



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 22nd DAY OF NOVEMBER, 2000 AT 9:30 A.M.

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

OFFICERS IN ATTENDANCE: Britta Olson, Clerk of the Council; Pete Kasting, Senior Deputy City Attorney; and Peter Hurley, Sergeant at Arms.

Item Nos.1688, 1696, 1697 and 1698 were pulled for discussion and on a Y-5 roll call, the balance of the Consent Agenda was adopted.

1683 **TIME CERTAIN: 9:30 AM** – Hear appeal of Dora P. McCrae (PIIAC No. 00-15/IAD No. 98-054) to the Police Internal Investigations Auditing Committee, per City Code 3.21.085(4)(d) (Report introduced by Mayor Katz)

Disposition: Continued to March 14, 2001 at 2:00 p.m. Time Certain.

1684 Hear appeal of Timothy M. Strategos (PIIAC No. 00-16/IAD No. 00-141) to the Police Internal Investigations Auditing Committee, per City Code 3.21.085(4)(d) (Report introduced by Mayor Katz)

Motion to send the appeal back to Internal Affairs Division: Moved by Commissioner Francesconi and seconded by Commissioner Hales. Y-2; N-Katz, Saltzman, Sten.

Motion to uphold the PIIAC advisors' ruling: Moved by Commissioner Sten and seconded by Commissioner Saltzman.

Disposition: Appeal Denied. (Y-3; N-2, Francesconi, Hales)

S-1685 **TIME CERTAIN: 10:45 AM** – Amend Code to implement the Clean River Incentive and Discount Program and make corresponding revisions to stormwater management rates and charges (Ordinance introduced by Commissioner Saltzman; amend Code Chapter 17.36)

Disposition: Substitute Passed to Second Reading December 6, 2000 at 9:30 a.m.

CONSENT AGENDA - NO DISCUSSION

1686 Accept bid of Terra Tech, Inc. to furnish annual supply of seedling protection products for \$45,009 annually for three years (Purchasing Report - Bid 100339)

Disposition: Accepted Prepare Contract. (Y-5)

NOVEMBER 22, 2000

- 1687** Accept bid of Pacific International Pipe Enterprises, Inc. to furnish concrete sewer pipe for \$113,895 annually (Purchasing Report - Bid No. 100370)
Disposition: Accepted Prepare Contract. (Y-5)

Mayor Vera Katz

- *1688** Authorize lines of credit and bonds or notes for Light Rail Extension (Ordinance)
Disposition: Referred to Commissioner of Finance and Administration.
- *1689** Authorize lines of credit for Local Improvement Projects (Ordinance)
Disposition: Ordinance No. 175092. (Y-5)
- *1690** Pay claim of George Bean (Ordinance)
Disposition: Ordinance No. 175093. (Y-5)
- *1691** Create one Benefits Manager position for Bureau of Human Resources (Ordinance)
Disposition: Ordinance No. 175094. (Y-5)
- *1692** Create one new nonrepresented classification, Land Use Review Supervisor (Ordinance)
Disposition: Ordinance No. 175095. (Y-5)
- *1693** Abolish one nonrepresented classification and create one new nonrepresented classification, Sustainable Development Director (Ordinance)
Disposition: Ordinance No. 175096. (Y-5)
- *1694** Authorize the Purchasing Agent to sign a Purchase Order with Danka Office Imaging Company to furnish a copier/printer and a five-year service and supplies agreement for a total of \$481,500 (Ordinance)
Disposition: Ordinance No. 175097. (Y-5)
- *1695** Amend contract with Northwest Assessment Center to extend length of service and compensation (Ordinance; amend Contract No. 32793)
Disposition: Ordinance No. 175098. (Y-5)
- *1696** Contract to allow the Federal Bureau of Investigation access to Imageware photos and demographics via an interface to the Portland Police Bureau infrastructure (Ordinance)
Disposition: Ordinance No. 175110. (Y-5)

NOVEMBER 22, 2000

- *1697** Agreement with Portland Office of the Federal Bureau of Investigation to participate in the Portland Joint Terrorism Task Force (Ordinance)

Motion to substitute the mission statement in the Memorandum of Understanding for Item 3 of the ordinance: Moved by Commissioner Hales and seconded by Commissioner Francesconi.

Disposition: Ordinance No. 175111 as amended. (Y-5)

- *1698** Contract with StastnyBrun Architects, Inc. for an amount not to exceed \$150,000 for planning services for the Midtown Blocks Planning Study (Ordinance)

Disposition: Ordinance No. 175109. (Y-5)

Commissioner Jim Francesconi

- *1699** Authorize agreements with Multnomah County and Albina Ministerial Alliance for youth services related to the "We're Here, We Care" program (Ordinance)

Disposition: Ordinance No. 175099. (Y-5)

- *1700** Assign the right for sewer facilities to be located in Madrona Park (Ordinance)

Disposition: Ordinance No. 175100. (Y-5)

- *1701** Contract with JEC Mechanical for \$60,325 for East Delta Maintenance building HVAC upgrade (Ordinance)

Disposition: Ordinance No. 175101. (Y-5)

Commissioner Charlie Hales

- *1702** Contract with Tice Electric Company in the amount of \$113,425 and provide for payment for pedestrian safety improvements on SE 60th at Salmon and Lincoln and at NE 112th and Marine Drive (Ordinance)

Disposition: Ordinance No. 175102. (Y-5)

Commissioner Dan Saltzman

- 1703** Accept completion of the NW Germantown Rd., MP 1.1 culvert replacement, Project No. 6278, and authorize final payment to B L & B Contractors, Inc. (Report; Contract No. 33077)

Disposition: Accepted. (Y-5)

NOVEMBER 22, 2000

- *1704** Authorize a contract for construction of Insley Basin CSO sumps west of Milwaukie, Project No. 6877, and provide for payment (Ordinance)

Disposition: Ordinance No. 175103. (Y-5)

- *1705** Authorize a contract for construction of Insley Basin CSO sump connections west of Milwaukie, Project No. 6962, and provide for payment (Ordinance)

Disposition: Ordinance No. 175104. (Y-5)

Commissioner Erik Sten

- 1706** Accept contract for groundwater pump station electrical improvements with Christenson Electric, Inc. as complete (Report; Contract No. 32929)

Disposition: Accepted. (Y-5)

- *1707** Contract with Multnomah County Community & Family Services for \$1,746,850 for the Multnomah County Omnibus Contract FY 2000-01 and provide for payment (Ordinance)

Disposition: Ordinance No. 175105. (Y-5)

- *1708** Contract with Salvation Army District Office for \$202,420 for the provision of emergency winter shelter for homeless adults and provide for payment (Ordinance)

Disposition: Ordinance No. 175106. (Y-5)

- *1709** Contract with Southeast Uplift Neighborhood Program for \$42,000 to conduct Housing and Community Development project-related citizen participation activities in inner and outer southeast and provide for payment (Ordinance)

Disposition: Ordinance No. 175107. (Y-5)

- *1710** Designate and assign a strip of Bureau of Water Works land for public street area for the Powell Butte Heights - Phase III street improvement project (Ordinance)

Disposition: Ordinance No. 175108. (Y-5)

REGULAR AGENDA

Mayor Vera Katz

- *1711** Create one new fund effective November 22, 2000 (Ordinance)

Disposition: Ordinance No. 175112. (Y-5)

NOVEMBER 22, 2000

- *1712** Authorize Restrictive Covenant and Easement Agreement for Performing Arts Center (Ordinance)

Disposition: Ordinance No. 175113. (Y-5)

- *1713** Accept a Department of Justice, Justice Based After-School Initiatives pilot training site grant (Ordinance)

Disposition: Ordinance No. 175114. (Y-5)

Commissioner Charlie Hales

- 1714** Consider vacating a portion of SW Sixth Avenue west of SW Sheridan Street at the request of Terwilliger Plaza (Hearing; C-9978)

Disposition: Approved: City Engineer Prepare Ordinance. (Y-5)

- 1715** Amend Code to change the prohibitions relating to skates and skateboarding (Ordinance; amend Code Chapter 16.70.410)

Disposition: Passed to Second Reading December 20, 2000 at 6:45 p.m. Time Certain.

Commissioner Erik Sten

- *1716** Increase contract with Rapidigm, Inc. for computer services by \$175,000 and authorize payment (Ordinance; amend Contract No. 32300)

Disposition: Ordinance No. 175115. (Y-5)

At 1:00 p.m., Council adjourned.

GARY BLACKMER
Auditor of the City of Portland



By Britta Olson
Clerk of the Council

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

NOVEMBER 22, 2000

WEDNESDAY, 2:00 PM, NOVEMBER 22, 2000

DUE TO THE LACK OF AN AGENDA
THERE WAS NO MEETING

NOVEMBER 22, 2000

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.

NOVEMBER 22, 2000 9:30 AM

Katz: I told him I don't think he has ever won a land use case.

*******:** Oh, yeah, he hasn't won them all, though.

Katz: All right, the count will come to order. Britta, please call the roll. **Francesconi:** Here.

Hales: Here. **Saltzman:** Here. **Sten:** Here. **Katz:** Present. All right. Any items to be removed off the consent agenda?

Britta Olson, Council Clerk: We have a request for four of them. 1696, 1697, and 1688, and 1698.

Katz: Okay. All right. Any other consent agenda items to be removed by anybody in the audience or by any member of the council? If not, let's have roll call on the consent agenda.

Item 1688.

Olson: There's been a request to send this back for further work.

Katz: Any objections anybody who came to testify on this particular item? All right. Hearing no objections. So ordered. All right. 1696. Is anybody here -- I know this was pulled off, I know, dan, you pulled it off. Were you planning to testify? I would like to then wait for somebody from the police bureau, so because they need to respond either you or the questions by the council since it is their item. So, if there is no objections, let's come back to that one. I think it is lynnae comes back to the council, or comes to the council. All right. Let's do 1698. We will come back to those, dan, don't worry. I won't forget.

Item 1698.

Katz: Francesconi?

Francesconi: I called it. I see that we have some people here, I don't know if council has any questions. One question that council did have was source of funding. I would like, it is for p.d.c., I would like to thank the mayor and p.d.c. For this. It actually -- maybe I will introduce it this way, and people can -- you can address it, but the donation of park block 5, by tom moyer, gave us an opportunity to think big about the mid town area, and we have had significant community interest on this, and activity on the park blocks from some prominent citizens. I think that now is the time, though, to open this up to the broader community so that they can take a look at, it is our central city. And so gayle kelly is spearheading this, but we are going to have a process to include citizens, downtown residents, the business community, planning, p.d.c., Parks, and outside experts to kind of look at this area. I am pleased to tell you that the group looking at the park blocks is fully aligned with our efforts. Neil may be here to endorse this process, but he's fully in support of us looking at this and bringing these efforts together. The goal will be the revitalization of this retail area in the context of an exciting and vital public space. What we are seeing in the river district, gateway wants it, the park blocks want it, I am sorry, hollywood wants it. Parks can, are, key urban spaces to our retail and economic vitality, and we have, already, a vital downtown, but we ought to keep it that way for our retail core, so that's why it is planning leading this effort, not parks, and it is planning and p.d.c. Working together with parks to do this. So, this is exciting. I want to particularly thank the mayor for putting this together. Go ahead. Gayle, do you want to address this? See, and then what we are trying to do is we have park block 5 at one end, and we have o'brien square at the other, and we both -- we have the resources to redo these, and we are going to redo them. O'brien square,

in particular, has been a barrier to business development, and with good park design, we can redo that. But, we need to look at the whole area so that we know how to design these parks, and that's where we need the help of planning pdc, and most importantly, the citizens.

Katz: Okay. Go ahead.

Gil Kelley, Director, Planning Bureau: I would just echo -- Joe Kelly, planning director, I think that the, the notion here is to take a quick strategic approach, have a very intensive theory of design right up to the first of the year, and really come out that far with some guidance for redevelopment of property, as well as -- private property, as well as public acquisition of the properties in that district. The notion being that we could give the downtown retail core a real shot in the arm for this exercise, as well as to define a particular character and nature of this subdistrict of the retail core. So, I think it will be an exciting piece of work, and I think that the, the notion that we will be bringing in national, nationally recognized experts in the area of retail, as well as design and public spaces and historic preservation lends a lot of expertise to the exercise.

Amy Miller, Portland Development Commission (PDC): Yes. And I am Amy Miller, Portland development commission. Also, echoing the comments made, I think that the South Park block community association was very interested in having wider view to give direction to that planning for the park, and so it also asked for this wider study.

Hales: What's the availability of funding for implementation so that this report doesn't sit on the shelf. We have a number of places in the central city the planning dollars per square foot could repay the -- repave the streets, plant street trees and install lighting but we spent it on planning so that -- I don't want that to be the outcome here so, what dollars are there for implementation when you get done with the design work?

Kelley: Well, we are taking a small increment of the capital funds for park block 5 that are really inadequate to complete that project in the first place, to do this exercise. But we were able to do it right, we are going to need to look at additional funds.

Hales: At this point, we have no funds for implementation?

Kelley: We do have some. We are not sure that it is adequate to do the job that's necessary for that -

Katz: I don't think that that was the question. The question was, the implementation as a result of the study.

Hales: The study will say, here's an action chart, ten things we ought to do to make these great streets, sawed improvements, streetlighting --

Kelley: Potentially, those things, we are also looking at this design program to really get a private investment in the district and there is a lot of movement right now in the private sector there, sort of jostling around with regard to properties adjoining this corridor, so I think that a lot of what we are doing is giving some guidance in the short-term for private investment.

Francesconi: That's a very good question, and I think he answered it. But let me try it. There is about, and I may be wrong with the precise amount of money, so you might have to correct there, but I think there is a million dollars in park block five. We have a 1,850,000 to a million, for the square already --

Hales: In the tax increment district?

Francesconi: No, through parks, we have a source of funding for the parks that do this. In Owe Bryant square --

Hales: What's the --

Francesconi: It is, it is -- he's not here, I will have to get back to you, but there's -- I think that it is S.D.C. Money, but there is another source that she is accessing, and I have forgotten what it is.

Miller: Portland development commission also has \$500,000 --

*******:** Of tax increment money from the district.

Francesconi: And then she's matching it with another 500,000, and then -- I will get you the source, it may be s.d.c., It may not, and then there is the other capital so, that's part of it. And the other is, clearly there may be a bond measure, so there is discussions there. There is the private sector investment separate. There is a park's foundation that we are creating that's also going to be focused at this, but your main point is, this thing will not sit on the shelf.

Hales: But that's for the parks. So, what sources, I mean, again, I am not sure what the product of the study is going to be, but, but let's say that it is, it recommends for the sawed improvements for the buildings or, you know, co-development of, of new buildings on the vacant lots, I mean, what funds do we have, you know, I don't know what the study is going to prove, so obviously, we knew that we wouldn't spend 150,000 but if it produces a list of things we ought to do in this portion of the district, you have got half a million of tax increment money, a million, 10 million? I don't need the details, I just want a sense we won't have a study on the shelf.

Katz: Go ahead.

Miller: I believe that there is the outcome of this study would then ask for particular funding, for any city involvement, and as you know, south park block, urban renewal district is going to be sunset not guilty a number of years, and I think that p.d.c. Was interested in seeing what final appropriations of urban renewal funds would be appropriate.

Katz: Okay. Further discussion? This is going to land on our laps one way or the other, and I would rather be ahead of the train than in the caboose. All right. Roll call.

Francesconi: That was well put, mayor. [laughter] Thank you for your leadership on this. Aye.

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

Katz: Mayor votes aye. All right. Is lynnae here? Okay. We will come back to the two items that have been pulled off the consent. Let's go on now to the time certain. 1683.

Item 1683.

Katz: All right. Before you start, michael, we all got a note or a letter or a memo that there is a pending lawsuit against the city, and so I want peter to make it very clear what the possible liabilities are depending on, on how far we go into the discussion of this.

Pete Kasting, Senior Deputy City Attorney: I think what needs to be emphasized is the scope of review, the council, sitting as the, the review committee. That scope of review is to find that city code section 3.21.083 sub a which reads the committee may review the adequacy of an iid investigation and whether the iid determination was supported by the findings of the iid investigation. The committee shall not investigate complaints about police officer misconduct. The committee may refer all appeals to the citizen advisor's for review and recommendation in the manner provided in 3.21.05 sub d, so the point is your questions should be confined to reviewing the adequacy of the iid investigation and whether that determination by iid was supported by its findings.

Katz: Let me ask another question before we start. We had another case a long time ago where there was a case filed against the city, and I can't recall whether we delayed hearing the piiac issue until the case was resolved and then come back to the iid complaint or not. Do you recall that at all?

Kasting: I have no idea.

Katz: Anybody here remember that? All right. So, just want to caution the council on this. Now, if you want to proceed, that's fine, and we will proceed. But, if you want to go into great detail on that, then I would, I would recommend that we wait until we conclude with the case filed against the city and then go back and deal with the iid complaint. So, just want to flag that. Okay. Michael.

Sten: Can I ask you a question? I don't know if this is appropriate or not, but I am inclined to ask the citizen their view on this because, I mean, I was a little bit shocked to get that note from our lawyers, not that it is not right, but the tight rope that you are asking me to walk in deciding this case is very thin, you know, to be able to decide a case but not express an opinion is what, essentially, you

know, and so I almost defer to the citizen to say, you know, you have got your day today, would you rather wait until your court case is over or proceed under what you have just heard.

Katz: And I -- the reason that I raise that because I knew where the council usually goes, and I told peter that, and that would be very difficult for the council, and I didn't want to -- I didn't want more discussion on the part of the council -- I didn't want to thwart discussion on the council's part. I thought that we should conclude delay until the discussion is resolved and then we can look at this and ask far more questions in depth, but, what's the --

Sten: I am inclined to ask the person, whose complaint it is.

*****: Well, the appellant is here --

Katz: Identify yourself.

Hales: Well, frankly, erik, I wouldn't mind hearing the appellant's decision but we made need to make a decision about whether there is a valid decision for us as reviewers of this and if we are so constrained, as you pointed out, as reviewers that we can't do our job effectively, even if someone wants us to do it, I would be inclined to say, wait until we can do it right.

