



CITY OF
PORTLAND, OREGON

OFFICIAL
MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 23rd DAY OF MAY, 2001 AT 9:30 A.M.

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

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Harry Auerbach, Senior Deputy City Attorney; and Peter Hurley, Sergeant at Arms.

Items No. 592 and 593 were pulled for discussion and, on a Y-5 roll call, the balance of the Consent Agenda was adopted.

		Disposition:
578	TIME CERTAIN: 9:30 AM – Portland Rose Festival Association update by Executive Director (Presentation introduced by Mayor Katz)	PLACED ON FILE
*579	Grant a revocable permit to the Portland Rose Festival Association to erect and maintain flags and banners on the ornamental light standards in downtown Portland from May 25 through June 27, 2001 (Ordinance introduced by Mayor Katz and Commissioner Francesconi) (Y-5)	175596
*580	Grant revocable permit to the Portland Rose Festival Association to use Tom McCall Waterfront Park for its Waterfront Village from May 18 through June 18, 2001, or as approved by the Portland Parks and Recreation Bureau (Ordinance introduced by Mayor Katz and Commissioner Francesconi) (Y-5)	175597
*581	Grant revocable permits to the Portland Rose Festival Association to hold the Starlight Parade in downtown Portland on June 2, 2001 (Ordinance introduced by Mayor Katz and Commissioner Francesconi) (Y-5)	175598
*582	Grant a revocable permit to the Portland Rose Festival Association to vend and sell Rose Festival items on downtown City sidewalks on June 2, June 6 and June 9, 2001 (Ordinance introduced by Mayor Katz and Commissioner Francesconi) (Y-5)	175599
*583	Grant revocable permits to the Portland Rose Festival Association to hold the Junior Rose Festival Parade on June 6, 2001 (Ordinance introduced by Mayor Katz and Commissioner Francesconi) (Y-5)	175600

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<p>*584 Grant a revocable permit to the Portland Rose Festival Association to close portions of city streets prior to the Grand Floral Parade for formation area from 5:00 a.m. to 1:30 p.m. on Saturday, June 9, 2001; for erection of seating in Winning Way from 8:00 a.m. Friday, June 8 through 4:00 p.m. Saturday, June 9, 2001; and for a float display area after the parade from 12:00 noon Saturday, June 9 through 8:00 p.m. Sunday, June 10, 2001 (Ordinance introduced by Mayor Katz and Commissioner Francesconi) (Y-5)</p>	<p align="center">175601</p>
<p>*585 Grant revocable permits to the Portland Rose Festival Association to hold the Grand Floral Parade on June 9, 2001 (Ordinance introduced by Mayor Katz and Commissioner Francesconi) (Y-5)</p>	<p align="center">175602</p>
<p>*586 Grant revocable permit to Portland Rose Festival Association to close certain streets from June 13 to June 17, 2001 to hold its Rose Festival Art Festival, waive fees for some permits and inspections (Ordinance introduced by Mayor Katz and Commissioner Francesconi) (Y-5)</p>	<p align="center">175603</p>
<p>587 TIME CERTAIN: 10:00 AM – Authorize the rates and charges for water and water-related services by the City during the Fiscal Year beginning July 1, 2001 to June 30, 2002 and fix an effective date (Ordinance introduced by Mayor Katz and Commissioner Sten)</p>	<p align="center">PASSED TO SECOND READING MAY 30, 2001 AT 9:30 AM</p>
<p>588 Amend Title 17 of the City Code to revise sewer and drainage rates and charges in accordance with the Fiscal Year 2001-2002 Sewer User Rate Study. (Ordinance introduced by Mayor Katz and Commissioner Saltzman; amend Code Chapters 17.35.070 and 17.36.020 and 17.36.025; repeal 17.36.010 and 17.36.065)</p>	<p align="center">PASSED TO SECOND READING MAY 30, 2001 AT 9:30 AM</p>
<p>589 Revise residential solid waste and recycling collection rates and charges, effective July 1, 2001 (Ordinance introduced by Mayor Katz and Commissioner Saltzman; amend Code Chapter 17.102)</p>	<p align="center">PASSED TO SECOND READING MAY 30, 2001 AT 9:30 AM</p>
<p align="center">CONSENT AGENDA - NO DISCUSSION</p>	
<p>590 Cash investment balances April 12 through May 09, 2001 (Report; Treasurer) (Y-5)</p>	<p align="center">PLACED ON FILE</p>
<p align="center">Mayor Vera Katz</p>	
<p>591 Accept contract with Eagle-Elsner, Inc. for street improvements on SE Tacoma Street - Overpass to Bridge improvements as complete, release retainage and make final payment (Report; Contract No. 32994) (Y-5)</p>	<p align="center">ACCEPTED</p>
<p>592 Authorize Amicus intervention in City of Auburn; City of Des Moines; and City of Tacoma v. Qwest Corporation in the U.S. Court of Appeals for the Ninth Circuit regulating telecom providers (Resolution) (Y-5)</p>	<p align="center">35998</p>

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593	Name the fountain in Pioneer Courthouse Square in honor of Terence O'Donnell, a native of Portland, a historian, and a friend to our City (Resolution)	REFERRED TO COMMISSIONER OF PUBLIC WORKS
*594	Give preliminary approval for the issuance of Multifamily Housing Revenue Bonds for the construction of Pacific House Project in an amount not to exceed \$10,000,000 (Ordinance) (Y-5)	175580
*595	Authorize the issuance and sale of Tax Anticipation Notes, Series 2001, in an amount not to exceed \$13,000,000 (Ordinance) (Y-5)	175581
*596	Contract with e-Bid Systems, Inc. for system upgrade and customization to the Bureau of Purchases pilot project for providing plans and specifications via the internet (Ordinance) (Y-5)	175582
*597	Authorize an Intergovernmental Agreement with Tri-County Metropolitan Transportation District of Oregon regarding the City Equal Employment Opportunity and Workforce Training & Hiring Programs (Ordinance) (Y-5)	175583
*598	Authorize an Intergovernmental Agreement with the Metropolitan Exposition Recreation Commission regarding the City Equal Employment Opportunity and Workforce Training and Hiring Programs (Ordinance) (Y-5)	175584
*599	Apply for a grant from the Department of State Police, Criminal Justice Services Division, Violence Against Women Act (Ordinance) (Y-5)	175585
*600	Authorize the Police Bureau to appoint Matt Estes to the classification of Police Officer at the four-year salary rate (Ordinance) (Y-5)	175586
*601	Authorize application to the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development for six grants in an amount up to \$815,000 for transportation and growth management programs (Ordinance) (Y-5)	175587
*602	Authorize a contract and provide for payment to reconstruct the traffic signals at six intersections (Ordinance) (Y-5)	175588
*603	Authorize continuance of negotiations for purchase of property rights required for the Southwest Parallel Interceptor Project and authorize the City Attorney to commence condemnation proceedings, if necessary, and obtain early possession (Ordinance) (Y-5)	175589

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*604	Authorize an agreement between the City and the City of St. Helens to provide laboratory analytical services (Ordinance) (Y-5)	175590
*605	Agreement with JOIN for the funding of activities to provide a rental assistance program under the Transitions to Housing Pilot Project and provide for payment (Ordinance) (Y-5)	175591
*606	Accept a transfer of two U.S. Department of Housing and Urban Development, Supportive Housing Program McKinney Grants funds from Multnomah County for leasing dollars for the Homeless Single Adult System (Ordinance) (Y-5)	175592
*607	Increase agreement with Portland Development Commission by \$8,286,234 to administer housing and economic development programs and provide for payment (Ordinance; amend Agreement No. 33301) (Y-5)	175593
608	Amend the effective date of the Southwest Community Plan Vision, Policies and Objectives until the Southwest Community Plan Comprehensive Plan/zoning map update becomes effective. (Second Reading Agenda 562) (Y-5)	175594
City Auditor Gary Blackmer		
*609	Authorize contract with InSight Knowledge Management Systems, LLC to install and configure Electronic Records Management System (Ordinance) (Y-5)	175595
REGULAR AGENDA		
Mayor Vera Katz		
*610	Authorize acquisition of vehicles for use by City bureaus (Ordinance) Motion to remove request A-12 from Exhibit A: Moved by Commissioner Hales and seconded by Commissioner Saltzman. (Y-5)	175604 AS AMENDED
*611	Authorize five Professional, Technical and Expert Service contracts for services in support of Communication and Networking projects (Ordinance) (Y-5)	175605

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*612	Accept an additional \$176,375 from Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms for the G.R.E.A.T. program grant (Ordinance) (Y-5)	175606
*613	Adopt findings, approve an alternate contracting process, create an exemption to the competitive bidding requirements of ORS Chapter 279, contract with the highest scoring evaluated proposal and provide for payment for Electronic Handheld Parking Citation Devices (Ordinance) (Y-5)	175607
City Auditor Gary Blackmer		
614	Assess property for sidewalk repair by the Bureau of Maintenance for billing processed through April 19, 2001 (Hearing; Ordinance; Y1042)	PASSED TO SECOND READING MAY 30, 2001 AT 9:30 AM
615	Assess property for sidewalk repair by the Bureau of Maintenance, a special assessment for May 2001 (Hearing; Ordinance; Y1043) Motion to overrule one remonstrance: Moved by Commissioner Hales and seconded by Commissioner Sten.	PASSED TO SECOND READING MAY 30, 2001 AT 9:30 AM
Communications		
616	Request of Leonard Reinhorn to address Council regarding discrimination on City golf courses (Communication)	CONTINUED TO MAY 30, 2001 AT 9:30 AM
617	Request of Larry Tuttle to address Council regarding energy issues (Communication)	PLACED ON FILE
At 11:25 a.m., Council recessed.		

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<p>A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 23rd DAY OF MAY 2001 AT 2:00 P.M.</p> <p>THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Hales, Saltzman and Sten, 5.</p> <p>OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Frank Hudson, Deputy City Attorney; and John Scruggs, Sergeant at Arms.</p> <p>At 2:12 p.m., Council recessed. At 2:30 p.m., Council reconvened. Commissioner Hales left at 2:30.</p> <p>*618 TIME CERTAIN: 2:00 PM - Amend and extend for 90 days moratorium on electronic equipment facility development along streetcar corridor in NW Portland. (Ordinance introduced by Mayor Katz and Commissioner Hales; amend Ordinance No. 175298)</p>	<p>CONTINUED TO MAY 30, 2001 AT 2:00 PM</p>
<p>619 TIME CERTAIN: 2:30 PM – Appeal of David Leiken, Double Tee Promotions, Inc. against Hearings Officer’s decision for reconsideration of a conditional use approval for The New Portland Meadows at 1001 N Schmeer Road (Hearing; LUR 00-00820 CU)</p> <p>Motion to affirm Hearing Officer’s decision and eliminate the language with regard to the expiration date: Moved by Commissioner Sten and seconded by Commissioner Francesconi.</p> <p>(Y-4)</p> <p>At 3:11 p.m., Council recessed.</p>	<p>APPEAL DENIED WITH NO EXPIRATION DATE</p>

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<p>A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 24th DAY OF MAY 2001 AT 2:00 P.M.</p> <p>THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Hales, Saltzman and Sten, 5.</p> <p>OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Linda Meng, Chief Deputy City Attorney; and John Scruggs, Sergeant at Arms.</p> <p>620 TIME CERTAIN: 2:00 PM – Consider revised findings for the Oregon Holocaust Memorial Siting on remand from the Land Use Board of Appeals (Hearing)</p> <p>Motion to exclude the submitted letter and any other new testimony from our decision: Moved by Commissioner Hales and seconded by Commissioner Saltzman. Gaveled down by Mayor Katz after no objections.</p> <p>Motion to adopt the revised findings: Moved by Commissioner Hales and seconded by Commissioner Saltzman</p> <p>(Y-5)</p>	<p>ADOPT FINDINGS</p>
<p>621 TIME CERTAIN: 2:30 PM – Amend City Code to establish the Independent Police Review Division (Ordinance introduced by Auditor Blackmer; replace Code Chapter 3.21)</p> <p>At 6:37 p.m., Council adjourned.</p>	<p>CONTINUED TO JUNE 6, 2001 TIME CERTAIN AT 10:30 AM</p>
<p>EXECUTIVE ORDER</p> <p>621-1 Reassign City departments and bureaus to the Commissioners in Charge (Ordinance)</p>	<p>175579</p>

GARY BLACKMER
Auditor of the City of Portland

By Karla Moore-Love
Clerk of the Council

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

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Closed Caption Transcript of Portland City Council Meeting

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

Key: ***** means unidentified speaker.

MAY 23, 2001 9:30 AM

Katz: Good morning, everybody. The council will come to order. [roll call]

Katz: We are honored by having the court here. So i'm going to turn everything over to you. You've got something choreographed for us?

*****: Where would you like us to stand?

Katz: Anywhere you want. Right over here? Oh, no. Turn to us.

Hales: They get to see you all the time.

Katz: You are on television now. You need to know that. Move down a little bit and squish in.

*****: We're the 2001 rose festival court and we'd like to introduce ourselves and give you a preview of this year's rose festival.

*****: Felicia. I'm felicia from parkrose. I enjoy singing acting and listening to music. I can't wait to see all the entertainment this year at the pepsi waterfront village. Thousands come to listen to great music and good food. Ashley.

*****: I'm ashley from st. Mary's academy. I compete in equestrian activities. Be sure to watch all the beautiful horse that's take place at the southwest airlines grand floral parade. It's fun for the whole family with floral floats, patriotic marching bands and special guests.

*****: I'm christina. I'm a national honor 0 site member and a team captain of two varsity sports. If you're a sports fan like me and enjoy -- at the freightliner g.i. Joe's 200 june 22nd through 24th at the Portland international raceway. Michelle.

*****: I'm michelle from marshal. I'm a member of my school's new polynesian club. One way to experience all of the cultural diversity in Portland is attend the international showcase concert at the memorial coliseum saturday, june 9th. Enjoy song and dance for more than over 30 different cultures.

*****: I'm lawanda. I volunteer as a kindergarten science teacher. I know a special group of kids called the rose festival kids who participate in community service activities around the city. This program has received an award for best community outreach in the world.

*****: I'm laquia. I love to attend the rose festival air show presented by intel. This year's show features a sat die twilight performance and a fireworks display.

*****: Hi, i'm bethany from central catholic. I was the lead in my school's spring play and enjoy sketching. The Portland arts festival presented by verizon wireless is a great place to experience all the region has to offer. 150 artists showcase their work june 15th through june 17th at Portland state university south park blocks. Lindsay.

*****: I'm lindsay from madison. I plan to major in business and would love to own my own wedding shop. One store you should plan on visiting is the rose garden store in beautiful gift shop is packed with souvenirs.

*****: I'm sharifa. I enjoy sewing, shopping and writing poetry and i'm also a track and field state champion sprinter. This fantastic effort helps keep the rose festival one of the cleanest festivals in america.

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*****: I'm ursula from roosevelt. I play volleyball and softball as well as coach a little league team. Our fabulous volunteers give their free time to events and programs like the rose festival court. We wouldn't be here today without them.

*****: Hi, i'm vanes a from david douglas high school. I've lettered in theater choir and track. And i'm my glad valedictorian. I'm looking forward to the george morlan 1190 festival of bands at the newly renovated pge park friday, june 8th. These high school bands put on one of rose festival's finest shows. Wesley.

*****: I'm wesley from lincoln. I'm a member of a national charity league and plan on majoring in fashion design. I can't wait to see all the designs of the beautiful floats featured at the qwest dex showcase of floats. Not to mention the entertainment and exhibitors.

*****: I'm skye from cleveland. I'm studying child development. Dozens of elementary schools are featured in the junior rose festival parade where 10,000 kids strut their stuff in the hollywood district. It's the largest kids parade in the country and it happens june 6th.

*****: I'm kelly from wilson. I love dance and cheerleading. I've marched with wilson's band in grand floral and starlight parades. This year's starlight parade, presented by southwest airlines, takes place saturday, june 2nd, and features colorful floats, and the all-important marching bands. Look for us on the red lion float.

*****: Thank you for having us today. It's great to meet you.

Katz: Thank you very much. [applause] they're a wonderful group. All right. Let's go consent agenda quickly. Consent agenda items to be pulled? 592, 593. Anybody in the audience want to pull a consent agenda item? If not, roll call on consent agenda.

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

Katz: Mayor votes aye. [gavel pounded]

Item 592.

Moore: Authorize amicus intervention in city of auburn, city of des moines and tacoma.

Madelyn Wessel, Office of the City Attorney: This isn't our case, which you're all quite familiar-

Katz: Commissioner Saltzman told me they sponsor the rose festival. They're going to be sued again.

Sten: It's a friendly disagreement.

Wessel: This is actually one where they sued somebody else, but the result of that legal action at least initially in the ninth circuit is one that calls into question some very important city programs and policies, including management of the right of way with respect to when streets get open, how streets get opened, what kind of revenue and fees can be charged with the installation of telecom facilities other kinds of conditions placed on them. In other words, a very significant set of policies for transportation and also for the cable office and for the city's objectives that are pretty significant. As you all probably know, it's not over until the fat lady since, and what we're doing here is seeking review again by the panel decision that issued an opinion that really many of us feel is a bit off and in the alternative, seeking rehearing on -- which allows all of the judges in that court to take a look at the decision and respond to requests for review. The actual case here is a case involving state of Washington ordinances, not city of Portland ordinances. But the ripple effect of the court's decision would certainly have an impact on our programs, and we think it's very important to join with other cities all along the west coast in urging the 9th circuit to take a second look at this particular decision. So the authorization here is for us to appear as friends of the court, not parties to the litigation in the ninth circuit with other cities, and the league of Oregon cities, which also has decided to join this particular case. To ask the court to take another look.

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

Francesconi: This will be significant for ernie as among other things. Aye.

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

Sten: Let me just say I think this is something we have to take a quick look at. It probably puts on hold the telecom ordinance I brought forward at an informal about a month ago, because we've got to make sure it's in line with this new decision while we question this decision. So i've been trying to get this ordinance passed for a long time and it's going to be a little longer. Aye.

Katz: Mayor votes aye. [gavel pounded] thank you.

Item No. 593.

Moore: Name the fountain in pioneer courthouse square in honor of terrence o'donnell, a native of Portland and a friend to our city.

Sten: He passed away recently, and the proposal came forward to name the fountain in pioneer square after him. It doesn't have a name at this point, and the water bureau maintains the fountain and is interested in doing that. Mr. O'donnell had very close roots with the persian community in Portland, and the chief engineer has been talking with the family and trying to figure out what would be a fitting legacy for terrence. The idea of the fountain, he loved public space and loved water, so it makes sense. The mayor was interested, and we were going to bring this forward. I thought the pioneer courthouse square board had a chance to look at that. I was mistaken. They haven't found a position, so i'd like to pull this back and let them look at it and make sure that's an appropriate idea from their point of view and then bring it back.

Katz: Any objections? Hearing none, thank you, commissioner Sten. So ordered. [gavel pounded] okay. Time certain. Let's read 578 through 586.

Item 578, 579, 580, 581, 582, 583, 584, 585 and 586.

Katz: Okay. Come on up.

Francesconi: After listening to them, i'm not sure we want to hear from you. [laughter]

Katz: You're going to get jazzed up in a few minutes.

Dick Clark, Executive Director, Portland Rose Festival Association: Good morning.

Katz: Good morning.

Clark: My name is dick clark, the executive director of the Portland rose festival association and i'd like to -- my could legion to introduce themselves.

Jack McGowan, Executive Director, SOLV: I'm jack, executive director of solv.

Marilyn Clint, Associative Director, Portland Rose Festival Association: I'm marlin, associative director for the Portland rose festival.

Clark: Thank you for consideration of these ordinances. I wish we could add one more that says we're going to legislate sunshine like we have outside today for the 31 days. But we're going to have a great rose festival. It all kicks off in seven days and you have a schedule of events that was distributed this morning that details the 80 different activities that will happen over those 32 days, starting on may 31st and continuing until june 2nd. During that time period, 2 million people will be visiting those events, whether it be the parades, the grand floral, the junior or the starlight parade, the air show, the carter race at Portland international raceway, or our second year of our completely reprogrammed waterfront village, which we're very proud of. There are several common threads that run through all of these events. They include youth, our court program, and our rose festival kids, community, diversity, and the environmental. -- the environment. Those themes form the basis of our rose festival vision, which you received this spring that our board of directors passed last spring. This becomes the road map for the rose festival of the future. The environment is the theme that we would like to share with you today. If the city of Portland, yourselves, your bureau heads, the police, the fire department, are our number 1 partners, then solv, represented by jack mcgowan, is on the top 5 list. Because of solv's volunteerism, creativity and spirit. We're so thankful of solv's involvement in -- and jack's leadership that have led to a lot of

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successes you've heard about over the years. The rose festival was ranked as one of the most environmentally friendly festivals in the world for the last 40 years by a leading events industry association. And we're very thankful for the leadership internally of marilyn. Through teamwork with the city of Portland, your maintenance bureaus and other volunteers, 160 tons of trash have been collected and a lot of that has been recycled by volunteers after the parade, saving the city tens of thousands of dollars in the last eight years since the program originated. More than 500 school children representing 17 Portland schools participated this year in the rose festival kids program. Many of these schools chose projects that were associated with the Portland parks bureau, they helped pick up, clean up, they also worked with the maintenance bureau and helped paint murals on the sides of the trash dumpsters that you'll see during the solv pick-up effort after the parade. We have a short video to show you of one of the school programs.

*****: My name is michael. [inaudible]

*****: -- planting native plants around the street.

*****: Thanks, pacific power:

Clark: As you can see, the city of Portland parks benefits from programs like this and it's just good for the community. This year we're excited to launch a new partnership with solv that will proclaim an exciting initiative for maintaining Oregon's reputation as a great treasure. This float, which marilyn has, is one of many floats that will be in the grand floral parade on June 9th. This particular float is sponsored by the rose festival and made in Oregon stores and it will proclaim the solv's new program. The largest tv audience in the parade's history, 50 million tv households nationwide will see this float. It will be seen on the rose festival's first-ever spanish broadcast of the parade into the northwest, san francisco, and los angeles. Jack mcgowan will be one of the float riders and now he'll share more details about this new initiative.

McGowan: Thanks very much. I appreciate this. Vera, commissioners, thank you very much for having us this morning. We appreciate the time you've given us. We're very sensitive to the time lines that you have before you, so i'll make this short. I'll break it into three parts. For the audience that is here and no doubt you folks know the history of solv, but this is our 32nd year of service to the state of Oregon. We have grown the organization to be the largest volunteer nonprofit in the northwest. Not in terms of staff or budget, but really in terms of what counts. People being served and people who are engaging in solv's activities. Last year we engaged over 89,000 volunteers. In over 250 communities all across Oregon. It's not only in the Portland and salem, but the tiny towns like monument and birkenfeld that are very important to us. We look at solv and Oregon as seamless. Solv represents the best qualities of what we see in this wonderful state that we live in. This effort by solv is really about citizen engagement. We believe that every citizen in this state has to be a participant. Oregon has no room for observers. Oregon has no room for just arm chair quarterbacks. We all need to be involved in the game called Oregon and we need to exercise our citizenship. Whether that's in the voting booth, whether that's to endorse or oppose different candidates for public office or senate bills or house bills or initiative. It's also to become engaged in the health of Oregon through volunteerism. What solv really see assist that volunteerism is the engagement tool for an active citizenry. It's rolling up our sleeves and getting the job done and paying less attention to what divides us and more attention to what unites us, which is a love for this treasure called Oregon. With that theme, with that purpose that was given to us by governor tom mcall, our founder 32 years ago, we approach the city of Portland and rose festival with an idea. That was, why don't we have the citizens of Portland really become participants in rose festival? Not just observers. Observing is wonderful. But participating is even better. And give them the tools of citizen participation. When mayor Katz first sued -- ensued mayor, vera and I convened a summit meeting in the old blue room upstairs. We started to talk about the explosion

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of graffiti in the metropolitan air. As you know, we were inundated by bloods and crips graffiti almost overnight. We were not prepared. The gangs were down in southern californnia, not Portland, but they found fertile ground up here. We started to work on it immediately. Paint the town clean was started by vera and I as a rose festival activity where we approached dick and marilyn, the rose festival board, about let's get together and start wiping out this graffiti problem. Have it on the same day as the starlight parade. So we started paint the town clean and in that history of organizational effort with the city of Portland, rose festival and solv, we eradicated over 500,000 square feet of blood and crisp of gang-related graffiti and now that has -- is a success story that continues to this day. Two years ago we expanded it. We said, let's not only paint the town clear -- clean, let's make the town clean. Let's have an annual day of citizenship, a spring cleaning of the entire metropolitan area. And that's what we're going to do this day, folks. On the same day as the starlight parade we want citizen engagement. We want people to collectively get together at different rallying points around the city and come armed with push brooms and dust pans and cleaning agents that we'll provide and gloves and get our children involved. Paint out graffiti. Clean up abandoned property. Clean up tri-met bus shelters. If you see something that's wrong, make it right. Do something for the city and kick off rose festival in a devoted day of citizenship and caring. Each one of you have received an electronic e-mail from my office to you. I'd love you to pull up that e-mail, the flyer is in front of you. The e-mail mail alert that you have received has this, and what i'd like you to do is spread the word to this. Use your e-mail address book and tell as many of your constituents, your fellow city of Portland employees about this event and let's get out there that day. Our goal is to make this as big as the beach clean-ups. Literally a new Portland tradition commences every year on the same day as the starlight parade. It's a day of 79ship, the world is watching, people are coming to our door, and we're going to show them the best we can be as Portland. That's the first tone. The second is what we're doing now with the starlight parade, the children's parade and the grand floral parade in regards to the clean eggs parades in america. Imagine hundreds of volunteers handing out litter bags along the parade routes. It's become a tradition. People expect this now and the last entry on those three parades will be hundreds of volunteers collecting the litter that has been generated by the parade goers but is their responsibility to clean up what's around them. It's not their responsibility to leave it to city employees. Let's pitch in together and have a collective effort and a collective message about what it means to this -- live in this place. Portland gives us so much, asks so little in return, and we can help our fellow Portlanders in two steps. Number 1 to clean up the entire city, and number 2 in those three parades to do our part in making it easier for the city of Portland workers. The third element is what we're doing with this solv Oregon legacy walk. My wife jan, it's her wonderful idea, she's the associate director of solv. Our son travis, who's 13, and i, on june 30th, will commence a walk of legacy. A walk of history. We will walk the entire coastline of Oregon over 400 miles, as a statement about who we are, why we live here, and how we want to take care of this treasure. We're asking each one of you to walk with us for one day. Walk with us for one mile. We are having hundreds if not thousands of people join us in this effort. Walk one day. Walk one day for Oregon. Get pledges for your walk. Every penny that is raised through pledges is going into a separately administered fund that we've put together with the Oregon community foundation called the solv gift to Oregon fund. We now have over a million and a half dollars in the fund. The fund will permanently endow volunteerism in Oregon. 100 years from now, people who we will have never met will remember us as a society that had a twofold mission. The first mission was citizen engagement. And saying to the future generations, take care of this place. Take care of your homeland. And the second message is one of inclusion, it's a gift to the future, a gift of volunteerism and the monies that would go to support volunteerism. The third message is from our

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son travis. Travis wants every child in Oregon to pledge a penny a mile. \$3.62 from every child through pop bottles and pop cans or your allowance or whatever. But every child in Oregon can create their own legacy. That's our message to you folks today. We want you to join us in citizenship and volunteerism and Oregon and particularly Portland will be a better place. Thank you very much.

Katz: I'm going to take a stretch of the walk and i'm -- I hope my council can join on the stretch. There's a map here, and there's some favorite places for people, and -- we don't know the dates. You'll get back and let us know?

McGowan: The dates are on that map.

Katz: For those stretches?

McGowan: Of each day.

Hales: Starting north and going north.

McGowan: Going north. We'll wind up at clatsop spit on august 30th.

Katz: Thank you. All three of you. Thank you and thank you for making this a very special time in our city. Really. I was telling a young -- the young ladies this, is our favorite time, because even people who have frowns on their face most of the timing fundamentally -- actually put a smile on their face and enjoy the several weeks that we have here. Thank you for making that happen.

Clark: And we'll leave these roses for you, mayor, and you can divide them up or keep them all yourself. We'll allow you to do that.

Saltzman: We'll let her keep them.

Katz: I think we'll need those roses for tomorrow. We'll leave them here. Thank you. Thank you, everybody. And have a good day and we'll see you on the parade routes and on clean-up morning of june 2nd.

Clark: 10 o'clock.

Katz: Bye bye. Does anybody want to testify on all these items we just read? I didn't think so. All right. Roll call -- we've accepted the up date for 578 and we'll start with 579. 578-579.

Francesconi: My only comment, the rose festival is really great for us economically. But it also gives us a chance to actually celebrate together. We don't celebrate enough what a great place we have, great people we have. It's just a terrific thing. Aye.

Hales: I think all of us like the old traditions of the rose festival, but i'm very impressed with the new ones. Thank you for keeping it fresh. Aye.

Saltzman: Particularly I appreciate the emphasis on the environment. That's a great theme and nobody can accuse solv of aiming low. And the festival, too. You raise your sites every year and it gets bigger and better. Good job. It's great for the city. Aye.

Sten: I agree. Aye.

Katz: You really did identify the key issue, they want to make it better every single year, more family friendly. We're happy to be partners with them. Aye. 580.

Item No. 580.

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

Katz: Mayor votes aye. [gavel pounded] 581.

Item No. 581.

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

Katz: Mayor votes aye. [gavel pounded] 582.

Item No. 582.

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

Katz: Mayor votes aye. [gavel pounded] 583.

Item No. 583.

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

Katz: Mayor votes aye. [gavel pounded] 584.

Item No. 584.

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

Katz: Mayor votes aye. 585.

Item No. 585.

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

Katz: Mayor votes aye. [gavel pounded] 586.

Item No. 586.

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

Katz: Mayor votes aye. [gavel pounded] and the fun begins.

Item 587.

Katz: Okay. I'm going to turn this over first to commissioner Sten and the department. I do want to -- well, let's do that first.

Sten: Great. I'm going to ask the director to come up. We have a short presentation. We've talked about this in the budget, but I think it's important to lay it out for citizens. It's been a challenging year for the water system. We've got computer problems and also at the same time we've embark order what I hope is a somewhat landscape changing initiative to see if we can regionalize the system. So it's sort of the best of times and the worst of times with us. The bureau originally requested looking at all the factors that go into their plans a little bit over an 8% raise in rates. The mayor and the purb and irv recommended a 5% rate increase. I'm right in the middle at recommending a 6.9% increase. We thought we'd lay this out quickly and show you why. The goal i'm seek assisting kind of -- a stay of the course but not completely in the sense that we have really -- there's three factors going into this in my mind. One is that it does cost more to run things, a second is we're trying to put a little more money, not a ton, a modest amount more into capital issues. We've really done very little capital investments over the last few years out of a sense that with the sewer rates going up as high as they are, we're trying to moderate as much as possible. But I do see that not doing any of the major pieces is not a good long-term strategy and it's not the right signal for me to folks that i'm asking to do -- i'd like to be moving forward and clearly investing in our system. And finally the unfortunate when we've talked about, we've lost money on this computer system and that's pushed the rates higher than I thought. When we lose money it gets spread out among all of our customers and that's what's happening here. I would finally point out, of course this isn't great news, but we often look at the residential bill and with a 6.8% rate increase the average residential bill will be about 50 cents lower than it was last year. The result is rate reform brought the average residential bill last year down by 10% and so the average bill is down 10% from the year before for residents and we're pushing it back up 6.8. That was not free money. The rate reform which focused more on how much you use rather than fixed charges did push some of that cost to people who use more. But from a residential standpoint the cost of water is less than it was a few years ago and perhaps a tad more than we'd like it to be, but the 6.9 is your recommendation from me and i'll explain that.

