



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **2ND DAY OF AUGUST, 2017** AT 9:30 A.M.

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

Commissioner Fish arrived at 9:32 a.m.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Ben Walters, Chief Deputy City Attorney; and Elia Saolele and Mike Cohen, Sergeants at Arms.

Item Nos. 861, 862, 863 and 865 were pulled for discussion and on a Y-5 roll call, the balance of the Consent Agenda was adopted.

		Disposition:
COMMUNICATIONS		
853	Request of Kristin Bowling to address council regarding police accountability and community rights (Communication)	PLACED ON FILE
854	Request of David Kif Davis to address Council regarding stalking of journalists, whistleblowers and activist by City employees (Communication)	PLACED ON FILE
855	Request of Jamie Burrows to address Council regarding ongoing positive benefits from recreation arbitration and community benefits (Communication)	PLACED ON FILE
856	Request of Jennifer Birt to address Council regarding positive outcomes of the recreation arbitration and Portland's rising cost of living (Communication)	PLACED ON FILE
857	Request of Sheik Shareef to address Council regarding community prosperity (Communication)	PLACED ON FILE
TIMES CERTAIN		
858	TIME CERTAIN: 9:45 AM – Proclaim August 2017 to be International Rose Test Garden Centennial Month in Portland (Proclamation introduced by Mayor Wheeler) 15 minutes requested	PLACED ON FILE

August 2-3, 2017

859	TIME CERTAIN: 10:00 AM – Appoint Francesca Gambetti and Peter Platt to the Prosper Portland Board for terms to expire August 1, 2020 (Report introduced by Mayor Wheeler) 10 minutes requested Motion to accept report: Moved by Fish and seconded by Fritz. (Y-5)	CONFIRMED
CONSENT AGENDA – NO DISCUSSION Mayor Ted Wheeler		
*860	Approve grant agreement with WorkSystems, Inc. for the SummerWorks youth employment program and Black Male Achievement Initiative within City Bureaus for summer 2017 for an amount not-to exceed \$550,000 (Ordinance) (Y-5)	188535
Bureau of Planning & Sustainability		
*861	Authorize an Intergovernmental Agreement with Portland State University for \$8,000 to provide funding for Low-Cost Urban Air Quality Sensor Testing (Ordinance) (Y-5)	188537
City Budget Office		
*862	Authorize an Intergovernmental Agreement with Prosper Portland for FY 2017-18 economic development activities for a total of \$6,021,910 (Ordinance) (Y-5)	188538
Office of Management and Finance		
*863	Authorize charitable organizations eligible to participate in the City's 2018 Charitable Campaign and authorize exemptions from umbrella requirement for Portland Parks Foundation and Portland Fire Bureau Toy & Joy Makers (Ordinance) (Y-5)	188539
*864	Authorize a contract with I-Ten Associates, Inc. for architectural and engineering services for architectural drawing updates, boma calculations, floor plans and egress maps for a total not-to exceed amount of \$144,000 (Ordinance; Contract No. 30005949) (Y-5)	188536
Commissioner Dan Saltzman		
865	Authorize a grant agreement of \$21,307 with Southwest Trails for the development of the Robert Gray Trail for the period of July 20, 2017 through December 31, 2017 (Ordinance)	PASSED TO SECOND READING AUGUST 9, 2017 AT 9:30 AM
REGULAR AGENDA Mayor Ted Wheeler City Attorney		

August 2-3, 2017

866

Authorize City Attorney to appeal final opinion and order in Columbia Pacific Building Trades v. City of Portland, Land Use Board of Appeals No. 2017-001 (Resolution) 15 minutes requested
(Y-5)

37308

At 11:13 a.m., Council recessed.

August 2-3, 2017

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

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

Commissioner Saltzman arrived at 3:25 p.m.

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

<p>S-867 TIME CERTAIN: 2:00 PM – Comply with Oregon Health Authority's order to treat drinking water from the Bull Run Watershed for Cryptosporidium by submitting a compliance plan and proceeding with planning, design and construction of a filtration plant (Resolution introduced by Commissioner Fish) 2 hours requested</p> <p>Motion to accept Substitute Resolution to reflect change from UV+ to Filtration: Moved by Fish and seconded by Fritz (Y-5)</p> <p>Motion to accept amendment to enhance Bull Run environmental protections: Moved by Fish and seconded by Fritz (Y-5)</p> <p>Motion to accept amendment to enhance low-income discount program: Moved by Fish and seconded by Fritz (Y-5)</p> <p>Motion to accept amendment for annual reporting on filtration project: Moved by Fish and seconded by Fritz (Y-5) (Y-5)</p>	<p>Disposition:</p> <p>SUBSTITUTE 37309 AS AMENDED</p>
---	--

At 5:28 p.m., Council recessed.

August 2-3, 2017

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **3RD DAY OF AUGUST, 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; Jason Loos, Deputy City Attorney and Roger Hediger and Jim Wood, Sergeants at Arms.

The meeting recessed at 3:14 p.m. and reconvened at 3:22 p.m.

The meeting recessed at 5:52 p.m. and reconvened at 6:00 p.m.

<p>868 TIME CERTAIN: 2:00 PM – Appoint Ben Bortolazzo to the Planning and Sustainability Commission for a term to expire August 31, 2021 (Report introduced by Mayor Wheeler) 10 minutes requested Motion to accept the report: Moved by Fish and seconded by Fritz. (Y-5)</p>	<p>Disposition:</p> <p>CONFIRMED</p>
<p>869 TIME CERTAIN: 2:10 PM – Accept the Portland Recycles! Progress Report and Action Plan, dated August 2017 (Report introduced by Mayor Wheeler) 1 hour requested for items 869 - 870 Motion to accept the report: Moved by Fritz and seconded by Eudaly. (Y-5)</p>	<p>ACCEPTED</p>
<p>870 Direct Bureau of Planning and Sustainability to review Portland's franchise system for collecting residential solid waste, recycling and composting (Resolution introduced by Mayor Wheeler) (Y-5)</p>	<p>37310</p>
<p>871 TIME CERTAIN: 3:10 PM – Adopt new Post Deadly Force Procedures for Police Bureau and authorize legal proceedings to determine validity (Ordinance introduced by Mayor Wheeler) 90 minutes requested for items 871 – 873</p>	<p>PASSED TO SECOND READING AUGUST 9, 2017 AT 1:00 PM TIME CERTAIN</p>

August 2-3, 2017

<p>872</p>	<p>Approving amendments to Settlement Agreement between the United States and the City of Portland in United States District Court Case No. 3:12-cv-02265-SI, and Plan for Portland Commission on Community-Engaged Policing (Ordinance introduced by Mayor Wheeler)</p> <p>#1 Eudaly amendments 1-5: Moved by Fish and seconded by Fritz. (Y-4, Saltzman absent)</p> <p>#2 Fritz amendments 1-12: Moved by Fish and seconded by Eudaly. (Y-4, Saltzman absent)</p> <p>#3 Amendment to Fritz Amendment 9: Moved by Fish and seconded by Eudaly. (Y-4, Saltzman absent)</p> <p>#4 Amendment to Fritz Amendment 11: Moved by Fish and seconded by Eudaly. (Y-4, Saltzman absent)</p> <p>SEE ATTACHED FOR AMENDMENTS</p>	<p>PASSED TO SECOND READING AS AMENDED AUGUST 9, 2017 AT 1:00 PM TIME CERTAIN</p>
<p>873</p>	<p>Amend Independent Police Review Code to revise filing process, investigation and appeal provisions of complaints of police officer misconduct (Ordinance introduced by Auditor Hull Caballero; amend Code Sections 3.21.070, .120 and .160)</p>	<p>PASSED TO SECOND READING AUGUST 9, 2017 AT 1:00 PM TIME CERTAIN</p>

At 8:18 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 Closed Caption File following the attached amendment sheets for Item 872.

August 2-3, 2017

**Item 872. Approved amendments 8-3-2017
Settlement Agreement Ordinance**

EUDALY PACKAGE

Eudaly Amendment 1: Increase membership of PCCEP from 5-9 members to 9-11 members.

Eudaly Amendment 2: Change Item No. 2 in the “Selection Process Framework” section of the PCCEP Plan (Ex. 4-1) from “initial screening of applicants by mayoral staff” to *“initial screening of applicants by mayoral staff and a representative from any council office who wishes to participate.”*

Eudaly Amendment 3: Change Item No. 4 in the “Selection Process Framework” section of PCCEP Plan (Ex. 4-1) from “candidate interviews with Mayor” to *“candidate interviews with Mayor after soliciting feedback about final candidates from each Council office.”*

Eudaly Amendment 4: Add the following to the “City’s Responsibilities” section of the PCCEP Plan (Ex. 4-1): *“The Mayor’s Office will publish on the City website an annual report commencing from the date PCCEP begins meeting through the duration of its existence that will include updates on progress made by the City in key areas of concern and community engagement recommendations.”*

Eudaly Amendment 5: Add the following to the “Member Responsibilities” section of the PCCEP Plan (Ex. 4-1): *“Agendas and minutes from all PCCEP meetings will be published on the City website within 30 days after the meeting date.”*

FRITZ PACKAGE

Fritz Amendment 1: Reorder subparagraphs under Paragraph 131 of the *United States v. City of Portland* Settlement Agreement to move subparagraph *i* to become subparagraph *d*, with other subparagraphs adjusted accordingly (i.e., current subparagraph *d* becomes subparagraph *e*; current subparagraph *e* becomes subparagraph *f*, etc.).

Fritz Amendment 2: Amend Exhibit 4 (Proposed Amended Settlement Agreement), item (b) of Paragraph 142, to read the following: *“make recommendations to the Chief, Police Commissioner, the Director of the Office of Equity and Human Rights, and community and, during the effective period of this Agreement, to the DOJ;”*

Fritz Amendment 3: Under the “Scope of Work” section of the PCCEP Plan (Ex. 4-1), amend the second item to read: *“Gather and synthesize information from the community and make recommendations based on that information in key areas of concern to communicate to the Mayor, PPB, the Office of Equity and Human Rights, the DOJ, and the public at large.”*

Fritz Amendment 4: Under the “Membership and Reporting” section of the PCCEP Plan (Ex. 4-1), amend the last sentence to read: *“The PCCEP will report directly to the Mayor (Police Commissioner) and, separately and at least quarterly to, the Director of the Office of Equity and Human Rights.”*

August 2-3, 2017

Fritz Amendment 5: Under the “Selection” section of the PCCEP Plan (Ex. 4-1), add the following language: *“The Mayor, in consultation with the other Council offices, shall develop selection criteria and public outreach strategies for the PCCEP selection process.”*

Fritz Amendment 6: Under the “Selection” section of the PCCEP Plan (Ex. 4-1), add, as a final step to the selection process framework, Council confirmation.

Fritz Amendment 7: Under the “Removal” section of the PCCEP Plan (Ex. 4-1), amend the language to read: *“The Mayor, after consultation with the Council, the PCCEP Program Manager and PCCEP Chair (absent a conflict of interest) will have sole discretion to determine when PCCEP members are no longer fit to serve on the commission on account of misconduct.”*

Fritz Amendment 8: Under the “City’s Responsibilities” section of the PCCEP Plan (Ex. 4-1), replace “PPB’s Office of Equity and Diversity” with “PPB’s Equity and Diversity Manager.”

Fritz Amendment 9: Under the “Deliverable Product” section of the PCCEP Plan (Ex. 4-1), amend first sentence of paragraph 1 to read: *“PCCEP shall consult with community members and hold at least two (2) public hearings, to be completed, if practicable, within 120 days of PCCEP members being seated.”*

Fritz Amendment 10: Under the “Deliverable Product” section of the PCCEP Plan (Ex. 4-1), amend paragraph 2 to read: *“PCCEP shall meet at least quarterly with the Director of the City’s Office of Equity and Human Rights and PPB’s Manager of Equity and Diversity, including a review of PPB’s current Racial Equity Plan, and evaluate PPB’s ongoing efforts to implement that plan.”*

Fritz Amendment 11: Under the “Deliverable Product” section of the PCCEP Plan (Ex. 4-1), amend paragraph 5 to read: *“PCCEP shall strive to submit its recommended strategies for the Community Engagement Plan to the Chief, in writing, within 180 days of PCCEP members being seated.”*

Fritz Amendment 12: Under the “Deliverable Product” section of the PCCEP Plan (Ex. 4-1), amend last sentence of paragraph 6 to read: *“The Chief’s Office shall present the final proposed Community Engagement Plan (with implementation timeline) to the PCCEP for its final review and comment within 45 days of receiving PCCEP’s recommendations.”*

Amendment to Fritz Amendment 9: Amend to read: *“PCCEP shall consult with community members and hold at least two (2) public hearings to be completed within 180 days of PCCEP members being seated.”*

Amendment to Fritz Amendment 11: Amend to read: *“PCCEP shall strive to submit its recommended strategies for the Community Engagement Plan to the Chief, in writing, within 180 days, but no later than 270 days, of PCCEP members being seated.”*

August 2-3, 2017
Closed Caption File of Portland City Council Meeting

This file was produced through the closed captioning process for the televised City Council broadcast and should not be considered a verbatim transcript.

Key: *** means unidentified speaker.**

August 2, 2017 9:30 AM

Wheeler: This is the Wednesday August 2 morning session of the Portland city council. Good morning, everybody. Karla, could you please call the roll?

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

Wheeler: The purpose of council meetings -- we read this at every meeting -- is to do the city's business including hearing from the community about concern. In order to hear from everyone and give due consideration before the council we must all endeavor to preserve the order and decorum of these meetings. To make sure that the process is clear for everyone I want to review some of the basic guidelines, which I hope will help everybody feel comfortable, welcome, respected and safe at the meeting and to also ensure that decorum is maintained. There are two opportunities for public participation first, we have an opportunity for people to sign up for communications to talk about any matter they wish to address. These items must be scheduled in advance with the clerk's office. Second, people may sign up for public testimony on the first readings of report, resolutions and ordinances. If you sign up, your testimony must address the matter at the time. Please state your name for the record we do not need your full address. If you're a lobbyist, we do need to do that and if you're representing an organization, please identify the organization. Individuals have three minutes to testify unless otherwise stated sometimes if we have lots of people signed up, we have to shorten that. When you have 30 seconds left, the yellow light on that box will go on and you'll hear a beep. When your time is up, your red light will go on and you'll hear more beeping. Please do not interrupt other people's testimony. Everybody has a right to be heard in this chamber but let's do it in the proper order. If you interrupt testimony or council deliberations, you'll be given a warning. If you do not seize that, you will be asked to leave. If you do not leave, you'll be subject to arrest for trespassing. If you want to share your support thumbs up or if you don't like something thumbs down it just keeps things moving if people aren't verbally shouting. So, that is it. With that lengthy introduction, Karla please call the communications item number 853.

Fish: I apologize, if I could be noted as present.

Wheeler: Commissioner Fish has arrived duly noted. Item 853?

Item 853.

Wheeler: Good morning.

Kristin Bowling: Good morning. My name is Kristin Bowling and I represent Empower Portland. This is the fourth time a member of our group has addressed council this year. Council members and Mayor Wheeler, I'm here today to submit that the city of Portland is conducting a campaign of terror against activists. The dictionary definition of terror is the use of violence and threats to intimidate or coerce especially for political purposes and certainly describes what is happening to us right now. I also submit to you that in addition to the members of our community that have already lost their lives at the hands of white supremacists and police in the past year the logical result of the campaign of terror is one the ruining of lives with long prison sentencing on trumped up politically motivated felony charges and, two, the deaths or permanent maiming of one or more of the defenders of this community that you see before you today. You're allowing our rights and protections to be dismantled while we are simultaneously targeted by a violent and unchecked police

August 2-3, 2017

force. How else can this possibly end without affective resistance on the part of our elected officials. People in this audience today have been repeatedly assaulted by chemical and impact weapons on Portland streets an ever expanding arsenal is deployed earlier in a event in the context of conflicting instructions without escape routes used discriminately against anyone and everyone. Empower Portland's Nate Cohen addressed you back in April about the dangers of the weapons being used then and its only gotten worse. At the same time, police are increasingly targeting neutral observers that are there to ensure public safety and accountability. Street medics, journalists, legal observers and cop watchers have been assaulted, arrested and detained this year at street events. The attacks on these protections is particularly valiant harboring of fascism. Combined with the holy inadequate politically biased medical response by Portland fire at crowded events e e are losing the last line of protections we have to preserve our rights and access the medical attention we need when police attack us. Emts in riot gear ride the rails with cops their faces covered and uniforms barely distinguishable while we wash the chemical weapons out of the eyes of our comrades. Don't be fooled, militarized medics where never what empower Portland asked for. I also submit that this campaign serves the political purpose of maintaining a racist status quo since Portland area law enforcement targets left protestors while protecting and including with the racist rights. Why else would police stand their backs to right wing white supremacist militia while assaulting the left with chemical weapons. Why else would ppb conduct a training to recruit the right to collecting intelligence on the left on 82nd avenue before the march of terror through the heart of the immigrant community. Add to this the increasing surveillance of activists through drones, constant police filming, the infiltration of crowds and an officer whose job is to do nothing but follow-up on surveillance after protests and the logical result is the increasing individual detainment, assault, arrest and over charging of individual activist often weeks or months after an incident. How else can we explain these things but to conclude that there is a campaign of terror against us designed to suppress decent and dissuade us from confronting those that threaten our community. Commissioners and mayor Wheeler you must stand with us to reverse this trend, this campaign of terror, we employer you. The activists before you right now love the city like no other. We're defending it with our liberty, our sanity and our very lives, you must do more. Please stand to defend us by taking any of the actions I have listed in the email I will send to your office this afternoon. The liberty and future of our very city is at stake for what befalls those on the merges is indeed what is in store for us all.

Wheeler: Thank you for your testimony. We appreciate it. Next item, please.

Item 854.

Wheeler: I don't see him. Next item, please?

Item 855.

Wheeler: Good morning.

Jamie Burrows: Good morning. So, my name is Jamie burrows, I'm a recreation coordinator at mount Scott and then Creston pool during the summer. I've been working since 1999, so this is my 19th summer with parks. I want to talk about what's happened over the last four years recreation has seen huge changes in their staffing levels. We went from 80 full-time benefit employees with the arbitration that went up to another 150. With the voluntary recognition that we experienced, we're looking at another 300 to 500 employees that will have the potential to have benefits, better wages, all really good things. The impact of this -- what this has had on us is how we deliver our services. It's been pretty positive and noticeable. We now have the robust workforce of benefited represented employees working at or near living wages. Instead of the high turnover rate we've experienced in the past, we now have employees who are celebrating annual

August 2-3, 2017

anniversaries. One year, two year, three year really long-standing employees. The impact that this has had on our patrons is continuity. So I just came from our weekly staff meeting we have 60 to 70 lifeguards that train on a weekly basis for about an hour in the morning and looking at them, I realize that over the 19 years I've been working for parks, I've watched them grow up. I taught their swim lessons and coached their swim teams and trained them to be lifeguards and for a lot of them I'm their first boss. So then they go on after that to become -- they go to other jobs and become productive members of society it's great to watch that cycle and continuity of patrons I get to know entire families, like we run out of families I went through all their siblings had all five of them six of them and now we're moving onto their cousins, their friends ectera . So, this is a really neat cycle to watch with that, those families then become employees and it furthers the sense of community that is so important to so many people in Portland. We wrapped up our last contract negotiations I'm an active member of our union, I negotiated the last two contracts I'm on the Imbc, the task matrix, the e board and I'm a steward for our union. So, while it's easy to say that no contract is going to have what everyone wants on both sides but this is a really good contract and I appreciate the effort both on the union and as you as commissioners and mayor, to further those relationships that we have so we can have a good contract. Some people haven't seen wage increases in well over 20 years. So, we get our cola's, but it only what is done by the cpiw so it's not an actual wage increase so we received that this year and it tells us that you value us as employees and you value us as much as we value ourselves and as much as the public values us so thank you I really appreciate it.

Fish: Can I make one comment? Thank you for joining us today and congratulations on the contract, but I think there are three former and current parks commissioners on the council. We had four in the last council and, I'm reminded that one of the most harrowing moments in our respective leadership is when we hear about an incident in a pool and what the public doesn't really maybe know as much about is that with lots of people in our pools, the chances that a child or an older adult or someone would be distressed, from time to time, happens. The good news is, our highly-trained and highly-experienced lifeguards on a regular basis make life and death decisions.