Sten: Well, I think it is possible without having looked at the pros and cons of it that we should have some kind of policy on what we do when cases are being litigated. We don't have that under the current -- they have wait add long tile to get this hearing, and so that's where I am, you know, I am curious what, what they think. But, I agree.

Katz: Let me ask -- michael, can you add to this conversation? Identify yourself for the record.

Mike Hess, Police Internal Investigations Auditing Committee (PIIAC) Examiner: I am mike hess, piiac examiner for the city. And we do have a lot of cases that come through the citizen advisors where the case is still being heard in court or pending, and this particular case has gone on for well over two years, and as mr. Sten said, it has been a long time for the appellant, and we do have the appellant and her attorney here, but I don't think that -- actually, I kind of would agree with the commissioners that it might be better to wait until the court case is finished before you put yourself in that position.

Francesconi: Here's what I am concerned about. One is, you know, we -- it took so long to get to this in the beginning. Now, we are addressing that, but that's taken so long. That's number one. Number two, an unrelated concern but let me comment, when you have five piiac advisers abstaining, that's a problem. So, I guess I would like you to address that separately. Because, not now, perhaps, but we need piiac to give opinions, not to abstain. Okay. The third point is that apparently, if I understand the facts right, there has been a trial already, and now I think that there is a retrial, if I have got the facts right, so there is more investigation, there is more evidence out there already. I have some questions about the depth of the investigation, and since there is other information already available, is it possible that piiac could look at this, reconsider what's out there, without us getting into the, the issue. It just it seems to me that you have five piiac people abstaining. There has now been a trial. There is a lot of evidence out there somewhere, and at least I had some questions about the adequacy of the investigation. Why don't we just make that available to piiac, have a more in-depth review, and then present it to the council? To me, that's a more -- maybe there is something wrong with that approach, but it is a more logical way to proceed, I think.

Hess: For one thing, we only look at IAD investigations, and their investigation is closed on this, so we are not going to have any other information. All we have is what the iid has.

Katz: That's true. And I guess commissioner Francesconi's concern that five of the citizens abstained.

Hess: Right, and I asked a couple of them to come here, if you want to ask them why they abstained, mr. Ford was one, denise stone, I have one person who voted for, one person who voted against, and one who abstained, who can explain that.

Katz: Right. And I will ask the council whether they want to go there at this time or just delay this until we close the legal issues with this case. I guess that I have a little concern because of the discussion that we had with the task force, when we discussed, if you are going to -- if we make some changes in piiac, how do you deal with iid cases and criminal cases, if you ask officers to subpoena them, to testify, then they are excused from any, any --

Hess: From criminal cases.

Katz: From criminal cases.

Hess: Not from civil cases.

Katz: Right so, we are getting both of these things coming at us at different times, and it just -- it makes it very difficult for the council, because the council does tend to go beyond just what peter described.

Kasting: The council, I am sure, knows this, but just as a reminder, I will mention it, the code also provides in section 3.21.070, the committee shall have discretion to determine which request for review it will grant. So, you can exercise discretion on what case to say hear and I think that that implies discretion on when to hear them.

Katz: So, where is the council?

*****: I want to wait. Wait?

Sten: I was still inclined to hear from the appellant.

Francesconi: I hate to be difficult, but I think that we should proceed. But I will bow to the majority of the council.

Katz: Commissioner Sten, what is it that you want to ask the appellant without getting again into the --

Sten: I would ask the appellant to address the question of -- I clearly can't get into all the details of this case today with the -- would, would rather have a hearing before this council on a very limited scope, has been described about our attorney or set it over until after the court date in february and have a chance to have a more full hearing, because I think that they wait add long time to get this hearing, and if they would rather have it, my advice would be to set it over, but I would be influenced by a request to have it today, although I may or may not agree with it, I would just be curious to hear their opinions.

Katz: I usually, when council members want to hear from somebody, we go forward and we do that, but I just want to warn you in terms of the discussion on the council. All right. The question, the question to the appellant is not describe the case. The question to the appellant is whether they want to proceed with very limited discovery and questioning on the part of the council now or wait until the lawsuit is complete. So, is the appellant -- can the appellant please come forward, if they want to?

David Clarke, attorney representing Dora McCrae: Good morning, mayor. I am appearing on behalf of Dora McCrae. As I understand the purpose, the way the piiac thing is written now, the merits of the underlying case have no bearing on --

Katz: I know, I know all of that. Don't lecture to me. I asked you a question. I know all of that. But the council talks about a lot of issues that go far beyond what the code specifically addresses.

Clarke: So your question is -- would I allow my client to answer questions on the underlying fact merits of the case? The answer is no, in advance of the next trial.

Sten: My question is, my recommendation to you from me, personally, would be that we set this over until after the trial so that in trying to determine this case, I could have more, more breadth to understand what happened, which I won't do today because of the trial, so I would recommend putting this over until after the trial, but I wanted to see if you agreed with that or if you wanted to ask us to proceed today, whether or not we proceed today is going to be a debate.

Clarke: I see no reason, given the scope of your review, that you can't proceed today because there are two separate issues.

Sten: And I am telling you out loud I think it will limit my ability to judge the case, so I want you to, to have your client know that that's what I am saying.

Katz: Okay. Thank you.

Hales: So you would prefer to proceed with this, with this action, or this review by the council regardless of how constrained we are?

Clarke: Your constraints are the existing administrative rules that govern the scope of your decision, not -- and if you stick within those, then we won't be discussing the merits of the underlying case. Which is what would be discussed at a trial of the case. The outcome of which is irrelevant to your decision.

Hales: Let me ask the question a different way -- what do you hope to obtain from this review by the council that's different than what you might obtain if you succeed here today, what would you obtain that's different from what you might obtain from a court of law?

Clarke: This process, my understanding of this process is to give a citizen who makes a complaint about police conduct, a fair voice, within the police department, to evaluate that complaint, so the piiiac thing is -- was there a proper investigation of the complaint done that was fair, thorough, adequate, with respect to the interests of the citizen. Forget about the merits. You are looking at the quality and nature of the investigation. Were the right questions asked. Were they timely asked. Were people given a fair opportunity to present their side of the picture before a final decision was made, and then ultimately, what's the disciplinary action, if any, that should be taken against the officer.

Francesconi: Following up, do you intend to use anything you get here today in trial?

Clarke: I don't think that I can.

Katz: Oh, I -- I am not sure that --

Francesconi: The answer is no, he will agree not to use it.

*****: Excuse me, assuming the other side agrees to the same thing.

Clarke: I don't see that we can get into this. There was piiiac documents that were ruled inadmissible the first go around. The only thing that is admissible are the statements obtained from the different individuals interviewed at various times by the investigator.

Katz: Thank you. The new trial is set for february 2001. Peter --

Kasting: I am asking the attorney who is handling that case to come up so that she can advise on --

Katz: Good. Because the attorney is saying that none of the information that would come out of here, even if he opened it up for broad discussion, as we usually do, could be used on his behalf, for his client's behalf. Identify yourself for the record.

Jenifer Johnston, Deputy City Attorney: Jennifer johnston, deputy city attorney. In the last trial they did exclude all but the statements, but the statements by city commissioners are statements by the city. So, I would be very concerned that plaintiff's council would attempt to use those in the next trial, which I believe is the concerns that peter expressed earlier and the concerns that we have about having this discussion. I also know that even though just now mr. Clark indicated that, you know, we would not need to get into liability issues, ms. McCrae's appeal raised the verdict in the prior lawsuit as part of her appeal. She raised some of those issues before piiiac so to me, that's a clear indication that they do want to discuss liability issues with this council and that they intend to do so. And I would be concerned about city council discussing those liability issues when that could affect the upcoming trial.

Katz: All right. Thank you. Mr. Hess, I really think after hearing the city attorney and getting a sense from the council, that we would like to hear this after the trial is completed, and I really don't think that bringing cases that have implications in a trial is, is, before that process is completed, is

going to be of any value to your -- to the appellants because the council really does -- we are piiac, and we do ask questions sometimes that may be outside of the traditional scope or ask them to get to whether the procedures were appropriate and proper.

Hess: Might I suggest that we discuss that issue and see if we could write that into the city policy when we rewrite the code on piiac?

Katz: Fair enough. Yes. And I think that it was commissioner Hales that raised that a long time ago.

Hales: Yeah, you are right.

Katz: I recall that. I recall looking at that side of the table on that issue. Good.

Hales: This discussion, I think, helps confirm that, too, and this review by the council is limited enough, its effectiveness, I don't know whether the bureau is paying attention to us or not, but the scope of what we get to change based on these discussion is limited enough as it is, so if we are also having to dance this careful legal minuet while we are trying to perform this limited review function, I think we are wasting a lot of people's time, so if we are going to do this, we ought to be able to do it openly and with respect to all the issues.

Hess: I would like to see the citizen advisors under the same rules as the council, too, because we are an extension -- they are an extension of the council, so --

Hales: Good idea.

Katz: We will hear from you next time. Okay.

Francesconi: Can we make sure this is reset right after the trial?

Katz: Yes. Mr. Hess will. They have waited long enough.

Hess: I will work with ms. Olson on that.

Katz: So we will take it back and then bring it forward again and at that time, the piiac advisors can tell us why they felt so conflicted on this particular case, okay. Thank you, everybody. Took a little time but we needed to go through that. All right. We will take the next item, then. **Item 1684.**

Mike Hess, PIIAC Examiner: Again, I am mike hess from piiac. We have citizen advisor robert wells, who examined this case and presented and wrote the report, so I would like to ask mr. Wells to make the presentation on the piiac findings, or advisor's findings.

Robert Wells, PIIAC advisor: Good morning, your honor, commissioners. I am robert wells, piiac citizen advisor. Appointed by commissioner Hales. I would like to just give a brief summary of piiac case number 0016. This complaint arose from an incident at president 3:00 a.m. In the morning on february 11th, 2000. A Portland police officer was dispatched to the location where the driver of a pickup truck was reported to be driving erratically and swirling in a parking lot. This was observed by an independent witness. The appellant was stopped by a police officer, arrested, cited for disorderly conduct, and transported to the Multnomah county detention center. The appellant's allegations are basically three. That officers without provocation, sprayed the appellant with pepper spray and failed to rinse the spray from his face. Number two, that officers had additional criminal charges for the original charge of disorderly conduct. And finally, third, that officers involved in the incident have a personal vendetta against the appellant. I would like to state that the advisor's recommendation was to affirm iad's declination of this complaint and that on september 14th of 2000, the advisors unanimously vote to do affirm the iad declination of this complaint due to lack of merit.

Katz: Could you go into a little bit of greater detail as to the few people that are watching, the lack of merit?

Wells: Basically, the officers approach the, the defendant in the street after swirling, the swirling incident in the parking lot, and the appellant appeared to be quite intoxicated or something was wrong with him. He resisted arrest. He kicked, and eventually, had to be restrained with spray in

NOVEMBER 22, 2000

order to get him to cooperate. I would also like to, to ask that captain brett smith of iad explain why it was declined.

*****: Okay. The appellant also said that he denied driving the vehicle that night and nothing was towed. So, that --

Wells: That was -- there was a tow truck driver there as a witness, and there was also the police officers there, and also the appellant, I believe, to be, have perhaps a lapse of memory or impairment that night, so that he doesn't remember all that occurred.

Katz: Okay. Let's have captain smith and then we will call the appellant. Captain smith?

Katz: Why did you decline?

Captain Bret Smith, Internal Affairs Division, Police Bureau: This is captain smith here. We decline any further investigation because the available information and the witnesses statements that were learned at the time and after the intake that was given. The officers fully documented in their police report the violent behavior of the individual. That was also substantiated by the witness, who was at the scene at the time. And in a intoxicated condition. And that's all documented in the witness, by, for example, the tow truck driver. The individual was seen leaving the vehicle by the witness and a description was given to the police to observe the direction that the person was going, walking down the street, in an intoxicated manner, the car nearly struck him upon the result of that police contact, they placed that person in custody at the time or his condition walking the street and endangering himself or others, as well as the prior information about the driving the vehicle at the time. Because of his violent behavior, et cetera, they put a, a community exemption hold on him at the moment at the county detention facility to maintain custody of him until he no longer would be a community concern. So, for a lot of those reasons that are documented in the police report and backed up by the witnesses, in this particular, this case did not have any further investigation on the decline.

Katz: Okay. Questions?

Saltzman: The officer confronted him as he was driving the vehicle down the street?

Smith: He was walking, nearly hit by another car.

*****: Who was hit by another car?

*****: Nearly hit by another car.

Katz: Briefly?

Francesconi: Can you enlighten me? When did they put the holds on him at Multnomah county? What are the circumstances?

Smith: Well, they put the holds on at the booking facility at that location, filled out a form, and it is based on, on their behavior during the officer's contact with in that individual.

Francesconi: But what kind of behavior results in a hold? I don't remember.

Wells: Yes. There was a detailed police custody report and this detailed the kicking, the attempt to assault him -- death threats against all Portland police officers, and then pursuant to the sheriff's special order 59-36 about the multiagency groups being able to put a hold on this individual, which was the community hold done by the supervising sergeant.

Francesconi: Thank you.

Katz: Okay. Appellant? Come on up.

*****: Either one?

Katz: Either one.

*****: Okay.

*****: I appreciate your time --

Katz: Identify yourself --

Timothy M. Strategos, appellant: Oh, okay. I am sorry. I am timothy strategos, and I would like to start out by saying that I appreciate you taking out your time to review this case because I feel it is

NOVEMBER 22, 2000

important. It might be a little refreshing for you because there is no lawsuit. I am not an attorney, and I am here for altruistic reasons. On the night in question, I was driving home from -- with my friend, driving home from downtown. I wasn't driving. He was driving, but we were driving home. He pulled into the parking lot at this tow company, that had towed his vehicle before. And he was irritated and he was drunk. This individual will call suspect "b", okay. I will be suspect "a", okay. Suspect "b" has two dui's already, and he was driving without a license or insurance. And he was intoxicated at the time. He pulled into this tow yard, and started spewing all kinds of anger and swirling the tires, which was turning the tires and shooting gravel. At this point, I am like, this guy is nuts, I am out of here. So, I got out of the truck and started walking down north Portland boulevard. Now, bear in mind that -- do you know where north Portland boulevard is, between marine drive --

*****: Yes.

Strategos: Okay. So it is a very deserted street. We are talking about north Portland road, I am sorry, did I say boulevard, north Portland road, it is very des lat. It is about 3:00 in the morning, there is no traffic on that street, and I was not walking in the street. I was walking on the shoulder and I was walking home. I live in st. Johns. The next thing I know, a police officer pulls up with their lights on. On the shoulder, directly behind him. And I stopped, I said, what can I do for you? Now, I am not going to say I didn't drink, but I am going to be totally honest with you, I am going to offer more information than I really need to. I don't drink much. I smoke pot. My father was an alcoholic, and I beat my family, you know, and us and terrorized us, I don't drink much. I have about two or three drinks, I will go outside and smoke a joint, okay so to say that I was highly intoxicated, you can talk to my ex-wife, and she has known me for 17 years and she has seen my intoxicated possibly once. In 17 years. So, the police officer pulls up behind me and says, freeze, and da-da-da. So, there wasn't ten words said between the two of us during that time. And the standard operating procedure went down. I am leaned over the truck -- the hood of the car. I am handcuffed. All my -- everything out of my pockets is taken out. And set on top of the hood. Of the vehicle. He radios, I guess, his location, where, I don't know what exactly he radioed, but he radioed, he looked at my id, and then radioed, looked over my wallet, at the id, and radioed. He says, you are under arrest. I says, okay. He put me in the car. Fastened the seat belt, and just before he closes the door, he reached in and he sprayed me in the face with the mace. At that point, I was highly agitated by that behavior. I was trying to spit the, the mace out of my mouth because he got - - you know, he did it so quick and he got right up in my face with it, and so I had all this mace in my face and in my mouth, and I am spitting it out, okay. And so then he takes me back to this tow yard, and he -- I am burning, you know, and that's fine. Not a problem. I am a tough old guy from chicago. So, it is okay. Big deal, you know. But, just the behavior and the breach of trust that the city has put in this individual, you know, is what irritated me. And I would like to, you know, just interject at this point that my uncle is a 25-year retired chicago police officer, okay. And I did, you know, ride-alongs with my uncle when I was 9 and 10 years old, and I have a lot of respect for the police, you know. I am definitely not one of these anarchist type of people. Okay. You have got to have law and order, but, you also have to have individuals who will hold a high regard for the trust that is put into them. So anyway, let me --

Katz: We don't have all day.

Strategos: A lot of time, I am sorry.

Katz: We have some questions.

Strategos: Okay. That's not the worst of it. The worst of it is that after he took me to the tow yard, he then drove me up to north precinct, and I highly -- I am really upset with this guy saying that they took me to the justice center. That would have been fine. No, he didn't. He didn't take me directly to the justice center. He took me to the north precinct, and at the north precinct, I am -- my

eyes are burning and I can't see, but I can hear two individuals standing outside the, the squad car, and they are laughing. And they are talking, and I really can't hear what they are saying but they are laughing and talking, and then moments later, the door opens again, and they empty a can of mace on me while I am hunched over this way, it goes all down my neck and burning my skin. My eyes are already burning. And they are laughing. Then they took me to the justice center. At the justice center, they told them that I was spitting on them. I never spit on a police officer. I never would spit on a police officer. I was spitting the mace out of my mouth because it was burning my mouth. So, what they did at the justice center, what they told them that I was a, a this and that and who knows what, so what they did at the justice center was they took a towel, and they wrapped it around my face and they twisted it up at the back, and then they jerked me by my head and my neck out of car after they released my seat belt, and then, you know, roughly, which is fine, you know, pushed me into the, into the booking center area. And you know, that was basically it. Thank you.

Katz: There was a witness who says that, that you were driving the car.

Strategos: Where is the witness? Who is the witness? There was no witness.

Katz: This is a summary of a witness report, which is what the piii advisors and what iad reviewed, and it is -- it identified a local tow company driver, by name, witnessed the appellant driving erratically in the parking lot before getting out of the truck and walking, the tow driver physically identified the appellant as the one who had been driving a pickup truck and stated this person had nearly tipped the truck over in the lot. Is that not accurate?

