



CITY OF
PORTLAND, OREGON

**OFFICIAL
 MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **22ND DAY OF FEBRUARY, 2017** AT 9:30 A.M.

THOSE PRESENT WERE: Commissioner Eudaly, Presiding; Commissioners Fish, Fritz and Saltzman, 4.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Lauren King and Jason Loos, Deputy City Attorneys; and Jim Wood and Mike Cohen, Sergeants at Arms.

Item No. 171 was pulled for discussion and on a Y-4 roll call, the balance of the Consent Agenda was adopted.

The meeting recessed at 9:34 a.m. and reconvened at 10:42 a.m.
 The meeting recessed at 11:40 a.m. and reconvened at 11:55 a.m.

COMMUNICATIONS		Disposition:
161	Request of Justen Harn to address Council regarding introduce Open Signal's new brand and services provided to the community (Communication)	PLACED ON FILE
162	Request of Rebecca Burrell to address Council regarding Open Signal a media arts center (Communication)	PLACED ON FILE
163	Request of Lisa Faust to address Council regarding Open Signal's recent growth and history with the Mt. Hood Cable Regulatory Commission (Communication)	PLACED ON FILE
164	Request of Laura Lo Forti to address Council regarding partnership and growth opportunities with Open Signal in the community (Communication)	PLACED ON FILE
165	Request of Kalimah Abioto to address Council regarding Open Signal (Communication)	PLACED ON FILE
TIMES CERTAIN		
166	<p>TIME CERTAIN: 9:45 AM – Portland Streetcar Annual Report for 2016 (Report introduced by Commissioner Saltzman) 30 minutes requested</p> <p>Motion to accept report: Moved by Fritz and seconded by Fish. (Y-4)</p>	ACCEPTED

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167	<p>TIME CERTAIN: 10:15 AM – Assess benefited properties for mast arm traffic signal and utility undergrounding improvements in the N Vancouver Ave and Cook St Local Improvement District (Hearing introduced by Commissioner Saltzman; Ordinance; C-10047) 15 minutes requested</p>	<p>PASSED TO SECOND READING MARCH 1, 2017 AT 9:30 AM</p>
168	<p>TIME CERTAIN: 10:30 AM – Reappoint Adam Green, Kate von Ter Stegge and Steve Yarosh to a pool of community volunteers to be available to serve on the Police Review Board for terms to end February 21, 2020 (Report introduced by Auditor Hull Caballero) 30 minutes requested</p> <p>Motion to accept report: Moved by Fish and seconded by Fritz. (Y-4)</p>	<p>CONFIRMED</p>
169	<p>TIME CERTAIN: 11:00 AM – Improve land use and other City regulations through the Regulatory Improvement Code Amendment Package 8 – Technical Amendments (Previous Agenda 158; Ordinance introduced by Mayor Wheeler; amend Title 17, Title 24 and Title 33) 30 minutes requested for items 169 and 170</p> <p>Motions for items 169 and 170 were moved and seconded on February 15, 2017 for vote on February 22nd.</p> <p>Mayor Wheeler was present February 15th and absent February 22nd.</p> <p>Commissioner Eudaly was absent February 15th and present February 22nd.</p> <p>Commissioners Fish, Fritz and Saltzman were present both meetings.</p> <p>The motions are numbered in the order they were made and votes were taken.</p> <ol style="list-style-type: none"> 1. Motion to adopt amendment to Item 3, Regular Lot lines to remove the requirement that the adjusted property lines to be at a right angle to the street; as stated in Wheeler 2/9/2017 memo: Moved by Wheeler and seconded by Fritz. (Y-4) 2. Motion to adopt amendment to Item 33, Definitions – Seep or Spring to remove the amendments to the stream definition; as stated in Wheeler 2/9/2017 memo: Moved by Wheeler and seconded by Fritz. (Y-4) 4. Motion to add Inclusionary Housing Minimum Parking Requirements as stated in Wheeler 2/9/2017 memo: Moved by Wheeler and seconded by Fritz. (Y-4) 5. Motion to amend 33.930.025 Measuring Development Standards as stated in Saltzman 2/14/2017 memo: Moved by Saltzman and seconded by Fritz. (Y-4) 6. Motion to correct Title 33 Table 825-1 as stated in Eudaly 2/15/2017 memo: Moved by Wheeler and seconded by Fritz. (Y-4) 7. Motion to accept Fritz amendment to 33.710.030 Commissioner, Committees, and Boards Generally as stated in 2/15/2017 handout: Moved by Fritz and seconded by Wheeler. Motion withdrawn on February 22, 2017. <p>February 22, 2017</p> <ol style="list-style-type: none"> 8. Motion to delete Planning and Sustainability Commission amendment 15, Commission Term Limits, 33.710.030: Moved by Fritz and seconded by Fish. (Y-4) 	<p>PASSED TO SECOND READING AS AMENDED MARCH 1, 2017 AT 9:30 AM</p>

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<p>170</p> <p>3. Motion to correct several minor typos and/or errors identified by City Auditor; as stated in Wheeler 2/9/2017 memo: Moved by Wheeler and seconded by Fritz. (Y-4)</p>	<p>Improve City tree regulations through the Regulatory Improvement Code Amendment Package 8–Technical Amendments (Previous Agenda 159; Ordinance introduced by Mayor Wheeler; amend Title 11)</p>	<p>PASSED TO SECOND READING AS AMENDED MARCH 1, 2017 AT 9:30 AM</p>
<p style="text-align: center;">CONSENT AGENDA – NO DISCUSSION</p> <p>171 Appoint 25 members to the New Portlander Policy Commission for two and three year terms (Report introduced by Mayor Wheeler and Commissioner Eudaly) Motion to accept report: Moved by Fritz and seconded by Saltzman. (Y-4)</p>		<p style="text-align: center;">CONFIRMED</p>
<p style="text-align: center;">Mayor Ted Wheeler</p> <p>*172 Authorize a grant agreement with Resolutions Northwest, Inc. for \$28,000 for the Restorative Justice Program for the reduction of suspensions and expulsions, keeping students connected and engaged in school (Ordinance) (Y-4)</p>		<p style="text-align: center;">188240</p>
<p style="text-align: center;">Office of Management and Finance</p> <p>173 Grant a franchise to Level 3 Communications, LLC, for telecommunications services for a period of 10 years (Ordinance)</p>		<p style="text-align: center;">PASSED TO SECOND READING MARCH 29, 2017 AT 9:30 AM</p>
<p>174</p>	<p>Extend term of franchise granted to Qwest Communications Company, LLC n/k/a CenturyLink Communications, LLC to build and operate telecommunications facilities within City Streets (Ordinance; amend Ordinance No. 171914)</p>	<p style="text-align: center;">PASSED TO SECOND READING MARCH 1, 2017 AT 9:30 AM</p>
<p>175</p>	<p>Extend term of OnFiber Communications, Inc. franchise to use designated City streets to provide telecommunications services (Ordinance; amend Ordinance No. 175793)</p>	<p style="text-align: center;">PASSED TO SECOND READING MARCH 1, 2017 AT 9:30 AM</p>
<p>176</p>	<p>Extend term of franchise granted to Sprint Communications Company, LP to build and operate telecommunications facilities in City streets (Second Reading Agenda 139; amend Ordinance No. 172141) (Y-4)</p>	<p style="text-align: center;">188241</p>
<p style="text-align: center;">Commissioner Dan Saltzman Bureau of Transportation</p> <p>*177 Authorize the Bureau of Transportation to execute a trail easement with Sullivan's Gulch Group LLC (Ordinance) (Y-4)</p>		<p style="text-align: center;">188242</p>
<p style="text-align: center;">REGULAR AGENDA</p>		

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<p>Mayor Ted Wheeler Bureau of Police</p>		
<p>*178</p>	<p>Apply for and accept a grant in the amount of \$45,000 and appropriate \$22,500 for FY 2016-17 from the Oregon Department of Transportation Traffic Safety Division FY 2017 Safety Belt Grant program for sworn personnel overtime reimbursement (Ordinance) 10 minutes requested (Y-4)</p>	<p>188243</p>
<p>Office of Management and Finance</p>		
<p>179</p>	<p>Accept bid of Raimore Construction, LLC for the Lents Park Playground Improvement project for \$843,821 (Procurement Report - Bid No. 00000489) Motion to accept report: Moved by Fritz and seconded by Fish. (Y-4)</p>	<p>ACCEPTED PREPARE CONTRACT</p>
<p>Commissioner Amanda Fritz Portland Parks & Recreation</p>		
<p>180</p>	<p>Approve the designation of seven trees as City of Portland Heritage Trees and remove the Heritage Tree designation from five trees (Second Reading Agenda 151) (Y-4)</p>	<p>188244</p>
<p>Commissioner Nick Fish Bureau of Environmental Services</p>		
<p>181</p>	<p>Authorize a contract with Parametrix, Inc. for professional services for the Broadway & 94th Pump Station Upgrade Project No. E10783 in the amount of \$423,629 (Second Reading Agenda 141) (Y-4)</p>	<p>188245 AS AMENDED</p>
<p>182</p>	<p>Authorize a contract with the lowest responsible bidder for construction of the Woodlawn-King Streets Sewer Rehabilitation Project No. E10331 for \$4,700,000 (Second Reading Agenda 153) (Y-4)</p>	<p>188246</p>
<p>183</p>	<p>Authorize a contract with CH2M HILL Engineers, Inc. for professional services for the Columbia Boulevard Wastewater Treatment Plant Outfall 3 Improvements for \$674,612 Project No. E06923 (Second Reading Agenda 154) (Y-4)</p>	<p>188247</p>
<p>184</p>	<p>Authorize a contract with the lowest responsible bidder for the construction of the Middle Hillside Rainfall Derived Inflow and Infiltration Pilot Project Laterals, Project No. E10617 for an estimated cost of \$3,400,000 (Second Reading Agenda 155) (Y-4)</p>	<p>188248</p>
<p>185</p>	<p>Authorize a contract with Brown and Caldwell for professional services in development of the Bureau of Environmental Services Resiliency Master Plan for an estimated cost of \$499,299 (Second Reading Agenda 156) (Y-4)</p>	<p>188249</p>

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<p style="text-align: center;">Commissioner Dan Saltzman Bureau of Transportation</p> <p>186 Vacate a portion of Multnomah County public road known as the Hawthorne Bridge West Approach ramp pursuant to ORS 368.361 (3) (Resolution) 10 minutes requested (Y-4)</p>	<p>37269</p>
<p style="text-align: center;">FOUR-FIFTHS AGENDA Mayor Ted Wheeler City Attorney</p> <p>186-1 Authorize the City Attorney to appear as <i>Amicus Curiae</i> supporting gender equality on behalf of City of Portland and Portland Police Chief (Resolution) (Y-4)</p>	<p>37270</p>

At 12:55 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **22ND DAY OF FEBRUARY, 2017** AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Wheeler, Presiding; Commissioners Eudaly, Fish, Fritz and Saltzman, 5.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Heidi Brown, Deputy City Attorney; and John Paolazzi and Elia Saolele, Sergeants at Arms.

The meeting recessed at 3:53 p.m. and reconvened at 4:24 p.m.

		Disposition:
187	<p>TIME CERTAIN: 2:00 PM – Appeal of the Citizen Review Committee against Portland Police Bureau’s finding regarding Independent Police Review/Internal Affairs Case No. 2015-C-0104/Appeal No. 2015-X-0002 (Report introduced by Auditor Hull Caballero) 2 hours requested</p> <p>1. Motion to uphold Police Chief’s finding to exonerate with debriefing: Moved by Saltzman seconded by Wheeler. (Y-2, Saltzman, Wheeler. N-3, Fritz, Fish, Eudaly) MOTION FAILED.</p> <p>2. Motion for a finding of Not Sustained: Moved by Fish seconded by Eudaly. (Y-2, Fish, Eudaly. N-3, Fritz, Saltzman, Wheeler) MOTION FAILED.</p> <p>3. Motion to reconsider motion #2: Moved by Fritz seconded by Fish. (Y-3, Fritz, Fish, Eudaly. N-2, Saltzman, Wheeler).</p> <p>4. Motion for a finding of Not Sustained: Moved by Fritz seconded by Fish. (Y-3, Fritz, Fish, Eudaly. N-2, Saltzman, Wheeler)</p>	<p>APPEAL NOT SUSTAINED</p>

At 4:44 p.m., Council adjourned.

MARY HULL CABALLERO
Auditor of the City of Portland



By Karla Moore-Love
Clerk of the Council

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

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Key: *** means unidentified speaker.**

FEBRUARY 22, 2017 9:30 AM

Eudaly: I call this meeting, February 22, 2017, meeting of the Portland city council to order. Karla please call the roll.

Fritz: Here **Fish:** Here **Saltzman:** Here **Wheeler:** **Eudaly:** Here

Eudaly: We are going to start with communications, before we begin I want to say a few words regarding council proceedings and maintaining the decorum. The purpose of council meetings is to engage with and hear recommendations from the community on the public's business, in order for us to hear from everyone and give due consideration to matters before the council we must endeavor to preserve the order of these meetings. To make sure that the process is clear for everyone, both those here and those watching on their computers or tvs, I want to quickly review some public testimony guidelines. My hope is that these details help everyone to feel comfortable and included and also to ensure that the decorum is maintained during the meeting there are two opportunities for public participation. Communications, which is what we're about to do now, and communication items are an opportunity to briefly speak about any subject. These items must be scheduled in advance with the council clerk's office. First readings of reports, resolutions and ordinances, public testimony and these items must address the matter being considered at the time. Please state your name for the record, and we don't need your address. If you are a lobbyist, please disclose that information at the start of your testimony. If you are here representing an organization, please disclose that, as well. Individuals have three minutes to testify unless otherwise stated at the meeting. When you have 30 seconds left you will hear a beep and the yellow light will flash on the box before you. When your time is up you will hear four beeps and the red light will flash, I will need you to conclude your testimony at that time. If you have handouts for us please give them to the council clerk, and she will distribute them to the council members. Conduct that disrupts the meeting, for example shouting or interrupting other people's testimony or during council deliberations will not be allowed. If that behavior is seen, this guidance serves as a warning anyone disrupting this proceeding may be escorted from the council chambers and excluded from the city hall. If folks would like to show your support or displeasure for a particular item or comment, please do so with a thumbs up or down so that no one is disrupted but we can see your expressions. Karla please call up the first citizen for communications Today.

Fish: Can I suggest we call them as a group.

Mimi German: I am making a suggestion right now we shut down city council and have an emergency [inaudible]

Eudaly: I need you to take a seat and stop disrupting the meeting. You have one more chance to sit down. I am calling a recess.

At 9:34 a.m. council recessed.

At 10:42 a.m. council reconvened.

Eudaly: Welcome back, we were just about to start the communications portion of council and as we suggested to Karla since all of the people signed up for communications are

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testifying about open signal we thought that we could have them come up as a group or at least in threes.

Item 161.

Item 162.

Item 163.

Fish: Let's make sure the power point is up and running. It has been -- ok.

Eudaly: They are professionals, commissioner Fish.

Fish: Ok.

Justen Harn: Justen Harn, executive director, open signal.

Rebecca Burrell: I am Rebecca Burrell, director of strategy and development at open signal.

Lisa Faust: And Lisa Faust, board president, at open signal.

Harn: So thank you for the opportunity to speak in front of you today. I am Justen Harn. The executive director of open signal, formerly Portland community media. It's an honor to be here, and before I start I just want to take a moment and have everybody from open signal please stand up. Wow: [applause] I would also like to acknowledge Janelle Neil. Janelle is a key part of the open signal and works hours to broadcast meetings to bring engagement and leadership to the Portland community, can we switch to the cameras up in the booth for a moment? Wow. That's a first. There she is, thank you very much, Janelle, and to everybody for your hard work. Open signal is in every one of these council meetings we're here to show you our plans for the future and how much more we do outside the walls of city hall. Open signal builds upon the 35-year legacy of Portland community media, an organization that began with the vision of amplifying voices of those underrepresented in the mainstream media. While our building on mlk and our name may look different, our creativity, technology you, and social engagement remains steadfast and stronger than ever. In my previous life at the Hollywood theater I saw the potential of organizations that have had, that have been dormant or struggling to find a second life. About the power of nonprofits to engage and support communities. We are not just giving people cameras and equipment. We are now helping them to tell their story and broadcast the stories to 400,000 homes on five Channels across the Portland metro area in English, Spanish, Russian, and Farsi. We partner with wisdom of the elders, vanport mosaic, media institute for social change and assist, assist. We have also launched into the open school north for middle school students who have not been successful in the public school system. Each term we offer courses and \$650,000 in media equipment and state of the art production studios that we check out to the community free of charge. In the past year we tripled the number of workshops, added artist talks and pop-up exhibitions including a public art series with the regional arts and culture. In the past year we generate 35,000 hours of television programming, with over 9,000 hours of brand new broadcast content. As we move forward we would love to partner and find ways to work together. We welcome the opportunity to collaborate, and to help you realize your vision to move Portland forward. Thank you.

Burrell: Good morning, my name is Rebecca Burrell, the director of strategy and development for open signal. I am here just to introduce to you today a brand new video that we put together through the incredible generosity and collaboration of our local film studio called Juliette studio in southeast Portland. This video features open signal staff, students, and community producers. It's about the power of providing Portlanders with unmitigated access to produce and broadcast their stories.

[Video played]

Faust: I am Lisa Faust, the board president of open signal. I've served on this board for over three years primarily as board treasurer I can tell you today when I started at Portland

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community media I was not sure how long I would last. Now under Justen's leadership we are stronger than we've ever been and ready to realize a vision that's been brewing for a decade. In my job as senior vice president at Pacific Continental Bank I lead the growth of our nonprofit sector 1400 clients and develop educational opportunities to help these organizations succeed. Many of these I have shared with Open Signal. When I, when I was appointed to the board by Commissioner Saltzman PCM was in a financial position and in dire help. We embarked on a search for the replacement and I told myself that I would commit to one more year through that search. We received an overwhelming response to our call for applications, and what Justen brought we felt would take PCM into a new era. He is a community builder, innovator and able to invigorate spaces and programs that excite and enliven the community. With new initiatives like digital inclusion and facility renovations we are embarking upon a vision that we have always had but never realized I am proud to say after hard work we are in a stable and secure place with a strong path forward. We own our own building on Northeast MLK and have paid off all our debts. There is a reason I am still on the board, truly exciting to see the growth and direction of Open Signal. As the daughter of Cuban immigrants, I witnessed the barriers to advancement that some face now perhaps more than ever. We are living in a time when our administration has de-legitimized the media and threatened the constitutional provisions that gave individuals like my mother and father citizenship. I am proud to be part of Open Signal because our commitment to inclusion and equity and providing a safe space for all individuals and a time when our community needs it most. Being a part of the organization is seen, has seen its growth over the past few years has been a rewarding experience giving a voice and amplifying that message, continues to be our ultimate goal. We have the power and opportunity to do that. Thank you.

Item 164.

Item 165.