Burrows: They do.

Fish: And I think we would be remiss if we didn't communicate our deep gratitude to the work of our lifeguards at our various rec centers.

Fritz: I just got back from spending time with my family in England and I just want to thank you for coming in on this first morning that I have back to remind me why I like coming to work and thank you for your partnership with local laborers 483.

Burrows: Thank you appreciate it.

Wheeler: So my second boss was somebody just like you. My first boss was the head of a kitchen where I was a dishwasher for two years, which was the hardest job I've ever had I really mean it that was a character-building experience, working as a lifeguard my recollection, I had to get a water safety instructor certification. So people who are lifeguarding and teaching swim lessons have to get additional certifications and teaching little kids how to swim, kids who are often afraid of the water, have never been in the water before, with their parents watching you like a hawk, to make sure that -- that you're treating their precious, little one well, was a tremendously gratifying experience and very important and I remember the woman who I worked for was just wonderful and so, as you were talking I was thinking of the opportunities you're opening up for young people in your community and I was one of those young people and I'm really appreciative of it. Thank you for coming in and sharing a positive story. Next item, please, Karla.

Item 856.

August 2-3, 2017

Wheeler: Good morning.

Jennifer Birt: Good morning. Thank you for having me my name is Jenny Birt. I'm a recreation coordinate for city-wide recreation and I've been employed with Portland parks and recreation for over 18 years just like Jamie. I'm also an active member of laborers local 483, representing recreation on the past two contract negotiation teams. The recreation arbitration negotiation team and serving as a shop steward as well as our executive board. As you may recall, I sat before you in February of 2016, giving testimony in support of the recreation agreement reached by the management team and local 483, which was a direct result of the recreation arbitration ruling in May of 2015. I'm pleased to report that that agreement continues toward achieving its goal of setting clear, bright lines for the work of all recreation employees and so far, has been preventing further slide of represented work on to casual staff. It resulted in the creation of 150 benefited positions, returning many of the jobs lost to budget cuts over the years and providing living wages to those employees, some who had been picking up the slack for years. The agreement brought opportunity of recognition of a new classification of recreation workers which will now see 300 additional employees be recognized and better-compensated for their commitment and dedication to the mission of our bureau and the city we all serve. I come before you today to acknowledge and thank you for the recognition, support commitment, you have shown our local, our bargaining team and the hundreds of employees who will for the first time benefit from better wages and working conditions through the rec arbitration agreement and our most recent soon-to-be ratified collective bargaining agreement. I believe this is a testament to your commitment as a council towards making the city of Portland a model of employee. However while it is true that we have made great strides forward to achieving that goal, there is still work yet to be done. There is still countless recreation and city employees living below the poverty level struggling to make ends meet while the cost of living in our city continues to skyrocket. Although we are truly moving in the right direction, many of our represented employees still today can't afford to live in the city of -- in the limits of the city they serve. It is my hope that local 483 and the city can continue working together positively to ensure that someday soon all city of Portland employees have the opportunity to achieve a living wage and the city of Portland achieves the goal of being a true model employer. Thank you, Wheeler, and commissioners, for your time and consideration today and for your ongoing commitment to work collectively and collaboratively with us towards reaching agreements that help make the city of Portland a better place to live and work and to commissioner Fritz, thank you for your continued encouragement and support of all recreation staff by working together we truly can achieve great things. Thank you.

Wheeler: Thank you, commissioner Fritz.

Fritz: Thank you so much for the time to come in today and I also want to recognize your entire union bargaining teams over the years Anna Kanwit, mayor and your staff have been amazing, Harry Auerbach the retired from the city attorney's office. I'm really happy that we are moving towards paying such wonderful employees the wages and benefits they deserve thank you.

Birt: No worries thank you.

Wheeler: Thank you for coming in. Next item, please.

Item 857.

Wheeler: That appears to -- nobody appears to be here for 858. Actually, let's go to the -- no, we can do it time certain 858. So, go ahead and read it, please.

Item 858.

Wheeler: Colleagues I have a proclamation and then we have a couple of guest speakers, Kimberly James and, Harry, if you're here, you can come up while I read the proclamation.

August 2-3, 2017

Whereas, the international rose test garden had its beginnings in Washington park, Portland, Oregon in 1917 as a sanctuary for European roses threatened by world war I. And, whereas, the international rose test garden yearly hosts over 700,000 visitors from around the world. And, whereas, the international rose test garden is the oldest public rose test garden in the united states. Whereas the international rose test garden was recognized in 2006 with the garden of excellence award from the world federation of rose societies. And, whereas, the international rose test garden represents a strong relationship between hundreds of partners, volunteers, the city of Portland and Portland parks & recreation, and the public. Whereas, the international rose test garden is a source of pride for all Portlanders and showcases a unique role in Portland's history. Whereas, the city of Portland is looking forward to the next 100 years of roses at the international rose test garden. Now, therefore, I, ted wheeler, mayor of the city of Portland, Oregon, the "city of roses," do hereby proclaim august, 2017 to be "international rose test garden centennial month" in Portland, and encourage all residents to observe this month. And, we'll go ahead and turn it over to our guest speakers.

Kimberly Bowen: All right. Thank you so much. My name is Kimberly Bowen and I'm the president of the friends of the international rose test garden. Thank you, Mr. Mayor and commissioners. Thank you for having us today and for honoring the international rose test garden in its centennial year. The rose garden is an icon in the city's moniker of the city of roses. I represent the friends of the international rose test garden and the hundreds of volunteers devoted to maintaining and enhancing the rose garden a number of them are here with us today. We contribute thousands of hours dead-heading pruning spent roses guiding public tours and answering questions about roses. We enjoy the tremendous support and partnership of your parks and recreation department represent here by curator harry landers and land stewardship manager James Allison. We have a lot of other Portland park and rec folks here today to hear this proclamation. Thank you for your efforts on behalf of the city of roses. The friends will continue our devotion to another hundred years of blooms.

Wheeler: Thank you, Kimberly.

James Allison: Good morning, mayor wheeler, city counselors -- city commissioners, sorry. Thank you for your support of our world-class park system that has over 144 developed parks, 73 natural areas, more than 53 community gardens. These are exceptional and essential community assets the centennial celebration recognizes many efforts and contributions of many hands across many decades. I want to thank you for your efforts and I want to thank our partners, Portland parks and recreation has more than 200 friends and partners, organizations that define our work and make that work happen. In the spirit of collaboration and goodwill, Portland parks and recreation is sponsoring a free community day at the garden on Saturday, august 26. This is going to be a full day from 11:00 a.m. to 8:30 p.m. where we welcome all Portlanders into the international spirit of this garden and this special place. This day will feature art, music and other performances from Portland's many cultures and the two highlights I look forward to most are art inspired work for more than 60 public school students and rose flavored ice cream inspired by our city of roses. Thank you again.

Wheeler: Thank you, we appreciate it. Good morning.

Harry Landers: Good morning. I have the great honor of being with the garden for almost a third of its life. Seems kind of hard to believe now. I have the privilege of taking the garden to its international standing, so we're known throughout the world. That's one very proud thing I can take with me as I retire thank you.

August 2-3, 2017

Wheeler: Harry, consider yourself it was the last third of its life as opposed to the first third of its life. [laughter] thank you. Colleagues, we've had a request to have a photo with Kimberly and Harry and James.

Fritz: Before we do that can I just say thank you to all three of you for being here this morning and celebrating the centennial. I also want to thank the taxpayers of Portland and the voters of Portland who approved the fix our parks bond measure and so in addition to the beautiful flowers we now have an accessible walkway that will make a huge difference to everybody feeling welcome and being welcome in the garden. So, I hope that people will come to the big celebration on the 26th, but also now is a very good time to go out there and walk amongst the flowers and take the time to smell the roses and, thank you, Harry Landers, for all your work. [applause]

Wheeler: Moving to the consent agenda, we can't go to the next time certain. Karla, which items have been pulled off of the consent agenda?

Moore-Love: 861, 862, 863 and 865.

Wheeler: And, 865. Could you please call the roll on the remainder of the consent agenda?

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

Wheeler: Aye. The consent agenda is adopted and I just want to make one note 860 is not pulled, is that correct?

Moore-Love: Correct.

Wheeler: I just want to note that this was a grant to work systems, inc., for the summer youth program. I want to acknowledge the city council's leadership on the issue of summer employment for youth we allocated \$550,000 through our budget to support this in conjunction with Multnomah county and other partners. Obviously, engaging young people during the summer and encouraging them to think about different career and higher educational opportunities has been a priority for this council. I just want to acknowledge that through the consent agenda, we are allocating those funds. Commissioner Eudaly?

Eudaly: I would like to mention that we have the pleasure of having a summer works youth intern in our office, his name is Gabe. He's leaving tomorrow and we're going to miss him and, thanks for this wonderful program.

Wheeler: Very good thank you commissioner. Item 861, please.

Item 861.

Wheeler: Colleagues while staff is coming up, air quality sensors are another example of how we're moving Portland forward on protecting air quality in our neighborhoods. As you know, I and all of you, are committed to improving air in Portland and one way in addition to monitoring is potentially by pursuing the local air authority to protect our community. Our local air authority could monitor air quality and air toxics set standards and issues penalties for violation. I am well-aware that the state continues to push for higher standards and continues to push for funding. The legislature, despite the best efforts of our colleagues, particularly from the Portland delegation and our governor, they pushed hard to get that legislation through. Unfortunately, they were blocked by others who did not share their values to air quality in this region. So, I'm eager for the Oregon legislature to move forward and I'm particularly hopeful that we have an ambitious dirty diesel phase out program. In the mean while as you know colleagues I've requested that Portland should move forward and support a regional approach. As you recall, our budget included funding in conjunction with Multnomah county to begin to lay out such a framework in the event that the state is not able to deliver air quality and I want to assure you the conversations are taking place with not only the governor's team and with legislative folks, we have also had brief conversations at this point, but conversations nonetheless. With Irap which is Lane county's regional air program as well as folks with metro and folks elsewhere that we believe have

August 2-3, 2017

an interest in this and we continue that approach. Sorry for the long -- I wanted you to be aware --

Fish: Thank you for those comments because for a number of us, what we have read as been in the paper and we haven't had a chance to have this conversation with you. What I think what we ought to plan to do, mayor, because the council hasn't taken this issue up yet, is schedule a work session for the purpose of laying out what the options are, who our partners are and where they stand and how we pay for it. I think there are big questions council needs to address before we start putting the framework in place and it's particularly important to me that we're working with the county so I want to hear from the county leadership about where they are since this is a regional approach. Are you planning to bring something to us early this fall?

Wheeler: It is premature, at this point, because there is no framework to bring forward. We're in the early stages of investigation. We're looking at other models around the state and country that have been successful. We are a long way off for who is in and who is out and we're a long way off from determining how such a regional air authority, if created, would be financed or funded. That being said, as we all remember, it wasn't that long ago when town halls were being packed across this city with residents expressing legitimate concern about air quality in the Portland area and there's been some press out there to suggest that Portland has some of the worst air quality in the United States and as you know on issues with dirty diesel, we're way behind. Our colleagues in the states of Washington and California and I do agree with those who say the state is the appropriate area for this to take place and that the d.e.q. is the appropriate agency for this to happen, but, I cannot simply punt the responsibility for air quality to the state or to the d.e.q. if they're not actually doing the testing and the remediation and the penalties. And so, I think there are people -- you know, I believe our county chair is quoted in the paper as saying she does not support a local approach. Knowing that papers are imprecise in terms of statements and approaches there will be some point where if there isn't action at the state, we will have to take action it will be our obligation for us to do, but we're quite a ways from making that decision, but I think we need to lay the foundation.

Fish: I think we have to calibrate community expectation and the reality is, that on a daily basis, we're faced with the challenge of having either a federal government, a state government and in some instances, a regional partner not addressing a challenge that we think is urgent and what we cannot do in each and every instance is create a Portland only solution because at some point, we don't have the resources or the capacity. The question of whether the state needs to step up and do more, I think, is the question before us right now and I'm very interested, since a prior council launched this initiative, I'm very interested in knowing what our options are in that regard. I do think we have to be careful about saying we're prepared early in the negotiations to go it alone because we're saying we're going to shift the burden and the cost to taxpayers and the issues have a state or a national component so that's a tactical question. There's no dispute about the goal here, but I'm concerned about us setting expectations and as you know coming out of our most recent budget, we're scrambling to find money to fill potholes, to provide services for homeless people, to do a whole host of things. So I want to manage expectations there's no question this council has said clean air matters and we have launched a process to investigate a regional authority, but frankly, I don't want to let d.e.q. off the hook prematurely. If we start talking about moving forward, we're essentially letting them off the hook and damn it they have primary jurisdiction and it may be that we have a parallel effort, but when we are unable to meet other urgent needs right now from a budgetary point of view I want to be very clear about setting expectations about what we can and cannot do.

August 2-3, 2017

Wheeler: That is fair and, I don't conceptually disagree with anything you've said, commissioner Fish. I will say this, as far as I understand the process, to this point, the roadblock is not other governmental jurisdictions. The roadblock are private sector advocates who believe the standards that are in place are too stringent and the public and I certainly do not agree with that. I do not believe the standards are too stringent and I like putting the leverage on the table of the city council because historically I think our environmental standards will be more stringent than what the d.e.q. might come up with. So, I will let our private sector partners chew on that a little bit. Addressing your second issue saying we are absorbing the cost and burden. We're already absorbing the cost and burden we're already absorbing the cost and the burden in the form of externalities in the absence of the state providing a rigorous framework we don't know who's polluting, we don't know where they're polluting and the cost is being born by the people who live in the community is a shift of externality cost onto the people who live in this community and what the community has told me is they're done with it. So, I agree with you we do not have the capacity today to lay up an entirely new bureaucracy, nor do I want to and I'm on the record many, many times over the course of my run for office saying that, but at some point, just as we stepped into the housing fray ahead of the state in order to put leverage on the state and in order to take care of the situation for our community, air quality seems every bit as important to me as affordable housing so I use the parallel argument we used to pass the relocation ordinance.

Fish: Let me just close by saying the context for this discussion is a shared sense of frustration on this council.

Wheeler: Agreed.

Fish: That on issues we care about we often find ourselves preempted by the state legislature abandoned by the federal government, overturned by luba and unclear about how we go forward so this is the context and I applaud, mayor, your sense of righteous indignation about how we approach this problem. I guess I go back to what I said earlier which is since we are investigating other regional authorities, since we are talking about a possible regional approach, I think bringing the council along early on in terms of potential frameworks and what this might look like is useful. We have to make very tough choices about lots of core priorities and they are amounting. If this becomes an urgent priority that - that we're going to establish, staff and fund I think the sooner we identify what that looks like and what some of the options are the better. There is no quarrel on this council about the issue I think that the question is at the federal, state and local level who does what and who pays for it is an important question and I for one don't want to let people off the hook.

Wheeler: In that, we are in full and rigorous agreement, commissioner Fish. So, yes is the answer to your question. Sorry. Hi. Good morning.

Christine Kendrick, Bureau of Planning and Sustainability: Thanks for the lively discussion on air quality. My name is Christine Kendrick with the bureau of planning and sustainability I'm here to talk about this ordinance to authorize an intergovernmental agreement with Portland state university to support low-cost air quality sensor testing. This sensor testing is part of an ongoing project aimed at evaluating and deploying low-cost air quality sensors. The goal of the project is to understand how we might be able to use lower-cost sensors to better understand air quality at the roadside and a higher spatial resolutions and across the landscape and also temperature and climate affects, as well. Portland state, with this iga, would provide testing and evaluation of sensors by exposing them to known concentrations of gases and particles and also wall changing temperatures and relative humidity. The second stage of this test is to deploy the sensors at department of environmental qualities southeast Lafayette stations we're doing a multi-stage validation study and then this work was supported by two different grants received by the city,

August 2-3, 2017

national institute of standards and technology, rsct grant and also 11th-hour project funding from 4th formerly known as drive Oregon and Portland state was originally named as partners in this grant application.

Wheeler: Very good. Commissioner Fritz?

Fritz: Thank you, mayor. Thank you for your work and I'm very happy that we are looking at this \$8,000 seems to be fairly inexpensive for this study by Portland State University. So I appreciate that as we all know, today's going to be a very hot day and indeed trimet is offering free rides all day to help people not drive. It seemed incongruent to me when I got off the bus and saw a person using a leaf blower to literally blow around three leaves making a lot of noise. So there may be things we can do, mayor, aside from the big picture regional air quality -- we haven't done leaf blowers for quite some time at the council, but things like that, that would further our climate action change plan and things we can do without getting into the whole wash of what's happening at the state and what's at metro so I hope we can consider that.

Wheeler: Well-said. Thank you. Colleagues? Commissioner Saltzman?

Saltzman: So, I thought the council, like, two years ago, purchased some mobile air quality monitoring devices. What happened to those?

Kendrick: Mobile air quality devices? I don't know about mobile. We do have some insurance that were set up in stations at two different intersections. So right now the one is operating is southeast 122nd and division and those are more laboratory grade or federal regulation grade instruments, so not low-cost, but those give us data points to be able to test some of these lower-cost sensors. The idea there is it's so hard to get air quality data at a high spatial resolution. We only have one monitoring station for all the city of Portland so if we can learn how to use lower cost sensors and calibrate them against better measurements we can get more data across the city to understand the spatial distribution.

Saltzman: I'm really puzzled because I recall the debate. It was a pretty well-focused debate and it was all about these mobile air quality sensors that psu folks could take it over precision cast parts and then they could take it over to north Portland. Do you know anything about that?

Kendrick: I might be also referencing the work for the xrf, which was to do air toxics mobile measurements. That was to produce an instrument to analyze and using samples that they already had at the Portland state university lab they were able to collect the particle samples and go do that analysis, but that's for air toxics and I apologize.

Saltzman: That's what I'm thinking of, then.

Kendrick: And I apologize I didn't say earlier these sensors are for transportation-related pollutants so at the urban roadside at intersections and bus stops.

Saltzman: Given the debate going on here, maybe I drifted to the air toxic right away.

Fish: Commissioner Fritz, I'm glad you raised the question of the issue about the leaf blowers I have had to experiences with them. I live in a big apartment building and on the weekend I get woken up in the morning because there's a particular neighbor that starts blasting their leaf blower and it echoes all up through the vista St. Clair presumably waking everybody up and there's a coffee place at the end of the street, there's a gentleman who fires it up and creates the mother of all dust storms as people are just sitting outside drinking coffee or are just enjoying the day. I've always wondered, what is really going on here with these things? I guess the science is, they're big polluters, as well and not just noise pollution, but air pollution as well. Perhaps we could take a look at that.

Wheeler: Is there any public testimony on this item?

Moore-Love: I didn't have a sign-up sheet. Mr. Lightning pulled it.

Wheeler: Thank you.

Kendrick: Thank you.

August 2-3, 2017

Wheeler: Good morning.

Lightning: Good morning. My name is lightning, I represent lightning super watchdog x. One of the reasons I pulled this item is I wanted to have a clear understanding. When we're reviewing the iga, you have a lot of terms, such as on number eight, confidentiality on -- you have also, copyright. You have also that this information will be given only to the sponsor, which is the city of Portland. I want to have a clear understanding on this information that the public, the general public, will have access to this information. As you know, I have done communication on -- when we had the daycare center located as -- next to that bus stop, we can do certain things to where we can have the situations like that not happening. We can have 1,000-foot distance from any bus stop where the diesel particulates are going up in the air and maybe drift over. Also again a great point on the leaf blower, one of my biggest concerns is when I walk down the sidewalks when they're using those, if there are diesel particulates that have floated out on the sidewalks, they begin to blow that up into the air again, we need to have more research on that to make sure that the people that are walking on these sidewalks aren't put into a dangerous situation, which I think they are. I believe they are. We need more research, again, on this type of testing to be able to look at that and say, let's not have that leaf blower used, at least a certain time when there's a lot of people on the sidewalks and so there are certain things that can be implemented. There are things that should be implemented and again, my position on all of these situations is, again, to focus on the fossil fuel subsidies, begin aggressively taking those away from them and transferring those into other areas. You know, we weren't able to keep the -- what is it? The Paris accord in place. Let's go after the fossil fuels subsidies and begin to transfer funding in other areas to focus on the clean air aspects of this city. The diesel particulates are my biggest concern this time I want more aggressive attention placed on that, I want to monitor the testing and I want to have access to this testing, as a private individual, as the public, it does not say that in the agreement. Everything is confidentiality, everything is copyright, everything is access to the sponsor. I want to see, in these agreements, that the public will have access to the information provided by this test that is going to be done. Thank you.

