groups requested it. For example, I went out to the foster-powell business association and so forth. We received extensive e-mail correspondence, and replied to all of it, and I think that we had built inasmuch as we can the public concern and again, I point to the fact that this agreement is, in many respect, more restrictive in the zoning code that controls the land adjacent to the right-of-way.

Saltzman: Thanks.

Sten: One thing I wanted to mention, I forgot in my opening, it's small but important, I think that we are a constant advocate for underground utilities, and given the fiscal climate and all the issues, aid with rick and we have not been able to supported the idea of dedicating money to go to the general fund undergrouding because it comes directly out of the fund that's hurting right now. He came up with an interesting idea of setting up a volunteer funding an underground fund to show the city is interested in this issue, and also be a fund that we could administer if neighborhood groups through voluntary work when they are working with the cell phone companies and others when they come to talk to them, if that was the top priority to talk about the donation to the fund and at the time, at which, if and when the fund has enough money to do a project we could go through the project, so it's symbolic move for the time being. There may come a day when there is a source of money that pays for undergrouding but I thought it was a reasonable suggestion, and it was kind of -- put that forward today, as well. And I think that I am quite sure that rick will be up to testify at some point.

Saltzman: Okay.

I think that we are at that point, for public testimony.

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Sten: And I had, I just ask the council and mr. President, I think that laura eshel, I am not sure if I said that right, from voice stream, they requested five minutes instead of three minutes the size I was inclined to offer that if the council will indulge that.

Francesconi: It's a good idea.

Saltzman: So if we could just make sure you use the microphones and state your name for the record before you start and why don't we start with the gentleman on my left.

Richard Busch, Attorney, Miller Nash, 601 Union Street, Ste 4400, Seattle WA 98101: Thank you. My name is richard bush, the usch, I am an attorney with the firm of miller nash in seattle, wash, and I am here today to speak on behalf of sprint pcs, who would like to strongly encourage you to adopt the proposed resolution and adopt this for your consideration. I think you will find the resolution will help the city solve problems, as you mentioned earlier, wireless, telephone usage is, is quite common and the users around the country expect good quality coverage as they travel around major municipal areas. Three weeks ago I took the family to dairy queen for a little treat late at night, and we weren't one mile away from dairy queen before my 5-year-old daughter's eyes started to go shut. It was no hospital anywhere around, but I knew that there was a fire station about four miles ahead. I was traveling through a part of seattle where the roads curve and there are hills, as you make your way out to the plateau, and I had to reestablish a call to the 9-1-1 emergency call center three times in order to monitor her condition as we approach the fire station. Portland has some similar geographic areas like west burnside, where it's, it's, it's financially feasible for carrier to say build a series of towers that you saw in the power point presentation in order to cover areas like that, but I assure you that I would have paid almost anything to have continuous coverage so I could talk to the 9-1-1 folks as we were traveling to the fire department. One of the issues that we are talking about with the staff is, is how can we define a site as opposed to per pole, and areas where it makes sense, like west burnside and other roads, terwilliger, the curves and have the hills. We look forward to continuing those discussions if the resolution is approved. So, we encourage you to think along those lines. The second comment that I have is that I don't believe that you will find a proliferation of wireless facilities in every corner if the resolution is adopted. Wireless carriers have a goal of serving the community and they are not going to, to invest foolishly. They will replace the tower idea with the, the more attractive or less intrusive extension of the utility facility so I encourage to you keep that in mind. And as you probably heard, this is not the perfect solution. Your staff worked very well with the industry, I think, holding several conversations, drafts. Listen to the concerns and prepare what I think is a reasonable compromise to get us moving forward at this point. Thank you.

Saltzman: Thank you.

Marnie Allen, Attorney, Preston Gates Ellis, 222 SW Columbia St., Ste 1400, 97201:

Honorable commissioner, I am marnie and I am an attorney, and we represent voice stream. I am here today with laura, the national director of state and local government affairs for voice stream. Was we would like to do is a joint presentation, I will have laura talk about voice stream's objectives and comments on the right-of-way agreement and then I will wrap up with maybe some more technical comments.