Laura Lo Forti: Hello, thank you for having us, I am Laura Lo Forti I am the cofounder and co-director of Vanport Mosaic, and the city has been already incredibly generous and kind in supporting our effort. I don't need to tell you what we do, but I am here to tell you how Open Signal, Portland Community Media, has been an incredible partner for us and I would say that this story wouldn't have been possible without the partnership. The stories are told by the Community members, and they are aided by community members, and as many of you have seen in our screenings, they are cherished by hundreds of people. Since we started three years ago we've been overwhelmed by the amount of people who want to tell the stories. These are stories that are forgotten, left out by history books. We have a waiting list of people who want to share their experience in the 1940s, 1950s in Vanport and Albina. And we also want to help in this effort and people are being trained in how to do this story. The narrators are in their 1980s and 1990s so it's an urgent effort. It's been a struggle to, to meet this demand, which is a great problem to have for a community-based organization, so thanks to this partnership we've been able to give access to anyone who wants to help, and they have access to an incredible, immediate treatment and we are able to offer free workshops using this space. As we speak, actually, we took advantage of this little break, to continue the planning on the, on the next workshop in March, and among the many people who will be able to train, there is an eight-year-old boy who loves history and who wants to interview someone who was his age when he was in the Vanport flood. There is also a lady who is going to interview her mom, 88, and she has been in Vanport and became a community activist and then in Portland, to fund the Portland Black United Front. So these are the stories that need to be told. There is another initiative I am excited to share that has been possible because of the Open Signal. During this year's festival, at the end of May, we'll be able to have a stream with a recording studio and

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parking in front of the different venues during the festival, and invite people to share the experiences in terms of home displacement and a sense of community. So these are the stories that need to be told and we are able to do it thanks to the open signal, and we need more of these opportunities. Never like today, we need an opportunity to acknowledge everyone's history in the city. Thank you for the opportunity.

Kalimah Abioto: Hello. I am Kalimah Abioto. Thank you for your time today. I am differently an artist and resident through open signal's night light program in collaboration with the regional arts and culture council. So first of all I've been deeply inspired and moved by the incredible people on the staff and the growing community. Having been involved with Portland community media more than six years ago I have seen its amazing transition. There is noticeably more community engagement and many more people reaching out. In a critical time in our society it's important that we use the media to address the cultural and social issues and bridge this growing divide. I see this happening daily at open signal. Through my grant and residency, I was able to attend a video art conference in Mali west Africa last year. As film-makers, there can be many barriers to entry. Many being financial. The leadership team at the organization allowed me to pursue this grant and this program providing an unprecedented opportunity which continues to influence my artwork to this day. The film that I captured through using open signal equipment overseas, infused the project that I am working on now through the residency. It's been a great blessing in my life. In light of the election, many people are looking for ways to utilize their skills to creatively address the problems we face in our society. Media and film is a natural organism for this work. You need a sound engineer and a camera operator and a director. We all play a part in creating solutions. At a time when we are so insulated, bridging our divides to do something together, to do something greater, is how we will move forward, and we can with safe, supportive spaces, like open signal. Anyone can have access to high quality equipment and collaborate with people who know how to use it. Through film open signal is a medium of social change. This Saturday I would like to invite everyone to attend our inaugural open house at open signal from 4:00 to 10:00 p.m. I will be on-site along with Many other artists. There will be food and interactive art pieces from artists and students and community members. We would love to see everyone there. Thank you for your time and for your support.

Eudaly: We will now move onto the consent agenda. Ok. I understand the item 171 has been pulled. So we will move onto the next item. Oh, what. Ok. Well, we're going to take a vote.

Fritz: Aye. **Fish:** Aye. **Saltzman:** Aye.

Eudaly: Aye. Now we're onto the regular agenda. Thanks, guys. Karla please call up the next agenda item.

Item 166.

Eudaly: Welcome.

Saltzman: Thank you, madam president. If you don't mind I will take it away, ok. This is the third annual report to the city council on the status of the Portland streetcar operations. My first as the commissioner in charge of the bureau of transportation. And ultimately the Portland streetcar. The ridership on the streetcar reached a great milestone of 50 million riders in 2016. With streetcar ridership among the top ten transit lines in the region comparing favorably with light rail and with frequent Service buses. This service is provided using 100% renewable energy through the city's purchase of renewable energy credits to meet our climate change goals. While we focus on transit operations 15 years after the streetcar line began we continue to see the influence those fixed lines had in changing our city and how people get around. Part of what we're here today relates to the research link in the growth of streetcar ridership to the growth of housing units in the

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central city, and how many of those are affordable units. So we're pleased to have with us today the streetcar board chair Jim Mark, executive director Dan Bower and Portland transportation division manager Katherine Levine. Take it away Katherine.

Katherine Levine, Portland Bureau of Transportation: Thank you commissioners thank you for your time this morning. We are here to update you on streetcar operations and provide a view towards the future as well. I'd like to take a few moments to talk about the system as it is today and note that under our 2015 to 2020 strategic plan vision streetcar exist to continue to encourage growth in the central city and provide convenient connections to destinations in the downtown. Currently streetcar operated 7 days a week between 5:40am and midnight on weekdays of the fleet of 17 vehicles, 14 are scheduled on regular weekday service. The folks who run streetcar are a partnership of three organizations, city of Portland, trimet, and Portland street car, inc. There are currently 24 full-time city employees in operations maintenance and enforcement. 68 trimet employees, 56 operators, 12 mechanics and maintenance and waste specialists. There are employees from Portland streetcar inc psi which lead the private sector engagement strategic service planning and other service areas. Together we have over 100 people from these organizations partnering to operate and urban railroad. Currently the annual budget is over \$13 million of which 78% is for the cost of the people. These are the folk who workdays, evenings, weekend and holidays to help others get to where they need to be. Based on data collected by psi in 2015 we know a bit more about our passengers, that 66% of the trips originate at home, 25% of the riders have an income of \$20,000 or less, 17% of the travelers are headed to a college class, and 38% of our riders come from households without cars. We also know that mobility ramps are crucial to providing service with operators deploying mobility ramps approximately 30 times an hour. We look to fare revenue and sponsorship to offset operating costs and in 2015 fare revenue provided 11% of the operating budget. In 2016, we saw decrease in that to 7%, one relevant factor being the work on the Broadway bridge to remove lead paint which required a shutdown of streetcar for some weeks. In the long run in the strategic plan we pointed out that by 2020 our target is to have 20% of the fare revenue cover operating budgets. Crucial to that is the implementation later this year of the regional efare hop fast pass by trimet. Streetcar participates along with c-tran and trimet. That will result in revenue sharing. Which will be to our benefit. Sponsorship has been increasing with Portland street car exceeding our initial contract target for the first year. Other streetcar agencies regularly contact psi for guidance on how to develop and implement a sponsorship program. Today you'll see cars sponsored by local organizations like Portland state university in Bridgeport but you'll also see after a lot of dogged and determined work on psi's part a car sponsored by target as well. The chair of psi, Jim mark, is here with executive director Dan bower to present the annual report.

Wheeler: Thank you.

Jim Mark: Thanks for the opportunity to come before council again this year. I have just enjoyed so much being chair of Portland streetcar the last few years. I'm celebrating my 10th year on the board. We have seen a lot of progress over the years. This first annual published report is obviously in response to questions on what what's going on in streetcar. We're proud to present it. We made some copies. It's available online on our website, so if you have an opportunity I think it leads to a lot of great information. It was a great year with our partners working with the city, with trimet and others. We continue to focus on streetcar being cost effective, looking at how our product is serving our customers, whether in the city and around as intermodal connector. We spent a lot of time in 2016 working on the system to make it faster and more reliable. That included some permanent closures around the city where we looked at again trying to get the system to

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speed up and also be mindful of the traffic flow and what's going on in the city. I ended up having the pleasure of going to Kansas City with Dan last year and it was really interesting when people ask you about streetcar. How we were really the leader in streetcar and how we can make it relevant. One thing I tell them every time it was a public-private partnership from day one and the city really committed to making the system a system that would serve the whole inner city. It's something that Kansas City when they looked at their line I had the privilege of seeing areas that had not been developed in Kansas City in the warehouse district, that they had pioneers going in like we did 25 years ago in the different districts and really making those areas livable within their inner city. If you've spent time in Kansas City, it's difficult in some of those areas. It's an example that I'm very proud to be from the city of Portland. Our customers are also asking for increased travel time, frequency of trains and expect the system to grow with the city as time goes by. So we're ever mindful of looking at where we're serving the city, where we are not serving the city. I think Dan will lay out some of the plans for future line expansion and obviously that has to be aired not only does the city council but to the city at large. So with that I think I'll turn it over to Dan and again I have enjoyed working with streetcar. It's an amazing example of Portland unique.

Dan Bower: I'm dawn bower, director of Portland street car, inc. Happy to be here for the third year. I just want to touch quick on the map in front of you here today. Katherine talked a lot about the system and I want to flag that if February continues the way it has for the first three weeks we'll have the highest ridership month ever for streetcar. We had the highest ever in October and we're on pace for just over 16,000 in February. That has to do with being able to run and work with our partners when we have bridge closures and construction projects and other major things in the city we want to make sure people understand we're carrying a lot of people and our ability to operate has a lot to do with our ability to perform to our metrics. So again as Katherine said we celebrated our 15-year anniversary, our 15 million's rider. We hosted an art contest and had community members bring in streetcar related art. Here is some of the stuff that came in actually some really nice stuff. We had the public vote on it via twitter. What we learned there is that it's purely a popularity contest. The winner was a fantastic piece of art. Also had a very engaged social media following. Really nice to be able to celebrate that. Be able to talk about the growth in the system over 15 years. We also talked about growing our community partnerships in the city. What we have been trying to do with our sponsorship program is to not just have sponsors that are bringing in revenue for the city but also be direct partnerships with Portland street car. Last year we had two examples of that. One I'm showing they sponsored free rides on Thursday. Then we also partner with Portland center stage. They had a show called streetcar named desire. We were able to partner with them to get a sponsorship opportunity with the streetcar hand out tickets to our riders, have a play on words with the streetcar named desire. Much like Jim said growing the community in Portland that been mirrored nationally. The national movement is moving along very, very rapidly. Last year we saw openings in d.c. Cincinnati in September in Kansas City. Seattle and Tacoma are expanding their systems today. We expect Detroit to open this year. Oklahoma City just broke ground on their streetcar. There's a lot happening nationally. It's a reminder of how we have a very mature and maturing system. We have streetcars on the road today now 15, 16 years old and they are going to be in need of refurbishment and over haul in the next couple of years. Some look like they have been on the system for 16 years. We are thinking about service. If we're deploying 14 streetcars every day and we this to take some out of service to refurbish them we're going to have a service problem. The other thing we recognize as the city grows and the demand is growing we need to be able to respond. This chart on the left shows interesting stat we

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published earlier this year in blue, the total number of housing units built within a quarter mile of a streetcar over 15 years and in green is the average weekday ridership on the Portland Street car. Very, very direct connection to housing, affordable housing and investment on the streetcar system with our ridership. Again, what we know from the ridership surveys is that people using the system are the people who live on the system. 66% of our trips are people coming or going from home. Interesting connection there. What concerns me is the chart on the right, which is the looks like the bar graph got cut off but that far right bar is the number of housing units we expect to be built in the next two years. We have a very, very crowded system today. Particularly on the west side. If we add 6,000 housing units in the next two years and our ridership projections stay on the same track, we'll have an issue with overcrowding not being able to serve our customers. At the same time as our city grows we see congestion growing. We run in traffic. We have done a very good job of managing that system. We have good signal timing, priority where we need it but there are places in our system one I'm showing northeast grand and Davis where every single day we get stuck in traffic trying to get on the i-84. This is a big, big problem. I'm sorry, there seems to be a timer on my slides here. This is a major issue for us. Every day during pm peak a \$250 million investment in rail comes to a complete stand still because of our inability to manage the traffic in that three-block section. We're working on it. We have some ideas. It's an issue to think about in terms of streetcar moving forward.

Fish: Can I address that for a second? I think one of the challenges you face is with all the construction going on in that three-block area what can happen on any given day is number of lanes of traffic are taken out of service to allow for delivery, say, which then impacts congestion. You can be backed up six, eight, ten blocks in an automobile. I wonder how we can do a better job of coordinating. One thing that I notice is that sometimes there will be a lane taken up, I'm talking particularly around the Burnside bridge head. There's a lane taken away for delivery but there are no deliveries being made. Whether that might cause us to reflect on a more time specific permit for taking out a lane. Also when you're taking out a lane, it's just ahead of the only left turn that you've got to get on the bridge. You're creating -- has massive impacts. I know we're a growing city but until you just said that I am aware of being stuck in that traffic in a car but now I have a better sense of how it impacts your system. Perhaps we can coordinate better just in terms of taking lanes out of service.

Bower: I will say last year city council invested a little bit of money trying to speed the streetcar up and we were able to do quite a bit with. That signal timing, paint, simplifications. The station closures are one example where we have realized fairly significant time savings but not incorporate them into our schedules yet. There are still other places in the system where we're struggling. We're going to keep looking at that. As Katherine mentioned we're very excited about launching hop in partnership with trimet and c-tran, specifically the reason we should be excited about this for streetcar is couple of reasons. One is that right now 70% of our passenger's board with a prepaid trimet fare and Portland street car does not receive any revenue for that which is why our fare box recovery rate and our ability to pay for operations with fares is down 10% rather than 20, 25%. Our ability to use hop to manage money so when a customer pays it's not really their problem that the moan goes to trimet or streetcar. That's our problem. Hop is going to allow us to manage that process with trimet and with c-tran so when a person buys a trimet ticket we'll be receiving that revenue. That's a very good benefit for us. The other is the fare capping mechanism that allows you to buy one fare at a time up to the point where you've spent the equivalent of a monthly pass then you no longer get charged. Rather than

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laying out \$100 a month for a pass you will build up to that. Those are both great things for our community I think.

Fritz: Can I ask a question about that? If earlier you said that it's used a lot by people going from home to somewhere else, so those people are presumably paying for streetcar pass only. They don't pay the more expensive trimet option will that still be the case when it's the hop.

Bower: Well, we don't expect to make up of tickets to change a lot. Most are coming where they are a trimet pass provided by their job or they have a pass through school or some other institution.

Fritz: We have lots of seniors that live downtown and might be taking the street car to get to particular place. Will there still be the option of using money to buy a streetcar pass?

Bower: Yes. We'll have the cash machines and credit card machines at the platforms you can walk in our office today and buy anything you want. What we see in the senior population we're using the mobile app quite a bit. We have a monthly pass for \$20. We sell quite a few of those to seniors.

Fritz: Thank you.

Bower: Just in summary I want to talk about where we're headed for the future. I see four bodies of work in the next year. They are all somewhat related. One of them has to do with making our existing fleet work better. We're making investments in security cameras on the streetcars. Today we don't have cameras on the cars. We're investing in automatic passenger counters on our entire fleet. Right now we have passenger counters on six cars. We would like them on all 17. We would like to begin the conversation and really set up a timeline for buying more cars. We need these. No question about it. We have opportunities to do that in near future. We're trying to get to a place where we can present an option that makes sense for the community in terms of increasing our ridership and also meeting demand but also managing the overhauls with the trains becoming older we have to start taking trains out of service. If we don't buy new trains, we'll be in a bit of a pickle here. The third investment area happening around our system. There's a lot of construction, also road projects happening. They are directly on our system. We need to be able to position streetcar for the future in terms of knowing where we want to be and how those projects are lining up. Some of that has to do with for example projects happening in south waterfront with zidell and ohsu the south portal project. Odot's project in the roads quarter to widen i-5. We're talking about closing down i-5 for 150 days. We need to be able to respond to that and emerge from those in a way that makes sense. Part of that for me is looking at the future trying to figure out where we want to be and how we want to use those opportunities to put our tracks in the right place so we can advance on projects. The fourth piece is actually thinking about expansion. We are in a position now where metro is calling for projects for the 2040 regional transportation plan. Psi, the city and trimet have been working to prioritize those investments. We look forward to being able to share those ideas with you in coming weeks. We want more cars and have more service and we want an expansion lined up that makes sense for the community. We look forward to being able to bring that forward. I'll stop there and open it up for questions.

Fish: I have a comment and a question. The first, to Jim please give your father our regards.

Mark: Oh, thank you.

Fish: I think this is an excellent report but I'm struck by it occurs to me that it could be even stronger if we added a page that just showed your revenues and expenditures. There is an indirect reference to that under your performance section number 4, efficient cost effective operation, fare box recovery target. Without a pie chart showing revenues and

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costs it's hard to put that in context. Is there any reason that's not part of your annual report?

Bower: No. The budget and revenue sources are published in the city's adopted budget every year. So it's available nothing to hide.

Fish: I would strongly recommend go to the complete document. It has useful information about economic impact and service and your strategic plan in future. I think a self-contained document that showed your revenue sources from the city, trimet, grants, as well as private contributions then some corresponding pie chart, over all expenses that tells an important part of the story, the public-private piece. I would urge you to consider that in your next report.

Levine: We can definitely provide that level of information. I think what would jump out at you if we were to have that today is that trimet is both a significant funding partner as well as a significant expense. So this being a three-party partnership if you will, the city actually has less operating revenue involved in managing this system.

Fish: Thank you.

Saltzman: I was struck when you said the rose quarter, odot transportation improvement project would close Broadway/weidler for 150 days?

Bower: The i-5 rose quarter project envisions widening of i-5 to three lanes through that area. Necessitates removal of Broadway and wide letter, the structures, for a significant period of time.

Saltzman: Does that mean the streetcar will not operate?

Bower: There are options to operate on a temporary basis but I think the city needs to be coming out fairly strongly saying that we would need transit during that period. The conversations are happening now.

Mark: It's impacting, just like Dan talked about the Broadway project, closing Broadway a series of times has really impacted our ridership numbers. We start building it, we get people used to the line then you shut it down and divert it. It's the reliability of the system and predictability.

Fish: Why does the streetcar come a complete stop on the Broadway bridge?

Bower: It doesn't. It slows to ten miles an hour at the two yellow gates, five miles an hour in the middle, which seems slow. The reason is if you ride over it every time or drive over it look at the center of the span and it comes together like this. As our vehicle goes over the span literally flaps around like this. If we hit that going too fast, it can damage our overhead wires because the bridge is not actual lined up properly. When we hit that center span going more than five miles an hour there's so much give in the way the spans come together we have in the past had issues with not lining up properly with your red wire. You look baffled.

Fish: Thank you.

Eudaly: Any other questions? Karla, has anyone signed up for public testimony?

Moore-Love: I know we have people who want to testify.

Eudaly: Anyone who didn't sign up?

Bower: Thank you very much. Welcome. Please state your name for the record.

Joe Walsh: Good morning. I'm joe Walsh, representing individuals for justice. I love the streetcar. I really do. The last time I was on it I took my wife Patti and we went to the tram and we went up the tram to lunch, it was really nice. There's another story I'll tell you. That when I was working at the shipyard sometimes Patti and I on a Friday afternoon I would pick her up in the limo. A surprise. We would spend the weekend in Vegas. Then when we came back from Vegas the limo would pick us up. I loved that limo. I really like the streetcar. However, it's expensive. And there's a couple things that you talked about that you really should spend more about because the last time I testified on the streetcars,

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that's what we talked about. We talked about the fact that this pass will get me on streetcar. Nobody knows I'm there. There's no record. You are one third partners in the streetcar you get no money for that. The only person that gets money from this pass is trimet. So you're getting ripped off. It would be really easy to do some kind of data. When you get on the bus they give you a little ticket. That means there's a machine. The machine keeps track of people getting on the bus. Why can't they do that on the streetcar? Have a little box. I show my pass, trimet reimburses you something. One-third of the fare, whatever. We talked about this about a year ago. Why is it with government it's always going to be good. It's never is good. It's always going to be good. Sitting on the edge of the bed saying it's going to be wonderful. It's going to be wonderful. That's it. That's the way government is. You talk about these things but you don't put them to practice. The streetcar does not pay for itself. Streetcar is not paying for itself. It should. It's nice. Kind of nice. So you guys have something that is nice, wonderful but not necessary because if you ride the streetcar along and you will see if you look out the left side of the streetcar the number 6 bus. Runs the whole route. So you got trimet running the same routes streetcar is running. Is that stupid? Yes, it is. Don't know how you fix that one but we talked about that years ago too and I'll bet you if I'm still alive I'll be here looking at you talking about the same two items. You do nothing.