Mike Rosenberger: Commissioner, thank you. Mayor and members of the council, I just handed out a fairly brief handout that I would like to walk through probably just take us four or five minutes. We are requesting an average increase of 6.9%. We have made reductions to our current budget on the order of 2.8 million dollars on the operating side of things, and almost \$12 million on the capital side to try to mitigate revenue losses and increases associated with operations as well as difficulties with the information system. We tried to tighten our belts and absorb as much of those costs as we could. This rate reflects inflation, it reflects other economic impacts, it reflects a

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reduction in per capita water use overall, 2.7% lower water sales than we had anticipated. And 1.1% of the rate increase is directly related to the customer information system. 1.1 of the 6.9, and that's after we absorbed the 3 to \$4 million in operating costs, which is as far as we feel we could cut it. If you look at the next page, the typical residential customer will have an increase of 73 cents per month under this proposal, the 6.9%. You can see the figure on rate reform. The 1343 at 6.9% compared to prior to rate reform is a savings of about \$30 a year for the average residential customer. And you can take a look at our system development charges and see that they are increasing slightly, but as you'll see from a chart a little later, we're substantially below the rest of the region, so we're in a very competitive position there and will continue to be so. If you look at the next page you can see some history of monthly water bills for the typical residential customer. If you look at '96-97 and compare so it what we're requesting for 2001-2000, you'll see our rates have increased on average 2% per year. If you look at inflation adjusted dollars on average, they have decreased 2% per year. So until the last five years we have really ratcheted down the rates. We had one year where we had no rate increase in '97-98, but we're at a place where we need to boost it a bit. If you look at the next page you can see how Portland residential bills compare with the rest of the region. We're virtually the lowest at \$13.43. Ranging to tualatin valley, \$16.91, lake oswego, \$19.35, gresham and beaverton are both between 20 and 21 dollars. So I believe we're pretty competitive in that area. The next page shows the sdc's, which, again, does have an impact in the construction arena. We're between -- \$1200 less than tualatin valley, about \$800 less than gresham. So I think we continue to be competitive there. The final page is the colorful chart that -- where we look at the bills that each of us pays as residents. Everything from telephone to electricity to natural gas. You can see that for the average customer about 6% of their total utility bills, all the bills added together, is for water service. About 6%. So let me just make about two or three other points and then finish this off. This budget and this rate to fund that budget will enable us to continue the low-income program for residential homeowners. That amounts to a little over \$32 per year. We also are funding low-income utility bill assistance for renters. We began that this year and we will continue to do that next year. And we are also funding again next year the affordable housing sdc fee waiver program. So that's basically my case. That's my case in four minutes.

Katz: All right. Questions?

Saltzman: I have one question. You talk about the rate reflects inflation and other economic impacts, including a reduction in retail water demand of 2.7%, which you talk about as conservation and economic downturn. Is it possible to break that out as to how much is due to conservation, how much is economic downturn?

Is not possible, commissioner, off the top of my head, but I think we could do some analysis of that. We could take a look at some of the water patterns until the aggregate. It's hard to know exactly what is conservation. What we do know on the conservation side is that since 1992 residential customers inside the city of Portland have reduced water consumption by 15.5% per capita. Since '92. We also know that we are seeing some reduced water sales from some of our largest customers in the summertime where they are cutting back some production. And some of that is due I think to economics, and some of it I think is also due to energy costs. So the energy issue is kind of impinging on our bureau in a cup of ways on the demand side in some cases as it effects some of our industrial customers, but also on our own operating cost side of things. But we could take a crack at defining that further.

Saltzman: I guess I appreciate that, but I guess sort after fundamental dilemma -- this is true of water as it is true for other utilities too as the -- as almost a disincentive to encourage conservation

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because the less you use, that means the higher it rates are going to have to go to recover a certain fixed cost.

Rosenberger: Commissioner --

Saltzman: It's a -- it's a fundamental irony we have to deal with here.

Rosenberger: It is. And in fact the mayor and I did the Oregon live radio program yesterday, the internet program, and that question came up there as well. The way that I see it is that conservation in the longer term, taking the longview, to the extent that it pushes off capital investment and that sort of thing, it does have a direct financial benefit to customers. At the same time, there is the economic reality of the kind of businesses that we're running in our utilities, which have very high fixed costs and they need to be covered.

Katz: Let me just -- i'm not going to make a big to-do about this, but I want to share with you what I asked the water bureau to do at the time that I had to put the budget together. And so I asked them the question, could you identify -- connect the rate increases to factors that you see on the left side. Cip, pers, inflation, asr reductions, new adjustments and a total. And I laid it out with the help of ompf on what their request was first, that's the first column, the second column, what I propose, actually proposed a little lower, and after listening to them ramped it up to five, and then the revised rate increase before you. And you see with at least -- when you -- above the asr reductions there's one minor element reduce construction revenues, the revised rate is slightly increased, and -- but most of the changes were made and that's where I thought you were going, commissioner Saltzman, on demand reductions which is a combination of conservation and economic slowdown, and the computer revenue shortfall. And I guess the question that I have of you is, originally you didn't even have those factors in your rates, but added them on until the rates that were currently -- we're currently looking at. Do you want to explain that?

Rosenberger: Yes, mayor. I would add one thing, though. Again, in reference to this chart, in what we had originally requested in the 8.4%, we were requesting 2.9% of that to expand the cip, to begin ramping up the cip. In the present time in this particular proposal it is .4 of a percent. 2.5% of this cut was from our original cip request. As we continued to refine and run rate models, the main thing that popped up to us was the demand reduction. The fact that water sales had slowed substantially. 2% is pretty substantial from what our estimates of water sales were. So the more that we learned about what was happening on sales, be it due to conservation or be it due to economic downturn, that is what led us to propose some additional rate increase to cover that, to cover water sales.

Sten: Mayor --

Katz: Let me finish. 2.1 is the conservation and an economic slowdown and .5% is the revenue shortfall, so the -- that's a substantial difference from what you had proposed before.

Rosenberger: That's true. That's true, mayor. In the aggregate it's about the same. Individually -- looking at individual components --

Katz: I know. I had to break it down to see how it connects with each percentage point.

Rosenberger: Yes, ma'am.

Sten: I would just say, I think just as a side comment, the point of rate reform was to give people more incentive to conserve, and they've done that. And that's terrific. And I think it's a better strategy to have slightly higher rates but more reward to people who can serve it than to have -- corn serve it than to have rates that don't reward conservation and have them lower, but people are using more water. Because I think this rewards the right behavior. So I think -- there's never a great way to charge for everything, but there's a smarter way to charge. As a small place holder this, chart I believe is dated yesterday, I have not seen it, I don't completely agree with the

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characterization. I just want to be clear on that. It's an irt team analysis and it's mostly right, but I don't agree with every line on it.

Francesconi: This is an important point to me. The reason it's an important point to me is because I go along with what commissioner Sten said on the cip side that maybe we need to be making more long-term investments in infrastructure now, because if we wait it's going to cost us more money in the long-term. So that's what I thought the debate was about. Now if this chart is accurate, it actually shows less cip and more money going to the conservation issue and the computer issue. And that's not what I understood. It's my fault for not looking into it, but --

Sten: From the 5% we've restored some projects and capital spending. This -- let's characterize it as not having done that. I'm -- I don't understand that, so i'd have to look at that and understand it. To some extent this is both a philosophical and an objective discussion in the sense that you can characterize where the money goes certain places, but I think we have x amount of money to work with based on the rates. So i'm not -- I have to look at this in more detail. I've never seen this chart. To me it doesn't quite jive with what I think. I'm not sure it's going to change the ultimate recommendation. Inflation is about 3, we've lost money on the computer system, and demand is down. At 5 once you factor in the demand is down and that we've lost money, you barely are paying the wage increases. I'm trying to get more money into the rates so we can push it. There's probably a little more adaptive management in the day-to-day running of the bureau. I'm trying to get more money into it so we can push more on capital. That's what i'm trying to do. How you characterize it, there's a little bit of arbitrary -- when you create these charts it may put forward more -- more exactitude than is there right now.

Katz: I'm not sure that's accurate, but i'll -- i'm going to ask ompf to explain the chart. The first two columns were worked with the bureau, both of bureaus, and that first section really didn't change at all. And what we -- go ahead, bob.

Bob Tomlinson, Financial Planning, Utility Review Team: In putting together this chart I worked with the water staff and hopefully it's accurate as I understood the situation. Again, the main change is due to the new information that came out, namely the reduced man was not known at that time, interest rates continued to decrease, which is another indication of the economic downturn. They are showing decreasing sdc's and new services which is continuing, and of course continued revenue shortfalls from cis. So I think my understanding of the situation, this is fairly accurate, how you portray it whether you put 2.1% in cip and zero in conservation, that's just a matter of how you want to portray things.

Sten: That's the point.

Katz: Wait a minute. That's not good enough.

Francesconi: How are they going to spend the money?

Katz: Just a minute, let me -- when you have a budget, you know exactly how much is reflected in the rates with regarding to capital construction.

Tomlinson: That's correct.

Katz: Okay. So that first column, if 220,000 is not the right figure, then what is the right figure?

Tomlinson: Well, no, that is the right figure given my understanding. The water bureau has in their 6.9% it includes the 2.5% reduction in cip. And that's reflected on the first line. So their request, my understanding of their request is a reduction from the 2.9% original to to.4%. That is my understanding.

Katz: Thank you.

Sten: Again, it's a \$65 million budget. I do work with this bureau. What we're trying to do is restore some capital. That's what we're trying to do. I think the bureau has said honestly that to do the full capital program they need 8.2. That's before some of these other factors which are

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unfortunate, like interest rates, we're -- this gives us more breathing room. I think an honest person would say the exact spending pattern of this bureau is uncertain at this point. We don't know for sure what our actual losses are going to be on the computer system, and the 6.9 is not a scientific number, it's a management number that I think it's the right mix between making tough choices and also not -- for the sake of keeping the rate down, keeping it so low there is no room to work on capital. That's what I'm trying to say, this is a budget we're managing through, the intention of the request from me is to get more money into capital and I think I will succeed at that, but you'll have to judge that at the end of the day. And I don't think these numbers have the exactitude it might look like on this chart. I'm not requesting the veracity of the chart or the people working at it. We have to manage through this thing and that's what I'm trying to do. It's my judgment that's 6.9 is the right number.

Katz: I'm not going to push it any further. We disagree. That's fine. Further questions?

Francesconi: Yeah, thanks. So the .5, even though it's not precise, but the computer issues, that's not going to be an ongoing expense, then?

Rosenberger: Commissioner, I sincerely hope not. Our expectation is that it isn't. That we are catching up with the bills that had not yet been build. We have a good deal of money out there in accounts receivable right now, now that the bills have in fact gotten out of the system that were stuck in the last few months. And the expectation is that we're going to collect almost all of that money. That's where our energy is. So my answer would be no. It's not ongoing.

Francesconi: And you're going to give us that report in June?

Rosenberger: Yes.

Francesconi: Okay.

Saltzman: I have one question, I guess. In your presentation you said 1.1% of the rate increase was due to the computer issue, and I guess here it says .5%.

Tomlinson: There's another line --

Saltzman: Where am I missing?

Tomlinson: There's a .6% where it says rebuild reserve due to fund balance shortfall.

Saltzman: Oh, okay.

Tomlinson: That's cis also.

Saltzman: Okay.

Katz: Further questions? Okay. Anybody else want to testify? This passes -- let's see. This passes on to -- anybody else want to testify on this item? It passes on --.

Moore: The water issue? We have Jim Abramson.

Katz: Is anybody here from Purb? Come on up. I didn't see you behind the roses.

Jim Abrahamson, Chair, City of Portland Public Utilities Review Board: I'll try my best to have a smile on my face. Good morning.

Jay Formick, Portland Public Utilities Review Board: I'm Jay, on the Portland utility review board and chair of the water.

Abrahamson: You've received our written document last week. I'm not going to go through and read that, but I would like to touch on some high points. First of all, our document is based on the 6.9% water increase, sewer increase, sewer and storm increase of 1.9% and solid waste recycling at 2.6%. First of all, I'd like to make the observation that obviously the bills have historically been increasing rapidly and they continue to increase rapidly and it's our expectation they will continue to increase at a very rapid rate close to if not over double digit annual increases for probably the better part of the next decade. There are a host of fundamental drivers that cause those rates to go up, aging infrastructure, continued growth, and regulatory illegal mandate. It all requires that Purb and the council pay very close attention to the rates as they're built up and try desperately to keep

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the annual rates of increase to ratepayers as low as possible to help mitigate some of these effects. Adding to this of course I do need to mention that the 7.5% franchise fee does remain as part of the utility bill being paid by customer -- being paid by customers. We need to noted for the most part the rate increases requested by the water bureau and b.e.s. Are what we would consider to be on the high side of normal. It does seem funny for a citizens group that's kind of charged with trying to keep rates down to be saying it's on the high side of normal, but I think that's an important statement, because it demonstrates just how fast the rates are increasing and how important it is for all of us to be working on that. That noted, the normal aspect, we do note that the cis problems which do continue to plague us all, are adding 1.4% to the sewer increase and 1.1% to the water increase. The most notable feature of this year's utility rate setting process of course is the addition of the transportation fee. As we noted in our document to you, the transportation fee is adding four full percentage points to the typical residential bill. That's a transportation fee at \$1.85 for a single family residents. As i'll mention here briefly, purb is opposed to placing this transportation fee on the utility bill. If the council does move forward and do that, to implement it, we would urge the council to consider that to be temporary, that it be worked on to be reduced over time as alternative funding from the transportation system is identified, and that no new city fees be added to a city utility bill that is growing at or close to double-digit rates and is expected to grow rapidly for at least the next ten years. We also note the disproportionate nature of the transportation fee as it's currently envisioned, impacting tremendously on residential customers, adding four full percentage points to the bill increase and also a disproportionate impact on small commercial customers, adding possibly as much as a 30 to 35% increase to their bills in the next fiscal year. Adding insult to injury to -- as has been mentioned before, those customers incurred a large portion of increases coming from rate reform by the shift to -- from fixed charges to volumetric charges. Now we'd like to comment on the three bureaus we oversee.

Formick: I'll comment on the water bureau's proposals. The purb believes the bureau needs to hone in on ways to control cost and study that and offer some more evidence that costs are being watched closely and controlled to the fullest extent possible. We also believe that the prospect of a regional water authority does need to be taken very seriously, and what this means is the transmission and supply expenses in the water budget should be delayed. Those expense that's might be associated with a regional water authority should be delayed or scaled back at least until this issue is a little more clarified for all parties concerned. There could be a great number of costs worked into the capital improvement plan and by one analysis that ranges up towards 30%. It could be delayed or scaled back. We also believe, and eye won't spend a lot of time talking about the cis or the computer issues, but we also believe that the bureau should document the cost controls that have been and will be brought to bear on the full implementation and stabilization of the cis. Furthermore, we recommend that there should be a time line, and it doesn't have to be carved in stone. Time lines and reports of this nature can be adjusted, but we would like to see and we think it would be beneficial for the council to see a time line ranging out to full stabilization and operation of the cis. We -- because of the instability of cis right now and lack of confidence in that system, purb recommends that water not issue any bonds until cis is stabilized. There might be minimal risk in the bond rating for the city, but we believe it would just be prudent to stay away from that until we know that cis is going to function properly. With regards again to the capital improvement plan, we believe that all costs associated with transportation relocation projects should be divided under the current policy, and the council needs to resist pressure to start shifting costs for transportation, onto the water bureau and b.e.s. That should be paid by p dot. With regards to conservation, we perceived an alarming lack of energy in the completion of setting conservation plan, creating goals and benchmarks, and purb strongly urges council and the bureau

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to work more closely with the wholesale contractors on creating more conservation programs. We were rather alarmed to see that conservation in the budget was weakened, notwithstanding some of the earlier discussion, it is in our view evidence of that conservation will lower capital costs both in the short-term and the long-term. We would like to see much more action in the conservation activity area for the bureau. We commend the bureau on its low-income support program and the sdc fee waiver program. We think that's a good thing. I'm going to turn over the other bureau reports to jim.

Abrahamson: Thank you. With regard to bureau environmental of services, the average residential rate increase for combination sewer and storm water is 9.1%. Nearly double digit increase in rate is important for us to focus on. Although we really weren't able as we got into the b.e.s. Budget able to find enough recommendations for cost savings that would have made an appreciable lowering of the b.e.s. Rate request with of course the exception of the storm water discount program, which is in the queue and waiting for the cis to catch up. That said, i'd like to make a couple other comments about our b.e.s. Recommendations. First, touching on something jay has already said regarding cis system stability and revenue predictability, cash flow to b.e.s. Since the initiation of the cis in fib of 2000 has been highly unpredictable leading to significant write-office of revenue and upward pressure of rates. Purb recommends once fully operational the cis be permitted to operate for a defined period of time tone sure that it is indeed operating correctly and within the required definition of stability. And that that be done to -- before new enhancements or features are added to the system. We also note that the rate stabilization fund for b.e.s. Is at a level that's insufficient or was insufficient to balance this year's impact of the try 0 of unexpected cost increases from decline in interest rates, and greater than anticipated level of water conservation. We recommend that b.e.s. Strive to grow the rate stabilization funds so it can perform its required function. There's also a host of small cost of service base fee that's b.e.s. Is including within their budget proposal which does move in a small way towards moving their revenue sources away from just rates. We are supportive of that. We're supportive of moving the industrial permit fees to full cost recovery over three years, we are in favor of the increases in the existing building plan review fees and the number land use review fees that b.e.s. Is developing. We also note too that the extra strength charges which is a necessary component of bringing on a new revenue stream to b.e.s. Is still waiting for the cis to catch up and we are certainly encouraging that the cis be finished so the extra strength charges can be added to customers' bills as necessary. On to solid waste and recycling budget. First purb wishes to express appreciation of the clarity and inclusiveness of the solid waste recycling rate-setting process. The office of sustainable development at b.e.s. And each of the 38 haul there's participate with the city are also recognized for their efforts to assist in an efficient and understandable rate setting process. We wish to note the benefits that are being passed along to customers this year through cost savings from the commingling of recycling. It's helped bring about a reduction in the costs per month of both the 20-gallon mini-can and the 32-gallon solid waste can. These benefits have helped hold the average residential solid waste recycling rate increase to 2.6%, which in this inflation area environment, with these increases in fuel costs and increases in wage costs, should be commended. A couple of observations. First purb wishes to make the observation concerning the fact that the residential portion of the solid waste management fund reserve is drawn down to near zero by the end of the next fiscal year, 2002-2003. The residential franchise fee is currently at the maximum allowed level at 5%. We encourage the office of sustainable development and we know they already have plans to work to increase the combined residential and commercial solid waste surplus fund to a more normal level of around \$750,000. So there will be something in the residential surplus fund. After the next fiscal year. We also note that in regard to the leave collection costs, I don't need to

explain that program to you, but we do need to note alternative funding for the leaf collection costs have yet to be identified past the two-year program period originally funded. So this next fiscal year is the second year. One suggestion that has surfaced is an idea to explore adding a leaf collection fee to the water bills to customers who live in the neighborhoods impacted by the leaf collection program as stated in our position regarding smith, purb believes it's inappropriate for hosting fees recommended by other city agencies. That said, purb does encourage the council to complete the investigation of alternative leaf collection program options and funding mechanisms in order to avoid having to make a rush decision at the next budget setting cycle. Coming down the home stretch here. Touching very briefly back on the street maintenance and improvement fee, just a couple of observations. One is, it's inappropriate to utilize current billing system as a vehicle for raising transportation-related funds. Commercial and industrial customers have already received large rate increases due to the shifting of costs, further shifting of this cost are anticipated. Making it more difficult to do business within the city of Portland. Especially for small businesses. Not so much the large businesses that have a regional or national reach, but the small businesses that really rely on local customers and local business. Adding the transportation fee also opens the door for the addition of other city fees. There's a leaf collection fee idea that's been proposed, there was also a suggestion, and this was just a toss-out suggestion, for the inclusion of a street tree fee which would pay for the acquisition planting and maintenance of the city street tree program and that would be added to the utility bills.

Francesconi: We said no to that one.

Abrahamson: Oh, good. Oh, good. Oh, good. Thank you goodness. If the council does move forward to approve the smif, we urge that the smif be temporary and have a sunset date, not be indexed to -- that's -- that the city and pdot establish a timetable to pursue new funding sources. Additional funds generated from those new sources should be credited against the revenue stream and used to reduce the smif and the safeguards should be put in place to protect low-income ratepayers. Lastly, brief statement on the customer information system. I want to lead out with a definition of system stability. We are in agreement, purb is in agreement with the definition of system stability that was communicated to us recently by the water bureau. Under that definition, the cis is stable once 99% of the city's water and sewer bills are correct and delivered to customers on time and that that is done by the system itself. That is not an excessive amount of hand work or baby-sitting that needs to be done. You can argue that maybe the 99% figure is a little too high. Maybe a the lower, mid-90s, but that's something we can discuss later on. 99% might be a little tough to reach. Purb does not consider the system to be stable until that level has been reached. That it's actually operating within an acceptable level of accuracy on time and without having a lot of manual work. We urge the council to hold off on any new adders, additions to the cis until it has reached functionality and until a certain period of time has gone by and we'd recommend at least one full billing cycle to test whether indeed the system is stable, that would give the water bureau additional time to see if an -- if in addition the system is going to cause an unforeseen problem down the road. We also note that some of the addition that's are on tap for coming online is one the storm water discount, and we're presuming this is in order, obviously that was for you to decide. We're presuming the storm water discount is first in the queue for addition to the cis with the transportation fee would probably be the second part that would come on, the extra strength charges would probably be third in the list, and then we need to start looking at augmenting the system to accommodate monthly billing. Lastly, we want to introduce what we're calling the post-project completion review. Purb continues to place faith in the water bureau's statements that the cis will achieve stability and null functionality. Purb concurs with the water bureau that a comprehensive evaluation of the cis planning and implementation process be conducted once the

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cis achieves stability. So in other words, we're going to go back and take a look at what happened. We would recommend that is that study be completed within six months of the attainment of cis stability. It would be our recommendation that the city auditor's office be charged with the responsibility for doing this review. If the auditor's office is bus and I for some reason or other can't accommodate the review, we would advocate that that review be conducted by an outside consultant that does not have current ties to the water bureau. Whew.

Katz: Thank you very much for your work and your report. Questions? All right. Anybody else want to testify? Just on the water rates? Come on up. Water rates only. We didn't read -- we'll get to that. We're just -- they did an overview because that's their job. So we're -- right now we're just on water.

Tom O'keffe, United Committee Action Network: Mayor, gentlemen. Water rates of course --. Water rates have been my baby for a long time. I've done a lot of things when it comes to water. I was one that introduced storm Stenciling, got burlington northern to put a -- i'm not going to go into what I did in the past. It was nice seeing the prom queens here today. I needed to back away from that because I have three sisters and they have been queens themselves. And I would never interfere with that. Water has become an issue with me and it's on my agenda again. If when the rose festival starts up and you have warships come in and you use the fire bureau to -- their boats that spray water shoot up different colors of water, I have bought enough dye to turn the river red. And all the fountains in town. If we're going to educate people on how to behave, then don't do that, or I will do my thing.

Katz: Okay. Karla, go ahead and read the -- water.

Francesconi: Beyond water?

Katz: No. Folks, we're still on water. We'll move on to -- we've got three of them in front of us. 587. No, no. Hold on anybody else -- anybody else signed up? Come on up. Karla, we're still on 587.

Moore: Roll call?

Katz: No. Testimony. It's not a roll call, it's a second reading.

Jada Mae: I'm grandma jada. I finally moved into a house with hot and cold running water. I've been experiencing hauling water for a long time. And there is nothing I love better than the -- than appreciate how much we all take for granted, running all the water we can through the household. So an increase in the cost of water will probably help people to conserve a little bit more and cut down on their two or three-hour -- two or three half-hour showers every day. So that's all I could say. I've had to haul water more than once in my life, and I think 25 years ago I thought that the price of water some day was going to be causing more -- cost more than the price of gas, and that's the way it is now. I think it's a good idea.

Sten: We're not quite there yet.

Katz: Anybody else want to testify? On the water rates. Did you want to make a comment?

Francesconi: I do. This is what I -- we've talked a lot about conservation, and I see a price here that may cause \$1 million increase in the rates. But if the good work that commissioner Sten and commissioner Saltzman did to encourage -- switch to volume use, encourage conservation, the idea of it costing more in the short run through some increase in rates is okay. So i'm okay with that because with do need some work done to show on projected over time if we can encourage this much conservation it's going to save this much capital. That issue is not in front of us. But the principle of increases temporarily that save longer term, i'm okay with that. Assuming that's a factor in the difference in the rates between the mayor's proposed and the commissioner's proposed. I do encourage the water bureau to come in with some work to show how if we save we can save some long-term expenses, which also translates into reduction in the rates. That's one thing I want

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to say. The second, just as a reaction to purb on the idea -- that when you said makes sure that water and sewer are not financing other operations, that's not happening anymore. I think it was happening, and it's under the leadership of the commissioner, that's not happening. I guess I want to say that. I do think that I need a little work between now and the next session that the increase, the difference is going to go to capital. And I think commissioner Sten has said that's going to happen and I think increasing the rates beyond 5% in order to make capital investments makes some sense. Because I think it can save some money in the long term. I'm not particularly interested, though, in raising rates in the short term because of the computer issue. That's something that we're going to have to deal with. If it can be done. Because I don't -- i'm not comfortable on that one. I guess I want to say that. The other thing is, I do think we need to do more on low-income rate relief in general. And i've got -- i'm going to hand out something later that shows the increase in our utility franchise fee over and above inflation. And I think it's time, folks, that we've got to cap the utility franchise fee at inflation and population, which is about 5.5%, not an 8% growth, which we then put in our general fund. We should use that money and direct it to expanding low-income rate relief, and i'm coming forward with this. I'm just telling you. Soon. And i've got a draft of the proposal for the council to look at. It won't have any impact on this budget. The next budget it's only 200,000 the first year and it escalates up to 2 million. But it's not fair that we're doing this on the backs of the low-income folks. I wanted to alert people of that. On the issue of the transportation fee, the system has to be stable for -- before we can impose another fee. I think we've been assuming that, but I don't know if we're assuming that or not. I just wanted to be clear on my position on that.

Katz: Okay. This passes on to second and we'll vote on it next week.

Item 588.

Katz: Okay, come on up.

Saltzman: I think this rate increase has been well analyzed by purb and I want to thank them for analysis. The increase is 9.1%. There's a council goal to keep the rate increases for sewer and storm water below 10%, but we also -- we all know we're in the midst of a massive public works investment project in cleaning up the willamette river and the columbia slough to eliminate combined sewage overflows, and that is the principle driver behind these rate increases. And I think dean marriott if you want can walk you through that in more detail but I don't think it's in surprise to anybody. I did want to say that as purb noted, the storm water discount is on hold. We will not be -- we will not be turning on july 1st, so we don't know when it will be turning on. It's contingent on resolving the computer information system issues. I personally regret to all the people who were expecting this storm water management fee discount, or the opportunity to receive that discount, I apologize for the delays in making this happen, but remind them the city council has adopted this policy and it will go forward, it's just a question of when we do actually turn it on and make it available to residents. I think that's probably all I really wanted to say.

Katz: Before dean starts, let me say that I reviewed the rate structure and -- at the bureau of environmental services. I need to commend dean and the bureau. They have kept the budget tight and absorbed a lot of the reductions they had made for a variety of reasons that have been mentioned. So I concur with your rate increase.

Dean Marriott, Director, Bureau of Environmental Services: Thank you. Mayor Katz, members of the council. I just have a few minutes of presentation before we get to your questions. The proposed rate increase is -- will hit an average single family bill to the tune of 9.1% next year. It's about \$3.9 a month increase combining the sewer bill and the storm water charges. It does reflect a lot of work that has taken place and remains in front of us in -- as far as dealing with a combined sewer overflow problem. We just celebrate add few weeks ago the completion of the

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columbia slough clean-up projects, which involved construction of five miles of pipeline along the columbia slough, a new influent pump station, new additions to the treatment plant, new outfall to the columbia river. I'm please to say those projects were completed ahead of schedule and under budget. We also have an enormous amount of capital investment to be done not only in building new facilities to address combined sewer overflows, but to replace our aging infrastructure that we have here in the city. And of course we're also making strategic investments regarding protecting our watersheds in light of the endangered species listing. What are some of the drivers that are pushing a 9% rate increase? Well, obviously we have a significant capital investment program underway. Two-thirds of the rate increase are driven by that, basically. We have higher energy and fuel costs, about \$700,000 increase projected next year and -- in electricity and fuel costs. We have the addition of about \$500,000 next year in Portland harbor superfund-related expenses. And we are stepping up our increase -- increasing our water quality monitoring and watershed health programs. Just a few words about the assumptions built into this rate proposal. We are assuming an increase in water conservation. We've stepped up our assumption from 1% to 1.5%. Our numbers are slightly different than water because we don't count water used during the summer periods for irrigation. That's why our figure is slightly lower than the water bureau figure. We have pursued and included in this rate package our -- some proposals for increasing fees. There's land use review fee and a source control review fee included in this package. We also proposed to increase the industrial permit fee, industrial waste discharge permit fee from basically one-third cost recovery to about 50% cost recovery. We've assumed some lost revenue from the computer system. It also reflects the slower growth in our number of new customers since we've basically finished the mid-county sewer project. And just a word on that, next month i'll go before the state environmental quality commission and receive their certification of completion of the mid-county sewer project, and I know that will come as certainly good news for all of us. That was an enormous undertaking when it started in the late 1980s, it was very contentious, and i'm pleased to say that we -- other than a few accounts that have yet to -- a few properties that have yet to look up to the system, we're essentially finished with that project. The bureau has taken a lot of steps to control operating expenses. We will continue to do that aggressively. I can say things do look better for the future, looking two years out, right now we're projecting about 6.5% rate increase. So if we keep our fingers crossed regarding the energy impacts and fuel costs and so forth, we certainly hope to bring you better news in the not-too-distant future. With that i'll be happy to respond to any questions you might have.

Francesconi: Does water -- if we continue to serve -- save water and do a better job, does that also translate into any capital savings for you, or is that a different scenario than water?

Marriott: There's similarities, commissioner. If we can project long-term trends and conservation because we receive the wastewater from people if they're used -- they use less water, that's beneficial to us. At the same time, so much water use is for irrigation and other purposes, it's difficult for us to say it's one for one trade. But again, we are factoring into our long-term plans less water being generated and therefore less water that we have to collect and treat.

Francesconi: Okay.

Katz: Further questions? Thank you, dean. All right. Testimony? Anybody else want to testify on 588? Okay. Passes on to second.

Item 589.

Saltzman: As purb has just commented, the rate increase average residential rate increase is 2.6% below the rate of inflation, and we appreciate purb's remarks about office of sustainable development's handling of rates and strictly the clarity of the process. That's always a good things to hear. With that i'll turn it over to susan anderson.

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Susan Anderson, Office of Sustainable Development: Thank you. Good morning. This is a good news/bad news story for rates for solid waste. The bad news is labor and fuel costs have gone up, that's something we can't control. It's a national trend. The good news is that residents have done such a good job of recycling that recycling collection and disposal costs have actually gone down. So the upward labor and fuel costs have sort of been tempered by this increase in recycling. So I think we need to commend the haulers for keeping costs down at a time when especially diesel prices have increased, and also really commend the community for the job they've done in increasing recycling, because that has helped to keep costs down. Without the increase in recycling rates would have risen about to a total of about 4%. So residents should be proud of their efforts. We have the solid waste advisory committee and purb have reviewed the rate and were involved in the process and they generally are supportive of the increase. With me here today is Bruce Walker, who runs the residential solid waste program. He has two or three minutes of just a quick overview of how we got to the rates.

Bruce Walker, Office of Sustainable Development: Thank you. I'd like to just step through quickly in terms of the -- if we're able to --

Katz: Have patience.

Katz: Okay.