Laura Altschul, National Director, Government Relations, Voicestream Wireless, 12920 SE 38th St., Bellevue WA 98006: Commissioners, I am laura, and I won't go through that title again, I am hear representing voice stream today, and as a former citizen of the great city of portland, I personally am proud to be able to be before you today, and offer the perspective that I can bring, which is that I do this around the country. And if, if every city had the approach that, that each of you and your staff and david and mary beth and the citizens of portland have used to get through this process and come up with a right-of-way agreement, that is fair for all parties and as balanced as it is that my job would be easier and I think that all of us would get along a lot better, so on

behalf of the company I want to thank you for that, the approach that's been used here. Everyone so far has already gone into all the facts. I will skip that part of my presentation. The bottom line is that wireless is here to stay and people expect to use it wherever and whenever, and people expect to use it seamlessly if, if they are people who are prone to using wireless devices, and we acknowledge that not everyone is, but certainly the facts demonstrate and support that the trend is, is for the majority of the country to, to be using a wireless device just like what we see happening in asia and in europe and in underdeveloped countries. What we specifically want to address today are two things -- three things, briefly. One is that, and this gets to the issue of compensation, we think that it's important for the commission to understand that there are a couple of reasons why we have a concern about, about the compensation structured within this agreement, or proposed agreement. When we choose to use a right-of-way, and we feel that when you are serving residential areas, using rights-of-way and utility poles is the responsible approach into best serve a community. When we are doing that, we are more often than not talking about a site, and we interchange site and pole, so forgive me if that's confusing and I can explain it. From our perspective. But, we actually have three leases that we usually have to deal with in order to engage in a right-of-way site.

We typically do not place all of our equipment on a pole, although we have present some samples today to you that do show what we call a flexsy-talk technology. That technology is not a technology that we use very often. We have use it so far in limited circumstances here in Portland, and on a going-forward basis we most likely will not use that same technology. What we need to do in order to use a right-of-way is we typically have a lease with the utility owner, the pole. We have a lease with an adjoining private property owner so that we can place our base station equipment on that property. That's close to the pole and in a circumstance like the city of Portland, we will have some amount that we need to pay in a fee for the right-of-way agreement. In addition, when we use these types of sites, we forfeit opportunities to market our sites as co-location opportunities, so we really are talking about a signature amount of investment, and this goes for the other carriers, too, but we are talking about a signature amount of investment versus using a mono-pole where we have one lease, one payment, and we have opportunities to co-locate. With that said, we think that it's very important in residential areas, again, I reiterate, that we, we be able to use rights-of-ways and place our sites on utility poles because it is what -- it's aesthetically -- it better serves the neighborhoods for capacity reasons with the overloads on the networks, it gives us a far more targeted approach to being able to serve those homes and help people expect to use their wireless phones and devices. So, we strongly support use of the right-of-way, and I think that that's also important to note that when we talk about use, when wireless talks about use of the right-of-way, we are talking about a very minimal amount of space that we actually take up, especially if our cabinet equipment is placed outside of the right-of-way. With that said, I would like to offer an example of a compensation program that has been used for, for, well, we negotiated this three years ago in king county, Washington, and compare it to the compensation scheme that's been suggested here. The city of Portland is talking about, as the proposed agreement stance today, a \$5,000 right-of-way fee and a \$5,000 publishing fee. What king county charges is \$225 for those same efforts. Also, Portland is talking about \$3,000 per facility or, in our mind, per site, per year. What we typically pay in king county for the same type of site, if we are placing our equipment outside of the right-of-way is \$2,000 per facility, per year. The other issue here with compensation that's very important is the term, the length of the agreement. We typically take, we, the industry, typically take about seven years to see a return on investment for our sites. If we are limited to a three-year term and then five-year renewables versus in king county where we have the assurance that our -- out of the chute we will be on that site initially for ten years, and then have renewable terms, it makes, from a business scheme it, makes much better sense to a company, no matter what the industry is, to know that we have a chance of making a return in our investments so we are asking

you to consider and asking the staff to consider an ongoing negotiations that that term be lengthened.