Wheeler: Thank you. Call the roll.

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

Wheeler: Aye. The ordinance is adopted. We'll go back to the time certain, item 859, please.

Item 859.

Wheeler: Colleagues, we're fortunate to have two excellent candidates for the prosper Portland board of commissioners. They come from very different backgrounds, but share a commitment to our city in using their talents and expertise to make Portland a better place to leave for all of our residents. I want to thank peter platt and Francesca gambetti for your willingness to make a significant commitment in terms of volunteering your energy to prosper Portland and its goal to build an equitable economy here. We have had requests in the past from people who are appointed to important commissions, such as this, to be present. We appreciate it knowing you are both really, really busy. We were hoping you could tell us a little bit about yourselves and why you want to be on the prosper board and what you think the most important challenges are ahead and Kimberly is you want to come up as well, director Branam from prosper Portland is here as well. Good morning. I won't put you on the spot.

Francesca Gambetti: Good morning, mayor wheeler and commissioners. My name's Francesca gambetti. I started my career as a project manager at shiels obletz johnsen nearly 20 years ago. I've worked in a variety of projects throughout the city over those years, that were designed to strengthen communities, expand housing opportunities and

August 2-3, 2017

demonstrate sustainable building practices. I worked on a number of complex mixed-use, including the Hollywood library and book mark apartments in northeast Portland, museum place in downtown. I have been involved in a number of nonprofit projects such as the artists repertory theater, the pica and mercy corps. Just last year I completed a couple of rewarding projects last year, we completed the construction of open school east, which is a really fantastic program that serves students that aren't succeeding in the traditional public school system. The organization has been operating with great success for 50 years in north Portland and they have expanded to the east side in Gresham, largely in response to the shifting demographics of the region. Last year, I also worked on a project with a home for everyone, transition projects, construction and mba architects. We transformed a warehouse on southeast McLoughlin into the Willamette shelter the Willamette center's homeless shelter. It was a small project in terms of development scale, but had tremendous social impact. So, it was something I was really proud to be a part of. So, through all these years, I've gain a deep understanding of all aspects of project development, including acquisition, financing, community outreach as well as the design permitting and construction process. I'm hopeful that these skills and my perspective will be an asset to prosper Portland. I believe deeply in the work that prosper Portland's doing and in the direction that Kimberly is taking the organization. I think they're demonstrating a real commitment to equitable economic development and creatively expanding opportunities for low-income and minority residents. So, it's something I would be excited to be a part of and I thank you for your consideration.

Wheeler: Very good. If I could mention a couple of other things that caught my attention on your resume. You've been volunteering with habitat for humanity and bicycling ideas for kids, empowerment. Your company, which you're a co-founder of, commits a portion of your proceeds to benefit pair, an organization we're familiar with and happy with its local organization it mentors homeless and transitional youth. You have both head and heart so we're really delighted you're willing to step forward and make a commitment to this board thank you for being here. Peter, tough act to follow?

Peter Platt: Yes, indeed. Good morning, mayor, commissioners good to see you. It's an honor to be considered for this very important position, helping oversee and guide prosper Portland as it manages a significant pivot both in funding and operations. I'm a small business guy no two organizations or businesses are the same, but there are fundamentals of management and financial oversight that I will bring to me to the board and of course the street-level small business perspective. I think it's important and vital, as Kimberly has done, that our job is to ensure the rising tide of economic development lists all votes and I look forward to working with my talented and accomplished board members, as well as the equally-dedicated professional staff at prosper Portland, to ensure that that's the case. I will say, coming from a bilingual, bicultural family, I'm going to be especially sensitive and attentive to the voices from women, from community of color in our small business community I think we have a thriving small business sector that is at the heart of economic resiliency in our community and I think the kind of work that prosper Portland is doing to help underwrite the health creation we want to see in our communities of color is exactly aligned with my values. I -- I'd like to thank my parents, in particular, because they represent, to me, an example and demonstrate daily what the marriage of two cultures represents and that is greater than the sum of its parts. And, that their devotion to public service and to our company's mission and to the values of cultural understanding are really my inspiration for being here. Thank you very much for the consideration.

Wheeler: Peter, we appreciate you being here and, Francesca, as well. Kimberly I don't know if you have anything you wanted to add?

August 2-3, 2017

Kimberly Branam: I think all I would add is that we are delighted that both Francesca and Peter have agreed to be considered for this. I've had an opportunity to understand the dedication that it is to be a volunteer member of the board. There's an adage that citizens are the riches of the city and I think that citizen volunteers or resident volunteers are truly at the top in terms of what they are willing to dedicate and so I appreciate, in advance, the leadership that I know each of them would put forward. Just really want to appreciate that thank you.

Wheeler: Thank you, Kimberly. I also just want to acknowledge and thank you for your leadership on the legacy project that was -- that was brought forth for the public yesterday. That was a historic move and prosper Portland and your leadership played a key role in all of that so I want to thank you and your commitment to equitable prosperity. Colleagues, any comments or questions for Peter or Francesca?

Fish: I just have a comment, Mayor. First of all, thank you, both, for serving this comes close to being a thankless task. You're going to have to manage this and the rest of your lives so we are very grateful that you're stepping up and donating so much of your civic energy towards this. I want to just note three things that -- that sort of touch on what you've each said, but I think are ongoing challenges. One is how our neighborhood prosperity agenda benefits our local small businesses. Small businesses are the backbone of our community, in our neighborhoods, I think about 90% of them employ five or fewer people. How do we keep our eye on the next headquarter business while making sure our neighborhood business prosper? That's one of our challenges and I think you both alluded to it in different ways. Second is, how do we bring art and culture into the urban renewal conversation? And, you know, artists and artists affordability and those issues they'll never been as important as the acute crisis of homelessness and affordability challenge for renters. We understand that, but they are impacted by what is going on in our city and we are at risk of displacing a lot of creative people and also making it difficult for arts organizations to prosper. How might we use art and culture as part of our vision for urban renewal, particularly in places like gateway and Lents that are still struggling to find an identity? I challenge and urge you to consider that, and also in the central east side I think as you approach the ODOT blocks you have a huge opportunity to think about art and majors. And the third question and I guess this is mostly for Francesca, we do know that we're going to have fewer resources for affordable housing. Now, prosper Portland is not the lead anymore, that's shifted, for us to be successful prosper Portland and the housing bureau have to work together. We'll have fewer federal resources, we'll have fewer state resources over time. The need is growing and there's a limit to what we can do, just on our own. One of the questions on the table is how might we rethink how we might rebuild housing and develop housing to get more units? That's a really tricky conversation because underlying that question is a values proposition about how much are we willing to sacrifice on the values side to get more product out the door? And you will be part of that conversation about green buildings, about sustainable architecture, about living wages and about opportunity where we build and I urge you to bring your values and passion to that conversation because we're at a critical watershed and we have to get more units built. But the question will be, at what expense to the values that support the housing that we're building? And I -- from your backgrounds and from what I know about your work, you'll be two important voices in helping to shape that conversation. Three things to think about and, thank you, again, for your services.

Wheeler: Thank you, Commissioner. Commissioner Eudaly?

Eudaly: Commissioner Fish you're not supposed to tell them about the thankless part upfront. [laughter] I want to thank you for stepping up to serve our community. It's heartening and hopeful to me to have two people with street level experience and

August 2-3, 2017

knowledge, as you mentioned. And as challenging and thankless as it may be sometimes, there is deep satisfaction in getting to have a hand shaping the future of our city. So, thank you. That's what I tell myself every night at least. [laughter]

Wheeler: Colleagues I'll entertain a motion.

Moore-Love: We have testimony.

Wheeler: We have public testimony on this item, just cool your heels for a few minutes.

Fish: I guess we should say mesd commissioner.

Michael Durrow: Director.

Fish: Director, excuse me.

Durrow: Hello, gentlemen, ladies how are you doing. I would like to address commissioner Fish's recent -- was it groundbreaking or finished the project to recover gas? The natural gas project?

Fish: With our wastewater facilities?

Durrow: Yes congratulations that's going to save a lot of carbon dioxide. I want to thank you for speaking to the pollution issue. I'm one of the people I have 50% lung function and I have oxygen tanks home in my room. Which issue number are we on?

Wheeler: This is the appointments to the prosper Portland board.

Fritz: 859.

Durrow: Sorry. I -- I got on the wrong one. What I came here for was to speak about the water, about the water filtration plants. I'm sorry. I thought -- I read the wrong one.

Fish: That's at 2:00.

Durrow: I have a meeting with the superintendent at 1:00.

Wheeler: We're only taking testimony --

Wheeler: If you have a statement to read this afternoon give it to me and I'll make sure it goes into the record.

Durrow: Thanks. Sorry about that.

Wheeler: No worries.

Lightning: My name is lightning, I represent lightning super watchdog x. Just to mark Edlen and Tom Kelly outstanding work and again, on the new appointments, I think you're well-qualified. I think you'll do very good and you have some tough shoes to fill and I'll be watching you as a watchdog, very close. One of my issues or one of my points I wanted to bring up again on the housing, the most vulnerable people in our city, the homeless, people that live below the poverty line, I'm hoping that, again, prosper Portland will begin to look at following what Hawaii just did passing house bill 89 to begin a process on looking at the universal basic income for all through the united states and, I want this to be looked at very close to have an understanding. Everything we talk about is what this universal basic plan can be implemented and help. We're talking housing, we're talking improved health, we're talking reducing the poverty level, we're talking, all these areas and we need to start focusing on that and having groups, such as prosper Portland, having communication with elon musk, having communication with mark Zuckerberg and people in Hawaii who are the first to begin to implement this with a work group. We need to start understanding that when we're talking the most vulnerable, when we're talking housing, what we need to understand, at the end of the day, they don't have enough money to get into housing. They don't have enough money to buy that smartphone to have access to internet. They don't have enough money, that's what universal basic income, comes into play for all people. Nobody to be excluded and that means, universal basic income will be paying bill gates \$12,000 to \$15,000 a year, as well as that person on the sidewalk. So, again, in my limited time here, during public communication, when we're talking about the homeless, the most vulnerable, start focusing on that, at least take a look at it and start having communication with people about it, to have a better understanding. Thank you.

August 2-3, 2017

Wheeler: Thank you, sir. We have a motion from commissioner Fish. Is there a second?

Fritz: Second.

Wheeler: Commissioner Fritz seconds. Any further comments? Please call the roll Karla.

Saltzman: Well, I want to also acknowledge and thank outgoing prosper Portland commissioners, Tom Kelly and Mark Edlen. Tom served as the chair they both made outstanding contributions to our city and we appreciate their service and I also want to welcome our new members, Francesca and Peter. Very impressed with your backgrounds, your statements today and I think you're going to be just the right people at just the right time. So, thank you very much for your willingness to serve. Aye.

Eudaly: Aye.

Fritz: Thank you very much for the perspectives that you bring. I'm just reflecting on the prosper Portland -- I avoided not saying the old name. The board now, with Gustavo Cruz as president and Alicia Moreland Capria and both of you. Pop quiz mayor who is the fifth member of prosper Portland?

Wheeler: Sorry, I was reading the next item.

Fritz: Of course Willy Meyers.

Fish: That was cheating. [laughter]

Fritz: This is an amazing diverse board who brings so many different perspectives and I'm excited to know about your backgrounds and what you'll be bringing to the commission and to the city as a whole so thank you very much. Aye.

Fish: I want to echo what my colleagues said. I want to thank the mayor and the mayor's office and Kimberly and her team for recruiting new members. People don't just drop from the sky and this has been a successful recruitment, as evidenced by the two people before us. I understand we're going to break with some tradition with PDC and meet at a local restaurant after-hours so thank you, Peter for that active generosity. You're the first restaurateur at this organization since Bud Clark was mayor and was overseeing it. Am I right on that? Kimberly, maybe? It's about time we had a distinguished restaurant on our panel a business person. Thank you for stepping up and doing it and we have a lot of really difficult decisions to make as the city goes through growing pains and you'll be in a unique roll to help us get it right. We look forward to working with you. Thank you. Aye.

Wheeler: I just want to thank you, both, for stepping forward and, again, remind the public that these are volunteers. And that this is a significant time commitment from two people who are very active and engaged in positive ways already in the community so we're very, very lucky, fortunate to have people of this quality willing to step forward and take on this role. Absolutely, I want to echo commissioner Saltzman's remarks, Mark Edlen and Tom Kelly both who served this board with distinction. I have every confidence that you will continue a great tradition, continue to work with directors Branam in moving prosper Portland into important new directions. So, thank you for your leadership. Aye. The report is accepted, the appointments are approved. We were half-way through the consent agenda item, 862 is next, if I got that right.

Item 862.

Wheeler: Very good. Thank you. Good morning.

*****: Good morning.

Wheeler: Colleagues if I could make a brief introductory statement. This is an issue which has been discussed in public forums as part of our budget process. This is the allocation of the general fund towards prosper Portland for 2017/2018 so this is not a new item it's the allocation. Good morning.

Tony Barnes: Good morning, Mayor Wheeler, I'm Tony Barnes, budget officer, prosper Portland. The item before you is the annual intergovernmental agreement between prosper Portland and the city of Portland. It includes core key funding for building inclusive

August 2-3, 2017

economy both ongoing funding as mentioned in the budget process as well as one-time-funding identified. Of the total contract of \$6 million approximately \$5.5 million represents the ongoing funding and \$480,000 of one-time funds which was allocated through the budget process. Included in the contract are specific performance measures that we report on through the bump process. As well as year-end reporting for specific performance measures.

Wheeler: Colleagues, any questions on this item? Public testimony?

Moore-Love: I didn't have a sign-up sheet, but Mr. Lightning pulled it.

Saltzman: Did you want to make a statement?

*******:** Just here to answer questions.

Wheeler: You can go ahead and have a seat. If there's any follow-ups, we'll bring you up. Good morning.

Lightning: Good morning. My name's lightning. I represent super watchdog x. Again from the entrepreneurship and the innovation by the money you're proposing and already have approved, I understand that. I agree with all the areas that you're going into and one of the things, I guess, from my standpoint, is that I -- I had -- the reason why I pulled this, I had a little bit of an issue on one of your items here, which basically was on the small business working capital. The small business working capital program is utilized to increase access to capital for small businesses. The aim of the program is to promote wealth creation for small-scale, low-income immigrant or minority-owned firms, target businesses who aim to grow their businesses. The only concern I had on this is that you had a number there of -- and I think you know what I'm talking about of \$51,000. Where on these other programs, the numbers were quite a bit higher we're talking about a good amount of money that has been approved. I guess from my position I'm hoping that this to me, this is such an important issue for the survival of these businesses, especially starting out and sustaining themselves, but we had such a low number there and I'm hoping, number one, in the future, that number could increase. And, maybe somebody here could explain why that number is so low to begin with when these other programs, as you can see, the numbers are quite a bit higher to begin with and they have more businesses that are being provided this type of money. Thank you.

Wheeler: Thank you. I don't know if there's a response from the team on that?

Barnes: In response to the question, that line item was reduced in the last two budget cycles. However, it is paired with other dollars prosper Portland has, within its adopted budget, for non-tif funds to support the same programming. There's several hundred thousand dollars in non-general fund dollars, non-tif funds it's paired with.

Wheeler: Colleagues any further questions? Comments?

Saltzman: Aye. **Eudaly:** Aye. **Fritz:** Aye.

Fish: One historical note, I believe, at the end of the Adams administration, it had an impact on the coming in on the Hales administration, that this council voted to convert one-time money for economic development at what is now called prosper Portland to ongoing. It created a delta in Mayor Hales first budget, but the idea was that we wanted prosper Portland, then PDC, to have this flexible general fund resource so they could do economic development city wide and not just in the 15% of the city governed by urban renewal districts. So this is a commitment of -- of general fund resources to economic development and once upon a time, most of these dollars were one-time, meaning they were quite vulnerable. I was pleased that we moved them to ongoing and I'm pleased to support this ordinance aye.

Wheeler: Aye. The ordinance is adopted. Thank you very much.

Item 863.

Wheeler: Good morning.

August 2-3, 2017

Jane Braaten, Office of Management and Finance: Good morning happy to be here. I'm Jane Braaten and I manage the omf business operations division. We're here to ask for authorization for our next city charitable campaign, that campaign is set to begin in September and run through the first part of October. That's our annual effort to raise money for a lot of different charities so, we receive 15 applications for our charitable campaign this year and our advisory committee, made up of represents that the council appoints has recommended approval of all of them. This ordinance would approve the 15 and also approve an exemption from the umbrella requirement in code for two of our charitable organizations, Portland parks foundation and Portland's fire toy and joy makers. They have received your approval in the past and they have a loyal following and are charitable donors so we're asking for your approval again. These umbrella organization and those two represent more than 600 charities and we have about 600 employees who participated last year, giving \$281,000 to charities through this campaign. They can use the payroll deduction process and it reflects an important way that employees can do charitable giving and do it at a higher level since they are doing a payroll deduction plan. So I have with me Kelly ball, who manages that effort in her team and we're happy to answer any questions that you have.

Wheeler: Very good. Good morning.

*****: Good morning.

Saltzman: So, did you say that 600 employees gave \$281,000 in last years campaign?

Braaten: That was the total for last year.

Saltzman: Is about the total from year-to-year or does it fluctuate a lot?

Braaten: It bumps up incrementally each year, but we're also noticing that there are other ways that employees donate they don't necessarily have to do that through the charitable campaign so we're very careful to word that this is one way that they can participate.

Kelly Ball, Office of Management and Finance: It is fairly stable, with a little bit this way, that way.

Eudaly: I just have a couple clarifying questions since this has been pulled. Could you explain the selection process for this list? As well as why that umbrella requirement is there? Because I'm assuming the parks foundation and toys and -- toy and joy makers are non-profits?

Braaten: Yes.

Eudaly: They don't have fiscal sponsors? I think the umbrella thing is confusing.

Braaten: I -- I -- this was approved with -- we can credit mike Lindbergh, former city commissioner, for creating the initial code for this campaign. I think the original intent of the umbrella organizations is that one of the things that our city campaign is different from what other people joining the city might expect is we have an incredible choice amongst our organizations. So the umbrella helps us be able to give employees a choice of 600 organizations rather than --

Eudaly: I see. I was reading that as if -- the organizations are the umbrella organizations and then they dole out -- I got it. Okay. And so, then, what's the selection process like?

Braaten: The selection process is that we have an application material online. We do marketing, certainly, to all of our previous organizations and we get information from our advisory committee if we need to do some additional outreach and we received 15 applications and we're recommending all of them.

Eudaly: And, what's the advisory body called?

Braaten: We call it the city charitable campaign.

Eudaly: So its just devoted to this?

August 2-3, 2017

Braaten: It comes together to provide oversight in reviewing the applications to make sure we're meeting all the code requirements and that the council is assured that there is that additional review.

Eudaly: Great, thank you.

Wheeler: Is there public testimony on this item?

Moore-Love: Mr. Lightning pulled it.

Wheeler: Good morning.

Lightning: Good morning. My name is lightning. I represent lightning super watchdog x. Again, on your charitable campaign and the umbrella concept. I'm in total agreement I think it's great I think it's something positive you're providing. Where I have an issue here is on this ordinance today it says you are asked to authorize an exemption from the umbrella requirement for the Portland parks foundation and the Portland fire bureau toy and joy makers. So, you want an exemption from, what I think is a great plan you put into place and have implemented in a positive manner. Now, here's my problem. Under code chapter 5.10, charitable organizations may only participate in the charity drive as a member of an umbrella organization. It must be approved by city council based on compliance with eligibility requirements set forth in code section 5.10.040. Portland toy and joy makers and Portland parks foundation do not meet the requirements. However, both have participated in the previous 13 campaigns and both have requested to participate again. The charitable campaign advisory committee comprised of representatives from each council office recommend approving participation by these organizations. Again, there are other great organizations that I think could meet the requirements of the umbrella plan and yet they're being denied that opportunity and you're giving two exemptions to these groups here. Now, my only question is, why don't they meet the requirements? And why are you giving them two exemptions at this time? Which I do not approve of. Thank you.

Wheeler: Is there a response to that?