Walker: It was just a wonderful power point presentation that I will summarize. And I apologize for the delay. The -- first of all, we have an annual rate review that involves an extensive rate model and work with b.e.s., and i'd like to recognize the cooperation and the excellent level of work that's done with bureau of environmental services, economist Neil Johnson, and if I get to more technical questions we can bring Neil up. But that's -- as we go through an annual rate review, we include both cost data from the haulers as well as some forecasted information which would include taking a look at recycling markets. Neil also brings in, as we oversee this review, an independent CPA to review the haulers' financial records. With that information we go to purb, there's a thorough review undertaken in a public setting, and you've heard the purb chairman's comments earlier today. Briefly, inflationary increases in terms of fuel costs, labor contract, slash, health coverage for hauler workers and some increased truck maintenance costs have pushed rates up, along with some lower recycling market forecasts. Now, that's more of a -- i'd have to say an international economic concern, as much of what we collect while it may be used in domestic mills, it's affected by rates that are impacted by far east Asian markets, which compete for recycled materials. The net is a 2.6% rate increase. There is some good news. We've seen some downward pressure on the rates as Susan indicated. Customers are disposing less garbage. They're doing the right thing about a pound a week we found out through independent measurement, they're throwing away less. Ever since the start of the commingling program, we've seen a decrease in what people are actually throwing away in the garbage can. With that, there's an increase -- a significant increase in the amount of recycling, and as we mentioned a month or so ago, Portland was recognized as the highest level of recycling of any of the 30 largest cities in the United States. So customers are doing the right thing. They're putting more in the recycling bin, less in the garbage can. That helps hold down costs. Another important component of that is that haulers we've seen with the onset of the recycling, the commingled recycling, actually have slightly less collection costs. So they're doing more recycling collection out there, but they've been able to hold the costs down. So we've been able to see, and the shift of this program, that was launched with a fair amount of discussion with council, that we've seen exactly what we wanted to have happen. More recycling, less garbage disposal, and holding down that element of the rates. Briefly, or to summarize, we've got rate increase, it's 2.6%. What does that mean for the 77% of our customers who are in a 20-gallon mini-can, 32-gallon can or the equivalent small roll cart? It's a 40 cent per month rate

increase. The mini-can actually also has a small disincentive -- excuse me, incentive to -- so it's priced below the cost of service. For the 13% of our customers in the larger roll cart, 60 or 90-gallon cart, they're seeing an 80 cent per month rate increase. The drain charge, which affects about 12% of our customers in the west hills, that is going up an additional 20 cents per month. So sorry for the technical difficulties, but we've tried to cover this as quickly as possible.

Katz: Questions?

Francesconi: I just have to have one, and I know i've got to get over this. Maybe this will help me get over it. But this 25 -- is there still that 25 cents in the residential rates that's -- that subsidizes the commercial side for the green buildings? Am I in the wrong fund?

Anderson: There is still a 5% franchise fee on residential garbage, solid waste fees of which about 3.5% go to support the residential programs. And about 1.5 of that 5% goes to support the green building program. What we're doing over the next coupling years is looking at how do we shift some of that responsibility for paying for the green building program over to the commercial side and we're doing a little bit of it in this coming year and we're going to work on trying to figure out if we can shift some of those costs.

Francesconi: Please do that. Then I will really get over it: Thank you. [laughter]

Katz: Okay. Anything else? Thank you. Anybody want to testify? All right. Anybody signed up?

Moore: No.

Katz: All right. It passes on to second. Hold on.

Francesconi: There's one thing I wanted to say. I wanted to thank bob tomlinson in particular, but also the other analysts. This major policy impact review has some bugs in it, but it actually helped me. I was very good to read. That report especially on the water bureau.

Katz: All right.

Item 610.

Katz: Okay. Come on up, ron. There's an amendment on this, and you'll hear about it. We need to take a motion.

Ron Bergman, Bureau of General Services: The action before you is the first under the new policy that the council adopted to have all additions to the fleet come before you. The 23 vehicles that we have here are the first. We have had a request from the police bureau for the very last item in the exhibit to be withdrawn, so they can do some more work with it. So it would be for an additional of 20 vehicles rather than the 23 that was --

Katz: I need a motion to delete --

Hales: That's the three suvs? I'm very happy to make that motion.

Katz: They may come back as suvs, but there's still a lot of work to be done. Second? Hearing no objections, so ordered. [gavel pounded]

Hales: By what procedure will those three come back and is there any authorization for them to lease vehicles in the meantime?

Bergman: Any additions to the fleet by any means does require council approval. So there will -- these will become regular items, assuming we might move them to the consent calendar at some point after they become more routine. We wanted to bring the first one to you to -- have you look at the form that identifies what the vehicles are. They cannot lease these vehicles. They are additions, you without the approval of the council on doing that. So i'll be kind of making the rounds and kind of discussing any issues that might be in.

Hales: I'd like to talk with whoever about that one, but i'm real glad it's not in front of us today.

Bergman: Okay.

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Katz: All right. Any objections to deleting that item? Thank you. [gavel pounded] all right. Anybody want to testify? On this item?

Saltzman: I have a question. I really want to commend this exhibit and the report and this process that the council has created. It's really good and the form is readily understandable. I guess I was curious, are any of these vehicles the hybrid vehicles, the electric and gas --

Bergman: None of the vehicles on this are the hybrid vehicles. We do have an item that's -- will be coming before you for the acquisition of some hybrid vehicles. We had a bit of a hiccup in terms of some of the financing that we -- hiccup in terms of some of the financing we had to work out. That's about done so we'll be coming back with that request.

Saltzman: Okay.

Katz: Further questions? Roll call.

Francesconi: Terrific work on this, ron. And mayor. Aye.

Hales: Right. I appreciate the mayor's office and ron's competent management of this function. I think the amendment before us this morning demonstrates that scrutiny is helpful. Aye.

Saltzman: Aye. **Sten:** Aye. **Katz:** Aye. [gavel pounded]

Item 611.

Nancy Jesuale, Communications and Networking Services: Good morning, mayor and council. The ordinance before you is to authorize five professional services contracts. These are for flexible services to provide engineering and design on various projects over the next five years.

Katz: Questions? Anybody else want to testify? Come on up.

Moore: We have john wish.

John Wish: I was here for the rate hearing.

Katz: You need to identify yourself for the record.

Wish: Resident of Portland, member of purb. And recently retired economics professor at lewis and clark. Commissioner Sten was very gracious when the \$600,000 contract was given montgomery watson to eliminate standard phrase subparagraph e, which allows for 25% increase in consulting contracts without council approval. If that item is in these contracts, I would urge council not to pass it with that subsection e. I have been a consultant, I have hired consultants in private industry. Never I have approved nor I have been able to get a client to give me a 25% possible increase in the amount without going back to the authorizing manager or board. So if that is on page 1, subsection e -- and I don't know if it is -- standard boilerplate I was told, commissioner Sten eliminated it from montgomery watsons, I would hope it's eliminated from these. Thank you.

Saltzman: Sounds good to me.

Katz: Wait, wait, wait. Let's talk about this. This was an issue that I had raised, and asked -- thank you, sir. Questions? -- had asked about that, and I was somewhat concerned about it because of the potential increase in the cost. But this is what you have all agreed to on construction -- anything other than professional and technical services. Correct? Do you want to come up? Thank you.

Saltzman: This is a pte.

Katz: I know. -- this is --

Saltzman: This is a pte.

Bergman: Would you like me to respond?

Katz: Yeah. Why don't you both respond.

Bergman: I specifically asked for that authorization until the ordinance before you on these contracts. It's an important management tool for the type of approximate -- projects that we're anticipating. What we're doing is executing contractual arrangements prior to refining or defining

the specific task orders on these projects. So 4 1/2 years from now when i've got an engineering job and it may require some flexibility in terms of -- the first thing you need to know about that rule is that it doesn't allow any of us to overspend our budgets. It simply allows us to use a contract and make an amendment without bringing it back to you. It's a very handy tool, but it does assume that the council has vested that authority and that responsibility in the project manager. So that's why we specifically ask for it up front so you can discuss it, and you know you're offering it on these particular contracts. It's extremely useful in this type of contract, and that's why i'm asking for the authorization on these.

Katz: The other option of course is the one where you have to come back to the council for each one of them.

Bergman: Really a couple options --

Katz: Identify yourself for the record.

Bergman: Ron bergman from general services. There are a couple of options on these professional type service contracts in terms of dealing with this. As was just mentioned, there are some contracts we do where we want to have people essentially on call to do work that we know is coming but we don't have a specific scope attached to it and so we have a requirements contract that says we know we're going to have this work but we don't know exactly what it's going to be. And then we issue task orders. So we use up that capacity in the contract. So having a little flexibility with that amount is really very helpful rather than having to wait and go back in order to get work that's necessarily done. Another situation is where you have particularly on construction contracts for design issues, when you're looking at a project you have a choice of either scoping that contract for absolutely everything that could possibly be looked at in a particular project, or scoping it for usually the things that I know i'm going to have to look at, and I may learn some things in the process of looking at those that would add to the scope. And so typically that's the way we have done these professional service contracts on the design and engineering side, is to scope the contract for the minimum amount of work that we have necessary as we learn more about the project, and may have to look at additional things we wanted the flexibility to look at that. The other alternative is to scope that project at the front end at the most that it could be and then choose not to implement all of it as certain things were decided not to be done. So it's just a question of how you want to approach that work, because as you're doing design work, things come up that you didn't know about it at the very front end. So it's a question of how best to handle that from an operations side. Again, as was mentioned, it has nothing to do with managing to your particular budget, because you have a limited budget for a particular project and it's a question of how you manage all of the component contracts up to the authorization for the project.

Saltzman: Via question.

Bergman: Our bureau, for instance, does a lot of project work for the police department, the water bureau, b.e.s., and the scope of these -- and transportation as a matter of fact. The scope of these individual projects changes based on the bureau's ability to expand or contract those within their budget allocation. And very often i'll have a contract where I can perform the work that they're asking us to do, provided that I can modify the scope by this amount. So it gives me the freedom to offer the services to the bureaus on an as-needed basis without the additional administrative burden of coming back in for an extension or rebidding process. The bid process takes about four months, so where we can streamline it as a project manager I like to do that if -- as long as I have your authority to do that.

Katz: Okay. Questions?

Saltzman: I think the point isn't -- is not to allow some flexibility, I think the point is that 25% is probably totally out of sync with private sector practices, and probably extremely generous. And I

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guess -- i'm not going to belabor the point on this contract, but i'd like to revisit this issue as a condition and perhaps change the policy to lower that number to 10%, maybe 15%. I guess i'll note in the most recent revenue forecast we received from omf, the one area where we as a city are over spending like crazy is external materials and services, which includes contracts like this. You, say it's all done under budget, but according to the revenue forecast, we're way overspending in that category. And it's not getting any better. So we've got to bring these into line, and I would just like to say, I would like you to help me, ron, maybe craft a policy or work with whoever the appropriate -- I guess the mayor to revisit this and bring it more in line with what is a prudent business practice.

Bergman: At the mayor's request, omf is doing some analysis work to look at what exactly the kind of average over/under issue is on some of these. It's very hard to --

Katz: Tell them the truth. There is no ability right now to extract that data.

Bergman: On a mass citywide basis. It's going to take a lot of hand work to go through a sample of projects --

Saltzman: But nevertheless, as policy we can reduce the flexibility that we allow them to exceed on a bid award basis.

Katz: And that's really I felt the same way about it. The construction contracts do allow 25%, and that's what this is patterned after. But -- to be very honest with you, I was a little nervous about this as well, especially when I asked the question whether we can track today all of the variety of issues with professional and technical contracts, and the answer was no because they belong in your individual bureaus, and we haven't really centralized all of that. And that's the next step until the work that sue in purchasing is doing, is beginning to look at centralizing all those contracts so we can analyze what's been happening. So thank you. Anybody else? Let me see if I understand the request. The request is to come back -- not for you, for ron -- to work and come back and take a look at the policy. All right. Roll call. Anybody else want to testify? Roll call.

Francesconi: I think it's good to look at the policy. And I think 25% may be too much in some contracts. But I don't think necessarily in this type of contract, because where the work is going to be done in this area down the road I think we need to give a little flexibility on this type of contract, frankly. The more important thing is does it meet budget, and is it being efficient and cost effective. In that regard, ofa brought together a panel of outside people to look at the budget for ernie, and it was actually very -- and to check the assumptions to make sure our original assumptions were still valid. And we're going to get that report, but it was reaffirming the direction of ernie, and commissioner Sten was there from the very beginning that this was a cost effective thing. So we're going to be presenting that. And I think that is the most important question, the budget. Are we meeting the budget or not. Having said that, there are other kinds of contracts where 25% may be too much. We've got to be careful, though, because if we come down too much, that's going to have everybody set the amount at the maximum and could end up costing more money. Having said that, aye.

Hales: I think it's a good discussion. We should reexamine the policy. I think there are going to be instances where that flexibility is necessary, but the aggregate effect could be pretty luge, so this -- these are fine, but let's come back to that. Aye.

Saltzman: I think if we do change the policy, and I think there may be a rationale for maybe not doing it with construction, keeping it at 25%, but reducing professional services, doesn't mean we're taking away flexibility, it means the flexibility has to be approved by us as a city council. And I think that instills all certain amount of fiscal discipline both on behalf of the private sector firms that are doing business with us and the bureaus authorizing this contracts. It's hard to quantify, but there's a certain sense of fiscal discipline when they know they have to come before

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us to get approval. So it doesn't say we're taking away flexibility, we're just lowering the threshold. I look forward to further discussion of this possible change to our code. Aye.

Sten: Professor wish is one of the citizen that's keeps a close eye on it. He was right. We took -- we need to give some flexibility, 25 seems high, but i'd like forward to seeing what ron comes back with. Aye.

Katz: Aye. [gavel pounded]

Item 612.

Katz: Anybody here? All right. Anybody want to testify on this? Roll call.

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

Katz: mayor votes aye. [gavel pounded]

Item 613.

Katz: Does anybody want to talk to us about this? Electronic handheld parking devices. Questions? Anybody want to testify? Roll call.

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

Katz: Mayor votes aye. [gavel pounded]

Item 614.

Katz: Do you want to talk about it? All right. Passes to second.

Item 615.

Katz: Come on up.

Frank Dufay, Assessments and Liens Manager, Auditors Office: We have one written remonstrance that needs to be overruled. No one is here to testify.

Hales: So moved.

Sten: Second.

Katz: Any objections? So ordered. Remonstrance overruled. Passes on to second.

Item 616.

Moore: He could not make it today.

Katz: Okay.

Item 617.

Moore: He withdrew.

Katz: Okay, everybody. We stand adjourned until 2 o'clock. [gavel pounded]

At 11:25 a.m., Council recessed.

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MAY 23, 2001 2:00 PM

Katz: Good afternoon. The council will come to order. Karla, please call the order.

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

Item 618.

Katz: Amendment 618. We're going to have testimony and then we're going to carry this over until the 30th, correct?

Barry Manning, Bureau of Planning: Correct.

Katz: Go ahead and talk to us.

Manning: What we have today is an ordinance that extends a moratorium on electronic equipment facilities along the Portland street car line in the area of northwest Portland for 90 days. As you'll recall, back on January 31st of 2000, the city council adopted an ordinance which imposed a moratorium on the development of electronic equipment facilities along the street car corridor in northwest Portland. The moratorium applied to an area zoned ig-1, which is a general industrial zone and bounded roughly by northwest Lovejoy Street, Pettygrove Street, Northwest 12th Avenue and Northwest 18th Avenue. I'll show you really quickly on this map where that is. Talking about this area right here, where there is a hatched mark. The council adopted that moratorium in response to rapid conversion in that area. Shortly before the council adopted the moratorium, the Bureau of Planning initiated at Council's request a project called the Northwest Transition Zoning Project to address the zoning issues in that area, what's given rise to the moratorium on the eef. The project looks to transition an area of northwest Portland from those industrial zoning classifications to an employment or mixed use zoning and comprehensive plan designation to facilitate transit supportive mixed-use development in that area and limit development of inactive uses like electronic equipment facilities along the Portland street car. The Northwest Transition Zoning Project code provisions are going to be coming in front of you next Wednesday on the 30th, the same day that the moratorium would expire. The proposed amendments will not be effective until approximately 30 days after you take the final vote on that, so there would be a gap in coverage of the moratorium between the 30th, when this 120 days we have now expires, and until the new regulations become effective. So we're asking that you extend the moratorium for a period of 90 days or until the new regulations are adopted, whichever comes first, in order to provide some coverage during that period between the end of the original moratorium and when we adopt the regulations.

Katz: Questions? Anybody want to testify on this? Didn't think -- oh, you do. Come on up. Put the mic closer to you. Thank you. I'm David Allred on the staff of Neighbors West Northwest. I'm here on behalf of NWDA. John Bradley wanted to be here, but had a last-minute difficulty with that, and asked me to come and convey the sentiments of NWDA, that they are in support of this extension of the moratorium, and to thank the council for its attention on this important matter. As you know, NWDA and the Pearl District Association worked with the Bureau of Planning on this matter, and is continuing to work with them collaboratively on the wider planning projects underway in the Northwest now. And the NWDA certainly supports this extension, so that there's not a problem of a gap in the protections to the -- to this facility. All right, thank you.

Katz: Anybody else? All right. Roll call.

Hales: We have to wait to continue it.

Katz: Right, sorry. Continuing until the 30th.

Item 619.

Moore: It's at 2:30. It's a time certain.

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Katz: All right. We'll take 15 minutes.
At 2:12 p.m., Council recessed.

At 2:30 p.m., Council reconvened.

Katz: We'll come back to order. Commissioner Hales is on personal business.

Item 619.

Katz: Frank?

Frank Hudson, Office of the City Attorney: Good afternoon. I'm going to take a few minutes to talk about the rules of procedure. This is an evidentiary hearing. This means you may submit new evidence to council in support of your arguments. The evidence may be in any form, such as testimony, letters, petitions, slides, photographs, maps or drawings. If you haven't given the council clerk a copy of the evidence you plan to submit, you should give it to council clerk after you finish your testimony to council. Any photographs, drawings, maps or other items you show to council during your testimony should be given to the council clerk at the end of your testimony to make sure that it becomes part of the record. The order of testimony will be as follows -- we will begin with the staff report by the planning bureau staff for approximately ten minutes. Following the staff report, city council will hear from interested persons in the following order -- the appellant will go first and will have ten minutes to present his or her case. Following the appellant, persons who support the appeal will go next. Each person will have three minutes to speak to council. This three-minute time limit applies regardless of whether you are speaking for yourself or on behalf of an organization such as a business or association or a neighborhood association. The principal opponent will have 15 minutes to address council and rebut the appellant's presentation. After the principal opponent, the council will hear from persons who oppose the appeal. If there's no principal opponent, council will move directly to testimony from persons who oppose the appeal after supporters of the appeal conclude their testimony. Again, each person will have three minutes, whether you are speaking for yourself or on behalf of an organization. Finally, the appellant will have five minutes to rebut the presentation of the opponents of the appeal. The council will then close the hearing and deliberate. After the council has concluded its deliberations, the council will take a vote on the appeal. If the vote is tentative, the council will set a future date for the adoption of findings and a final vote on the appeal. If the council takes a final vote today, that will conclude the matter before council. If you wish to speak to the city council on this matter and have not yet signed the list located outside of council chambers, please sign up at this time with the council clerk. I would like to also announce several guidelines for those presenting testimony and participating in the hearing. These guidelines are established by the zoning code and state law and are as follows -- any testimony and evidence you present must be directed toward the applicable approval criteria for this land use review or other criteria in the city's comprehensive plan of zoning code which you believe apply to this decision. Planning staff will identify the applicable approval criteria as part of their staff report to council. Before the close of this hearing any participant may ask for an opportunity to present additional evidence. If this kind of request is made, the council may either grant a continuance or hold the record open for at least seven days to provide an opportunity to submit additional evidence and will hold the record open for an additional seven days to provide an opportunity for parties to respond to that new evidence. Under state law, after the record is closed to all parties, the applicant is entitled to ask for an additional seven days to submit final written arguments before the council makes its decision. Finally, if you fail to raise an issue supported by statements or evidence sufficient to give the council and the parties an opportunity to respond, you will be precluded from appealing to the land use board of appeals based on that issue.

Katz: Thank you, frank. All right, declaration of conflict of interest by the council members. Hearing none, let's move on. Ex parte contacts by council members? None. Anybody want to challenge us? Okay. Let's do staff report.

Duncan Brown, Office of Planning and Development Review (OPDR): Thank you. Before you is a reconsideration of the conditional use for Portland meadows. Lur 00-00820 cu. It was issued upon determination that the activities of the site have changed since becoming a nonconforming use in 1989. Public hearing was held on february 13th by the land use hearings officer and the record was held open an additional 3« weeks for written testimony and then a final week for final rebuttal by the tenant and operator and the principal complainant, that is opdr. Hearings officer decision was mailed on march 22nd, and the appeal filed on april 5th by david leiken of double tee. The reasons for initiation of the reconsideration are that opdr concluded that the use is subject to the conditional use regulations, has not been subject to a conditional use review and has substantially changed its activities or substantially increased in intensity of its operations since it became a conditional use and more than 60 days had passed since the first notice of violation was sent. Criteria for reconsideration are found in city code chapter 33.700, section 33.700.040, a through f. Portland meadows began operations as a racetrack for horses in 1946 and has continued with that activity to date. The track was originally in unincorporated Multnomah county and was that until about the -- somewhere in the '60s, I believe, and then was annexed into the city of Portland. Portland meadows activity continued as an allowed use in the general manufacturing zone as a group 5 commercial use, which has allowed outright in the old m-2 zone. Portland meadows became a nonconforming use in 1989 when we adopted new industrial zoning and again shifted in its particular status, use status, when it became an automatic conditional use under 33815030 with adoption of the current zoning. In preparing the -- the hearings officer report and decision, there were two questions that the hearings officer had to determine. First was what was the level of activity and operations on the date that Portland meadows became the conditional or nonconforming use. That's referred to as the base level activities. And secondly, if there was a substantial change in the activities or substantial increase in the intensity of the operations. The base level activities, which the hearings officer determined to be present were horse racing during the winter season of each year, golfing on a year-round basis, concert activities on an average of one every two years with a maximum attendance of 10,000, and car shows in the parking lot during the summer. Specific evidence in the hearings officer's -- that the hearings officer relied on is in the record, and also summarized in the tables or described in the report and decision I believe you have before you. As far as substantial changes in activities, the hearings officer determined that prior to 1989 those four activities were present, and after 1989 those four activities were also present. So there has been no substantial change in the type of activities at the Portland meadows site. However, the hearings officer did find that there had been an increase in a number of visitors during the summer months over and above the base activity level that resulted from concerts held at the Portland meadows site since 1989. And also, that there had been a substantial increase in the number of concert events held from 1992 through 1999 that were over and above the base level activity. In conclusion, the hearings officer determined that the use of Portland meadows did become a conditional use and/or nonconforming use due to a change of zoning regulations or mapping, that the use is subject to the conditional use or nonconforming use regulation, but has not been subject to a conditional use or nonconforming use review, that there has been substantial increase in the intensity of its operations since it became a conditional use or nonconforming use, and that was because of the number of visitors during the summer months and in the increase in the number -- in the number of concert events, and because there has been a substantial increase in the intensity of activities and operation, the hearings officer was able to apply conditions or restrictions

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to ensure that any substantial increase in intensity applies -- complies with the current approval criteria for the use. Land use hearings officer decision was that the base level activities that occurred in -- prior to 1989 -- or 1989 -- excuse me -- were horsing in a structure that can accommodate 12,500 people, a golf course on a year-round basis, car shows during the summer months, and holding one concert every two years with maximum attendance of 10,000. Any activity exceeding the intensity of those base level activities requires a conditional use approval through a separate land use review. And specifically that holding more than one concert during the two-year period would be considered a violation of the condition imposed in this decision. That isn't to say that concerts or other events cannot be held. It simply says that the approved activities are governed by the automatic conditional use regulations within the city code in 33815030, and anything beyond those base level activities that the hearings officer determined to be present require conditional use review. And the appellate, or no one for that matter, has applied for and received a conditional use today.

Katz: Has not applied for it?

Brown: Excuse me?

Katz: Has not applied?

Brown: That's correct -- well, they applied that they withdrew.

Katz: Withdrew?

Brown: Yes. The appellate appealed on 11 issues. They're in your pact before you, so I don't I don't think I need to go through this. Portland meadows is located in north Portland, just north of the columbia slough between m.l.k. And i-5. There's an photo of the site. And the Portland meadows property is outlined in red. You can see that martin luther king boulevard is on the east and the i-5 freeway is on the west. It's immediately north of the columbia slough. And the main access point is via schmeer road that runs through south of the site, connecting i-5 to vancouver avenue and then martin luther king. And here's a picture of the largest structure on the site and some of the horse barns for the horse racing activities in the foreground that are aqua-colored on the end. In conclusion, the land use hearings officer did make a determination that there were only four activities were demonstrated to exist as of 1989. And that holding -- one of those was holding one concert every two years with maximum attendance of 10,000. Any activity exceeding this in intense I didn't tell requires a conditional use approval, particularly holding more than one concert during that two-year period. And that decision was based on the evidence submitted into the record and as noted throughout the decision of the land use hearings officer.

Katz: Thank you. Questions?

Saltzman: Yeah, I guess. Does the necessity to get a conditional use approval, is that on a concert-by-concert basis or can the applicant or the appellate, can they present a schedule of concerts in a season and get a conditional use approval for that schedule, or is it a case-by-case requirement?

Brown: They can present a range of activities, including concerts and any number of other activities, present a season or a scheduled number of activities within a certain season. And based on that we could do a conditional use review.

Katz: Okay. Thank you. Further questions? All right, the appellate, you have ten minutes.

David Leiken, President, Double Tee Promotions: Hi. It's just me, i'm the only one speaking.

Katz: Pull the mic closer to you.

Leiken: What this is about, in my opinion, the coors sale of a business. What is interesting to me is that the city, tom moyer, norm daniels, ticketmaster, g.i. Joe's, will tolerate or perhaps even encourage traffic snarls emanating from basketball games, antique shows, football, car racing, but if it's from a musical event at Portland meadows it suddenly becomes a public nuisance. If this is

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not a clear instance of discrimination, i've never seen it. This type of double standard should never be tolerated in any community. Concert noise becomes a public nuisance when in the next breath in "the Oregonian" the city brags about, and yes, promotes, the fact that they've tripled their business at p.i.r. Mostly with loud racing events. Again, I would point out the obvious double standard. To try to single out concerts as an unallowed use for a single major entertainment venue when they've been allowed at numerous other such venues and been given status at city-owned parks, such as the waterfront, shows further the double standard at work here. Certainly waterfront park was not created as a concert venue or a major entertainment venue. Yet by the logic at work here, it can house concerts, but Portland meadows can't. The crux of the issue is that nowhere in the code does it say that concerts are a conditional use at a major entertainment venue. They are certainly an outright use. As long as they're presented within the law. There's no use category in the code which separates horse racing from other spectator events. The code does not differentiate one spectator from another. But clearly tries to create an entertainment venue in its description. Concerts certainly fall into that description as anyone with any common sense would agree. There are many types of spectator events that were not in vogue or even invented in 1947 when Portland meadows began. There weren't truck pulls, amplified concerts, multi-media spectacles, trade shows, computer shows, and many other uses that have become popular at major entertainment venues over the years. Creativity in the market are ever-changing. I dare say that no one at code enforcement would suggest that expo not do certain events that were not even thought of in its early years. Concerts have been one of the evolutions of the major entertainment venue business. It would be impossible for me to believe that the city of Portland could suggest that concerts are not an allowed use at a major entertainment venue, because if you agree with the hearings officer's ruling that is in essence what you're saying. Or that Portland meadows is not a major entertainment venue, which defies all logic in a previous ruling by the city council in the early 1990s declared that it was a major entertainment venue and that we were in compliance with the noise issues out there. Up until a couple of days ago, I was inclined to come here and let a sleeping dog lie, but city officials in the last couple of days have crossed the line. Duncan brown made statements to the press in columbia county where we're trying to do our shows that are detrimental to our business. Betsy radigan, the head of the piedmont neighborhood association, also made statements to the press. These kinds of statements from these officials of the city of Portland are irresponsible, offensive, libelous and slanderous and also false. Actions by the city of Portland, tom moyer's lawyer, and neighborhood chairs have resulted in the core sale of the operating license by the ferrymans to tom moyer and the loss of million dollars in revenue for our company and a relationship that was being built over a long period of time has gone. Most of the complaints that you've heard have been pushed by certain individuals, fabricated or in many cases are erroneous. For example, noise. I'll give you an example. Last year I took the noise complaints from our shows, the largest until the final show was three. And that concluded the big stink, rock fest, among the loudest ones, however ben harper, which was our last show, where there was a neighborhood push, there were eight complaints. And I think anybody that knows music or concerts know that the difference between kufo rock fest and ben harper is like night and day. It's hard to take seriously complaints that are fabricated. Several years ago we received a call on one of our shows from your traffic people, and said that they had received a lot of complaints. And I said to him -- and I don't remember his name at this point -- "well, that's interesting, there were 2000 people there, I don't know what traffic complaints there could have been." and I said "you're certainly welcome to come out to our next show and check it out." he never appeared, never showed up. And that was the end of that. There have been repeated attempts by the planning officials to interfere with our business, including trying to influence the state of Oregon to not issue

our alcoholic beverage licenses and their appearance at the noise task force to try to influence them to recommend closure of Portland meadows due to excessive noise, while at the same time exempting civic stadium from the noise control issue. And what's further interesting is they knew full well that we already had a letter of compliance from the noise control officer when they did this. That person's name is Denise Klein. Each year there were letters sent out casting doubts as to the status of Portland meadows as an entertainment venue. Several planning officials did this. It's damaged us considerably. This -- copies of this correspondence went out to Steve Pfeifer, Tom Moyer's lawyer, while another legal proceeding on the same issue was going on. This seems unethical to me. Then there's the other issue -- that's people. We employ upwards of 200-plus people at our shows out there in the summer. It's been a good extra income for a lot of people and serious money for others. We had vendors, we're developing a good, solid business, and I think it was much loved in the community. No big deal. It's gone. You know, the River Queen is gone due to complaints from some of the same people. It's gone. It's okay, give Cirque du Soleil six weeks down at the river, but forget the River Queen. In 1992-93 there was a hearing with the city council that stated we were in compliance with the noise issue and Portland meadows was a major entertainment venue. What changed? I think one thing changed. I think the city expanded into the concert business and became the serious amount of income for them, and it just seems like the city's out to protect its interests. And lastly, the ruling itself. Horse racing for six months? The golf course, which has been there a long time. Car shows? One concert every two, up to 10,000 people? I mean, this mix is laughable. And especially if you've reviewed your packet and saw the evidence produced, I don't know where this guy came up with this. It's like, "oops, here it is," you know. Where in the world did he get it? What was the criteria? It makes no sense. Common sense tells you that this decision is pulled out of a hat and not based on any credible criteria. The reason I came here is because I've watched this whole thing go on, and in my opinion this is a matter of right and wrong. It's politics and money, not zoning. The decision is wrong, pure and simple. Portland meadows was probably the best single place to produce outdoor shows in the metropolitan area. And I know, I've been doing this for 30 years in a lot of venues. The speedway has expanded its business. P.I.R. Has expanded its business. Expo has expanded its business. The speedway and P.I.R. Consistently exceed noise standards and run after 10:00 p.m. P.I.R. According to "the Oregonian" has tripled its uses and the waterfront and civic stadium have also tripled their uses, but one business gets put out of business by the city of Portland. Down the road, when Portland meadows, when the property's developed, please remember this meeting and the absurdity of the ruling. When they build a ballpark, or whatever they do there, just remember it should only be used for horse racing, golf course, car shows, and one concert every two years for 10,000 people. This is ridiculous. That's all I got to say.

Katz: Questions?

Francesconi: Any questions?