Strategos: Okay. That's not accurate at all because I wasn't -- I wasn't driving. But here, let's look at it this way, can I just say this? Let's say that yes, strategos is a bad guy, okay, and he's swirling in this parking lot and he's drunk and he's, you know, does -- what does that have to do with the actions of the police officers?

Katz: Well, I am not --

Strategos: I don't mean to ask questions because I have seen you on tv and we don't ask questions, got you. The only other thing that I wanted to say is I wanted to go to trial on this because I wanted to see the police officer get on the stand and lie because if he lies, then that, then that, that impugns all his former testimony, but they refused to go forward with any of the charges. The charges were all dropped. Why is that?

Katz: Thank you. Questions?

Francesconi: Well, at the justice center, what was your behavior like?

Strategos: I have never lashed out at a police officer. You have got to be stupid. They are not going to win. You are an idiot if you do that. I have seen what happens when I was a child to people who lash out against my uncle or my cousin, who is also a Chicago police officer. You are going to get the beating of your life. A whole-sale beating. I mean, come on. You have got to be stupid, you are not going to win. You are just not going to win. And I will tell you, I am -- I have a solution for the whole thing. I have a solution for the whole thing. Get a job on a cruise ship and go to Hawaii, and that's what I have done because I am out of here. I mean, I am out of this city.

Francesconi: Was there a blood alcohol done on you?

Strategos: They never did a blood alcohol on me. Listen, they would not give me a blood alcohol test. They are not obligated to do that.

Katz: Thank you.

Sten: What happened to the guy who was driving the car?

Strategos: The guy who was driving the car called through -- he has the little window if the back of the pickup. He crawled through the window 23469 in the back of the pickup and in the camper, and he was in the camper when they towed that vehicle. After they towed his vehicle into -- this guy has two, three dui's, two are still on his record, he knows the game. He crawled into the back of the

NOVEMBER 22, 2000

camper. They towed him and the vehicle into the lot, and after they closed up and locked the gate, he got out of the camper, jumped over the fence and came home an hour later.

Sten: Is it your car?

Strategos: No, it is his car.

Katz: Thank you.

Strategos: You are welcome. Is that it.

Francesconi: Who is this person?

Strategos: Do I have to identify this individual?

Francesconi: I don't know.

Strategos: He's my roommate.

Francesconi: And is he here today to verify this?

Strategos: No, but he will verify if, if you wanted. I don't see the point. The only reason --

Katz: The point people are asking is that there was a witness, you know. The advisors have your case, hear you. They hear iad, and they have reports of witnesses. The witness of a tow company sent you a driver.

Strategos: May I respond to that?

Katz: I thought you did already.

Strategos: No, here's the response. They had such a viable witness, why didn't they take me to trial? Put me in jail? I put a guy like that in jail.

Katz: Thank you.

we will bring somebody up to, to respond to any of that.

Strategos: Okay. So I am dismissed?

Katz: Any further questions? All right.

Strategos: Okay. Thanks a lot for your time. I appreciate your help.

Katz: Captain, were you standing to come on up and share something with us or did you lose your seat?

*****: The initial questions -- I have got a couple of questions.

Katz: Sit down. Come on and sit down.

Smith: I don't have any information in my report that indicates that the officer spit, what they said was they proceeded to transport the complainant that he continue to do spit all over the rear cage and et cetera of the car that was filled with spit and saliva and et cetera, that he continue to do kick and be violent in the back seat of the car and make threats to the officers, as they were doing the transport, they original the used mace on the complaint because he was kicking at the officers while they were attempting to identify him through his identification when they were trying to retrieve it. Those are the things that were going on at the time.

Hales: A couple of questions. Once again, we had sort of, for my own sake, as well as anybody else's, who has to be reminded about why we are doing this, this isn't a retrial. It is an opportunity for us to try to understand officer conduct and determine whether we think that it is appropriate or not, and it is an opportunity for us to understand how the bureau operates on a day-to-day basis, which sometimes we learn something and sometimes we change something as a result of that. So, on the latter front, why didn't we, if we arrested this man, for operating a motor vehicle while intoxicated, that was the reason we arrested him, right?

Smith: No, that's not what he was charged with. We did not arrest him for driving under the influence of intoxicants.

Hales: So why did they go back to the tow yard?

Smith: When a car was towed -- the vehicle was towed for hazard. It was towed, the car was towed. The person --

NOVEMBER 22, 2000

Hales: There wasn't a concern on the officer's part that this man was operating a motor vehicle while intoxicated? The officer wasn't worried about that? He saw him walking down the street and arrested him for staggering down the street?

Smith: The question is, why didn't they arrest him for driving under the influence?

Hales: Right.

Smith: That was a decision they made at the time based on the available information that they had from the witness, and either their comfort or experience level, being able to make a case. They decided not to arrest him for the driving under the influence charge. They did arrest him and charge him for -- let me go back.

Hales: Disorderly conduct, resisting arrest --

Smith: Correct.

Hales: Okay. So, it was all based on behavior after they encountered him on foot, rather than anything to do with the behavior while allegedly operating the truck.

Smith: Right, correct. So they respond because of a call, they arrive on the scene, and they talk to the witness, he explains where the witness went, that he observed him come out of the car, and they find him wandering in the street, they make contact. At that time, because of intoxicating condition, at a minimum, they arrested him for his personal safety because it was observed that the car had to swerve to avoid hit -- hitting him as he was walking down the street. While they were trying to identify him and object stain the information, he became violent kicking at the officers, et cetera. And the district attorney viewed that and added that as an additional charge to the -- to be prosecuted.

Hales: Back to the other front, officer conduct, we have a completely different version of events here, as we often get. The complainant says he was sprayed unprovoked. Why did iad choose to decline to investigate that allegation?

Smith: We declined to do any further investigation, but it is because of the information given to us by the witness, and the witness --

Hales: The witness saw him spray --

Smith: Well, I have to go back in there exactly. And see what the witness said. I have to pull that out. But, the officers specifically said that the mace was used when the individual was kicking and assaulting him while they were trying to retrieve the id when he was sitting in the back seat of the car.

Hales: So the witness supported that version of events and that's why you declined, right?

*****: The witness didn't --

*****: I need to look exactly at what the witness's statement is on that.

Sten: I just -- tell me if right because I am trying to get this straight. The witness saw him get out of the truck and start walking. There was no witness to what happened between him and the officer on the street, is that correct?

Hales: I think that's right.

Sten: My understanding of what I heard was the witness identified him as the person that -- they found him wandering down the street. The officers saw --

Smith: He was at a different location. We have two officers that were at this scene at this time.

Sten: The officer saw a car swerve, not to hit him. At that point, a conflict ensued but we don't have any witness as to how that, other than the parties --

Smith: Other than the two officers.

Sten: Did you interview the officers about what happened there? At that moment?

Smith: Yes.

Sten: Okay. And they simply said that he was disorderly?

Smith: Yeah. They -- their testimony was -- testimonies were very similar in the sense of what they observe and had what was documented in the police report.

Hales: I think I understand the sequence now, thanks, Erik. So, why did we not press charges?

Smith: The charges were presented to the district attorney's office, and right now I don't have in my file what the results of the criminal charges are. I am not sure what that is.

Katz: They make a decision --

Smith: But the district attorney took this case and accepted it and presented it. I am just not sure right now what the outcome is, it is not included in my case file. When we completed this investigation, I don't believe it had been finalized.

Sten: I don't know what happened on that night, obviously. I don't find it surprising that, that after he was maced, he was disorderly. So, it seems to me that the question is, you know, was there good reason or acceptable reason to use the mace in the first place, and am I understanding, you said that you reviewed the police reports that describe that, found them inconsistent --

Smith: The justification is -- to give the identification through his wallet because he would not identify himself. The complainant would not identify himself so they attempted to get that information, by removing his wallet, and while they were doing that, he became combative and began to kick at the officers while he was still sitting in the police car, and at that point in time, because of his combative and violent condition, at that time, they used mace to subdue him so that they could go ahead and complete their, their task of, of retrieving the identification and et cetera.

Sten: Was he sitting in the police car and they were reaching into pull his wallet out --

Smith: I believe they start to do put him in the police car and he was on the outside of the police car, is where it was, on the outside, where the door was opened still and they were trying to move the complainant in a position where they could retrieve the wallet.

Saltzman: And he was maced at north precinct again? And this was on the scene? The first macing -

Smith: Correct.

Saltzman: The complainant says he was taken to the north precinct and maced there. Do you have corroboration of that?

Francesconi: Do you know if he was taken to the north precinct?

Smith: He did, momentarily, and they tried to give him water to wash his face, et cetera, and he refused any kind of water. To be used to help his condition.

Saltzman: Not based at north precinct?

Smith: I don't have that in my documentation here right now. No. But what I do have is that he was soaked with water. He was soaked with water. Even though he said he did not want the water.

Francesconi: I don't understand police procedures. Why would you take him to north precinct and then take him to the justice center? Does that happen routinely?

Smith: It could. I don't write -- I can't recall right now if the question was asked that, but I don't think that the location of this incident was all that far because you would have passed north on the way. This is also a situation where they use water, additional water at north precinct. They only have so much water available in water bottles in the trunk of police cars and et cetera.

Francesconi: Let me ask a more basic question, what's the difference -- when do we decline to investigate, as opposed to just exonerate? It sounds like your testimony should be, you know, you have witnesses, let's just exonerate. Why -- what -- when do you decide not to investigate?

Smith: Well, I think that, that it really should be stated here that, that every one of these complaints is investigated to a degree. We did an interview here, contacted a witness, looked at the police reports, et cetera, and then we did attempt to look at statements and interviews and based on those statements from witnesses and from the police reports, there is an investigation that goes on. It is at that point that I make a determination whether or not they are going to be a further investigation and

if they decide not, I decline for any further investigation. I don't exonerate or do something unfounded. I say based on the investigation that I have here available that the actions of the officers appear to be appropriate and justified per the bureau procedure and policy and there will not be any further investigation, and the only time that we ever send a case out for something unfounded is if there has been a full and complete investigation and it is sent out for the revision captain or et cetera to make that. I don't --

Francesconi: If, and this is an if, if the council were going to say, let's investigate this, what would do that you haven't done already?

Smith: I don't know that there would be anything more that I could do that I haven't done because I would have to go back and from a redundancy point of view be interviewing the officers again, and the witnesses that have given statements and are documented there. I have an individual that was supposedly highly intoxicated, that's a roommate driving who crawled into the back of a window that we have no confirmation of, that being the case, and I have a complainant who at that time, was completely intoxicated. I don't really have any other information available that I could do differently.

Francesconi: Well, you have a roommate now. You could go and interview the roommate, I suppose.

Smith: Possibly. That's correct. It does not -- but, what the roommate does, is talk about his intoxicated condition and he, and in driving a car, supposedly, and he was not at the scene, and a different location when the officers came in contact when this whole issue about officer misconduct was being alleged about the mace and et cetera or his being transported to the north precinct or eventually to the jail because he does not have direct testimony or eyewitness observation of that.

Hales: Back to jim's point for a second, in terms of whether these proceedings work or not, if you have talked to everybody that you could talk to and reach add conclusion, that sounds like exoneration to me. It doesn't sound like a decision not to investigate. I mean, I think that that's a distinction without a difference, there is no difference in this case between exoneration and declination. You have talked to everybody that you can interview, reached a conclusion, and you have made a decision. That's fine, and in fact, I am probably inclined to agree with that decision, but, but --

Smith: In a sense in my letter, I do state that. You don't see the big word, quote, "exonerate" in there. But in my letter of declination, I write in there, where it says that there is no indication that the officers --

Hales: I am not talking about the quality of the work. I am talking about how we describe it.

Katz: It is the description.

Francesconi: Is there a blood alcohol in this case?

Smith: No, because he was not arrested for a dui charge, and we didn't go through that process.

Francesconi: And at the justice center, I don't see the formal report, what is --

Smith: We don't have it, we were not -- we did not obtain that information.

Francesconi: So you don't know what the statements were? There is no -- other than the two officers, is there any other description of his condition in here? In this file?

Smith: Not that I am aware of, other than the witness, the tow truck.

Francesconi: Well, then you could also find out, there is a Multnomah county file somewhere that would document his condition, too, isn't there? You could get that somewhere.

Smith: I guess what I am trying to go back to is we can talk about his condition and we potentially could have that verified, except that I have to have a medical release for that from the complainant. And I can't get that information until that's released. But the issue that, that the jail can't tell us, either, is what happened at the scene.

Francesconi: But here's the problem, and I am just struggling with it. You have one -- and I am still not even to the question of who is right or wrong, but on the question of, is there other evidence out there, you have got one person saying that the mace started it. And you have got two officers saying not, okay. But, you also have then the witness saying certain things happen before beforehand and certain things happen afterwards. He testified at the jail, for example, that he knew not to kick, scream, et cetera. If he's not telling the truth about what happened before or happened at the end, then it is powerful evidence, to me, that he's not right on the pepper spray, either. It is circumstantial evidence, but I am trying to give the benefit of the doubt to somebody, and that's why I think I am leaning towards having to do some more investigation on the witness and what happened at the jail. Why would that not -- if I am forced to rule on just exxon rated versus not, if that's what you presented to me, I probably would have gone exonerated, but I am looking for, I think that we need a little more evidence here. But, I don't want to send you off on a fishing trip.

Wells: I just wanted to add two important notations by officer "a" concerning the question of the precinct. When this is use of force used by an officer, he has -- he or she has to make a report to his or her supervisor regarding this use of force, and this was done at the precinct regarding the pepper spray and the, the demeanor of the appellant kicking and screaming and death threats, and that he, he talked to his supervisory sergeant, who he gave the report to, and he also asked -- requested the sergeant to call Multnomah county detention center and have the sheriff order to hold him until he was not a danger to the community or himself. That's just what I wanted to add.

Francesconi: So did the sergeant witness that, too? Witness the behavior? Where is the sergeant? Are we at north precinct now?

Smith: We have a tenant that was involved.

Francesconi: Where did he come from?

Smith: He was at north precinct.

*******:** Okay. So he was at north precinct? The only thing that we have is, you know, that we have in the file is the community exemption, or community safety exemption that would be the fact that in order for us to make that request and for them to hold him as a result of the safety, they had to also observe his condition and agree to that, that it made sense based on the information that was given by the Portland police officers and their observation --

Francesconi: Whose observation? I am sorry Multnomah county now or the lieutenant?

Smith: The jail. They had to --

Francesconi: See, if I had that evidence in front of me, I wouldn't have any trouble with this case, and I think it is out there.

Smith: Well, I cannot get that information about the medical conditions and get that report unless I have the release. I don't have a release.

Hales: Well, there are pieces of this that ought to be in the review process that don't seem to be. I mean, this man is just come here, I don't know if you told this to -- made this allegation earlier, said he got spray add second time at north precinct. Now, presumably, you have got folks, like that lieutenant, who is taking the report of the use of force, verbally, I take it, who can confirm the police bureau's version of the story which is that they were washing him off. Again, he says he got sprayed again and they say they washed him off. Somebody, I assume, can confirm that, right? And you checked on that. Help me out here.

Smith: Well, I think that I need direction from you because I think that we are kind of going in circles --

Hales: I don't know, is this the first time he made that charge that he got sprayed again at north precinct? Is this news we haven't heard before?

Smith: This was in his tapes, in his interview.

Hales: So, did you check that out? To find out if, you know, all these, these are always, he said, she had.

Smith: The answer to your question would be yes, and it was based on the documentation as written in the police report, so based on the documentation --

*****: From the person.

Hales: The lieutenant in charge said yes, we washed him off, or it is the arrests officer's report?

Smith: The arresting officer's report.

Hales: Again, why do we do this? We are always going to have two versions of the event. We are always going to have the officer's version, middle of the night, something bad happens and we are always going to have the officer's version and the complainant's version. And you know, iad and then the advisors and then the council, when it finally gets here ought to be able to at least go and ask people, you know, and you always have to weigh the credibility of different folks' versions of events and make a decision, somebody's version is accurate and somebody's isn't, and that's what I am hungry for in this proceeding and am still hungry.

Smith: What, I guess, what more do you want?

Katz: You have got to remember what the code, if we want to change the code, that's a whole other discussion, and we will have that discussion, but the code clearly doesn't put these people on kind of a, a civilian trial.

*****: That's not what I am saying. They are asking -- they have to make a determines whether they have gone far enough in the investigation. And --

Hales: I am not trying to make this more formal or more like a trial or pretend that I am a judge, none of the above but it seems like there is some basic fact-finding that ought to happen.

Katz: Let's ask the advisors, why did you feel -- why did you feel that the response from iad was sound enough for you not to go ahead and proceed? Because you made that determination.

Wells: I can speak for myself. One thing was the fact that there was a witness that did see the erotic driving and it was quite obviously obvious they almost tipped the truck over, and the second thing is the officer "a", his detailed report about the violent activity that he did to kicking, screaming, death threats, this sort of thing, and then also, the fact that he went to the precinct to request to his supervising sergeant that something need be done with this person in regards to the community safety. That, to me, was kind of a preponderance of the evidence, at least to me, in reviewing this that there was an independent witness, that, that things just didn't exactly go according to what the appellant's account was. So --

Hales: Here's my request. You asked -- you asked what more can you do. What I would like you to do, here's what I would like you to do. I think that you are 80 percent there. I would like you to go back to north precinct and see if you can talk to one of those people, provide independent verification of his condition in north precinct. I would like you to go to --

Smith: Who is one of those people, the officers?

Francesconi: The lieutenant, the lieutenant who -- we have a hearsay statement, apparently, but I would like you to talk to the lieutenant, I am being pretty --

Smith: The lieutenant wasn't at the scene.

Francesconi: At north precinct.

Smith: The officers, I went through them, currently document that they did not spray more than one time.

Francesconi: Right. Listen, you asked me to what I thought that you should do, I am trying to say. Then I would like you to go to the county and try to get independent verification of the condition there. Then I would like you to ask them to sign a medical authorization that he declined. And that's, those three things, if that's too much.

NOVEMBER 22, 2000

Katz: That's one of the reasons we are behind in the case load, they make some determinations they are not going any further on this one and now we are asking them to go back, but if that's what the council wants, to do, then they will do it. So, I need a motion.

Hales: Do you want to put that in the form of a motion?