Braaten: I think one of the items we covered were the applications we received. So, those were the ones we received. I also -- with having a little bit of background, Portland parks foundation and the fire bureau toy and joy are also affiliated with city bureaus and organizations and they do activities that are closely aligned with the missions of those organizations and they have a very loyal donor base within our city employees so that's why we've continued to recommend an exemption for those organizations. Toy and joy is small and may not have the infrastructure to meet the umbrella requirement to donate to nine different organizations and the parks foundation, they've had some changes over the years and they may -- they may elect to grow to meet that or they may elect to continue an exemption, but we also of course, we would be willing to consider any other requests for exemption and have the committee evaluate that and are perfectly open to that.

Wheeler: Could I just ask a clarifying question? So, these are the organizations that we're authorizing here, are all of the organizations that applied?

Braaten: Correct.

Wheeler: And of -- no organization has been excluded?

Braaten: Correct.

Wheeler: So the question before the council is, are we also willing to accept these two charitable organizations that don't meet the minimum required thresholds requirement that were previously established for charitable organizations. And if I can just paraphrase to make sure I got it the argument that you're providing is, a, they're affiliated with city bureaus; and, b, they have successful operational histories. Is that a fair statement? Or no?

August 2-3, 2017

Braaten: The other thing is they also meet all of the other requirements. So there's a requirement about their administrative cost per charity there are other requirements and these two meet of them, with the exception of the umbrella.

Wheeler: With the exception of the umbrella. Very good. Commissioner Fritz?

Fritz: Thank you mayor so potentially, we could change the code and say -- and add bureaus, charities affiliated with city bureaus that also meet all the other requirements that we wouldn't have to keep doing an exemption every year?

Braaten: We're open to looking at a code refresh.

Fritz: Something to consider and also I consider the Portland parks foundation is like an umbrella organization it does fund lots of different projects all over the city in partnership with other nonprofits. So I'm very happy to vote for this ordinance.

Braaten: Thank you, commissioner.

Fish: We should also put a shout-out for just the whole program because once you sign up, the money gets deducted from your paycheck which is the easiest way to do charitable giving so thank you.

Wheeler: Any further comments?

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

Wheeler: Aye. The ordinance is adopted. The last consent item is 865.

Item 865.

Fish: Karla, who pulled this?

Saltzman: I pulled this. Thank you, mayor, this grant to southwest trails pdx is a long time coming and will fund a volunteer project that I know all of our offices have heard about for a couple of years now and that is the southwest 25th avenue, which is the classic southwest Portland unimproved right-of-way that is used by numerous students and community members to move around the neighborhood and get to Robert gray school. Robert gray middle school is directly in the path of southwest 25th avenue and where it crosses Beaverton Hillsdale highway. A pedestrian signal and crosswalk exist however. directly south of the Beaverton Hillsdale highway it steeply drops down to the gully and creek that runs along the highway and it is this location that the grant will fund a much-needed trail improvements, including stairs with handrails. Matt grumm in my office is here with some pictures to orient the council on where this is and the need and then we'll open it up for any testimony. Matt, take it away.

Matt Grumm, Office of Commissioner Saltzman: Good morning mayor, commissioners, council Matt grumm, with Dan's office. Just some pictures here, quickly, to orient the council on what we're doing here. Here's a shot of the middle school you'll note -- the cursor here, this is the highway, highway 10 here and this is the right-of-way that is unimproved. We'll get closer, you'll see the unimproved area here, this is a steep gully. Here's the crosswalk with the pedestrian signal it goes right up to the school. Here's a shot of it as you're going to cross the highway. You'll note here, there's a sign for the trail right here, and you drop down right after this guardrail. You can see that opening there with the guardrail, dropping down in there. This is my favorite shot of assistant director warner trying to go down it. He was embarrassed for me to show this, but I couldn't resist. There is a better shot of the steepness we're going to improve here and there's a shot of the trail. That's what I wanted to orient you and hope to have your support.

Wheeler: Very good. Commissioner Fritz?

Fritz: I couldn't tell from the photograph, is there a sidewalk on that side of Beaverton Hillsdale highway?

Grumm: There's not there's a bike lane, but no sidewalk.

Fritz: By memory its the Oregon department of transportation who's responsible for Beaverton Hilldale?

August 2-3, 2017

Grumm: Correct it has just been repaved and restriped which was a great project pbot was involved with, with odot, but it does not have sidewalks.

Fritz: So potentially in our next legislative agenda we should look at encouraging that to happen cause although the trail will be improved, it's a little nerve-wracking to realize there's nowhere once you get down the hill.

Grumm: Exactly, very bust too.

Wheeler: Is there any public testimony on this item?

Moore-Love: I didn't have any sign-up sheet.

Wheeler: Very good. Come on up, matt. Anybody else want to testify on this? We'll close the list, please. Good morning.

Glen Bridger: Good morning, mayor and commissioners. My name is glen Bridger, I'm a resident of southwest Portland and, I'm a member of the board of southwest trails pdx and I'm here to speak on behalf of the board. Our leaders are traveling into cooler parts of the country right now. We are in support of this much-needed grant. This trail is really a backbone or a spine through many cultural, religious activities in southwest Portland. There are very few ways to get through this area. The crossing of the headwaters at fanno creek makes it more difficult, which you saw the picture of. We have, on the north side of Beaverton Hillsdale highway, a number of churches, synagogues and the Robert gray school. As we go south along on southwest 25th and get down to capitol highway, we're in the middle of the Jewish community center, a couple more synagogues and more churches are present, as well as a lot of housing complexes so it is an important passageway for people who wish to worship and go to school. We need this for safety, you saw the pictures, we need it for safety. I, myself, have a problem with balance I have not been down to the crossing because I've been there many times, I don't go down there because it needs good steps, it needs the handrails, it needs to be safe and we very much support that project. And at this time, I'd like to let -- one of our volunteers, who lives right along this corridor and has been doing a lot, Andrea.

Andrea Wall: Yes. My name is Andrea wall and first of all, I want to thank the city council for approving, on June 21, my grant for the community watershed stewardship. And so, I received an \$8,000 grant and I have been working with a very diverse group of community volunteers on the south end of this trail up by capitol highway, removing invasive plants, planting native plants, providing storm water management and creating habitat. So I've been working with solve and Stephens creek low cross, housing and many community volunteers who care about this trail this is the way we get around. As mentioned, the last about 500 feet of this trail, which you saw pictures of, is unsafe and Portland public schools has deemed it so unsafe that they bus the junior high school students -- middle school students from Stephens creek to Robert gray rather than have them walk the stretch -- this stretch of trail. Also down in that ravine is a huge red western cedar tree that we're hoping will receive heritage status and close to the headwaters of fanno creek, it's a special place down there. We hope to do restoration work once it's safe and when it is safe it will provide a community trail that's a safe nature trail. It will give people opportunity to get exercise, to get out in nature and instead of the children being bused over driven to Robert gray, they can walk and that will relieve traffic congestion, pollution and cost to the school district. Thank you.

Saltzman: Thank you for advocacy.

Wheeler: Very good, colleagues any further questions on this item? Thank you for your testimony please call the roll. I'm sorry this is a non emergency first reading of an ordinance it goes to second reading.

Fritz: I want to thank Glen Bridger for your long-time support of volunteer activities in southwest Portland including your past president of the southwest neighborhood inc

August 2-3, 2017

board. Also, of course, kudos to don Bach, who has been a champion for this project as well as the trails throughout southwest Portland. Its astonishing to me that for \$21,000 and a little bit more, this -- this path -- right-of-way can be made safe. I particularly appreciate also the work that you've done as a legislature to make sure that there's immunity for mishaps on the construction -- after the trail's been constructed. I seem to remember that when this was approved in the budget the principle of Robert Gray had fallen and broken her arm in this very spot, so I hope she now knows that we are correcting it even if it is a bit late for her safety so thank you very much.

Wheeler: Colleagues any further comments before I pass this on to a second? This is a non emergency reading of a first ordinance it moves to second reading. Karla an I correct can you confirm we've completed the consent agenda.

Moore-Love: Yes that was all.

Wheeler: Very good, Ill last item today is 866.

Item 866.

Wheeler: Good Morning.

Linly Rees, Chief Deputy City Attorney: Good morning mayor, good morning commissioners. My name is Linly Rees I'm a chief deputy with the city attorney's office, with me today is Lauren King also a deputy city attorney. We'll make some brief comments and then if you have questions after testimony we'd be glad to take them. In December 2016 the city council amended the zoning code to create a new use category called bulk fossil fuel terminals. That category limits the size of new fossil fuel terminals and expansion of existing terminals. Four parties appealed council's decision to the land use board of appeals and on July 19, 2017, they reversed the city's decision in part because they concluded the city's regulations were unconstitutional. The city attorney's office believes that there's a reasonable basis for asking the Oregon court of appeals to reconsider luba's decision. By city code we must ask this council to authorize the city attorney to institute such an appeal and that's why we're before you today.

Wheeler: Commissioner Fish?

Fish: I have a question. You know, there are some lawyers in the room but a lot of us sort of had some passing whatever with the "dormant commerce clause" but now it's back and it's like the big issue. I want to just make sure I understand the framework here, so there are areas where we legislate that someone has said we're preempted from acting and so we deal with that all the time, so the state legislature or the federal government says we can't do something. That's very clear, so this is different, this is an example of where we did something and a reviewing body said under the commerce clause what we did somehow unreasonably affect interstate commerce and therefore it's unconstitutional. The effect is the same it's in the first instance we are told we can't do something and in this instance we're told that what we did is unconstitutional. But in effect that's what we're dealing with here, right? This is an area where we have the right to legislate, but a single member of luba said that it runs afoul of the dormant commerce clause and is unconstitutional and the question that you're asking are we prepared to go to the court of appeals to challenge that ruling.

Rees: Both to challenge to challenge the determination under the dormant commerce clause as well as a couple of findings and evidentiary issues which we're in the process of evaluating other areas to determine whether we'll appeal on this basis.

Fish: The other question I wanted to ask, we're always concerned about precedent. I know that you often tell us that each luba decision stands on its own and is fact bound. But it does seem to me the different here is that the dormant commerce clause analysis could represent a challenge to a lot of the regulating we're doing at the local level where someone from outside of our community can claim that it somehow interferes with

August 2-3, 2017

interstate commerce and therefore try to limit our ability to legislate local community standards. Is that a fair comment?

Rees: It's a fair comment that folks may raise that. I think our argument would be typically in a case that the analysis is limited to the facts in that particular case so I don't think we certainly would be supporting the idea that it applies more broadly but it's certainly possible that people could raise that argument.

Fish: In fact, given that we have a rather ambitious climate agenda and a plan guiding our action this particular issue could come up in the future on lots of these kinds of land use decisions where someone is challenging our action based on the commerce clause.

Rees: Yes, that is possible.

Fish: So, we're really talking about a fundamental constitutional question that relates to our ability as local leaders to legislate and I think that makes this qualitatively different than some of the other kind of luba rulings we often hear about.

Rees: It's unusual for the city to appeal a luba ruling.

Fish: Thank you.

Wheeler: From a practical standpoint what is our policy while this is being appealed?

Rees: We're evaluating that at this time.

Wheeler: Very good.

Saltzman: Are luba members attorneys necessarily?

Rees: They are.

Lauren King, Deputy City Attorney: They are appointed by the governor.

Saltzman: Commissioner Fish made reference to one luba member.

Rees: In this particular instance there are three luba members. Two of the luba members recused themselves based on family member participation in the council proceedings.

Wheeler: I would like to add the hilarious footnote that that was reported in the press as a unanimous decision. [laughter]

Saltzman: That is baffling.

Rees: Typically a one-person decision is.

Fish: By the way --

Wheeler: They could have said unilateral.

Fish: On that point, colleagues, it certainly is possible that all three members of luba could get it wrong from our point of view, but I do think that what makes this case unique is that we're talking about a fundamental constitutional question decided by a single member of luba which could in the future significantly limit our ability to move forward with climate related legislation and the combination of a single person rendering a decision and we're all as human beings fallible and the consequences of that decision on things we are likely to do in the future makes this case ripe for appeal.

Wheeler: I appreciate commissioner Fish's line of questioning. That certainly frames it for me and lays it out so I appreciate the line of questioning we just went through. Any further questions? Any public testimony on this item?

Moore-Love: No one signed up.

Wheeler: Very good. There being no further comments or questions this is a nonemergency -- oh. Please call the roll.

Saltzman: Well, I do believe especially in light of my new information this was decided by one person on luba that we have more than ample grounds to appeal this to the court of appeals. I guess my initial reaction when I first heard of the decision, the unanimous decision, was the commerce clause is a high bar to cross. Certainly the court of appeals will I'm sure weigh into this after how long it takes them, a year, two years, but it's an important issue. It does underpin as commissioner Fish said our efforts to move forward on issues around climate change and other issues where our residents are looking more to

August 2-3, 2017

local governments for solutions than they are looking to the state or federal governments because certainly with respect to federal government there's just no leadership on climate change in the executive branch, period. This is an appeal that needs to be taken forward and I'm happy to support it. Aye.

Eudaly: I'm also happy to support this appeal. My layperson's understanding of the dormant commerce clause I'm not convinced that we're in violation of it. I am also ready and willing to fight back against the state interfering in our ability to protect our environment and to protect our residents and make what we think are the best decisions for our city. We need them to set standards that protect people, not profit. Aye.

Fritz: I agree with everything everybody else has said. Also there's a long precedence of land use decisions made by the land use board of appeals being on land uses, not constitutional. I agree it's very crucial to get this sent up the ladder so that we can continue doing the work that we do, which is national precedent setting legislation that we passed and prod to be a part of it. Aye.

Fish: I appreciate the conversation. I think the fundamental question here is who gets to decide these questions. Under this ruling, greater weight is given to people who live outside of Portland than live inside of Portland. The precedent could be used to challenge many actions we are likely to take in the future to protect the safety and health of our residents and extends well beyond climate change. So I think it's very important that we appeal this decision. It reminds me a little bit of the debate around international treaties and the resistance we have had nationally to some treaties where we have effectively ceded our sovereignty to neutral bodies in another country and the net result is a diminution of labor standards, environment standards and other standards. I think the consequence of this that may be a little overstated is potentially a loss of sovereignty, local control, over charting how we intend to respond to climate change. That makes this a very important question to appeal and to get clarity on the constitutional question. I wholeheartedly support this appeal. Aye.

Wheeler: I have three reasons why I will vote for this. Number one I agree with those who have said that officially this impacts the work we have already done to achieve our climate action goals. We need the ordinance in place it was an important ordinance the community came out in large numbers to speak in support of that ordinance and they would expect us to continue to defend that ordinance. Number two, I'm very appreciative again of commissioner Fish's framing of this issue. He made a compelling case which I agree with that there's more at stake than the important issue of climate change. That's the second reason I think it's our duty to defend the ordinance. The third reason is one that has been mentioned I'm not going to pick on the poor one standing luba commissioner who had to make a difficult decision. They are volunteers and I appreciate the decisions that they make and they are always controversial decisions, but one commissioner's viewpoint is hardly a definitive opinion on this important issue. Therefore I think we have a duty to go forward and defend the ordinance for that third reason as well. So I certainly support this I vote aye. The resolution is adopted and we're adjourned until 2:00 p.m. Thank you, everybody.

At 11:13 a.m. council recessed.

August 2-3, 2017
Closed Caption File of Portland City Council Meeting

This file was produced through the closed captioning process for the televised City Council broadcast and should not be considered a verbatim transcript.

Key: ***** means unidentified speaker.

August 2, 2017 2:00 PM

Wheeler: Good afternoon everyone this Wednesday August 2, 2017 session of the Portland city council, Karla please call the roll.

[Roll Call]

Wheeler: So we have a statement that read at all council sessions. The purpose of the council meeting is to do the city's business including hearing from the community on issues of concern. In order for us to hear from everybody before the council we all endeavor to preserve the order and decorum of these meetings. To make sure that the process is clear for everyone I want it review the basic guidelines which I hope will make everyone feel comfortable, welcome, respected and safe at the meeting and also to ensure decorum is maintained. Today there is one item that will be under discussion, and if you would like to participate in that conversation, please sign up with the council clerk. State your name for the record, you do not need to give your full address, if you're a lobbyist please disclose that, if you're representing an organization, please identify the organization. Typically individuals have three minutes to testify sometimes we have to shorten that depending upon how many people sign up to testify. When you have 30 seconds left there's a yellow light that will light up in front of you and there's a beep when your time is up the red line goes on and it will beep repeatedly. To be clear, disrupting other people's testimony is not allowed. Disrupting council deliberations is not allowed. The time for you to speak is if you want to sign up and participate in the public testimony along with everyone else. If you do disrupt the testimony you will be warned not to do so. If you continue you will be asked to leave. If you're asked to leave and you choose not to do so you're subject to arrest for trespassing. Hopefully none of that ever happens. Thumbs up if you like something, thumbs down if you don't like something. That's the best, easiest, most non-disruptive way for people to express their opinions on what's being said. So with that, we will move to the first item Karla

Item 867.

Wheeler: Commissioner Fish.

Fish: Thank you -- thank you, mayor and colleagues and welcome. Ten weeks ago the water bureau received an order from the Oregon health authority revoking the city's ten-year variance from treatment requirements of the It2 rule, which is part of the safe drinking water act. The revocation followed repeated detections of cryptosporidium in the bull run watershed this past winter. Originally the revocation was effective September 22nd, which put us on a very tight timeline to make a decision about the future of our system. Since that letter was received, the Portland water bureau has initiated a robust public debate about next steps. Here's a summary. A council work session on June 27th. The bureau prepared comprehensive data and documentation on the treatment options to inform the community conversation. The bureau reached out to large and small stakeholders including wholesale customers for their input. The Portland utility board, which provides community oversight of our two public utilities, held four meetings on this topic including as recently as yesterday. The Oregon citizens utility board met with water bureau staff, requested additional information and has submitted its recommendation to bureau leadership. There were presentations to editorial boards and much more. I want to begin this hearing by thanking

August 2-3, 2017

the bureau for stepping up to take on this challenge during an already busy time. They have provided briefings, pulled together information, run analyses and otherwise devoted enormous time and energy to ensuring that we have the information we need to make a thoughtful decision. Now, before we proceed, let's pause for a moment to consider the context for this afternoon's conversation. It's about 107 degrees today. Wildfires are raging across Oregon. We saw historic levels of rain in the watershed this past winter. We anticipate more of this disruptive weather not less in the future. Climate change is no longer debatable. We're feeling its effect here in Portland and around the globe. We have all had our eyes open to the reality of a significant Cascadia subduction zone earthquake, the big one. Which we now know is a question of when, not if. We are very fortunate that 19th century Portlanders had the foresight to secure the bull run watershed as Portland's primary drinking water source. They were thinking 100 years ahead and planning for the future. Today we are called upon to prepare our system for the challenges it will face over the next 100 years. Be they regulatory, environmental, climate or otherwise. As commissioner in charge of the water bureau I approached this question through the lens of public health, regulatory compliance, cost and stewardship and I have some history on this issue. In fact in 2009 commissioner Saltzman, commissioner Fritz and I participated in a similar debate, and at that time the council consensus was to seek a variance with u.v. treatment as backup. As I recall we were primarily focused on cost. Including the cumulative impact of major capital projects at both utilities including the \$1.4 billion big pipe. Colleagues, today here's my ask. I ask you to listen to the presentation from the bureau and to the perspective offered by our invited guests and the public, then to see whether we can come to consensus on a preferred option. While the mayor and I have secured an additional 60 days to respond to the Oregon health authority with our compliance plan, I still hope that we can reach a decision today and then spend the extra time engaging the pub and the cub as we develop our plan. These two oversight bodies have offered thoughtful and productive advice and it's important we have the time to review and offer feedback about the bureau's response before it's finalized and submitted to our regulators. So what are the choices before us? Over the last ten weeks I have heard loud and clear from stakeholders including our oversight bodies, ratepayers, public health agencies, editorial boards, business leaders, whole sale customers and many others that we have three choices. Option 1. Build a u.v. plant to strictly comply with the rule. Option 2, take a phased approach that implements u.v. treatment in the near term while planning for a long-term solution that could include filtration. Option 3, think long term and proceed right to filtration. I want to be clear I have also heard loud and clear that doing nothing is not an option. Now, reasonable people can and will weigh the various factors, cost, risk, resilience, regulatory uncertainty and many other factors differently and they will reach their own conclusion. Between the discussion we had in June at the work session, the feedback we have heard since then, particularly from our oversight bodies, the information the bureau has provided and the testimony today, I hope that we can come to a decision on a preferred option by the close of the hearing. Now, I ask the bureau to prepare and file a placeholder resolution for our consideration today. In our conversations with the community about the three options, the hybrid option, the so-called u.v. plus, seemed like a possible middle ground. It is, however, just a point of departure for our conversation. It's a placeholder. Before we proceed with the presentation today, I plan to offer a substitute resolution to give the council another option and to make sure that both options are on the table as you testify. I will also offer a number of amendments that directly respond to the feedback we have received from our oversight bodies. Finally, mayor and colleagues, here is the run of show. We have invited city staff to review the primary options and to provide you with additional information about them and to answer your questions. We'll then move

August 2-3, 2017

to a panel with several invited guests, who will provide additional perspectives and then we will open it up to the public for testimony. Thank you, mayor.