Eudaly: Thank you.

Fritz: Mr. Walsh I think you stepped out of the room when they discussed about the hop pass that will give them the streetcar money from trimet.

Walsh: I didn't hear that.

Fritz: You had stepped out of the room. When trimet comes in with their new system with the hop pass that will touch it to the receptacle in the streetcar then they will be able to get some money from trimet.

Walsh: It's always we'll be able to. Hear what I'm saying? Always in the future. [speaking simultaneously] After 15 years, commissioner, wouldn't you do something like that?

Eudaly: Next, please. State your name for the record.

Shedrick Wilkins: I'm Shedrick Wilkins. [shouting]

Eudaly: Joe:

Walsh: Don't call me joe. You call in me Mr. Walsh.

Eudaly: Mr. Walsh, your time is up. You answered it. Okay. [shouting] please state your name for the record.

Wilkins: Mr. Shedrick Wilkins. I want to compliment the streetcars in 1907 there was a plaque, this is leading Portland to have a county general hospital like most major cities have. What blocked the whole thing is there was a railroad scandal in which they put ohsu up on the hill and there's been a movement slowly to bring it down to the waterfront thanks to mayor hales we can now have a medical school with a surgical residency. You can be a doctor, go to school the psu, go to omsi, housing on the east side, bunch of housing on the east side near the light center. Take the streetcar. I look at the streetcar more in the south side of the situation, not the north side over Broadway but I see a lot of stuff with the new bridge. When I go to omsi sometimes I stare out the window in the cafeteria I think I'm seeing the golden gate bridge. Another thing that should be complimented, given light-rail and the trolley system in 1973 and 1979 there was an oil crisis shortage. Because of light-rail and the streetcars I think Portland could still function, the hospitals would still be open. That's entirely electrical, which would be the power comes from the dam. We are like a European city. The city will not be immobilized. People will move around and stuff like that. I know the history of the Oregon iron works that built the streetcars. They are the first streetcars built for 50 years. Oregon iron works also makes tidal wave generating equipment. It's possible someday that Oregon may have the distinction Newport will be the

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first city there's a tidal wave and the whole city will be powered, lights, streetcars, at Newport. Hospitals, x-ray machines will all be powered by renewable tidal energy. Think about that one. The Oregon iron works is on the east side. Great company. They are doing a lot of stuff with generators. Streetcars. This is a resurgence for America to actually make things again. So this has only happened in the last five years. I was at omsi when the circle ring was dedicated by mayor Sam Adams and the council was there I think it was four years ago.

RA Fontes: Good afternoon. I'm trying to. For the record I'm RA Fontes. I share commissioner Fish's concern with the lack of data provided in the report. Go beyond that, it's very hard to get a lot of particular data would be important for you folks and also for the general public to exercise oversight for streetcar. If you would look at your handout, the second page, I have highlighted middle on the left side, the operating expense total operating expense for fiscal '15, \$13,500,000. Fare revenues, \$500,000. Annual online trips \$4,625,000. If you do simple arithmetic your fare revenue is 4%. This is highly formatted, very strict about what goes in. No opportunity for spin. There's absolutely no fluff or anything like that. It makes it possible to see how you're doing relative to other systems. The highlighted in blue, the line below that, operating expenses for vehicle revenue hour. Again they have \$235 whereas psi says \$180. Nothing nefarious just looking at different things. Using that \$180 the comparison for trimet bus is about \$180. Streetcar costs half again as much to run as the trimet bus. So you could get a 60 foot trimet bus which has more capacity than streetcar according to recent southwest corridor project, 86 of versus 81, and get it for less than 65% of the cost. Back to the front page, psi has dropped important governance from its website. It's getting worse, not better. The report that came out two years ago says there's a problem with transparency, with disclosing data. It's getting worse, not better. There's no discussion whatsoever anywhere on the potential effects of autonomous vehicles on streetcar's future. I want to talk about it, these things are coming. Oh, boy. Just to wrap it up, av's probably take streetcars out of commission entirely. The reason being is because streetcar is so slow, the trips are so short, that there's no reason people would pay a streetcar fare. Final two thoughts, since av's are expected to save tens of thousands of lives a year in this country alone, any public policy which delays or taxes their use will cost lives and without adding a new resident or job we can expect av's to dramatically increase travel demand. This can be mitigated by sharing vehicles, sharing trips. Public policy must not discourage sharing or the use of fleet based av's by internal voters in the state of Oregon this is extremely important. Thank you.

Lightning: Yes, I'm lightning. I represent --

*****: Is Lightning your full name or do you have a government name? Your first and last?

Lightning: Again, I'll do my own speech, thank you so much.

Eudaly: It says here state your name.

Lightning: I'm stating my name. I'll do this again so people can hear. My name is lightning. I represent super lightning watchdog pdx, multco and pdc.

*****: Do you represent Multnomah county?

Lightning: Again, I will.

Eudaly: I need you to stop interjecting. Are you going to give testimony on the streetcar, ma'am?

*****: No.

Eudaly: Then you need to take a seat.

Lightning: My opinions are on behalf of super lightning watchdog pdx, multco, and pdc. Again, very good presentation on the overall cost of what the streetcar as far as on revenue, over all expenses for labor, numbers don't look real good from that position. Again, what I do like about streetcar is it does appear to create development along where

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the streetcar goes at a rapid pace, which is very clear on why people would want to do that. They have good transportation there. They want to move the people around to different locations so it makes a lot of sense. I do want to see more affordable housing in the plan, not just a quarter but up to 50% of affordable housing on the streetcar lane. There's no reason why that can't be requested and implemented. Create more work force housing where corporations can come in and pay for that cost for that type of housing. Another issue I have is that as the gentleman referred to, my position is on the central city location downtown I want to see Portland become the first vision emissions zero location to do that streetcar obviously is going that direction. Bus, we go electric. Forget the diesel killing machines. Get them off the road. Again, autonomous vehicles. If we look at the electric side of this and go that direction and have a designated area downtown where we have and focused on clean air for the highest population base in that location. Again, I have wanted to have discussions with uber, lyft, bring them to the table and pay a fee to have that right downtown and understand this is a public safety issue. It's people's health. Many studies have done on diesel and any fool who thinks diesel is good for young kids to breathe shouldn't even be an elected official and should be removed out of office immediately. Any fool that supports anything to do with diesel downtown where young kids and family breathe that all day long is a fool and should make that change for their health. Again, like I have stated, I think streetcar has been efficient. Expanding that at this time, again I agree with this gentleman, don't go that direction. Too much cost. Not enough return. Can't cover your expenses. Doesn't make any economic sense over all. But to look at these other directions at this time again for clean air, zero emissions output, the protection of the young children, we need to look in those directions. Thank you.

Fritz: I Move to accept the report.

Moore-Love: I think we have one more person to testify.

Fish: On this report?

Dan Handelman: Yes. I'm sorry. Good morning. I'm sorry. I'm Dan handelman, not representing any group with this testimony, which is unusual. I just saw something in the presentation that bothered me about the hop pass where you have to have a smart phone for your multiple trips do add up to a day pass or to a monthly pass over time and for people who scrape together money to use the public transportation seems that's an elitist thing if you have to have a smart phone and use digital money. If you choose not to use digital money or own a smart phone it's very elitist in that sense. I also while I'm up here I have been a producer of Portland community media for 26 years. We wish they had used the words Portland community media for their name but that's another issue. The officer upstairs who's videotaping this is in my opinion a violation of Oregon revised statute used to numbered 181.575 gathering information on people's social, religious and political affiliation without any suspicion of criminal conduct. I would like to find out why the officer is videotaping the audience. Thank you.

Fish: Moved and seconded.

Fish: Commissioner Fritz moved, I seconded.

Eudaly: Roll call.

Fritz: Aye.

Fish: Thank you for the excellent report.

Walsh: I would like to speak on this.

Eudaly: You already did.

[shouting]

At 11:40 council recessed.

At 11:55 council reconvened.

Eudaly: Ok we were at roll call on the streetcar report.

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Fish: Thank you for the report I look forward to the additional information next year around revenue and expenditures. Congratulations on two milestones, 50 million riders and the prospect this year of being 100% renewable energy driven. Aye.

Saltzman: Aye.

Eudaly: Aye. Karla, next item.

Item 167.

Saltzman: Thank you, madam president. This item really is all about thanking folks that we finally have this local improvement district. I want to thank the Boise and Elliott neighborhoods for waiting 42 years for this new signal at north Vancouver and north cook. The left turn signal at north Vancouver and Fremont. Neighborhood advocacy made this possible as apparently did the dialogue before we reconvened. Commissioner Fish was an inspiration for this stop light too. So I'll turn it over to Andrew Aebi I want to thank pacific power and red cross and I believe legacy.

Andrew Aebi, Portland Bureau of Transportation: Legacy and kaiser.

Saltzman: For stepping up to make sure this happened.

Aebi: Thank you commissioner Saltzman. I know it's been a long day. I'll move this through quickly. We moved this lid forward with 100 first support. Everyone was participating in the lid voluntarily. This is a list of all the folks that helped contribute to the lid either financially or otherwise. In addition to the stakeholders that commissioner Saltzman mentioned we also had new seasons market who participated in the lid as well. So I particularly wanted to recognize red cross. They were the last partners that stepped up to help us with the lid. You can see they do a lot for our community between disaster relief, first aid, preparedness training, blood collection, service to the armed forces. They help us with home fires, blood, wildfires, explosions like the one in northwest Portland and red cross has always been there to help people in Portland affected by disasters big and small. Red cross accomplishes through their volunteers and their donations that they get from the community. One of the things this lid wanted, one of the objectives was to make it safer and easier for people to access the red cross to donate blood and go to the red cross headquarters with all the gridlock before this traffic signal went in. This is an example on this next slide we had a fire at the hotel alder recently. Red cross stepped up and helped those residents who were displaced by that fire and within hours had people there at the hotel alder to help some of our most vulnerable citizens in Portland. We really appreciate the partnership with red cross on many facets. Commissioner Saltzman mentioned there was a 42-year wait for this traffic signal to be installed when odot opened up the Fremont bridge in 1973 they didn't fund the traffic signals at the east end of the bridge so it was up to the city of Portland to come up with that funding. We have gotten complaints about lack of a signal for many, many years. We were finally able to turn it on in 2015. The results are a fair amount of discussion at council about utility undergrounding and we were able to get that done as well. The next slide is a picture of what Vancouver and cook used to look like before the signal went in. You see the white car on the left side of the photo. You come off the Fremont bridge, trying to look around cars turning on to the Fremont bridge, trying to keep your eye out for bikes then you would be trying to monitor oncoming traffic to figure out where they are go straight or making a left turn. This was one of the top ten right angle crash locations in the city. This was definitely a safety initiative. This was the day we turn on the traffic signal. We did something quirky, very Portland, we had a little party and invited the neighborhood to show up. In the stop right corner is ben Kaiser who provided the largest share of funding for the lid had the honor of turning on the traffic signal after our director treat cut the ribbon on the new traffic signal. You can just see the looks on everybody's faces there in the lower picture, just a lot of relief that we finally got a safe way to cross that intersection. The woman sitting there on the left on her bicycle was the very

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first person to ever wait for a red light at Vancouver and cook. We caught that moment for posterity. The woman on the right there crossing the street owns a hair salon down the street. The new signal plus the combination of left turn signal will really improve access to her business. I'm sorry we lost Sheila Holden from Pacific Power but she was a great partner on this project. Pacific Power dropped all the powerlines just in time for our new traffic signals to be operational. They also removed the overhead powerlines so that they wouldn't be in the way of the development coming in. So Vancouver and Fremont -- Williams and Fremont used to be a food desert. You had to drive a long way to get groceries. Now there's a new Seasons grocery store on the corner.

Fritz: I was able to talk to Sheila during one of the breaks. She expressed the regret that she wasn't able to stay. And also her great appreciation for you, Andrew. Thanks for your coordination of this.

Aebi: Thank you, Commissioner Fritz. This is the second to last slide showing the day we took down the old span wire signal and turned on the new signal. The last slide here shows thanks to the advocacy of Commissioner Fish we scrounged around for the money to upgrade the signals including a left turn signal. You can look at all these neighborhoods whether they are on transit riding the number 24 bus line or driving, these are all the neighborhoods whose residents travel through this intersection to get to other places in the city. So we're very happy that we're able to deliver that. This is the first traffic signal project I have managed. One thing I learned if you want a left turn signal you better budget for it up front because you can't come in later and just hang a left turn signal on. You have to tear out half of the hardware. We didn't want to further disrupt businesses. To wrap up we started out with this lid, replacing one traffic signal. It grew. We came back to Council five times, kept expanding the partnership to replace three traffic signals. We got 25% economies of scale on the core project. That is money that Pbot can you use to rebuild more traffic signals in other areas of the city. We're very pleased with the partnership and wanted to recognize our community partners in this effort.

Saltzman: Thank you.

Eudaly: Thank you any questions from the Council?

Aebi: Now that we have money and Cassie from Red Cross --

Eudaly: So welcome.

Cassie McQueen: Thank you, Council, for having us and thank you for your support. I'm Cassie McQueen, chief operating officer of your local Red Cross. I have had the privilege of working for organizations for over five years now. I'm proud to say that we're doing amazing humanitarian work in this community. The Red Cross accomplishes our services every single day, every single month, every single year. In 2016 alone, we responded to over 630 local disasters and helped over 2700 people in need in Oregon and southwest Washington. These are big numbers, but I felt like it would be best represented in a quote from one of our most recent clients who was displaced by the hotel Alder fire in January. His name was Eric. This is what he said. I have no one here in my town. No one to check on me. There is no other help. The Red Cross is my help. The compassion of volunteers is kind of rubbing off on me. This is a whole other level of love that I have learned and I'm going to use it. I owe it to the Red Cross and myself to give back. So on behalf of Eric and myself, thank you for empowering the Red Cross. We will continue to do our service work here in Oregon.

Monique Dubois: I'm Monique Dubois, regional director of communications for the Red Cross. Thank you for this opportunity to speak with you. We're able to go to work safely, cross the street safely because of this partnership and we do appreciate it. With all the services that the Red Cross provides in our community we each have what we call a mission moment. Our mission moments are when we felt the impact personally of the Red

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cross in our life. My personal mission moment came when I suffered serious injuries from a car accident and needed to have 60% of my blood replaced. Because of the red cross and generous donors in our community, the blood was there at the hospital when I needed it. That's my mission moment. And the red cross is the nation's largest blood supplier. In fact, we supplied more than 182,000 units of blood just in this area alone. Hospitals and patients in need just like me were able to get the blood when they needed it. I'm sure many of you have a mission moment, and when the red cross services have touched you personally or someone that you love, and we would simply ask that you remember, think of the red cross and that your mission moment was sponsored by the red cross. So thank you very much for your time. Thank you for making it safer for us to get to our facilities, for our workers, volunteers and donors.

Eudaly: Thank you. Any questions from council? Any public testimony?

Moore-Love: We didn't have a signup sheet.

Eudaly: Okay. Call the roll, please.

Moore-Love: Nonemergency.

Eudaly: My bad. It's a nonemergency.

Fish: If I could just say for the benefit of our friends from the red cross, you know, over the years that I have been on the council I have watched the red cross step up during winter weather emergencies, I have watched them step up when people are displaced, when we have had all kinds of challenges. We almost take it for granted. I thank you for the work you do around blood. Because I have a rare blood type, I get a phone call almost every night at dinner, you're almost as persistent as the aarp with the solicitations I get in the mail but what that reminds me is that blood is vitally important and can save a life. Your story underscores that. Thank you for all the wonderful things the red cross does for our community.

Eudaly: Next item, please.

Item 168.

Eudaly: Welcome.

Anika Bent-Albert, Independent Police Review: Good morning. Assistant director of the independent police review appearing on behalf of director severe.

Rachel Mortimer, Independent Police Review: Rachel Mortimer, the other assistant director independent police review.

Irene Konev, Independent Police Review: Irene Konev, community outreach coordinator, independent police review.

Bent-Albert: We're here this morning to seek reappointment of community members to the police review board. The police review board is an advisory board to the chief of police. It makes recommendations of findings and proposed officer discipline to the chief of police. These people have previously served on the review board and have been recommended by the auditor for reappointment following the expiration of their terms on February 19, 2017. These members reapplied for their positions and reappointment was recommended by a selection committee consisting of ipr staff members of the crc, and former police review board members. If confirmed their term begins today and will end February 21st, 2020. We are very grateful for their continued interest in serving on the police review board as they have been invaluable in the process. Thank you.

Bent-Albert: Questions?

Fritz: We appreciate your work. Thank you very much.

Bent-Albert: Thank you.

Eudaly: Is there public testimony?

Moore-Love: We have a signup sheet. I'm not sure everyone is still here.

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Lauren King, Deputy City Attorney: It's my understanding there is overflow set up in the Portland building.

Moore-Love: No one is there any more.

King: My apologies.

Eudaly: Welcome. Please state your name for the record.

Dan Handelman: Good morning. I'm Dan Handelman. I'm in this sense representing Portland cop watch. We have been following to the extent that we could the exploits of the review board created in 2004. It's become more and more open to the public but there's still many problems including that the meetings themselves of the board are not open to the public and the board itself never meets in a public place so the community doesn't know who is representing them when the most serious kinds of police conduct including shootings of people protesting about this morning are being held behind closed doors. People who complain can't come to the board. There are five people appointed to the board in February of 2014 whose terms weren't renewed. It's not clear if they dropped off or didn't ask to be renewed or what happened. We have no objection to the three people that you're contemplating putting back on. The total number by our count of people on the board will be 16 with 10 females, six males. Eight are former or current attorneys. No offense but doesn't show a broad variety of diversity of Portland when that many attorneys are part of the same body. The only time that more than one civilian sits on the panel the second seat is filled by a citizen review committee member. That's something council changed as part of the DOJ agreement. We have been advocating I hope you saw the final report from John Campbell of the stakeholder group put together about how though change the CRC system. We recommended Portland cop watch recommended in there as a footnote that members of the police review board be asked to sit with the citizen review committee to consider appeal hearings like the one you'll hear this afternoon when they are backed up. The whole reason we rushed into trying to change the CRC system is they had a huge backlog of appeals and at the half the meeting when some of the information wasn't available to the board and they had to cancel the hearing the director announced that this was the last appeal pending. So apparently when there were all these appeals stacked up until May of this year that all disappeared and there's no big rush. So we think that our idea of involving the PRB on the citizen review committee is an idea council should consider. A few other things about the police review board, the reports are supposed come out twice a year. We sent an email to the bureau February 14 asking where the January report was. It was published on the 16th and sent out for the first time to the media. We didn't get an individual email back from the bureau. That's part of the communication problem with the bureau. It would have been common courtesy, thanks for reminding us. We found out by reading in the press it was released. I really appreciate the opportunity to speak about the police review board. As I said very little is dealt with in public forum.

Eudaly: Thank you.

Fish: I move the report.

Fritz: Second.

Fritz: Thank you very much for the report. Thank you to the volunteers serving and thank you, Mr. Handelman for your observations. Aye.

Fish: Aye. **Saltzman:** Aye. **Eudaly:** Aye.

Item 169.

Item 170.

Eudaly: Welcome.