Francesconi: Well, yeah. I will -- I am not going to put the specifics because I don't want to do your job. I wanted to answer your question as to what I thought would be additionally helpful. So, I am not putting that part in the motion. I am going to leave that to you, but I am going to move that we send it back to you for further investigation.

Hales: I will second that.

Katz: Okay. Discussion? Roll call.

Francesconi: Aye.

Hales: Aye --

Katz: Hold it, I didn't -- okay. Did you want to discuss it?

Sten: I am okay.

Saltzman: No.

Sten: I am also going to vote no. I tend to agree with the motion that there could have been a little more work, and the reason I am voting no is I don't think that this one is going to be resolvable because I don't think -- I think it all resolves around everything is going to be circumstantial that you find, and we are not going to find a witness on whether or not -- I think it all -- I think that everything depends on whether or not he should have been maced the first time, because I think that the conflict was inevitably going to escalate from the time that he was maced the first time and I don't think that we can resolve that question with the information, although I tend to agree that some of that information would have been helpful in the front end so I will vote no because I don't think that we should keep this one going.

Katz: Mayor votes no. All right. I need a positive motion, rather than negative motion --

Sten: I would move to uphold the advisor's opinion. **Saltzman:** Second.

Katz: Roll call. **Francesconi:** No. **Hales:** No. **Saltzman:** Aye. **Sten:** Aye.

Katz: Mayor votes aye. Thank you. Okay. 1685. Oh, before I get to 1685 5, 1696 and 1696 and 1697. We have got folks here.

Items 1696 and 1697

Katz: Who is here from the police bureau?

Katz: Sit down. Let's try to move this as quickly as possible, and then we have got a full agenda today. All right. Go ahead.

Lt. Randy Kane, Police Bureau: I am lieutenant randy cane, currently assigned to the chief office in charge of the criminal intelligence unit for the Portland police bureau.

Captain Mike Garvey, Police Bureau: Captain mike harvey in charge of the identification division for the Portland police bureau.

Katz: Okay. And sir?

Kevin Fazreau, FBI: Kevin, the supervisory special agent in charge of the Portland joint terrorism task force at the federal bureau of investigations.

Katz: Do you want to address what, 1696 is and then somebody address 1697. I know that they are not directly related, but they are somewhat related.

*******:** Your honor, I can --

Katz: You can do 1696.

Garvey: Yes. Very briefly. All right. Michael. The Portland police bureau and Multnomah county sheriff's office, the Oregon state police, since the early 1990s have, have, were in joint partnership on a program called "image" where when an individual was arrested their photograph would be taken and stored in a data base for law enforcement use in the future. As time as gone on,

NOVEMBER 22, 2000

the Multnomah county sheriff's office took over that process and now is a sole owner of that data base. However, the Portland police bureau has got a infrastructure, which allows access by other agencies into that data base. Which the Multnomah county sheriff's office does not have. We entered into an agreement with the, the federal bureau of investigation to allow access into that data base through our internet, and that's what this agreement is about. It basically says that the fbi can go through our network in order to, to obtain access to that data base.

Katz: Okay. Questions of mike? I will have, dan, I will have you come up, I think you want to respond to both of them. All right. Questions on that item?

Francesconi: So, I understand it, so is it for the fbi of the, for the benefit of the fbi.

Garvey: And the law enforcement investigations throughout the areas.

Francesconi: Thank you.

Garvey: Yes, sir.

Katz: Item 1697.

Katz: Who wants to address that?

Kane: Lieutenant randy cain, Portland police bureau. Briefly, the criminal intelligence unit is currently housed within the fbi building. This agreement would allow Portland officers to receive federal credentialing, security clearances to participate in criminal investigations involving terrorism issues. The cases that go before the joint terrorism task force involve cases with a federal concern. This allows the federal bureau of investigation to share information with the criminal intelligence unit and the Portland police bureau, and likewise, intelligence unit to share information with the federal bureau of investigation.

Katz: Let's check the mike. Would you, rein, move the mike? What kind of, of particular cases are we talking about that, that you, you, you would be working together on?

Fazreau: Kevin, supervise, joint terrorism task force. The types of cases involve criminal acts of, of individuals who are involved in extremist type of activity, which we refer to as domestic terrorism, which would have some type of federal nexus involved, involved with violations of federal statutes, such as the hobbs act, intimidation, forcing businesses out of business through the use of force or violence, things of that nature.

Hales: I guess I have got a question and a concern. Your description sounds reasonable. Or at least acceptable. But I have a silly rule that I vote for items on the calendar that I can support and against those that I can't support. And the language of this ordinance says under item 3, the mission of the pjttf is to identify and target for prosecution those individuals or groups who are responsible for right wing and/or left wing movements, as well as acts of the anti-abortion movement and the animal liberation front, slash, earth liberation front, and frankly, that's very unfortunate language, sounds like something out of the nixon administration. According to a lot of people, this city council would qualify as a left wing movement. [laughter] Why do we have something this broad in front of us in terms of an ordinance, what you are talking about sounds reasonable. This, I can't vote for. So, on its face, I can't go home and say I voted for this, and maybe people will misunderstand it, but the language is terrible.

Fazreau: Let me stress that our investigations involve only the criminal acts, whereby we have a reasonable indication of criminal acts on behalf of any of those groups you just mentioned. We certainly, as the fbi very cognizant, of the first amendment rights of individuals, having a history which had developed eventually into what we call our attorney general guidelines, which tell us, as a federal investigative agency, that we cannot investigate first amendment acts of individuals. We don't care what people think. Or what they are involved in. As far as their first amendment rights. It only -- we only kick in, as far as being able to investigate those acts, when there is --

Hales: I agree with that, and therefore, you need to change the language of item 3, from people who are involved in movements to people involved in criminal behavior. I will vote for an ordinance that

authorizes our participating and investigating and prosecuting criminal behavior but I won't vote for one that authorizing our participating and prosecuting people in a movement, that's impermissible.

Katz: Read it.

Hales: Item 3, who are responsible for right wing or left wing movements. Ralph nader would qualify under number 3. On its face. That's the ordinance. That's what's in front of the council, not the testimony -- let's amend it.

Sten: We can't amend it.

Katz: This is a memorandum of agreement.

Hales: No, no, the ordinance. The amendment is fine, the ordinance.

Katz: Because I am reading the memorandum of agreement, which is not what you just described, as the ordinance. Item 3.

Francesconi: That doesn't reflect admission. We should say that, this ordinance, the mission, which is the primary line document.

Hales: Sure, access criminal terrorism.

Fazreau: I was under the impression our memorandum of understanding did include all of that criminal language.

Katz: It does. The memorandum does. I will vote for the memorandum so, let's make it clear, so folks, you are doing the right thing here. The memorandum of understanding that you have is accurate. It protects constitutional rights as correctly pointed out. We just drafted an ordinance with the wrong language. So, commissioner Hales, do you want to change?

Hales: I would move to substitute the mission statement in the, the memorandum of understanding for item number 3 in the ordinance.

Francesconi: Second.

Katz: Before I take a vote on that, do you understand that?

Francesconi: We made the mistake, not you.

Katz: You are fine with that?

Sten: I think it is all right. I just have a couple of questions. I hadn't looked at this. It was on consent so I will be honest I do quite my job on this, but does it say anywhere, and I am sure you do, this is an issue that always comes up and comes up constantly in committee meetings that I have had. Is there some place that I can turn to that outlines, you know, the concern is that we are monitoring groups that we, you know, just because of their views, and I think that the response is something along the lines of, and I don't know how much you are monitoring groups but we are monitoring groups because you are worried about terrorism, and it is a similar outline sometimes about how you, you guard your, you know, is there a, a, you know, a chief's memo or something that shows what that, what the details of how you do this are?

Fazreau: The attorney general guidelines, for general crimes in how we, we actually investigate domestic security terrorism type of cases, give us the guidelines that we follow as the federal bureau of investigation to be able to investigate the activities of groups and individuals only if we can show a reasonable indication that they are involved in some type of criminal activity. Otherwise, we would be in violation of the first amendment rights. Now, there is a lot of talk about the history that goes back as far as things like co--in-tell pro, and other things that keep coming up, and in 1983, these items were promulgated. I could easily make available the attorney general guidelines.

Sten: So you are not monitoring any groups right now?

Fazreau: We would only monitor groups that are involved in criminal activity. If we can show that two or more people are involved in criminal activity where they utilize force or violence to try to enhance some type of political or social change, that is our definition of terrorism. And if we can show a reasonable indication that those people are, in fact, involved in criminal acts towards advocating violence of some type, then yes, we would be allowed to investigate those individuals as

groups. But, we have many, a long system of checks and balances that goes back through our fbi headquarters, through the department of justice, all the way to the director of the fbi and the attorney general to be able to monitor what we can do with regards to groups.

Sten: And that's if they are meeting as a group to plan these? If you have two people who you, you consider to be suspects of criminal activity, and they are both involved in a group, are you saying that that -- you are going to monitor that group? I mean, you see the line I am trying to draw?

Fazreau: Surely. The focus of our investigations, however, when we say group, what we are trying to do whenever we might open an investigation on a group, per se, is find out the individuals in those -- in that group that's involved in criminal acts. Anyone else who may be a member of that group that's not involved in that criminal activity is, is not under investigation, per se. And you know, I don't know if that explains it for you in full detail, but we always have to show these individuals that are under investigation are involved in criminal activity, or else we should not be investigating them, and in fact, we don't.

Sten: Is it -- I mean, what's, what's the theory because it is in the memo of understanding, I assume it comes from the, the, something in the, the process that you are describing to me, what's a theory between sort of calling out right wing and left wing as opposed to criminal acts?

Fazreau: It is just a, a system that the law enforcement community, in general, has developed to identify criminal extremist movements as either being left or right wing, anti-abortion, et cetera. We are not saying that there is anything wrong with people having left or right wing, anti-abortion thoughts, protests, ideas, everything that they can do under the first amendment to the united states, and in fact, you know, we, as law enforcement, also protect those rights, from civil rights investigations and other things. But, it is just our way of being able to group them into different categories and we have investigations ongoing into different individuals who are involved in what we call right wing extremism or left wing extremism or anti-abortion extremism. Criminally.

Sten: Thank you.

Katz: Okay. We have a motion. Any objections to reflecting the language in the memorandum onto the ordinance? Peter, did you get it?

Kasting: No. We are just substituting the language. The mission statement and the intergovernmental agreement for the language describing -- described in the --

Elizabeth: And the findings in the ordinance.

Katz: You will just have to put it in. I will get to you. Any objections? Hearing none, so ordered. All right. Further questions? Thank you. Does anybody else want to testify on this item? Three of you? Okay.

Dan Handelman, Portland Copwatch: Mayor Katz, I am dan handleman with Portland cop watch. Po box 4256, Portland, I am glad that I had the opportunity to pull this off of the consent agenda because it is listed as an emergency ordinance, in this day of age of community policing to have something like this being rushed through as an emergency ordinance is quite alarming, and particularly in the fallout after may day, where people are being accused of so-called criminal acts of marching without a permit, which is not necessarily a criminal act, and i, myself, have been listed on the criminal intelligence unit as a noncriminal but I am still in the file. I think that this is a very scary, slippery slope. Of are you now or have you ever been a member of the Portland city council, commissioner Hales. I really think that this deserves more discussion, particularly the access to the data base, of people's photos who get booked in the Portland police bureau or the Multnomah county sheriff's office who may have been booked for an offense they didn't commit. It is up to the courts to decide whether or not an offense was even committed and a lot of times, these protests, people are booked and then they are not charged with anything. The charges are dropped. This happened again and again, and very recently with the september 26th and may day trials, there have been people whose cases are just dropped. If their pictures are on file, the fbi has a national access to them, as

suspects, even though they have done nothing wrong in the eyes of the law. So, I really think that this needs more definition. What is criminal activity? Is it, you know, jaywalking? Is it standing in the middle of the street when the police officer tells you not to? Is that something that, that the federal government needs to, to have people in a data base for? I really think that this is a very, very alarming thing, and the whole concern, certainly there is terrorism that exists in the world and in the united states. But, even after the detective, sue hill, from the police bureau died in the twa flight 800 and everybody got scared of terrorism and turned out that nobody is blaming the downing of that flight on terrorists. I think that there is a scare in this country, akin to the mccrae carthy area, about left wing, you know, communism, and I think that we need to be really careful about, moving forward too fast with what are really, really pseudofascist ordinances, and I would urge you not to adopt this, and also if you are going to amend this ordinance and with, with the new language -- what's that?

Katz: They are talking about 1696.

Handelman: Yeah, well, I am talking about 1696 and 1697, participation with the joint task force, as well as something that really concerns me that you are going to get the federal credentials for local officers to work on federal cases. There this intermingling of federal and local jurisdictions, which is against, basically, our constitution. Or our state has its rights to enforce its own laws and we don't have to have a federal government dictating local laws to us, like whether or not we need to have a permit to march, ins. So, I think that we have to be really careful. And if you are going to change the language, I would appreciate if somebody could read that language that you are planning to insert, in place of the very frightening language I am glad that commissioner Hales pointed out about left and right wing activity, and anti-abortion groups.

Katz: Peter? See if you can -- we will give you a little bit more time. All right. Questions of dan?

Saltzman: I think your point about the photography is probably, you know, a good point but isn't this a standard practice throughout this country, every law enforcement agency has the same photography protocols and data exchange with the fbi?

Handelman: If it is true, let's set a precedent.

*****: It is consistent with law enforcement protocol.

Francesconi: One question, you used jaywalking. But, do you think that, that the, the federal bureau, atf, for example, local law enforcement should coordinate on tracking illegal guns that end up killing our kids? Do you think that that's an inappropriate combination of federal, state, and local resources?

Handelman: If it is a federal offense, if it is a federally banned weapon, but if it is a handgun that, that, you know, a felon under Oregon law shouldn't have, it is not the fbi's business, it is the Portland police bureau or the Oregon state police.

Katz: You think prosecute under state law or federal law. And in those particular cases, we look and see where we have -- where we can get the longest period of time. And that's why they cooperate together.

Handelman: I am very concerned with federalization and the militarization of the police.

Katz: Thank you. Anybody else want to testify?

Katz: Jimmy, why don't you pull the mike to you.

Jimmy ? ***:** Okay. If you instruct to me how to works. I would like to speak to both this and what I heard, in the language was pictures of people who were arrested, not prosecuted in a court of law and convicted, but people who were arrested. Kind of like that individual that was just here earlier, walking down the street. He was arrested. Wasn't convicted of anything. That is very vicious to me, upon the rights presumed to be within the individual, that because they are arrested, that we have a digital file on them placed in law enforcement data, before there has been any process. Not objective, not subjective, but no process at all. Now, I just -- I think that the whole idea is

ludicrous. Now, if someone is trafficking arms, and they get caught with guns in the car, all the, the authority is there with the arrests officer to arrest them on probable cause for trafficking weapons and it seems to me to be pretty clear cut. On the other hand, if a neighbor is an arab or muslim heritage or region, and he happens to be in the neighborhood with, next to someone who is also of that heritage, and communities like that are very close knit because that's their support network, and they, they are based on nothing but, but allegations, and criminal activity is not very well defined. To me, if -- it should rise at least to the level of a felony. And I didn't hear any distinction, at all. Now, I will just wrap up with the fbi. I do not consider to be an organization that is close enough to the citizens. We have got enough problems just, just trying to worry about the Portland police bureau. And the fbi operates out of Washington, d.c., 3,000 miles away, and this is an organization that, in order to save the children, decided to send tank-like vehicles in through the walls because they are going to save those children. They are running the tanks over. That's all that I have to say.

Katz: Thank you.

Richard Koenig: I am richard, and I would like to put this question out. What's going to be the difference between making this contract, this agreement now with the way that it is currently. The lieutenant here, randy kane's staff has made pictures of posters of this presenter available to the fbi already when I attempted to file a police report against a judge. No criminal activity, even the allegations on the poster didn't amount to criminal activity, but it was alleged that I am a threatening and dangerous person because I attempted to file a police report with the Portland police bureau against a judge. Went to the fbi, the fbi is already acted on that. The fbi has already routinely got in the practice of using that poster as a basis to deny my basic rights. What's going to be the difference between signing this contract and not? I will give you a reason for not doing it. I mean, we are looking at an agency that has a very questionable history. A history where they have at least appeared to be involved in acts of terrorism, bombings, murders, assassinations, covert operations of all sorts, which I don't think that you could get a poll of the people to support. Just because government does something -- oh, and thank you, dan, for bringing up the, the fact that it is routine police practice to share photographs and already data base, doesn't make it right anywhere. That's, that's, that's the hallmark of the police state that, that has been classic in different eras and for instituting here, you know, at an alarming rate, but thank you for, for letting us all know that, that it is going on everywhere. Answer my question. What's the difference between the way it is now and the way it will be.

Katz: Thank you. Captain, do you want to come in and share with us some basic information on the photo?

Garvey: Yes, your honor. Mike harvey, captain, identification division, and I basically oversee the photo imaging program for the Portland police bureau. We -- there's a variety of reasons that we capture photo images of individuals that are arrested in the Multnomah county city of Portland area. We use those images for investigative purposes, criminal investigative purposes, and identifying whether or not the individual that's providing us with information is actually who they say that they are. When someone, the image is taken, they have done something that gives a law enforcement officer the, the facts necessary to take that person into custody, transport that person to a booking facility, and then capture that image, along with fingerprints, when that person is processed in the booking facility. The frequency of people using other people's names when they are involved in criminal activity and behavior is much greater than one might realize. The abilities of my division to clearly identify somebody who has, in fact, been arrested and insure that the name and date of birth and information that they are giving is correct, so that who is ever being booked in the facility is, is, we are sure that that person is booked under the correct name. Can only happen as we continue to capture this data and information. And those are the main reasons that we do it. I can't tell you what happens and how difficult it is if information gets into a system that's inaccurate or incorrect.

NOVEMBER 22, 2000

The tools that we use through fingerprint and proper identification and photographic identification and blending those two pieces together help us to insure that once somebody is arrested, they are, in fact, who they say that they are. That's the main purpose that we use in obtaining this kind of information and in processing it the way that we do.

Hales: Could you briefly answer the question posed about what changes as a result of our participation in the governmental agreement? What's different as a result of it?