Wheeler: Thank you, commissioner Fish. So commissioner you would like to offer up a substitute resolution?

Fish: Yes, mayor. The resolution before the council is the so-called hybrid option or the u.v. plus, and I have a substitute resolution I want to offer and a number of amendments, and mayor, I will pass these down as packets for my colleagues. Karla, I apologize, I have one for you. I should have left it at the table. I'll just walk you and my colleagues through this packet. Fish amendment 1 is a substitute resolution. I have provided it to you, colleagues, as a clean version and as a red line version, and what this simply does is it substitutes filtration for the hybrid option as the preferred option. Fish amendment 2 addresses a concern that we have heard from many in the community about protecting the bull run watershed and ensuring that current and future environmental protections are honored. I will read Fish amendment 2 "be it further resolved that the city of Portland will continue to advocate for strict environmental protections to preserve and protect the bull run watershed for future generations regardless of any final decision about water treatment in the bull run watershed". Fish amendment 3 addresses concerns raised by a number of parties and my colleagues concerning the impact of additional cost to our ratepayers. It reads as follows "be it further resolved that the Portland water bureau will seek to optimize an enhance its discount programs to lessen the impact of rising water rates on low income customers". Fish amendment 4 is an amendment that addresses a request we have heard from many parties that there be locked into code annual reporting, and it reads as follows "be it further resolved that the Portland water bureau will submit an annual report to the Portland utility board, the Oregon citizens utility board and the Portland city council regarding the progress of the -- let's see. This technically could be an amendment to either resolution. It would either be the progress towards the u.v. plus treatment project or the filtration project, so it's meant to be generic, the first of which shall be delivered on or before June 30, 2018.

Fritz: I'll second it for the purpose of discussion.

Wheeler: Commissioner Fish has moved Fish amendments 1, 2, 3 and 4. Commissioner Fritz has seconded Fish amendments 1, 2, 3 and 4 for discussion purposes.

Fish: We have additional copies of the amendments for any member of the public who would like to take a look at them and we are certainly more than open to any recommendations for how they can be improved and modified and we would hope that through testimony we hear from people about potential changes to the amendment.

Wheeler: Very good.

Fritz: Commissioner Fish, I think there was the easiest way to resolve your wording issues in amendment 4 is just to strike the word filtration so Portland city council regarding the progress of the water treatment project.

Fish: That was what we intended. Thank you. We'll strike that and make it generic. Mayor, with those amendments which are now on the table, if I may I would like to invite our first panel.

Wheeler: Please do.

Fish: I would like the following individuals to come forward. Mike Stuhr, director of Portland water bureau. Gabe Solmer the deputy director of the water bureau, ken rust the director of the bureau of revenue and financial services also known as our cfo, and Karen moynahan, senior deputy city attorney. I want to welcome our bureau team again I want to thank you for the work you've done over the past ten weeks to bring us to this point. Mike, I'll turn it over to you.

August 2-3, 2017

Mike Stuhr, Director, Portland Water Bureau: Good afternoon. Mr. Mayor, commissioners, all of our invited guests. I have with me up here as commissioner Fish introduced myself, I'm going to talk about the background. Karen Moynahan from the city attorney's office is going to talk about the legalities of the revocation order. Gabe Solmer, our deputy director, is going to talk about cost and probability. Ken Rust is the city's CFO, and our colleague is going to talk about his perspectives on the project. I would like to acknowledge some guests in the back. We have Mayor Emeritus Colleen Johnson, who is one of the co-chairs of the pub, who is talking. I hear her chuckling back there. We have Janice Thompson from the Cub. Members from Portland Business Alliance. Two of our wholesalers are here. Mike and Andrew Degner and of course our colleague and friend Dr. Paul Lewis from Multnomah County Health Department. So thank you all for coming we're glad you're here and we look forward to hearing what you have to say and the public too. So moving along, the watershed. Our watershed is a tremendous resource it may be what makes Portland what it is. Portland wouldn't be what it is without our wonderful water supply, we would be a tiny little town probably. We produce very high quality water, but it is not perfect as we have seen. One of the wonderful things about our watershed is it's high up compared to here and we have a gravity system. One of my challenges as chief engineer for 10 years and now as bureau director is to preserve the nature of that gravity system. 80% of our customers receive water from gravity it's not pumped. That has great effect on our rates and normal water utility spends 20% or more of its money on electricity to pump and we spend in a normal year around 2 or 3%. Last but not least, our watershed, our very protected watershed is our first line of defense in the water quality arena. Stepping forward, It2. In 2008 the city mounted a challenge to It2, technically called a petition for legal review. That's how one protests federal regulation. That challenge took place in the D.C. Court of Appeals in Washington D.C. That's the second highest court before the Supreme Court of the United States. Among other things, we alleged that the science was inadequate or unreliable and therefore the rule was unnecessary. I want to read you the last paragraph of the D.C. Court of Appeals collusion. "In conclusion Portland's attacks on this rule making are either inaccurate, irrelevant or both. EPA used the best available science and provided ample evidence to support the rule. Clear notice to the public about what it was considering and adequate responses to comments. Even if EPA's cost benefit analysis, use of science and responses to comments were as flawed as the city's insist, these errors had no effect on the final rule and were thus harmless. We therefore deny the petition for review". To wrap this up more to the present day, the EPA conducted a rule review that they are required to do between 2014 and 2016 called the six-year review. They made no changes to existing requirements. So It2 is here to stay and we are obviously here to deal with that. Subsequent to the legal challenge in 2009, the city chose to pursue two-track approach to deal with the requirements of It2, or at least the treatment requirements. The track was apply for a variance which was allowed by the rule but because there was a rule deadline we also were directed to design a u.v. Plant so if the variance wasn't achieved we would be able to comply with the law. In 2012, after many, many months of negotiations with the Oregon Health Authority, we received the only variance in the country. We completed and then shelved the design for the u.v. Plant. Fast forward to 2017. For five years we got along fine with the variance. This spring as you all well know, we found 1900 cysts in 14 samples. We wrote a letter to OHA explaining our views on that matter and the revocation order was the result of that so here we are. That leads us to the resolution before you today. What we had been called u.v. Plus. One of the responsibilities that I try to take very seriously is that it's not my job to stand in front of you and tell you that you have to do X. My job is to provide viability options for council to consider and council makes choices. Hence the u.v. Plus. We're asking council to consider

August 2-3, 2017

the water bureau's proposal for u.v. Treatment plus and a set-aside investment fund for future treatment needs. We agree with our forward thinking community members and public health partners who have shown a widespread desire to address more long term needs. As icon veterans' day to council in the June 27 work session, cost to ratepayers is a considerable factor and we remain concerned with that. The u.v. Plus option provides the lowest cost in the short term while responding to the community's call for investment in future treatment. This is a compromise balancing long term stewardship and responsible management today. That is the end of my background summary. Now I would like to have Karen moynahan address the legalities of the enforcement order.

Karen Moynahan, Senior Deputy City Attorney: Good afternoon. I'm Karen moynahan, senior deputy city attorney. As you know, on May 19, 2017, the Oregon health authority issued to the Portland water bureau an order revoking the city's variance from the epa's long term 2 enhanced surface water treatment or It2, as it's known. Is not whether to comply but how to do so. To better understand the requirements of the oha revocation order it's important to understand the underlying variance. Key factors in oha granting of the variance were findings that first the bull run source water enjoyed legal protections that limit people and exclude livestock from the watershed and second, that based upon data collected in the bull run watershed cryptosporidium concentrations in the water source were below health based regulatory limits. Recognizing that those concentrations could change oha conditioned the variance by requiring the water bureau to ensure that watershed protections remain in place and to closely monitor the watershed for cryptosporidium. If samples revealed the presence of cryptosporidium the water bureau would have to undertake increased monitoring for a full year to demonstrate the average annual concentrations were within the allowable levels. If the average concentrations exceeded the allowable level however oha would have to revoke the variance and provide the water bureau with a schedule to install treatment. When the water bureau detected cryptosporidium earlier this year it immediately complied with the increased monitoring and requirements from the variance however some subsequent samples continued to contain cryptosporidium in very low concentrations and by march it was clear it would be virtually impossible by year's ends to demonstrate the average annual concentrations would not exceed the allowable level. With this information in hand on May 19, 2017, oha revoked the city's It2 variance. The May 19 order revokes the variance effective on the date that oha signs a compliance schedule and interim measures agreement are in order or until September 22, 2017, whichever is sooner. The order requires for the purposes of establishing the compliance schedule and control measures the water bureau submit to oha by August 11, 2017. 1 a description of which treatment technology the city intends to pursue to ensure compliance with the cryptosporidium treatment requirement. 2, a detailed proposed schedule of when treatment will be in place demonstrating that treatment will be in place as soon as practically possible. 3, measures that the water bureau intends to take to reduce risk of the public's exposure to cryptosporidium until treatment is in place, and 4, a proposed sampling schedule for cryptosporidium until adequate treatment is in place. Further until a compliance schedule and interim measures are in place the bureau must comply with the variance requirements including the increased cryptosporidium monitoring frequency. Now as you know, upon mayor wheeler's and commissioner Fish's request oha has granted a 60-day extension to the dates contained in the order. Therefore under amended order dated august 1, 2017, the water bureau is now required to submit the information by October 11, 2017, with compliance schedule and interim measures agreement or order in place by November 22. As a final matter I reviewed the resolution amendments that commissioner Fish has proposed today and find them to be both reasonable and valid. Thank you.

August 2-3, 2017

Wheeler: Thank you.

Stuhr: Next up we would ask Gabe to talk about cost and a little bit about probabilities.

Gabe Solmer, Portland Water Bureau: Thank you. Good afternoon. Mayor, commissioners, you are being handed a set of information that has been publicly available. You've seen it before and we'll also have this information available for the public. I wanted to walk you through it because it's in a slightly different format than you've seen before. You have two sheets and the first one I'd like to go through is a rate chart. On one side of the rate chart you have information about the u.v. Plus option. It's listed in purple, magenta and it also contains the information about our combined forecast that's in black. So I'll just walk you through this briefly and the parts I want to highlight are that the information here is the combined bill, so this is what the increases look like for both utilities, both bes and the water bureau that's shown at the bottom of the page. In the magenta is the u.v. Plus and I will just point out in the notes that this includes .2% rate increases over the first six years to the water rates and .5% increases each year thereafter. That is a model for you to look at, it is not set in stone. Every year that we come back for rate increases under the u.v. Plus model you would set what you think those are, so whether those are .2, .5, something else that is for you and for future councils to determine. The other thing I want to point out is that you'll see lines are dotted. About 2025 and on and that just shows the uncertainty that we have as we move out we're much more certain about the numbers in the early years than in the late years. You can see from the chart and the numbers that u.v. Plus at least how we have defined it for you for this model ranges about 4.5 to 5.0 in the early years and then tails off to a smaller increase. I will just caution you as you read this if you took statistics just as long as I did it might be useful to show that although the number goes down that's a lower increase it's not actually decrease in the amount, so just to be clear about that. If you flip that page over, you will see the same information provided for the filtration options and what we have done is 350 to 500 million dollar options because that is the range that we have for the filtration treatment option. So you can look at that at the green line which represents the \$500 million option and the blue which represents the \$350 million option. Something in between would be in between those two lines and again, I would just call your attention to the fact that the lines are dotted for a reason that just shows the level of certainty that we have going out into the later years. That is the information that I have on the combined rate increases for both the option that bureau has put forward and for the option under the amendments. Then I will walk you quickly through the other document, which is entitled probabilistic benefits of filtration over u.v. and this came about from a question that was asked, Mr. Mayor, at the work session. You asked us to look at a cost benefit and probabilistic cost benefit of the two options to give you more information. We did that you have a background on the first page. On the second page what we did is listed both options, u.v. as a treatment technology and filtration as a treatment technology adequately comply with It2 so we also took that as a baseline. The ultraviolet treatment does not provide any additional benefit past compliance with the It2 rule. Filtration has additional benefits those are listed in table 1. There are a number of them I'm not going to read them all I will just point out that these are all quantifiable benefits we have put a number to these both at the beginning you can see that one of benefits of filtration that is it reduces disinfection byproducts dbps those carcinogenic compounds reduction is a benefit. We have quantified that you can see going down a little bit on the page again I'm not going to read these all, that filtration would allow us to augment supply from bull run so we would be able to access some additional supply that has a quantifiable benefit. Moving down to the bottom of table 1 on page 2, the filtration would also allow us to improve our ability to respond to changes in regulation, give us more flexibility there. Again you can read through all of those on page 3 towards the

August 2-3, 2017

ends it would also increase our flexibility to respond to future regional demands. So all of these have a particular quantifiable benefit. When you put those all together based on the likelihood of occurrence and resulting consequence those are equivalent to a \$5.4 million benefit annually. We did that over 25 years you could pick a different number and that's \$99 million. That I think answers the question that we were asked at the work session. We wanted to go further because we wanted to give you the other --

Wheeler: Not to nitpick but what discount rate are you using?

Solmer: I'll get that information for you. As that information is being provided I wanted to walk you through the second part of the memo. So we provided cost benefit, e also wanted to provide some information on risk reduction because there are several drivers that could require the city to move to filtration whether or not you pick u.v. or filtration at this instant you may have to move to filtration. There's a couple of points that would require that so that is what we went through in table 2 on page 4 and those drivers range from water quality to regulatory to a physical change in the canopy of bull run. You can see in table 2 the first risk would be that our disinfection byproducts level rises to a level or regulations lower to a level that we are out of compliance and that the only way to deal with that operationally would be to do filtration and we give a likelihood of that one happening in 50 years. Second driver would be changes in manganese levels that's a much lower likelihood because those are at a lower level now they are secondary whereas disinfection byproducts are at a more concerning point. In terms of regulatory risk products we also have emerging regulatory compounds. These are personal care products and the like this is you can see represented by a much lower risk so one in 1,000 because we don't have these in our water stream leading from the bull run. Lastly you have the risk of a major fire and the loss of canopy and the erosion concerns there. What that risk driver shows you is in figure 1 you have probability curve and again I think the easiest way to look at this is to look on the one side the probability zero to 100 and then on the other years and what you can do is look out to whichever timeframe your interested in and see what is the risk that you would have to build based on these risk drivers filtration in any event. So what I find useful and I'll point out to you, of course you can look at your own comfort in terms of risk, but I will just bring over from the 50% level if you bring your finger to the curve, drop down, that hits the curve at about 27 years. So all that means is that at 27 years it's a coin flip. It's just as likely that you will have a driver that will cause you to build filtration as not and this is just a coincidence, that's about the time frame that u.v. would need to be a major upgrade would be done. So that is the information that is how we tried to comply with the request made at the work session both with the information on cost benefit but also the risk.

Wheeler: That's a very interesting analysis particularly where it ends at the coin flip. It is literally the center of the target in terms of probabilistic out comes. That's interesting.

Solmer: That's true.

Wheeler: The projected useful life of the protection provided by u.v. plant versus filtration, and the probabilistic toss of the coin. They are at the same point. That's a coincidence?

Solmer: It's actually 27 years versus 25 years, but yes, that's a coincidence.

Wheeler: Very close. Interesting. Thank you.

Solmer: To answer your question you asked about the discount rate. 2.5%.

Wheeler: Thank you.

Fritz: Can I ask a question? At the work session there was a discussion of the area of land needed for either a ultraviolet versus filtration. Can you remind me how much -- there was a larger amount needed for filtration. Is that correct?

Stuhr: It takes about 30 acres to build a normal filtration plant and we have a property we call the carpenter lane site. It's near lusted, you've been to lusted hill just down the road

August 2-3, 2017

from lusted. It was purchased for that purpose it's 90 acres. Presently it's leased to a farmer and they are raising trees on it but that's why we bought the property. The u.v. plant is 11 acres and it fits at head works.

Fritz: Alright thank you.

Stuhr: I guess I have to say something again.

Wheeler: I want to thank you. I really appreciate your taking the time to do that. I actually found that very interesting.

Stuhr: We wrestled with that. It was fun from a wonky point of view to figure out how to do that.

Solmer: One coin flip but we have some very dedicated and smart people at the bureau that actually did the work.

Wheeler: Thank you. I will frame it.

Stuhr: Now I would like to turn it over to ken rust, who is our colleague working with us on other financial matters. He will give you the cfo's perspective.

Ken Rust, Director, Bureau of Revenue and Financial Services: Thank you, mike. Good afternoon mayor wheeler and members of the city council. For the record, I'm ken rust, city's chief financial officer and the director of the bureau of revenue and financial services. As mike mentioned I have been working with the water bureau to review costs and potential financial impacts associated with water treatment options that would enable the bureau to comply with regulatory requirements for the drinking water for the city. One of my duties as the city's chief financial officer is to advise city council on issues that affect the city's long term fiscal health. I do this by looking at those trends, issues and risks that are beyond the annual or five-year budget view so that the city can be positioned to take appropriate and timely actions thus avoiding potentially much larger and disruptive impacts in the future. The treatment decision we are discussing today is complex, and illustrative of why a long-term view is necessary to make an informed decision. In reviewing the work done by the water bureau on treatment options ultraviolet disinfection and filtration, the cost and timing of these two options have significantly different impacts in the near term. If you focus only on the near term goal of achieving compliance with current regulatory requirements, the u.v. option is the least cost. However, the bureau's probabilistic analysis of long term regulatory compliance indicates an increasing likelihood that more robust treatment will be required in the future. When you consider the longer term view, you find the most cost effective option may be filtration even with higher initial cost. Providing on safe, reliable and ample drinking water is a basic governmental service that Portlanders current and future depend on for health, safety and commerce. Long term and strategic decision on water treatment options like the one you're considering needs to be informed by long term financial impacts accompanying that decision. By anticipating our long term infrastructure needs, developing and implementing cost effective plans to address those needs and working to manage and mitigate adverse impacts to the extent possible we contribute to ensuring the city's long term fiscal health. Thank you for the opportunity to share my thoughts with you on this matter.

Wheeler: Thank you.

Fish: Mayor, colleagues, this panel will be available to come back to answer any questions that you have based on the testimony. Thank you all four. It's my honor to invite up our second panel of invited testimony. Colleen Johnson, co-chair Portland utility board. Janice Thompson, Oregon citizens utility board, dr. Paul Lewis, Multnomah county health officer.

Wheeler: Commissioner Fish, if I could just ask, can Mr. Cfo, you will stick around? I would like to ask you some financing questions but I don't want to interrupt the flow of the presentation. Thank you.

Fish: Welcome. Who would like to go first? Mayor?

August 2-3, 2017

Colleen Johnson: Good afternoon, mayor and commissioners. Name is Colleen Johnson, I'm co-chair of the Portland utility board. As I'm sure you all know the Portland utility board was created by the city council to serve as a citizen oversight board for the Portland water bureau and the bureau of environmental services. Over the last month we have held three special hearings, public meetings on this issue before you today. I would say we probably spent at least eight hours discussing this over that time. Not including extra time individuals spent reading the submitted materials so we've dedicated a lot of time to this issue. The recommendation we sent you last week is threefold. Number one, the city must comply with the long term 2 enhanced surface water treatment rule. 2, we urge city council to request an extension from OHA until the end of the year. We appreciate Commissioner Fish's and Mayor Wheeler's letter to OHA, requesting such an extension as well as OHA granting us that 60-extension. We believe there was compelling rationale for OHA to grant such an extension and we would now urge the city to use the time to engage in more extensive community outreach and develop a communication plan to better educate and inform citizens of the costs and impacts of the different treatment options including the chemicals and additives that would be used and potential health and environmental safety aspects. Review in greater detail the engineering plans and proposed costs of the different options along with appropriate comparisons. Begin preliminary engineering assessments for filtration to allow for accurate budgeting projections and rate impacts. Explore in greater detail the costs, how the costs will affect low income residents as well as any intergenerational equity issues. Continue to involve the public in all these discussions as the city moves forward. While we understand that decisions of such magnitude must sometimes be made with incomplete information and some amount of risk, we also think the city should not be rushed into a decision and should attempt to minimize both uncertainty and risk. At the time we sent our recommendation to Commissioner Fish, the public did not know if OHA would grant the extension. In the event that OHA had not granted the extension, the public voted to recommend a filtration plant based on the values it believes should guide this decision. Including protecting the health and public safety of the residents of Portland. Providing long term reliability and system resiliency. Offering the most long term benefits relative to cost. To be honest, I don't know how OHA's decision would affect the recommendation and treatment option we selected. However, should the city move forward with a treatment decision today, the public will monitor the implementation of the compliance option throughout the process to ensure that it is done with reasonable cost possible for customers and with known and predictable utility rates. Thank you.