Saltzman: Let me stop you. You are sharing your ten minutes -- so --

Altschul: Yes.

Saltzman: Great.

Altschul: The other issue that is important to us, that we think needs to be looked at by staff and by the commission within the agreement is the issue of, of interference. It is our position that the, the entire issue of interference falls within the jurisdiction of the fcc. It does not fall within the jurisdiction of the city. What we propose as alternate language, and we will work with staff on this, is that rather than describe a process whereby we have to have interference, perspective interference cleared on the front end, that we allow the fcc to do its work, allow us to uphold what the fcc requires us to uphold on our interference issues, and if there is an interference issue with, with most of us, there never will be an interference issue, then language can be written into the agreement that provides a remedy for that, that particular instance of interference, rather than having to go through an interference process for every single application because we feel that it violates the fcc. Finally, in conclusion, again, we want to thank the city of Portland. We strongly uphold the need to, to serve our customers by placing sites in the right-of-way. We support the city's efforts to find a balanced point and a fair and reasonable approach to allow carriers to serve our customers and the citizens by having sites in the rights-of-way but we do expect the issues of compensation and our interference, in particular, will continue to be an issue that can be worked on and further resolved between the carriers and the city. Thank you.

Saltzman: Thank you.

Francesconi: Just one question, your testimony was helpful. Let's assume, if the price is too high, or the, the terms, the contract period is too short and those two relate, what are your alternatives?

Altschul: Our alternatives are to lengthen the initial term and renewables. If we follow the king county --

Francesconi: Let's say we don't agree to that. What are your alternatives in terms of providing coverage.

Altschul: Raise an interesting question. This is a little bit falls into the problem of, you have us over a barrel.

Francesconi: I wanted to see how much over a barrel we have you. That's why I asked the question.

Altschul: We need -- we do not feel that it's responsible, nor can we provide the service that the citizens here expect us to provide by placing mounted poles outside of residential areas and trying to shoot in. The type of technology and coverage does not work for capacity any more. We are way beyond that. We expect, and there is disagreement even within my company but we expect we need to pay something to be in the right-of-way. There are some of us who come -- I was the, the technical director for the seattle market. I come from the engineering side. We know how important it is to be able to provide service as quickly as possible and to be able to deploy our sites. A reasonable question could be asked by carriers and by the city and citizens, what's the difference, if the site just happens to be placed in the right-of-way, what's the difference between paying a private landlord for a mono-pole versus paying a city to be in the rights-of-way and there is lots of legal issues that can go back and forth to answer that. Our expectation is that we will sign this agreement. What we are hoping is that for all the, the reasons that are being discussed today and have been discussed in the past couple of years, that we will come up with a scheme for payment that is much closer to the king county scheme.

Saltzman: Okay. I think that you have about two minutes left. Did you want to use part of that?

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Allen: Yeah, please. And I will make it brief. I guess I want to start off by thanking you and by, again, thanking the staff. Dave and I have spent many hours exchanging e-mails and trying to come up with provisions that will adequately meet the city's needs while accommodating wireless needs. As laura pointed out, there are two broad policy issues that we are asking the commissioners to consider directing staff to look at amending. Those being compensation scheme and the interference provisions. And in addition to that, there are four other provisions in the agreement that mr. Solace and I have been negotiating over, that we would like the city to consider technical changes, have been reassured that we can do that in bringing back a specific agreement, so, we appreciate the opportunity to continue working with staff on bringing back an agreement that addresses the four issues that are yet unresolved as well as the two policy issues that laura mentioned, and with that, appreciate you considering this matter and again, support going forward and approving an agreement that allows wireless to be in the right-of-way.

Saltzman: Thank you very much.

Saltzman: Why don't you start.