Garvey: With regard to the ordinance that's on the agenda today, sir?

Hales: Yes.

Katz: The contract.

Garvey: What happens is that the, the federal bureau of investigation has always had access to those photos ever since we started --

Hales: Talking about the second item, the task force.

Garvey: I am not -- I have to say this, I am in the identification division. Commissioner, and I am absolutely totally out to lunch on the task force.

Katz: I thought that mr. Carnick was questioning what's different with regards to the photo.

Hales: I am questioning what's different with regard to the task force.

Katz: All right.

Hales: The assignment of people? Is that --

Garvey: I would like to say this about the photos, mayor, nothing. At this particular time, the federal bureau of investigation has always had access to those photos. And the big difference is that my people no longer have to work with them to look those photos up, with this kind of interface, the federal bureau of investigation can look those photos up themselves instead of taxing one of the city bureau resources to do that.

Katz: Thank you. Randy? Thank you, mike.

Hales: What changes as a result of the agreement?

Kane: This formalizes the sharing of information. It establishes liability, and more importantly, the federal bureau of investigation has offered resources to us. They are going to be training us in the attorney general guidelines. Those kinds of resources are now available to us through this agreement.

Hales: And it assigns eight people full-time to the task force, right?

Kane: Yes.

Hales: Okay. Thanks.

Katz: Okay. Thank you. Let's take a vote then on 1696. And then we will read the amendment on 1697 so that everybody is clear. 1696.

Francesconi: I am going to make brief comments on both right now. The discussion was terrific because we have to guard and protect first amendment rights, and pulling off this and having this discussion was very good. We also have to recognize that terrorism does exist, and we have to have tools, including coordination, with the fbi to protect our citizens when terrorism does exist. So, therefore, I am going to vote easily aye, on both of these. I do think for the group, the task force, I do think, though, that when, when names are singled out, right wing, left wing, or particular groups in a mission statement, that creates a problem. So, my request to your group is, to eliminate all of that, just focus on criminal terrorism, and it just sends a, a clearer, better message to the officers and the citizens. But, other than that, I eagerly vote aye.

Hales: As I said earlier, I will support this now that it is more accurately described. I think that, that there is always tension between the police power and public safety, and you know, this has been a good discussion in illustrating that, I handed another issue, which I won't spend more time on now, but I think that, we ought to, mayor, come back to in terms of our work on this. And that is this agreement assigns eight people full-time to this work. I don't know what the right level of effort is,

but eight police officers is a big commitment and we don't have enough to do everything else. So, you know, I am certainly willing to go along with that, but for the longer run, I guess this just goes through september, it looks like. You know, we ought to determine what the appropriate level of effort is. I am certainly willing to give this the benefit of the doubt for now. Aye.

Saltzman: I think this was a good discussion and I do appreciate the fact that these weren't pulled off the consent agenda, these are good issues, they are controversial issues and ones that are deserving of the time and attention that we spent on this issue right now. And I agree with respect to the fbi's, left wing, right wing, it is, it is poor typology, although I suspect in our own offices we also probably have similar typologies, we just don't put them in public and in our resolutions so I suggest they not do the same thing. Nevertheless, this was a good discussion. Aye.

Sten: Well, I appreciate, dan, you pulling these off. I think these did merit discussion, and yeah, I think that these are kind of at the heart of how community policing work, and they are very difficult, I mean, I think that there is an affirmative responsibility for the law enforcement agencies to do everything that they can to combat terrorism. I also think that it very quickly shows the mentality that I think, directly undermines the community policing, which is the community working together to stop these acts, and to be frank, I think that we, as the city, over-reacted to what we found on the internet and may day, and ended up antagonizing the vast majority of the marchers who, and I am not saying it was a one-way street but who were not there to cause any harm, so I think that we have to be very, very careful in how we do this, and I think that the best that we can do is to try and show the kind of openness that, I think it is lieutenant kane, showed today in terms of talking through these issues and trying to be clear about what it is that we are trying, so I would really, really encourage the police bureau to be as open as we can be, in terms of what we do and what we don't do because I think that there is a lot of misunderstanding and I find that to be very -- and I also think that sometimes there's been a lot of mistakes around this area in the past, and so I think that it is critical that we try and as best we can, because there is, I think, a bit of an inherent conflict approach these issues in a community policing fashion, and I do believe, when we start, you know, landing so heavily on right and left wing, I will make a joke, but I think there is a great danger of center terrorism in florida if this thing continues to go on, and you couldn't get more centered than that choice, so I think that, people are getting angry and mad and who knows, and I think when you say right and left wing, and I think friendly admonishment, I think that Hales is totally right, we have got to be a little more careful, when it says in the ordinance that this is to target right and left wing movements but the memorandum says criminal acts, not, not movements, it understandably adds to the, the uneasiness of people who, I think, have a right to be uneasy about groups being monitored and I think that we have to be just a lot more diligent in catching ourselves on these issues. I don't think that it is an intent, but it, it makes people on edge on something that I think that they should be on edge about, and which is how we are monitoring political movements, but I think that there is a function that, that needs to be performed. Aye.

Katz: I want to remind everybody we are on 1696, aye. 1697. You want to change the, read the language?

Kasting: I understand that the, the proposed amendment is to revise finding number three, in the ordinance to read as follows -- the mission of the pjttf is to identify and target for pros accusation those individuals and groups who are responsible for acts of criminal terrorism. I would like to careful is whether you would also like to amend the, the exhibit to the ordinance to change the first sentence in section, roman numeral 2, to read the same way as the revised finding. Right now, the first sentence in roman numeral 2 goes on with that list of right/left wing movements, et cetera.

Francesconi: First of all, I love your amendment, it is terrific, on the ordinance. I don't know that we have the power to do it on the second because it is other people.

Katz: It is a memorandum of agreement that's already been signed by other people, but it does reflect the, the criminal terrorism of representatives of those movements. So --

Kasting: Amending the, the memorandum itself would require reexecution by others.

Katz: All right. I think that -- let me just say that I think that you have sent the message clearly to our local enforcement and quite frankly, you sent it also to the fbi. And since we work closely with the fbi on a lot of issues, I think that they have heard it, as well. So, I think that, that the amendment is adequate for -- okay. Roll call.

Katz: Mayor votes aye. All right, every. We are now at time certain. 1685.

Iem 1685.

Katz: We have a substitute proposed?

Saltzman: Yes.

Katz: Do you want to read what we have, first?

Francesconi: Is this going to take a while? Is this all city people?

Katz: Okay. There is a substitute. Commissioner Saltzman?

Saltzman: I would like to move a substitute ordinance.

Katz: Okay. Do you want to just quickly describe the substitute ordinance for the people who are watching or listening.

Saltzman: Deals with the date of the stormwater discount program. The original ordinance talks about a january 1st effective date, and due to issues we are having with our water bureau, customer information billing system, we can't do it january 1st so it simply speaks to go it at a later date.

Katz: Any objections to -- oh, on this one, I don't think that you get to vote. But, does the council want to hold off until you hear the testimony before you accept the substitute or do you want to accept it now?

Dan Vizzini, Bureau of Environmental Services (BES): If we have testimony on that question.

Katz: You are going to testify on that question now?

Vizzini: I understood it as eliminating the january 1st starting point.

Katz: Okay. We will -- the substitute amendment is before us, and we will open -- we will leave it open until after we hear all the testimony. Since he does have a vote sometimes, and we do talk with him about city issues. All right.

Saltzman: Let me give an overview here before we go. We are here today to actually put into ordinance the stormwater discount program, as we just discussed the effective date is going to be delayed, but this is actually the culmination of a process of several city county resolutions, and as well as a process commissioner Sten and I started back in march of 1999 to reform rates, water and sewer rates and stormwater rates to basically give people more control over their destiny and to encourage people to control, in this case, stormwater on-site, for environmental purposes, for purposes of reducing the cost we spend as a public utility to treat stormwater. So, today we are actually putting into code. This is the final step. Sort of actually the rule-making that we will implement this, but this is the, the final last step of the city council. We put it into our code today. And the stormwater discount program because a reality, as we will learn later, we will delay the effective date and I think that we are going to go onto that, but first, dan is going to actually tell you what the final details are of the program, and I do want to also mention that last time we met on this back in september, there was a lot of discussion about the application form people need to fill out for the stormwater discount. I am pleased to say now that it is two pages, and it is very simple. Much simpler than it was before, so I think this is a good program, and like I said, from environmental purposes, giving people the ability to reduce their bills and to keep stormwater out of our system and hence, out of our rivers and streams. This is a good step forward. So, I will turn it over to dan who will give us an overview of what's in the ordinance.

NOVEMBER 22, 2000

Vizzini: Mayor Katz and members of the council, I am from the bureau of environmental services. I prepared about a ten or 15- -- 15-minute presentation but given the lateness of time, I think what I will do is a very quick overview of what we originally brought into you and then what changes are in the substitution, and then mike is here from the bureau of waterworks to discuss the current status of the customer information system. Let's see if some slides come up on your screen here.

*****: They should, go ahead.

Vizzini: They were there earlier. It is on? Well, I will proceed without the high-tech stuff here. Sorry about this. I will just proceed. Originally, we filed an ordinance that created the discount program in new code language. It also called for the creation of new stormwater rates on January 1 to pay for the cost of the discount program for the six-month period from January 1 to June 30. There was also in the original ordinance a minor housekeeping item that had to do with the chart of rates and charges that are in code that are unrelated to the stormwater program, but we felt that we had an opportunity here to clean that minor item up. In discussions after we filed the ordinance, the ordinance needed to be filed by the way, two weeks prior to the hearing in order because there was a code amendment, and in the two weeks between the time we filed it and this hearing, we had further discussions with the bureau of waterworks and the commissioners were involved in those discussions. The vendor involved with the customer information system, and we have concluded that the, that we could not go forward with implementing the program on January 1, that has begun to accept applications, impose new rates on January 1 because we -- this, the customer information system was, was not stable enough yet to, to provide us certainty of the date on which property owners would actually see their discounts. What we wanted to do was to avoid the circumstance where we would impose higher stormwater charges on customers without any assurance of a specific date where they would begin to see relief from those charges due to the discounts and incentives. So, the resolution that, or the ordinance that we have proposed to substitute does adopt the new program in code. It postpones program implementation until the customer information system is stable and can provide the necessary computer services we need to run the program. We are asking you to accept the findings and recommendations of a staff report that's attached to the substitute amendment. That staff report will effectively become a basis for formal rule-making that the bureau will go through in December and January to fill out the details of the program, and then we still have, in the new substitute ordinance, the, this minor housekeeping change that is, that is identified in exhibit "b" of the ordinance. Basically, the -- I am going to just speak very quickly about the goals of the program, and then I am going to step aside and let Mike Rosenberg come up. Basically, the goals of the stormwater, or the clean water incentive and discount program are to increase equity, fairness and controllability of stormwater charges to advance some very specific environmental commitments that the city has. The clean river plan, the city's response to the endangered species act, the sustainable development policies, the stormwater manual, and our permit under the national pollution discharge elimination. All these are very, very basic environmental policies and commitments that we hope would be tied in with the incentive and discount program. And finally, we need to have a program that protects and enhances the long-term financial stability of the stormwater utility. By promoting private stormwater management and reducing demands on public facilities. This third goal, this idea of protecting the, the stability, financial stability of the utility is critical in understanding why the delay is important because by increasing rates without having any certainty of the implementation of the program, we actually set in motion forces that could actually undermine the financial stability of the system. So, I am prepared to get into this in much greater detail but in the interest of time, I think that I will stop now and be here to answer specific questions that you have after you receive Mike's report and public testimony. There are members of the public here to testify. So, I will step aside.

Sten: I want to just take a second. I wanted to very quickly thank dan and the bureau of environmental services. I think their work has been absolutely exemplary the last couple of months, and I was one of the commissioners who didn't like the last application form. I think the new one is terrific, and I think that you just have done a great job. I asked mike rosenberger from the water bureau to come today because the primary reason that a delay is being recommended in the program is our computer system that the water bureau is in charge of, and I thought that this would be a more than appropriate moment at which to give, and we will be doing this in writing and everywhere that we can, but to give a public update on how we are doing on that system, and to put in context, so I will ask them to do it briefly and I will just say, I was very late in coming, as late as monday, or friday, I guess, coming to rest on the idea of delaying the discount. It was not something that I wanted to do, and in fact, there is some good lessons for me in all of this because I worked for many years to get rate reform through and it gives me great pain when we should be celebrating with people, we are delaying because of computer problems. The reason that I came to that conclusion was two-fold, and I also represented -- need to give him an apology for not giving it to him sooner, I was holding off on this, for too long, two reasons are, one, I think that we have to get the system working first and foremost, end of statement, before we can do anything else. We are at a fair amount of risk. And secondly, on the issue of, we could, and this is what I was pushing for up until last week, we could delay giving the discount, but make it retroactive to january 1st, which was what i've been thinking all along, was if it took us longer, you would get a bigger rebate when the time came. The problem with that, that I found is that in order to make the discount retroactive, we have to raise the rates on everybody else because the way that the rates are going to get, the discount is going to get paid, is by people who don't make the rates, who don't get the discount paying more, and so in order to make the discount retroactive, what we would have to do is raise everybody in the city of Portland's rates, so for a period of at least six months, people who were going to get the discount would pay some kind of rate equal to those who didn't get the discount, and I just felt that managing that communication, as well as the strain on the system was going to be unworkable, so rather than getting the discount that they wanted on january 1st, they would get a rate increase, and that rate increase would last for two or three quarters worth of bills. And we would just have one more communication problem on our han, so I felt this was the choice of the lesser of two evils to be frank, and I think that the better way to do it is communicate with people clearly that they will have the discount, but it will be delayed a couple months rather than raise the rates january 1st and get into that whole quandary, and that was my thinking, and mike, I will turn it over to you.

Mike Rosenberger, Administrator, Water Bureau: I am mike rosenberger, the director of the Portland water bureau. I think that it is prudent to delay the implementation of the discount in order that we can focus on correcting the issues with the information system, and getting the system stabilized. In terms of perspective, we have about 10% of our accounts, about 20,000 accounts that we have had a problem with, either have not been build or have build and then for some reason, not build after that. So, about 10%. But, 90% seem to be working fine. The other 10% are problematic. I think that we have made a substantial progress with our vendor, in the last two weeks, in particular. The vendor is headquartered in the united states in houston and the senior vice president met with commissioner Sten and me two weeks ago. As a result of that, and some other conversation we have been having, they have deployed as of two weeks ago, five senior people in Portland that have been here up until today. They are in houston for thanksgiving. Working with some of our people and I think we are making very good progress at identifying the root causes of the problems that are, are -- the cause of the problems with the 20,000 accounts. Pretty much, I have identified 16 or 17,000 of those that are -- that seem to be tied to one of three particular issues. So, that the technical people from the vendor are focusing on those, and at the end of next week, we will have the, the project schedule that I promised all of you in the last two weeks, that we said we would

have next week, focusing on correcting those 20,000. On december 8th, the ceo who is headquartered outside of london and in the united kingdom is going to be in Portland meeting with commissioner Sten and me, as well as with the project staff of the developer and ourselves. So, I think that, I guess one point that I wanted to make is that we are focusing on the 10% of the problem. I think that it is prudent that we put our energy into getting the system stable and getting people billed, making sure that all of the system functionality works before we add, yet, another thing to the system. So, that's one, one point that I want to say. A second thing that I want to say is that in addition to the vendor, we have brought in some other specialized assistance. And we just got a primary report today and we will have a final report within two weeks, looking at the operation of the system, itself. Looking at the oracle data base, looking at ways that the system can work faster. It is working faster as of monday because one of the achievements of the vendor in the last week was to install the next generation of this information system on our computers. Resolve some of the problems that existed. Gives us a more stable base from which to make additional changes and modifications. It is, it sped up the system a bit, so on the operations side, that helps us when, when a customer representative is on the phone, talking to, to a customer, the system moves faster from screen-to-screen so that, that we can answer questions faster, and therefore, take more calls and reduce hold times. So, that's been something that we have been focusing on for the last few months, the way that we have tried to reduce the amount of time on the phone. The they are thing that I want to mention, in the interest of keeping this short, but one of the things that we are focusing on quite a bit now, and dean and I and a couple of our staff met with commissioner Sten and Saltzman on friday, and we are putting together a communication that we want to get out to customers, very soon, that ties together, I think, in a way that hasn't been made as clear as it might have been, what happened so far relative to rate reform and the fact that, that changes to the service charge have given people more control over their water and sewer bills, talking about the 20% discount relative to the portion of bills that are older than six months, making that clear to people. These are things that we make clear to customers over the phone. But we want to have it in a written piece. Making sure that people know about our low income programs. Making sure that people who are getting bills for a long period of time, will be given as much time as they need, generally, will go up to 24 months, if that's what they want to do, with a payment arrangement, without having to pay interest, so we are trying to cushion the blow of some of the problems that have, have resulted from the system. We have identified some customers that fall into some of these problematic categories and we will be writing them a specific communication, directly to them so that they will hear from us and know what the problems are and know what we are doing, trying to rectify them, giving them an idea and making sure that they know what the alternatives are that are available to them. And we are also focusing on, on explaining to our, our, about 12,000 customers who, who want to be on an equal payment plan, how that works under the new system and getting them squared away on that, which is essentially analogous to what some of us have with, like the gas company and so on. An equal payment, and then banking up at the end of the year, so that's kind of the, the quick overview, but I think that the, the fundamental point is that it is prudent to wait, and that as soon as we are able to put this in, as the ordinance says, we will do it, and be back to the council in, in conjunction with bes.

Katz: Let me -- anybody have questions of mike?

Francesconi: Yeah.

Katz: I will hold off on mine. Dan --

Francesconi: You can go --

Katz: I don't care. Go ahead. Dan, did you want to come on up? Commissioner Francesconi.