Saltzman: So you disagree with the intensity of use issue in terms of the baseline --

Leiken: Well, this is absolutely --

Saltzman: I have two parts to this question. Secondly, are you also saying an additional review requirement for a summer schedule of concerts is to your mind the equivalent of shutting you down?

Leiken: Well, we tried twice to work with the planning people regarding conditional use. The first time the improvements that they asked for on that property were -- we estimated at a million dollars plus. They wanted us to put sidewalks on Schmeer Road. I can't remember the whole list of things. But then we go across the street and you look at what goes on at Expo, and none of that happened there. I mean, you just look at the double standard, and it just goes on and on. So we

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went -- we tried two times with this conditional use process, and, you know, frankly we hit the stonewall.

Saltzman: Related to the intensity?

Leiken: Related to doing concerts at Portland meadows.

Saltzman: Okay.

Leiken: As far as the intensity goes, I think anybody would be hard-pressed to prove that there are more attending Portland meadows events now than there were in the '70s and '80s. I know it's not true. Horse racing used to draw people in there, you know, 5 to 12,000 people consistently. So, you know, what's the difference between a horse race in October and a concert in June? I mean, that's what it really boils down to.

Saltzman: Thanks.

Katz: Thank you.

Leiken: Uh-huh.

Katz: Supporting the appellate? Do we have anybody signed up?

Moore: These are all opposition.

Katz: Okay. Anybody here to support the appellate? If not, let's have the principal opponents, 15 minutes. Who's the principal opponent? All right. Does anybody want to testify in opposition? Who signed up? Are you the principal opponent? Is the neighborhood association a principal opponent? All right. Do we have anybody signed up to testify?

Moore: We have Everett Roberts, Barbara Fisher, and Steve Pfeifer. Come up, three at a time.

Katz: I'll give you three minutes each since we don't have any principal opponent. Okay. Who wants to start? Why don't you get closer to the microphone. Pull it over to you.

*******:** Go ahead.

Katz: Go ahead.

Barbara Fisher: Hi. Good afternoon, Mayor, Council. I'm co-chair, along with Ruth Frank, of the Piedmont Neighborhood Association of the my address there is 7204 North Mississippi in Portland. The city hearings officer recently made a decision that affirmed something that we neighbors thought was true -- the Portland meadows is in fact a race -- horse racetrack. The matter has been a bone of contention since 1993 when the horse track became much more of a concert facility. Piedmont, along with other neighbors in the area, all realize the impacts of the concerts were well beyond the impacts of any horse racetrack. It is felt like an assessment on the community was a critical missing step. A reconsideration hearing is an appropriate step at this time. It's appropriate to review the allowable activities for horse racetrack. As a neighborhood association, we urge you to uphold the hearings officer's decision and deny the appeal. Thank you.

Katz: Thank you.

Everett Roberts, President of the Hayden Island Neighborhood Association: I too agree with the city staff that made this decision, and I believe properly. I believe neighbors and neighborhoods should have an impact on these types of decisions. I live on Hayden Island about a mile point one or something like that from this facility, and I've been -- I can sit in my backyard and hear this very plain. Now, if I can hear that a mile point one away, I'm sure that those neighbors closer are just blasted out of their homes. Now, that's the noise. Do I make a complaint? I'm like a lot of other people -- no, I don't get on the phone and make complaints. I come to the city councils or hearings officers and make my voice heard. So I agree with the staff 100%. And I think this should be -- should be denied. Thank you.

Katz: Thank you. Steve?

Steve Pfeifer: Mayor Katz, members of the council, here today on behalf of TMT development, the neighboring property owner to the north. I'll be brief. I've been involved in this case for

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approximately a year and a half in various ways, and we're fully in support of the hearings officer's analysis and the testimony you just heard. With regard to mr. Leiken's comments there's very little to rebut because something he said today strikes to the evidence, the criteria, he offers no additional evidence. Frankly what he offers obviously in a very frustrated manner is a problem with the policy as embodied in title 33 with regard to major event entertainments and under his view they shouldn't be regulated at all in any way. Secondly, he confuses impacts as he did before the hearings officer with the analysis required to demonstrate compliance with the code, as he did today, and as he did then, he suggests there's no noise, no other types of impacts. At one point the hearings officer had to stop him during his testimony below and indicate that that's precisely the kind of testimony and analysis and evidence which should be offered in a conditional use permit forum. Where there is an opportunity to address impacts and how they might be mitigated. Instead mr. Leiken was chosen, as he's done again today, to say he shouldn't even be subjected to that analysis. He's repeatedly refused to submit a conditional use permit. He's been deemed by the hearings officer to be illegal, as commissioner Saltzman points out the avenue has always been available to submit a conditional use permit and he promised to do so, only to revoke that right immediately before the 1999 concert season and left us all back with another year of damage and impacts. So the final point is i'd make is the final distinction I would leave you with is the difference between his operations, not only at this site, but frankly at other sites in the city in the past, and p.i.r. And many of the other instances that he mentioned. Public and private. Is that they went through the land use process. They submitted themselves to the scrutiny of the city, the policymakers such as yourselves, the affected neighbors, and everybody in between through a public process. You just completed a conditional use master plan for p.i.r. Which addressed all of those impacts and more. He simply doesn't want to go there. He complains about the cost of providing sidewalks. Everybody else that submits themselves to a discretionary land use review provides sidewalks. He simply doesn't believe he should be subject to title 33 as everyone else, including the city of Portland, is. It's not a question of impacts or nuisance or anything of the like. It's a question of his unwillingness to participate the way the rest of us do, including the city. With that, we support. And frank, i'll leave you, if you want to raise the last issue you and I spoke of. Because i'm out of time.

Hudson: Sure. There's one minor issue involving some language in the decision. The decision has a portion stating that this decision expires three years from the date it is recorded.

*****: Bottom of page 28, last sentence.

Hudson: Right. And the issue there is that -- and the easiest way to explain it is this -- typically when an appeal comes up to council from the hearings officer, the hearings officer has either approved or denied an application for a land use permit, and that's not really the case in this situation. And of course if it were a permit for a land use permit it would have a specific expiration date for the developer to get his building permits and so forth. In this situation, what the hearings officer looked at was a preexisting conditional use permit approval, because by right Portland meadows had an automatic conditional use. So in essence what the hearings officer did and what's before council is reconsideration of the use and the extent of the use. Which really doesn't have an expiration date. It's perpetual.

Saltzman: Do we need to make a finding to that effect or --

Hudson: I think we need to amend this decision, assuming -- well, I don't know how council's going to decide it. If council approves the hearings officer's decision, then we would need to amend this statement to say something like "council approves the hearings officer's reconsideration." in other words, it doesn't have an expiration date.

Katz: So he made an error, frank?

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Hudson: Yeah. They use boilerplate language, because typically they are dealing with applications for land use permits.

*******:** We just didn't want to come back in three years.

Katz: Okay, thanks. Thanks, ladies and gentlemen. Anybody else?

Moore: Lowell mcgrooger. Okay, that's all who have signed up.

Katz: Anybody else want to testify? Okay. You have five minutes.

Leiken: I have a couple things to say in rebuttal about the conditional use process. We tried to go down that road at river queen and in conjunction with the naito people. All I can say is that every time that we got into meetings with staff there were hurdles put upon us that were certainly not put upon the city and their -- in their own backyard, and I think that that's unreasonable and would be more than reason for somebody to withdraw. Secondly, i'll defend my 30 years of presenting shows in this community safely and professionally with any in the united states. Our reputation has been close to unparalleled in the music and concert industry for years. We've never had a fatality at one of our events, for example, and we've been doing it for 30 years. So I think if somebody wants to cast aspersions that's another issue. I think ethics are more important than that anyway. But the real issue is the concerts are gone from Portland meadows anyway. The reason I came down here to do this is because I wanted everybody in the room to have the true overview of the situation. I've said my peace and that's it.

Katz: Do you want to comment on anything that you with regard to the accusations made?

Leiken: I don't think so.

Katz: Okay.

*******:** I think it's pretty clear there are no additional evidence submitted into the record today, and we continue to recommend the hearings officer's decision be upheld.

Katz: Okay. I'll need a motion. Susan? Just a minute. Susan, do you want to share this with us, or do we need to hear this?

Susan Feldman, (OPDR): Well, actually, frank will do that.

Hudson: She was just remarking that usually the opponent gets the last word.

Katz: They waived it.

Feldman: There is no opponent. I just wanted to make sure -- susan feldman from opdr -- that they were procedurally correct in giving the -- what I believe is the applicant the last chance to rebut, that the staff wasn't the last person.

Katz: No, no, no. No. I just asked duncan to come up here if he had anything -- comments he wanted to make. All right. We need a motion.

Sten: So moved.

Saltzman: Second.

Katz: What was the motion? [laughter] I didn't hear a motion.

Francesconi: From the hearings officer -- affirm the hearings officer, I think.

Sten: I so move. The motion is to affirm.

Katz: And to eliminate the language with regard to the expiration date. Do I hear a second?

Francesconi: Second.

Katz: All right. Roll call.

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

Katz: The mayor votes aye. This is not a tentative decision, even though we changed the recommendation. Yes? No?

Hudson: No, it's not.

Katz: Okay. Fine, everybody. Thank you very much. We stand adjourned. [gavel pounding]
At 3:11 p.m., Council recessed.

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Katz: [roll call]

Item 620.

Katz: Katherine.

Kathryn Beaumont, Office of the City Attorney: Good afternoon, mayor Katz, members of the council and -- The purpose of today's proceeding is to hopefully complete an as-yet unfinished piece of council business. As most of you recall, in October of 1998, you made your original decision to approve the Oregon Holocaust Memorial Coalition's request to site a memorial to victims of the Nazi Holocaust at what has become known as the Right Avenue site in Washington Park. Your decision was appealed to the Land Use Board of Appeals and went on up to the Court of Appeals and back down to LUBA. In November of last year, LUBA issued its decision remanding your decision back to the city. LUBA concluded that your findings addressing several of the criteria in the council's memorial siting policy were inadequate. The purpose of today's proceeding and what you have before you are a set of revised findings and a decision to address those issues that LUBA felt were inadequately addressed in your earlier decision. Notice has gone out of your -- of this council proceeding today. The notice stated very clearly that there will be no additional testimony or evidence. The revised findings before you are based on the existing record -- existing record is adequate to support those findings, and the purpose of today's proceeding is simply for council discussion and a vote. I will note that over the noon hour we received a letter from Greg Hathaway dated today's date on behalf of the Arlington Heights Neighborhood Association. Because the notice that went out stated very clearly the council will not accept additional testimony or evidence at today's proceeding, it's my recommendation that you reject this letter and exclude it from the record. And I think if -- it would be necessary for you to have a motion to do that. So I'm here to answer any questions, but the two pieces of business before you are to rule on the letter and then to -- for council discussion and a vote on the findings.

Katz: Council, do you have any questions on this issue?

Hales: Your recommendation that we do move to adopt -- move to allow the letter to be --

Beaumont: No. My recommendation is that you move to exclude the letter from the record.

Hales: I'm sorry. Thank you. So I move to exclude the submitted letter and any other new testimony from our decision.

Katz: Okay. Is there a second?

Saltzman: Second.

Katz: Is there a discussion? Any objection? Hearing none, motion is unanimous. [gavel pounded] all right. Do you want to talk a little bit about the findings?

Beaumont: The findings before you use the same format that was used for your original decision. All we have done is we have removed those pieces of the findings that LUBA felt were inadequate and we have added new findings that further hopefully -- further and better explain why the council decided each of the approval criteria in the memorial siting policy were satisfied. In terms of the geographic justification criteria in the siting policy, the findings explain that there are special circumstances that merit siting the memorial at the proposed location, and that in addition there is a geographic justification for locating it at that particular place as well. The findings better address the traffic evidence that's in the record and interpret the Washington Park Master Plan first to not require any street closures and second to consist of only recommendations which will not be made impossible to implement if the memorial is sited at this location. It also relies on the traffic evidence that was presented to you in 1998 that very clearly explains the memorial will have little

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if any traffic impact on the surrounding street system and in Washington park. Finally, the additional findings discuss how the -- how and why the memorial fits the function of Washington park and the particular area in which it's proposed to be located.

Katz: Questions by the council? All right. Do I hear a motion?

Hales: Move to adopt the revised findings.

Saltzman: Second.

Katz: Roll call.

Francesconi: Briefly I want to thank kathryn beaumont and harry our back for the excellent legal you've -- work you've done. We've made a decision. There's ample evidence supporting the decision. We're sorry that it couldn't be reached in a consensus fashion, but it's time to build the memorial. Aye. **Hales:** Aye.

Saltzman: I wasn't here in october of '98 when the original decision was made, but I have reviewed the record, and feel i'm well qualified to now cast my vote in support of these additional findings and hopefully we can get this thing built as soon as possible. Aye.

Sten: I think it's time to do it. Aye.

Katz: Mayor votes aye. [gavel pounded] thank you. All right. Our 621 is a time certain for 2:30. We'll take a recess until 2:30. [recess]

At 2:11 p.m., Council recessed.

At 2:30 p.m., Council reconvened.

Item No. 621.

Katz: Council will come to order. Could I get a reading of how many people want to testify? Okay. We'll start with three minutes. When we get to public testimony. But depending on what the time factor is, we may shift to two after that. We'll see. Why don't you read the item.

Katz: Gary, why don't you come up.

Gary Blackmer, Auditor of the City of Portland: Good afternoon, mayor, members of the council. What you have before you is an ordinance which replaces the chapter of the city code which had defined the rules and procedures of the police internal investigations auditing committee with a new entity called the independent police review --

Katz: You can't hear? Well, if you -- if you are hard of hearing, we do have something -- just a minute. We can only raise it up to a certain level. It doesn't go higher than that. Go ahead.

Blackmer: Let me try again. Okay. Mayor, members of council. I'm gary blackmer, Portland city auditor. I'm presenting an ordinance to transform the police internal investigations auditing committee into the independent police review. This is largely based upon a proposal that my office put together in march. We've had a great deal of input on it. We've had a lot of discussion and that report was based upon work that was done by the mayor's task force as well as some additional work in my office. What you have before you is an ordinance for which we'll have a hearing and then there will be a vote, either next week or depending upon timing of amendments, beyond that. I have a number of amendments that were made. Many of them are merely making sure language is consistent. Some of them are to clarify our intent. So I have made copies of all of those amendments available. They're at the table and there's more in the audience. So if people want to see those, they're welcome to do so. What i'd like to do is do an introductory presentation of it, and then to introduce two members of the police internal investigations auditing committee, and then two other speakers, and then make it open to the public with your approval -- approval.

Katz: Okay.

Blackmer: A year of work will have been invested in this problem. Through the mayor's task force, my office and the mayor's office, considerable dialogue in the community and each council

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member in hearings, weighing alternatives, listening more today and then making a decision in the next week. You will hear sincere arguments today about the proposal not going far enough, or going too far. We can all agree on the goal of building a better police bureau. We can all agree on the goal of preventing problems rather than responding to them. The debate hinges on which strategy can best produce change. Let me emphasize one point. Civilian review by itself cannot produce the changes in the police bureau that many people want.

Katz: Just a minute. Please keep your signs down. This is a deliberative body. Go ahead, Gary.

Blackmer: Change happens in an organization when a vision is shared by the commissioner in charge and in this case the police chief, the employees of the police bureau, the council and the community. We must then remind each other of that vision. And make the right decisions to achieve it, day in and day out. Handling complaints is only one element of organizational change. The proposed ipr has the authority and tools to make it the most influential civilian oversight model in this country. It has three critical features -- independence, "ability and an emphasis on service improvement. Let me first -- speak first of independence. As an elected official, the public cannot provide my office with a stronger basis of independence. I do not answer to the mayor or commissioners. My office is established in the city charter and I apply my energies to serve the interests of all 530,000 residents of Portland. Citizen involvement also ensures independence. Under this proposal, Portland will continue to actively include citizen volunteers in the oversight function. The citizen review committee will have an active role in developing protocols for the way complaints are handled, hearing and deciding on appeals, and helping build strong ties between the police and the community. Accountability is the other -- another key element. Citizens will no longer file their complaints with the police. The ipr will receive the complaints and decide how each will be handled. We will track the complaint for timeliness and ensure that investigations are fair and thorough. We will produce quarterly and annual reports on the efforts and performance of iad and the ipr. We will also monitor follow-through on policy recommendations made to the police bureau. The citizen review committee and city council will continue to hear appeals and make determinations of findings. The third element, service improvement. The proposed ilr will impact police officers and -- in the entire organization. Not every complaint can be resolved with an investigation, and we will have many tools to address a wide range of problems. Some of the tools include mediation, internal affairs investigations with follow-up by the ipr, internal affairs investigations which involve ipr staff accompanying them. Ipr staff actually doing the investigation. Analyzing complaints for patterns of problems so that then we can make recommendations to change police bureau policies and procedures. This range of solutions can result in better iad investigations, better findings and better police services. This proposal has a tool to fit every size of problem except one. Shootings and deaths in custody. I don't have the wisdom and experience or the naivete to promise successful results if we were to review these tragedies. I believe public expectations of solutions are high. The risk of error is high, and the costs are high. At this time I cannot see a way through the thicket of emotions, laws, and financial costs to reach the answers that would satisfy the public's expectations. But i'm also convinced that our efforts will reduce the likelihood of deadly force being used. The solutions to prevent these tragedies can be found in problems when deaths do not occur. Deadly force is the last response in an escalating, violent situation. The solution is to prevent the situation from escalating to that point. Which is much easier to say than to do. What skills and instincts does a police officer need to diffuse a volatile situation? How does the police bureau help each officer acquire those abilities? And how do we ensure that officers apply what they have learned in their daily work? I don't have answers to these questions now. But I am willing to embark upon the important search and make recommendations to prevent these tragedies. This proposal is a

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profound change in the way police complaints are handled, and in Portland and I believe it's superior to all the alternatives. But I will depend upon the city council to judge our stuck says and to consider other alternatives if we do not achieve the objectives we set forth. We will report quarterly and annually to council, measuring our results. As an audit or, I recognize the need for a -- for evaluation and vigilance to identify better strategies. This proposal for the independent police review division is a responsibility that I will accept knowing that it is your decision in the future when and how it must be changed. I give you and the citizens of Portland my commitment to do everything I can to make this proposal succeed.

Katz: Did you want to just go quickly review the ordinance and maybe some of the changes?

Blackmer: Sure. Some of the things that we are doing, we are adding intake in the -- in our office instead of in the police bureau. We are providing greater involvement for citizens in making final decisions in terms of appeals. When a decision currently goes to piiiac, that decision can then be forwarded on to city council. This will empower citizens to make decisions on those findings where they are in agreement with the police bureau and that's where the complaint ends. If they are in disagreement with the police bureau, then it comes to city council for a hearing. And all those hearings continue to be public. We would also focus on mediation. That is something that the bureau has initiated, but we want to see if we can expand and push that as a problem-solving tool to help build broader connections between the community and the police bureau. And we can do that much easier with intake in our office. We also want to make sure that we're looking for patterns of complaints, certain types of complaints, certain patterns of -- with officers to be able to identify strategies for preventing those complaints from happening in the future, either through policy or through active work with supervisors or doing investigations of those particular kinds of complaints. This continues to provide all the public access that piiiac had in the past. We've preserved all those things. And it also provides that the chief continues to have the final say on discipline, which was the agreement that was made in the majority and minority reports and it continues to be an element that we've preserved here. The recommend -- the large difference is that council can make the final disposition on a findings, which in the past it was a recommendation. So that's a significant change from the past as well. I think those are some of the key elements that we're proposing in terms of change.

Katz: Okay. Before we get on to further testimony, the council did get some additional amendments, and at some point, whether it's now or later, if you feel that you need further explanation by a city attorney, we can do that.

Saltzman: I would.

Katz: You would like it --

Saltzman: I can wait until the piiiac -- I have a couple questions of gary.

Katz: Go ahead, then. Let's do it now.

Saltzman: The -- one of the question relates to the amendment. Maybe this is the question the city attorney has to answer, but --

Blackmer: It may well be.

Saltzman: The change that was made in terms of how complaints are handled, and particularly where ipr is doing the investigation, I guess that's option d, or -- I guess philosophically I need to know why is it that the ipr investigator needs to go through iad to ask questions in this situation? It seems to me if you're doing the independent investigation, why can't your investigator ask the questions? And then -- and again, in this amendment about the iad investigator may either repeat the question or directly employ to answer the question. Just explain --

Blackmer: Those are good questions, and they sound like they don't -- they don't make a lot of sense, except the broadest answer I can give is that when people are directed to tell the truth, we

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have to protect their constitutional right not to incriminate themselves on criminal charges. So that's as far as I can go on it. But I would certainly invite the attorneys --

Saltzman: Is that with respect to changing the word "shall" to "may"?

Blackmer: Exactly.

Saltzman: When can't investigators ask the questions directly?

Blackmer: Because they are not supervisors of the officers being questioned. That's the best answer I can give to that.

Katz: Let's get the city attorney, because those are the question that's have been raised several times.

Blackmer: Here comes rudy westerband from the city attorney's office.

Katz: Okay, folks, let's move quickly.

Rudy Westerband, Office of the City Attorney: I'm with the city attorney's office.

Stephanie Harry Potter: also with the --

Stephanie Harper: also with the city attorney's office.

Westerband: There are two issues. In a situation where there is no potential for criminal liability, that is there is no criminal investigation or potential for criminal investigation, you're simply talking about in all -- an allegation of some form of misconduct that would not result in a potentially criminal prosecution. The draft recognizes that the authority to discipline the officer rests with the chief. And therefore the order should come from -- through the chief's personnel to answer the question. The process is primarily an investigative process for purposes of determining whether or not the rules of the police bureau were violated. And so the idea is to have that direction come from the chief's agents and designees. Where the issue is potentially criminal, and that's where you really get into the difficult issue, an officer has the right, as you know, not to incriminate himself or herself in the statement that's are made where he subjectively and objectively believes that criminal prosecution is likely. If the --ful the ipr is -- if the ipr is -- if I understand the question, the question is, why should the ipr not be given --

Saltzman: Why can't the ipr investigator directly question the officer? And it just -- I don't understand that. Why can't the investigator, the independent investigator directly direct a question to the officer? Why does have it to go through an iad investigator who has under this amendment, the subsequent discretion to decide whether to even ask that question?

Westerband: All right. The reason why --

Saltzman: Is it legal, union issues, or chain of command, or --.

Westerband: The -- I believe that the original -- that the draft has the iad asking the question in both situations in order to maintain the line of authority in the -- and the chain of command within the police bureau. I don't believe there's any reason other than that. And I could be wrong. But I believe that's the case.

Katz: All right.

Westerband: The real issue, the real issue in so far as the change of "shall" to "may" is the following -- the right of -- the constitutional right not to incriminate 1self exists. There's no way to dilute that. Where there is a potential for criminal investigation, or the reality of a criminal investigation, and the officer invokes the fifth amendment right, at that point the idea is that the iad investigator and the ipr investigator will step back, regroup, confer with the city attorney's office as needed, a decision may have to be made in consultation with the chief of police and with the district attorney as to whether or not criminal prosecution is a possibility. If the -- under the code, however, as was originally drafted, the officer is given an order to speak after invoking his or her rights, that officer is -- made the argument -- maybe the argument will be the officer is being compelled to forego the exercise of that right. That of course could have adverse ramifications for

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any criminal prosecution which could otherwise occur. And it also places the city and the officer in an adversarial role, relationship with regard to discipline. And of course in determining whether a discipline is appropriate, where the individual has invoked the right of the constitutional right in the context of a potential or real criminal investigation, that is a difficult, difficult issue. We would have to work very closely with the chief of police and the police bureau to avoid that kind of a problem.

Francesconi: See, commissioner Saltzman too, commissioner Saltzman, I thought the iclu sent a very good letter outlining certain principles that they thought we should follow in this amendment. They didn't give us precise advice on what we should do, but one of the principles is we've got to be careful from the aclu standpoint to not prejudice potential criminal cases against police. And that was I think -- I think that's what the heart of this amendment is about, to make sure we don't do that.

Harper: And -- sure. And the direction --. In direct answer to your question, it has to do with the chain of command and who has the authority to actually tell a member of the Portland police bureau that you are directed to hearby answer this question under threat of disciplinary action.

Saltzman: Well, if we're talking about -- most of the concern seems to center around potential criminal activity.

Westerband: Exactly.

Saltzman: I would assume under such an investigation that a union representative would be there an officer may have an attorney, we might even have -- we might have a city attorney there.

Westerband: That's true.

*******:** That's possible.

Saltzman: So with all those potential safeguards about self-incrimination, again, why can't the ipr investigator just ask the question and then it can be determined whether the officer has to answer that question by the union representative, officer's attorney or city attorney?

*******:** Mayor --

Katz: It's a good question, and i'm not sure you satisfied commissioner Saltzman in the response.

Westerband: I think the response is basically this. I think that the city code could indicate as a policy issue that the ipr investigator can ask the questions and can -- and under appropriate circumstances can require the individual to respond to the question, or give an order to that effect.

Saltzman: I'm not interested in the ipr giving the order to respond. If the officer doesn't want to respond, he or she will invoke their right not to respond.

Westerband: Right. The point I do believe, as a policy matter, the code could provide that, that the questioning can come from the ipr investigator directly. That's a policy issue. That's primarily a policy issue. I don't see a legal impediment of that.

Harper: Other than if any issues are raised by the labor organizations about some sort of change in practices.

Saltzman: That gets to it. It's a policy matter that we can decide to change this provision.

*******:** I believe you can.

Katz: We'll have -- you'll have another week, and if you change your mind, let us know. Otherwise, we will accept the notion or unless we hear other testimony, that that is a policy issue that we will discuss later on. Thank you. Okay. Gary, come on up with denise and charles.

Saltzman: Did I have one other question. It can wait.

Katz: Go ahead.

Blackmer: I would like to introduce charles ford, who's the chair of the police internal investigations auditing committee. Mr. Ford?

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Charles Ford, Citizen Advisor, Police Internal Investigation Committee : Thank you, gary, mr. Blackmer. I've been here many times before. I find it somewhat ironic when I walked in this afternoon to realize 20 plus years ago we were here in this chambers, dealing with the same issue of oversight. It was a first in Portland, Oregon. It became somewhat of a model. Today we're back here looking at changing that model, which became a model not only for Portland, but for not only the country, but internationally it became a model. I know there were advice fritz lithuanian -- visits from lithuanian. After last sum where we went through a long process of review and there was a determination that there had to be some changes. It was something difficult for me, along with other people to digest. But recognizing time moves on and we must deal with the times of now. Those -- there were two proposals presented to the majority and minority. I want to compliment gary for going through both and trying to articulate in a format in front of us today where both were

Ford: Good afternoon, mayor, i'd like to add a few more comments after denise.

Denise Stone, Vice-Chair of the Citizen Advisors, PIIAC: Hi. I'm also a member of the piiac monitoring subcommittee and the chair of the piiac outreach committee. I think the committee -- thank the committee for allowing me to read our statement today to you. Since 1982, the citizens of Portland have been involved in the city system of police accountability. Citizens called for the formation of the system and citizens have been a part of the process ever since. What began as a seven-member citizen advisory panel is now an ethnically and geographically diverse committee of 13 volunteers. The citizen advisors to the police internal investigations auditing committee are members of the community who volunteer their time to facilitate the police accountability process. Over the course of 21 years, these average citizens have been pivotal in the indication of -- identification of strengths and weaknesses in police policy and have seen many of their recommendations result in improvements in police procedures and community relations. The current citizen advisors committee is strong and cohesive. We have found insight through our diversity and we have derived strength from our respect for diversity. While we may disagree, we're not disagreeable. And it's because of that attitude that every one who attends our meetings has a chance to be heard. Under the strong leadership of mr. Ford, we've worked hard to facilitate organized and fair hearings. But our vigilant has led us to feel the tug of growing pains even before the first steps towards reform were initiated. At times we felt pressure from all sides for the perceived inadequacies for the current system n our limited capacity as citizen advisors to piiac, we responded by calling for more advisor training, question requested -- we requested that a city attorney attend our monthly meetings, we ask that the piiac and be assigned only piiac duties. We even requested a budget. While city officials granted some of our requests, bigger changes were in the works. It is with an ear toward the call for reform that the citizen advisors looked to auditor blackmer's proposal with optimism that the citizen and police bureau can actually succeed in working together in cooperative system of police accountability. We commend auditor blackmer for his ability to compile many opposing viewpoints into a succinct system that combines with the needs of the police bureau with those of the citizens. We agree with auditor blackmer's object that i've a sound system of police accountability will focus on implementing improvements to the bureau rather than focusing on punishment. To that end, the auditor's proposal managed to keep the duties of the internal affairs division intact while infusing some independent checks and balances. The citizen advisors committee is the one body who regularly addresses the issue of police accountability from an impartial standpoint. During our appellant hearings, our outreach activities and our monitoring work, we strive to bring the police bureau and the citizens of the city to a common ground. Therefore, we acknowledge the need for compromise and we believe the compromise is in this proposal are for the most part justifiable. However, we recommend a few

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adjustment that's would go a long way towards bolstering community relations without compromising the role of the internal affairs division. The advisors believe it would be to the department remit to cut the number of review committee in half. In the early years of ppiac the number of citizen advisors increased from its original seven to ensure that each meeting met aquarium requirements and -- quorum requirements. The current committee of citizen advisors is the most diverse and -- in ppiac history. Each individual member adds a unique perspective to the mix that ensures multi-faceted consideration of every ppiac issue. For example, advisors initiated the effort to translate complaint forms. Through -- the division revised some of their form letters for clarity. And advisor's negative experiences serve as a constant reminder of the value of community policing. Without each of these diverse perspectives, the mix is incomplete. Second, we call on the auditor and the city council to recognize the value of the current ppiac monitoring subcommittee, and we ask that that process remain intact when the new system is implemented. The monitoring subcommittee performs hands-on audits of internal affairs cases. We research each closed case with an eye towards identifying emerging patterns and police trends. Throughout its history this committee has made many recommendation that's have improved bureau procedures, our efforts have resulted in the implementation of diversity training during in-service trainings, the reexamination of the courtesy general order to tighten the guideline for officer use of profanity, easing the accessibility to public records, and identifying conflicts of interest in complaint investigations. It was because of the monitoring -- of a monitoring recommendation that the bureau no longer leaves citizens stranded at the precinct at all hours of the day or night after towing their automobiles. Monitoring of closed cases by the citizen review committee will keep the valuable citizen component intact. The monitoring results combined with the statistics revealed by the early warning system can reveal a comprehensive insight into patterns and trends. However, there is language in the proposal that could circumvent the monitoring process and short change the people's right to have all closed cases included in the monitoring process. The advisors assert the proposal language under section 3. -- is too broad in that it allows the city attorney to arbitrarily label closed cases as legally privileged documents. We ask that that language be adjusted to define a strict protocol for labeling case -- closed cases as legally privileged documents. We ask that auditor blackmer and the council recognize the difference between a complaint against a bureau officer and a financial claim against the city. While we may agree with the director's decision not to investigate a citizen's complaint during litigation, we do not view complaints against the police and claims against the city as synonymous. They are actions with exclusively significant results. The citizen advisors acknowledge a growing uncertainty toward the privately held grand jury proceedings that follow police use of deadly force incidents. While we respect the grand jury system, we also must respect the people's need to know that the procedures followed by the police bureau are appropriate, even when those procedures result in tragedy. The 30-second media sound bytes only serve to fuel public misgiving. We call on the auditor and the council to include within this proposal or establish a separate system by which the ipr and the citizens review committee can audit completed investigations of use of deadly force cases. Finally, we encourage auditor blackmer and the city to set up a system to regularly review the ipr, acknowledging the system's strengths and weaknesses with a willingness and time line to make adjustments where needed. In closing, we thank auditor blackmer for his effort to bring consensus to this divisive issue of police accountability. We believe the proposed system is a vast improvement over the current model and with the inclusions of our recommendations made by these experienced citizen advisors we call on the council to adopt the proposal.