Jerry Hanson, 3204 SE Woodward, 97202: Good morning, I am jerry hanson and I live in the richmond neighborhood. I am asking to you vote against any proposal that puts wireless telecommunications structures on the residential streets. Many neighbors are, are already under legacy utility structures, and the richmond neighborhood, my neighborhood, were leveled and rebuilt, all those exposed lines and poles would be taken out because it really is quite ugly. My neighborhood has worked to increase the charm and livability as witnessed by over 600 new street trees in the last five years. All of you come out and plant, I know. You walk through the neighborhood and you will see fresh paint jobs. Planting is intent on top of utility poles gives us ugly, not beauty. I am not opposed to wireless technology. And I am hope that go we get 100% penetration of wireless use in the city. But, I believe that wireless structures belong in existing transportation corridor, not along the residential streets where we, we walk or dogs and bike with our kids and that sort of thing. Between division and powell, and it seems like perfect streets to put the, these kinds of structures. So, I am asking to vote, to keep our neighborhood streets, residential streets free of industrial structures and can't oppose it at this time, consider putting it on the table until we have, we have a full council again. Thank you.

Saltzman: Thank you. Miss miller?

*****: I would like --

Saltzman: Could you take the microphone and introduce yourself?

*****: Yes, I would like to ask --

Saltzman: State your name for the record.

Cynthia Miller, 5006 SE Ogden 97206: Cynthia miller. I would like for extra time because I am the one that's going to be most severely impacted.

Saltzman: We will give you five minutes, like we give everybody else.

Miller: First of all, just because more people are using cell phones doesn't mean that there's any intelligence behind it. I spent -- I want you to know what my symptoms are as I sit here. I have been having to live without electricity for about six weeks, and yesterday I spent a couple of hours in front of a computer, in order to write this letter. So, as a result my feet are burning, the backs of my legs are stinging and burning, I got about an hour sleep, I am hyper alert and agitated and emotional. These are the things that, these are the symptoms that are caused by electro-magnetic pollution. Cell phone antennas have been my biggest problem since being injured by a magnetic resonance imaging device 8.5 years ago. I have been able to find a safe place to live since. I know of at least 20 people in Portland who are electro-magnetically sensitive. Three of us have been driven out of our living spaces in the last three months. I now am going to have to move again. I

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have had to move five times since 1998. I am part of your early warning system regarding the effects of electro-magnetic and chemicals on human biological effects. The quality of my life has been impacted by exposures to both. I have a genetic trait that predisposes me to be sensitive to chemicals and ems, my father, sister, and two uncles died of result of exposure and ingestion of chemicals. My ex-husband and three of his brothers died early after working in the electrical electronics industry for two to three decades. The remaining three brothers who chose other career fields are still alive. Two of my four grandchildren were diagnosed with adhd. One was placed on ritalin at the age of 7. Excuse me. Autism, adhd are related disorders, some of them the more severe cases are linked to the same genetic trait or deficiency that runs in my family. The name of that disorder is hereditary copa-euphoria. It is the result of the liver being able to detox. 80 to 90% of people test are showing up with one or more induced deficiency the. 20% of people with this deficiency have become photo sensitive or light sensitive. That includes sensitivity to the entire electro-magnetic spectrum. According to a time magazine article, in the may 2000 issue -- 2002 issue, there is an explosion of children now suffering from autism. 1 million children have been, now been diagnosed as autistic. Many of them live in the silicon valley of california. My grandchildren live in Washington county, the second silicon valley. Their fathers are computer nerds, they spend hours of every day playing video games, watching large screen tvs, closeup. Playing computer games and with electronic toys. Also, the lawns with toxic weed killers and ingest signature amounts of petrochemicals and preserves in the commercially grown food they eat and the water they drink. They attend schools where chemicals are used to clean and sterilize everything and where they spend more time in front of cathode ray tubes computers. I grew up on a farm in Nebraska, a dairy farm. It was my job to clean the cows every day. We cleaned them with chemicals to reduce the spray population. I got ddt all over my hands and skin, as well as inhaling the fumes. Pesticides were applied to the farm crops throughout the growing season. In my 20s I worked for three years as a secretary to the research manager of a chemical research lab where I was exposed to every known chemical and chemical combination then known. By the end of three years, I was so sick that I could no longer work and spent eight years recuperating on an 80-acre farm where I grew most of our food organically. I have been unable to work a 40-hour workweek since that time. I became a writer and spent 20 or more hours in front of electric typewriters and computers, unknowingly exposing myself to ems. In 1994 I had a magnetic resonance imaging exposure in my lower body. M.r.i. Incorporate the use of radio frequencies bombarding 15,000 magnetic field. They spin the molecules out of order into random order to make an order. When they get back into order they release heat. As a result of the m.r.i. exposure I became disabled by chronic stinging and burning pain from the hips down. Ems hyper sensitivity is progressive. As a result of this injury I have been unable to find a safe place to live and have been repeatedly driven out of my living spaces by exposure to radio frequencies from police fire antennas, personal or station satellite transmitter receiver dishes and multicell phone antennas on top of buildings and cell towers. I am in the process of being driven out of Portland due to three cell phone towers within a 4 to 5 block radius east of my current residence.