Francesconi: Well, first of all, let me just say that your decision, I know how painful it was, but your decision, and commissioner Saltzman, to delay this thing was absolutely the right, the right -- the discount was absolutely the right decision. We have an unstable system that we have to

stabilize. For the benefit of east Portland and the whole city. But, you are, but you are to be congratulated because you got rate reform done and it is done, now it is just a question of implementing it. So, and also, now is not the time to kind of look back and second-guess things. Now is the time to just try to get this thing fixed and stabilized. I think that later on we probably need to look at this, for lessons learned for the future. So, I am not here to ask a question about what went wrong now. I think that at some point, we need to do that. but the question that I have for you, and only one question, it is the question that I raised in my office when you just briefed me, and I had only a very brief conversation with commissioner Sten, but with the idea of fixing it, is now or, or at some time in the near future, will the time be to bring in somebody from the outside to help us analyze this situation and give us some additional advice about how to fix it, that we can use that information for the future, as well.

Rosenberger: Yes, commissioner, I think that there will be a time to have somebody come in and basically, audit our itch mention. You know. Kind of from start to finish help the, kind of postmortem on what might have been done differently, what might have sped things up, whether you -- kind of looking at all aspects from the vendor to ourselves to project management to the whole thing, just like when we talked in your office, I think that that's a good idea, and as a matter of fact, said that it was a good idea months ago.

Francesconi: I think you did, and you are to go credited for that. And I don't know that that word has gotten out. But you and commissioner Sten, your willing, you are willing to have outsiders come in and look. I think an audit is a good idea, when do you think that would be a good idea?

Rosenberger: If I -- I wouldn't put a date on it, but in terms of a time frame, I think that I would say when we feel that we have a stable situation and have had an opportunity to operate it for maybe a six-month period or so, because, you know, if you remember back to the kind of schedule that we talked about in the beginning, we said that we want to implement the system, get it stable, and then have six months to do our process analysis and re-engineering so that, in fact, we could streamline operations to start saving the kind of money that we thought that we could save and start being able to improve our level of service. So, it was always install it, stabilize it, re-engineer it --

Francesconi: Mike, with all due respect, that didn't happen.

Sten: No, that didn't happen. So, I am expecting a full game plan based on these five senior people being here who I do have faith in on november 28th and then I am going to review that with the ceo of the company on december 8th. He's coming over from england. He should have been here a long time ago, I will be blunt. He's coming now. I can't change the past. I will tell you after that date whether we need to do something faster than six months from now. If things are not completely on track, we are going to have to take steps. I believe that they are on track but I don't know that they are on track and I need to be absolutely clear about that.

Rosenberger: I am totally -- commissioner, I understand exactly what you are saying. The question that I was answering was a postmortem, not do we bring in something now if things are going down the tubes, and of course, sure.

Francesconi: Maybe I wasn't clear because, I think bringing, bringing in an outside audit is good. It is not up to me to determine the exact timing of that. Six months is too long, however. We don't need to discuss it right now, but I am wondering if bringing in somebody from the outside can both help on the necessary post-evaluation, but also give some added help to fixing the problem.

Rosenberger: Commissioner, yes. And I understand what you are asking now. We have brought in a number of specific outside consultants right now. We have people here from ema, people here from it is called the illustrate nat software company, that's the oracle data base people that I was talking about, I talked with fred miller at pge to have an, an opportunity to get some advice from their chief executive officer, so we are doing those kinds of things, trying to increase the capacity of outside assistance.

Francesconi: Okay. I will be satisfied. We will hear from -- commissioner Sten is looking at this, he will do an evaluation. He will make some short-term and long-term recommendations to us.

Katz: Let me ask the questions. My concern, first of all of course the form is much better. I did try to help you out, but it never quite got into the mail. But I did -- I did -- sorry, dan. I did -- I plead guilty but I tried and I reviewed it. And I know how difficult it is now for all of you. I honestly know that, and it is one of those situations that you need to continue, and I asked you the question, or somebody, are we at the point to pull the plug, and the answer was no, there is still work going on, and positive movement happening. You did suggest a, a timeline for some decision making, and a timeline for those benchmarks from improvement, and I think that that would help the council know that this is what we expect will happen by a certain date. This is the next step and the next step, so we know when you think this is going to be over because as my concern, as I put the budget together, the numbers of the possible short-fall between us and warner on the high side is daunting. And I am very concerned about that, and I hope that we -- it is more, more positive than the worst case scenario because then that means, major reductions in your budgets, and you may come back with a rate increase, and I don't want to discuss that right now, but I think that the council and the public would be very interested in terms of when you have these things ready, and how are you going to, how are you going to manage the reductions that have to occur in your budget because of the loss of resources. Do you want to respond to that?

Rosenberger: I will, yes. Mayor Katz, and members of the council. I think that there are a couple of parts to it. One, the first part that has to do with the schedule, the deadlines, the when of decisions are made, how do we monitor progress, that's exactly what commissioner Sten, I think, was talking about. We will get a primary project schedule and completion stuff next week, and then we are going to meet with the CEO. In correspondence that I had with them two weeks ago, and again yesterday, yesterday I reiterated what I told them two weeks ago, which is that we want a date. We want to know when the thing is going to be done. When the system we contracted for will work and when we are stable, so that's the first fundamental thing, and then there will be more specifics, relative to particular problem-solving. The second part is that, in our bureau, and I know in BES but, I guess that they will have to speak to that, but in our bureau, we have done a month's worth of hard budget and financial analysis, including looking at all of the impacts on our budget from every source, including that of CIS, and have done some primary problem-solving and kind of a lay of the land assessment in terms of how we would deal with the problems that have been posed by this, and have just initiated conversations with the commissioner's office. So, I guess that I am not prepared to talk about it in a great amount of detail right now, but what I can tell you is that we have identified ways that, that we would mitigate most of, almost all of the impacts of CIS, and we are looking at ways of eliminating all of them. But, we, we have done a great deal of detailed analysis that will we will be prepared to talk about, that we are just initiating with the commissioner.

Katz: Okay. And I understand that you still need to do the work, and I guess Dean Marriott has the same issue with regard to his budget, as well, so I wanted to flag this to the council that we will need to be briefed on the -- you have got a problem in terms of getting the operations up and stabilized, and all of the activity has had a financial impact, and I am -- I just wanted to flag that because I am very concerned about that, and how we get over that.

Vizzini: For the bureau of environmental services -- just to answer that point, we have gone through a process of identifying areas where the budget would need to be cut back, appropriation levels would need to be cut back to cover revenue short-falls this year, and are moving -- would be moving to implement them. I believe on January, in January? Is that -- immediately? They are already in place.

Katz: You better be doing it immediately.

Vizzini: Yes. So, we are looking ahead to try -- trying to make sure we close this fiscal year in a fiscally sound manner.

Rosenberger: Let me add that, you know, specifically we are doing exactly the same thing. Looking at vacant positions. Looking at all our o and m line items and freezing those and stopping consulting contracts and so on.

Katz: I would like to see what you actually did and then go back and kind of review in my own head all the budget discussions that we had last year.

Francesconi: I appreciate the fact that you are doing this, and you need to do it, but the reality is that we don't have any way of knowing the budget impact until we get the problem fixed.

Rosenberger: I think that, commissioner, it is true that we won't know exactly what it is, but I think that we can make pretty good educated guesses to kind of look at a range of impacts in several areas. We do have a very good idea of some of the out-of-pocket costs and some of the lost interest, estimates, you know, I think that we can do pretty well.

Katz: Under the worst case scenario for both bureaus, worst case scenario is about \$12 million, worst case scenario.

Sten: I mean, there's best and worst case, I would caution people not to try and do budgeting on the fly, I would be very supportive of the idea of putting these bureaus kind of first up as we get into the budget, in the part of next year. We cut quite a bit to manage this, the idea that there will be no impact to the financial is long passed being argued. It will have a substantial impact to both bureaus. I would say, at this point, it is my professional opinion that the chances of the worst case are very, very low. The chance of it having to take significant steps in the budget are, are -- is, is a fact. And but I have looked at this extremely closely on a weekly basis, if not daily. I have staff members looking at this. I do not, in any way, shape or form believe that you will see a fiscal crisis this fiscal year. I think the right way to do it is through a thorough, thoughtful, several-hour, public budget discussion, and look at the impacts and I think that we can do that in early 2001 in a fashion that will, that will allow us to solve the problem, I am very confident that there is a problem. I cannot make an absolute assurance because nobody knows the future, but I am very confident that we are not in the worst case scenario. We are in a significant budget impact but not the worst case.

Katz: All right, that's the good news. All right, let's proceed.

Doug Morgan, Chair, Public Utilities Review Board (PURB): Chair of the public utility review board, honorable mayor and commissioners, we have been before you three times on the discount program since it started 18 months ago. I think that we should key note with commissioner Saltzman's reminder that we should be celebrating a lot of hard work on the part of a lot of folks, including the commissioners who exercised leadership on this issue and an effort to institute a discount program at the time you are implementing a new billing system. Requires an extraordinary amount of work on the part of the, the bureau, waterworks, and environmental services to try to make this occasion possible. We should be celebrating it. Perb has been consistently concerned with the principal of equity. That started with the good citizens of mid county reminding us that there was a problem. And the leadership of commissioner Saltzman and Sten, on this, has made it possible for the discount program to be developed. We wouldn't be here without their leadership. We wouldn't be here without the good citizens of mid county pressing, all of us, including perb on that issue. The central concern for perb has been the issue of equity. We were, before you -- three times on the issue of equity. First, we make sure that the discount program be available to all citizens, not limited to a geographic area. Secondly, we came back to you in the name of the principal of equity and said, in terms of the, the incentives for the discount, we want them to be available on a property-specific basis. So, that all citizens within the city of Portland have access to the discount program. We come back to you now in support of your desire to delay implementation of this, in the name of the principal of equity. I think that commissioner Sten is exactly right. It doesn't make sense to

overcharge two-thirds of the rate payers in order to keep your promise to implement this in January for one-third of the rate payers. That is not an equitable thing to do. So, consistently with our concern for equity, we very much want to, want to praise all of the good work that you have done, and urge you to delay implementation until we have a system that's capable of implementing it, effectively for all of the rate payers within the city. Thank you very much.

Katz: Thank you. Representative Merckley?

Francesconi: Doug, just one, a brief comment. Because once a year and a half -- a year ago or so I criticized the perb on some testimony that wasn't helpful. In the last year, you've been terrific. You've been analyzing some very difficult issues that helped me sort through some things.

Morgan: Thank you.

Jeff Merckley, State Representative, East Portland: Representative Jack Merckley from East Portland. I feel I am here to play the role of the grinch, perhaps, because while everyone else is celebrating, I am not feeling particularly celebratory.

Sten: Do I sound like I am celebrating? [laughter]

Merckley: I will try to summarize my concerns. My first concern is that I am the only one here from East Portland because the coalition program was not briefed on these items, and my briefing came via the Oregonian, and even today, I could get a hold of the ordinance just minutes before speaking up here, and so my analysis is rather poorly developed. And I apologize if I missed the nail on these items, but I feel that they are important to say, even though they clearly go against the grain of the discussion. I know that Howard would have liked to have known of these changes, I know that people in Portland would have liked to have read them in detail and haven't will the chance to do so. But, enough about process. The comment was just made that it is okay to break the promise on retroactivity to January 1st because of the complexities of implementing that promise. I am sure that citizens of East Portland would have liked to have a part of the discussion and find a way to do it while avoiding the difficulties discussed, since we haven't about part of that discussion, I can't speak to what innovative ideas or solutions may have come forward. The very fact that we are sitting here and talking about breaking that promise, reflects a process that builds on the very thing that we didn't want to come out of this. Which was a sense that the city has prone its promise. We have a slogan in the city, the city that works, but in East Portland, it has become the city that breaks its promises. Deep inside of this material, are sublevels, 70% for your roof and 30% for your driveway. I have never seen these sublevels before, but they are very significant. Virtually, everybody has a driveway, even when their driveway is uphill to the street. So, even though the city street may pour water onto your property under these rules, you only get 70% of the 35 35% discount. That's a whole new piece, a way to save the city money that has not, does not treat the situation fairly. It is clever. But cleverness is not what this process should be about. If you remember, during the time that we have been in this discussion, the rates have been raised from \$8.50 to \$10, and now we are talking about raising them to \$13.50. Since virtually everybody has a driveway, and since quite frankly, virtually nobody even if their driving is uphill to the street has any device designed to particularly address water off the driveway. It means that we are now talking about a discount of 700% of 35%, and that also feels like a prone -- 70% to 35%.

Saltzman: If you take the \$8.50 that people were paying when we started this discussion and you now looked at the new rate, and you realized, as stated herein, you will get \$4.90 off, your rate will be \$8.60. You cannot sell to the city a 10 cent increase and call it a 35% discount.

Merckley: I guess I feel particularly sensitive about this because when the council passed the resolution, in September, I put out a mailing, in which I told the citizens of my district that we had a limited victory, but we had to realize that this was a big deal. It was a big deal for the city in a situation where more money is needed to offer a 35% discount and to make it active on January 1st, even though the paperwork wouldn't be done. And now I have got to turn around and I have got to

tell those citizens, you know what? Your rates, when we started this process, were \$8.50, and the best situation for most of you, you will get a 10 cent increase, in the best situation.

Saltzman: I want to step in here, that's not right. Basically they will be getting a \$4.94 discount off the existing rate of \$10 so the rate can drop to \$6.50, and I appreciate what you said about not having enough time to analyze this information but I felt that I wanted to get that point out there right away so that that misconception doesn't get out there too widely.

Merkley: I believe that, that you are, perhaps, not correct about that because the, the clause here says that the other 30% will be a discount of \$2.10, if those are combined, the 6.90 and 2.10, that's \$7. If you take that off 10, we would be paying \$3. So, it is my impression that, that from the quick questions I was able to ask, that, indeed, in fact, I would refer you to a chart in here.

Sten: Could i, while you are looking at this? Let me say that we ought to have dan come up and clarify that, and let me again, publicly apologize to you for not getting you more in this discussion. Literally what happened is as of friday, I was personally, as I told you, of the position that we should make the discount retroactive to january. And frankly, what happened is I have just -- I reeled that we had to raise the rates, and it could be four or five months, I am going to try and do it faster, my hope is, that we will be able to be offering this in the spring around the time that we were planning to, but with the possibility looming that it could be a long time, I thought, and this is -- that, that the idea of raising all of your constituent's rates to \$13.50 with an indefinite time, before they would get what they deserved would really sort of continue to exacerbate the problem, and I completely think that you have every right to your frustration, and on the issue of what the discount will be, let's clarify that. But, I would just, you know, try and hope that we could push a little bit to say to people this has been very difficult. I've been working on this non-stop since being on the council for four years. And we can make a choice whether to characterize it, what the city has done on the january 1st date as once again, broken a promise, and if you make that choice, I respect that. Because, I did promise to get it done by january 1st. What happened is, I can't do it because of this computer system and I don't think that the commitment that I am trying to build with east Portland has changed at all. I think what we are trying to do is deliver this, and I hope that we can try and find a way to say to people, this is -- and that's what rich said to dr. Horner yesterday, and his response was, that's -- I am very disappointed but I believe you, and get it going as fast as you can. I wish that he was here to say that, as well, and I just -- that -- I can't say it any other way, that's what's happening with this delay. I don't think that it is anything like sort of the history that the people have out there, I think it is that the computers don't work. On the discount, I think that you have got a right to, that's the debate that we had at the last hearing was, do you get the whole discount or not, and let's clear that up.

Saltzman: I would add, the reason that we are putting this into the city council ordinance today is to keep faith with the fact this was a promise that is delivered. On the date we turned it on, is going to be delayed. But it is now going to be in the city ordinance, the stormwater clean river incentive and discount program.

Merkley: And I realize how much effort has gone into this, and that's why I am trying to -- this is my tempered version of frustration. [laughter]

Katz: Maybe, if it is not tempered, 28 go faster. [laughter]

Merkley: I will conclude with these, these two points being repeated. Everyone would understand about not being able to put it in place on schedule. People will not understand why that means to eliminate the retroactivity, and second, my math is correct. This chart shows that the \$13.50 fee would be reduced to 6.50 with a \$7 discount, that discount is split into 4.90 for the roof and 2.10 for the driveway, you take away the driveway, and it is 4.90 from 3.50, which is 8.60, which is 10 cents more than we started this process, and that is, is profoundly frustrating. And that would be after people go through a process of, because the third piece that I talked about last time before you was

that for those people who don't have the choice of putting their water, by law, either into the street or into the combined sewer system, all they are allowed to do by law is put it into a dry well, so that everybody, by law, has a dry well, and what this comes back and says in the interest of fairness we will not distinguish between people who are, by law required to put in a dry well, or by law, required to give options, and that is not fairness. By law, you are not getting the option and you ought to get the discount without having to go through a lengthy application process. A process that the bureau is complaining about because of all the applications that they are going to have to process.

Francesconi: On this second issue, is there any reason that we have to vote on it right now, given the late notice, can we let --

Katz: It is not an emergency.

Francesconi: Time for input on the second issue? Maybe even beyond --

Saltzman: We can clarify the second issue right now.

Francesconi: We need to clarify it but we only have one person here and I think we need to get this information.

Sten: Let's make sure that representative merckley is right on this, because I think it may be better than he thinks.

Francesconi: Okay, let's do this.

*****: I know it is better than he thinks. We clarified it right now.

Francesconi: We can clarify it but on the second issue my request is there is an immediate emergency, we have got to have more public notice and involvement. On the first issue, representative merckley, and I don't want to get into process or, I guess I want to add that I am sorry that this happened on behalf of the whole city, not any particular bureau but the whole city's responsibility but I am having trouble on two points on your first, on the retroactivity, and I need you to help me with this. And just, and you just represent your citizens, not the whole city, which is our responsibility. And that's your job, and I appreciate that. But the issue of the instability of the system, isn't it in your citizen's interest to make sure that we have a stable system so that we can produce the discounts and the changes, and isn't that something important that we should be doing for the sake of your own citizens?

Merkley: I am sure my citizens have diversity of opinion, but I would think that their feeling would be it is a simple accounting measure to set aside an estimate of the savings, and at some later point be able to redistribute those. The fact that the computer system is having trouble is certainly reason to delay the application process, but to, but to eliminate retroactivity, that does not correlate in my mind.