Katz: Thank you. Charles?

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Ford: Additional comments i'd like to make this, is no doubt the last chance we will be coming before you as a committee of piac. Somewhere within the next month we look forward to this process being finalized. With that will come a new committee. Those of us have -- on the committee have talked about what has taken place, and we have decided the efforts we would step aside and be -- let this process be open for new blood, new membership, although recognizing there are many of us who might want to continue serving and would be considered for reappointment. I'm not one of those who would want to consider serving. I've been here for seven plus years and I think that's a long time. I have appreciated all I have been involved in. There's been many, many instance where my -- I felt the need and will continue to feel the need. With that, we would hope some of our members will be considered for reappointment. Because we feel this might be the last public for our committee, we asked most of our members if they would come today. They are here and we'd like to have them stand so you and everybody else can recognize the kind of work that's going on. It's been easy for me surfing as chair, because very seldom I got an opportunity to review cases. I always delegated those things. For me to have all these people here do all the work hard, I think -- i'd like to ask them to stand at this time. They know who they are.

Katz: In this particular case, as a thank you for the kind of hard -- keep standing for a second -- hard and difficult work that they do as citizen volunteers, we can applaud. [applause] thank you, ladies and gentlemen.

Ford: One last comment. I have -- it's not -- we -- training is important. I want to request of this council, the city to look at how we can spend some time and energy in training continuously our officers. It is my feeling, when we look at the budget, which this will cost to implement, when we look at those dollars, I would hope we would look at putting additional dollars in training. I don't mean just in-serves training, I mean ethnic training. We did this in 1985. I was a real adjunct to the whole system. We hope we will take a second look at that. Thank you very much.

Katz: Thank you. All right. Let's now bring up chief kroeker.

Blackmer: And former police chief tom potter.

Katz: And former police chief tom potter and then we'll open it up for public testimony. And gary, as we go through public testimony, please keep note of some of the issues that are raised and i'm going to ask you to come back, just like we do it on land use issues.

Saltzman: Can I ask a question before we go through public testimony? [no audio]

Chief Mark Kroeker, Portland Police Bureau: Good afternoon. I have reviewed and discussed with auditor blackmer the proposal you have before you today. I am convinced that the proposed system will have a positive constructive, helpful overlapping effect in the police bureau accomplishing the goals as set out in its strategic plan. The bureau has charted its course in a strategic plan. This plan has received substantial community input. It was reviewed by this city council and accepted. This plan has six major goals, and they all pertain to the safety of our city and the quality of its police force. Three of these goals i'm convinced will be directly served by the development of the ipr in the proposal that you have with you. One of those goals has to do with improving the community and police relationship. And from what i've been able to see, you never know until actually you see a program roll out and see its development and its execution of the plan, but i'm convinced as I look at it from this standpoint that the plan will produce a level of trust and confidence that is needed in this whole area of the governmental system to review citizen complaints of misconduct. By opening up this process in this manner and establishing in its -- in its variety of offerings and the manner in which it's done, the perception will be built upon that there is a process, that there is a level of independent review, that there is a method in which members of our community can voice their dissatisfaction with the police and along with that, then, as we look at the other goal that has to do with developing and encouraging our personnel, if it

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develops a quality in our people, if it has an effect, an impact in the organization of sending signals, of making sure that the organization has a clear knowledge by all of our members about the threshold of expectation, and then allows an improved level of accountability, and I use that word advisedly, then I am convinced that it will serve in the developing of that goal pertaining to the encouraging and developing of people. And finally, when it has to do with improving the capacity of the organization and all of its processes, as I look through the proposal, and I see that there is a feedback mechanism for getting back into the organization, policy suggestions, and implications for improving the manner in which our policy statements are made or procedural directives are issued, then it certainly will have a good feedback loop that will get back into the organization to myself and members of my staff in the way that we set policy, articulate it, and invoke its adherence in the organization. Certainly as I look at accountability as chief of police, and I have the responsibility that have been chaired by prior chiefs by -- like Tom Potter, our responsibility to develop in our recruitment and our selection and our training and our supervision, in the monitoring of police misconduct, in the investigation and the rapid and quality way, in the promotion of the people who hold to -- hold the line on police misconduct, and who are being held accountable for the misdeeds of people in their own commands, all of that is my responsibility, but I see in this plan an overlapping and even a dovetailing mutual service of the goals that you have been presented in this strategic plan. And with these three goals being served, the improvement of the community and police relationship, and the improvement of the quality of our people, and then the improving of the processes of the organization, with those three being served, then we can facilitate the others that have to do with crime and the fear of crime and improving the quality of life in our neighborhoods, which are primary goals for the delivery of service to the people in our community. Finally, I believe if we can develop over a period of time a quality in the organization that reaches into the community with a customer service that has a quality level where our attitude, our service orientation, our follow-through, the proper investigation of complaints of criminal conduct, as we follow through on those, we will develop an improved spiral of confidence by the people in its police force. And so that being the case, I stand in support this afternoon of the proposal that you have before you, and commit my organization to cooperation and coordination and working out the shake-down issues that will have to do with the implementation of it. And we'll work with Auditor Blackmer and all those details that will make that -- those questions still unresolved come to successful resolution. Thank you.

Katz: Thank you.

Tom Potter: Good afternoon, Mayor Katz. Members of the council. Good to see you again. I appreciate the opportunity to provide support for this proposed ordinance to create an independent police review process. I have great faith in the integrity, honesty and independence of the Auditor's office to carry out this ordinance. Community policing requires a police to work with all citizens to keep the peace, uphold laws and resolve community safety issues. This careful balance between enforcing the law and protecting the rights of all citizens requires a well-trained and highly dedicated police force. Effective community policing comes about when citizens and police base their relationship and interactions on mutual trust, respect, and accountability. I believe this ordinance will provide both the citizens of Portland and the police with an opportunity to resolve complaints in a fair and impartial manner. I believe this ordinance will provide an independent and meaningful oversight of police conduct. I believe it will conduct surveys of complainants of police in community to determine if the IPR process is achieving its mission and purpose. It will provide greater community outreach, provide quarterly and annual reports on the status and disposition of citizen complaints, and provide the police bureau with additional information and recommendations for improving the service and the organization. And I believe it will provide an

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additional tool to further community policing in Portland. I believe the independent police review to be established through this ordinance can be an important tool in helping strengthen the relationship between the police and the community they serve. I ask the city council to support this ordinance. Thank you.

Katz: Thank you. Questions?

Saltzman: Yeah. Well, i'd be curious to get both of your reactions to what we were talking about earlier, that when ipr is doing an independent investigation, that they -- the investigator be allowed to ask the questions directly of bureau personnel. Fully recognizing if it's a potential criminal situation that the officer doesn't have to answer. There will probably be city attorney and other legal personnel present to ensure that doesn't happen, and union personnel. So -- any comments on the policy issue if we were to change that to allow the investigator to directly question the officer?

Kroeker: That's true. If it were a criminal matter the officer can assert rights of the miranda. But if it's not, then the compelling of the answers must be done by someone in my organization who orders the employee to speak. Even against his or her own will. So this becomes a matter of a direct order by a supervisor of the organization. I think that's the only requirement that was built into this, and the thinking that went behind that was that if we come into conflict with this issue in not being able to compel the testimony or the witness of the officer, then you have potentially statements that cannot be effectively used in the administrator, that is the internal complaint. So it's a matter of the case law that has brought us to this point having to do with compelling a witness to give a statement.

Saltzman: Under this proposal, in a noncriminal situation where you're expressing the need to have the ability to have the chain of command --

Kroeker: Yes.

Saltzman: Under the independent investigation there will be an iad investigator or liaison assigned to that.

Kroeker: Yes.

*******:** So it still -- still couldn't the ipr investigator directly direct the questions and if the officer refuses to answer, couldn't the iad investigator who is sitting in the room simply say, answer the question?

Kroeker: Yes, but I think it comes to a point where our city attorney has advised that this has to be a question that is directed by an -- a line of questioning directed by a member of the organization to which that supervisor compels this employee to respond. And so it's pure lay technicality of the case law that has brought us to this point.

Katz: This is somebody who's -- this is the mcgarrity issue, is it not? Yes.

Kroeker: It's a form that is presented and instructed the supervisor actually reads from the -- from that language to ensure the proper order Monday it's. So it's a very technical -- proper admonition. It's a technical process that must be adhered to in order to guarantee the validity of the statement that is forthcoming.

Katz: We'll come back, unless, tom, you want to respond to this. Did you want to respond?

Potter: Other than just to add what the chief said, I think the important issue here is that the ipr investigator gets to ask the question. How it's done to me is procedural and has issues of law, but the important thing is that they do get to ask the additional questions.

Katz: It's the issue of law that I want to get back to and dig a little bit deeper. Okay. So we'll get back to that issue.

Francesconi: The questions are not going to be censored. If the same question gets asked -- I think that's what commissioner Saltzman is --

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Saltzman: It gives the iad investigator discretion whether the question gets asked. It says the investigator may repeat the question or direct the employee to answer the question. May. So it leaves the possibility that the independent investigator asks a question, and the iad investigator decides not to ask that question.

Blackmer: I think we can deal with it on a practical level if those cases come up where the iad investigator refuses to answer it, we can merely -- when the investigation is done, send it back and say, you didn't ask these question and make them have another interview. From a practical standpoint, I don't think they're going to do that more than once.

Katz: I'm still not happy with the language change. I'm not sure that we got all the issue responded to.

Blackmer: Let me add one other thing. This is based upon what san hose -- san jose does. I had the same question, wasn't this kind of awkward, and they told me it doesn't get in the way and we give -- get our questions answered. So I based on what was practically working elsewhere. While it seems legally awkward and you end up getting into constitutional legal issues, it seems to work elsewhere.

Katz: Okay.

Blackmer: The tape is running and transcripts are extractable if there's ever a question of the integrity of that particular moment.

Katz: We'll get back to that. That's an issue that I think needs a little bit more poking at. All right, gentlemen. All right. Let's open it up to testimony. We'll take three in opposition and one -- and for every three, one in support.

Moore: Come up three at a time.

Katz: I just want to remind everybody, you have three minutes. So we can move on, because there are a lot of people that want to testify. Go ahead, sir.

Joseph Schneider: Hello, i'm a member of afscme 189. I live in northwest Portland. It seems that every explaining i've ever heard for why there are laws in policemen involves logic like this -- if we don't punish people who commit crime, it -- there's nothing to deter them from future crimes. Or deter others from emulating them in crime. And this logic always seems to hold in every debate I see except for when it concerns the police, who they seem don't need to get punished to deter others from misconduct. When have we ever heard a discussion about violent crime using words like miss denise did from piac that were not focusing on punishment? I gathered signatures last summer for the police 2000 accountability 2000 initiative, and it was the easiest signature gathering i've ever done in my life. I did 90 northwest Portland, and people who were sick of petition gatherers who were just trying to get through and by me to get their groceries to the car, when i'd say, it's about police accountability they'd stop and come back and sign it. This is popular. The people want it. And yet for some reason it's not happening. Not -- I don't understand why. Something's going on not in these public fora, not in the public eye, it's more decisive apparently than what the people want. The word of independent has been so abused here that i'm afraid its lost all meaning. Mayor Katz, you've worked along -- a long time to try to shield the police from accountability. These structures of impunity, you've helped put in place and keep here. That's why you're as responsible for the death of mejia poot as the officer that pulled the trigger.

Katz: That's enough. You've stepped over the line.

Schneider: You allowed it to happen. You set up the structures that allowed it to happen. And if you don't do something about it, something real, not a silly process where people jump through hoops and nothing gets done, something real, it's going to happen again. And all of you will be responsible for the death of some other member of the public.

Katz: Thank you.

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Hales: Can you tell us a place that has the system you want?

Schneider: I hear minneapolis is well regarded by its citizens.

Hales: Gary, looked --

Schneider: I understand he didn't look quite that in depth.

Hales: I put a lot of credibility by his independence. Obviously we disagree about that. But he did a lot of research. He tried to bring the best of these other systems to his proposal. I run into this with people who don't like light rail and they say, we'd have a much better city if you -- we didn't have light rail. I ask them to tell me a place where they'd like to live, and they come up short. I'm not trying to be tricky, but there must be a place that has the best police review system in the country. We should emulate it and if not minneapolis, then where? I've heard good things about minneapolis too. I've looked at some of the details of their system. I've also heard that people still aren't satisfied there and that maybe there's not a system fix for all of what we're trying to accomplish.

Schneider: Well, I think you can look at its structure as you look at the one in gary blackmer's proposal in order to try to determine what it would lead to. Something that hands people a stack of money for throwing stones in a pond just -- is probably going to lead to a lot of people throwing stones in ponds. A system that has no real teeth in it, doesn't even look at the most serious crime, deaths in custody, leaves once again final authority in the hands of the chief is a system that is not going to hold people accountable and it's going to lead to more of what we have, is -- which is the police feeling like they have impunity to do what they will with the citizens.

Hales: What do you mean by final authority in the hands of the chief? One of the things I like about this proposal, it's something we've debated about on the council and that we pushed gary to include is that the current system allows citizens to appeal decisions to the city council, and the city council reviews the case, and makes the decision, but the chief can overturn that. The new system that gary has in front of us has the city council's decision be binding.

Schneider: Didn't he just say that final authority with changing policy was left with the chief?

Hales: Disciplinary authority. But the finding of whether misconduct occurred, the council makes a finding and the chief can take it or leave it and has left it in the case of both the last two chiefs in individual cases. The current chief and his predecessor. I think that's an important change. It may be more important than we've given it credit for. In other words, the fact that the people who are accountable to you directly now get to decide this. I think maybe -- that may be more important than we've given it credit for.

Schneider: You get to decide in blackmer's proposal the discipline?

Hales: No, not discipline, but that's accountable as well because the chief's accountable to the commissioner in charge just as any bureau director is who has the authority to hire and fire bureau directors.

Schneider: Forgive me if I don't have a lot of confidence in that.

Katz: Do you know how many officers I have fired?

Schneider: No.

Katz: No. Maybe you ought to find out before you say those kinds of things.

*******:** How many?

Katz: Let's go on with testimony. Excuse me. I get to ask the questions. And the council does. We are going to clear -- [gavel pounded] we will clear this chamber. We are not going to have a debate. Go ahead and testify, please.

Paula Lilley: I'm going to read -- first, I feel an obligation to speak about this issue because my experience in just going about my life and minding my own business here in Portland. As part of my volunteer work I read reports of police intervention in domestic violence situations. I'm very

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grateful that there are police officers who do that workday after day with commitment to increase women and children safety. It's a job I don't have the courage to do but I have at times stepped beyond my fear in order to protect another's safety. I'm going to read next an excerpt of a letter I sent to you January 18th about an incident in May of '99. I was walking in my neighborhood and heard a woman crying. I saw a male police officer walking holding a woman about half his size. She was very distraught. She somehow fell to the sidewalk and the officer began dragging her by the arm. I said that's not okay. Since I was concerned she might get injured. He said are you trying to tell me how to do my job? I said no, do you want help? He said sure so I helped pick the woman up and assisted her to get -- him to get her in the car. I felt he was unnecessarily rough getting her into the car. I asked why he was taking her in. He said she made a suicide call and he gets testy when someone calls him for help and doesn't want help when he gets there. I was horrified that the officer's treatment of her might not get -- might negatively affect her emotional state. I thought I better protect myself from his behavior. I took the license number of his car with the intention of reporting this but never followed through because of my fear of him. Through his actions and words this officer communicated confidence that he can get away with how he was treating this woman as he did at -- it very publicly which. I'm very concerned about what he would do in anyone in a private setting especially if they dared to question or not go along with his agenda or if he felt he was at risk for harm. When I see an armed public official mistreating citizens I feel intimidated and scared to speak up. I don't think I'm the only citizen who has kept quiet out of fear. I have never been arrested but given what I've witnessed and my fear of reporting the officer, I think it takes great courage for someone who has been mistreated during an arrest to file a complaint. That's it. I'm speaking here today because I feel that my not reporting this mistreatment by a police officer of someone in the mental health crisis was a part of the community contribution to the death of Mejia Poot. Not that epilepsy or not speaking English are mental health crises, but if we had a system in which citizens like myself trusted that we would be safe from police retribution after reporting the disrespectful or harmful treatment of people, they stop or arrest Mr. Mejiia might still be alive. I've read that the city council is going to vote to adopt Mr. Blackmer's plan for Piac. This would be a step backward at this time. Many Portland citizens have experiences more compelling than mine that prove the current system or his revision do not provide the means to ensure that police officers treat all citizens respectfully and not intimidate or harm with misuse of police power. I request that you move beyond your fear of police and political retribution and adopt the majority report to make Portland safer for all citizens in memory of Mr. Mejia Poot. [applause] [gavel pounded]

Katz: I will clear this hall if that happens again. We'll just recess and clear the hall. This is a deliberative body. If you want to support what somebody is saying, raise your hand. But we are not going to have interruptions by applause and cheering, and asking questions from the audience. This is not a school board meeting. Go ahead.

Diane Tweten: What is the bottom line that the majority report is saying? It is saying another perspective is needed in order for everyone to feel that they have been heard. Even more than having people agree with you is the need to be heard. Why would the police be so against hearing another perspective or even acknowledging that there is another perspective? Why would the city council oppose creating a channel for citizens to voice their concerns that is separate from the body that was directly involved in the situations that those concerns came from? The answer is the same thing that brought me here today. Fear. What are the police afraid of? Fear of change? Fear of not having control? Diane Lane's investigation of the effects of citizen review boards is that the fears of the police and of the community went down after a number of citizen review boards were created. When there was a channel and accountability complaints went down. Problem situations

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decreased. The police didn't have a problem with their -- once the change was made and they got used to them. There was resistance in the police departments before the decisions were made to create them. The people of those cities had the courage to face their fears and make the change. Portland is a nice place to live in. Though it's -- it was recently recognized as such in a magazine. People seeking absolute control are afraid of change and they never achieve their goal. Nothing ever stays the same and complete control is not possible. One effort at control leads to another and another. The only thing that would keep Portland a nice place to live lies in our relationships with each other. They say that if you strike a child you have already lost control. If a policeman needs a beanbag gun and tear gas, does that support listening and giving everyone a voice or silencing that voice in if those weapons don't give them absolute control, what will be next? It works just like the arms race. There is always something stronger that has to come along in the quest for total control. Acting out of fear only ends up giving us more serious things to be afraid of. When we face our fears, it's never as bad as we thought it was. I hope the city council will have the courage to face their fears and make the change that other cities have. We need to have a living democracy, not a conceptual one. A living democracy is in our relationships with each other. It cannot exist in relationships that require ever stronger technology technologies of control. I saw some of you recently at pioneer square where the dalai lama spoke. He later said that Portland was a special place. I hope that you will do the right thing and rejecting -- in rejecting the proposal which doesn't go far enough.

Katz: Thank you. Karla?

Katz: Go ahead, ray.

Ray Mathis: Good afternoon, mayor, council members. For the record my name is ray mathis, executive director of the citizens crime commission and affiliate of the Portland chamber of commerce. This is my second time to appear before you in connection with the piac reform. My statement will be short. As you know, the citizens crime commission sported the -- supported the minority report which calls for maintaining the current system with full funding better case management more accountability there are multiple reasons for supporting the minority report and opposing an independent citizen review system supported by the majority of the committee. But to recap our main objectives, first is there's no perfect system for investigating allegations against the police. Secondly, we had an independent review system over the past few years that was inadequately staffed and funded. We would be sitting here having this exact same discussion and expressing these exact same concerns. Cities such as austin, seattle, and sacramento who have been through this exact same process, have all recommended the audit model which we currently have in place. The pool of well-trained investigators is limited more often than not to retired law enforcement officers. And -- in other words, even with a civilian review system, you're likely to be using former police and professional law enforcement officers to conduct the investigations. There are many layers of review already in place that when properly managed will produce good results. Lastly, no matter what system is in place, there are individuals who will never be satisfied unless their antipolice biases are confirmed in each and every case. Having said this, i've reviewed city auditor's proposal for an independent police review division within his office. It is still our opinion that this is just adding another layer onto an already cumbersome process. However, we have a lot of respect for mr. Blackmer's objectivity, thoroughness and dedication to responding to community concerns in a responsible way. Therefore, we endorse his proposal.

Katz: Thank you. Dna? -- dan?

Dan Handelman, Portland Copwatch: Good afternoon, mayor Katz, city council. First I want to address the auditor's plan. The auditor's interpretation of independent investigations does not meet the definition of independent by any standard. If the investigators are going to be asking all of their

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questions to the police through internal affairs -- we address the concerns in our report on page 38. I can go into details later. Minneapolis and new york both use this method and do the investigations without internal affairs asking questions. In cases where ipr investigators sit in with iad or where they conduct dependent investigations, the city will be paying salaries of two people to do the job of one. This makes the ipr more expensive than a fully independent model. Next the ipr will not be reviewing closed investigations into police shootings deaths in custody. If you look at the case of mejia poot, you can see nothing to month -- is more likely to -- the grant jury, the chief, the interagency investigators can look at all these cases but if you do not put in a mechanism in place for citizens to review them, you will only have yourselves to blame if the community erupts. The auditor has slid into -- in two causes which were mentioned before. One allows the city attorney to withhold documents in cases where they claim attorney-client privilege and another requires the ipr to check with the police bureau before releasing public information. These clauses undermine the goals of community trust and openness. The auditor has also proposed lowering the number of civilians on the board even though neither report recommended this. I want to point out that 12 out of 18 members of the task force that was appointed by the mayor call for a review board with independent investigators given the pow tore compel testimony and recommend that discipline happen. We also recommended reviews of police shootings and deaths in custody. Our recommendations were based on community input and years of experience with the current system and its short comings. We have seen internal affairs bungle a number of cases which have been heard here in these chambers and a defensiveness about officer behavior instead of objective fact-finding efforts. I'd like to talk about the process. The work group spent six months and heard public testimony. The auditor only spent two months and no public input. Then came to a council informal and drafted the ordinance with no public input n january there were 50 people who testified and 40 of them wanted an independent board. I'd like to know how many letters you received in support of the auditor's plan versus how many want the majority report. The newspapers reported that at least four members of council are planning to vote for the plan. Does that mean the vote is predetermined before we have a public hearing? If people think their voices aren't going to be heard they'll not participate in the process. The presidential with the fewest -- the candidate -- one reason the auditor chose not to put fully investigation into his proposal has to do with the Portland police association's contract. We have to ask who runs this city. It is the city council or the police union? As far as we can tell the citizens were given the choice, very few would choose the police. Therefore the prudent thing to do would be to place an independent model based on the majority report and the auditor's report on the ballot and let the people decide.

Katz: Thank you. Dan -- not dan, gary. Two other issues, the attorney-client privilege we need to discuss that, and the release of the public information. Those are the issues that were raised.

Thanks, dan. Diane.

Diane Lane: Hi. The city auditor, gary blackmer, traveled to san jose, minneapolis, and san francisco to study their civilian review boards, even though they were already researched by the mayor's work group. Since the auditor repeatedly proclaims that he is an independently elected public official, you would expect that his research would be objective and neutral. The auditor's report describes the three boards fairly accurately, but then he makes many negative statements, primarily about the boards in minneapolis and san francisco which just happen to be independent boards. For example, the auditor claims that the minneapolis board director stated that hearings are rare. But the auditor omitted the second part of her actual statement, which was, quote, because we began using stipulations instead, end quote. The auditor claims despite continuing legal battles, the san francisco system still has not completely resolved its scope and authority during its 20 years of operation. That's an incredible statement, since this board's authority is backed up by a police

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department general order that states that officers must cooperate with the board. San Francisco investigates over 1,000 complaints per year, and each investigation includes officer interviews by the board's civilian investigators. Also, the courts have consistently upheld the board's authority in lawsuits filed by the officers. The auditor also claims that Dr. Ken Adams, a researcher studying police accountability, stated that the level of citizen dissatisfaction for complaint systems is the same in the six cities he studied, including Portland and Minneapolis. This is not what Dr. Adams told me last year, and so I called him recently. He stated that dissatisfaction in terms of outcome is equal, but, quote, if you separate process from outcome, many -- Minneapolis seems to do better, end quote. Objectivity is crucial for the examination of police misconduct. As you have witnessed, objectivity rarely happens in IAD investigations. I don't believe objectivity happened in the auditor's research. And it won't happen in his proposed monitoring system, which he will oversee and evaluate. I urge you to vote no to the auditor's proposal and let the people decide.

Katz: Thank you. IAD.

Carolina Urrela de Hess: Good afternoon. I've been living in Portland for 14 years, and I'm deeply involved with the Hispanic community. In order to have more accountability, what needs to be done is to strengthen the IPR by increasing the number of citizens reviewers from seven to 13. That has worked in the past, and it should be allocated for that to reflect the communities that agency serves. The proposal needs to be amended to allow persons to file for an IAD complaint and have a lawsuit at the same time. There needs to be taking out of page 4 -- I'm sorry, page 9 under dismissals. Supporting -- support investigations done at the IPR in order to have investigations done by an independent body other than the IAD. I think that if that happens, and that a -- persons will be able to feel better about the process, because everybody will be allowed during the investigation, which is what a lot of community who are under -- under represented and don't like dealing with the police. That would allow for that. Under the proposal of having mediators, I have a concern in our culture we don't have the concept of mediators. To my knowledge, there isn't many mediators who are bilingual. If they go through that venue, my suggestion would be that they need to hire somebody who will understand at least the Spanish culture, not to dismiss the other cultures, but that's the fastest group that is under turmoil at the moment. In order for work they need to have somebody to understand both groups. Lastly, allow the citizens review come to the audit -- to audit complete investigations done for deadly force. I understand that there is a concern about that. While they are under investigations. But once they are completed I think that's good for persons to have that allowed to them. So I vote in support of the proposal, for the auditor's proposal providing that those things get changed.

Katz: Thank you.

Alan Graf: I didn't wear my tie and jacket because I'm not too proud to be part of the system which I am as a lawyer. I want to say as far as the legal issues, it was painful for me to listen to some of the tortured legal opinions today. The people who gave you those opinions did not do their homework, did not study this. As an author of the majority report and someone who researched these legal issues, if you want to -- a really good legal opinion, maybe you should get Mark Cramer myself and will --

Katz: I was thinking of that.

Graf: And we'll give you the true scoop. I include will because all three of us are well versed in the legal issues of this. As far as the legal impediment, Commissioner Saltzman, you asked before about whether there was any legal impediment to IPR asking the questions. There isn't, other than -- than the union contract. That's the impediment that Gary Blackmer was looking at. The objectivity of IPR, the proposal has changed since its -- it's come in front of you. It had more independence. Before -- the first initial proposal, Gary Blackmer put out had the ability to have the

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discretion to do a completely independent investigation. It's been watered down which leads me to wonder whether gary blackmer's actually going to be objective in how he an act this, because in putting this together he's been under pressure from the police union to water this down from his original proposal. There's no timeliness factor. It's one of the biggest problems we've had. There's nothing in here as far as i've seen that says when these need to be done. Mediation, if you have -- if you mediate and you don't succeed, you're dead in the water. You can't make a complaint. I want to address, commissioner Hales, something you said about the system. I agree, one system will not fix everything. It's a step in the right direction. And the other steps we need to do is to defend the police department.

> take away a lot of their toys, guns, weapons, motorcycles and put that money into the schools. Right now my son at wilson high school sits in a class of 40 kids. We're constantly talking about priorities. You guys have the ability to change those priorities and take away the money that we're put nothing the militarization of police and fund our schools. Why aren't you doing that? I really wonder. We can pay for a holocaust memorial which is a piece of stone, which re -- evokes very deep emotions in me because my grandparents were killed by the nazis, yet it would be better to have a living memorial to curtail the police state by putting in real accountability. Don't call this an independent board. That's an orwellian title. Leave this to the voters or put the minority report in place, because that's a lot more honest.

Katz: Thank you, alan.

Graf: Thank you.

Katz: Excuse me, will, are you leaving?

*****: No.

Katz: We may at the very end call you up. Go ahead.

Mike Jensen: I've been a citizen of this city for 40 years.

Katz: Talk a little louder --

Jensen: A little closer? Okay. My name is mike jenson. I live in sellwood, i've been a citizen of this town for 40 years. I've also been a police officer for six years. It was about ten years ago that I left the department. In that ten years, I have been appalled of my dealings with the police and how they've treated me and will it's a serious issue. And when we have complaints from the citizens and the police don't listen, you're going to have a lot of dissatisfied citizens. I think it's very, very important to listen to the citizens and what they have to say about the police department. When our policeman, you're in a group of people that hold to themselves. And since i've been out, it's a different story. I'm a citizen now. And i'm treated by -- i'm treated by the police a little differently now. But once they know that i'm -- I used to be a policeman, they treat me differently. So listen seriously to the citizens. I don't know if the police administration is really in tune to what's going on on the street with the police officers on the street, but they need to be more attuned to that. As far as the results of investigations that either the police do or the citizens do, I think we need to look at training. It's going to be a long-term solution instead of short-term disciplined for individual officers. We still need to look at that. But we need to look at the long-term. I'm really dissatisfied with the police department here and how they've treated me.

Katz: Thank you.

Darlene Lemley: Good afternoon, I live at 827 northeast 90th. I'm one of the originals. I was on the original committee that created piiac. And in the last week i've had some conversations with dr. Stores. He and I don't get together very often but we all feels very congenial whether we do see each other. I'm -- have with me a statement that she said that I would be authorized to make. She was unavailable to come. She said, first of all, I would enthusiastically support moving the site where complaints and concerns are registered about the police away from the police bureau. Now,

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I talked to her and I think she misunderstood when they said they would be in the city hall. She says, city hall is receiving site would be an improvement but including even less potentially threatening venues such as neighborhood associations would be even better. The majority report did ask for dual intake more than one place for citizen complaints. Secondly she said, and this I think even more important, from a citizen's point of view, independent nonpolice investigators for complaints would be ideal. Even practical for all complaints, decisions about a sign -- assigning an investigator to a specific citizen complaint would best be made by a group of objective citizens rather than by two -- one or two people in the auditor's office. Such a group could also select mediation, iad investigation, or other potential solutions. I'd like to add three short comments. I'm very unhappy to see in the auditor's proposal a reduction of the current number of piiiac members. We need to have as much citizen involvement as possible. This is -- and we need to have at least the number that we have now for the range of diversity we have in our city. Secondly, from the testimony that i've heard today and from the things I have read, I do believe shall I do believe it is proper -- I do not believe it is proper or honest to call this independent police review. And third, I would suggest that as what occurred with the original piiiac, was referred to the citizens for voting to vote on the proposal, and I would suggest that this be done so on both the blackmer's proposal and the majority report.

Katz: Thank you.

Jan Wolf: I represent the league of women voters. The citizens of Portland deserve a credible system of police oversight that restores trust in the system and provides an unbiased approach to handling complaints regarding police misconduct. The auditor's proposal accomplishes neither of these goals. The ipr will accept complaints from individuals who feel they have suffered from police abuse, but those complaints will for the most part be directed to iad for investigation. On the rare occasion that ipr staff involves itself, questions to police officers will be directed through iad personnel. The ipr will not have the ability to compel its own testimony. This approach flies in the face of reason. Asking the police to investigate themselves will lead only to increased public skepticism. In addition, because the ipr will have the power to reject complaints, it runs the risk of alienating community members with serious concerns regarding police behavior. Another short coming of the proposal is the absence of a procedure for reviewing investigations of police shootings and deaths in custody. Although other entities investigate these cases, there is no independent citizen group and place that could consider policy changes and review the thoroughness of the completed investigations. Furthermore, postponing an investigation of a citizens complaint when the police file a criminal charge against the complainant creates a serious potential for abuse. It allows the avoidance of investigation noose alleged misconduct and could prevent handling complaints in a timely manner. There is, however, an alternate approach that will create a credible method of oversight. The proposal recommended by the majority of the piiiac work group, they were appointed by the mayor, spent months discussing various options, undertook exhaustive research, consulted with experts and heard public testimony. The proposal described in its report would allow for truly independent investigations of police misconduct, meaningful citizen involvement, and would restore confidence in the system. We urge you to adopt it. If you choose to disregard our concerns, out of respect for the sincere efforts of the work group, refer the two proposals to the voters so they can evaluate each approach and select the one in which they will have the most confidence. If it is the will of council to adopt the ipr model, we recommend you establish clear criteria for evaluating it after one year of operation and declare an independent assessment at that time. The league has a long history of involvement in this issue. We believe government works best when it is open and accountable and only true independent investigations will reach that goal. Just calling the ipr independent does not make so it.