Sandra Wood, Bureau of Planning and Sustainability: Thank you. I'm Sandra Wood with the bureau of planning and sustainability. We were here last Wednesday with the hearing for the regulatory improvement code amendment package number 8. There were

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seven amendments that were proposed and they were moved and seconded last week. We have had a written testimony open for another week on those amendments. If I may recommend would you like me to walk you through those? You should have two pieces of information in front of you. One is a memo from mayor wheeler to city commissioners dated February 6, the other one is three more amendments. So mayor wheeler's amendment included four amendments that as I said were moved and seconded last week. So I believe the plan was that we vote on these amendments today on all seven of them. Then we'll do the second reading next week. That was my understanding. So starting with the mayor's amendment, we need to call the roll, Karla. We'll be calling seven rolls? We're ready? The first amendment 1 is item 3 about regular lot lines.

Fritz: That's on page 95 of the handbook you just gave us.

Eudaly: We're going to do we do each one individually?

Wood: They were all moved individually.

Eudaly: Okay. Roll call.

Fritz: This is to make it easier to do lot lines and it's almost a technical fix aye.

Fish: Aye. **Saltzman:** Aye. **Eudaly:** Aye.

Wood: Amendment 2 is item 33, which has to do with the definitions of stream on page 113 of the document. Basically it removes the amendment to the stream definition in the zoning code.

Eudaly: Roll call.

Fritz: Just to clarify, under the housed substance which is underlined in front of that, that's because we're also changing hazardous substances but nobody had any amendments on that one. Is that correct?

Wood: That reference is the list of lists which is a federal document. That was updated and the old reference was still in the code.

Fritz: So that's just another technical part of it and we've already gotten the main thing so now we're talking about redefining seep or spring to be an area where ground water is discharged onto the land surface creating either saturated soil conditions or visible flow at the land service and I vote aye.

Fish: Aye. **Saltzman:** Aye. **Eudaly:** Aye.

Wood: Amendment 3 is about title 11, the tree code. The city auditor identified several minor typos and errors. This is a list of errata that she wanted corrected during this process.

Eudaly: Roll call.

Fritz: Appreciate the council and the staff working on some of the tree issues. Obviously we have many more to go. This is a start. Aye.

Fish: Aye. **Saltzman:** Aye. **Eudaly:** Aye.

Wood: Amendment 4 and the final one in the mayor's memo, regarding inclusionary housing parking in the vote council did in December I guess it was. What council intended was to waive the parking requirements for projects that provided on site or off site affordable housing but not to waive the parking requirements for projects that paid a fee in lieu. I believe commissioner Fish this was your amendment at that time. The code amendment wasn't aligned with that intent. This is technical to bring it into alignment with council's intent.

Fish: To be clear this would be the effect of discouraging in effect someone to do a fee in lieu. They would not be getting out from under the minimum parking requirement.

Wood: That's right.

Fish: Thank you.

Eudaly: Roll call.

Fritz: Thanks to everyone for working on this. This is what we came to late last year. Aye.

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Fish: Aye. **Saltzman:** Aye. **Eudaly:** Aye.

Wood: Now moving on to the other documents, amendment 5. This was introduced by commissioner Saltzman, seconded by commissioner Fritz last week on page 115 of the document. This changes the measurement chapter and changes how floor area ratio is measured. The planning and sustainability commission recommendation is to measure floor to area ratio based on post dedication site area so a smaller site area after land has been dedicated. Commissioner Saltzman's amendment would measure it pre dedication prior to applicant dedicating public right of way on a street that's been widened.

Fish: I missed this discussion. I might have missed it. What is the net effect of that?

Wood: The net effect is so the way the proceeds works is an applicant comes in with a building permit and all the service bureaus are reviewing it. Pbot would take a look at it and ask the applicant for dedication of right of way. The request is that penalizing the applicant because then it makes the site area smaller and they would lose floor area ratio. This amendment ensures that they can count that site area before the dedication occurs towards their floor area ratio calculations.

Fish: For how long have we been using the current rule?

Wood: For as long as we have had zoning. Since 1924.

Fritz: This has the net effect of allowing more development on the site. It means that they are not being penalized for giving a larger right of way which could include wider sidewalks and other things we require now that we didn't necessarily require 20, 30 years ago.

Fish: Thank you.

Eudaly: Roll call.

Fritz: Thank you to commissioner Saltzman, bureau of planning staff, bureau of development services as well as transportation for figuring out this one. Aye.

Fish: Aye. **Saltzman:** Aye. **Eudaly:** Aye.

Wood: So then amendment 6 was introduced by commissioner Eudaly last week. This has to do with the correction to the design review threshold. As you can see the design review threshold table is two pages long. There was a circumstance where a property and the testimony last week was cully where the old sugar shack property is that has a design overlay, it does not in a design district, which is a subset. I won't get into that. The table inadvertently sends that property through a type 3 design review instead of type 2 design review, which was always the intent out of side of central city to go through a type 2.

Eudaly: Any questions?

Fish: Trying to sneak this by eagle eye Eudaly? Glad you caught this.

Eudaly: I have to give credit to my chief of staff Marshal Runkel for that one. Roll call.

Fritz: Good spot for those who weren't watching last week. I was very impressed when staff knew the answer to why do we have this number, 2,188,650. The answer was it started off as a more rational and rounded number but then it gets changed by inflation each year.

Wood: March 1st it will change.

Fritz: So thank you for explaining that aye.

Fish: Aye. **Saltzman:** Aye. **Eudaly:** Aye.

Wood: Our final amendment is 7 that was introduced by commissioner Fritz last week and moved.

Fritz: I would like to amend my amendment if that's all right with everybody. I had offered a rather convoluted suggestion which is down in your packet about when we can extend members' terms because there's a vacancy. After due consideration I believe it would be better to just remove the planning sustainability's suggestion of by right giving members another year on a commission if the commissioner has not been able to appoint a new

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member. I withdraw the amendment you have before you and I would strike -- we don't have the other one.

Wood: Right. I think what you would do is probably move to amend the recommended draft to delete the amendments to the section 33.710.030.

Fritz: Can you identify what number that would have been I'm sorry about all this?

Wood: Oh. What item number?

Fritz: Yes. Essentially had said let's allow a member who should be termed out to serve another term if there's no one to fill the vacancy. With 600,000 people in the city I think if we start early enough we, the council members making those advisory recommendations to the mayor, ought to be able to find somebody when there's an expected vacancy due to term limits.

Wood: Your motion is to move to delete the amendment item number 15.

Fritz: I'll withdraw my previous ones and move to delete amendment 15.

Fish: So I'll second it for discussion. What are the commission committees and boards provided under this chapter?

Wood: This is the zoning code. The bodies are the hearings officer, the planning and sustainability commission, the design commission, historic landmarks commission adjustment committee. I believe that's it.

Fish: I wanted to clarify that because we'll be having a discussion in council about boards and commissions and updating our rules generally. This is very specific to those bodies.

Wood: Those bodies only.

Eudaly: Any further questions? Roll call.

Fritz: Thank you, commissioner Fish. That's another helpful clarification. You are in the process of looking at it. We shouldn't be changing the rules for specific committees and boards that Ms. Wood mentioned until we have done the overall look. I vote aye.

Fish: Aye. **Saltzman:** Aye. **Eudaly:** Aye.

Wood: That was a motion and vote on -- there was a first and second on the amendment then a vote amendment I just want to make sure I'm clear.

King: That's correct.

Wood: Now we need to pass the whole package as amended to second reading next week.

Eudaly: Roll call? No roll call?

Fritz: You just say that.

Eudaly: We're moving it to Second reading.

Fritz: Thank you to staff for sitting here all morning and then your wonderful clarity of the presentation.

Wood: Thank you.

Eudaly: Next item please.

Fritz: You want to do the pulled items first.

Moore-Love: Mr. Lightning and Mr. Walsh pulled that one. They are both gone. Do you want to do 171?

Fish: Let's go to the regular agenda.

Eudaly: Regular agenda.

Item 178.

Moore-Love: They may not have been sure what time to be here.

Fritz: Looks like a fairly straightforward grant should we ask if there's any public testimony.

Moore-Love: Does anyone want to testify?

Eudaly: Roll call, please.

Fritz: This is an emergency item obviously a good thing to be getting money for these kinds of important duties. Aye.

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Fish: Aye. **Saltzman:** Aye.

Eudaly: Aye. Next item.

Item 179.

Lauren McGuire, Portland Parks and Recreation: Christine moody is supposed to be here. It's really a procurement item. Parks is working with --

Fritz: Perhaps we could start with your presentation and after Ms. Moody gets here we can do the more formal part. Thank you. So I'm proud to announce Lauren McGuire from Portland parks and recreation to give a very short presentation on this project.

McGuire: Hello, members of council. I'm Lauren McGuire, parks development program manager.

Moore-Love: Could you get closer to the mike there?

Fritz: One more challenge.

Christine Moody, Procurement Services: Christine Moody Procurement services, you have before you the procurement report recommending a contract award to Raymore construction. The engineers estimate on this project was \$907,128.00 with a confidence level of medium. On January 5th 2017 three bids were received and Raymore construction is the low bidder at \$843,821.00 which is 7.5% under the engineer's estimate. Portland parks and recreation has reviewed the bid items and accepts the proposed pricing as good. The city put forward an aspirational goal for dmwesb subcontractor and supplier utilization at 20% of the hard construction cost for this project, Raymore construction identified five divisions of work for dmwesb opportunities with subcontracting participation at 10.1% with work being performed in survey disposal and playground equipment installation. Raymore construction is a certified minority firm so the combined prime and subcontracting participation on this project is at 85.4%. I wanted to note to council that we just opened tier four the prime contractor development program in which the city owned construction projects up to 1 million are bid to contractors in the program. As part of this social equity contracting strategy this is the first time ever that projects of this size have been bid to minority and women contractors as part of our program. This is also the first project that we have bided and we just opened the tier a couple months ago so this is the first project that you will see coming forward to you. I will turn this over to Lauren for more information about the project.

McGuire: Thank you, again Lauren McGuire from Portland parks. We're here today to tell you a little bit about the Lents project itself too. Lents park is located at 4700 se 88th just west of I205 the bond repair project is made possible by the support of the Portland community as funded by the 2014 replacement bond. We're very grateful that the Portlanders have historically helped the city repair and maintain our much loved parks from the very first levee of the historical record in 1901 to what we're talking about today. In November of 2014, voters passed a 68 million bond measure to address the critical needs without increasing the tax rates because the 2014 bond replaced an expiring bond. The bond funding goes towards parks most urgent needs, like replacing failing playgrounds, pools, and other facilities. The seven repair priority areas that we identified as part of the bond effort were playgrounds, trails and bridges, and pools, facilities to protect workers and pioneer courthouse square repairs and accessibility repairs and other urgent repairs. Portland's playgrounds are one of the most popular attractions. The bond language promised that we would do, 5 million worth of work, and we would do 10 to 20 play areas, so far, phase one we will be renovating seven playgrounds, and we'll have spent 9.7 million. So the renovation project today will update the play area with safe and imaginative play opportunities, and replacing the outdated equipment from the 1970s, it will also add inclusive play features like swings, slides, and music and sensory elements. It will add synthetic safety surfacing, and improve the circulation between the upper and lower levels

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of the play areas, replace the pavement to make it more ada accessible and improve existing pathway that goes from the parking area to the play area and provide ada accessible parking. We'll also be replacing picnic tables, benches, and a drinking fountain and making sure that Those are all ada accessible as well. The time line, we're in for permits in June, and we're here today to accept the bid from Raymore construction and that's as Christine said \$843,821. We anticipate we'll start in the spring and we hope to be finished by fall of 2017. On your screen is a list of projects we just finished the construction of, so we had the grant pool part one, Matt Dishman pool and spa and park lane loo, sellwood pool roof house and under construction shortly will be the argate tennis courts, the couch park playgrounds, forest park bridges, grant pool part two, north park playground, ricky field renovation, and the Washington park rose garden. So that concludes the presentation. We would be happy to answer any questions at this time.

Eudaly: Questions? Do we have anyone signed up to testify?

Moore-Love: No, we do not. No one signed up.

Eudaly: Ok.

Shedrick Wilkins: Did you want to talk to wilkins? He would like to speak on this item.

Eudaly: Because we are two hours behind I will ask you to limit your testimony to two minutes.

Wilkins: On Sunday I went to the Lents Baptist church and when I went in there it looks bleak. People are depressed and they want to have faith in something, the area needs a lot of attention.

Fritz: I Mover the report.

Fish: Second.

Eudaly: Roll call.

Fritz: Congratulations Ms. Moody for all the work you've been doing, regarding encouraging, helping minority businesses succeed in our city and it is very pleased, the first one is a parks partnership, well done all around, very happy for these improvements to be made in a wonderful area of the city that is waiting to continue growing and being even more wonderful. Aye.

Fish: Congratulations. Commissioner Fritz who led the parks bond effort, Christine for this innovation, and look forward to being there for the ribbon-cutting. Aye.

Saltzman: Good news on both the procurement front in terms of the prime contractor development company, our program, excuse me, and also for Lents park, very, very good improvements coming. Thank you, aye.

Eudaly: Nice work everyone. Aye. Next item.

Item 180.

Eudaly: Commissioner Fritz.

Fritz: This is a second reading. Unless anyone has questions.

Eudaly: Questions? Roll call on the second reading, roll call please.

Fritz: Thank you. Especially commissioner Saltzman, I enjoy watching how much you enjoy and get very interested in this, and I am, too, let's work in getting more heritage tree's designated, aye.

Fish: Aye. **Saltzman:** Aye.

Eudaly: Well, apparently there is not a single heritage tree designated in my neighborhood so I will be working on that. Aye. Next item.

Item 181.

Eudaly: This is a second reading so just do roll call.

Fritz: Aye. **Fish:** Aye. **Saltzman:** Aye.

Eudaly: Aye. Next item, please.

Item 182.

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Eudaly: This is a second reading, roll call.

Fritz: Aye. **Fish:** Aye. **Saltzman:** Aye.

Eudaly: Aye. Next item please.

Item 183.

Eudaly: Second reading roll call please.

Fritz: Aye.

Fish: Just a note that with the record rain, we have had record flow at Columbia wastewater treatment plant so I want to thank all the folks who are working hard to keep our systems running, in spite of the torrential rains, aye.

Saltzman: Aye.

Eudaly: Aye. Next item please.

Item 184.

Eudaly: That was quite a mouthful, roll call please.

Fritz: Middle Hillsdale continues to be one of my favorite titles in the city. Aye.

Fish: Aye. **Saltzman:** Aye.

Eudaly: Aye. Next item please.

Item 185.

Eudaly: Roll call.

Fritz: Aye. **Fish:** Aye. **Saltzman:** Aye.

Eudaly: Aye. Next item.

Item 186.

Eudaly: Commissioner Saltzman.

Saltzman: Thank you madam president. I will just say that this vacation is critically important to Multnomah county, and its efforts to construct a new courthouse, and I will turn it over to Dee Walker if you had anything?

Dee Walker, Portland Bureau of Transportation: Thank you. Good afternoon commissioners. D. Walker with right-of-way acquisition for the bureau of transportation. So before you is a resolution to vacate the west approach ramp of the Hawthorne bridge, to summarize quickly last summer Multnomah county took a resolution through their board of commissioners, to vacate the ramp in support of the new courthouse. The ramp was removed last week, it is owned by Multnomah county, and it was never dedicated as a public right-of-way, and because of the use, that there was a layer of transportation use with the public using it for decades, and part of ors368.361, this resolution is before you for the city to remove its interest in that property. And in order for Multnomah county's vacation to be effective, this also on the city side needs to happen. I would like to draw your attention to the community impacts and community involvement section of the impact statement. It states that the city auditor published and posted the notice, this was stated in error. After speaking with the city attorney's office and the auditor's office, there is no Statutory requirement to do this, and since the county held its own open house for the public as well as having a public website, based solely for the courthouse, the auditor's office, it was their decision, they decided not to publish the hearing and post-it since it was not necessary. Commissioner Fritz I know that you were a little, had questions over the, how it affects the pedestrian and cyclists and I got your answers for you. So I spoke with the transportation planning, and you will be happy to know that just recently it was approved to put in a ped and bicycle crossing at Jefferson and naito. This takes care of the movement for the old ramp so people won't have to go out of their way because they can cross the street and use the other ramp on the east side, so it's, it was great timing, so I was happy to be able to report that back to you.

Fritz: Thank you to finding that out. I appreciate it.

Walker: No problem. That's all that I have so if you have other questions.

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Fish: I was looking at the packet. Have we received any objections to this application?

Walker: No, none.

Eudaly: Any public testimony on this? I don't know if anybody signed up? No? So we go to a vote.

Moore-Love: Motion to oh it's a resolution. I am sorry.

Fritz: Thank you very much. Aye.

Fish: Aye.

Saltzman: Thank you miss walker for your report and for finding out that additional information for commissioner Fritz and this is, as I said, this is vitally important for the county to build a new courthouse which will serve all of us very well. Aye.

Eudaly: Aye. Ok. Thank you. Let me do the item that was pulled from the consent agenda next.

Moore-Love: We have a 4/5 item.

King: Ellen is coming down from the city attorney's offers now so you could do the item pulled first and then she will be here for the 4/5 if that works?

Eudaly: Certainly.

Item 171.

Fritz: Do we know who pulled this?

Fritz: This was something that commissioner Eudaly and I worked on before the new year so this is a relatively routine appointment. It's the new Portland policy -- new Portlanders, policy commission, the first time established after being supported by council last year.

Fritz: I will move the report.

Eudaly: Thank you.

Saltzman: Second.

Fish: It says that they recommended appointments are for two or three year terms and the committee will determine the term length, what does that mean?

Fritz: We took our cue from you commissioner Fish when you formed the Portland utility board, we would leave it up to the commission to decide who was going to get the initial longer or shorter terms because we don't want in the future, everybody to term out for the same time.

Fish: I see, and then any vacancies that arise in the future would be filled by the council?

Fritz: Correct. We are approving the commission. Following up with the ordinance we passed before. It will run the same as all the other boards and commissions do.

Eudaly: Any other questions or comments? Roll call?

Fritz: Did I move it?

Eudaly: You moved it.

Fritz: Very exciting commissioner Eudaly, aye.

Fish: Aye. **Saltzman:** Aye.

Eudaly: Aye. And our last remaining item is the 4/5 agenda item. Is anyone here? Fantastic.

Item 186-1

Ellen Osoinach, Senior Deputy City Attorney: Ellen Osoinach, a senior deputy city attorney in your city attorney's office and I would like for us to, to thank you for putting this on the agenda with late notice. A debriefing schedule in the case that we are asking you on was to authorize us to appear as amicus is going quickly and the folks that asked us to sign on, need to get their filings in place by February 27, and so hence the rush today. The resolution and the announcement was sent out to a small but wide listserv so I wanted to acknowledge for you all today that I did receive feedback as I believe that you all in support of the resolution, and I also wanted to let you know that several folks had indicated that they were watching streaming today so there are likely people that are here

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participating remotely, and I think that the resolution speaks for itself. You all had a long day so I will just summarize. There is a case pending before the supreme court in which a transgender boy was denied access to the bathroom facility in his school that corresponded to his gender identity. It's an important case because it involves the application of title 9, and the Obama administration had sent guidance to the schools throughout the nation, saying that they believe that there is a constitutional right to access the facilities, consistent with one's gender identity, and that is what is being litigated before the supreme court. I also wanted to note that the trump administration has signaled its intent within the coming weeks to rescind that interpretation of title nine, so I think that adds some importance and urgency to the resolution that you are considering today, and I would also like to note that this resolution that would authorize the city attorney to appear on your behalf as the city is consistent and amplifies the work that the commission and the city has done over the years to support the gender equality, including the work that I know was amplified and spearheaded by commissioner Fish with regard to all user bathrooms. So certainly it is consistent with the city policy, and then as the resolution states, the chief Mike marshman who was not able to be here but wished to testify is also seeking your permission to join another important brief on behalf of law enforcement nation-wide, police chiefs and other law enforcement leaders to submit a brief that provides the important context about the fears and the myths around all user bathrooms and put an important context that the crime that certain people fear and which amicus testifying on behalf of the county and against access for equal access for gender identity, there were two public safety professionals that submitted an affidavit saying that there was an undue public safety risk posed by these policies, and so the brief that the chief would like to sign onto is an important counter point to that brief and is supported already by many chiefs nation-wide and provides that really important factual context that in fact, these equality access initiatives promote public safety and in fact do not undermine the public safety efforts to hold folks accountable who are committing primarily what has been feared as predatory sexual offenses, that is not the experience of law enforcement here or nation-wide that it creates an undue safety risk.