Francesconi: Well, I think that there is a direct, and I think the bureau may need to spend some time, but they are having trouble doing that, and focusing on that will create more instability in the system and delay the fix, is my understanding, but you can debate that with the water bureau, my second point, though, is the perb was wrong on the issue of raising two-thirds of the bills. We are actually going to raise three-thirds of the bill on the citizens because it is going to be raising the bills on your citizens without knowing when they are going to get the discount. Now, that's going to cause a whole lot of problems for your citizens, who are our citizens. Don't you think that there is a value to your citizens in not loaning us money for six or nine months or whatever? That's the point that I am missing in your, in your talk with us.

Merkley: The big new change in this process is tying the discounts to an increase. Recognize that these discounts were in place until 1998, so there was a big surge of funds when those were eliminated. It has been, in essence, temporary money, but the bureau is looking at it now as permanent money and saying how do we replace it, but one answer would be by spending less money.

Francesconi: This is one that I think that you can't side step, I mean, no offense. I mean, I have looked at this long and hard, we have to raise the rate. We are having revenue short-falls because of the computer system, and the people who, who -- we don't squander any of the stormwater money so the people who use the parts of the system more are going to pay more, and the people who use the parts less, if we can't distinguish those people, something is going to have to give, so we are going to have to raise the rates to make up for the discounts. And it is not going to be the folks, I mean, it will be the rest of the city, so it will be in one form or another. That's the main thing that's driving me. You have to agree, I want you to understand that I thought that the broken promise impression of raising the rates, as potentially six months on people who should be getting a discount was worse than telling them honestly that I got a delay for a couple of months because a computer -- of computer problems, that was the choice as I saw it and I chose the latter.

Merkley: There is another piece in here that changed the discussion previously the discussion was, that the theory was, everyone drives on the city streets, and that everyone should particularly pay for the storm water that runs up the city streets and the argument was, up through september, that bringing the people into the system that are outside the of the system, in the areas, and having them pay their share of the run-off would balance it, and that's why a rate increase would not part of the discussion, so this has changed since I was brought into the dialogue.

Sten: And I think that it is a hybrid that we want to do bring in new revenue and then we have to balance it was where I viewed it, but that's a fair point.

Katz: Thank you, jeff, thank you. Who else wants -- who signed up to testify? Clancy? Who else? Come on up. Who else? Those are the only names that you have? Anybody else in the audience wanting to testify?

Lise Glancy, Port of Portland: I am lisa clancy representing the port of Portland. The port supports the proposed clean river incentive and discount program. We think that the recommendations are responsive to the concerns of repairing areas. And we appreciate that. The port is also committed to working toward helping implement the system by providing impervious surface estimates and we want to acknowledge the excellent work of dan. He's gone, as usual, he's gone above and beyond the call of duty, and keeping us informed, and working out issues. So. Thank you.

Katz: Sir, go ahead.

Norbert Radtke, Oregon Association of Community Organizations for Reform Now (ACORN): I am a homeowner in southeast Portland. I am here with Oregon acorn. We do support the idea of keeping --

Katz: What's acorn?

*******:** They are the association of community organizations for reform now. A grass-roots organization of basically working families. We have about 600 members right now in Portland and gresham. We are hoping to be over a thousand by the end of the year. We are here today to protest the establishment of the clean river incentive discount program for the clean water river management. Residents in east Portland and gresham who manage their run-off on their property currently are paying for services that they are not using. We don't believe that that's fair. Residents who manage stormwater on their property and do not contract to the Oregon stormwater system should receive an exemption of 100%. I owned this home for, for four years now, having come here from california. I see the combined water and sewer bill go from \$120 to \$160 to \$180, and you are talking about raising it again. It is just not fair.

Katz: Questions? Thank you. Well, nobody else? All right. Let's vote on the amendment. Any rejections to the amendment? The amendment is delayed -- i'm sorry, the substitute. The substitute amendment is to delay the implementation of the rate reform. Roll call.

Francesconi: That's what we are voting on now?

Katz: Yes.

Saltzman: Well, we are codifying the discount program.

Katz: No, no. Well, I just -- remember, this goes to second. Okay. So, as we do that --

Saltzman: Okay. Sorry.

Olson: Vote on the substitute for the delay. Francesconi?

Francesconi: Just to -- so for stability in the system and because we don't want to charge people until we can provide the benefit, I vote aye. **Hales:** Aye. **Saltzman:** Aye.

Sten: I would vote aye. I was whispering to commissioner Saltzman what did he think about delaying the second reading two or three weeks to give jeff merckley -- representative merckley some time to look at this, and that would be my proposal, and I think that actually, you know, I think that the point -- we need a minimum accounting on how the riparian additions play into this, and I think that there is some issues around, you know, how are we doing the calculations, that are well worth a good discussion, and I think that we can get that done between the first and second reading, at least a modest bit of a makeup call for our floundering process. Aye.

Katz: Mayor votes aye. All right. Everybody, this passes onto second and it will come back in two or three weeks, whenever you feel that you have gone through the process with representative merckley. Do you want to set a date? Two weeks? Are you going to be around town? Two weeks. I don't know of the out -- if the outcome is going to change, but process-wise, let's at least do that. Two weeks is when?

Olson: December 6th.

Katz: December 6th.

Olson: A wednesday morning.

Katz: Okay. Fine. Thank you. All right. Everybody, we are on regular, 1711.

Katz: All right. Anybody want to testify on this? If not, roll call.

Francesconi: Can parks borrow this fund?

*******:** Sure.

Sten: Water may need to borrow it. [laughter]

Katz: Mayor votes aye. 1712.

Item 1712.

Katz: We lost our folks. I am very sorry, but it was a lesson in civics.

Mark Williams: Good morning, mayor Katz, members of the council, I am mark williams, america general manager. And we are here with good news. As the mayor mentioned, cheryl manning, and gary are the coaches of the performing arts center, friends, committee who, along with steve janik, were instrumental in securing the 1.5 million donation for the new theater building naming, which is before you today. And we -- the america commission has set out a price list for naming opportunities at the performing arts center. Last week, the america commission was briefed and passed a resolution recommending that this council take the action which is before you today. My understanding is that the documents before you have been approved by mr. Janik and by the city attorney's office and by, also, by the america commission. So, we urge your positive action.

Katz: Thank you. Did you want to testify?

Christine Anderson: Nothing particularly. Kristy andersen, executive director of the friends of performing arts center.

Katz: Did you want to say anything?

Anderson: Not that I --

Katz: Did you want to say anything?

Robin Williams: I am robyn williams, the director 9 Portland center for the performing arts and urge your acceptance of this. This is much needed money for these facilities and put it to very good use.

Katz: Thank you, robyn. All right. We don't know -- well, at least I don't know who the donor is, but it is a kick-off of the \$6 million campaign, and I apologize to commissioner Saltzman. He

should have -- it should have been his name on this. We don't know how that happened. But my apologies to you on that. Anyway. Thank you. Anybody else want to testify? All right. Roll call. **Francesconi:** This is just a terrific thing. We needed something to celebrate today. I wish this had been a little sooner, but thank Cheryl and Steve and Gary and everybody else. This is a tremendous thing, and it is also a vote of confidence in us, in them, that we are willing to do this, not knowing the name of the donor. But, we know that it is in the performing arts center, their best interest to have a name that is a terrific benefit, and we also trust the people that did this. But this is a great thing because we need these kind of partnerships in the arts and parks and in a variety of areas to make this special city, but we need people like those folks to make it special. Aye.

Hales: Bravo, I mean, aye. **Saltzman:** Aye. **Sten:** Aye.

Katz: This isn't over, this is just the beginning, and part of the campaign is to ask citizens to buy a seat anywhere from \$300 to \$500, a wonderful holiday gift, a wonderful gift to remember your loved ones, or your significant others, and your name will be engraved on your -- on the seat, or at the seat in perpetuity. So, what a wonderful legacy for your friends. So, think about that because they are going to need to raise the rest of the money. Aye. All right. 1713.

Item 1713.

Katz: All right. You all -- we lost some of you, too. Yes.

*****: I am the only one left.

Katz: Identify yourself for the record.

Maria Elmore, Asst. Director, Police Activities League: Maria Elmore, assistant director of the police activities league, I am here to represent something else for you to celebrate. After-school funding that we have, are just waiting for, you so sign off on to get the money and start positive activities for children in the Portland area. So, I am here to answer any questions that you may have.

Katz: Thank you. Let me -- I happen to have the little poop-sheet here, and it will expand the hours of the, the pal, and commissioner Francesconi, you may be interested, it includes after-school programming to additional sites through a targeted effort called, Powell Plus, play and learning under supervision. So, I hope that you are working with commissioner Francesconi and the sun schools to make sure that the work that you are doing and the work that they are doing is -- compliments.

Elmore: We certainly are. We have a meeting in the case week with his office to talk about partnership with them.

Katz: Okay. Questions? Thank you. Anybody else want to testify? Roll call.

Francesconi: You've been doing this very good work for a long time. Even well before sun schools so I am looking forward to doing more of this. I am also jealous of your ability to get grants. This was terrific. More is terrific. Mora is terrific, and maybe we can learn from you, but the most important thing, us working together, especially in southeast Portland, you are such an important group there because that part of town, where many of our poor kids live is so underserved, so thank you for all that you have done.

Elmore: Thank you, we look forward to working with you, too.

Katz: Just want to let everybody know that this is a cop's grant. Mayor votes aye. 1714.

Item 1714.

Katz: This is a hearing. Commissioner Hales?

Hales: I don't think that we have any testimony. It is very small vacation, unless there is testimony, I don't think that we need a staff report and I would simply want to make a small amendment here, not an amendment, but a request that when we bring back the ordinance that we apply a condition that we want the transformer that's being constructed here, to be appropriately screened by landscaping. This is a street vacation of a tiny chunk of property in order for terwilliger properties to be able to install a transformer, so we want to make sure that's not done in a way that isn't pleasing

so if there isn't any testimony, I will make a motion we bring back an ordinance and include that condition.

Katz: Any objections? Hearing none, so ordered. All right. Mr. Janik, it is gone.

Hales: There he is. Thanks, Steve.

Katz: All right. Then I will take a motion for you to come back with an ordinance?

Hales: So moved.

Katz: All right. Second. Roll call. **Francesconi:** Aye. **Hales:** Aye. **Saltzman:** Aye. **Sten:** Aye. **Katz:** Mayor votes aye. 1715.

Item 1715.

Hales: A couple of, just briefing opening comments, I know that we are running out of time here and we have a couple of folks that want to testify. I want to clear up some confusion. I think, about this item and the changes that I am proposing. It is currently legal to skateboard the word, "a roller blade" on most sidewalks in the city, that's about 95% of the city. Outside of the downtown corps, it is legal to skateboard boarders to skateboard on those sidewalks today. Between sunrise and set, if you can tell when the sun rise and sets are, that means that northwest 23rd, hawthorne, belmont, this is already happening and without injury to pedestrians or skateboarders. What's being proposed is that we lift that sunset to sunrise ban on this form of transportation because we have got people in the community, particularly young people, who use this form of transportation to go to school, or to work and again, not just in the hours between sunrise and set. The proposal for the change in the downtown corps is that we make the rules for skateboarders the same as they now are for bicycles, that is no skateboarding on the sidewalks, in the downtown, in the downtown core. That remains. But, for example if, a psu student wants to be able to skateboard the rest of the way to class, they can get there. They will have a legal route to do so. Without fear of a ticket. And again, the sidewalks, the transit mall, and the, both the sidewalks and the streets and the transit mall would remain off limits to skateboarders. What we are not trying to do here is encourage skateboarding in the street. But, we are simply providing a legal way for a lot of people who are already using this transportation and recreation choice to be able to move around the community and not fear that, on the way home from school, because it is this time of year, and it gets dark early, that you are going to get ticketed for, for using something other than a car to get around. So, that's the, the reaction now behind this. It has come out of the work that we've been doing on giving people more choices for transportation, and the rising popularity of skates and skateboard boarding among young people in this city. I think that it is something that I have really learned in working on this issue is these kids are not punks. This is a legitimate transportation choice, and it is pretty discriminatory to say, we want to be this progressive city on transportation policy, but you are a young person trying to get home after middle school or high school or get to your job and you are skateboarding or using your scooter to get there, we might just give you a ticket. We, we need to change that.

Saltzman: I was going to ask, does this include scooters then?

Hales: Yes. Yeah. But the scooters, I think, now are legal in the street, but it is a little questionable.

Katz: We are going to have a lot of discussion on this item, I grant you. But --

Hales: There is some folks that are here today.

Katz: Commissioner lynn, come on in. Who else do you have signed up?

Olson: About four people.

Katz: Okay.

Diane Linn, Multnomah County Commissioner: Again, commissioner diane lynn, Multnomah county, I am here really to testify more as a mother, than as a commissioner this morning, although it is not morning any more, and I hate to testify in front of you when you are tired and hungry, but I will make this as brief as possible to make my point. And then leave you to our ongoing discussion.

Congratulations on your bragging rights. Money magazine said the city of Portland is a great place to live. Today, I earned bragging rights as a mother and I want to hope to bring the point that commissioner Hales made about skateboarders to you in a different way. Consider this -- the 14-year-old boy in my life last night was praised by every single teacher I talked to, aced honor's class, we hope, I think on his way to earning a full ib or international baccalaureate degree at cleveland high school, he's in a band and on a winning soccer team and he's learning a foreign language, spanish. His pe teacher told me he ran an extraordinarily fast mile, and I wasn't even aware of that. His physical endurance and conditioning is at a peak for his age. And I think that there is a reason for this. My son is also an aggressive in-line roller blader. He loves to skateboard, and he is not alone. In our neighborhood of sellwood, he's among a group of kids who are equally, as accomplished, and equally as committed to skateboarding. They are a group that are good kids. They are teens, preteens. They bus around the city to find good places to skateboard. They have had conversations with the police officer in our neighborhood. They have been treated as trouble makers before the officer was even aware of who they are, what they do, and what they want -- how they want to be perceived as the -- as a member of the community. Most of you know that I am also a member of the commission on children with families in communities, and I think that most of you have seen the surveys on how kids feel that they are perceived in this community. We all know, we have all been actively involved in the problems that we are having with teenagers, 1100 of them living on the streets of downtown Portland, serious issues around problems with kids. Why take a group of kids on, on -- who are doing well and turn them into would be, or possible criminals on an issue that we should be actually encouraging. I am going to make two final points here, again, it is late and I know that we will have more time to talk about this. One is on the issue of safety. As parents, we are alterably concerned. I say a prayer every time he rolls out that door, believe me. Helmets are important. Reflective gear is important, obviously. I could be the mother of a football player. We are all parents, as many of us are, of kids who are, who will be learning to drive. Now, that's scary. Any way that keeps the kids out of the car as long as problem, onto bus and is roller blading in safe conditions is a plus, as far as I am concerned. We have to keep an eye on the safety issues and we are alterably concerned about that. But, discouraging driving is a laudable goal. Downtown Portland is an issue, and I think that the question of, of transportation modes is very important. Lastly, really, skateboarders, in terms of the criminal issues around this, if they are violating the law, impacting other people, doing things that, that are a nuisance, those issues should be addressed. But, not just because they are skateboarders. Roller-bladers or skateboarders. This activity is really important to these kids and they will continue to do it. The adrenaline rush that they feel, if you could hear them describe it, and I am sure that you will in the coming months, as you hear from the kids, themselves, about how important this is to them. And in our effort to honor our children, in this community, I encourage your consideration, passage of this ordinance, in -- and again, it is going to be here, and we ought to live with it, and on our kids, work with them, communicate with them about what they need and want so that we can encourage behavior that is not criminal, that is not trouble-making, but it is positive. Thanks so much. Take care.

Katz: Okay. Anybody else want to testify? Before I ask, okay. I will ask you to testify, the assistant chief.

Celeste Grewe: I live at 4019 northeast 29th. I am here today to speak to you on behalf of my skateboard boarding family, and my skateboard boarding friends. I am a senior at grant high school. And I work in a local skateboard board shop called exit the real world. I am involved in a committee that's attempting to build the skateboard boards here in Portland. And I have many friends that are skateboard boarders and my little brother uses his skateboard board every day to go back and forth from his middle school to our house, and he uses it to go out everywhere that he goes. And it is his primary means of transportation outside of my parents, and me driving him. Our family spends

weekends traveling outside of the city to, to take him to skateboard board parks where he can legally use his skateboard board. It is now a mainstream sport and it is a preferred form of transportation for many people who are both young and old. It is also -- it has also become a primary form of recreation, and recreation is something that our schools encourage us to partake in after school, just like they do with sports, and this is a sport and a recreational activity, and they have chosen skateboard boarding for this, and my brother will, most likely, remain a skateboard boarder for the rest of his life, as an inexpensive way to get around the city as many other young people today do. Skateboard boarders have a hard time understanding why they can't use the streets like other nonmotorized forms of transportation, like bikes. And they don't understand why Portland doesn't provide them the space to go, like a skateboard board park, that they can use when they can't be out on, in front of their house using their skateboard board. My brother doesn't spend much time right now downtown because he's only 11, but I know that as he grows older, he will be downtown, and he probably will be on his skateboard board, and I don't feel that I want him getting fines and being a criminal because he is on his skateboard board and he's in the bus mall, to whenever he's going, and we do try to emphasize to him that, that he needs to use it safely and with respect for other people and their property. My hope is that my brother and his friends in the future will be able to use their skateboard boards as a form of transportation, legally, and without fines in the city of Portland, and I urge you to pass this ordinance. Thank you.

Francesconi: I have just a couple of questions to ask you. Okay. First I want to tell you, it is terrific that you are here. And you are willing to do this and testify. And it is also terrific that your father, on his personal time, is working on this because he cares that you have good, safe places to, to recreate, the other thing that I want to say, on behalf of Portland parks, I want to apologize to you that we don't have more skateboard board parks and that we haven't provided more activities, especially for teenagers in our parks. In interviewing you for, you teenagers for a strategic plan for parks, it has come over repeatedly that we are failing in this regard, and we need to provide a variety, not just one, but more than one skateboard board park throughout the city. Appreciate the efforts of commissioner Hales and others who are working on this issue, including parks, to deliver on this. I first thought that this was about skateboard board parks, and we need to do this, to authorize it. Especially if we have restrictions on our streets, we better have more skateboard board parks. Okay. So, I understand that, and I wanted to tell you that, but I do have a couple of questions because this is not about skateboard board parks, this is about skateboarding in streets. Do you skateboard board in streets in the neighborhood after dark now?