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Katz: Thank you. He's already testified. Why don't you keep going.

Moore: Bob wells.

Katz: Come on up.

Paul Maresh: I live on north portsmouth. When I was in grade school, we were taught that in the united states we have government of the people, by the people and for the people. Over the past years, the people have become very dissatisfied with the present piiac situation. And as a result of that, the mayor judiciously in my opinion appointed 18 people to study the situation. They came back with a recommendation that I think is very good recommendation. I work in office with a lot of people who most of them are quite conservative. There is a general feeling accepted across all political spectrum in my office that the police department is out of control. The auditor's system puts up an independent review board to make recommendations to iad, who's already shown for whatever reason a lack of ability to investigate situations. Newspapers can go out and find things that they don't find, they're absolutely atrocious and appall all of us. There are people called private investigators, attorneys use them all the time, that conduct excellent investigations, and this is why doe fence attorneys win in court a lot. My recommendation is to go with the minority report, or at least put it to a vote.

Katz: Thank you.

Robert Wells: Good afternoon, I reside in southeast Portland. I am currently a piiac citizen advisor as well as a member of the piiac citizens monitoring subcommittee. I just have just a few brief comments that I feel that I need to make. It has been an interesting five years for me as a city advisor and an advisor on citizens for the subcommittee of piiac. To see changes as -- such as ipr proposal, brings on many new challenges. I wish to emphasize that hands-on reading of closed iad files by advisors have -- has been a source for our subcommittee to look for pattern in police behaviors and examine police policies. I wish to emphasize that this process of hands-on research must continue and that ipr, if it's proposed -- or taken, should continue to have full complete access to iad records on closed cases. For research, I pr and the ipr for education, I wish to add that a strong trustful liaison needs to be established between the Portland police bureau training division as well as iad so that the ipr proposal, if done, is kept up to date with police techniques and protocols. This has been lacking. The diversities of our committee speaks for itself and to the city of Portland. We love her and want to -- a cross-section of Portlanders who have come from all neighborhoods in the city. Please keep it at 13 members for this cross-section of diversity. Finally, during the interim, I will do my utmost to assist and help the new ipr committee if it's done, and will work to have this new system flourish. Piiac has been here in forms for over two decades. I want ipr, if it's done, to have the same longevity with changes along the way as needed. Thank you very much for your time. And ability to have my say.

Katz: Thank you, robert.

Katz: Go ahead.

Pam Allee: I live in north Portland. My statement is very brief. A lot of people have basically repeated why you should adopt the majority report, they've done so in a factual manner. I just want to say that you can dismiss the majority report apparently. It's of your own task force. They put a lot of hours and dedication into making it. And you've replaced it, what -- with what is essentially the same system only worse. I think the fact that you've done this seems to me rather arrogant and dishonest and cynical. It makes me very sad. I work for caesar also. I don't think he would have approved of this. Please let us vote on this. Give you a choice. There's really nothing to be afraid of here. Even though apparently have you some fears. Thank you.

Francesconi: I understand why you think it's not as good as the majority report, this auditor's report. But i'm having trouble understanding the argument that it's worse than the present system.

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Allee: I think it's less -- there's less independence even less powers, less teeth. Less people. People cannot -- if they hire a lawyer, then they can't go through the system, it seems, from my quick reading of the report. Just -- what allen said, go with the minority report if nothing else.

Martin Gonzalez: I live in north Portland. I'm also a director for the american service community, economic development. I came here today to express my support for an independent civilian review board. I had not I must confess read the proposal before until I got here, so I have to add to my comments. I want to share with you that over 20 years ago I began an internship with the american civil liberties union and it was an internship documenting police brutality in seattle. It was one of the hardest tasks I had. After a year of -- or so I could never get anybody from our community to file a complaint against the police. Even though they were -- there was proof they were basically -- their heads being busted open by the police, but there was nothing that I could do in regards to trying to convince them they could do something. One of the things that has happened, a terrible tragedy in terms of our community, in terms of the death of jose mejia poot. There's been organizing efforts to get answers, and hopefully make some recommendations. I listened today in regards to what has been said, and one of the things that commissioner Hales was asking, is there a model. They might not be a model. I think one of the things that distinction wishes us from -- us in Portland is it has been -- the trail blazers, I hope you do also be a trail blazer in regards to setting new standards for how we not to look at its -- as has been stated before of having -- trying to satisfy everybody's concern or addressing that, I think the auditor ballot measure miles an hour has stated that the reason that one of the -- the reasons it was not -- deaths and incarceration is because they didn't have the expertise. Hire the expertise to conducted it. I don't think that should be a thing that will stop. It think -- I think it's important for all of us to have a system that has improvement built in and we go back and relook at it. I hope that you look at those things and the other component that I don't see in terms of the proposal is the whole question of how do you build credibility and confidence in the part of the community? I spent a whole year and I couldn't get one case. Today after this death, folks from our community are saying, there's nothing worse than can happen to us at the hands of the police. Before we have not come forth in regards to making any accusations or complaints against the police because we figure it was going to be -- what's going to be worse? There's nothing worse than death. But there's -- if this system is going to be in place, whatever form it takes, and you all need to -- will be the best interest in deciding those things, there needs to be a way to not only have reports for you all in terms of quarterly reports, but how do we communicate that were the rest of the population in regards to what has actually happened? How effective is this mechanism that is -- what kind of community outreach will be set and how will that be funded in this proposal? Thank you.

Katz: Thank you. Jergens.

Katz: Karla, did you call tom kropf?

Moore: I'm sorry, I said cooper.

Katz: He'll come up next. You're going to sing for us? We're looking forward to it. Why don't you start. Bring the mike closer to you.

Moore: Okay. Identify yourself.

Kathleen Jergens: My testimony goes like this. How many heads must a cop bash in, before you will tell him he's canned? Yes, and how many years can a city council sit, with their heads stuck firmly in the sand? Yes, and how many hearings must we all attend, before you can hear our demand? The answer, my friend, is citizen control, the answer is citizen control. How many speeches must we all sit through, before the word becomes deed? Yes, and how many reports must the citizens write, before you all learn how to read? Yes, and how many people must get shot in the head, before you give us what we need? The answer, my friends, is citizen control, the answer is

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citizen control. How many bogus proposals will there be? Before there's civilian control? Yes, and how many times must we come to city hall, and throw our testimony down a hole? Yes, and how many times can you dis your citizens, before we revolt at the polls? The answer, my friends, is vote on it ourselves, the answer is vote on it ourselves.

Katz: Thank you. [applause]

Jergens: If that gets stuck in your heads, i'll have done my job today. Thank you.

Katz: Thank you. Ken?

Ken Spice: Mayor Katz, city council, good afternoon. I live in southeast Portland. I'd like to begin my remarks by responding to something that was said a little while ago by mr. Mathis of the citizens crime commission. I think it's terrible to paint people interested in civilian control over the police department as somehow anticop. Both of my younger brothers are cops, and I support them. But I am against racist cops. I'm against brutal cops, corrupt cops, and we have a lot of problems with that in Portland. And that's why i'm for an independent civilian review board. I'm here today, like so many other people, to voice my strong opposition to this the city auditor's proposed office of independent police review. Which is not independent, and indeed represents the worst solution in the existing civilian complaint process. This pale imitation is no surprise. In fact it is both predictable and one step in a series of escalating tactics that have been repeated across this country since the 1960s. We are here today at least in part because of the long-standing efforts of police accountability groups such as cop watch, more recent political pressure in the form of the police accountability campaign 2000 ballot measure and parallel efforts on the national seen by groups such as the international association for civilian oversight of law enforcement, the increasing clout of the national black police association, which endorses civilian review, and the fact that civilian review has gained support among key politicians. Finally owing to the multitude of recent examples of corruption within the Portland police bureau, large numbers of ordinary citizens are standing up and demanding more oversight. In other words, I believe we were on a course towards increased civilian oversight but this is a long-term struggle. It's words our while to study, understand and remember the tactics our opposition will use. This resistance generally comes in three steps as identified by the american civil liberties union in their police practices project. The first step is over my dead body. The second step is political inevitability and the third step is the postpartum litigation. We've already been through the first stage. We saw this in kroeker's statement in "the Oregonian" which said his officers wouldn't trust civilian oversight. In the past year a pattern of abuse in policing has come to light. This brings us to phase ii, political inevitability. In this phase police leaders suddenly undergo a magic conversion and become proponents of citizen oversight advocating a pallid model lacking teeth. Such as independent investigations. It is just such a pallid model being considered today. Once we finally manage to establish a real independent review board, resistance will become vehement. We can predict lawsuits. Happily these suits have been 100% unsuccessful thus far. There is no doubt a struggle remains but we have a noble and inevitable goal and we will get there. The model proposed by the auditor today is not the way and I trust the council is able to recognize this political reality. Thank you.

Patrick Norton: Hi. I live in northeast Portland. First I want to make a comment about the mayor's threat to clear out the room if folks applauded. You asked for applause before for the piiac committee. And then you don't want people to applaud when they feel like it. You also said you ask the questions, while if you have any questions for me i'll answer them when you answer civilian questions. I'm here to tell you that despite what your police advisors may say, a large portion of the population of this city are sick of broken promises and delay after delay from elected officials. Gary blackmer's proposal is a great veil of broken promises. Now that the issue has been

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raised by the community itself, grass-roots organizations are poised to force it to a general vote. The mayor decides it is time to act. Unfortunately the action comes in the form of this proposal which undercuts the hard work and volunteer time that many people have put in to bring the issue to the forefront. The auditor's proposal is so complicated and yet so vague it -- key points, that its value and motivations are suspect on its face. It is unworkable and undemocratic by design, and I believe intentionally so. There are many specific flaws and omissions -- omissions in the proposal. This is my particular favorite. In the section that gives broad discretionary power to the ipr to turn down complaints, one of the criteria is that a complaint cannot be vexatious. That means irritating. Like us singing at you. [laughter] i'm sure that would -- i'm sure that would pass constitutional muster. Surely there's an amendment somewhere that a person loses their civil rights if they annoy their -- the authorities. At least in florida or alabama. If the city council thinks this proposal has merit, and is interested in gaining public support for it in -- and, quote, restoring faith in government, it could move to put it on the ballot alongside the recommendations of the majority report of the mayor's work group and the police accountability campaign. Surely the people of Portland can come up with a better approach to police accountability than this vexatious proposal. Jada mae.

*****: We'll let you be pinned between two women.

Tom Cropper: I'm going to let the lady go first.

Katz: Jada, you go.

Jada Mae: You know I like to be last. I will go ahead and follow the -- Portland has -- is one of the most loving places i've ever been. I'm a friend of city hall, but I always stick my nose in all sorts of business and I want to be part of this independent civilian things, because I can tell you stories that start from the early '70s of how I have helped to prevent more police officers from committing crimes against citizens, especially indians, and I didn't get any rewards for it. But anyway. I'd die for you. I'd defend you, because i'm a defender. I love Portland and it's going to all get better, I promise you. That's all I have to say.

Katz: Thank you, jada.

Cropper: We both ran for city council the same year, and --

*****: It's fun for me.

*****: I ran for mayor, if you recall.

Katz: I had both of you:

Cropper: And when I moved here, we had a mayor named bud clark, and he had a very confident chief of police named ron still. And I would have liked to have seen ron still as the mayor. I say we have a disagreement here. But --

Katz: --

*****: Wait until you hear my story about ron still.

Cropper: There are some good cops, and ron still, bob koch, tom mack are among the best that I know about. And I know there are others. And what I -- what i'm not hearing is enough talk about the internal affairs division. I have heard at times that the division has done good work. I have never heard that the citizen review process has worked. I haven't heard from anybody that praised it. And that's why i've -- I have reservations about this ordinance, because all it's doing is moving a hot potato from the mayor's office to the auditor's office. It doesn't change anything. The problem is -- as I see it is not -- it's the commission. The commission isn't doing its job. The police commissioner isn't doing her job. What I would like to see is an elected police officer, a countywide police officer and consolidate the police agencies into one, and I would like to say the state laws applied not the home rule charter applied. There's no teeth in this ordinance. On page 4 it says that the investigator, who apparently is the director, cannot have access to legal -- legally

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privileged documents held by the city attorney or a client communications, and this is where the real problems are. This ordinance is talking about police misconduct, but certainly there's some things happening that are worse than misconduct. Actual lies and criminal act by people in authority, abuse of power, and I don't see any of this changing. So I think this -- this topic is not over. I do think that we need an elected police chief. I think we need an elected review board. Unless we get a county -- a city council -- that's all I have to say.

Jada Mae: I'm the next sheriff, so we'll take care of everything. Retrain the deputies.

Katz: Okay. Go ahead.

Rachel Stein: Northeast Portland. Prophecy runs rampant in our city. I find it very interesting that the same mayor in some of the city council members that welcome the dalai lama just two weeks ago with his message of peace and nonviolence can sit here two weeks later and not accept the citizens' request for justice and unnecessary brutality stop in police conduct. I'm amazed at that hypocrisy. You know, it's interesting in a mayor's election the majority decides who's the mayor. But in a police accountability vote, apparently the majority, you know, doesn't really mean anything. So while I have many things to say about the proposal, i'm -- and speech is a powerful thing, I think in this situation I think silence is a little bit more powerful. Silence for human life, silence for injustice, and silence for things that are sacred. So i'd like to take 60 seconds, I know I have three minutes for testimony, so the last 60 seconds of -- and final 60 seconds of my testimony as 60 seconds of silence and i'd like to ask that the council respect that and the cameramen and everyone sitting in here. And i'd like to begin it in -- and the clerk can tell me when the 60 seconds is over, or you can hit your gavel. I'd like to begin it with a native american poem in this book. Need I be afraid? I am simply on the earth. Need I be afraid? [moment of silence]

*****: I have no fear.

Katz: Thank you.

*****: Thank you.

*****: The beautiful sound of silence. [laughter]

Katz: T.j., why don't you start.

T J Browning: Okay. Greetings to all of you. Good afternoon. Gorgous day. I think that I was probably -- i'm sorry, t.j. Browning, southeast Portland. I think I was in the minority of the majority group, because when I read gary blackmer's original proposal, this one has me concerned, I need to read it closer, but the original one, I was pretty surprised, pleasantly surprised that he opened the door to internal investigation. I was disappointed he didn't walk through the door, but I was really quite pleased that he even introduced the concept. And I really inequality was a step forward for all of us. I know there's concerns from all of you because you're managers and that needs to be your job as to how the police will be interact with this, this is going to work with the police, and how they function as a bureaucracy. And I appreciate that concern, because that's part of your duties. But there are two sides involved in this issue, and it's not just the police that's -- it's also the citizen. And the process needs to be fair for both sides. And right now it's not fair for either side. Through the course of the summer in the work group by default I became the chair of the mayor's task force on piiac. And through that course of the -- that responsibility I worked a lot with my cast. I really grew to admire and respect, this is a great guy. And I went into his office one day and my apologies to mike because this was just a casual conversation, but i'm putting it on the record, but he's usually a pretty upbeat kind of guy. I went in there to talk to him about a meeting and he was down in the mouth. And i'm like, what's going on? And he said the most frustrating part of his job, and i'm paraphrasing, was that he had -- even when the police did a professional, select investigation, an a-plus investigation, he could not convince the citizen that they had done their job. And that was really frustrating for him. What a shame. That people

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cannot -- it's human nature that people can't accept the fact that police can investigate themselves. That's just human nature. We can't fight that issue. Under this proposal you're putting our police officers in a no-win situation. They're stuck once again investigating themselves, and it doesn't matter if they do the perfect job. They are not going to be believed. What a terrible situation we're doing to them that serve our city. You know, there are people out there that want the police to investigate. And what I would like to see happen with Gary's original proposal is that we offer the citizen the option, do they want the internal investigation to investigate their complaint, or do they want an independent investigator to investigate? There is a percentage of the populations that -- that have shown they do want the police to investigate. And they should be allowed a venue that they trust. Just as much as a citizen who wants an independent investigation should be allowed a venue that they trust. I believe the money is there. I believe the money that's been proposed is pretty comparable to what happens in Minneapolis, and Minneapolis doesn't have the option of having a citizen choose. The last thing I want to talk about is shootings and deaths in custody. That is such an important issue. That just can't be stressed enough. If our city auditor isn't comfortable with investigating that, I can respect that. But I would really like a commitment from the city commissioners that you will look into an -- and institute some sort of independent investigation into shootings. If not this venue, please just give us all a reassurance that you will set up something, and I think that would help everyone.

Katz: Thank you, T.J..

Don Baack: Mayor Katz, fellow -- commissioners, all four. I want to talk about policy and management and then relate this proposal to those things. I live in Hillsdale. Last year in Hillsdale we had a -- we had a person shot and killed. The Poot incident happened not long ago, a man was shot and killed. In neither case was the police officer fired upon, although it's alleged it was justified and so on. Also earlier this year in front of the White House we had someone with a pistol fire shots at the White House. That guy got one round, was fired by -- that's probably the most heavily defended place and one round was fired. The guy was injured and the situation was diffused. Now, I want to see the deaths of our mentally ill people stop in this city by the hands of police. We've had far too much of it. It's got to stop. You need to take the action, because in this testimony that's here, you five people are the people that have got to control that. I want you to do something about it and I want it done in the near future, not long-term future. Second relating to Hillsdale -- Hillsdale this, is word from the front if you will in terms of community policing, we've had an officer come at various times to the neighborhood reporting on what's been happening in Hillsdale. The shooting was an incident we talked about and he first said, I can't talk about it. It's under investigation. He said, it's been investigated but I don't know anything about it. And so we basically then asked that the supervisor, whatever his boss could -- whoever it was, come and talk about it. We wanted to talk about it from the perspective of why are we doing these things? Nobody came. Finally, the officer involved personally that was involved in the shooting came and explained what happened. I'm not about to take him on a policy point of view. My gosh, that's got to be extremely emotional for him. It's a totally inappropriate response. They didn't answer our questions, in this case the community policing is not working. Now I'd like to move on to January 2nd this year. I was in my dentist chair on Multnomah Boulevard. A siren came by, and another, and another. I began counting. 25 police cars came down Multnomah Boulevard at very, very high speed. I don't know how many cars were on TV Highway or I-5 or Barbur. But they were chasing one robber that had been on I-5. Now, it seems to me that's a lot like -- I don't think that's necessarily the way the police ought to respond to these kinds of things. Yet I don't know of any vehicle to say, what's going on with regard to policy? I called the next day and the guy had to go through the files and find out what the problem was. It was a bank robber. How many people put

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their lives in -- in danger because police were going 75 miles an hour down barbur. We're putting a lot of people at danger I think without having a clear understanding of what's going on, particularly that many cars. And I think it raises question to me in terms of what's happening with the police department. It seems like it's out of control. Thank you.

Katz: Thank you. Go ahead.

Kristian Williams, Portland Cop Watch: My name is christian williams, a member of Portland cop watch.

Katz: Talk into the mike, please.

Williams: I have a statement I was going to make. But instead i'm going to address something that commissioner Francesconi brought up earlier. He asked one of the people who was testifying, in what ways are the proposed system could be worse than the current system. And i'll refer you all to the analysis by cop watch auditor's proposed review board shields police from public scrutiny. Which -- and on page 2 of that, we outline a number of weaknesses and i'm going highlight a few, which are in fact worse than the status quo. According to section 3.21.160 a-1, the citizen committee of ipr unlike the current piii can now request further investigation. If they don't have a complete investigation all they can do is pass the case on to council or uphold the finding. Whether the investigation is conducted by civilian investigators or police, the citizen board should be able to assess the thoroughness and fairness of this investigation and should also be able to send it back for more investigation, since as you've all seen, the investigation is the command of iad are often substandard. Secondly, section 3.21.160 a-2 states that city council will, quote, decide what the finding is, and, quote, inform the chief of the council's decision. That's good. But it doesn't state the chief must accept the council's finding. Given that chief kroeker's reject add piii finding recently, it's probably crucial that be spelled out. Thirdly, section 3.21.020 part o defines policemen's -- misconduct as conduct by a member during an encounter with a citizen which conduct vie lights police violations of orders. The part of that that's objectionable is during an encounter with a citizen. This would seem to imply that people who aren't citizens, such as resident aliens or undocumented workers don't have the same right to fair treatment and wouldn't be available to file a complaint. It also implies the cases which don't involve contact with the public, for example, misuse of funds or officer on officer misconduct, would not be under the purview of the ipr. Fourthly, section 3.21.110-b preventing investigation of matters of litigation where a tort claim notice has been filed or when a grievance or other appeal has been filed. Presumably also in litigation can mean a criminal investigation or lawsuit is underway. So it's unclear whether a person will be able to file a complaint once criminal charges were resolved, and under the current system can both file an internal affairs complaint and a lawsuit, because they perform different functions. And I realize that puts the council in an awkward position, but the outcome has been that you've waited to hear the appeal until the litigation was done. Not that there couldn't be an appeal because there had been litigation. Which blackmer's proposal as its read would produce that result. And finally, section 3.21.160-d-3 implies that council can compel officers to testify but removes language explicit in the current code. Should I finish or stop there?

Katz: Just finish your thought.

Williams: Okay. If you read the rest of the paragraph you'll see that furthermore, it would bar the council from asking about things which respect covered in the current -- which aren't covered in the previous investigation and no new evidence could come to light which again, given the substandard quality of many internal affairs investigations, seems very dangerous.

Katz: Thank you.

Janine Oshiro: I live in northeast Portland. Independent civilian review is an essential step in establishing trust between the press and the community. Right now we all know that there is a

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dangerous even deadly division between the police and the people. The auditor system does nothing to bridge this gap of trust. As I listen to chief kroeker and others talking about the auditor's system and endorsing it, I feel that it is very premature to extol the virtues of this system for its ability to establish trust, respect and accountability when we have still not heard a satisfactory answer as to why investigators would not directly be able to ask a question of a police officer. I feel this is more than just a technicality. Or a procedural issue. How can we really have independent investigations if the questions must be asked through iad? We need empowered civilian investigators, the power of the people and the police put in balance. I hear all the time how important community input is. The city council, the police want to listen to us. Why not listen to the majority of your very own work group who devoted their time and energy into research, including public testimony, for all of us. Why not schedule public testimony for such an important issue as this later at night when other people could attend? I know so many people who would have been here if it had been at a later time. I also want to echo the point made by martin gonzales earlier. Commissioner Hales asked what city has the oversight system you would want to the first person who testified. I thought this was the city of vision and innovation and community involvement. I would expect our elected officials to lead us in the commitment to justice and the safety of all of our communities. If our elected officials fail, I have full confidence in the power of the voting people to support the independent civilian review board put forth by the police ability campaign 2002.

Greg Cluster: I live in northeast Portland and I work with the police accountability campaign. In helping to organize speakouts and while gathering signatures I have spoken to hundreds of victims of police abuse from folks who have been verbally harassed to those who have been hit by police cars and others who have been beaten by groups of officers for not cooperating are police. And others who have undergone police interrogations during which officers were applying pressure on arms and hands. Of these people with whom i've spoken only a very few have filed complaints. When i've asked the remaining majority why they've not filed complaints the answer is simple -- they're afraid to do so. They know filing a complaint with iad will bring more police presence into their lives. A number of them have had friends or relatives harassed simply because they had filed complaints others knew they would have to undergo more interrogation by police officers and they wanted to steer clear of the police at all costs. Most vowed they would never call on the police for help in the future. In february I received a letter from commissioner Francesconi outlining the changes he would like to see in our structure of police review and that outline many months ago resembles mr. Blackmer's proposal. And contains a list of what he calls critical changes, but the changes proposed in that letter and the report are nowhere near the critical point that would make the women and men i've spoken with silent victims feel safe filing complaints. Without a guarantee of independent investigations by nonpolice investigators who all remain in blissful ignorance of the prevalence of abusive policing in Portland. Unless we have a truly safe and powerful system of civilian police review, police abuse will remain under reported. Until our citizens feel that filing complaints can be safe and effective we will never come to get a clear picture of the problems we need to deal with. Without that clear picture we will never be able to purge of bureau of abusive officers or define the deficiencies in our officers' training. If we don't do that, policing and public trust in police can never come to be. So establishing a fully empowered civilian review board initiative will only be a step toward resolving the problem of police abuses of power in Portland but it is a necessary step. Without it we will never know what the problem looks like. I believe making the changes row posed by the city auditor will at best be a waste of time. As diane stated, the initial report and its later waterings down -- putting the power in his hand that's his report proposes is a dangerous step backwards. If you do not feel comfortable

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making meaningful structural changes that might frustrate police, I urge you to turn this decision over to the voters.

John Francis: They call me helpful john. I don't know everybody that's been here, but I thank the council for showing up and suiting up and being here for us. I'm probably the least qualified of anybody to give testimony of any kind today. I have to remind myself every day because I live down in the old town area, chinatown, that the police do a good day's work when i'm not there to observe it. And that I and -- and trust, or just flick a switch and I expect the entire enormous chain of power producing in my light bulb to make my life more convenient. And i'm just overwhelmed by the lack of total authority that anybody here has. And how well we've worked together as a community. I see that gaze, that you know, that 100% present gaze in people's eyes, and I know we're working hard and I just want to congratulate you. I know transparency is the thing we wanted to have the last 200 years and i'm beginning to find out that's hardly what we've achieved. But I hope that you won't be too disappointed if we haven't done our best all in time to remember that the police are there when we're not able to be there, and that that entire community of events we call a society of trust is based on a transparency and accountability. And thank you for being here.

Katz: Thank you.

Katz: Who wants to start?

Casey Condon: Hello, a professor of criminology and professor of sociology. I'm here to oppose the auditor's report and ask you to oppose it too in favor of the majority report instead. The problems of the auditor's report have already been covered. But i'll run through a couple of the highlights. The investigation is filtered through the internal affairs. The information -- information could potentially be withheld from both the public and the irb itself. Death and shootings are excluded. As commissioner Saltzman was pushing, was never adequately answered, the investigation is going to be convoluted by there potentially being two questions directed at the officers. One by the review board, and one by internal affairs. And in particular, the investigation will be convoluted by having the internal affairs detective alter the tone of the wording of the questions. Another weakness of course and weaker than the existing system is that the -- which was already covered well, that the review board cannot compel testimony. As a professor, I understand it's annoying and frustrating to have people meddle into my work. After all, I have had training. I went to school for ten years to teach at college. But I understand also that the integrity of my job depends on that external oversight of my work. The police have even greater power than I have as a professor. They have the power to deprive people of civil liberties. Whether that be by physically detaining them, or by squelching free speech. Both of which happen in Portland. These powers must be monitored by an independent authority. I'm not going to insert malice intent on anybody's part, I don't think we need to do that even if it exists. Piiac has done some positive things. The proposed irb will probably do some good, like possibly facilitating citizen complaints. But we have a better plan as an option. It's -- the idea of having the perfect plan is all brady bunch fiction. We're not going to have a perfect plan. But this plan not being perfect is neither a radical plan. It does not intrude on police policy making, it does not specify discipline, and it does not exclude the police from the investigation. As a final except, george will, by no means an anticop voice, george will wrote, defensive democracy depends on pessimists who are not defeatist. We have to assume that anybody with strong discretionary power may abuse or mishandle that power. We have to assume that. But we do not need to accept that as fate beyond control. Reforming piiac in terms of the majority report will do several things to empower us. It will deter some police misconduct, it will investigate it when it happens, it will protect the integrity of Portland police by

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opening it up to public scrutiny, and it will lead to the defense of democracy that George will called for.

Katz: Thank you.

Francesconi: Professor, you were clear and articulate on the reasons why you think the majority report best accomplishes those purposes which I think we all want. We have some disagreements about the methods. But as -- my question to you is, other than the majority report, which is -- has the strongest oversight, the current system, the mine orthopedic report or the auditor's report? -- minority report or the auditor's report?

Condon: The majority report --

Francesconi: You're clear the majority report is the best.

Condon: But of the other three?

Francesconi: Yes.

Condon: I haven't compared them in those terms. I don't know.

Francesconi: Okay. Thank you.

Richard Koenig: Hello all the folks out there in television land that are just getting home and are just tuning in. Sorry you couldn't have heard more of the technical discussion. What I'd like to do is put a cast on this. There was a question --

Moore: Identify yourself for the record.

Koenig: I'm from Buckman neighborhood. There was an allegation at one point that this -- Gary Blackmer's problem addresses all except -- all problems except one. Would I like to propose a second, which is the lack of will to achieve police accountability and what I'd like to do is do you through some results of my investigation. I'm fortunate that I didn't enter this arena, the police accountability controversy with a vested interest. I came in it as an advocate for others. So I have more or less an opportunity to view it dispassionately. I've been investigated this situation, police accountability, for about six years. The finding that is of greatest significance is that at every level of the accountability system there seems to be a uniform effort to obscure the process from the people who are to be served. In past six years, that I invested in this, I just ask -- I kept asking all the police I encountered, I need a community policing opportunity where we can sit down and resolve problems. I have asked that of every one from the street to the chief. In six years, there has been no sit-down to resolve community problems. Okay? In a related citizen's complaint process, I witnessed 20 written requests to see evidence legitimizing that which IAD has apparently misrepresented to you folks right there, was appropriate police conduct. Ten of those requests were courtesy copied to the commissioner of police, you, Vera Katz. No response was ever made. I complained about the IAD captain, therefore apparently lying. And he declined to investigate himself. Making a laughing stock of Chief Kroeker's assurance to the PIIAC quarterly monitoring meeting that the PPB does not place its officers in situations where there's a conflict of interest. In a PIIAC appeal of that particular thing, I -- I've -- I was denied the opportunity to be apprised of the rights on appeal. I didn't even make my presentation because I didn't have -- I wasn't apprised of the ground rules. After hearing you folks -- after hearing the mayor in particular disavow the current PIIAC ordinance and say you folks don't hold with that, I ask the city, well, I was given an answer by the city attorney as to what rights the citizen must relinquish to participate in the PIIAC process, and he didn't relinquish any, but a couple weeks ago refused to allow the exercise of any that I insisted on. I think that we've got to bear that in mind as a totality and we have to ask the question, if it looks like there's no will to achieve police accountability, will your vote for Gary Blackmer's recommendations be believable?

Katz: Thank you, Richard. Thank you.

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Hank Miggins: Good afternoon. I'm -- I live in southwest Portland. I'm retired. I'm here to ask you to support the -- Gary Blackmer's report. There's no system in any police in this country that is universally supported by the citizens of that community. And this one won't be either. But I believe there are elements of this program and this system that has the possibilities of gaining greater support. So I'm asking that you adopt this system and implement it and move on with the accountability for police activities here.

Katz: Thank you.

Miggins: Thank you.

*******:** Mayor, may I make one final comment?

Katz: Go ahead.

*******:** As a criminologist I associate with a lot of police, most of them almost all of them are great people and intend to do good. I see there is no -- rely on their good faith or anybody's good faith for self investigation or the customer service proclivity of police.

Katz: Thank you. Anybody else want to testify? All right. Let's bring our lawyers up here. Will? Is Allen still here? Matt is not here. I'm sorry, Mark, he's not here, and Allen left.

Will Aitchison: I'll speak for them.

Katz: You can give us both sides of the story.

Aitchison: I will.

Katz: Identify yourself for the record.

Aitchison: Thank you. I live in northwest Portland. I'm a lawyer for the Portland Police Association and I was on the PIIAC committee appointed by -- if I could take a shot at answering Commissioner Saltzman's question --

Katz: We'll get to the other questions later with our own attorneys.