Wheeler: Thank you.

Janice Thompson: Janice Thompson, Oregon Citizens Utility Board. I sent -- I have copies but I think I sent a memo I think it's in your packet, but I want to start first, though, with thinking back to 2009 and why it is that a 2009 directive for the water bureau to focus on UV treatment though maybe appropriate at that time merits being revisiting today. Some of the key differences between 2009 and now include one spending on resilient reservoirs which are now closed due to the It2 rule, that spending is winding down, not just beginning. The effect of that spending is still seen in current rates but it's evening out especially as we're getting closer to wholesalers starting to kick in for the capital improvements. One big major expense is It2 rule has been addressed. Another difference that is besides in terms of sewer and wastewater side of the bill are projecting rate increases under 3% for the foreseeable future whereas back in 2009 their rate increases were significantly higher because they were more in the midst of the big pipe spending. The third point, thank goodness, we're not in the great recession. So I think those factors contribute to the merit in taking a look at a different option than had been the basis of a previous council decision.

August 2-3, 2017

I want to touch on a couple of points. The u.v. plus option has been -- is not part of the current resolution as amended by commissioner Fish.

Fish: To be clear there are now two resolutions before the council. U.v. plus and filtration that are both before the council.

Thompson: Thank you. Let me touch on the u.v. plus aspects of it and that's on pages 6 and 7 of the longer memo. The u.v. hybrid or u.v. plus I don't think meets the objectives that were triggered by the mayor's comments during the June 27th work session. Cub just does not view the u.v. plan as currently cited as being a meaningful stepping stone towards a future filtration plant. Now, you get there a little better if you site it in the lusted hill area which has been mentioned earlier is on property that is already owned. The reason, though, that that's a better, more genuine stepping stone to filtration is that that work in that location that would involve moving conduits a step that is required for the filtration. So in other words, you're doing a more significant chunk of work so it's a more genuine stepping stone. The catch, then, of course, is that that costs more, which leads cub to think you may as well bite the bullet and skip the u.v. step and move to filtration and this has already been mentioned u.v. plus in the long run costs more because you're doing two things. In terms of saving money for future filtration, that understandably is very appealing its kind of like what you want your kids to do, save up your money. However, cub is troubled by the long time frame between collecting money from current customers and completion of that major future project as well as inadequate assurances that a future filtration plant would ever be built. This is one of those situations where it's all the legal details work out, but in our view it just doesn't seem consistent with best utility financing practices. So that's just a little background on in terms of the first resolution cub being concerned about the u.v. plus approach.

Wheeler: Could I ask you a follow-up question?

Thompson: Yes.

Wheeler: You hit on an intriguing point. It's not consistent with best practices regarding utility financing. Could you add a few more sentences to that?

Thompson: Yeah. So we deal a lot in the private utility world and one of the things that cub and that's being a ratepayer advocate in that arena, looks for is inappropriate cost burden on current customers for benefits that are primarily going to be realized by future customers. So as an example private utilities can't charge customers for investments that are not presently used it kind of a term of ours. So instead, shareholders pre-fund those investments with compensation by earning regulated rate of return. Once those private utility investments are used and useful, kind of another term of art, then customers begin to contribute for those expenses in their rates. Now turning to the municipal arena, there's obviously no shareholders. That's why municipal utilities are allowed to charge customers via rates before capital investments in major construction projects are used and useful.

Wheeler: Could I ask you a question about that? This is getting some really interesting territory. Is there an implied obligation by collecting those rates today and putting them in a savings account for a capital project tomorrow, are we committed to that project?

Thompson: Well, yes and I think this is where there's a timing issue so that dynamic does mean in the municipal arena that payments from current customers may well benefit future customers, but the time frame between starting to include project construction costs into rates and the completion of that project is clearly defined. That's why you do five-year cip plans. That's a big part of the ratemaking process for both bureaus. So that timeline is clearly defined and it is shorter than the time contemplated in the u.v. plus scenario. It's that difference that is troubling to us. There just isn't quite the same assurance --

Fish: Janice, can I ask a related question? We're often criticized for not creating sinking funds to cover future capital costs of existing equipment and property. I take it that if this

August 2-3, 2017

fund were set up exclusively to cover the cost of updating and repairing just u.v. then that would not raise any concerns.

Thompson: Yes. That's where -- we understand the appeal. It's kind of -- it's really -- it's really a scenario that's kind of a little outside of the norm. You know? So it just seems we're just suggesting caution and well particularly linked to the first point, which is u.v. plus really doing much for you in terms of a stepping stone. When you take a look at both factors together it's just like the tipping point for us is now then.

Wheeler: That and plus the probabilistic analysis that you just presented that's already three strikes, that's a biased conversation, but that kind of my thinking thus far.

Thompson: However, turning to kind of the new resolution, the second resolution, one thing I think to keep in mind maybe in your mind pencil it in on this, is that the baseline really isn't zero or the baseline really isn't like the current forecast unless I will be corrected if I'm wrong but I don't think the current forecast includes roughly \$100 million for a u.v., so I'm not saying that those numbers are not correct and those are not troubling forecast.

Fish: Your point, I read that section carefully in your thoughtful submission, your point is if you're going to have to spent 100 for one option and 350 for the other let's be clear we're talking about 250 is the delta.

Thompson: There you go that's one point. Then in the resolution amendment that we offered in the memo describing it we had information, very helpful information from the water bureau on the cost of parameters. We characterize that kind of using kind of the health insurance industry kind of lingo of there's bronze filtration plants and platinum filtration plants just like there's bronze and platinum insurance plans and people through the cost implications obviously those decisions are also driven by what the patient needs if you will. In this case the patient being the water system. So we supported in the filtration treatment suggested maintaining the u.v. treatment as a backup option, have the first step in the filtration process, planning process, include kind of a scoping period to kind of delineate like do we need bronze? Do we need platinum in this system? Is it silver? In that way start -- I'm not trying to say that this replaces probably two-year process that is required by the water bureau of really kind of do the detail project planning, but to have an initial scoping to kind of provide more guidance into that. My suggestion was to build that into the compliance agreement. Basically the compliance agreement would say, the default position is filtration after a scoping period that would end no later than June 30, 2018, either that would be kind of provide enough cost containment kind of information that there's a comfort level on we're going to continue on this path, but if that scoping discussion raises concerns about costs, there is kind of an off-ramp back to u.v. now, in terms of -- that's why the cub resolution had the scoping period as part, not to replace either the detailed planning and there was not a request for delay from oha, it was rather to build into the oha compliance agreement. So I know in one of the amendments there's a regular report requirement that would start June 30th. I think I was trying to get at a little bit different idea with having this initial scoping just so there's more guidance given and more clarity about what the cost containment opportunities there were with regards to filtration. Now, in terms of dropping that idea, and just moving with the Fish -- commissioner Fish's amendment 1 and its amendments, I mean it's very interesting and heartening to hear the comments from Mr. Rust in terms of the least cost least risk kind of factor looking from a municipal finance expert that the longer term really is more cost effective. So but nevertheless, I think there was both -- that scoping period was, however, of interest to us to kind of have it build in an option within the compliance agreement to like I say provide more guidance about, oh, we think we want bronze actually what we think is silver. So we know a little bit more before the detailed planning. As opposed to detailed planning

August 2-3, 2017

evaluating all the options help potentially narrow the scope a little bit beforehand. With that, I will think that's it in terms of --

Fish: Thank you. Thanks to both of our oversight bodies. It's been a new day at our utilities. We're very grateful to roles both cub and pub play and the time you spend overseeing our utilities. Thank you both. Dr. Lewis?

Dr. Paul Lewis: My name is Paul Lewis. I'm Multnomah county health officer. Mayor wheeler, commissioner Eudaly, commissioner Fritz, commissioner Fish, thank you for having me today. I'm feeling pretty embarrassed following these guys and their very comprehensive view of the decision in front of you I certainly learned a lot by listening. I'm going to be a little more simplistic about some health aspects. Again, just a tiny bit of background I started my career as an hiv doctor and I'm also a pediatrician I've been doing both of those things for 23 years. These are particularly the populations that are most vulnerable to really problematic cryptosporidium. In the bad old days of hiv it could often be the final straw in someone's life so I'm extremely sensitive to this threat. About 13 years ago I morphed and I just do that part time and I started working as public health and preventive medicine physician and I thought I had a broader view, but not as broad as these guys about all the complexity I hear. I think the main thing that I have to say, I'm in strong support of filtration as a long-term investment in health safety and resilience and part of it is that our standards continue to go up. You know, a few months ago we were talking about lead the goal most have changed and we have to do more to control that problem. Several people have already mentioned the concern about disinfection byproducts which again is a long-term exposure and particularly in vulnerable people like children and pregnant women we're most concerned about unnecessary and preventable exposure to things like that. Then as I mentioned the previous time I testified enough time has gone by since the winter months where there were frequent detections of cryptosporidium to look back at this disease which has been reportable for almost 30 years to know there are slightly fewer cases of cryptosporidium reported during that time period. That in addition to many informal communications with my colleagues that take care of children and of hiv patients and other compromised hosts there does not appear to be any detectable problem related to those detections. When I weigh those things that there is a risk of cryptosporidium in an unfiltered water supply but ours is special and as far as we can tell the risk is very low that leads me to the conclusion that we shouldn't rush to do u.v., which is really just a one-trick pony. That it does make more sense to make the longer term investment that not only will protect us against cryptosporidium because we remain at risk for that but also provides the list of benefits that we have been through and this new table 1 even includes stuff that I wasn't aware of so I do think there are a lot of benefits to that long term investment. Thank you.

Wheeler: Thank you.

Fritz: Can I ask a question? I don't want the answer now, but I'm assuming that with some of the time that we have even with the current 60-day extension I would expect the pub and the cub will be looking at are there any other currently planned projects which could be delayed or perhaps not even done in order to limit the rates. I see you nodding.

Johnson: Yes. Thank you. I didn't go over our entire recommendation, but certainly part of our discussion was that that was an element that if we were going to spend \$350 to \$500 million on a filtration plant that that put pressure on the bureau to look at what other projects might be in the queue and whether or not there were ways to maybe push off some to be able to afford this.

Fritz: Thank you.

Fish: Could I make one additional comment on that? I think it's a very important question and cost has been a primary consideration for us back to the days that we had the debate

August 2-3, 2017

in 2009 and now right to the present. Commissioner Fritz, whatever the recommendation of council, I would anticipate that there be a direction to the utilities through the next budget cycle to come in with options for mitigating the impact of whatever choice we make. That could include a revisiting our five-year or longer cip programs and considering phasing, delays, other kinds of things. Mike is starting to look a little queasy back there. There are a bunch of things we can't change, but I anticipate that council saying show us the cip again and convince us that everything is necessary and that you've got the sequencing right. I anticipate the council looking closely at the existing rate stabilization funds and asking are we deploying them in the most strategic way thinking about long term costs. Remember until wholesale customers pay their share we have a bigger responsibility during the construction phase. So how might we use the rate stabilization funds in that way? The cub has I think introduced the bronze verses the platinum, the Chevy verses the Maserati. One thing we might be looking at are what are the various options in terms of technology and are there costs differences and can we look at that. I would also remind you, while there's no reason you would have picked this up because it's microscopic print, on the sheet we were given that the bureau prepared on sort of water-sewer combined rate increases and projections, in very small print it says that we use very conservative assumptions in developing this data. My colleagues know that because every year we start the budget process with a forecast rate for water, for example, which is, you know, at x, then because it assumes very high interest rates or more than our fair share of overhead costs, Cecilia is nodding and other factors, we're able to bring that down. The reason that we're now close to a combined rate increase of 4% is we have been able to scrub a fairly conservative set of forecasts and get down to the actual. Those are just some of the things that I would expect regardless of our decision council would say during the budget process that they want to have heightened scrutiny on to see if we can bring that number down and the annual increase to something council believes is manageable.

Fritz: Thank you, commissioner I appreciate that and just to emphasize one of the things you said which is no change in the rate for this fiscal year. So it's not like we're going to send out a new bill next week financing anything.

Fish: No, and as the chart shows there's very little difference in the two significant options in terms of the rate impact over the first four years they're quite similar. It's in the out years you see some changes, but again, I believe whatever the decision of the council this question of how we manage the rate increases and bring all of our tools to bear will be a direction to the bureau through the normal budget process.

Wheeler: If I could chime in on this, because this is where the calculation gets a little less quantitative and more subjective. While I really did want the probability analysis I think that's really good, it's illustrative of the risks in a static environment that as we look at rate increases and I think we're all concerned here about the impact of rate increases particularly on lower income ratepayers, I know some of us up here want to ask questions about that later and some of the strategies that could be used to ameliorate that problem, the real risk that that probabilistic model raises is there's the construction cost, which is frankly the lesser of the risks, that will definitely lead to some increase in rates. The bigger risk is the catastrophic consequence of a landslide or a fire or something else. That will also add even more significantly to rate increases in the future if we don't take certain steps to prevent those risks. Like either the u.v. plus or it sounds like thus far people have made a much stronger case for a filtration strategy. We're really balancing two different sets of risks here and two different sets of potential costs to ratepayers. I just want to be clear that not all of that is going to fit neatly into a quantitative model.

August 2-3, 2017

Fish: Mayor, this is the second and final panel of invited testimony. I would suggest we move to the public testimony then we'll have our expert panel available to ask questions once we have heard the public testimony.

Thompson: If I may, just one -- two quick things. I explicitly did not use the Chevy Cadillac or Maserati that's a luxury. The bronze versus platinum, some households need platinum. It's not a luxury for some households to have a platinum health insurance. It was an analogy that I was -- picked on purpose for that.

Wheeler: I appreciate that it wasn't a sports analogy.

Eudaly: Just as long as we keep away from the lead option.

Thompson: I think the other thing that was in the memo I wanted to highlight is the views of the wholesalers I think are really important here. And I think it just -- they are important partners and I think a filtration decision would be positively received.

Fish: I think as part of the record now, I think my colleagues have been briefed on this, my recollection is that is we have a very strong support from our wholesale customers for the filtration option for many of the reasons and Chloe you're nodding.

Eudaly: Yes.

Fish: That is in the record and they have weighed in heavily behind filtration. There was one additional invited testimony then we'll switch to public testimony. That's the Portland business alliance and we'll invite Marian Haynes up. Welcome.

Marian Haynes: Thank you. Good afternoon, mayor wheeler, council members. My name is Marian Haynes and I represent the Portland business alliance good afternoon. The alliance has a long history of working with the city on cryptosporidium and those issues. We were involved in some of the discussions in 2008 and 2009, worked with the city, at the federal level, with the epa to see what we could do at that time and so we do have quite a long history of working with the city, dealing with the variants. We understand that now with the new testing the question really before us is what do we do now? What treatment option do we look at that takes into account both short and long term costs and benefits? The alliance is supportive of the hybrid approach I guess we're calling the u.v. plus at this point where ultraviolet would be used in the near term and at the same time setting aside a modest amount of ratepayer funds into a sinking fund for a future filtration system. We think that this does make sense it minimizes costs in the near term and rate impacts in the near term because there are other projects and significant items that are going to be under construction. This does allow some long term thinking and savings and fiscal discipline we believe to pay for those future anticipated costs and allows the time while the u.v. system is in place to do the due diligence, understand how the regulatory environment might be changing at the point where you're looking at making the more sizable long term investment that does have the additional benefits with it but it gives a little bit more time. I think we heard the rules are continuing to change and so that allows us to take all that into account. We think that this is a sensible approach. The u.v. plus and we would lend our support to that.

Wheeler: Thank you. How many people do we have signed up for public testimony?

Moore-Love: I show 17.

Wheeler: 17. Good. All right. Colleagues, does anyone have a time conflict where three minutes would be a problem? Looks like we're good to go. Please call the first three.

Wheeler: Thanks for being here. Name for the record.

Dr. Theodora Tsongas: Good afternoon, mayor, commissioners. I'm dr. Theodora Tsongas I'm speaking on behalf of Oregon physicians for social responsibility. We thank mayor wheeler and commissioner Fish for asking the Oregon health authority for three months to make an informed community decision. We're grateful that you did not express an opinion in your Monday letter on a preferred method of dealing with cryptosporidium in

August 2-3, 2017

bull run water. Today we ask that you request the Oregon health authority to extend the timeline to no less than June 2018 as recommended by the citizens utility board. To allow for informed community discussions and decisions regarding bull run treatment and we request that you do not vote on a preferred treatment today. I'm delivering to you a petition signed by a number of organizations and individuals outlining our rationale for an oha timeline extension. Our chief concern is that decisions with long term impacts on the well-being of the people of Portland are being made in a rush based on fear without adequate scientific consideration of the alternatives. Ratepayers are already paying high water and sewer rates and these will rise even without costly treatments for crypto. Young people, families with children, the poor and elderly are already being pushed out of Portland because of the high cost of housing. Adding unnecessary increases to the price of water to pay for treatment facilities with no public health purpose or benefit only serves to exacerbate and increasing crisis of livability and degrades the public trust in local government. Finally, scientific data showing lack of risk is being ignored in a rush to judgment. The It2 resolution is out of date and does not distinguish between strains of cryptosporidium that are and are not harmful to humans. The type of cryptosporidium found in bull run waters is not harmful to humans. We are fortunate to have a unique, elegant green system designed and strictly protected from human and domestic animal waste to keep it clean. Many residents and businesses including great breweries and restaurants chose to locate and remain in Portland precisely because our water is of such high quality and requires minimal treatment with chemicals. We ask that you request the Oregon health authority to extend the timeline to no less than June 2018 as recommended by cub to allow for informed community discussions and decisions regarding bull run treatment. Thank you.

Wheeler: Thank you. Appreciate your testimony. Good afternoon.

Damon Motz-Storey: Good afternoon. For the record I'm Damon Motz-Storey and I am a program assistant for Oregon physicians for social responsibility. I would like to thank mayor wheeler and commissioner Fish for writing a letter to the Oregon health authority requesting a three-month extension. I urge you not to vote on a preferred treatment option today and I ask that the city council request an extension of the Oregon health authority until no sooner than June 2018 as per recommendation of the citizens utility board. I remember hiking on mount hood mere months after first moving to Portland and catching a glimpse of the bull run reservoir in the distance. I was awestruck to see something so beautiful and well protected from human and livestock contamination. I am highly concerned that filtration could open the door to human and livestock infiltration of the bull run reservoir. Additionally I'm concerned about increases in water rates particularly since the type of cryptosporidium found in bull run waters is not harmful to human health. Not all cryptosporidium is the same. Low income working class Portlanders do not need a spike in rates. All these concerns and more lead me to agree with commissioner Fish in the extension request letter on Monday that we need more time to consult with citizens, stakeholders and independent advisory organizations but two months is not enough. Please request an extension to no sooner than June of 2018 as per the cub recommendation. For more information please refer to the community letter that our member dr. Tsongas just submitted. Thank you for your time.

Wheeler: Thank you.