Saltzman: Miss miller, your time is up.

Miller: Please let me finish this. I put a lot of effort into this.

Saltzman: I am sorry, but five minutes is the time limit. If you want to submit it to the clerk, will be happy to look at it. It will be available to the public. Mr. Seifert. Please introduce yourself.

Rick Seifert, 2115 SW Tyrol 97239: I am rick seifert, on the board of hillsdale professional business association, and I was the lead author of this report, the underground utility citizens advisory committee report which we, we presented to you more than two years ago now and which you approved in, and agreed to accept. You didn't approve the provisions, which is sort of why I am here today. Our conclusion was that degradation to the right-of-way by users needs to be

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compensated for. We need mitigation and it should be a matter of public policy, and those people who use the commons, which you are responsible for, on our behalf, needs to, you need to protect it and when we have a proposal such as this one, you need to set up a mechanism by which you compensate for that light which takes place and is getting worse. I was here last when the broadband folks were here and made exactly the same presentation, that anyone who degrades the common space needs to pay for it, in some way. What we are suggesting here is a small step as commissioner Sten mentioned, that we establish an underground utility, undergrounding account for utilities and it doesn't matter that these cell towers have to be in line of sight. The trigger is that these towers will, in fact, worsen the appearance of our right-of-way and by the way, in commercial areas, we have had reference to residential areas, I am here because the commercial area in hillsdale and commissioner Saltzman knows it well, is absolutely has high, high transformers and power lines and the like. It would be a 20-foot extension on those poles that's being proposed, that we have been proposed here. It would be a signature degradation of, of the environment in hillsdale. Hillsdale is a town center where, where you are asking us and we have accepted a higher density, we want greater use. We want people to, to have a pleasant pedestrian environment, encourage them not to use their cars, to use mass transit, and here, we are worsening the environment. So, we ask that, we set up this account. I would like to see personally a portion of these fees go into that account. Right off the top. The price of admission here is to do something about the damage you are causing and to begin to address this problem. As many cities have across the country. They see this as an important public policy issue that must be addressed. And I just wanted to say that the pictures we have seen here are lovely pictures against the backdrop of greenery and the like, but I can see where these towers will go in hillsdale and they will not be hidden in trees. They will be very obvious and we need, we need not to have these, these images in our mines that we have seen here today. These will be a real intrusion.

Saltzman: Okay. Thank you very much. Do we have further?