Aitchison: Sure. Here's the situation. Whenever a public employee is compelled to answer a question, compelled by use of disciplinary authority, your governmental authority, the fifth amendment applies. The fifth amendment which gives us our right to be free from self-incrimination. What the Supreme Court has said in the Garrity case, is when that happens, when you tell a public employee, not just police officers, any public employee, you must answer this question, that automatically what you are doing is you are granting them immunity from criminal prosecution basically you can't use the statement or the fruits of the statement in a criminal prosecution of that employee. That's the trade-off. You as an employer have the ability to force the answers to the questions. But when you do so, you immunize the employee. In Oregon it's even heightened because the Oregon constitution has broader immunity standards and in Oregon, probably the Supreme Court hasn't addressed it yet, probably the moment you order someone to answer a question, it's not just that you can't use statements in the first -- and the fruits of the statements, you can't prosecute them, period. Now, why is that important? Since only a certain percentage of police investigations involve potential criminal liability? The thing to think about here is, at least in my experience, this is entirely anecdotal, I don't have any numbers, is that the vast majority of citizens complaints against police allege conduct that potentially has criminal ramifications. If, for example, a citizen alleges that a police officer put on happened cuffs too tight, that's potentially an assault. If a citizen alleges that there was no probable cause for an arrest, that's potentially an assault, it's potentially kidnapping. There are all these potential criminal ramifications to the everyday activities that police officers take on the street. And that's why police officers hear -- here, elsewhere, public employees elsewhere facing an internal investigation, won't voluntarily answer questions unless they're ordered to do so. So the predicate for all police internal investigations in Portland forever, and in every police department I know of, is the department ordering the employee to answer the questions. Now, the significance of this in terms of what

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auditor blackmer has proposed to you, is this. Here's the dicey part and why that word "shall" had to be changed to "may" to make this proposal constitutional. I didn't know that was going to happen until I -- I didn't even know that was an issue. I just saw that a -- as a problem with the ordinance. If you use the word "shall," what that means is that when i. Ipr or an ipr investigator wants a question asked, the ia investigator must ask it. No discretion. Must compel the employee to answer the questions. What that means is, you're immunizing the employee, the moment that happens. My guess, and I don't know, because I haven't discussed this with anybody, my guess is as to what's going on is that the police bureau, district attorney's office, somebody wants some discretion as to whether or not to force the employee to answer the question and thereby immunize them. The second half of your question, commissioner, dealt with why is it that the order has to come from the police chain of command somewhere as opposed to ipr. And all I can do is tell you

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Saltzman: Not the order, the question.

Aitchison: The question won't be answered unless there's an order for the reasons i've just set forth because of the garrity concerns and everything like that. If you sit down in an internal affairs investigation and don't compel the employee to answer questions, they'll respectfully decline to answer your questions, invoking their fifth amendment rights. So the order is going to have to be there. The order is there in every internal affairs investigation i've ever seen anywhere. So the question then becomes where does the order come from. Now, from a policy standpoint I think you heard chief kroeker say i'd like to give it, i'm in the chain of command this. Is one area, this is like the moon being in the seventh house and jupiter in mars, this is one area where the citizen attorney's office and I completely agree. The cases say that for a citizen's review board to have authority to give that order, it must also have disciplinary authority.

Katz: That was the --

Aitchison: And the notion here is to give that order, you've got to have the ultimate disciplinary authority. And since under the ipr proposal ultimate guess president clinton area authority remains with the police chief and the police commissioner, ipr can't compel the answer to a question. And so that's why that structure -- I think it is, i'm pretty sure it is, a constitutionally necessary structure. Where mr. Graph and mr. Kramer would disagree with me in all of that -- cramer -- is one in -- in one point that. Is that neither of those two gentlemen believe the cases say that the order has to come from the police department. They disagree with where I am, where the city attorney is, and they say the better reading of those cases is the order can come from an independent civilian review authority. And then you just have dueling lawyers.

Katz: And then what?

Aitchison: You have dueling lawyers as to whose opinion you're going to accept.

Katz: I heard this discussion between I think it was will and mark, and allen, and I think you stated it accurately in terms of where the disagreement would be. But if anybody doubts that in your file somewhere there is a paper on this issue, the mcgarrity case and the dueling lawyers on this particular issue.

Aitchison: There's a written opinion from the city attorney on this. That was presented to the work group.

Francesconi: If it's okay with you, i'd like to ask dan handleman a question, a follow-up question.

Katz: Before we get dan up here, any other -- while we have will here, any other questions, since he didn't sign up to testify?

Saltzman: I just, if it's a noncriminal investigation, the iad investigator clearly has the authority and won't risk violating the mcgarrity case to compel the officer to answer a question?

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Aitchison: I suspect -- see, it's just old hat now in an internal affairs investigation, to give the order. And I think that if you could carve out a subset of case that's had no possible criminal ramifications, the officer was rude to somebody, you know, something like that, I expect that iad or ipr could simply ask the officer to answer the question and not compel the officer to answer the question. My guess is the officer would say, am I ordered to respond to the question. And then the ball would be right back in your court.

Saltzman: And the reason you believe the iad investigator has to answer the question -- ask the question in a potentially criminal investigation -- i'm having trouble understanding that. The officer clearly wants to protect from the mcgarrity situation.

Aitchison: If there's a potential criminal situation, the officer, like any other criminal suspect, probably doesn't want to get a voluntary nonimmunize statement. Probably. And that means the officer is going to be there looking for the order. Looking for the come pull shun to answer the question that will trigger fifth amendment immunity. And that means in a criminal situation, someone is going to have to make a decision somewhere. It can't be automatic. The way the ordinance was first written by auditor blackmer was automatic. You had to answer the question. You had to ask the question. Someone needs to make an informed decision as to whether or not you want to use your powers as an employer to immune eyes this officer. If it's not -- if it's -- if you don't retain that discretion, you're going to be immunizing somebody and preventing the possibility of a criminal prosecution in a potentially appropriate case.

Saltzman: Won't in most of these investigations, are you present?

Aitchison: No.

Saltzman: No.

Aitchison: I can't remember the last time I was an internal affairs.

Saltzman: Is the union --

Aitchison: A union representative is present most internal affairs investigations. But not lawyers.

Saltzman: What about an officer having private counsel? Is that --

Aitchison: If I had to put a number to it, i'd say less than 100 -- less than 1 in 100 times. Very, very rarely.

Saltzman: Wouldn't it be more logical to have -- given that iad investigators are not trained lawyers, and given the delicate walk you have to walk here on not immunizing where you don't want to immunize, wouldn't it make more sense perhaps to have the city attorney's office present to make that decision?

Aitchison: My understanding --

Saltzman: Whether the ipr question should be asked.

Aitchison: Commissioner, there's a couple of answers to that. First of all, one advantage to having ia investigators as opposed to somebody who is not -- their every day job is not to do criminal investigations, one advantage to having ia investigators who are trained police officers is they know when there are possible criminal ramifications. They have the ability to triage cases a little better. Secondly, my understanding is that if there is a doubt as to whether or not you want to use your authority to compel an answer to the question, in fact that sort of discussion is had long before you get the officer into an internal affairs investigation. The city attorney will be consulted or the district attorney will be consulting with internal affairs.

Saltzman: Thanks.

Katz: Further questions of will? All right. Commissioner Francesconi's asked dan to come up, so dan? Thanks, will. And after dan we're going to bring gary up and then our city attorneys. There was some questions that I have jotted, I tried to keep all the issues as well as gary, and their questions that I know peter casting on the confidential documents.

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Francesconi: I had one specific question. But you seemed like you wanted to say something. Do you disagree with the interpretation?

Aitchison: Very much so. In our report on page 38, we wrote verbatim the language from the case *pervatzi versus new york* which defines the ability of the people -- city and county of denver v. Powell. Defining what is meant by a review board being an integral part of the disciplinary process. Not the final disciplinary authority, which is what mr. Acheson would have you believe. Rather an integral part of the discipline process. In new york the board is limb -- our proposal had the recommendation of discipline as part of it. So that the review board would be an integral part of the disciplinary process, therefore they would have the power to compel officer testimony. And the way it works in minneapolis is that chief of police just gives an order using a general order saying you officer, so-and-so, you must go and answer the questions by the civil -- by the authority there.

Francesconi: I think, and I don't know want to argue, I think he's saying under the Oregon constitution if you compel testimony you can force it but then you waive the right, which brings me to my question.

Aitchison: Okay.

Francesconi: And there is a public policy argument that you could make that it's better to compel testimony in all cases so you get at the bottom of it from a disciplinary standpoint, and not prosecute officers. Do you agree with that, or do you think it's better to sometimes not ask some questions so you can criminally prosecute? Which is in the public interest?

Aitchison: Well, I think what will be described as triage is going to be necessary. For ipr -- if our ipr director is worth a grain of salt they'll be able to identify cases that will have criminal implications. There have been very few police officers indicted and very fewer have been convicted of anything. There was a deputy from the Multnomah county sheriff's convicted last week. In it happens, it's usually about stealing evidence from the evidence room. So there's been very few cases like that. I'm not very concerned. And i'm surprised to hear the lawyer for the Portland police association expressing concern that we won't be able to prosecute police. I think that's disingenuous. I think he's trying to make it seem like there's a reason that we shouldn't give the immunity to these officers, but I think what our goal is is to improve the police bureau and to find the policies and -- that need to be changed. If that's more important than prosecuting police in the very rare cases where it's going to happen, yeah, i'd rather see the immunity go in. If it's a serious, serious case, like the overtime scan did get investigated first as criminal, then it went to internal affairs.

Katz: Thank you. Gary and peter and stephanie and whoever else is here, on the issue of the legally privileged documents. The issue of attorney-client privilege, and the release of public information and I know that we're involved after we consult with you on whether this is a confidential document or public document. So do you want to talk about that?

Aitchison: Sure.

Saltzman: -- ipr access for iad files closed for investigation? Are we on the same topic.

Aitchison: This is a different topic.

Katz: And add that one on to your response as well.

Pete Kastings, Office of the City Attorney: Okay. There are a couple of provisions that have given rise to questions. The first one is the sentence that reads, the director, quote, the director shall not have access to legally privileged documents held by the city attorney or attorney-client communications held by the city attorney-clients. The important part of this in terms of responding to the concerns that was raised is that it refers to legally privileged documents held by the city attorney. The phrase "legally privileged" qualifies the category of document that's are subject to this exemption. That phrase has a meaning in the law. Privileges arise from state statute from the

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code of federal code of professional responsibility, and from federal law. The primary issues that are of concern and that this instance refers to are attorney-client communications and attorney work product. Those are privileged under existing law. The purpose of including this statement in this paragraph is to make it clear that by granting this broad authority to the director to look at records, the privilege for holding those records confidential is not being waived. So that's the way it is now. If you have a privilege that is created by law, that is a legally privileged document, those are not subject to disclosure. They're not currently subject to disclosure and this sentence makes it clear that --

Katz: Give us some examples of what some of that would be.

Kastings: Well, attorney-client communications, for example, are legally privileged under the Oregon evidence code and under the code of professional responsibility. And I should also clarify, because there was some confusion about it, that that privilege actually belongs to the client, not to the attorney. The attorney is prohibited from -- by the code of professional responsibility from disclosing those communications. There's no decision for the attorney to make. The attorney is prohibited. The client may at his or her discretion disclose those documents. So that's an example and it makes clear that that sort of privileged document under Oregon law remains privileged. And the director does not have the authority to broach that privilege which belongs to the client.

Katz: Does anybody -- do you want further clarification of that?

Francesconi: Another way to say what Pete is saying is, we can't break the law. We can't just pick certain laws and these documents that are protected by the law, so if we passed an ordinance saying you have to disclose them, we're instructing -- we're breaking the law for these employees, and a lawyer could be disbarred. It's not something we made up.

Kastings: And the complication is that some of these documents are subject to privileges that may be waived. And the purpose of this sentence is to make it clear that these -- the city, by adopting this ordinance, is not attempting to waive anything. Now, the question of waiver becomes complicated because if you get into a litigation context, you end up with multiple defendants. The city of Portland is usually named as a defendant, individual officers and employees are often named as defendants. The city council may have -- would have authority to waive a privilege with respect to the city of Portland, but would not have authority to waive the privilege with respect to the individually named officials, and you wouldn't want to be waiving those 45 of privileges anyway in a litigation context. The other section that has given rise to a couple of questions is section --

Katz: Before you go on, can we move on? All right. Go ahead.

Kastings: Section 3.21.110 sub c, the sentence reads, when considering a request for public records, the director shall consult with the appropriate bureau personnel and obtain approval from the bureau prior to disclosure of records under the Oregon public records law. What this is referring to is the mechanism that is used by the city of Portland to administer public records and access to public records. The way it is set up in Portland and in most places is that each bureau is responsible for handling its own records and responding to public records requests relating to those records. Just to put this in context for the people who don't bounce into it every day, there are generally speaking four categories into which public records fall. The largest category is records that are subject to inspection, period, there's no debate about it. The second category is records that are conditionally exempt from disclosure. That's -- there are several dozen conditionally exempt categories of records. In fact, most of this attorney general's public records and public meetings manual is analyzing those conditional exemptions and the various tests, there are several tests in the statute that are used for determining whether they -- an exempt record may be withheld in a particular case. The third category is records which are unconditionally exempt, that is the custodian of the record has an unconditional right to say, no, I'm not going to turn that loose. You

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don't to go through a balancing test, it's an unconditional exemption, but there is discretion to turn that loose if the custodian of the record decides that there's no long term reason to keep it confidential. Then the fourth category which isn't particularly relevant here is --

Katz: Or that it's of great public interest, which is the district attorney has ruled, individually on particular cases.

Kastings: Right. Well, right. In all of these cases, let me just finish up the fourth category. The fourth category is records where disclosure is affirmatively prohibited by state or federal law. The easiest example there, although there are several examples, is personal medical information. You can't turn that loose and in fact you are violating the rights of the person who is the subject of that record if you turn it loose without their consent. All of these records, even though they fall into different categories, are public records. The mechanism that's used to decide whether or not they are going to be disclosed is that the custodian of the record makes an initial decision in Portland that's done on a bureau by bureau basis with the decision will or not to assert an ex -- exemption. So in this case, for example, if the police bureau has records that it thinks may be conditionally exempt from disclosure, it does that analysis. It applies the balancing test and reaches a conclusion on whether or not it wants to assert the exemption. If the person requesting the record disagrees with that decision and thinks the balancing test ought to come out a different way or the record's in a different category all together they can go to the district attorney who under the statute reviews the custodian's decision and makes his or her determination. If somebody's not happy with what the d.a. Decided, you can go into the court system and go all the way up the chain of command in the courts to get the issue resolved, and there are a lot of cases that do that. What this language does is make it clear that even though the director may have looked at a document that is exempt from disclosure or conditionally exempt from disclosure, so that record now exists in the director's file outside of the police bureau, the question on whether or not to assert an exemption from disclosure still rests with the police bureau. The fact that the paper has gotten loose and is in somebody else's office does not mean that somebody else now gets to go through or has to go through the public records analysis and make that decision. The decision remains with the custodian of the record, -- with the police bureau.

Katz: Questions on that point?

Francesconi: On all four categories?

Kastings: Yes. All four categories, they are public records and if there's a dispute over whether or not they qualify, it goes through the statutory process.

Francesconi: I'm less thrilled about this one, because it's my experience on the public record side, as opposed to the privilege side, that except for the fourth category, they end up getting disclosed anyway. It's very -- isn't that right? Generally speaking?

Kastings: Just to -- it depends. The -- well, the largest category is records that are not subject to exemption, period. And most public records requests fall into that category. You ask for them, you get them, you can be required to pay the cost of producing them. There's a small category of unconditional exemptions where the record may be turned loose if the custodian decides to do so, but if the custodian says no, that's it, there's no balancing test. Attorney-client communications, for example, fall into that realm. They are unconditionally exempt if the custodian of that record says I don't want to release my attorney-client communications. That's it. But if somewhere down the road they decide there's no long term reason to keep that confidential, they can turn it loose. Most of the disputes arise under the conditional exemptions which involve different balancing tests for public interest in disclosure versus public interest in encouraging frank communication between public officials or protecting privacy interests or other competing interests.

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Francesconi: We don't have to debate it now, but i'd like a little work done on whether you could tighten that a little bit and lean more towards disclosure on some of those discretionary ones.

Kastings: Well, the real question in this language is who makes the decision. Is it going to be the director that makes the decision on whether or not police bureau records get released or the police bureau all the way up to the commissioner in charge of the police bureau?

Katz: Actually, this is -- this is a good conversation, because i'm put -- I know all of you are, maybe i'm put much more frequent position, I would love to release some of the documents that I know is -- is max still here is? That max is going to ask for and she's going to get under the public information act. Because it really does look very suspicious if we look at the instructions in the ors and say, no, this is a public document, and then have it requested and the d.a. Then looks at it and says, well, you know, it probably should be exempt, but this is an issue that is of great public need to know, and then we'll release it. We've had a lot of these will calls, and i'd rather release it at the very beginning so that people clearly understand that we're not hiding anything. It's just -- it's that balancing act. In fact, if I recall, once we said no because we wanted the d.a. To rule on it, because we weren't sure whether they were a public record for the public to see or not. So we said no, we're going to deny it and then it went up to the d.a. So I asked jeff and the city attorney if they could see if we can loosen it up a little bit. So this may be a good point of conversation.

Francesconi: It's also complicated.

Katz: Very comply indicated.

Francesconi: So you are going to have to come forward with a recommendation.

Kastings: That's a question --

Katz: It's beyond this.

Kastings: The only issue on this is who makes the decision on the status of the record. The director under this program, or the bureau the way it is now.

Katz: And the bureau usually checks with you.

Kastings: If it's at all complicated they usually do. We ask them to.

Katz: I do too. All right. There was one other one which was the access of iad cases when they are closed.

Kastings: I guess the question is what category do those cases fall into. It depends on the information that is in the record. As I said, there are several dozen categories of document that's are conditionally exempt from disclosure. Those categories turn on the nature of the information, not on where the document is filed or how it's labeled or anything like that. So ultimately it turns on a document by document review to determine if there's anything in that document that is either a conditionally or absolutely exempt. So if the file, for example, contains personal medical information where you'd be violating the privacy rights of somebody to turn that loose, then it doesn't matter if the file is open or closed or sent to archives, that information is still exempt from disclosure. On the other hand, if it involves, maybe there's attorney-client communications where the issue is no longer in dispute and there's no reason to keep it exempt anymore, then you can turn it loose.

Katz: But the overtime issue and then there was another highly profiled case where there was a request for those files, and approval was given.

Kastings: Right. I don't know the specifics of the case you're talking about, but it depends on the content of the information that is contained in the document.

Saltzman: I thought the -- I think it was denise stone, that the current piiac as part of their auditing purview has access to these files, and under this ordinance they don't have access to these files. I understand the appropriate caveats you have to apply, but as I understood the testimony from

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denise, she was saying under this new model that they would not have access to the ipr or the citizen review committee have access to iad files on closed investigations.

Katz: I'd like to ask gary to respond to that.

Blackmer: Under 3.21.160-b it says in reviewing the investigation, the committee may examine the appeal form in any -- and any supporting documents, the file and report of the iad and any documents accumulated during the investigation, may listen to the tape recordings, the committee may receive any oral or written statements volunteered and so forth. So that's language that's essentially in the current piiac. We have preserved all that. What denise brought up was making the closed cases a routine part of review. And my sense was with an early warning system with a lot of the tracking that we're doing, we may have -- we may end up rooting out those problems earlier and not need to go through and look at every closed case for adequacy of investigation if we find that there's certain kinds of cases that are coming up we can go back and look at those and in particular certain kinds of investigations.

Francesconi: I think you're hearing a strong recommendation from some piiac members, and the early warning system is terrific. But until it's up and running with more history, I think the idea of allowing civilians to go look backwards and see a pattern, because I know when they've made the quarterly reports to the council that's been helpful information.

Blackmer: Okay.

Saltzman: Would I agree with that.

Katz: And that's not anything that is precluded by law, by collective bargaining.

Stehanie Harper: The only thing that I -- The only couple of pieces I can think of is in the public records law there are two conditional exemptions for personnel records, investigatory records, information that is used that results in a disciplinary action, or in the information that underlies that disciplinary action in addition to public records where no disciplinary action is a -- action is a result. There's two conditional exemptions in the public records law to make all of those records exempt from disclosure. So, again, it's a public interest sort of test that ends up coming into play.

Katz: But -- but the advisors have -- there's nothing to preclude them from going back and looking.

*******:** What there would need to be in place is some sort of training or within the administrative rules about how they -- to exercise caution and -- in deciding which piece if they decide to copy any of those records or use some of those records, and then bring them into a public setting like here, then we would want I think the ipr folks to exercise discretion and judgment in making decisions about records whether or not they're going to make copies of those.

Katz: I have to tell you, 8 1/2 years, I have not seen a problem with that. And if there was, nobody brought it to my attention. But they have been very good about exercising good and sound judgment on that. All right. Let me run down some of the issues that kept popping up. The number of citizen advisors, gary.

Blackmer: I was going to start with that. We have 13, and it looked to me like it was built around the idea of appointments by neighborhood coalitions and the council. My sense, I like the phrase john used, he likes to see that hundred percent present gaze. Meaning that i'd like to see seven really dedicated 100% there citizens who represent our communities as best as possible, but also can be leaders on subcommittees with specialized responsibilities, whether it's outreach or other kinds of task forces. So from my standpoint it was looking for a manageable group that I could count on to be there and -- at every meeting that we -- the training would be easier to do with a smaller group, that just having a more cohesive and smaller charged group I think was my as yale for it. I'm okay with a larger number if council felt like that would be appropriate.

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Saltzman: What I wanted to propose is that we'd go to a larger number, because one thing you've taken out is the direct city council appointees to the committee. I'd like to suggest we restore that. Each one of us has the ability to point one member to this committee. And then I guess we'd need to increase the committee size to 13.

Blackmer: As --

Saltzman: Keep it at an odd number. That was one thing that troubled me about the current -- the proposed appointment process to the citizen review committee. It's a good process, but I think somehow having each one of us have the ability to have sort of our own set of eyes and ears on the committee will help make us better informed as to how the process is working and what -- when it's not working. If the person we appoint is not showing up, we find that out and we honor your desire to make sure we get people on the committee who will really show up. I think that's -- so I guess I'd like to see that proposal.

Katz: What's the sense -- I lost a member.

Saltzman: He's here.

Blackmer: Under the current system, anyone can do recruitment, and we want to -- I'd like to see some kind of an application process. And the citizens right now, piiiic, I would like to be part of the selection committee for identifying who those citizens would be. They would do nominations to city council, who would ultimately do the appointment. We would be asking council offices for any names that they could think of that they would think would be appropriate, but, again, we've had council appointees who have said I'd really like to be part of it but I can't put in the hours. And those kinds of things where we're torn between recognizing the value of having your eyes and ears there, but they're not there all the time makes it difficult. So I don't know how we do a balance that way.

Saltzman: Would you have a problem if we did restore the council appointees? I understand what you're saying, but if we're also making the commitment to make sure our members show up and you tell us if they aren't and we make those changes, I do that with the people I appoint to the chief's forum, I'd definitely monitor their attendance. And if I hear they're not showing up, I raise witness them and if need be, I haven't yet, but I'll make a change.

Blackmer: I would like to have some kind of an application form that the folks would go through, because one of my concerns is I'd really like to get people who come in as objective as possible. And I think that issues like this draw people from -- with various viewpoints, and for me, I think it's important to have an appearance of independence on a citizen as well as me, as well as anyone else who's doing work and passing judgments. We put jurors through that kind of a questioning, and I'm always looking for a group of citizens who are committed, who are also committed to being open-minded. And so as long as we can be assured that we're going to have citizens who can be perceived that way as well as being that way, is my important concern.

Saltzman: What if we were to have the authority to submit an -- a nomination and sort of a presumption that unless the committee comes back and -- with a recommendation to us about this person, there's a presumption that person would be in the committee?

Katz: Let me pry to work through this now right now. It is 5:30. I want to get -- before we make any recommendations in terms of amendments, I want to get through all of these issues. I need to get a sense whether the council wants to give gary a sense right now on this particular issue and everything else whether you want gary to come back with additional -- an amendment since we don't have anything written here, on this particular issue. Because I didn't hear out anything else that we just discussed.

Francesconi: I have a couple of others. I was waiting for your list. On this particular thing of 13, we can nominate, okay, and maybe dan just -- commissioner Saltzman just came up with a

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compromise, but they have to meet certain criteria. I think sometimes I haven't been good enough on some of my own appointments. So I think the point you're trying to make, people need to know what they're getting in for and there's got to be criteria and expectations. On the number of 13, because I have a tendency to assemble large groups for everything, I think we're trying to elevate the status of piiac. And we're -- and a 13-member city council would be a little hard to manage. And we need more training, we need more resources put in, we expect more, we need more public visibility, and more of a commitment. I think that's your intent. I think 7 is too small. 13, if you think you can manage it, I'm not going to fall on a sword over 13. But I think 11, nine, you know, seems more manageable to me for what it's worth.

Saltzman: I tend to agree with that. It needs to be bigger than seven.

Katz: Are you -- can you live with a compromise in terms of the selection of the members?

Saltzman: The compromise being that we select the -- each one of us gets to select one person, submit it to the committee and the presumption being unless the committee says no, this person gets appointed?

Katz: Gary says. That something --

Saltzman: You'd have to go the 13 to keep it at an odd number. Right now it's seven. If you add five, that's 12.

Katz: You don't -- he would be happy to change it so that that would be part of the committee. In other words you -- you don't have to add to his seven.

Blackmer: Nine or 11 would work as well with five coming from council.

Saltzman: I see what you're saying.

Katz: I think you've got a sense, so if you can come back with amendments, then we'd have to wait -- all right. The other issue was the -- I want to get back to the appeal. Can we have an appeal at the citizens review before -- if there's a criminal investigation that's going on, or a trial pending or actually in trial?

Blackmer: Meaning having a complaint investigated while a criminal case is going on against --

Katz: Or pending. And I think I -- because this -- we ran into this problem when the appeal was made to here, I think I suggested that even the piiac advisors not hear a case until we get through the criminal investigation. They're nodding, so my memory isn't failing me on this one. Is that something that the council clearly understands and can support?

Francesconi: I think it wasn't criminal as I recall, it was the civil suits where they're going to sue the city. I was the one --

Katz: Sorry, it was civil.

Francesconi: I was the only one that voted that we should continue with the case at the time. And I lost. Now, at the time, and this is why I had a little trouble with some of the testimony about the current status versus the auditor's, at the time the issue in front of the council and the civilian review committee for that matter was the adequacy of the investigation. As opposed to the underlying finding of whether a violation occurred. So it seemed to me that if all we're talking about is the adequacy of an investigation, we should proceed. But now with the change that the auditor is proposing, it's a different circumstance. And it would be hard, I don't know how we'd proceed with all of this, when there's another forum going on. I don't know how that would work. I guess I'd like some advice from the city attorney.

Kastings: Pete Kastings again. I'm not one of the tort lawyers and I'd like to talk with the tort section about this. My impression is if you have active tort litigation in process, trying to do a simultaneous investigation with different discovery going on at the same time would just be unworkable. And I would probably muck up the civil litigation.

Katz: And it probably would muck up either the -- you're right. Either civil or criminal.

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Kastings: Right. We can get more detailed analysis from the tort section.

Katz: That doesn't mean after the case is closed that the appeal can't proceed.

Kastings: Sure.

Saltzman: That's what happened --

Katz: There was another one before then too and then I finally advised the advisors not to hear any until -- until the cases go through the court system. All right. Let me get through some of the easy ones. There's the timeliness factor and I think we need to reflect that. It isn't a go order, is it -

Blackmer: It is currently in the police bureau, and we would enforce whatever the police bureau's g.o. is. Right now it's 70 days. And we would be reporting on that monthly to the police bureau quarterly to city council, what the timely necessary of investigations are. It's one of the management things we would be routinely reporting on. It's -- because we would have intake. So we do talk about performance measures in the code but we didn't get down to the specifics of saying timeliness. But that's one of the easy ones to do.

Katz: All right. Okay. I'm trying to get rid of the -- of some of the easy ones. There was a concern that as we move the intake from the police bureau to city hall, people felt that this was not a friendly place. And there was talk about having those -- the intakes available in neighborhood associations, what's your thinking?

Blackmer: Let me see if I can define intake in a way that everyone is clear on. Let me start first with what I call outreach. Outreach is getting those complaint forms out into the community as many places as possible. So that citizens can find one easily, fill it out, mail it in, or even phone in to the office. Whatever it takes to make that connection between our office and the citizen. Intake, though, is that critical piece where a citizen will call up and talk to us and say, this is what happened. We need to have someone who is a trained professional who is going to hear that story of the citizen and be able to figure out, okay, what went wrong here, what are the allegations that need to be investigated? And we cannot have anyone out in the community making those kinds of decisions because they don't know what the general orders of the police bureau are or what ought to happen in these cases. So outreach I want as far out as possible. I want it to be out there in neighborhood coalition offices and -- on the internet. The other part of it is that first contact needs to be in some place.

Francesconi: But where it's confusing is what triggers the process?

Blackmer: A citizen filling out a form --

Francesconi: What triggers this whole thing? The -- the form? Does the form is what starts the process?

Blackmer: A form or a phone call, any of those to contact us will trigger it.

Francesconi: What's the next step?

Blackmer: Then we will find a time that's convenient for the citizen to -- to view them to -- to interview them to understand what's happened.

Saltzman: And location.

Blackmer: If there's a particular problem with city hall, we would go interview that citizen there.

Katz: But if a citizen picks up the phone and calls, will you ask them to come back, or will you take the whole case over the phone?

Blackmer: Well routinely it's been taken over the phone. And it helps us because we can actually do a lot of the legwork and get it done more quickly. If a citizen has a problem with doing it over the phone, we will make arrangements to meet with them where it's convenient. The --

Francesconi: That's a good system. You get -- that's fine. I didn't know that's what it was. I didn't even understand that. I think you've got to clarify.

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Blackmer: It was the mayor's comment about city hall. I would hope we can overcome the stigma that people have about city hall. If they have a fear about the police and they have the same fear about this building here, then I think we need all to work harder. My hope is that there are a few people that may have a fear, but I see jada mae every couple days in city hall, and I think we make a welcoming place and I would hope we can even have more outreach. Especially people come here and get heard and listen to and treated with respect. I think that will work.

Katz: We even let them sing. The evaluation after one year, that's --

Blackmer: For sure. At the council's convenience. We can -- we'll be presenting quarterly report to council at whatever point you want to say stop, we want to do some serious talking about this. We will do that.

Katz: There was --

Francesconi: Mayor, you're covering all mine.

Katz: Let me finish this.

Francesconi: I'm still on that one. It's very important that that be in there and it's clear what the criteria is for evaluating this. The police and -- in their own evaluation include for a performance measurement the number of complaints filed. So we need it that specific. So you need to tell us ahead of time the evaluation criteria by which you're going to --

Blackmer: What I'd like to do is take the first quarter to develop all the measures we can think of.

Katz: That was commissioner Sten's request weeks ago that those benchmarks be there so you can make that --

Blackmer: I'd like to develop the measures, start gathering the data and then have you set targets. I don't know -- a lot of these measures haven't been gathered up to this point and it's hard for you to say, well, what's a reasonable level of satisfaction from interaction with ipr? I'd like to be able to at least give you some benchmarking points to work toward that -- but a starting point as well. So telling me I need to do performance measures is not -- is kind of an invitation to over -- being overwhelmed.

Katz: Not a tough sell at all. As you know, we're sort of the leaders in the country on that one. Citizens. There was a definition -- the fear that citizen didn't mean --

Saltzman: Person.