Carol Cushman: Good afternoon. I'm carol Cushman representing the league of women voters of Portland. The league would like to comment on the resolution before you although we do not have a position on which we can support or oppose any specific treatment option. We do have some comments. We believe it's important that you move forward to comply with the It2 regulations to protect our water. Portland worked for the

August 2-3, 2017

variance and met the criteria until the past year. Now the city must accept the ruling handed down by the Oregon health authority. However, it was reasonable to ask for time beyond the September deadline to define the exact way that compliance will be accomplished and we thank you, commissioner Fish, for your request to oha. In selecting a treatment option, it is important to thoroughly consider the total impact and the many consequences of that decision. The public in general expects protection of our natural resources and expects to share the cost. Therefore, the public should have a voice in the planning process. Any treatment option selected must be part of long range planning by the water bureau and the city. Although we anticipate the council may be making a major decision today, we expect there will be need for public education and input during the coming months and years. We thank the Portland utility board for offering time and opportunity for public input during the past month, but want to make sure that the pub and the Portland water bureau will be required to provide public input and education throughout the process of bringing the facility online. Finally, in support of commissioner Fish's amendment number 2, we admit that we note there have been past attempts to reduce protections for our water. In the future the city needs to remain ever vigilant and take steps in advance to thwart any such efforts. The city of Portland has been a good steward of the bull run watershed and must remain so. Protecting the watershed will be just as important with the addition of treatment as it has been in the past. Thank you.

Wheeler: Thank you. Appreciate it. Next three, please.

Wheeler: Good afternoon.

Lightning: Good afternoon my name is lightning I represent lightning super watchdog x. 107 degrees today we're going to have forest fires. The u.v. filtration system turbidity is not going to be effective. Plain and simple we're going to have to look at long term at the filtration plant, we need to get like you say some of the true cost estimates on that. We need to look at the other utility water systems and understand there's data where 76 out of 76, 71 went for the filtration. When you're looking at other municipalities doing that, we should look in their direction, get the data and possibly at least have that data in front of us to make the final decision again my position is that public health is number one, so that would be the long term in my opinion filtration system. Number 2 to me is something I haven't heard is the insurance policy that covers the system itself and having a clear understanding from them if we go in one direction are you still going to insure us? If we go in the other direction, is that going to make you feel a lot better and in my opinion, they will look at the filtration plant over all from an insurance standpoint and if you look around, they have every reason to be able to pull the insurance if they wanted to. That's the last thing you ever want to have on this type of a system. If you're looking at the valuation of the system itself that's a question that some people may throw up in the air, we have something there that I don't think this investment of \$300 million to \$500 million is out of line for what we have. We have a system there that is one of the best in the world. That is something we want to maintain, that is something we want to be able to say to the insurance companies, we have done this, that is something you want to be able to say to other states and possibly other customers such as I would like a little more research with Vancouver, Washington. Do they have a need for any water? Start looking for other wholesale customers to maybe do a more cost recovery on the overall filtration plant itself and again I think we can shorten the time frame up myself. I think some of these numbers are you know \$300 to \$500 million is a big range there. In my opinion do it right, do it long term, and protect what we have, which is the best and continue to have the best with precautions in place per oha in the revoke of the variance. You don't want to mess around with that. Thank you.

Wheeler: Thank you, Good afternoon.

August 2-3, 2017

Brad Yazzolino: Good afternoon commissioners thanks for asking for the extension.

Fish: Put your name in the record.

Yazzolino: I'm sorry I'm Brad yazzolino, I'm a Portland native and my family has been here since 1895 and I'm probably one of the few people in the room who besides three or four others who've been on this subject since 1992. That's when I first heard that the water bureau wanted to build a filtration plant and they were pretty excited about it. Anyways that's in the past I agree with the statements of Floy Jones and the southeast examiner. The tribune and today the testimony of the physicians of social responsibility I'm sorry you missed it, Chloe I was a real advocate for you. So the city of Portland is being hurried into a foolish and irrational compliance with a deeply flawed It2 regulation that is founded on a trumped up incident that is unlike anything that will ever occur in Portland's well-protected bull run watershed. The Oregon health authority has what seems to be let's just be sure to cover our assess attitude in the demand that Portland comply with the needless and expensive It2 regulation. Even the Oregon health doctor or county health doctor I'm sorry I don't know the name.

Fish: Dr. Lewis.

Yazzolino: Dr. Lewis. He stated that there are a number of different types of cryptosporidium. I don't want to quote him. The -- there's no scientific evidence that a \$350 million u.v plant or a \$500,000 filtration plant will improve Portland's drinking water quality. The Oregon health authority is to be commended however for granting the two month delay the city council must now really face what building these needless plants means. It means they will lose the trust of many of the well informed people of Portland. If council votes to do either of these plants, which I urge you not to vote today on them, it means the needless and ignorant tragic destruction of the simple, frugal and elegant rain water collection feature of Portland's 1890s water system. I don't want a bronze or a platinum I want a rain water one because of the brilliance of the 1890s water drinking engineers, drinking water then cost only \$1 per month for all Portland property owners. On ebay a week ago I bought a three inch by eight inch receipt from 1896 for \$1 for a address on Arthur street for one month's worth of water. Cost management is now developed to such an extent that you're trying to convince the people that -- the increase won't be much. These -- I'm sorry. I can stop. I only have, like, seven more lines.

Wheeler: Read your seven lines. Go ahead.

Yazzolino: Thank you. The \$1 in a sense is the base cost of our gravity fed pure rain water collection water system. Before the Portland water bureau became deeply involved of course cost has risen for many good reasons, but still the basic system is fundamentally cheap and should remain so. These wate rplants will not protect against the very unlikely nature landslides in the bull run and harmless turbidity cleans itself up by gravity and same for volcanic and fire ash, earthquake, broken and leaking pipes will be a problem and the complicated water treatment plants will not solve that. I urge you not to fall for the deceptive It2 law and waste tax payers money on these plants for we'll remember when we vote. Thank you very much.

Wheeler: Thank you, sir.

Kathryn Notson: I'm Kathryn Notson, Portland resident. I support filtration. I'm going to read some documentation, some excerpts. The first one is from the bull run watershed cryptosporidium report published in February 2003. I submitted these documents to the pub on July 11, 2017 and I put a link in my letter if you wish to read them. The first quote I'm going to speak on is the -- about the cryptosporidium itself from that original February 2003 report and it says, on page 977 " I submit sw15 was obtained from a sample collected at the Oregon site, which is fully protected from human impact. This isolate was different from c-parvum bovine genotype at three nuclear tied positions but clustered with

August 2-3, 2017

the bovine and marine genotypes. Figure four it is possible that this isolate represents a new genotype of c-parvum from a wild animal host. Another islet sw22 was obtained from the Oregon site and was identified as the c-parvum bovine genotype". If you don't know what bovine is, it is cattle and marine is rodent. The next one is from the uv report and this test was done on those both specific cryptosporidium -- the water samples in which was from the -- which obtained -- contained the cryptosporidium with the previous report. And it says, on page 13 "The chevalier in 2003 reported infectious cryptosporidium data from a unfiltered watershed in Oregon. Table five, these show that the design of a uv disinfection system should not allow more than 3-7 hours of down time to meet the 1 in 10,000 annual risk of cryptosporidium infection". And I also submitted the giardiasis report, in which there was an giardiasis outbreak in Portland, Oregon in October 1954 to march 1955, according to a doctor lisle veezy. She submitted that report to the epa 1976 because they were having a symposium on cryptosporidium in regard to water borne cryptosporidiosis outbreaks. The next thing I want to read real quickly is from Casey short's book, the second edition of water, Portland's precious heritage. It says, "the name, bull run, refers to -- excuse me here. The name is derived from a folk tale of the Oregon country in the 1850's cattle being driven over the cascades broke free in the area escaping through the dense forest in all directions they disappeared quickly and seen only occasionally in years to come drinking from the river who's name they had inspired". On page 27 of the same book, there is a picture of sheep in the bull run watershed. There were settlers there and they had cattle, sheep and horses. I'm sorry I'm out of time. I had other pictures to show you, if you wanted to see them.

Wheeler: Thank you. Appreciate it. Next three, please.

Wheeler: Good afternoon.

Micah Meskel: Good afternoon my name is Micah Meskel and I'm with the Audubon society of Portland I'm also a member of pub, but my testimony today is on behalf on the Audubon society. Thank you for having me, mayor and council. I'd like to start with I support amendments two through four and specifically with amendment two, I feel it could be strengthened with the addition of a couple words.

Give me one sec and I'll have it ready to annotate.

Meskel: Following environmental protections, I suggest -- or propose that you add, that prohibit logging and limit access to preserve and protect bull run watershed. It gives it a little more specificity.

Fish: That prohibit logging and?

Meskel: Limit access, which is currently in place, but just to instill that into the future. So ultimately today my testimony is to urge you all to delay your decision until two months to this date, when oha has extended the decision time and there are several reasons for that. It ultimately allows for the options to be more completely presented and compiled and that's important, both for the oversight committees, who have been tasked with -- with looking at these options. To-date, we've seen a lot of information and some of the presentations are -- the proposals have been pretty fluid and so, I think seeing a -- a distilled and very clear presentation of the two is important, both for the community oversight committees, but more importantly, to be presented to the public in that form. We have had, as pub we've held four public hearings, which we've engaged with the public and that's been great for the community here in Portland, that's followed this process, but not for the greater community, in my opinion. And I think presenting these more flushed out positions or options would be very beneficial and also, considering having a presentation or hearing on the east side of Portland. We've held all four of our here or either in the Portland building or city hall and it is not the most accessible and thinking about all ratepayers in the next month or so, it would be great if we'd be able to present to these

August 2-3, 2017

more fully-formed options to the public for city council, but also the -- the commissions, to hear community concerns about those options. Thank you.

Wheeler: Could I ask a clarifying question? On Fish amendment number two, your proposed language that prohibit logging and limit access is a narrowing amendment of what commissioner Fish imposed. Is that your intention?

Meskel: The intention it's to draw more specificity to it because it can be construed as to advocate for strict environmental protections that could be advocating for one, but not the other and so there could potentially be an additional watershed protection point that is made.

Fritz: So we could perhaps say including, but not limited to?

Meskel: Yes. Yes. And, I think the community has long been most concerned about access and about logging and so those are the ones that I brought up.

Wheeler: It wasn't your intention, then, to limit the environmental protections to those two issues?

Meskel: No.

Wheeler: Got it ok.

Fish: Following on what commissioner Fritz said, I'd like to take a crack with Todd Lofgren and if you could talk to him in the interim and following her suggestion, if we can frame it as including or not limited to or something so its not a term of limitation, but it is an illustration. My guess is that -- that may be viewed as a friendly amendment. I agree with the mayor and commissioner Fritz if we don't want it to be a term of limitation. I think we can simply refer to it as including, but not limited to.

Fritz: I'm wanting to tease that out a little bit. It's true that the federal government controls the rules in the bull run watershed is that correct. So you're limited to advocating for we cannot ban logging by ourselves and if they decide to do it there's not really all that much we can do about it. Is that correct?

Meskel: Yes, yes. That is correct, but I think placing that language here in this resolution or whatever the final product, it puts an onus on future councils to strongly advocate and lobby at the federal government cause they ultimately have the final decision.

Fritz: Thank you for raising the issue.

Wheeler: And you did not support amendment one and I want to make sure I understand why that is.

Meskel: So, I do not because I don't feel I have all of the information that I need to make the decision of treatment options.

Wheeler: Got it. Okay.

Fish: The letter I got from the pub as the co-chair explained laid out a concern about timing, request of additional time and said that if you're compelled to go forward -- I thought the letter said the unanimous recommendation from the pub was for filtration.

Meskel: Yes, there's a bit of a story about that, but I was on vacation this last week and was on the phone during deliberation and misheard what the final motion was and thus voted for it when, in fact, I would have voted for -- for uv, not having the complete picture. And so, that was -- that was an error on me. I did not have service for another four days and, thus, did not catch it until it has been finalized.

Fish: So the vote was something to one? We'll get a revised tally.

Meskel: It was a strong majority. I guess the final point I'd like to make is I think it's important not to decide today because that could be seen as predetermining what option city council goes forward with before taking part in a more robust public process and so I think that's -- that's how it could be perceived.

Wheeler: Thank you. Good afternoon.

Scott Fernandez: I'm Scott Fernandez and thank you for having us today. I'm going to

August 2-3, 2017

take a different approach to this whole issue today about our water system. First, I'd like to start with because we haven't had any public health issues, we should still be under a filtration avoidance determination waiver, so I hope the council will respect that because we don't have a public health problem with cryptosporidium. And secondly Canada has excellent fire suppression technology using infrared technologies and so we should consider using that, at some point. My first comment is, talking about industry standards of the Portland water bureau, the city auditor has acknowledged, many times, Portland water bureau does not meet industry standards such as taking and I quote from the auditor's report "400 years to replace our water main". That's what she's projected or he's projected. Secondly, in January of this year, Portland water bureau cryptosporidium lab did not meet industry standards to be certified for sampling. Why did Portland water bureau not participate in the January certification process for our lab? Portland water bureau wanted to remain free of certification oversight so they could provide their own cryptosporidium sampling outcome needed for the filtration water plant. All of a sudden, 19 alleged cryptosporidium samples appeared just as the right time for the Portland water bureau to lobby for a \$500 million filtration plant and a debt bonanza for the Portland water bureau at citizens expense. There's also the very strong possibility that there were false positives because false positives of cryptosporidium are very likely and very common. After it was all over Portland water bureau admitted that epa had not certified the laboratory they had used during that period. Portland water bureau did not allow certification because it would not want epa or oha looking over their shoulder reviewing sampling methods and proficiency standards. Portland water bureau wanted no outside lab interference labs that are not certified are scientifically meaningless. I taught microbiology at Colorado state university the students learned quickly and were reliable with proficient labs and were always certified. Portland water bureau lost their certification opportunity for cryptosporidium proficiency during the three-month sampling process because there was no outside professional certification from epa, no professional sample oversight, no professional proficiency, no professional analytical methodology leaving only one thing all these samples because they were not certified in a lab, must be rejected at the chain of custody spot. There are many years of no cryptosporidium found in our bull run water -- may I have a few more --

Wheeler: You have 30 more seconds.

Fernandez: We have no public health issues regarding our drinking water and cryptosporidium. The most important thing you'll see at the bottom of my second sheet, on the other side, is we are introducing more toxic and carcinogenic chemicals I've listed five here. Lead, copper, one nitrification, two radioactive isotopes coming from the commercial wellfield and now filtration coagulants that are both carcinogenic and neurotoxic with the alum and acrylamide and also, the possible introduction of uv with mercury. Those are five significant toxic chemicals that we're continuing to -- to go down that road with these and the children are going to be hurt the most. Thank you.

Wheeler: Thank you. Next three, please.

Fish: Mayor, we will be prepared to answer the specific comments that Mr. Fernandez has in his testimony when the professional team comes back later. I will simply note point of pride the water bureau has not been lobbying for any option on this thing so that's flat out incorrect.

Herschel Soles: Can I do a point of order here? Floy is a person who has done a lot of research over 16 years. She probably knows as much as anybody on the panel here or the water bureau and has a presentation longer than three minutes.

Wheeler: Are you going to seed your time to her?

Soles: I could do that. I'm asking for an extension just for Floy, but I can do that too.

August 2-3, 2017

Wheeler: Great. Thank you.

Floy Jones: Good afternoon. He was first, so I'll let him go.

Wheeler: Good afternoon.

Michael Morgan: I'm Michael Morgan and I live in Portland. A bull run water treatment plant is not needed. We know this because we have not been having a problem with infectious cryptosporidium in the bull run watershed demonstrated by a remarkable absence of drinking water cryptosporidiosis in the Portland area. Portlanders have been drinking bull run water for more than a century. Furthermore, a treatment plant would require and encourage human activity and development in the watershed which we want to minimize. A treatment plant would be an exceptionally poor use of limited ratepayer dollars. How did we come to be in this predicament? When it developed the It2 rule the epa assumed that all cryptosporidium were alive and able to infect humans, miscalculating the risks and significantly overstating the danger. Common testing methods then could not identify whether it was inactivated or what animal it came from. Dramatically-improved tests can provide that detail but Portland is saddled with an outdated sampling method that does not provide that detail. The It2 rule is at least 10 years behind the science, there are dozens of varieties of cryptosporidium that live in different hosts and the cdc says two species are most prevalent causing disease in humans and infections by four others have been reported. The two prevalent ones have gotten into water supplies and caused major outbreaks and they are generally linked to water that has been contaminated with either human sewage or agricultural runoff. A way forward is obtain a lengthy deferral of the It2 requirement, similar to that obtained from New York with regard to their uncovered reservoir. The It2 rule does not contain a deadline to begin treating and a deferral would be reasonable because the risk of cryptosporidiosis is so low and the consequences of a treatment plant so great obtain permanent relief from the It2 rule work with New York, enlist the help of our senators and congressman, the trump administration and Scott Pruitt might be receptive to modifications chuck Schumer senate minority leader said there is more than one way to skin this cat, referring to the It2 rule treat or cover requirement for their large, uncovered reservoir. We can say the same and the best way forward for us is to protect our watershed. I'd like to add when it comes to filtration, adding robustness or resilience or effectiveness under conditions of turbidity. Let us not forget that we have the Columbia south shore well field that can be used during turbidity events, summer shortages, maintenance and emergencies and I'd like to add, there's a concern that filtration would degrade the water quality, alter the taste, add chemicals, that would be terrible.

Wheeler: Thank you. So, you have six minutes. Whatever you don't use, he gets.

Floy Jones: All right. Floy Jones friends of the reservoir and thank you, Michael you made so many of my points already. This rule was responsive to the failure of a costly state-of-the-art filtration plant in Milwaukee, Wisconsin that failed to protect against infectious species of cryptosporidium and other contaminants that are found human sewage.

Infectious species of cryptosporidium have not been found in bull run water there's never been disease in 125 years. We participated in a scientific study through the American water works association 3021 and they took massive samples, more than we've taken here in 2015, and it's an improved sampling method a modification of epa 1623 method and they concluded that Portland and all participating utilities already meet the goal of the rule and that goal is to reduce the level of disease in the community we don't have disease in the community. So, our position based on 16 years of research is, of course, we would not support introducing mercury bulbs known to break I've given you a report by the water bureau and consultants that presented that in Paris, it should be presented here. We certainly would not support a filtration plant, yes, it offers more it offers risky chemicals to

August 2-3, 2017

our water, acrylamide, aluminum, alum, polymer is from a measurable public health benefit and filtration does negatively impact the taste and composition of our water. It's going to increase our carbon footprint and it does risk opening up the watershed which no, the forest service cannot just start logging but that's another conversation. Chemical adding filtration, what it does is it takes our perfectly designed pristine natural water system and turns it in to an engineering firm mecca. With regard to filtration chemicals ch2m hill was tasked to do a report of the impacts of chemical water filtration, well not only should we see that report we should have a robust conversation with the entire medical community. You cannot trust a rushed probability and cost analysis I attended the last whole sale meeting and that was their comment as well and this compliance discussion should not be limited to the owner's treatment plant projects, but should include thoughtful consideration of alternatives compliance such as the 20-year deferral that New York obtained until 2034. With regard to the court case the water bureau failed to mention to you that the judge also commented that had we made the Walla Walla argument -- which I won't go into at this point -- that was a better argument in that legal case and we might have won if we made that argument. So, we support decisions being based on sound science and evidence, not unsupported hypotheticals and the filtration arguments that are being brought forward don't hold water and that's why you only hear opinions and not evidence. Just as the epa's modeling of public health benefits proved wrong, Portland's 2002 climate change water demand modeling has proven wrong for 15 years since 1988 the water bureau projected as population went up our water demand would go up, but I provided you with our water usage chart, graph and that shows since 1988, water demand has gone down. Their demanding consumption reports say the same they're 2017 summer supply report says since 2004, population increased 18%, demand declined 13% our water bond says the same. We've already spent \$440 million to reduce in-town storage by 50 million gallons and then how many resiliency emergency backup systems must Portland ratepayers finance? As Michael said we've spent huge sums to clean up the Columbia south shore well field, make that available for use. In the 1990s, we acquired wells. In 2005, we acquired the Powell valley wells in this last decade Portland ratepayers financed top secret regional interties with Clackamas and other utilities. As has been said, wholesale customers pay nothing during design and construction. You might consider that 20 years ago twd invested in that filtration plan on the Wilson river have they hooked up to it in 20 years? No they haven't they told us for 20 years they were going to leave. Well that was a poor siting choice they know that now so we shouldn't really rely on them. Regarding massive turbidity, as you know, filtration plants don't deal with massive turbidity. That was the problem in Milwaukee, Wisconsin this last winter storm after storm, turbidity couldn't have been lower. We've invested Portland ratepayers, again, not the forest service paid for road decommissioning in bull run so that's reduced turbidity. In 2012 turbidity was caused by dredging in the watershed for a fish project so of course you're going to have turbidity if you dredge. Devastating fires like in Denver shut down the filtration plant we built helipads in the watershed to address any emergencies and they've ignored suggestions from the community to guard against target practicing on the edge of bull run because they said fire risk was so low. Future regulations, no one knows better than the water bureau if there are any future regulations out there they've put out none the water bureau participated in crafting this rule and the disinfection by product rule. There's nothing on the horizon for the next 20 to 25 years. I have 20 seconds. Okay. So, a filtration plant in Gresham is likely to be damaged in a major earthquake we're going to have conduits and pipes breaking all over. So with chemical-adding filtration, yes, we can enjoy livability if we're willing to accept a lower quality of life and I don't think anybody wants to do that.