Ivan Stewart, Cingular Wireless, 2701 NW Vaughan, #890 97210: I am ivan stewart with cingular wireless. As new name in the market, and some people may be familiar with it on a national basis, but a lot of people may not be. On a local basis. I will just give you a quick background on the company. The company is made up of a conglomerate of sbc communications, pacific bell and -- conglomerate of sbc communications. We are currently in the process of deploying a pretty substantial buildout in the Portland market for deployment in the first half of next year. Some of the sites that we are looking at, are within the right-of-way. We have had the opportunity through the staff members, dave to have something put into an agreement that would affect our choice of being this the right-of-way, and today, we are fairly comfortable with the agreement and want to the staff on that behalf. On behalf of singular, we want to be a good neighbor to both the public and to the city, and really that's probably the extent of the comments that we have at this point in time.

Saltzman: Thank you very much.

*****: Steve would like the balance of my time.

Steven Topp, SBA Network Services, 123 NE 3rd Ave., 97232: My name is steven topp, with sba network services. We do two activities, one is that we have towers at that we at least space to the various carriers on. We build the towers and lease the space out. Second we provide services to the carriers to site their facilities, take them through the zoning and building permit process and site acquisition process. I looked over the, the proposal in there, and from a, from a tower-builders perspective, it's a, it's an okay system because it will allow the various carriers to get their facilities up where they need to get them up. There is provision for us if we wanted to, to pursue building, replacing a, a pole and then putting the carriers on there. What is lacking at this point is the incentive that allows for the, for, actually, the carrier or the tower builder to beef up the pole so that

it can handle an additional one or two carriers in addition to what they are putting off for themselves. And that's something that I think that we can work on as we go through the process here. So, I wanted to basically say that we are in favor of the franchise -- I am sorry, the right-of-way agreement. We look forward to it getting implemented soon, and correlating that to the single project. There are probably between 20 and 25 sites that are currently looking to be in the right-of-way that if it's not adopted soon, and I am not trying to put pressure, just letting you know what's happening, then we have to start looking at nonright-of-way sites because we have a deployment that's supposed to occur in the first part of next year, and that means get it go through the zoning and building permit process in the next couple of months. So, it will be great if we can get this going. It will get those sites going and into the system and available, if not, we have to start pursuing the other options. My last statement is, is that, that adoption of the right-of-way agreement will certainly encourage co-location on the poles and be looked at favorably and strongly by most of the carriers, but I didn't want anybody to think that it was going to totally eliminate the need for the taller towers. Those are still necessary in some instances to get a broader capability. The, the power pole, microcells have more limited capacity and capability and so, they are going to be other areas where

they will need to put up regular towers. And thank you.

Saltzman: Thank you, and welcome to Portland. Next.

Mike Walker, 710 SW Stephenson Ct., 97219: Good morning, council. My name is mike walker. I didn't know which to sign on the agreement or the proposal of this. Mr. Soloos was gracious enough to e-mail me a copy of what has transpired thus far. Him and he have been corresponding for the past 3.5 years over this. You can say that, that I am the one who kind of started the wheels going, and there are some questions quickly. I would like to know how long until any decisions are made because I would like to get our neighborhood council together to look over the information that was sent to us. We just got it on the 20th, and as far as the pole in my neighborhood is concerned, line of sight is, is first of all, I have the map that shows that the pole was put in the wrong place in the first place. There is no line of sight. They took a 35-foot pole and replace it had with a 80-foot pole with a hood ornament on top of it, and that's kind of why I am here today. Like I said, the line of sight doesn't -- there is no involvement. I live in a very hilly area in the west hills, and nothing like that works. And within the distance that you can throw a football, there is a 300-foot monopole hidden in the trees of tryon creek. I can't see where all of these companies can't all play together in the sandbox and come up with an idea that they could eliminate so much antenna use on poles and make it somewhat appealing. As many people have said, I am not opposed to the, the wireless companies coming in and working with us, that is the main thing that I want to put ahead is working with the people so that we are not left in the dark, and as mr. Solace has said, you wake up in the morning and all of a sudden you have this in your yard. That's what we want. We want to be kept apprised of the information that's going on.