Fish: I have a couple of questions and I am going to support this. So the case that we would be filing a friend of the court, brief in is going to the United States supreme court?

Osoinach: Yes.

Fish: And is the issue that the court, the court would then have the option of either deciding a constitutional or a statutory question.

Osoinach: That's correct.

Fish: One argument is, the title nine, interpreted the way that we view it provides this or the court could, unlikely with this court but a supreme court could clarify the scope of the constitutional right?

Osoinach: That's correct.

Fish: And thank you. Good.

Eudaly: Further comments or questions? I have never had a 4/5 agenda item; do we take public comment? Any public comment on this item? Welcome.

Shedrick Wilkins: I have talked about this issue in front of the mayor --

Eudaly: Your name.

Wilkins: Shedrick Wilkins I have to clean bathrooms at a target store. I suggested I dress up as a woman and clean the bathrooms and that was refused. There is this issue about gender equality but there are men who would go in the bathroom and spy on women. And the decision by my store was I cannot do that, I tend to agree with the president on this. It's fine that public buildings and schools have a third bathroom. But to make this kind of like a

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general thing, I am sorry to say that it's one of the reasons that probably trump was elected.

Eudaly: All right. Let's take a vote.

Fritz: Thank you Ms. Osoinach for all your work on this and I am very proud to be joining this suite. Aye.

Fish: We're going to be busy this year following friends of the court briefs and a host of legal proceedings actions, challenging executive orders or joining with other parties, cities, and other parties upholding bank rights in this country, and it's going to put a lot of strains on our legal team but I appreciate that they have, they have been and are rising to the occasion, and I will preview for my colleagues on the question of all user restrooms, the city has had a successful transition with 600 single stall restaurants being converted to all user, commissioner Fritz was a key partner in making this happen. It has gone smoothly. The next phase of this will be the city will issue a challenge to the private sector to match some goals we're going to establish. We will not be mandating this. We will be encouraging people to join us and I will -- I am happy to report the initial reaction we received from the business and trade associations is extremely positive and the next time that you are in you know, in your favorite coffee bar or restaurant or bookstore I think that you will be surprised how many single stall restrooms have been converted to all user based on the common sense principle that they are open to more people and provide more options to their customers so thank you Ellen and I am pleased to support this application. Aye.

Saltzman: Aye.

Eudaly: Very pleased that our city can lend any kind of support to this hopefully historic supreme court ruling. Aye. So with that, we are adjourned until 2:00.

At 12:55 p.m. council recessed.

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Key: *** means unidentified speaker.**

FEBRUARY 22, 2017 2:00 PM

Wheeler: Good afternoon. This is the afternoon session of the Portland city council. We have one item up. Could you start by calling the roll, please?

[roll call taken]

Wheeler: Can you please read the first and last item.

Item 187.

Wheeler: Very good. Thank you. I have a rather lengthy script that I'm required to read as part of these proceedings so bear with me. The council will now take up agenda item 187 scheduled for time certain to consider appeal from the citizen review committee of the Portland police bureau finding regarding independent police review internal affairs case number 2015-c-104 appeal number 2015-x-0002. This matter is being heard by council pursuant to Portland city code section 3.21.160. This is not a public hearing with public testimony. Rather council is reviewing a decision of the Portland police bureau which the crc has appealed to the council. The council must decide if the ppb decision is or is not supported by evidence in the record. The council will not hear new evidence and it will not take public testimony. I want to note that members of the council have received emails from the complainant in this matter. These emails are not part of the record and will not be considered although the complainant will have an opportunity to address us today. The hearing will be conducted as follows. First ipr will present the case and the procedural history. Second, crc will outline the basis for its appeal and area of disagreement with the ppb decision. Three, the complainant or representative will have ten minutes to present. Fourth the Portland police bureau will have ten minutes to present. Five, the involved officer or representative may elect to make a voluntary statement of up to ten minutes. Council will then have an opportunity to ask questions of any of the presenters. Council was asked to hold all questions until the presentations of the ipr, crc, the complainant, the police bureau and the involved officer are all concluded. Council will then have a discussion. Council may elect to move into executive session for its discussion. Executive session would be authorized under one or both of the following statutes. Ors 192.6602b or ors 192,6602f if the council decides to hold its discussion in executive session an announcement of the executive session and the grounds for going into executive session will be made before the council goes into executive session. Eight, following council discussion, I will entertain a motion and second and will vote on whether the police bureau finding is supported by the evidence. The police bureau finding was "exonerated with a debriefing". Portland city code section 3.21.020s defines supported by the evidence as a "finding regarding a complaint is supported by the evidence when a reasonable person could make the finding in light of the evidence whether or not the reviewing body agrees with the finding". Nine, if council determines that the police bureau finding of exonerated with debriefing is supported by the evidence the complaint will be closed. 10, if council determines that the police bureau finding of exonerated with a debriefing is not supported by the evidence, council will need to decide on the appropriate finding in this case. Council needs to select from the following alternative findings. Unfounded. The allegation meaning the allegation was false or devoid of fact or there was not a credible basis for possible

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violation of policy procedure. Exonerated that means the act occurred but was lawful and within policy. Not sustained that means the evidence was insufficient to prove a violation of policy or procedure. Sustained meaning the evidence was sufficient to prove a violation of policy or procedure. A finding of exonerated, not sustained or sustained is based on a preponderance of the evidence. That is the facts and circumstances indicated it is more likely than not that the violation of policy or procedure either occurred or did not occur. Debriefings may be recommended for unfounded, exonerated or not sustained findings when it's believed the subject employee would benefit from a discussion and critique of the incident. Pursuant to Portland city code section 3.21.160c no new evidence may be introduced at this hearing. 12. To help protect the identity and privacy of the individuals involved, during public hearings council will not refer to them by name but will refer to them generically as complainant, witness a, sergeant a, officer b, and so forth. 13. Since Portland city code provides no new evidence may be introduced at the hearing and because this matter involves council's review of the community member complaint the potentially could result in discipline public comment or testimony regarding this matter will not be solicited or received. So with that, we will now begin, we'll start with ipr, who will present the case and procedural history. Thank you for your patience.

Anika Bent-Albert, Independent Police Review: Thank you. Good afternoon, mayor wheeler and commissioners. I'm Anika Bent-Albert, assistant director of the independent police review. I'll provide a brief incident overview and summary of the procedural history of this case before you on appeal today. On September 17, 2014, sergeant a observed a woman calling for help. The woman told sergeant a that appellant had just circled her car and was punching her windows. Sergeant a contacted appellant. Police reports indicated appellant was verbally aggressive and kept put his hands in his pockets although he said he had his hands up and attempted to deescalate the incident. The police reports that sergeant a pushed the appellant up against the wall and tried to handcuff him but was unable to do so due to appellants level of resistance. Officer b arrived, warned appellant that he would be tased if he did not comply with orders, and then deployed his taser in drive stun mode on appellant. Appellant went to the ground but continued to resist. Officer b then deployed a second drive stun taser in attempted to handcuff. Officers b then used his taser in probe mode and officers were able to handcuff appellant. Appellant complaints officers used excessive force and excessive number of taser cycle rounds from the electronic control weapon. Now for the summary of the procedural history. I was the assigned ipr director to review this case. This complaint did not originate through the ipr intake process it was referred by the city risk management office after they received a federal complaint filed by appellant on March 17th, 2015. The federal complaint stemmed from an encounter with Portland police bureau officers on the date of September 17, 2014. Portland police bureau's internal affairs initiated an administrative investigation on May 5, 2015, as part of the routine tort review process. Ipr requested that internal affairs open an investigation due to the nature of the allegation of excessive force. After the investigation was completed and findings were made disposition of the investigation was sent to appellant. Appellant was provided with the option to appeal to the citizen's review committee (crc) if dissatisfied with the results of the findings. Ipr received appellant's appeal of the bureau findings and crc held a case file review on October 27, 2015. At the conclusion of the case file review investigation was sent back to internal affairs for additional investigation. After additional investigation was obtained the first appeals hearing was scheduled for April 20, 2016, but was subsequently canceled because bureau members were ordered not to appear per order from former acting chief Henderson. On May 4, 2016, the crc conducted the second appeal hearing in which they voted 8-0 to challenge the first allegation findings from exonerated to exonerated with debriefing. They

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voted 7-1 to affirm the second allegation finding of exonerated with debriefing. On May 6 ipr received notification that allegation number two would be sent back to internal affairs for new findings due to the incorrect version of the police bureau directive being used in the findings process. The bureau accepted the crc recommendation regarding allegation number one. On September 7, 2016, the crc conducted a third appeal hearing for allegation number two. This time with the correct directive and they voted six in favor with two members abstaining to challenge allegation two from exonerated with debriefing to sustained. On December 7, 2016, crc held a conference hearing with Portland police bureau chief Michael marshman and the crc voted four in favor, one abstained to contained with their original challenge motion of sustained on allegation two. That all leads us to today as no agreement could be reached between the crc and the police bureau during the conference hearing. An appeal hearing was sent before city council. At the conclusion of this hearing the city council must decide whether a reasonable person could conclude that a finding of exonerated with debriefing is supported by the evidence with regards to allegation officer, used inappropriate force while taking appellant into custody. That's what I have. Thank you.

Wheeler: Thank you. Next up crc will address the basis for appeal and the areas of disagreement with the ppb decision. Good afternoon.

Kristin Malone: I'm Kristin Malone, chair of the citizen review committee. I know most of you are familiar with the committee but for the new faces on the council and in the community the crc is a volunteer body comprised of 11 community members. We have several responsibilities including hearing appeals concerning allegations that members of the Portland police bureau have violated city policy. As we review the conclusions reached by the bureaus initial decision makers we have the authority to challenge findings not supported by the evidence. When that happens we have an opportunity to resolve these difference through dialogue with the bureau. In the rare case of the crc and bureau unable to agree on proper finding on an allegation city code provides that you all have the final say. This is so rare that I believe this is only the second such hearing in the past decade so if this procedure is foreign to you we're all in the same boat. I prepared a short presentation that I hope will give you the most insight. I would have invited questions but I just heard we're saving them until the end, so I'm happy to answer them if you are banking them in your mind. For a quick summary of the facts giving rise to the case, on September 17, 2014, several ppb members dispatched to a Northwest Portland intersection following a report that a cyclist, the appellant, had struck the windows of the car while stopped at a stop light sergeant a contacted the appellant first followed by officer's c and d. After the appellant began shouting and emptying his pockets on the ground the officers took steps to restrain him. The three officers worked together to push the appellant to the wall and tried to handcuff him while the appellant struggled against the officer's. Officer b issued a taser warning and discharged his taser three times in rapid succession in the appellant's back. After these initial discharges the appellant fell to the ground. Sergeant a and officer d were on his upper body and officer b worked to stop the movement of the appellants legs which at one point knocked officer b to the ground. While the appellant was on the ground officer b placed the taser on the appellant's calf and released a fourth charge of electricity. As the bureau members continued to work to handcuff the appellant officer b fired the probe into the appellant's back issuing a fifth activation from the taser, sometime later officer b again discharged the taser this time apparently by accident. The probes were still attached to appellant and the taser log registered up to one second. The bureau investigated several alleged policy violations alleging to this encounter but the only one remaining is allegation two which charges that officer b used inappropriate force in taking appellant into custody. The bureau found officer b's use of the taser were lawful and within

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policy. However, a recommended debriefing to council of officer b on design differences found in the new x2 taser model he was using which the bureau believes led to the last accidental activations. The crc reviewed the record and held a public hearing to determine whether the finding was supported by the evidence. In other words, we like you evaluated whether a reasonable person reviewing the evidence could have concluded officer b's uses of force were lawful and within policy. The particular policy we evaluated was a December 2013 executive order regarding directive 1051.00 which provides rules for the use of electronic controlled weapons or tasers. At an appeal hearing the crc concluded the evidence did not support the bureaus finding and voted to challenge. The crc recommended a finding of sustained and continued to do so after a conference with chief marshman. All the crc members who voted and did not abstain agreed officer b's conduct was not in line with the directive. There were three main areas of disagreement with the bureau. First crc members felt that the first three uses of the taser were not supported because appellant's conduct did not meet the definition of active aggression. Although officer b and only officer b reported a feeling the appellant might punch sergeant a, crc members found the evidence shows appellant was merely resisting the officer's attempts to restrain him. Three officers had appellant pinned against the wall and had hold of his arms and torso. A reasonable person would have determined there was no threat or overt act of assault coupled with present ability to carry out threat or assault. Further some members found the directive did not permit the fourth and fifth taser deployments which occurred after the appellant had been brought to the ground and had three bureau members on top of him. Section 3.2 of the directive states that members will not use an ecw on a handcuffed or otherwise restrained subject. For example, a subject being held to the ground by multiple officers. Unless the subject is actively engaged in behavior that creates substantial risk of injury to the subject, members or others and no other reasonable force options exist. The video in the record show the that the drive stun to appellant's calf occurred while appellant was on his right side. Officer b had gotten hold of his left leg while kneeling on his right leg while officer d pressed on appellant's torso and sergeant a straddled across his shoulders and held his left arm. Seconds later when officer b deployed the probe appellant had been placed prone on his stomach and appeared well controlled with officer b straddling both legs with a knee on appellant's buttocks while sergeant a was seated on his back. Sergeant a was holding the appellant's left arm and officer d was holding his right arm, crc members felt that section 3,2 prohibited the use of the taser in these circumstances appellant was well restrained. Circumstances in this case directly tracks the example on the directive of a subject being held to the ground by multiple officers. Crc members disagreed with the bureaus conclusion that the taser activations were justified because the appellant was kicking his legs immediately after being taken to the ground and trying to roll over. Some felt they did not rise to the level of active aggression. The video showed appellant was manually restrained and no longer kicking at the time of the activation on his calf and was prone and largely immobile when officer b deployed the probe. With respect to the fourth and fifth cycles of the taser, crc members found the evidence did not support a finding that the appellant posed substantial risk of injury to himself or others or there were lack of reasonable force options. Finally, the crc took issue with the final taser deployment which occurred after the officers believed the appellant to be effectively restrained. This was recorded in the taser log but not reported by officer b, because he was unaware that it took place. The bureau believes this accidental activation occurred because the activation button is placed along the side of the weapon in a similar location to where officers are trained to rest or index their fingers on their firearm. The bureau has noted taser officer b was using was not the standard issue taser but instead a new model called the "x" 2, which the bureau was trying out at the time,

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and which has now been formally adopted. The bureau has suggested that the officer's instincts to index his finger caused him to tap the activation button sending another charge of electricity down the attached wires. The crc found this information useful and understanding how this accident occurred however directive 1051.00 is agnostic as to the particular device being used. It applies to electronic control weapons generally. The crc is not aware of any rule that would suspend the general force guidelines when new weapons are being tested in the field and used on civilians and rightfully so. Community members have a right to expect that officers are properly trained on any weapons used outside of the training facility and they will be governed by the weapons force and ucw directives. The bureau has also contended that officer b should be exonerated with respect to the sixth activation because it lasted only a short time or may not have had an effect on the appellant. The second point the bureau characterizes appellant as not remembering the discharge but in his ia interview conducted nearly eight months later appellant reported more than three charges during the incident and was not asked any follow-up questions on the precise timing of those shocks. In any event there's no language in the directive allowing otherwise impermissible uses of force based on the duration or the amount of pain felt by the citizen, therefore crc members found the sixth discharge was not justified by the directive and evidence did not exist to support use of force. In conclusion while I have outlined a number of explanations of the crc's challenge council has the opportunity to adopt any, all or none of them and asking the same question using the same standard which is whether a reasonable person could conclude based on the evidence that the force officer b used when taking appellant into custody was lawful and within policy. Thank you.

Wheeler: Thank you. Next up, the complainant has ten minutes to present. The complainant's representative. Good afternoon.

Matthew Klug: Good afternoon. If it pleases council, couple things I have heard --

Fish: First your name.

Klug: Matthew Klug. If it pleases council, to start with I did file the tort on the 13th of march. It was a Friday the 13th. So it's within the 180 days needed to be filed. The date was given wrong prior. Also, there was no dispatch to the officers. So just to be clear that you can look at the paperwork it says self-dispatched. Handwritten on the paperwork. There was no 911 call either. So this has been mischaracterized yet again in the stuff you just received yesterday or the day before. There was no 911 call. The word call was used in the paperwork. But that was supposedly a verbal call with her -- excuse me, the alleged victim with her arms out the window saying, help, help: That's what this is going off of. It took about three minutes between when that happened and when I was in handcuffs. 30 seconds is the video. Literally three minutes. This has been characterized as this big thing. It's been 890 days since that occurred until today. The tort review board asked for review on April 28th, 2015. It's been 667 days since that occurred. The target is supposed to be 180 days. Just put this in perspective I'm talking about a lot of big issues but really it's down to the policy at 1051 that I provided. They tried to at a hearing present one that was prior, an older version and on the way out of the hearing when they won that apparently won that they down to the commander at the time, high fiving Daryl turner on the way out the door. This is just -- you got to look at the way they behaved, guys. Okay? This is going on still. They are trying to mischaracterize it still. I'll get to what I need to say. My name is Matthew Klug. I'm a resident of Portland. I'm an epileptic, a survivor of traumatic brain injury from a long time ago, a coma survivor and I suffer mental illness. I'm not a lawyer but I'll explain what happened to the best of my ability. These things kept coming to decision points and decisions were made that kept making this compoundedly worse over and over and over again. This has been 890 days. I'm still shaking about it now. Really, I have a press release from the auditor's office and I gave copies to the clerk. This is from

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January 27th. Wanting to get to the bottom of how Portland police deals with brady material. I have an example right here. After I sued the city and the county, it turns out there was no complainant but they never put that in the discovery packet, nick. That's a big deal. Scares the hell out of me. This is the 1963 supreme court decision and no one is paying any attention here at the courthouse. I'm calling out to the judges. Somebody pay attention. In their name they tried to arraign me in absentia. One of the judges put her foot down, thank god. Okay? They tried to arraign me on a bunch of felony counts, seven counts. They left me in jail. They didn't do it by closed circuit or video feed. They left me in jail. Now it's a good thing my parents showed up. A family friend who is an attorney because probably if I had had a different judge or didn't have anyone there on my behalf I might have been arraigned on seven felony counts at that point in time. I went home 12 hours after I had charges dismissed, so you know, I was never read my Miranda rights and I was put in the general population. You know the kinds of searches they do. I was searched in different ways but I was never read my rights. They kept me in jail for another 12 hours after the charges were dismissed by the judge. What's going on there, guys? These are big issues. I'm sorry to just lob this on you but to cover up for some kind of little accidental taser thing that just making really bad decisions and this kept piling on and piling on and piling on to the point where I literally was given another set of charges, 43 days later, I don't know where that came from. I spent \$9,000 on a criminal defense attorney to try to keep me out of jail long enough to file this case that I did file on Friday, the 13th. That's just one of the oddities of this case. But -- the evidence that there was no complainant wasn't in the packet. Okay? So there was discussion of the charges but there was no ability to find out the origin of the charges. They were just there, 43 days. They must have refiled them. I'm not a lawyer. How did this occur? So I know when they know complaint things they can refile them later if they want to. Was there some kind of other something in the decision making? A risk management decision? I'm not sure. Along the way what contributed to refileing the charges. So at some point I know it's not double jeopardy but it comes right up to the line. Now they are going to go after me and they are probably going to try to try me in the court of public opinion and, wow, you know, so this is their third attempt at it. I hope you take that with a grain of salt. I know you've read this. Here's the 1051 if you need a copy, I got one for you. Here's my lawsuit with the general allegations. I'm sure you've all read this. You know, I don't know what I might have left out. But trying to arraign someone in absentia is just crazy in the united states of America. Take that in. Sitting there in jail. I knew I was supposed to go at 8:30. They never came with any medication. The nurse came every four hours. They knew I was epileptic. Didn't get any medication for 24 hours. They took my \$17 and had to go get 20 bucks out of the bank because they give me some debit card instead of my cash back. Get a bus ride home. I had a seizure before I even get in the door. This stuff is big deal. They have some kind of agreement with rite aid. All they had to do was send someone down there. I know this is the county but at some point when you hang people over you gotta have some faith that they are not going to be mistreated again and again and again. So the sergeant who pulled me over, sergeant a, pulled me over. I pulled over a block after I heard a boop boop, so I turned left at the light. I had the green left arrow. It must have been red for him. I looked back, there were lights. A block later I pulled over, the campus of northwest college of art or whatever it is. The old federal building. I have a post office box across the street that I have had since 2005. You know? I mean over ten years I have had a post office box there. It's not like I'm a stranger to Portland or downtown or that's where you used to get your tax forms, guys. This is Portland, right? What's going on? So just out for a bike ride. A little heavy handed. He came out of the car, reaching, unbuckled his holster, slid back the cover. That should scare the -- out of anyone. It did me. I put my hands up in the air --

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heard me say verbally, what did I do? What did I do? I didn't know what his animist towards me was. Maybe I'm close to the bus station so I said I'm not homeless hoping maybe he'd lighten up. But the officers came right after that in an old unmarked car and I believe those are the enhanced crisis intervention team members they did not deescalate the first thing they said to me was turn around turn around, I turned around and the sergeant did not try to cuff me they all came at me at the same time.