Grewé: Well, my brother gets out of school at 3:45. He skateboard boards home, by the time he gets home, it is 4:15 and on a cloudy day it is dark out.

Francesconi: But at 7:00, 8:00, 9:00, 10:00 at night, are you skateboard boarding on city streets?

Grewé: Permanently, I don't, but I know that other people do.

Francesconi: How many of your friends from the skateboard board shop where you work, how many skateboard board after 7:00 at night during the winter in neighborhood streets?

Grewé: Um, it is hard to say the winter because it is raining and you can't skateboard board while it is raining because your wheels rust, but I would say most of them do skateboard, whether, after they get off work or any other time, if they are coming home from a friend's house, that lives a block away.

Francesconi: Why do they use the street after dark instead of the sidewalk?

Hales: They don't necessarily, jim, the change that we are making is to lift the sunset to sunrise on streets and sidewalks. You can't do it on either one now. So, they skateboard board on the sidewalks, in the neighborhoods, by and large.

Grewé: It is hard to stop every, you know, five feet to pick your skateboard board up and get up the curb. You can do that without stopping and pick it up, but.

Francesconi: And your friends, do they not, to go to work, I will ask that question later, of other people, but do they skateboard board downtown on city streets now?

Grew: Not really because they do get fined. And it -- it is a problem, I mean.

Francesconi: They would like to?

Grew: They would like to, for instance, when they are going to psu or they are going anywhere downtown, and they want to use it, but they can't, and they know that they will be fined and it can be quite a large fine.

Francesconi: Okay. Thank you for coming and thank you for testifying. Go ahead.

Robin Klein: 6226 SE Ash, 97215. My name is robyn klein, and I am a mother of two young skateboard, ages 10 and 12. I reside? In the mt. Taber neighborhood where my children enjoy skateboard boarding just about anywhere that they can, including the busy and pedestrian dense hawthorne boulevard. Without incident. I enthusiastically promote their skateboard boarding as a recreational activity like bicycling and that's a healthy alternative to nintendo and tv. My kids are exceptional students in school. They are responsible, good kids. They have been attending the private french american school for many years and now my son is thriving in Portland public schools. I know that I speak for a large number of parents across the socioeconomic lines when I say that our kids ought to be allowed to put their skateboard boards on the ground and scoot on them in Portland without breaking the law. We are not talking about allowing destructive or unsafe behavior. That is a violation of separate law and is not permitted. It should not be prime ministered whether you are recklessly riding a skateboard board, a bicycle, pushing a shopping cart, or just tearing down the street running into people. Unruly, dangerous behavior that threatens the welfare of others should, indeed, be stopped and ticked. But, specifically outlawing skateboard boarding, even conscious skateboard boarding, for skateboard boarding's sake from anywhere downtown is unfair, it is discriminatory against skateboarders when bicycles are permitted in the same areas. And unnecessarily places our good kids at odds with the law. Portland is a progressive city. I just authored a guide book, in fact, on this city and learned a lot in the process. Perhaps Portland's greatest asset, and I promote this in the book, is that it is surely one of the most kid-friendly cities in america. Oregon is often viewed as the skateboard boarding capital of the country. Portland is perched at the e.p.i. Center and ought to involve and embrace this growing sort so I urge you to adopt the changes as proposed to the city ordinance, city code section 1674-10.

Katz: Does your family skateboard on the streets at 3:00 in the morning?

Klein: Not at 3:00 a.m. But a good example, in answer to your question, in the neighborhoods, my kids are skateboarding after dark sometimes.

Katz: In the street? After dark, at 3:00 a.m. In the morning?

Klein: Not at 3:00 a.m. In the morning. I have caught them out there once at 1:00 and I got quite mad. But, but they do -- halloween evening is good example, they were going from house-to-house on their skateboard boards, I had four boys --

Katz: On the sidewalk or the street?

Klein: In the street. They utilize both, which is legal in the, outside the downtown area. And that's where -- that's the neighborhood I live in, mt. Taber.

Rhonda Brown: 6239 SE Ash St., 97215 I am rhonda brown. I am a mom, a skateboard board mom. I have a son 17-year-old who grew up on a skateboard board since he was 5 years old. We have enjoyed watching him perfect his skills and use his skateboard board in all areas of his life and in a positive way. He's a good kid. He's a good citizen. As are many of his friends. We have concerns about this ban in the city on skateboarders, and to us, it seems to single out one group of citizens and it appears to be too extreme -- too extreme in its boundaries. These kids feel frustrated, especially when they cannot get from paint "a" to "b" without a sense that around every corner lurk as police officer ready to ticket them and throw them out. I believe that lifting this ban and allowing the

skateboarders to use their wheels for transportation downtown will not only enhance the growing cultural changes of Portland, and relax the laws for those having to enforce them, but will work toward improving skateboarders respect for the law and those who enact the law. I want my children, while they grow up, to view those who represent government authority as their friends and protectors, not their adversaries. Lifting this ban would definitely be a good start, in my view.

Katz: Thank you.

Bruce Prunk, Asst. Chief, Police Bureau: Good morning, mayor Katz, and members of the city council, I am Bruce and I am the assistant chief of operations for the Portland police bureau. I come before you this morning in regards to the proposed ordinance 16.70.410 to talk about some concerns that the Portland police bureau has with this ordinance. We are not anti-skateboard board, anti-inline skateboard, anti-scooter, and generally speaking, we, using the community policing models that we talked about several times this morning, would like to involve the communities and the people that would be impacted in this ordinance in the discussion about the merits of the ordinance. We did not learn of this ordinance until Monday of this week. There is a section b in this ordinance which specifically excludes people from using skateboard boards, inline skates, or roller skates on the transit mall. What's interesting is, is that the folks at tri-met are unaware that this part of the ordinance has been included, Captain Clark Jensen from our tri-met enforcement division wasn't contacted about this inclusion in here or the expectations that the tri-met officers might have in enforcing this part of the ordinance.

Hales: That's existing code.

Prunk: And I would also like to point out that the Portland police bureau has been very involved in problem-solving and working with community members and the formation and creation of skateboard board parks. Lieutenant Scott Wineguard was talking to you about the skateboard board parks, we are meeting next weekend with folks in Mayor Katz's office to talk about the skateboard park downtown, but most importantly, we are also, currently working with the city attorney's office right now on another chapter of the Portland city code, which is chapter 14, which is the public order and police. And in that chapter 14, we have been working for the past six months on language that discusses the use of skates and skateboard boards. We weren't included in any discussion on chapter 16, we are working on chapter 14. If you pass chapter 16 today, we are going to come here in several months with chapter 14 language that is not consistent with that. I guess what we are asking for you to consider today is, is that this be pulled -- pulled, and that we would ask that it be included in the discussion on how the city would propose to have the police bureau approach the use or the enforcement of a city code in regards to the use of skates, skateboard boards, and scooters. The other thing that this proposed ordinance that's before you today talks about is simply the downtown portion of the city of Portland. Chapter 14, we went out in meeting with the community members, and we also talked to folks in the Lloyd district, and the Rose Quarter, and they have the same concerns that the folks in downtown areas have, about folks using the sidewalks and roadways, especially along the transit areas, for skateboarding and using the skateboard boards and inline skates. So I guess I would just ask you pull this for today and we actually have a discussion on the boundaries and how we want to approach, you know, discussing this in the community, as far as regulating or nonregulating the use of this alternative form of transportation.

Hales: Bruce I want to apologize we didn't communicate with you earlier, this seems a pretty straightforward change in the policy but I will bring this back for a second reading and vote on December 20th so you will have some time to have these concerns addressed, but I couldn't quite understand where you were coming from. Personally, do you think that we ought to change the policy and allow kids to skateboard on the sidewalks in Sellwood after it gets dark or should we maintain --

Katz: And streets? And streets. With cars. At 3:00 in the morning.

Hales: Yes, and it is a good thing given this discussion that the bicycle was invented before the automobile because I don't think that we would have any of them on the streets, either. So, should we let them do that or not.

Prunk: I would just like to -- I guess, coming from a community policing background, I just want to make sure that the people that would be impacted on this, which includes tri-met, northeast Portland, and other people that would be impacted by this have a voice in it, and I don't see that that's happened with this yet. Second of all, I want to point out that this, this year, thus far, in the city of Portland, we have had 30 people killed in motor vehicle accidents. Of those 30 people killed, ten of them pedestrians, which means that they have not been in automobiles. And out of those ten people killed, six have been at fault, which means that they are in the roadway. Without exception, the six people that were at fault were out after dark and were wearing dark clothing. I guess I am pointing out that I do have some safety concerns about allowing people without any other guidance in here as far as any sort of helmets, or, or markings or anything else, that you put, you are putting people, especially young people at risk without giving them any sort of, of, of, you know, required safety limit to be operating on the streets of Portland, along with the motor vehicles but I think that that's part of the discussion that needs to occur that has not occurred yet.

Hales: I agree and I appreciate the concern about traffic safety, and let me say on a policy level, I don't think that there is anybody in this room that failed to notice my emphasis on that issue and appreciate the bureau's increased interest. In traffic safety, and the fact that we are killing more pedestrians with cars than, people, citizens with cars than we are with guns. Secondly, and by the way, I assume that the police bureau's interest in pedestrian safety will mean that we will no longer have the bureau patrolling waterfront park on the sidewalk in cars, so we will talk about that, too. But, on, on a personal level, I have a 19-year-old son, that has a funny little scar right here because he took a fall once, avoiding a car on his roller blades. But, he still doesn't have his driver's license. And I suspect the odds of him having been injured worse than that, if he had his driver's license, are greater, so I would rather see him on his blades a little longer and not behind the wheel. The point that commissioner Lynn made, this is about transportation choices. Are we going to let people make those choices and be on our streets and sidewalks or criminalize that behavior in favor of the car? That's the question before the council.

Prunk: But I do --

Katz: Wait, wait. Commissioner Saltzman?

Saltzman: On the -- I don't have the code in front of me so I don't know what chapter 14 deals with. Can you tell me, what are some of the changes you are looking at in chapter 14?

Prunk: We are working with the --

Saltzman: Is this with respect to certainly gear and reflectors or --

Prunk: Right now we are working with the city attorney's office on chapter 14, which is public safety. We brought it before chapter 20, we completed chapter 20 and now we are working on 14, which is public safety. Under chapter 14 now, is the elements about the unlawful use of roller skates and skateboard boards, which is basically the same sort of language that you have here in chapter 16.

Saltzman: Very similar language in two different parts.

Prunk: But what we have done in chapter 14, and we have expanded the area, not just on the west side but also, talking with folks in the Lloyd district and the rose quarter that have the same transportation and transit issues that we have downtown. So I guess all I am saying is, is that rather than move forward on one chapter, when we are working on --

Saltzman: And at this point --

Katz: Just a minute, just a minute, just a minute. Let him continue.

Saltzman: At this point in the process, is it safe to say there is nothing inconsistent so far with the direction you are going with what's proposed in chapter 16?

Prunk: Yes.

Saltzman: There is nothing inconsistent at this point?

Prunk: There are things inconsistent about the boundaries and about specific, you know, specifying that the --

Saltzman: Can these things be worked out between now and december 20th in terms of going to a second reading?

Prunk: I don't know. The question is, that we did not, in our chapter 14, we haven't removed the ban on skateboard boarding after dark.

Katz: Excuse me, just one second, commissioner Hales. Commissioner Francesconi wanted to speak.

Hales: We have a factual problem here.

Francesconi: I will get to it.

Hales: Is there anything in chapter 14 today about skateboard boarding, today, not this giant corpus being assembled by madeleine, that collect codes from all over the place, that's what we are talking about, is there anything in chapter 14 today about skateboard boarding?

Prunk: Commissioner, I am an assistant chief, and I am --

Hales: This is a draft.

Katz: That's what he says.

Hales: It doesn't exist today.

Prunk: I would love to have this discussion with your office and when I called your office, your staff said that we are moving forward because this is a transportation issue.

Hales: There is one section of city code that deals with this today, it is the section in front of the council for amending. There is a giant effort to create some new title and collect bits and pieces of code from all over the place and call it title 14, that is a completely different venture than the yet before us.

Francesconi: Some days, you know, most days, I am very proud to be a member of this council. Today, is not one of them. This is an embarrass element for us as a city right now. The first thing is, we all care about the safety of our children. We want safe places for our kids and we want them to feel more part of this city and we want to provide them with more opportunities. That's the first statement. I am having an incredible amount of time understanding that at the time that we have traffic fatalities, pedestrian accidents are such a serious transportation issue, transportation is apparently not talked -- taught to the police until monday. Now, the second point is, I need to hear from transportation, is p dot here? I need to hear from p do the as to what this is in terms of a transportation strategy to get people to work and I need to hear their opinion on this. And three, this is the kind of issue, along with community policing and community -- citizen involvement we need to hear from some citizens. If you can do all of that, and then finally, it would be nice to have the city attorney here when we are talking about changing a fundamental code. Now, if you can do all of that by december 20th, terrific. And get this on track. But, we can't be making policy like this on such an important issue involving our children. This is not the way to make policy.

Hales: Jim, my apologies, I thought this was a minor code change that inserts a little common sense into our code that behavior that's now criminal is something we otherwise encourage. We could do this easy and we could do it with a small hearing like this, or we could have a big proceeding with lots of process and lots of people here. So, if that's what the council wants, I will bring us back on december 20th, which is an evening hearing, 6:45 time certain, we will have lots of folks that are happy to testify about there issue, we will have lots of public involvement, and we will be here for a couple of hours.

Francesconi: That might be a good idea on an issue like that, so that's one point. But that's not my major point. When we are making substantial policy, which this is, and it may even be the right

policy, don't misunderstand me, we have got to get our act together and talk to one another and have a coordinated response ahead of time so we know what we are doing. We have got to have pdot and the police working together.

Hales: Pdot is fine with this, jim.

Katz: All right. Now wait a minute. We have all violated all of our rules in terms of having the council -- you haven't said anything yet. But you have violated all the rules of the council procedures, and I have ignored them for eight years and will continue to ignore them, but I need to give somebody else an opportunity to talk. If they want to.

Sten: I have nothing to say.

Katz: Okay. Let me say something because I usually wait until the very end. I guess I am -- I have the concern, a process concern, and I am not always terribly big on the issue of process but on this one, I do. I remember when I ran for the legislature that people on vista and montgomery drive and fairview boulevard, neighbors, neighborhood associations were going crazy because skateboard boarders were skateboarding late at night, down the hill and many of them getting into accidents. In fact I have one from my own staff where that happened, on montgomery. This is not only downtown. This is in the neighborhoods. This isn't only flat streets, this is hills, and they take the hill and they scoot down and now you are saying that they can really do it any time of the day or any time of the day. Now, to say this is a transportation policy and not address public safety issues is utter foolishness. On bicycles, you require lights in the front and in the back, if you can't see. On skateboard boards, you don't require anything. I am as worried about skateboard boards as I am worried about scooters. Because I watched scooters in the middle of traffic. It is very difficult for them sometimes to stop because they have no brakes, and on some streets, and this is not in the heart of the downtown, on some very congested streets, with the streets being ripped up all over the city, this can become a public safety, a human safety issue. And that's the reason that really I am upset. Now, I love skateboard boarders. I talk to them all the time, in fact during the summer, I met with them at pioneer square and had a conversation. What's your problem? What do you need? What do you want? And commissioner Francesconi is absolutely right. We basically ignored their needs, although there is a park now in north and there is one under bridge and we are discussing the possibility of having another park. But, to let them skateboard on the street and not protect them from automobile and motorized vehicles all times of the night and not to protect the neighborhoods that have called me over and over again in years past because of the noise is just, you know, really questionable. So, you can bring in whoever you want, but I would like the neighborhoods, especially those in the southwest hills and in the northwest hills that have experienced skateboard boarders taking those hills down late at night.

Saltzman: I would like to suggest, I support going ahead with the second reading but I support, you know, the right hand needing to talk to the left-hand and we need to bring all the concerns together and hopefully deal with them in a rash manner. I want to support skateboard boarding but I am also, you know, keenly attuned to public safety, pedestrian safety issues, too. And I guess that I want these to all be worked out, but I suggest that maybe december 20th is probably not, given the time of year this is, with holidays, it is probably not the most certain way that we are going to get it by then. Could we have this maybe in january, or have a hearing on december 20th but move it to a formal vote, perhaps, a little later.

Hales: We will look for --

Katz: Whatever time works for you.

Hales: But I think we ought to have it be a night hearing so people can come in and testify and so we will pick one of the next couple of months and do it at night.

Katz: And if we have any statistics on accidents with, with regard to, now scooters or skateboard boards and where that would be, that would be helpful, as well.

NOVEMBER 22, 2000

Prunk: And again, I want to sure of some concerns that were getting more restrictive than we currently are, in regards to the transit mall, and again, I have the concern that we haven't heard from, or talked with --

Katz: And commissioner Hales recognized that and we will bring folks in to, to review that. I think that, that we all heard you. And I would like to at least invite the neighbors who live on top -- or a neighborhood association with neighbors who live on top of a, of the hills at night. I, by the way, I hear it every night, every night, almost every night.

Hales: The question is whether we are going to make them criminals or not. They are going to be there, whether we give them authorization or not. But whether it is in our code as a prohibited act to skateboard board down your sidewalk --

Katz: I am talking about the street, not the sidewalk, the street. I am worried about their safety. It goes to the second -- thank you. It goes to the second reading. All right. 1716. Thank you, commissioner Hales, for taking it back and bringing it back in a couple of weeks.

Sten: This is a budgeted contract. It is computer work at the water bureau, not the cis or the vendor that we are having trouble. I would propose not having a presentation although we have one ready.

Prunk: That's fine.

Katz: I think that everybody -- okay. Anybody want to testify on this? This discreet item? If not, roll call. **Francesconi:** Aye. **Hales:** Aye. **Saltzman:** Aye. **Sten:** Aye.

Katz: Mayor votes aye. Before you all disappear, we don't have an agenda this afternoon. Have a very happy holiday, all of you. And stay safe. And we stand adjourned.

At 1:00 p.m., Council adjourned.