Decisions being made. Share that information with the public. Last but not least, interference. I have noticed since that pole has been in my neighborhood, that I do get sufficient interference on am and fm radio, as well as tv. That's what I have noticed. And I would like to thank pge for returning my phone calls every once in a while and especially mr. Solace and the city who have looked like they worked very, very hard and let's see if we can can't hash something out.

Saltzman: Okay. Thank you very much. Anybody else in the audience wish to testify? Okay.

Sten: Staff come back?

Saltzman: Yeah, why don't you have staff come back. I did have one question, actually, myself. Questions of staff? [inaudible].

Saltzman: I was curious, the proposal by mr. Hansen about excluding residential zones, would that looked at and are there any, any --

Soloos: Well, we actually --

Saltzman: Is that too big of a swap. Tell me why we couldn't do something like that.

Soloos: The wireless -- the wireless industry has developed in three phases. Initially, this is a new technology, only 16, 17, 18 years old at a commercial level. Initially they would come to town, say we need to build one tower and then we will have this carpet blanket coverage, and that was true at the time because we didn't have that many users and that many services. And now it's sort of a chicken and the egg. You are getting more towers, you get more service and you get more users and so forth. And the industry, as I understand it, I would like them, if I am wrong, to speak for themselves, is that they move to the next level of penetration. If you have coverage sites and then you have capacity sites and at some point the towers, the intent -- with the antennas on them, you get full of signals. I think that the, that the buildings can handle 65 to 75 calls at a time. That means for every caller after that, the signals are getting dropped. So, then you have to build more, more sites. The reason it's called the cellular is because that coverage area is considered a cell, like you have to divide the cell and you do that by placing another tower or antenna on top of the pole. It's really the antennas that we are talking about here, and you move that down to a certain level and you are, you are past just the, you know, the powells and beaverton hillsdale highways, and I think that that's partly why we are here -- that's partly why we are here. With the wireless use, not just subscribers, but minutes, with we are going to need that coverage everywhere so if mr. Walker lives on boones ferry, the industry needs coverage there. It's a mobile telecommunications service and a lot of people use it, and we are mobile in the right-of-way.

Saltzman: Is basically, you couldn't achieve the universal coverage that is sought after by this pole, in addition to commercial streets?

Soloos: I think that's pretty clear, especially when you look at the topography of southwest, and we just don't have your standard grid, main street every mile like you have in southeast, and that's, a lot of the pressure for us to pursue this came from the issues at west burnside, west terwilliger, west boones ferry, west beaverton hillsdale. That southwest area because of topography.

Saltzman: Thanks.

Sten: I wanted to check in on the issue of the length of the, of the permits. That there is a request for, can we do it for ten years. What's our thinking on that?

Soloos: The initial term of the agreement is three years with a five-year renewal. And we, too, you are looking at two-thirds of our office right now that handles the utility side. We don't -- we, too, would like to longer term agreements for administrative reasons. This, being the first dance with the industry, we would like to do three.

Sten: Just to see.

Soloos: It works out the kinks and enables us to a better feel of what is going on. As I mentioned in my presentation after this, we would like to move to at least a five plus five for the same reasons they talk about. The industry needs foreseeability but to see the city.

Sten: But the three is really just to give yourselves a chance to check it?

Henry: I would add that, it is a new program. Technology changes, you know. We are both kind of testing each other out to see how it works. If we get ourselves locked into a ten-year, into a ten-year agreement right out of the gate, we have no options for making adjustments if technology dictates adjustments need to be made.

Soloos: That was really the simplistic thinking of it.

Saltzman: Any further questions? Thank you. So, we have the resolution before us. There was a request that we delete the first, or second for the resolve paragraph. Somebody want to make a motion to that effect?

Sten: So move.

Francesconi: Second.

Saltzman: Okay. Okay. Let's call the roll.