Wheeler: Thank you very much.

Klug: The rest is on the video.

Wheeler: Appreciate it.

Eric Terrell: I'm Eric Terrell, the appeal process advisor basically assists the appellant in any way possible. So that's why I was sitting with the appellant.

Wheeler: Thank you both. Next up the Portland police bureau will make its presentation. They also have ten minutes.

Wheeler: Please state your name for the record.

Mike Marshman, Chief, Portland Police Bureau: Good afternoon. Mike marshman, chief of police.

Jeff Bell, Portland Police Bureau: Jeff bell, captain of internal affairs.

Marshman: Thank you for the opportunity today I will try very hard to get my presentation completed within 10 minutes, captain bell is going to help along. Part of the slides I think you'll be able to view as we go through this are going to be a little bit redundant as other folks have testified and spoken to them so I'll just skip through them as we go. So as stated earlier the taser policy in question today is directive 1051 active aggression I believe is what we're talking about today and that is a threat or overt act of an assault through physical or verbal means coupled with the presentability to carry out the threat or assault which reasonably indicates and assault or injury to any person is imminent. For the next slide when a reasonable person—excuse me when reasonable or under circumstances members are authorized to use the ecw or taser during the following in response to active aggression and the second in drive stun mode. In the event that the probes are insufficient spread or dislodged in close quarters like you'll see in the video to protect a member, create safe distance or avoid the use of a higher level of force and to avoid the higher use of force I think is appropriate in this instance. Members will not use a taser on a handcuffed or otherwise restrained subject and in our policy we give an example of a subject being held to the ground by multiple officers, unless the subject is again actively engaged in behavior that creates a substantial risk of injury to the subject, themselves or others and no other reasonable force is available. The reasonable standard as was said earlier by the crc we find the outcome of an administrative investigation like this unreasonable if the community finds the findings are not supported by the evidence. I think it's important to note here that the ru manager who wrote the finding their standard is preponderance of evidence or greater weight of the evidence. At that standard that the ru manager uses is a little bit different than the crc's reasonable person standard. I went through that pretty quick I wanted to get to the video for you and during the presentation we'll show it a couple of times. If you're ready, we can show you this encounter.

[Video Played]

Marshman: It's a short video and throughout the presentation we will come to it a couple times. One thing to note, you'll be able to see it couple times, you see that flash. That's the taser going off. In drive stun mode if it's raised up higher it registers a cycle, the computer chip in it registers that. If it doesn't register that it's making contact or its effective. In a drive stun mode my assertion is if it's up in the air and you'll see in the successive videos it's going. But it's not contacting. Then again, not to get too technical but the new taser the bureau has since adopted it, the officer, officer b, was testing that which we do if a lot of

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tools we deploy in the street. When you index your finger which retrain to there's a button there which is how you activate that and drive stun mode. One of my assertions is when you're struggling like in that video and he's getting kicked and rolled over he's by default clenching because you're getting knocked over I think he's hitting a button. You can see the flashes going off. Hopefully as we proceed further that will be a little more clear. So the next slides background to the call. We have been over that from other testimony. Officer b's statement, what he observed, sergeant a was being yelled at, complainant hands were moving rapidly. Officer b believed the complainant was about to take physical altercation. That's what led officer b to move in and took some action. Next statement I approached this is all quotes from officer b, he notated complainant was intensely focused on sergeant a, yelling at him, thrusting his hands in his pockets, lowering he head. He believes the person is initiating the altercation with sergeant a, again here's clip call clip 1, you get to see this again. This is the initial contact.

[Video Played]

Marshman: So officer b goes on with his statements he believes officer a was struggling with complainant. Complainant was arching back and pushing against sergeant a he thought he was trying to punch him. That's when he gives the taser warning. Officers b believes the complainant was violent and continued to escalate. Officer b says the taser was initially effective in deterring aggressive behavior. He drops to his knees and kicks his feet. Seeing the officer kicked to me is active aggression. Officer b says he got kicked multiple times by complainant, causes him to fall to the ground and he believes the complainant is still struggling. Last video you saw shows what I believe to be act of aggression by the complainant in the first five seconds of the taser then again that taser button is pushed three times for three seconds, one second, one second. I believe not all those were having contact with complainant but the officer rightly so was holding on to that. You don't want to hold on to that taser. Yes, it does register but I don't believe all three had contact with the complainant. Again, another video for you. Sorry, to watch. I'll get to that in a second. Just watching the time here for you. Video shows officer b gets up after being kicked, deploys the taser in drive stun mode for three seconds. Complainant still struggling. Basically we're just trying to get the complainant into custody. One more video clip for you, and I'll get to the crc's concerns. Thanks. So the next slide the taser probe officer c, the second bullet point, should be on complainant's right side. She believes the complainant is overpowering her and she can't get control of his arm. You can see the complainant tried to push up. It's hard to see his right arm. She's struggling. Just can't get his arm behind him. He's not in control. I'm running out of time. I'm going to skip towards -- crc concerns. Number one, officer b use of taser was unreasonable because it was not in response to active aggression. My assertion is during the video I believe complainant is in active aggression, with punch or attempting to punch sergeant a, kicking the officer, having the officer fault to the ground. Crc concern number two, being restrained, he was held down by officers during taser application, yes, we're holding him down but he wasn't restrained. He continued to fight and kick the sergeant was struggling get his right arm in one of the videos you can almost see him start to do a pushup with officers on him and again officer c was not able to get control of his right arm. Crc concern number 3, last discharge was supported by the evidence. After the complainant was handcuffed he was still struggling you have to maintain control of that taser. He is still struggling even though he's handcuffed. My assertion is nobody recalls it I believe that taser application is due to trying to control that taser. So for ppb findings, you've read that. I'll just finish with seconds left. Again, when that taser light goes off in the video it's not necessarily a contact with the complainant though it does register in the taser download.

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Wheeler: Thank you. Next up the involved officer or a representative to make a voluntary statement up to ten minutes if they choose to do so. The council may now ask questions of any presenters.

Fish: Mayor, how do you want to do this? Do you want to invite the presenters to come back so we can do it as one panel system?

Wheeler: Why don't we find out what the nature of the questions are and then we can invite panelists up individually.

Fish: I have a number of clarifying questions I would like to ask the chief.

Wheeler: Come on up, chief.

Fish: I have a couple of procedural questions about crc, I would address to the chair afterwards. Thank you for your presentation. We were given a very thick folder with a lot of information, and my understanding from a prior conversation I had with Mr. Handelman this is the first time council has had an appeal like this since 2003.

Marshman: Yes.

Fish: No one with the exception perhaps of commissioner Saltzman has been through this before. The rest of us are learning on the fly. I have some basic questions. From the moment the officers had contact with the shall we call him the complainant? The complainant, how long did it take to get the complainant into custody?

Marshman: I don't have the specific time frame. I believe that video that you saw -- it's obviously towards the beginning, he wasn't handcuffed at the end of that. I assumed he was handcuffed fairly quickly after that.

Fish: How long?

Marshman: I'm guessing I can pull up the video, 15, 20 seconds. Fairly brief.

Fish: Okay. Is it relevant to your analysis that there were three officers involved? Three police officers that were engaging the complainant?

Marshman: Yes, sir, very relevant.

Fish: At what point would the number of officers involved begin to change your -- the way in which you view restraint or whether other kind of force was warranted? The point I'm trying to get at is the difference between having a single officer trying to subdue someone and a large number of officers. How did that change the analysis?

Marshman: If it's just one officer and one subject I think the probability for either party to get injured is greater. With two officers and one subject it's going to diminish. We actually train if possible with three because I believe with three officers and one subject again the probability for any of those involved to get injured lessens. Within this encounter you can have one officer trying to control one arm, the other officer another arm and the third officer trying to control the legs. That's actually how we train. I do believe to a point more officers correlates into safety for all the parties.

Fish: That is common sense, right?

Marshman: Yes.

Fish: Number of officers trying to subdue someone, it changes the balance of force, if you will.

Marshman: Correct.

Fish: Is an officer required to give an oral warning before discharging a taser?

Marshman: Yes, if time allows. So there is a caveat but generally speaking, yes, they are.

Fish: I'm picking up on this because it was part of what you testified to council. Your understanding is that a warning was given?

Marshman: That's correct.

Fish: Is that in dispute in this hearing?

Marshman: Not to my knowledge, no.

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Fish: Under what circumstances again could someone be relieved of the duty to give a warning?

Marshman: For safety reasons, if it's simply no time allows, obviously not in this case but if somebody pulls a knife and starts running at you, if you think a taser is going to be effective you're not going to say take the time drop the knife I'm going to tase you as a hypothetical.

Fish: One of the terms that you have called out in the directive that's before us is the meaning of the phrase active aggression. In terms of interpreting that and applying that concept to the facts in this case, how much of that is an objective standard and how much a subjective standard? And what guidance do you have for us in terms of the interpretation? To me there's an objective and a subjective component but I don't quite -- I don't have a clear sense of either.

Marshman: Okay. In this specific case, officer b, when down by the legs of the complainant, and the complainant is kicking hard enough to knock the officer over, to me I think that's a clear example of active aggression. He's fighting. Struggling. Later on in the video when he's trying to do a pushup and you can see it better on his left arm, to me that's active aggression. You're not allowing the officers to put you in handcuffs. You're obviously not complying. You're trying to get up and get away. What would example of not active aggression? If you're intoxicated let's say and you're stumbling, you're just pulling away from the officer but not too hard, sliding scale, under some resistance there I wouldn't say that's active aggression to me I think watching the video the first time I saw it when the officer gets kicked towards the wall frankly surprised me. That's a pretty good kick to do that to that officer.

Fish: You talked a little bit about the duty to avoid a higher use of force. Now, in this particular instance what would have -- give us an example of higher use of force beyond the use of a taser.

Marshman: Couple uses of force in my mind would be higher use of force would be strikes or punches to the complainant. Higher likelihood of complainant being injured and/or the officer or use of the baton, striking the subject with a metal stick. I think that would be higher use of force and more likely for the complainant to get injured by that. With the taser there's no residual. It changes the person's -- it can when appropriate changes their active aggression stance at times instead of trying to get away it gives the officers a few seconds to handcuff the subject. I have been tased. It hurts, yes, but once the charge is over there's no residual impact. I believe that is a lesser amount of force and less likely to injure the complainant versus punches or strikes or hits with the baton.

Fish: Is that hierarchy use of force clearly set forth in the rules?

Marshman: Yes, and in training.

Fish: It makes clear that the use of a taser is -- there's a higher use of force that follows that it includes punching and use of baton and other tools?

Marshman: We have moved away from the levels of continuum but that is correct. Actually to me the drive stun mode is even more minor if you will than shooting the taser probes. That wasn't effective the first couple times so then each time you use it you have to assess whether or not it's effective. After two times not being effective the officer tries to use the probes because if done correctly has a greater impact on the subject. So the officer in their minds working up that scale.

Fish: One other question then I'll come back after my colleagues. We are being asked to apply a reasonable person's standard. A reasonable person when confronted with the facts in this case I think would ask a basic question, which is why did it require six different uses of a taser to subdue a person particularly when there were three officers and one

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person. That on its face I think is a question that people would ask in this case. What's your response?

Marshman: Two points. One, I think it's a very reasonable question. The officer thought they activated the taser three times though the computer chip in the taser when we did the download indicates six. The officer thinks in his mind he has to use it three times. Again, in the video when he's holding on they are struggling, my assertion is he's hitting that button on the taser he's testing and it's going off without contact with the complainant and the officer doesn't know it. That's in my mind where you have the discrepancy the officer thinks it's three but in reality it's activated six times. But again, it's not six times the way I read the reports and view the video it's not six times on the complainant. To your other point about the reasonable person standard, I believe it was already mentioned but if not, new assistant chief of operations, the person who wrote the finding, internal affairs captain and ipr director or designee all concurred with the original finding which is the higher level that they have to review this at where crc used it at the reasonable person standard. So I made two points there.

Saltzman: So you lost me at that last point there. You're saying the ipr director believed the higher standard than the reasonable person standard?

Marshman: At the time they have a different level of review. Different standard and they all affirmed exonerated or exonerated with debriefing before it went to crc.

Saltzman: Thank you.

Fritz: I'm a little confused trying to follow how many were involved in this. Obviously sergeant a started it but then officer b, and witness officer c arrived. And then as a witness officer d and a sergeant e. So what would be described as a witness officer?

Marshman: Somebody who just viewed and didn't have any physical interaction with the subject.

Fritz: Then it says the witness officer d positioned herself on the left side. So is there a protocol that you always call in other officers as witnesses?

Marshman: No. No.

Fritz: So the issue was three people not being able to restrain the complainant, why were there then two witnesses just taking notes rather than helping to secure the person?

Bell: I can explain real quickly. In the context of these cases the involved members are the members who actually have allegations of misconduct against them. Officers without allegations of misconduct are called witness officers. In this case there was no allegation of misconduct against officer c even though she was involved in this altercation. She's called a witness because she's a witness to the allegations of misconduct on the part of officer b and sergeant a.

Fritz: My concern is I'm having trouble following who is what. If a person is having an altercation like this it might be difficult to recognize who's been hands on and who has not. It seems like the crc focused a lot on the use of the taser and how much that was used. Was there consideration of the initial putting the subject against the wall and basically going towards him when it started with a traffic argument?

Marshman: Sergeant a had allegations against him, all the allegations were I believe exonerated.

Bell: The crc affirmed that.

Fritz: I'll ask them when they get back up again. Thank you.

Eudaly: I want to make sure I'm understanding the sequence of events. He was followed down the street, the lights went on. He dismounted his bike. The police car pulled up. He pulled the bike on to the curb. Then he was ordered to do something? His hands up. Or turn around, turn around. And at that point the taser is deployed for the first time was he standing or not?

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Marshman: No you want to take that.

Bell: Sure.

Eudaly: Walk me through.

Bell: You've got a pretty decent general description. Once they tell him to turn around their objective is to kind of use the wall to push him up against the wall and take him into custody with hands behind his back. That is the point where officer b, who is actually riding the car with officer c, when they come up is right when the video starts. They are engaged with him against the wall. Officer b says in his report and in his statements that he saw one of the complainant's hands back in a fist and based on his observations of what he described as kind of violent behavior and aggressive speech, shoulders rolled forward he took that and actually answered to commissioner Fish's earlier question those are the objective things that he took in, his subjective belief was that the complainant was about ready to strike sergeant a, and that's what caused the first application of the taser.

Eudaly: But there was no violent behavior. There was aggressive behavior. He didn't punch anyone.

Bell: With the officers, not at that point, no.

Eudaly: The first taser activation is he still standing?

Bell: Yes.

Eudaly: Then he falls to the ground.

Bell: Yes.

Eudaly: And then there's a struggle, arms and legs. But there's two more activations, one in the calf, one in the back, and those are the two I'm confused about because he does seem subdued at that point. So I just want to -- it's hard to tell what's going on in the video.

Marshman: It is hard. I apologize, I probably have like 30 hours of review in this case. To give you a fairly detailed presentation in ten minutes is a little bit of a struggle.

Eudaly: Understood.

Marshman: The kicking on the ground, the pushing up off the ground, he's not compliant and being placed in handcuffs. The actions that he's doing not obeying commands, not obeying orders, all the physical movements with that again it's my assertion and others as well that that is still active aggression.

Eudaly: Okay.

Fritz: Can I just follow up on commissioner Eudaly it says in the record that people were actually sitting on him while he was face down.

Marshman: We could watch the video again. At one-point officer b tries to get on his legs after he's kicked, so one way to safely do that you can trap somebody's legs and sit on them to avoid getting kicked. Sergeant a is trying to get his left arm behind his back and officer b, she never really got control during the video, is trying to get his right arm behind his back. So sergeant a, officer c are not sitting on him. Officer b is on his legs trying to keep from getting kicked again.

Wheeler: May I ask a question here germane to this? There was some discussion of the definition of restraint. Sounds to me like there's a dispute between the police and the crc about whether or not this individual was restrained.

Marshman: Correct.

Wheeler: What's your view again and where do you see the difference between the crc having heard their testimony?

Marshman: Having listened to crc that night I have no faith that if either sergeant a or officer c let go of the complaints' arms he was going to put his arms behind his back and calmly be taken into custody for the incident in question. I believe he would have tried to either punch based on previous actions of the complainant seconds earlier, trying to push up, get away, still punch or I think he would if he could try to get away from the officers. I

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think he's taking steps forward to accomplish his task versus obeying commands and being taken into custody. I saw no indication that he was complying with the officers.

Wheeler: You said this took please over a fairly quick period, 15ish seconds.

Marshman: A little longer.

Wheeler: What should I expect if I am being tased some number of times greater than three, what's my state of mind? Am I in a position where I'm hearing what you're saying? I have never been tased. I'm just asking the question. What would you expect in terms of compliance?