Blackmer: I use "citizen" interchangeably. In fact I was a little amused because they use citizen the way I use citizen, which is any person who is in our community. Whether they're visiting, whether they're here on a temporary work permit, whether they're registered to vote or not. We talked about citizens and it's a highly respected title, and I certainly don't want to string a lot of other things on to it because --

Katz: You can use "person." if you use "person" there's a definition of that in the city code that would apply automatically by default.

*****: Person review committee? [laughter]

Hales: Cute.

*****: Where do we start and stop?

Katz: I just threw that out. Does anybody have a problem with the use --

Hales: As long as we have that understanding that it's the popular use of the word not the ins definition.

Katz: Right. Okay. Now we get to two little bit more difficult ones. One is the suggestion of the choice of who -- that the applicant can choose who it -- who investigates the case, whether it would be iad or ipr.

Blackmer: From my standpoint I think that becomes a management problem. Trying to ramp up two different investigative bodies to handle the workload that would come in based upon the

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preferences of since. I think citizens would problem -- citizens. I think citizens would probably lean toward having nonpolice do an investigation, but my hope is that if you did a blind taste test, the citizen would afterwards wouldn't be able to tell the difference between something that iad did under our supervision and something we did. I feel like we are going to ensure quality investigations and we can get them there. So it will cost more because my sense is independent investigations moves us down that road toward more attorneys and the -- I think mr. Norton talked about the needlessly complicated code. I don't know how complicated it would be if we went to independent investigations.

Katz: We don't have -- part of yours is taken out of contingency.

*****: So that is a concern.

Katz: Holler if you want to continue to pursue. All right. Let's get to probably the more difficult one, somebody suggested the audit -- there's two. One is the review of deadly force case, and one recommended the audit of completed investigations of deadly force case. Cases.

Blackmer: Well, I guess when I began this process, that was one of those elements of -- that was one issue that I called the deep end of the pool. And it's one that I would love to be able to make a commitment that we could do something to stop that from ever happening again. But I don't frankly know how to get there. It's for me it's deeply emotional issue, it's charged with lots of legal liabilities, it's charged with criminal issues, it's charged with a lot of financial costs that I couldn't even anticipate. And for me, it was one of those issues that I felt like I didn't understand exactly how we could turn something like that into specific recommendations to prevent it from ever happening again. I think we can learn my emphasis on prevention, trying to intercede and offer ways for officers to learn how not to escalate, how to prevent 40 getting to that last deadly step is --

Katz: Let me poke on this. There's a difference between actually conducting an investigation and auditing the investigation. The -- let's take the tragic -- closed investigation. Let's take the tragic death of mr. Poot. The investigative reports are public. The only thing that's not public right now is the grand jury report. And that -- there's nothing we can do about that. There may be a federal report on that that would also be public. I've been asked to participate in a commission for lack of a better term, to -- with representatives from all the agencies that were involved in this particular death. So that they can review the same information that's now public. Unless I missed the point and there's additional information that people want. And then for a discussion and a recommendation, and reviewing the recommendations with the bureaus or the agencies involved to see what changes policy changes we could -- we can make. As a matter of fact, most of the bureaus and agencies are beginning that work. So that's doable. Now, in this particular case there's a lawsuit that's pending. So it's making -- that's making it a little bit more difficult. But let's assume there was no lawsuit pending. Is that something that you would feel comfortable having the citizens take a look at?

*****: That --

Katz: You don't need to answer today.

Saltzman: From an auditing perspective.

Katz: Basically what we would be doing if the commission or whatever you want to call it, was --

Saltzman: Every shooting or death in custody.

Katz: I didn't say --

Blackmer: That's my next question. Because then it is going to consume resources, because approaching those trying to understand all the elements of it, trying to glean from it those things that we can take back to prevented that in the future is going to be a lot of work. Each one of those cases is complex, it's going to have a huge amount of paper to go through, it's going to require us to really focus in on it. It's not -- it's -- in some ways it's like all the attorneys that are assigned to

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death penalty cases on both sides. This is such a serious thing that you actually have attorneys who do nothing but that. On the state side, on the public defenders side and to that extent, this is a whole different kind of issue than a citizens complaint about, you know, interaction was an officer that they're around to complain about afterwards.

Katz: Let me ask another question. Is anybody here from the police bureau?

Francesconi: The chief is here.

Katz: Chief. I didn't see you. Come on up. Don't -- just stay there. Don't go. What is the -- bring a chair. Who does -- what is the policy now on shootings, deadly force cases?

Kroeker: The investigation of course is conducted by a joint team that's made up of police bureau people and others. But there are other people who investigate the cases as in when the fbi steps in and they decide to do their independent work.

Katz: Do we --

Saltzman: Is there a grand jury too? Automatically?

Kroeker: Yes. The grand jury, when there's a fatality. The grand jury has a decision having to do with the cause of death.

Katz: Who investigated, in addition to the grand jury and the iad work now on mr. Poot, was it --

Kroeker: The assigned investigator was a member of the detective division.

Katz: Wasn't there another team that was put together to review that, or am I thinking of something else?

Kroeker: A regional --

Katz: A regional team. So there was our -- somebody representing the police bureau and somebody representing other agencies.

Kroeker: That's correct.

Katz: That's what I thought. Thank you. What's the sense of the council on that issue?

Saltzman: Well, my sense is that part of the old piiac had the ability I think to look at issues from broad policy perspectives.

Katz: Yes.

Saltzman: And that -- I would envision something that would say they don't necessarily have to review every case, but if the committee chooses to review a case, and I would support auditing only of closed investigations, I think that's something I could go for.

Katz: What's the feeling of the council?

Sten: I agree.

Francesconi: I guess we also have to be clear on what are we auditing. Let's use the poot case for an example. First of all, the details of what's happening and whether the officer violated a code, a decision -- it's very important to me that interdisciplinary team be involved, and i'm glad to hear the east county crime team is involved, and it's presented to a grand jury. So then we do that and it's after the fact. What are we looking at? If we're looking at the behavior of that officer after it's been investigated for all this, i'm not so sure. But if we look at some major policy issues that are addressed by the policies and practice of the police bureau, we need to do that. In fact --

Hales: I thought --

Francesconi: There's two different things. You could have an officer who is following proper protocol, but the protocol is wrong. And the other is you can have an officer using excessive force. There's two different things. In the poot case, for example, I already have read the police reports myself. And I do believe the council has an obligation to look at broader policy questions that have been raised in that case. And I think we need to do that, regardless whether you get involved or not, gary.

Hales: That's a way to get there, though.

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Katz: In many cases hopefully it will happen before they even get there. But -- because I don't think we can leave some of these issues hanging that need to be addressed. But yes, you're right, that is another way --

Hales: I'm assuming this, no grand jury is going to be dissuaded by a general order. Right? In terms of whether a crime was committed or not, the grand jury is going to look at state law and the incident and make a deliberation about -- make a decision about whether there was probable cause and go forth into a prosecution. The fact that there may be a general order that says do this or did that under these circumstances is not going to be taken into account, right, by the grand jury.

Blackmer: For some reason they wrote a letter to the mental health system about problems there, so they went beyond --

Hales: I'm not saying will they notice general orders, i'm saying will they rely on them to make the decision? I don't think so.

Sten: They have to. They have to take night account. Whether the officer was following orders or not.

Katz: They have --.

Saltzman: -- looking at the general orders after the fact.

Hales: That's what i'm saying. At some point there's a separation between performance and policy, which is what you were getting at, and we need to get at the policy.

Sten: There's a lot of hand wringing that can be done about this. Once -- I don't think you can have a dual investigation, there's no way on earth if something did go wrong that was potentially -- potentially criminal that that wouldn't be compromised. Once that is said and done, if the seven, nine, however many they are the citizens in the city who know the most about police procedure, having them take a look and think about it and make whatever comments they find appropriate seems to me to be right on the money.

Katz: We have -- I want to bring, since this is an issue that i've had conversations with robert about, maybe want to bring -- will, do you want to comment on this or not? Either one of you. Before they get up here, the other -- the problem -- so let me say, I have -- i'm going to probably have that happen, but then I have a law case and a lawsuit against the city. And now you're compromised again. So we have to be very careful and keep that in mind.

Blackmer: That was my question. If there is a parallel lawsuit going on, you would -- what's our role?

Katz: The city attorney has basically told us what our role is on that. And it's -- and it's not to participate. But that the policy issues need to be -- need to be dealt with. We can do that independently. Okay. Will, do you want to come up and talk about this issue?

Aitchison: -- right now. First of all, the east county major crimes team takes a look at -- they do the criminal investigation in deadly force incidents are treated by the police bureau and the major crimes team as potential homicides. With all of that seriousness. Secondly, there is an internal review that's done by the chief's office of all shootings. It goes to the review level committee in the police bureau and they are reviewed there. So there's that internal review.

Saltzman: That's all shootings?

Aitchison: That's my understanding.

Saltzman: Not just fatal shootings? All?

*******:** That's my understanding but I don't sit on that committee --

Hales: Chief is nodding yes.

*******:** Any time there's a use of deadly physical force by a Portland police officer, it is reviewed by a review level committee of the Portland police bureau in every case.

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Aitchison: The third thing that can happen, does not happen in all cases, is that internal affairs can only -- open an investigation and potentially discipline an officer for the use of force. That has happened, one of the individuals you fired, it happened with respect to -- so it has happened. The fourth level of review is the district attorney's office reviews the case for potential criminal prosecution of the officer. The fifth level of course is the grand jury that is convened in all cases where an individual has died, and the grand jury is looking at the case not from the standpoint of determining cause of death, but from the standpoint of whether or not the officer committed a crime. In using the deadly force. The sixth level of review that exists is that the federal department of justice has on a national basis as a matter of policy reserved the right to review and use the fbi to review all officer involved shootings in any particular jurisdiction anywhere. And then of course there's the inevitable, almost inevitable, civil lawsuit that exists as well. So you really have seven different places these are being reviewed. I just wanted to point that out and turn to robert for answers on policy issues.

Katz: Okay. Thank you, will.

Robert King, Portland Police Association President: This is an issue obviously it's not a matter that's directly contained in the independent review charter now that's here before us, so it's an additional matter. I know this is -- our sense is that there are, as will has just indicated, there are numerous layers of review. The -- i've heard repeatedly that the grand jury proceeding is closed. And that it is secret. And that it is not one which the community can look in on. And in fact in the recent shooting, the mejia poot shooting it has become I think one of the things i've heard a number of people say, that it -- in that case it's a closed proceeding in the -- and the community doesn't get to look in on it. What's important to me as the representative for officers and the officers involved in that is that the grand jury finding was that there was no criminal culpability. There was no true -- 42 witnesses came before the grand jury. The grand jurors are citizens. It is wholesale. There's nobody in this room that can't say it's not. It's wholesale citizen review. If you have a valid -- a valid driver's license you're on the grand jury. So they find no criminal wrongdoing on the part of the officer. We think that there's -- our sense is these are obviously on a community level the most serious matters, the use of deadly force by officers, and clearly the case in point before the council, and I think in the mind of the community right now, is the mejia poot shooting. I just want to express that the use of deadly force by officers is the most serious matter that they experience in their work as a police officer and in their career. I have reservations and concerns about the addition of the review of officer involved shootings in the ordinance because I think simply largely because I think it's adequately reviewed at this time.

Katz: Let -- I agree with you in terms of the investigation. But the policy issues that -- for example, let me give you two very simple policy issues. We -- if there is -- if we -- we should have notified the council general, the mexican counsel general. That's -- and that's a policy issue, I don't know if we have a general order on that, but that's something we should have done. And the other issue is, the manner of bringing weapons into a mental health facility. And in this particular case, they permitted that to occur. We probably should -- that's an issue that we need to address. Policy issues such as that, is -- do you want to think about that since it's not before us, and i'd like to maybe spend a little bit of time thinking through that with you and the council, because i'm not opposed to having people look at the policy issues. And then the council or the chief makes a decision whether this is a workable policy or not.

Sten: I think it's -- it's going to be important to have a further discussion about this. I think just -- my initial reaction, mayor, to your comments is that those are two policy issues that stem from the case in point. And so with respect to those policy changes or the council's look at those policy issues, it's the shooting. It's the use of deadly force by the officer that stimulates the larger

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discussion about what's the policy. Why are we taking guns into mental hospitals, or all the other attending issues having to do with what happened on the tri-met bus. The problem I think is that we were justified, officers were justified in their use of deadly physical force in the hospital. So on that scale, on that score, the officers acted and behaved appropriately. So I guess the point I'm trying to get at is, in the shooting now, in the u.s. Of -- use of deadly force, the officers acted and behaved appropriately according to the law and their training. And yet that becomes -- this case becomes sort of the case that's in our minds as we think about the review of other deadly force cases. I guess what I'm saying is, it would be easier for me to say and to -- see and understand that you want to do a review of deadly force cases in a case where deadly force was inappropriately applied and one of the things we know from -- I know from my experience is that consistently now as we look back through the years, our officers are in fact using deadly force in a way that's consistent with both the law and the policy of the Portland police bureau. So -- I'm not sure if I'm making my point well, but --

Saltzman: It takes a specific situation to trigger the broader policy question. But we're talking about confining the review strictly to the policy questions. It does a specific incident is usually what triggers these reviews, but I think the commitment here is that the roll of the review -- role of the review committee would only be confined to looking at the policies and making recommendations on that. And I think would it help in the poot situation right now we're could being together all this response mechanism, putting together these players. I think it may help to have this committee able to look at this issue rather than having to sort of cobble together a task force to know the review committee could be a place where that could happen.

Katz: We're not going to make that decision today, I don't think. But I want the chief to come up because I want the council to know what he's thinking in terms of that. Thank you, gentlemen.

Sten: We can go around, I think I understand this one. I think I understand the different points of view. I don't think that we should say this committee automatically looks at every case, but I think this committee should clearly be authorized to look at those cases on the policy level after the fact. The -- I think there's a lot of room to have citizens debate whether or not the policy is right, which is a totally different question than was the policy followed or was there another policy available. And I think it's self-evident that over time some policies need to be changed and unless there's just a willingness to let citizens debate that in a fairly aggressive fashion, as a political person who's in the middle of these conversations, you cannot ever bring them to a close in any form. So I think we need that debate and I think it's inevitable we'll have citizens commissioners on -- commissions on this issue. I'm fairly strong on this one.

Katz: Let me --

Francesconi: I agree with that. Now we're talking about the policy. And you're going to have these debates anyway and you're going to have these forums anyway. It's better to have an educated group look at the policies.

Katz: Before we get gary, hold off, somebody make room for the chief. He and I had this conversation --

Sten: I think we understand --

Katz: Just a minute. This is serious issues. I want you to know --

Sten: I've heard this.

Katz: I want you to know what's being done and how, and actually it was the chief who suggested that we do sit down together with all the players in the community with a commission to discuss this as opposed to have him come up individually very early on and to make those recommendations, because he wanted the community involved. So the question that I have, and I'm not disagreeing with you, and -- I want to give the chief the opportunity to tell us what he was

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thinking about and then get a consensus from the council, and I think I have the consensus, whether you want this done. The question then is, do you want it done with the -- in the citizens review or do you want to address it somehow in some -- somewhere else?

Kroeker: When we address the policies of the organization and the review of them, are they current, are they applicable, are they relevant, do they fit the law, do they match with our efforts in community policing and our strategic plan. This input can come from any source. And does come from -- for example, from our advisory groups. We have a dozen advisory groups that meet and talk and recommend to us adaptations in the policy. And so but -- but when it comes to a situation that is -- has occurred, a moment that is of trouble concern to the entire community, sometimes there is a need to have a group of people interagency gather as we've talked about and explore what is it that happened from the very beginning of that to the end, and track from this test case an approach whereby we may improve our policy, or even legal implications. Perhaps make some changes in the law or policy or procedures or training. And then have those reviewed in the years that follow and see how it affects those that the background -- in other words, the environment that led to this moment as Robert King aptly described as a very sequestered moment, where an officer acted. Was that moment a proper one, there is a channel. There's an approach there that takes it -- in all shooting, not only all shootings but all use of force incidents come through that same channel to make this determination and a recommendation to me. Was this proper under the bureau's policies. So when it comes to then later reviewing things in terms of -- or in the shadow of policy adaptations, we would welcome that input from anywhere.

Katz: Okay. That's what I wanted --

Blackmer: This discussion fits about the review of the shooting incident it should be explored carefully --

Katz: That's what I wanted the council to hear, that if the policy review is very appropriate, the question is, is it the citizens review that wants to do it or do you want to think through how else we do it? That's up to the -- and then what does it mean for Gary this.

Blackmer: I have a concern about what I would call patchwork policy making here. Which is that we have a charter and a code that's a patchwork of policies that we can kind of sometimes put a name to and say, the reason why we passed this was because of such and such happened. And I think that gives us some feeling of come -- comfort that we've done something to prevent that from happening again, but it isn't a systematic look. And I'm always concerned about taking one case and generalizing and making broad policies on one case. And my sense is a lot of times there are many decisions that are made. We make 99 of them right and one of them wrong and so we'll put that one wrong one in as policy, ignoring the other 99. And that's my concern about taking these high profile cases and backing down into policy making. I think it's important to look for those patterns that are throughout the organization and then make those policies that stop it from getting to --

Sten: I agree. That's why I think it's all the more important, if it becomes unmanageable we're going to be looking at this thing regularly. Then that's a totally different issue. But that's 80 think it's critical that these skins -- citizens who you're going to screen and who are going to look at the 100 cases, take a look at these ones as well, because otherwise it's the court of public opinion. That makes those policy decisions. Because that's what's happening. We have no forum whatsoever, I hadn't realized I felt that strongly about it until hearing this, because there is no other place to do it. I think you're making the argument for why this smart bunch ought to take a look at some of these things. If that becomes their whole task and they can't dot 99 cases, I agree. It's not appropriate. But I don't know whether this is going to be one or everyday that they've got something they want to look at.

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Katz: As I said, we were going to do this anyway, now there's a little wrinkle to this, so we need to consider that. Did you want to add anything? Was the sense of the rest of the council? To my right here. Not politically to my right, but -- [laughter] oh, you don't know.

Hales: I don't know about the politically part.

Katz: Why don't -- Gary, so you would have the ability to do that and what you would have the ability to select some of those cases and make a decision on what cases?

Blackmer: I guess I would need a little more guidance on what the criteria would be for selection.

Sten: Would I give that power to you and the committee. I wouldn't compel you to look at these, but I would say if you're really a citizen review board you ought to not be precluded from looking at deadly force cases after they're over to see how they line up with everything else you're thinking about. You ought to have the ability to look at them.

Katz: And many of them actually resulted in changes in policy. Though that was not done externally, it was done internally. I think commissioner Sten is absolutely right. I think that would clear the air on a lot of the issues that are still percolating around.

Blackmer: And I guess -- I approach this as a problem-solver. And that I think public involvement, engagement and all those things are important things and I recognize it's critical that we somehow get an understanding and we get some closure on what happened in the incident and feel like we've done something that it will never happen again. And I'm all for that. But I just don't know that we've got a mechanism here that will manage that kind of an event.

Katz: Chief?

Francesconi: And I agree with auditor Blackmer. One thing I would like to point out, just from a standpoint of transparency and explaining what it is that the member -- the senior members of the police bureau actually do in the review of these cases, as these are discussed, including these use of force -- for example, the use of a less lethal weapon, as these cases are presented, command officers come in, they discuss this case, the review level listens and they have the reports and they reflect on that. Right there already is a policy adaptation step. Because those commanding officers are asked the question, what should this incident teach us? Are there some adaptations we need in our policies, in our training? Is there some technology that we should consider acquiring that would really work better at -- and help us in this kind of a situation? So they go through sort of a grid in that decision-making, and I have taken from this discussion already several adaptations that we have made in -- and are making in policy statements. So I just want to make sure that you all know that that -- that takes place in the organization, not to say --

Katz: Right.

Saltzman: I guess our point is nothing should preclude this committee from also taking a look at the policy issues.

Katz: And he agrees.

Francesconi: For example, Piiac already -- Piiac has looked at the issue of translation and culture, they've looked at are we translating things that whole issue? And they've looked at the issue of mental health. Looking at those issues, and seeing how it fits with all cases, makes sense to me after the fact. Because they will have already -- I guess I shouldn't be looking at you, chief, but I've been looking at you, Gary. That's all we're saying. There's certain issues out there that we're aware of already. Piiac's flagged them. So we want to see from a policy standpoint not from the officer of conduct standpoint, whether there's more that needs to be done. In those two areas, for example.

Katz: Gary, I think you hear from the council -- I'm not sure we are going to leave the criteria to you, the workload issue is very legitimate, and you need to keep that in mind. But I think you've heard from the council, bring back some language on that score.

Blackmer: I will work on that.

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Katz: Remember, it's policy only. It is not the review, or even the audit of these cases. He'll work on it. He's not happy. Yes?

Aitchison: Mayor, i've been listening to this discussion -- I've been listening to the discussion unfold. It started off with the notion I heard from commissioner Saltzman and perhaps blending a little bit with commissioner Francesconi, that what you are contemplating is an audit of closed cases to determine what policy issues arise from those that are unrelated to the proprietary or impropriety of the underlying conduct by the officers. And --

Hales: That maybe derived regardless of the propriety or impropriety.

Aitchison: Correct. That there will not be a recommendation made as to propriety or impropriety. I just want to make sure that if you are contemplating that, which as robert told you is a new idea for us, that we have to think about and think about where we are, we would urge you that the language of the ordinance be carefully written to make sure that that's what it is. You know, we don't want to go down the road of seattle with public inquests and the damage that you can readily see that that does to the community. We want to make sure we don't go down that road and that if that's what the purpose is, the language is specific.

Katz: Okay. We've beaten this one. That's fair enough.

Aitchison: Can I say one last thing?

Katz: Sure.

Aitchison: We came today with respect to the ordinance not opposing it and supporting much of the work that's been done, and participated really thank gary for so much of what he's done along the way. This is new, and I will say this is of -- as the representative for the officers and sergeants, just speaking not for the community, but for police officers and sergeants in Portland, Oregon, this will raise a substantial concern for them as they now are already in a place where they're in harm's way using deadly force in defense of their lives and the lives of other innocent citizens and now this -- this new discussion with respect to policy is -- I know will be of concern. It is to me. And we'll obviously have more work to do in discussions on this matter.

Katz: But if it is -- as will said, totally divorced from the incident related to directly to the officer, I don't think that would be a problem.

Saltzman: You have to factor that in with the eight levels of review that happens anyway, and i'm sure that factors into their --

Katz: Work on language for that. Double-check to make sure that the concerns that dealt with and that we're -- you've reflected it's policy issues as well. And bale probably beat you to all of those. But that's all right.

Blackmer: Let me close with one other --

Katz: On this issue?

Blackmer: Well, it ties in a little bit. Someone raise the issue of lack of will in this proposal.

Katz: Lack of will?

Blackmer: Will of real change. That this is compromise, this is kind of not really going anywhere. I think it's a profound statement of will that I would step into this. This is not something the charter requires me to do as an auditor. And I stepped into it with the idea that I could make a difference. And I took what I know, what i've learned from my career, and what I think I can do to move an organization and put it in here. And I know it's not going to happen overnight. And I know it's going to take years that we're talking about culture, policy, expectations, training, and that's a long-term commitment i'm making. And I think that has -- has a bigger payoff than moving on something that is in the headlines. And that's where you have my commitment. That's where I think I can make the biggest long-term profound difference. And so to that extent, this troubles me that i'm going to be drawn into issues where I don't know that I can

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make that much difference. I -- if I think I can, I will. But those issues you raise are issues that come upper day in interactions between police officers and citizens. In terms of language, in terms of cultural sensitivity, in terms of all those things. So I guess I don't know that we're necessarily going in different directions. It's just that I feel like getting drawn off onto these cases undermines my ability to do those other things. Which I think have a more profound impact.

Katz: Okay. Let's -- thank you. Don't go away. Stay here, but -- I think I kept list of what I thought were the key issues that were raised. Gary, are there any others and then members of the council jump in.

Blackmer: Would you like to contemplate an election? One of the people recommended that we put all this onto a ballot. The next possible one would be march 12th, 2002. It would cost the city money to get onto that one. The next regular election is may 21, 2002. If pac 2002 gets its signatures they -- there would conceivably be three proposals before the citizens on what would be the appropriate code that essentially would be put for you -- before you to decide upon. The way the charter I believe is written, it says that whichever one gets the largest number of votes is the one that is put into the city code. So that's just another --

Francesconi: We have an obligation to do what we think is right. That's my view. And that's our responsibility. And we could be wrong. And the voters could say we're wrong. And that's -- that's a win-win situation. We can do what we think is right and the voters can do something else. But I think we have an obligation to do what we think is right.

Katz: I tend to agree. I was in the legislature, and I saw attempts to do this, because people weren't willing to make decisions. There's some issues that certainly need to go out for a vote. But I think these very complex issues that we're discussing right now, and to have three of them on the ballot, and our responsibility I think is here to make those kinds of decisions, and if it doesn't work, we're going to change it. I think you've heard from a lot of people that if this doesn't work, there's only one other way to go.

Sten: I would -- i'll make a short version of this, but i've been really through the whole course of this looking very closely have -- and have been talking to a lot of people. The one thing i'm amazed is how many people are certain they know what will work, because i'm not. I think some systems are better than others but I haven't seen one I would be that proud of. I've seen some that are better than ours for sure, and my point of view is this system has a better chance of working for a couple reasons. One is gary's work on it, and two is that I think in the long run, I think part of this is oversight, but the bigger part is cultural change. And trying to build a cultural -- culture of cooperation between everybody in the community. I think this has more chance of that if the police stay involved. If, however, and the reason i've been asking gary for benchmarks, after the first year I can't see evidence of that, i'll vote for the majority system. But I think that's a better way to go because it gives the chance to correct it. If the majority system is more polarized and gets less accomplished, which is my fear that it will, it's going to be impossible to go back. So I am not going to support an election because this is going to work or i'm going to support the majority system in the time that i've got on this council. So that's where i'm coming from..

Hales: I would also add a plea to the folks concerned we're not doing enough and we're not going far enough. That is, I believe people make more of a difference than any system do. And if the chief hears the message of this discussion and works on training and other issues in the bureau, and if the review system that gary's stepped up and tried to make work and created out of his research works, that's great. But i'll tell you this, is going to sound like a flippant comparison, but I sit on a committee that has nothing to do with this, called jpact. We're building 3 light rail rains right now. If systems produced decisions as opposed to people producing decisions, we wouldn't be building anything or we'd be building freeways. So systems are not the answer. Systems, you've got to

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have a system and this system is good enough. But people make more of a difference. And a police bureau that's committed to reform and an auditor who's committed to oversight are a much more powerful force than any system that we could devise or anybody else in the community could. I'm not being simplistic about that. Everything i've had in my experience says that's true. If this doesn't work, we'll try something else.

Katz: Commissioner Saltzman, do you have anything -- then I think we'll be through.

Saltzman: Okay. First, a straightforward understanding, if an appeal comes to council, who presents that? You or iad, or a citizen?

Blackmer: The way it -- iad, ipr and the citizen can all be at the -- at this table.

Saltzman: I meant the citizen on a committee. Like piac in the past. Right now iad presents the case from the police perspective. So who would actually present --

Blackmer: We haven't gotten down to the logistics of how that will work. My sense is I would like to have the ipr director there to talk about the investigation and provide some assurances regarding quality, thoroughness, timeliness, all those things. Having the citizen there to be able to talk about their experience, love to have the office they're as well talking about their perceptions of what happened. And having iad or even preferably the commander who was the one that made the decision about the finding at the table.

Saltzman: So still the principle presenter would be iad, even after the committee --

Blackmer: It wouldn't have to be. To me --

Saltzman: You you're saying you haven't figured it out yet.

Blackmer: No. And I think it's -- there weren't any rules on how piac was put together either in terms of who presented that kind of information. So a lot of this is a broad framework and we would need to get that more refined. I would almost prefer to have ipr at least introduce the case and describe --

Saltzman: That would be my preference too. Especially since it's gone on appeal and the citizen committee is recommending it. Okay. The other question I had was, again, cop watch made a statement which I guess I thought this was the case, I thought the citizen committee could ask ipr to do further investigation. I thought that was part of the parcel. They're saying that's not the case.

Blackmer: In the early proposal we had two levels of appeal to the citizen review committee. There are some concerns about all the levels of appeal that I think someone raised that it was too many levels. So from our standpoint we felt like we -- if we have staff that is reviewing the investigation, or tagging along on the investigation or whatever, that by the time we are done with it, the quality investigation really should not be an issue. We will by the time we are ready to send that on to the committee for its appeal process, those questions would have been answered. We may say, you know, they didn't hit all the witnesses, but it was -- the witness moved away and there's just no way we can get testimony. But this is the best we've got right now.

Saltzman: In your original version they did in fact have that ability to recommend further --

Blackmer: Right. But one of the other pieces i'm looking for that i'd like to see is standards on quality of investigation. That everyone is on the same page. That's one thing, when the citizen -- the piac members talk about lack of training, one of the reasons is there's nothing to train them from. There's no standards on investigation. That's one of the early things we want to develop is an understanding of what we expect of a good investigation. So iad knows where we're coming from, citizens know what they should be expecting, and everyone's on the same page.

Saltzman: Okay. That's it for -- I do have two amendments I want to suggest. And I don't know if we vote on them now --

Katz: Why don't you throw them out so that --

Saltzman: The first one.

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Katz: If you want to work on them, work with them with Gary and then we'll bring it up and we'll take a vote on it.

Saltzman: I suggest we do delete under the situations -- delete the word "vexatious." I think trivial and --

Katz: I think we can --

Saltzman: And I've never heard of that word until reading through this ordinance. I think -- that's the easiest one. This one goes back to my original question. Something that doesn't set well, I've heard the arguments about if IPR is doing the investigation, why they should filter the questions through the IAD investigator. I've heard all the question and I harken back to what Rudy said, it's ultimately a policy decision. So I would like to suggest that -- what I think is essentially a compromise. Which is on paragraph d, 3.20.120-d, we change the two sentences to say, when bureau personnel are being interviewed by IPR personnel, the IAD investigator may direct the employee to answer the question. So we get rid of the fact that IPR can't ask the question directly, we preserve the right of the IAD person to compel an answer to the question, and preserve all the McGarrity protections. It doesn't sit right with me that IPR can't ask the question directly. I heard the arguments but I also heard it's a policy cam. This is the most severe form of investigation, the independent investigation. We should preserve I think the right of the investigator, IPR investigator to ask the question directly. And give the IAD investigator the -- he'll be sitting there in the room so they can direct the employee to answer the question.

Blackmer: Well, I guess my strategy was I'd like to keep the lawyers out of this as much as possible. Because -- and if they said it's dangerous to go there, I would figure out other ways in order to ensure that we got our questions answered. If we felt like we were not getting those questions repeated properly or we weren't getting the cooperation, I would be going to the captain, I'd be going to the deputy chief, the chief and then I'd be coming to you. If it wasn't working. So I think there's a lot of other avenues for us to make sure this works without basically going to the point of where attorneys are saying, we don't know exactly what's going on. I can spend a lot of time trying to figure that out and I can do that, but from my standpoint I raised the very issue water ease a 0 daily in San Jose and she brushed it off and said it's not a big deal.

Saltzman: I understand, but it sounds like it's within our realm to do.

Katz: We'll bring it back. There isn't much that we've asked to you bring back, but there are some things, and what we'll do is we'll bring those amendments back next -- and then vote on them if we can.

Francesconi: On that last one, I want to be clear. On the policy side, I don't want to do anything that jeopardizes the ability to criminally prosecute. I disagree. So if we're going to do that, I want the legal opinion knowing, because I think we have to preserve that, frankly.

Katz: Okay. So this hearing is closed, and the council will work on the amendments. Thank you, everybody. Gary, thank you very much. We didn't thank you formally, but I know it's been difficult for you. Auditors are usually hidden in a closet somewhere, and do performance audits and all the auditing work that nobody else wants to do. But you've been out there in front and getting a lot of heat. So truly appreciated. We stand adjourned.

At 6:37 p.m., Council adjourned.