Francesconi: Well, it seems like we have maybe four explicit objectives and I think that erik seifert may have added a fifth, and that is to provide cell phone coverage to our citizens and allow our businesses to operate. To try to protect our neighborhoods from blight, some of the blight that this can cause, which would be a second goal, and the third, kind of unstated but to make sure that we are complying with federal requirements and law as commissioner Sten said and a fourth to generate revenue for the city. And I think that the staff has done a terrific job in balancing all the objectives and coming forward. I think you have done a very good job. Rick seifert has added, can we also mitigate some of the damages done to the neighborhoods as we meet these four objectives. So creating, establishing, for the most part, a symbolic fund at this point, but as we become more educated on this subject, it should arise as a priority, so that makes sense, commissioner Sten, and on the issue, it's not appropriate for us to negotiate up here, and I think that you have done a very good job. I don't think that we should set seattle as the goal and if we can raise more revenue to accomplish a variety of public purposes, that's good. Having said that, I think that it is important that you work with folks on the term, which makes sense now that you have explained it, that you start shorter and work towards a larger one. You look at the site questions, but see how, how you negotiate. If you are comfortable, that's where we need to be, then I am not going to second-guess it up here. I think that you need to have a process, though, where you work through and you look at other cities where we line up in, not just with seattle, but nation-wide to make sure that there is some balance in that but I trust that you will find the right approach. So, given the alternatives of a lot of tall cell towers, using the public right-of-way in this way, as they indicated, makes a lot of sense to me. Aye.

Saltzman: Well, I think the wireless technology has become basic infrastructure, certainly makes perfect sense to have access to the right-of-way. And I think that this is going to be somewhat of a process between the, the providers and the city and establishing at least we have the terms, establishment for the first three years but I am sure that things will be looked at over the first three years and perhaps change as you go into the longer term agreements. I do hope that, that in working with the, the providers that there could be some sort of a, maybe an implicit hierarchy when you have a neighborhood, like the richmond neighborhood where mr. Hansen lives where you have a division and a powell, and you know, it's a relatively small distance between that and the residential streets, that you can't establish a hierarchy, that the towers are the, the additions go first on the major arterial collectors and second, on the residential streets. That seems to be a valid point. I realize that southwest is, you know, a hole different area and you have to have different approaches there but I think in a lot of southeast, northwest, northeast, it would make sense to give a priority to the commercial collectors for those tower extensions. So, good work, mr. Sten and good work, let's go forward. Aye.

Sten: Well, thanks everyone. I gave my comments in the opening, and I want to thank mary beth and david and marshal from my office for very hard work. This has been going on for quite some sometime, and I think that it's a good balanced package and I think it has not been an easy one. But, I think it's an improvement in policy. I am also very sympathetic to the idea of trying the policy preference for the rob marciano streets, again, the residential streets, I do buy the argument that it probably doesn't work to say we can't do it on residential, but in areas where we could do it on commercial, I think that's a very good argument, so we ask you to keep an eye on that, and on the issues to the industry, I think that, you know, my, I think that we have a good package here. I think that it's a good package when it is acceptable to everybody but nobody loves it, and I think that clearly the people like it more than dislike it in terms of the balance that we found, but on some of the issues of terms and sites versus poles, I think, you know, it's clearly the council's point of view that, that the cable office can have a bit of room to work on those issues and not lock it in as we

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learn more about it. In terms of, but we will leave it to the cable office to negotiate those terms with the industry. So thanks again, and I vote aye.

Saltzman: Let's go back to our regular agenda. Item 904.

Item 904.

Saltzman: This will authorize code changes to the stormwater management manual, that will incorporate many of the recommendations that have been made by our stormwater advisory committee and other stakeholders. These are provisions that clarify the city's stormwater management manual requirements and provide consistency with the 2002 stormwater management manual. We do have staff present, if any council member has questions, otherwise, if there is no public testimony, this can move to second reading, so anybody in the audience want to testify? Okay. This will move onto second reading. 905.

Item 905.

Saltzman: Anybody wish to testify? Okay. Why don't you call the roll, please.

Francesconi: Aye. **Saltzman:** Aye. **Sten:** Aye.

Saltzman: There being no further business, the council is adjourned.

At 11:17 a.m., Council adjourned.