Marshman: Sure. When I was actually working the street I have tased folks. Every time you activate the taser's cycle the officer has to reassess the effectiveness of that taser. After two drive stun modes if it's not working you shouldn't use a third. Some other tool should be used or different use of the taser. I have been tased. I have talked to folks they are able to hear and comply if they choose to.

Wheeler: You testified the officer believed he used the taser three times but facts show it was deployed six times. Does that interfere with the argument you're making that there's a waiting period between those tasings to reassess the situation?

Bell: The main issue with the number of tasings and where the discrepancy comes in, the first three tasings were three second, one second, one second, all in a five-second span of time. The way the taser measures to get technical, it won't measure anything less than one second, so if you have two half-second taser activations they will show as one second. Both of the one second taser activations happened during the same second. Which I think it's fairly reasonable to assume that the officer is applying one but his finger is bouncing on the button a little bit as he's applying it for approximately five seconds.

Wheeler: Does that meet the standard, one second, one second, three seconds, does that meet the standard of reassessing before reapplying?

Bell: I think in this case based on what the officer said I think it's fair to assume that the officer did believe that these were only -- this was only one activation. During the struggle like I said his finger was coming off the button. This was a new piece of equipment and I don't believe he knew there were those gaps in there, thus believing it was one single activation.

Wheeler: You raised this testimony and I'm asking it even though it may not be especially germane, is there training prior to sending new equipment out into the field?

Bell/Marshman: Yes, there is.

Wheeler: What happened?

Marshman: Well, one, I think in my mind it's a poor design of that button on the taser. When you use a firearm and a taser is shaped like a firearm you keep your finger out of the trigger guard. That's just basic weapon safety. It happens they call it indexing your finger. When you index your finger which is what happens on this taser that's where that button is. During the video you see that flash go off in that drive stun mode but the taser is not on the complainant. If you're struggling, you have a natural instinct to kind of clench your hands during that struggle. My assertion is when you do that your finger is moving and you're bumping that taser. That's why I don't think the officer realized he was hitting that for a second at a time. That's why I think there's a discrepancy between a six activations although doesn't necessarily mean they are effective or on the complainant, and the officer's mind he thought he activated and applied it three times.

Fritz: Surely not using a weapon in compliance with instructions. That's a problem, isn't it?

Marshman: Well, you're trying to hold on to it and if by holding on to you're actually hitting that button again that's where I default back to the design. So when I took this position and I in this case came to me because it's gone through couple different administrations and

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different people, I asked the training division let's review this taser at large because I think it's potentially problematic.

Fritz: And Surely even using it in a situation where that might happen is problematic. If you – the crc brief actually does say witness a, officer d, sergeant a, restrained appellant's arms, officer b straddles appellant's legs. That's what I saw in the video. Why would you then be using a taser in close quarters?

Marshman: I think he was still struggling. They did not have control of him. I believe commissioner Fish said what other options? I would rather have the officers use the taser with no residual effect versus any kind of a strike with their hands or knees or pulling out the baton and hitting them with a metal stick. I think that's problematic. If they punched him or used a metal stick my question would be why wouldn't you have used the taser. I think the taser is a lesser probability of harm to anyone involved.

Fish: Can I pick back up on the question of the taser? In terms of a piece of equipment, chief, how many times can it be discharged?

Marshman: That specific taser itself?

Fish: Yes.

Marshman: This new taser like the one used here, it has two separate probe cartridges.

Fish: So-called x2 taser.

Marshman: It has two cartridges and each has two probes. So you can fire the two cartridges independently of one another. But for the drive stun mode we're not discharging anything. It's just a contact mode. There's a number of times. You can just -- you can cycle and cycle and cycle. So it's two different ways to use that electronic control device.

Fish: Do we currently have any guidelines that deal with frequency of use?

Marshman: Yes, in our patrol tactics if you use that -- since that weapon specifically is what we're talking about if you use it in drive stun mode a couple times you're not getting a desired effect, the officer should be thinking through each one and realize what they are trying to do isn't working and reassess on what they could do to in this case effectively take somebody into custody. They need to always reassessing and reassessing what they are trying to accomplish and whatever tactic they are using is it effective. If it isn't they better be thinking differently on how to do something that will be effective.

Eudaly: Can you explain the two different modes of use with the probes and without? I also have never been tased, so --

Marshman: Apologize up front it's a little technical you have two modes. You have a drive stun mode, so the end of it is maybe an inch by two inches roughly. It's just a contact. If I place it against somebody's arm and touch that little button for a second, they will have that contact for a second. It's going to hurt their arm. You pull away, zero residual impact of that. Doesn't affect the rest of their body at all. So it's lesser level of control if you will. The second way to use it is if you have some distance you can discharge two probes and actually make contact with you. So I could hypothetically shoot something like a forearm and upper arm. Those two probes where that contact is, is where you get that electricity through. That effectively isolates the larger muscles, just in the arm, and it's harder to use your arm. The rest of you is still free to do what you choose. Yes, it hurts. I have been tased. As soon as the electricity stops you have no residual, full motion, game on again.

Fritz: excuse me though what you just said is not in the record, right? That's not part of the evidence of this hearing. The description of how a taser works. I know people would dispute that a as it's possible for residual effects and it's not as benign as you characterized it. It's not what we're discussing today, is it?

Marshman: A whole detail account of how the taser works and the whole taser training -- none of that is in internal affairs review. That's correct.

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Eudaly: I was wanting to understand the difference between the two because of the escalation, it sounds like an escalation to deploy probes. So there was a twist that escalated in the final applications I guess.

Marshman: Is the probes.

Eudaly: Is the probes.

Marshman: Correct.

Eudaly: The complainant, he was being apprehended because of his perceived aggressive behavior, not necessarily what may or may not have transpired with the driver earlier?

Marshman: Yes. His interactions with the driver initially. Correct.

Eudaly: If he had just not seemed aggressive at all would he still have been taken into custody?

Marshman: If he wasn't aggressive I would still expect the sergeant and officers to contact him and try to figure out what happened if anything between the complainant, the person in the car and the complainant in this case, try to figure out what happened. Then if he was my opinion not resistive, who knows how it would have ended up.

Eudaly: Okay. Thank you.

Fish: I have one more question. I hope we have a chance to bring the chair of the crc back.

Wheeler: You bet.

Fish: Chief, could you provide just a little more description for us of what you believe is the critical distinction between active aggression and resisting arrest? Where is that line and help us understand the difference.

Marshman: The way we teach officers and I'll read it again out of our directive. At the time this case occurred its active aggression is a threat or overt act of assault through physical or verbal means. Coupled with the present ability to carry out the threat or assault which reasonably indicates an assault or injury is imminent. Active aggression. Somebody -- trying to think of a hypothetical for you. If somebody has clenched fists or sweating or running away, hey, I need to talk to you and they don't but they turn and they are clenched and they are looking for different ways of escape and they might verbally say get away from me, I'm not going to be taken into custody, they are tense and clenched, approaching that person is a whole lot different than -- I have talked to other folks, you're under arrest, they go okay, they turn and put their hand behind their back. There are two wholly different scenarios to where based on their verbal comments if any or body stance if any the situation at hand, what the person in the car stated happened, all those together builds up to where -- in your mind this person potentially be violent or not. If they like the directive states we train people if you think they are going to be actively aggressive, you can go at that level. My assertion in this case with the video is on the ground kicking and officer off him to me is actively aggressive or pushing up trying to not be taken into custody, trying to get away from the officers to me is an overt act that you're not complying. I apologize it's not a bright line. There is a sliding scale if you will in there, but I think on this case getting kicked as an example to me is clear cut.

Wheeler: I would like to ask a question about the police bureau's finding. Exonerated with a debriefing. Can you explain that in layman's terms? What does that mean exactly?

Marshman: Sure. I think it's on one of the footnotes I sent. Exonerated unfounded would be just didn't even happen. Exonerated it happened but debriefing is these kinds of cases I would always suggest debriefing. So that you can always learn from everything. Debriefing is a discussion, sit down with all the parties and discuss what did you do, why did you do it what time. What could you have done better, other options you could have used. Just saying yes, your actions were within policy it's always beneficial to have a debriefing of

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what I just stated. Even on all these, frankly. It's good to sit down and reassess actions on any incident of this nature. That added notation of with debriefing is just that. The officer, the sergeant and their command sitting down and essentially going over what we're doing here today.

Wheeler: So without bias I'm going to ask the following question. Would it be fair to say that the finding is from your perspective he acted within bureau policy but it was sloppy?

Marshman: No. I would say he acted within policy but it's good for all three of those members and their command to sit down and go each one why did you do what you did? Could you approach it differently? That was a tool being tested at the time. What can you learn from that? I can't think of any situation to where you can't learn and do a better job even if it goes well you can always do better, right? That's my philosophy. It doesn't hurt to sit down and debrief. I wouldn't say in policy but sloppy.

Wheeler: Would you say it was within policy but not textbook?

Marshman: That's more subjective. I think sergeant b, his actions were exonerated. I think he did what he was trained to do. Trying to take control of the complainant with three people, I think that's appropriate. That's textbook. When you get kicked, you go back and help the other officers and try to trap his legs so he doesn't kick again. I think that's textbook.

Wheeler: Bear with me for one more question, colleagues. I'm just trying to make sure I understand. [speaking simultaneously] we're talking about a 15-second period.

Marshman: Right.

Wheeler: It's your contention that this individual we're really talking about officer b, that officer b used their judgment over that 15-second period and was within bureau policy.

Marshman: Yes. I believe he was.

Wheeler: Thank you.

Saltzman: Can the act of tasing produce the reflex that was perceived as aggression on behalf of the complainant?

Marshman: No, it would not.

Saltzman: The kicking and that would not be a reaction to being tased?

Marshman: No. One of the big issues, I saw it last night, somebody gets tased they pass out. Horrific. That's not what happens. I have been tased went through my whole body and your large muscle groups lock up and you don't move. Once it's stopped, again, zero residual. I can get up and go instantly. Involuntary motor motions would not occur.

Fritz: I don't see anywhere in the taser policy where it says how often it may be discharged in a minute or in five minutes. Is it in a different part than the policy--?

Marshman: How often a person could --

Fritz: Policy 1051.00, electronic control weapons system. It says when it may be used but doesn't say anything about how often. Is there another policy that says you should not use it more than x times in a minute?

Marshman: Well, no, there's not a policy that says you shouldn't use it more than x times in a minute but current policy is if you use it three times like was used in this case the new policy states that triggers a whole other set of protocols but we don't have for our various tools we have how many times per minute an officer can use them. We just don't approach it that way. Again, on this one, if you try the drive stun twice, it's not effective twice, you should be thinking something different. Whether that takes 30 seconds or three minutes or three seconds.

Fritz: Which goes to the mayor's point. It was used many times more than three.

Marshman: My assertion is even though it was recorded the computer chip and taser is recorded, I believe that again you watch the video you see that bright light and the taser is up in the air, that's drive stun mode, I believe the officer is inadvertently hitting that button

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because his finger is on the trigger guard. It's being activated but not necessarily in my opinion not a contact with the complainant. That's why I believe the officer thinks he did it three times instead of what the taser download computer chip reads as six activations. Six activations but the officer is thinking he had contact with the subject three times.

Fritz: That seems to conflict with some of the witnesses, not the police witness, but the civilian witnesses. Who report more than three. Maybe I can clarify that with the crc, thank you.

Marshman: Thank you.

Wheeler: Any further questions for the chief? Thank you, sir.

Fish: Could we invite the chair of the crc up for a minute.

Wheeler: Yes, please.

Fish: I have a question for council. We heard some instructions at the beginning of the hearing and analogized this to a land use hearing. I guess we're all waiting for him to say does anyone have any ex parte contacts to disclose. Does that not apply to this proceeding?

Wheeler: I'll refer to Heidi but I believe the answer is no in this case. Heidi?

Fish: She's checking.

Wheeler: Thanks.

Fish: That's part of the instructions we get in land use. I want to make sure we understand what the rules are.

Heidi Brown, Deputy City Attorney: Advice of council is that –

Fritz: you need to push the button -- just push it and let it go. Good, you got one that doesn't work.

Brown: I apologize. The question regarding ex parte communication would be if you had ex parte communication regarding this matter you would disclose the fact of such ex parte communication, not the details, and disregard any of that information and state that you will disregard that information for purposes of consideration of your ruling and decision.

Fish: Is that at the end of the hearing?

Brown: Yes, I think that would be appropriate at the end of the hearing to do that.

Fish: Very good. Thank you.

Brown: Prior to your decision on it.

Wheeler: Thank you.

Fish: I have a couple questions. There are 11 members of the crc.

Malone: Yes.

Fish: What is a quorum under your bylaws?

Malone: Five.

Fish: The 4-1 vote would meet the quorum requirement.

Fish: Is that sufficient in your judgment, five out of 11?

Malone: I don't know that it's ideal but for 11 volunteers I think that's probably the lowest possible number that would seem fair.

Fritz: Wasn't this heard when you only had nine, you recently increased it to ten.

Malone: We had nine several years ago before I joined. We have been at 11 since I joined. For a period of time we were short a couple of people while awaiting recruitment.

Fish: In reviewing the voluminous record we got on this one of the things that struck me was the number of times this came back to the crc, and the number of sort of procedural hiccups along the way. I wanted to give you a chance to respond. This has taken a very long time to come to us. There were some back and forth about what is the right directive, was it being applied, and could you offer some advice and guidance to us about the procedural history of this case and what we can learn from that?

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Malone: Sure. I think this case has become the poster child for delays with the crc process. Not long ago city council commissioned a focus group to work on expediting crc appeals and the complainant was part of that group and provided his own opinions. I think this case is a really good example from the crc's perspective of how much of that timing is out of the crc's control. I think if you will look at the reasons this came back and back again, the bureau in our opinion, rightly so, didn't complete an investigation. We had additional questions about the taser log as well as witnesses that weren't interviewed, that the bureau then did reinterview but they are supposed have ten days to do that and it took much longer than that. Then we convened for an appeal. It was the bureau who didn't show. The volunteers were present and ready to hear the appeal but the bureau members were under instructions not to attend. Then we went through a whole appeal hearing under the wrong directive which was selected and evaluated by the bureau and although there was some complaint about that during that appeal hearing, the kind of verdict we received from the city attorney and the bureau was that it was the right directive only several days later to discover the appellant was correct and the case had originally been evaluated under the wrong directive. Then additional time was taken when we disagree with the bureau because there's a kind of procedure for us to meet again with chief marshman and see if through dialogue we can agree on a disposition that would prevent us from coming here.

Fish: You did in fact on one of the two issues you got to a disposition.

Malone: We did. But on this final complaint it proceeded to you and that kind of conference process of having another meeting to talk with the chief about it after we have already made our decision elongates the time as well.

Fish: I would say that these cases don't come to council very often. I was struck by the procedural history and I think we have to be very careful about the demands we make on members of the committees like this and the amount of time and energy that goes into these cases and have to find a way to do this in a more expedited way, in a way that I think is -- has more common sense. I thought your -- felt your pain as I was going through the record of procedural history of the case. The chief was just before us and I guess probably a number of us are now confused about what is the standard of review. We have been told there might be a difference of opinion on review, what's your view.

Malone: I think our understanding and I think what the chief was trying to get at is our committee and you all are supposed to be fairly differential to the finding reached by the bureau. They get a preponderance of the evidence standard. They are a more probable than not was this within policy whereas you and I have to evaluate on whether that finding was a reasonable one, which is -- it gives you less license to insert your own opinion. I think what chief Marshman was talking about was pointing out that there were several other players in the review process who using the more generous standard of review had also had concerns with what the bureau's finding was. So I think its fairly well settled that supported by the evidence that the reasonable person's standard is what you all are supposed to be using.

Fish: Even if we were to disagree with the ultimate judgment.

Malone: Yes.

Wheeler: Could I ask a question to that commissioner unless you had other questions.

Fish: That's it thank you.

Wheeler: So the chief showed us a number of very grainy videos and it is the contention of the police bureau in their finding that the individual was not restrained and was engaged in active aggression and he pointed out some points in the video where he said the individual was actively avoiding being arrested. He has knocked an officer over he was trying to do pushups or whatever. What's your comeback to that?

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Malone: I think that the -- we had an interesting insight into this particular directive because we reviewed the wrong directive first. And when we reviewed under the wrong directive, we agreed with the bureau mostly because we felt like that the directive allowed the taser to be used when someone was trying to flee or resist or be somewhere less than what it is now, which active aggression, I think we need to focus on the definition in the directive, which is a threat or overt act of assault. To listen to the chief say it there is, to him, restrained, meaning completely passive and calm, the officers could have gotten up off of him and he would have laid there passively and assaulting someone. Somewhere in between that is where the crc found that he was resisting but it was not active aggression. When you look at the video, the kicking occurs right as he falls to the ground. He's been tased and kind of flailing. To apply the drive stun to his calf officer b has to get hold of his legs and he's holding the one leg down, which is kind of crossing over his body in a way that is really pinning him to the ground and he goes to the calf and when he goes to deploy the probe, at that point, he's straddling and he's got a knee on him and sergeant a is straddling and it almost looks like he's asking the other officers to move out of the way so he can deploy the probes and not hit them that to me is what it looks like on the video.

Wheeler: It sounds like you're saying, yes, he was resisting arrest, but he was not engaged in active aggression and, you know, what we're hearing from the officer involved is he felt there was a threat. I think the police chief said it looked, to him, like somebody might throw a punch. There's some grainy videos that would probably make the worst hits of youtube if they were put out there under a standard. What advice would you give this body, given the standard that we're required to act under is, could a reasonable individual have made this decision based on the evidence that's available? What advice would you give us, as the crc chair?

Malone: I would say, first, that, I think the community, especially, has been concerned locally and nationally over officer's subjective fears and threats. When you see the video, I think it's very good evidence that the subject was in fact restrained at the time. And, I personally would look to the last discharge of the taser. I think we heard the chief talk about discharges in the air and maybe some of the activations in the middle didn't come in contact with the appellant. It occurred after he had deployed the probes. Anything that's coming from that taser is going directly down these wires and into the appellant. It seems pretty undisputed to me that he had no justification for that activation, that it was simply an accident resulting from the design of the new taser that caused him to flick the button.

Wheeler: The video appears to show some flashes. What do you think that means? The chief gave some ideas. What does that mean to you, if anything?

Malone: I don't know -- from my perspective -- that it changes the analysis much. We know there was a drive stun when he was standing and he fell. We know that there was a drive stun in the calf when he was down, we know that there was a probe deployed into his back and those three activations are not disputed. We know that they occurred and they made contact with the appellant and at least before this hearing, we had not heard the bureau dispute that the last activation occurred while the probes were still attached before the medical personnel came and removed it from his back.

Wheeler: He was resisting arrest. 15 seconds go by where some number of charges are deployed directly to the complainant. In his testimony, he says at least three times. We're disputing the number of times?

Malone: There's a minimum of four. The three the officer reported and the one while the wires were attached that showed up on the taser log. Four to six I think is probably what we can say from the log and the video.

Wheeler: Thank you, I appreciate that.

Fritz: Do you have any other questions that have come forward?

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Malone: I can clarify witness officer d is the partner of officer b. Witness officer c contacted the driver of the vehicle. That officer's statement concerned her report of what happened around the car. That was not an officer standing around, watching the incident on the video.

Fritz: Was there any discussion at the crc about the initial use of force, attempting to put this person in handcuffs?

Malone: I believe there was, related to another allegation, but I didn't refresh on that for this meeting and I would suspect that if it did come up, that there was significant evidence that the appellant was putting his hands into his pockets and throwing things on the ground. The appellant wanted to show his driver's license to show who he was. Sergeant a was worried there was something in the pocket.

Fritz: We've heard a lot of discussion about the standard of review and about reasonable person versus preponderance of the evidence. Based on the knowledge how often does the crc have a majority saying that, yes, a reasonable person would not have done that?

Malone: I wouldn't say it happens terribly often. We have tried to add a debriefing where something happened maybe in line with what mayor wheeler was saying where this was within policy, but it was sloppy. This was not the ideal way we would like to handle this. We have challenged -- and the bureau has accepted our challenge either before or after dialogue, we've come to see eye to eye.

Fish: I have one follow-up. Since we've never had a hearing like this before, I just want to say that I appreciate that you and your role as the chair of the crc are playing an invaluable role in helping the council under the crc's position. We are making this up as we go along. I appreciate your presentation. The chief, toward the end of his presentation, talked a little bit about the higher use of force and I guess as I understand the argument is that it may have been -- in the context of what was going on, might have been a different case, if someone had used a baton or a fist. In fact, it was just a taser and I want to think about that. But was your reaction to that?

Malone: Well, as -- I would say six of the new crc members, two years ago, attended the citizens police academy and the officers there, who had been tased during their training -- they can voluntarily agree to be tased to see what it's like almost all said it was something that wouldn't want to repeat. I'm not sure I'm persuaded by the concept of it being brief or about not leaving a mark. But, I'm not sure that from the evidence we saw that an escalation in force was needed. Once the subject was on the ground, the officers were in the process of getting the appellant under control. I think perhaps time would have been the best remedy there. I wonder if the officer b had evaluated the situation before he deployed the probes, he might have seen that there wasn't much of an out for the appellant, anymore at that point in time and it was just a matter of time before they got his hands together and could proceed.

Eudaly: I apologize. I'm not sure if you are the right person to address this question to. But the complainant has indicated that he's a traumatic brain injury survivor and he experiences mental illness and in the last several years, I know, police policy and training has changed around interacting with individuals experiencing mental illness. The situation escalated quickly, clearly. The complainant appeared to be afraid and perhaps panicked, based on emptying his pockets, asking what he had done, saying he wasn't homeless. I can imagine why he said that. Can you comment, at all, on what we would hope or expect an officer to do when encountering someone who may be experiencing some kind of crisis or just ongoing mental illness?

Malone: The crc has convened a workgroup and support a report that would prioritize de-escalation whenever possible. The concept of de-escalation we've seen appears sporadically through police policy. Cities like Seattle have an overarching policy. I would

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hope that with the more de-escalation-based policy, you would not see the officers escalating the situation so quickly. I think that there might have been a better way to back off instead of advance and going immediately to force. I don't think that that decision, at the time, was out of policy. There is a policy that we wish we had and the policy that we have.

Eudaly: Thank you.

Wheeler: Thank you. Are there any further questions of this panel or anyone else? So, colleagues, we have had at least one commissioner ask that we go into executive session to meet with legal counsel and I set a standard earlier that if anyone felt that was an important thing, we would do that. We'll come back into open session, obviously. For the time being -- did you have a question?

*****: [indiscernible].

Wheeler: Why don't we do this now --

*****: [indiscernible].

Wheeler: Sir, why don't we do this now, so we take care of this council, which is the decision-making body --

*****: [indiscernible].

Wheeler: I will ask legal counsel, if you'll give me a moment. Legal counsel, we are going to -- in a moment -- disclose any ex parte contacts we have had. Is there a commensurate requirement that city attorneys disclose their ex parte contacts?

Brown: What I hear him talking about would be an interaction happening that happened in civil case, that is not part of this issue on whether you support the chief's finding in this situation. That particular thing would be a separate issue, unrelated to what's before you today.

Fish: I'll kick it off. We received a couple of emails, relating to this matter, I believe one was from the complainant and I did not review that email, just forwarded it on to my staff person. And, I had a brief conversation with Dan handleman, who is something of a historian of police accountability matters and he reminded me, we've not had such a hearing since 2003. That was largely the extent of it.

Saltzman: I received the email, also, from the complainant, which I did read.

*****: [indiscernible].

Wheeler: Excuse me, sir. You're out of order.

*****: [indiscernible].

Wheeler: Let us finish this order of business, first. Since you are the complainant, I will let you address the council. I have no ex parte contacts, except the email that was referenced earlier I did read the email.

Fritz: Same I did receive the email I read the first paragraph and realized it was related to this and waited until I could ask the city attorney if I should be reading it. I also meet regularly with Julie Ramos the co-chair of the crc I haven't been meeting with her since I knew this was going to be on the council agenda. We haven't discussed the specifics in this case. When this first came through, it may have been one of the ones she talked to me about in general.

Wheeler: Commissioner Eudaly?

Eudaly: I received the email and did not read it.

Wheeler: So the city council has made its disclosure. Sir, if you wanted to come up.

*****: [indiscernible].

Wheeler: Could you please reintroduce yourself?

Klug: I'm Matthew Klug I want to know do you have any clue about the communication I sent cause if you didn't read it there's a big problem. The tort review board wanted to get to the bottom of my complaint in federal court the district court of Oregon and inside the

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district court of Oregon complaint was the video that I received from a civil rights attorney here in town and I have the video with audio so it would be good to look at the copy the tort review board was interested in getting to the bottom of.

Wheeler: Here's the problem, sir, with regard to this hearing. We are not allowed to entertain new evidence.

Klug: That was the evidence.

Wheeler: I will ask the city attorney whether or not we are allowed to consider new evidence?

Brown: You are not allowed to consider new evidence. You are allowed to consider the evidence that was in the record at the time.

Klug: The video is in the record. The video is running at klug.pw. It is very visible. It's not cloudy and choppy. It has audio. It would be beneficial to look at the copy that the tort review board was interested in reviewing at the internal affairs and independent police review. We've got the policy. The number is 2.4, the second page. The first charge of the taser, at 3.8, was up in my face. In the report, it says warning arch. There's nothing in training about a warning arch. You see me fall to the ground. If you watch the video, I cover my face. This is all in the record.

Wheeler: I don't mean to be disrespectful --

Klug: It's 30 seconds long, too. Six charges of the taser go off. They're limited to five seconds each.

Wheeler: I can't allow you to continue.

Klug: But that's the video.

Fritz: That version of the video is in the record?

Brown: I'm not sure of what Mr. Klug is referencing. There is a version of the video that is in the record, that I'm sure we could get and make available to you. I don't know what Mr. Klug is referring to and I haven't seen it.

Fritz: I think that is germane to what we have to decide. We have to decide whether a reasonable person considering the evidence could make a decision.

Klug: The one with audio --

Fritz: Thank you for telling me, Mr. Klug. In 2.4, it says they should evaluate their force options and give consider other force options if a ecw is not affective in two cycles on the same person.

Wheeler: So we gave the complainant two extra minutes and for that reason, if the Portland police bureau would like two extra minutes, I will offer that.

Klug: The ex parte thing, please --

Wheeler: No, you may not.

Fish: In the packet of materials we were given a dvd. That, as I understand it, is the dvd of the video in question. Is that correct?

Brown: I believe that's right. I think ipr put the package together. We could double-check with them. I believe the cd contains the video, that was considered as part of the record.

Wheeler: The police bureau has declined the extra two minutes, is that correct. We will adjourn into executive session. We will be back, so we are in recess. [recess]

*****: [indiscernible].

Wheeler: So, here's the script. The city council will now adjourn to the mayor's conference room to meet in executive session pursuant to ors 192.6602b. Which allows city council to meet in --

*****: [indiscernible].

*****: [indiscernible].

Wheeler: Let me wallow through this. Which allows the city council to meet in executive session to consider the dismissal and disciplining of or to hear complaints or charges

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brought against a public employee who has not requested and open hearing in pursuant to ors 192.6602f which allows the city council to meet in executive session to consider information or records exempt by law from public inspection. Representatives of the news media and designated staff shall be allowed to attend. Representatives of the news media are specifically directed not to report or disclose any of the deliberations during the executive section except to state the general subject of the discussion as previously announced. No decision may be made in executive session. At the end, the council will return to the open session in council chambers. The city attorney wanted to speak?

Wheeler: Yes, sir. Please introduce your name.

Mark Amberg, Chief Deputy City Attorney: Mark Amberg with the city attorney's office. The procedural plan ors 192.6602b one of the basis for going into executive session allows the involved employee the officer in this case to request that the executive session be held in open session. I have had a communication with the representative for the officer and the officer does not want to have the matter deliberated in open session.

Wheeler: Thank you. So, we are in recess.

At 3:53 p.m. council recessed.

At 4:24. p.m. council reconvened.

Wheeler: We are now out of executive session and are now back into regular session. I've had a request if we could have legal counsel, once again, come up and walk the council through our options.

Amberg: Thank you, mayor and council once again Mark Amberg city attorney's office. The -- when council is ready to take this matter up on a vote, it's a potential two-step process, the first vote that council has to consider is to accept or reject the finding by the bureau. Again, that's based on the reasonable standard. Whether a reasonable person in the argue manager situation, who came up with the finding of exonerated with a debriefing could come to the finding based on that evidence. If council votes to affirm the bureau's finding, that's the end of the council's session and that's the end of the case. That decision -- that finding of the bureau would be upheld. If council votes to reject the bureau's finding, then you go to the second step of the process. And the second step of the process is council has to determine the finding in the case. Again, the four options for council would be unfounded, technically exonerated without a debriefing. Council could come to that conclusion. Not sustained or sustained. Does council want me to explain, again, what those four --

Wheeler: Why don't you quickly do that for everybody's benefit.

Amberg: Unfounded basically means there's no basis in fact to -- that the event occurred. I look at that as the allegation is Portland officer smith did x when in fact it was officer jones from Gresham. That's an unfounded finding where there's no basis to fact in the allegation. Exonerated means the act occurred with the claim -- what the officer claimed to have done happened, but it was lawful and it was in policy. It didn't violate the constitution, didn't violate any law and was within the police bureau's policy. For not sustained or sustained finding, those are, again, council will weigh those findings. We'll get to that point, on a preponderance of the evidence and sustained or not sustained, council would need to make a determination, whether it's more likely than not that the officers' actions either were within policy -- did not violate policy so it would be not sustained or the officer's actions on a more likely than not violated policy in which case it would be a sustained finding.

*****: [indiscernible].

Wheeler: Any further questions of legal counsel?

Saltzman: Ready for a motion?

Amberg: Just to clarify the last point, sustained means the evidence was sufficient to prove a violation of policy or procedure based on the preponderance of the evidence

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standard. Not sustained was the evidence was insufficient to prove a violation of policy procedure, again, based on the preponderance of the evidence.

Wheeler: Commissioner Eudaly, did you have a question?

*****: [indiscernible].

Wheeler: At this time, I will ask if any of my colleagues have a motion.

Saltzman: I will move to uphold the chiefs finding to exonerate with debriefing.

Wheeler: So moved, I'll second for discussion. Any comments on this?

Saltzman: I just don't have -- I can look at the video all day long and I can't tell what's going on but I know it's a very brief episode. I believe the complainant and his account. But I do believe that there was -- I do tend to agree with the chief in terms of perhaps not misfiring of the taser, but too rapid of firing while the taser was a distance from the complainant's body so if the taser cycled four, five, six times, it didn't hit the complainant. I feel I'm listening to different accounts of the same incident and I don't draw any conclusions from the video. I just can't. So I'm going to err on the side of exoneration with debrief.

Fish: Mayor, may I be heard? I'm going to oppose the motion and then I'm going to recommend an alternative approach, if the motion fails. This is the first hearing of its kind that I've participated in and I spent quite a lot of time wrestling with the materials I was given prior to the hearing but I found the hearing itself very helpful and very clarifying. We are admittedly applying a very deferential standard. And we are being asked to determine whether the judgment of the bureau fits within a reasonable person's standard and I believe the law is clear that we have to be very deferential and I -- I think the chief has come very close to making out that standard. But there are too many unique circumstances in this case, that trouble me, that I think need to be aired out and discussed and I don't think the council can have that proper discussion if we simply accept the findings. So, I will oppose the motion and if this motion fails, I will make a substitute motion.

Wheeler: Very good. If there's no further comment, I'll ask Karla to call the roll.

Fritz: I can't support the motion, either. It's very clear that policy 3.2 and 2.4, the analysis by the crc, I believe, is supported and a reasonable person would not exonerate so no.

Fish: No. **Saltzman:** Aye. **Eudaly:** No.

Wheeler: Yes. And I want to explain my vote, even though the motion fails. The standard, as been discussed here by my colleagues on both sides of this issue, is a difficult standard. The question is, could a reasonable person have made a call that that made, given the evidence that's been provided? And the evidence that's been provided is not rock-solid. Unfortunately, what we have, as I mentioned, are different accounts, grainy video, judgment calls that were made over a 15-second span. And, differing -- questions around standards such as, was the individual restrained or not? And again, we're referring on both -- relying on both testimony, as well as the grainy video. And, the question of active aggression. Was the individual engaged in active aggression? He says he wasn't. I have no reason to doubt his opinion on that. But on the other hand, I likewise have no basis to doubt the opinion of those who made an alternative judgment. So, for that reason, I support it but the motion fails. Commissioner Fish, I think, was going to make an alternative motion.

Fish: Thank you, mayor. We are now free, based on the preponderance of the evidence to recommend an alternate finding. For many of the same reasons, mayor, you have just articulated in support of your earlier vote, I am very torn by the evidence before us. I am troubled by the documentation of six different tasers. I am concerned about the mental state of the suspect. Who appeared to be in crisis and frankly, reviewing the video makes that a little more clear. And I am frankly struggling with where that line is between active

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aggression and resisting arrest and the objective and subjective standards that you could apply to resolve that question. As the same time, as you note mayor, this happened during a very quick time frame. It unfolded quickly. And, I think the chief has made a point in reminding us that this encounter did not lead to a higher use of force, which would have led to an entirely different investigation and proceeding. Because I'm -- I find it difficult to resolve the two competing versions, while I could not support an exoneration with debrief, I will make a motion to have this matter not sustained.

Wheeler: Commissioner Fish moves to have the issue not sustained. Is there a second?

Eudaly: Second.

Wheeler: There's a second from commissioner Eudaly. Further discussion?

Fritz: I appreciate the attempt for a compromise. I still support the crc's report and I'm very troubled by many of the other things I'm reading in the record, which are not part of this case, but which I'd like to follow up on. No.

Fish: There are a number of things that have been brought forth in this record and in this hearing that concern me, and others. I am loathed to second-guess officers who are making split-second decisions in these kinds of circumstances. I'm reminded of advice that commissioner Fritz often gives us in land use proceedings about the requirement that we follow the law and the directions and that we -- we are scrupulous in adhering to the standard of review we're supposed to apply. Because we're not operating, I believe, under preponderance of the evidence standard, I find it almost impossible to reconcile the two accounts so I will use this opportunity, again, to just state the concerns that I have. I believe that with three officers attempting to subdue an individual who, in this case, gave some evidence of being in distress, I think that in our protocols and our training, we should continue to emphasize de-escalation and while I appreciate that the chief has drawn a distinction between using a baton or a fist to a taser, I don't want to minimize the impact of a taser and the fact that it was used six times troubles me greatly. This distinction between active aggression, which I think the tape doesn't adequately resolve versus resisting arrest is a very fine line I think your likely to get different outcomes whether you use an objective or subjective standard I mean no disrespect to either the complainant or the bureau, under the circumstances, I cannot get to a preponderance of the evidence so I must support a not sustained. Aye.

Saltzman: No.

Eudaly: I agree with commissioner Fish on this matter. It's problematic to me that the evidence doesn't constitute a clear violation of policy and procedure. That's something that we have to deal with down the line and just agree that while I can't -- I can't -- I can't clearly vote one way or another. Not sustained seems like the only course of action. Aye.

Wheeler: For the same reasons, I vote no. The motion fails. Colleagues, are there any more motions that anybody would like to make before we open the windows and see there's 36 inches of snow outside?

Fish: I hope not. Is it snowing?

Wheeler: I wouldn't be surprised. [laughter]

Saltzman: If we can't reach a consensus, that's it?

Wheeler: If we don't come to a consensus, the finding is effectively upheld by default.

Fritz: The findings of the crc or of the police bureau?

Fish: I thought we voted to reject the finding.

Wheeler: Could you come up here and clarify this, since we're now in new territory? Again.

Ben Walters, Chief Deputy City Attorney: Ben Walters with the city attorney's office. So, at this point, you still have the other three options that you can consider --

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Fish: We understand that. There's no other path forward, I can see. So what's the effect of the last vote?

Walters: Well, the effect of the last vote is your motion, of course, fails. If you can't come up with a majority, then effectively, you have no -- the decision of the chief stands.

Wheeler: But I thought the earlier motion overturned that?

Walters: I understand that, but you're unable to find a pathway forward to another finding -

Fritz: If that was the case, I think I was in the majority of that, so I'll move to reconsider.

Fish: Second.

Fritz: We need to vote on reconsidering it.

Walters: To reconsider the vote on the finding, matter not sustained.

Wheeler: Karla, could you please call the roll on the reconsideration?

Fritz: So for those struggling at home, that motion failed. I voted no, so I was in the majority so that means I can move to reconsider, which is what we're doing here is basically taking those and doing a do-over. Aye.

Fish: Aye. **Saltzman:** No **Eudaly:** Aye **Wheeler:** No

Wheeler: The motion passes.

Fritz: I move commissioner Fish's motion of not sustained.

Fish: Second.

Wheeler: Is there a second? Commissioner Fish moves.

Fritz: There are a lot of people trying to do the right thing. The person whose car was banged into, the appellant and the officers involved, many of them got kicked and otherwise hurt. There's a lot of people and there's the review bodies and the citizen review committee who have put a lot of time into trying to figure out the best way forward on this. I'm changing my vote because I don't think we should just allow the chief's decision to stand. I know there are a lot of other issues that need to be considered in connection with this case. I'm pleased as part of this evidence here I've been given the actual time line of how this case took so long to get to the appeal and that's what we have to deal with the department of justice settlement. There were many people who were hurt by this and many follow-up things we need to do. I do think the officers should be counseled -- I can't wait to hear what the latest use of taser policy is and that's not even in the record. And, so not sustained seems to be better than allowing the chief's decision to stand without further conversation. Aye.

Fish: I've already spoken to this motion. I'll just add one other thing to be clear on the record. Some may leave this hearing today wondering what is the difference between exonerated with debrief and not sustained so I will provide my interpretation of the difference. As we have struggled to apply a standard or review, which is very restrictive and to reconcile facts that are sharply at odds and to consider broader policy questions, this, I believe, is a principle way we can express concern. Concern with aspects of this case and I would hope that those concerns would be reflected in future training and protocols. Aye.

Saltzman: One thing I will agree with, commissioner Fritz, this case has taken entirely too long. It's ridiculous. I vote no.

Eudaly: Aye.

Wheeler: So, I'm going to stick with my first statement, but I want to add a few comments, as well. First of all, I want to thank the members of the crc, they spent a tremendous amount of time reviewing lots of evidence, grainy videos, came to a principled decision. I want to thank everybody here who testified today. I also have to say this, you know, while I support all of the broader principles have been discussed today, how the police interact with our public, how we treat people who are potentially vulnerable in the community,

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including those with mental health issues, I raised some concerns around training standards, that are still of interest to me. But when it comes back to what this hearing actually is about and the facts of this particular case and the standard by which I am being asked to judge it, which is could a reasonable person, with these facts, have come to the conclusion that they did? Though inelegant, I have to answer in the affirmative. I vote no again. But the motion does pass. And with that, I believe we are adjourned. Thank you.

At 4.44 p.m. council adjourned.