Wheeler: Good. I want to reward you for being a gentleman take 30 seconds to make your

August 2-3, 2017

best case.

Soles: Sure I look upon this case as being the reenactment of the music man, where the guy comes to town, the instrument sales when he tells them they have a problem. We have a task here that doesn't differentiate between cryptosporidium. He tells them they have a problem playing pool and he's got the answer I mean to really have credibility in this decision, you have to have a test that differentiates between hazardous cryptosporidium and not hazardous as cryptosporidium. Otherwise, there is just no credibility.

Wheeler: Great. Thank you. No one knows who the music man is, but if you talk about monorail, we're all onboard. [laughter]

Soles: Thank you.

Wheeler: Good afternoon.

Patricia Bellamy: Good afternoon. Thank you for the opportunity to briefly, but strongly urge you to take more time in making decisions on how best to provide safe water to businesses and nearly a million citizens. My name is Patricia Bellamy I'm speaking as a Portland resident and I'm a member of the Oregon physicians for social responsibility. Who has provided you with detailed concerns here today. The cost of these options, \$100 to \$500 million, is staggering. Decisions to spend these funds must be carefully and wisely considered with well informed businesses and residents. Accurate information, not false claims, such as a reported outbreak of human of crypto disease or the notion that this \$1.5 billion filtration system could or couldn't withstand a large earthquake must be provided. Public health is at stake, but you are not dealing with an emergency situation. It will take years to complete any of these options. There are questions on how high will our rate bills be. As a result of this major expense will our wonderful water change from chemicals? Will breweries find chemically-treated water suitable for our wonderful beer here? Will our decisions in bull run remain and protect our wonderful bull run water from future development, fire risks and human contamination? Also, thank you, mayor wheeler, and commissioner Fish for requesting three months extension and getting two, but we need to go to June 2018, as per the citizens utility board commission has recommended. Please, no action today. Take more time. More public education is needed.

Wheeler: Thank you.

Sharon Miller: Good afternoon. My name is Sharon miller I'm a resident of Portland and I am here to recommend that the extension until June 2018 be followed as recommended by psr and cub. I'd like to thank you all for hearing us today in this air conditioned setting, it's very nice and also, I'd like to thank mayor wheeler and commissioner Fish for recommending a three-month extension. I also believe strongly that an extension is needed for us to take some time and come to a well thought out decision. While we are here on a hot, steamy day with smoke blowing down from Canada, following months of unusually rainy weather and we're experiencing the effects of climate change. Climate change and our carbon footprint should be taken into account as we consider this plan. The extension until June of 2018 would allow time for not only climate change to be considered, but also input from ratepayers, including the elderly, low-income and racially diverse residents. The necessity of Uv systems and filtration systems also needs to be carefully looked at. Scott Pruitt has moved the epa forward in dismantling the clean water act without input from constituents so I want to particularly thank you for moving forward in Portland allowing input from these groups and careful consideration. An extension until next June will allow the necessary time for their input and will ensure clean water for all. Thank you.

Wheeler: Thank you. Good afternoon.

Dr. Joe Meyer: Good afternoon. My name is dr. Joe Meyer and I love Portland. My

August 2-3, 2017

doctorate is in physics so I understand something of the physical world. I'm a citizen reporter and I covered the water bureau for kabu news when I reservoirs were taken offline. Similarities between the events then and today motivate me to give this testimony and my conclusion is the Portland water bureau is dangerously prejudice towards building infrastructure and dangerously practiced at manipulating public opinion. Five years ago everyone involved, from the Portland water bureau, city council, friends of reservoirs, county health doctor Gary oxman agreed there was no public health benefit in the epa motivated public health projects. Like wise the proposals issued today have no health benefit you can try to postulate something, but however there's nothing that exist. The simple truth is that 125 years ago, the citizens of Portland constructed a simple and elegant drinking system. In 125 years of use no one has gotten sick from crypto. In 125 years our drinking water has been inexpensive safe and delicious the envy of other cities. Back 125 years ago the citizens of Portland had the ingenuity and political will to control their own water supply, no multinational corporations required. Timeline is another consistent theme for Portland water bureau projects. Last time citizen activist advocated for an extended delay in the It2 compliance timeline and the water bureau said we had to move. I believe commissioner Fritz was quoted as feeling hurried to make the decision. This time around the hurried time frame seems to start with the Portland water bureau requesting that the Oregon health authority find them out of compliance 7 months before the reporting deadline. Why would they do that? The third similarity is a lack of honest effort at seeking regulatory relief Rochester New York worked with their senator Chuck Schomberg to pushed back on It2 laws. Last time when I asked senator Merkley why Portland was spending \$.5 billion to bury our reservoirs while Rochester was not. He replied that local leadership was required and he had not heard from Portland city hall. If I may, I'd like to play an interview I did with Mr. Shaff a few years ago.

[Video Played]

****: Portland water bureau director Mr. Shaff.

****: Why not apply for a more extended timeline.

****: We have to have a reason. We don't have a reason. We could say, well, because it's going to cost a lot of money. And, their response is going to be, well, congress specifically, when they directed epa to write an It2 tool, they said -- we can't say, well it's money and we don't have any other hook, if you will, to say, well, because maybe the rule will change. That's not likely to happen, but that's really why people want --

[Video Ends]

Meyer: So my point there is you have to be more than skeptical of the Portland water bureau. You have to be disbelieving.

Wheeler: Thank you, I'm going to have to ask you to wrap it up. Thank you. The next three, please.

Moore-Love: Two more are signed up.

Wheeler: Good afternoon.

Cherie Lambert Holenstein: I scribbled some things here but some people have already addressed the issue. I had mentioned that nobody had mentioned the reason for the epa ruling, the Wisconsin treatment plant and floy did a marvelous job pointing that out. Throughout the world there are people dying from a lack of water and poisonous toxic water and we have this absolutely marvelous bull run system that I think our city council has neglected to protect and serve the people of Portland. We don't need a treatment plant. Dan, you and ted were born here, if I remember correctly. So, you should know well the history of bull run and there's a marvelous section in the Multnomah county library on bull run and I would hope that you have searched that and read the papers there. We -- several years ago, dave -- also, commissioner Fish, I recall about five or six years ago, you

August 2-3, 2017

saying right here in this chamber that we are fixing a problem that doesn't need fixing and that's still true today and, Joe Meyer mentioned David shaft about four or five or six years ago, he mentioned if he didn't obey the EPA ruling, he would have to go to jail and when I got to speak I said, is the citizens of Portland ever have a politician that went to the jail for the people, we would be -- we have a wrong law you don't obey a wrong law. People throughout history have fought wrong laws. You're familiar with Mandela and Dr. Martin Luther King, Eugene Debs, who went to jail because he spoke out against World War I. Those are people that are very familiar people who are not too familiar here locally we have people who want to jail protesting Trojan nuclear power plants very unsafe which pge on its own finally closed because that plant was not safe and I'd like to mention one person, a late friend of mine, Joe Dowdy. He came by on his red motorcycle and he pointed to me and said, I want to meet that woman she has the most interesting signs in her yard. Well I heard from him the most interesting story I ever heard in my life he told me about his father, World War I, he was -- he was -- he was drafted -- may I have another minute, please?

Wheeler: You're not done yet. You have 30 seconds.

Lambert Holenstein: He refused to draft. He was sentenced under Wilson for 30 years in jail, hard rock. He went home after three years, he had four sons, all four sons refused the draft decades later. Joel was one of them. They all served time in federal prison for not obeying unjust laws and I encourage you people, please, don't obey the EPA ruling protect our Bull Run water.

Fish: Could I ask for your name?

Lambert Holenstein: Cherie Lambert Holenstein. I campaigned for you, Mayor Wheeler, I met you at your opening announcement and I said my issues were protecting our water, homeless and no demolition and I went door to door for you and many hundreds of phone calls.

Wheeler: Thank you for being here today. Good afternoon.

Steve McCullough: Good afternoon. My name is Steven McCullough I'm a member of Portland State University class study in Portland's water taught Dr. Catherine Howl. First, I'd like to say how gratified I am that the stewardship of Portland's water supply is in really good hands. All of you are doing an amazing hand of considering all of the issues and I'm sure you'll make the right decision and I thank you for that. I love Portland's water, I drink it every day, I intend to do so until I die. I have one question or I wish you too imagine it's 10 years later and both of those systems are in place. And that if I, as a water user, didn't want to pay for those materials, those systems, could I just not conserve maybe 10% of my water bill and by doing so, offset that cost? Me what's the average water bill, say it's \$100, that's \$10 a month. Why not just opt out? We'll have the system and somebody else can pay for it. That's all.

Wheeler: Thank you. Very good. Commissioner Fish?

Fish: So, Mayor, if I can just make a suggestion about how we handle the next phase, we have a lot of questions that I know my colleagues want answers to. If I may have the next five minutes just to address a number of things that I think need to be clarified or whatever and then we'll bring the panel of experts forward and answer all of my colleagues' questions. I'd like to invite Janice Thompson back for a second. Janice, since there were some testimony referencing what you've submitted in terms of seeking a delay and June 30, 2018, could you clarify the Cub's position on that?

Thompson: Cub is not requesting a delay from OHA. Cub is requesting that the compliance agreement with OHA say, support filtration, maintain UV as kind of a backup option, that the filtration planning would begin with a scoping period, that would help really kind of clarify cost containment opportunities. That scoping period would end no later than

August 2-3, 2017

June 30, 2018. At that point in time, presumably, you know, for any number of reasons, the decision to move forward with filtration would continue into the more detailed planning. However, at that point in time, the city council could -- it's kind of giving the city council an off-ramp, if you will, to say, jeez, this is -- this is going to cost too much. We're going to use our backup option so it is not asking oha for a delay, it's asking that the compliance agreement with oha including this scoping period.

Fish: Thank you very much. Next, mayor, I'm going to hand out Fish amendment two, with the suggested amendment with our friends at the Audubon and it reads as followed. Be it further resolved that the city of Portland will continue to advocate for strict environmental protection, including but not limited to prohibiting logging and limiting access to preserve and protect the bull run watershed for future generations regardless of any final decision about water treatment in the bull run watershed.

Wheeler: Does commissioner Fritz as the second around the amendment have any objection?

Fritz: No.

Fish: So I would offer this as the substitute fish amendment two.

Wheeler: Fish amendment two has been changed to substitute amendment two.

Fish: Thank you. Mayor, next, I'd like to invite up Yone Akagi. Yone if you could take a seat at the table. She is the Portland water bureau water quality manager and Yone were you here for mr. Fernandez's testimony?

Yone Akagi, Portland Water Bureau: I was, yeah.

Fish: Would you please describe to the council what your job is at the water bureau?

Akagi: Sure. I manage the water quality group for the water bureau which includes overseeing the variance and the manager of our application for the variance to oha.

Fish: And what is the role you play concerning our sampling and testing?

Akagi: So my role is to make sure that all of the testing do meets all the regulations required by oha or epa.

Fish: In fairness to Mr. Fernandez who took time to give his written testimony and was very explicit about his concerns I want to give you a chance to respond to a couple of these points. He said in his testimony that in January, the water bureau crypto lab "did not meet industry standards to be certified for sampling" could you respond to that.

Akagi: Yes to clarify all of our samples, in January and in the following months, were all sent to a certified lab. It wasn't our in-house lab, it was a lab that had been certified by both oha and the state of Oregon.

Fish: Where is that lab?

Akagi: Vermont.

Fish: Mr. Fernandez in his submission also says, "Portland water bureau did not allow certification because it would -- it did not want epa/oha looking over their shoulder reviewing sampling methods and proficiency standards" end quote.

Akagi: I'm not sure what he's talking about there. The lab we used, they're called asi. They're a certified lab the both have been certified by epa and by Oregon and that is a lab we've been using for the last three years. Our in-house lab recently got certified and we just started using them last week.

Fish: He concludes as follows "because there was no outside professional certification, no professional sample oversight, no professional proficiency and no professional analytical methodology... all water bureau samples must be rejected at chain of custody". Could you respond to that?

Akagi: Yes, the lab we used was an accredited lab and we used epa methods 1623 which is the approved method for this analysis.

Fish: Okay. I think that's satisfactory. Thank you very much. Next, I'd like to invite our very

August 2-3, 2017

first panel to come back, the director, the attorney, the deputy director and our cfo. While I have a bunch of questions, I'd like to defer to you and my colleagues and then I'll bring my questions later.

Wheeler: Great. I have a question for the cfo and a number of my financial questions were answered during the testimony and I was interested in what people also said about the rates and there was substantial testimony on that. Could I ask a question about the financing? Let's say we went for the filtration options, since that is obviously the more expensive of the options on the table and it's the longer-term play as well. Can you tell us what fiscal impact this would have either -- on the bureau and on the city and does it, in any way, impact our credit rating?

Rust: I'll try to answer that based on the information I have right now, mayor and talk, first in generalities. We issue revenue bonds all the time for our utilities I've had a long standing practice doing that very successful and the water bureau has issued its first set of revenue bonds back in 1992, I was financial advisor on that transaction. They are highly rated as a aaa rating similar to the city's tax geo rating so we start from a point of view of very strong credit ratings and a strong reputation in the credit markets for the financial management and the ability to plan for all the improvements including these kinds of improvements. I know that the water bureau has done a lot of work in terms of looking at how they would finance and fund this project improvement and other parts of their capital plan. Typically we are in the bond market every year or every other year for the big utilities, planning transactions when needed to fund the capital program and I think that the projection that you've seen and discussed by Gabe has made assumptions about those future financings on into the future in order to fund all of their capital projects. Generally-speaking, they -- make assumptions that are at very conservative interest rates that are very substantial above current market because we don't know what the future working conditions might be. So, I think there's a lot of work that's been done about how we would do that. You asked a question, what impact might that have on our credit rating.

Wheeler: Right. And I assume the answer is, none. I want to make sure I hear it from you. It's a revenue bond and the limiting fund would be the ability of ratepayers to pay the increase to service the bonds, but I wanted to make sure I understood that.

Rust: That's correct. We have high standards that we plan for in terms of producing what we call debt service coverage or what the bond holders see as revenue available to pay debt service.

Wheeler: Is there a delta on top of what your projections are for the capital cost? Are you holding a reserve and putting a little of a air quote around that? Is there any reserve requirement?

Rust: I'm not sure if I understand the question.

Wheeler: In the case of a general obligation bond that's backed by the city's general fund.

Rust: Correct

Wheeler: In a issue general bonds backed by the states general fund and obviously the bond rating agencies would require some cushion in the general fund to account for risk to those bonds that have been issued to ensure how much you put in that cushion impacts your bond rating because it's more of a cushion, means you're more likely to be able to service those bonds. Is there any similar mechanism built into a revenue bond in the case of the utility infrastructure investment?

Rust: Yes, there is.

Wheeler: And how does that work?

Rust: We have a variety of different reserves and planning standards, we have operating reserves that are established to take care cash flow needs of the water or sewer utility. We plan to produce enough revenue to pay debt service on bond and a additional margin

August 2-3, 2017

above that. We have different planning standards for water and gas and it depends on whether we look at all the bonds firstly and secondly and combine, but those planning standards could be 1.7 five times or higher than the debt service payment that's due, so, those are all very important factors that factor into the credit rating. Another thing that is important is when we're looking at large capital programs for these utilities that do put a lot of stress on rates, which ultimately affect our ability to produce financial results that sustain those high credit ratings, the rating agencies are very concerned about whether we've taken down all the risks associated with our operations. I think part of the discussion here and the story will be, when we make choices about how we're going to protect and deliver safe, reliable, ample drinking water on into the future. If there is an option that doesn't provide as much resiliency, that could become a factor that the rating agencies will look at because we won't have necessarily covered all those risks because they are going to be very concerned about whether we've complied with what we see today and what we see tomorrow. So those are other factors that come into play, but generally-speaking, we're well-aware of that, we've planned for that and we've had tremendous success with large, capital programs and delivering results that have maintained those high credit ratings.

Wheeler: Very good. And I assume that, as we talk about estimates today in the context of this conversation -- and we're only really at the resolution phase of -- as some people have said, a multi-year project that estimate should be taken with a grain of salt I would assume.

Rust: I would assume so and Mike and his engineering folks talk more about the -- the confidence level associated with the estimate at this point in time.

Wheeler: I would like to hear that. While he's giving us an answer on that, I would like you to think about what strategies and I know we have strategies in place to protect low-income ratepayers and fixed income ratepayers. Are there plans in place in the event that we through with the capital construction project of this magnitude backed by ratepayer -- by utility rates -- is there a plan in place for low-income or fixed income ratepayers? Mike I'd love to hear your thoughts on confidence level around the estimates currently on the table.

Stuhr: The estimate for the uv plant, which is designed and needs to be updated, is what I would call moderate confidence level in the city's parlance. Mayor Adams old set of rules which, to me, is a good estimate I brought estimates to council to construct with that. Anything -- any time you involve heavy earth work, you know, there's risks there, no matter how many holes you poke in the ground, you only know how many holes you drilled into and you don't know anything else. The confidence level of \$350 million to \$500 million the fact that you've got that wide fat range is a low confidence. Many of the things that Janice mentioned and to an extent, colleen mentioned, are things that we would do in the normal design process. The way this thing should go, if we don't choose uv, if you choose filtration, is we need a planning study that takes probably a year and a half to do the study and five months to procure the contractor and that planning studies focus would be there four or five different types of filtration, since that's what we're talking about you need to figure out which one is the best for our water and then everything follow's after that. You have a planning study, then you have a design if we did it somewhat like we did the Hannah mason pump station, we have a variety of advisory groups and people that are involved that we brief and interact with. Lots of opportunity for public education, public participation would heavily-involve the pub and the cub, as we do in all these large projects. One of the challenges right now and even in talking about this is that one of the outcomes of the 2008-2009 period is we were enjoined from studying filtration plants so we don't know as much as we would like to know and we would be basically starting off with a design and I think many of their questions that they've asked would be answered in the course of -- of doing that. So -- the low confidence estimate, the short answer is that's what

August 2-3, 2017

I would call the range of numbers for filtration and that would be expected.

Wheeler: Very good. I appreciate that and, I don't know, ken, if you had any additional thoughts on the ratepayer protections?

Rust: Yes, mayor and the water and sewer both have programs to assist low-income households we've had that for years and there's been modifications to that. One of the thoughts that I've had and I've discussed with the water bureau and others is when we are faced with these large capital projects that are designed to meet a regulatory requirement, we end up for an extended period of time having rate increases that are substantially above, in some cases above inflation. Through an interesting kind of mechanism of city finance the utility license fee is applied to those inside city water sales regardless of whether they're at inflation or higher. It seems to me in a situation where we're struggling with the need to make improvements to protect the water supply, but we want to be mindful of impacts is the general fund shouldn't be an unnecessary beneficiary of that important correction and ratepayer action and maybe we want to develop a policy or program that would capture that excess above a baseline and devote that to an expanded ratepayer relief program. I think it's fair that the general get some natural background, but I don't think it should unnecessarily benefit from that when we're really trying to deal with some of the basic service needs. There's nothing more basic than providing safe, ample and reliable drinking water so I think there's ideas there that we can play with that can help address some of those issues. It may not be -- it may not address all of that, but over time, that could be a very substantial amount of annual resource that could be directed to the most vulnerable ratepayer population.

Wheeler: I appreciate that. Thank you.

Fish: I have questions, but I'll defer to commissioner Fritz.

Fritz: I want to first of all thank everybody for such a really wonderful hearing in particular commissioner Fish for your leadership of this and just to state when we had the work sessions several weeks ago I was thinking that we would do the less expensive option as we had in 2009 for the variance. The new information I've had just since getting back from England 36 hours ago, there's a lot to be considered here and specifically commissioner Fish with your work setting up the Portland utility board and their advice that they would like some more time to look into the specifics. I'm just wondering specifically the board recommends the water bureau spend time extension educating residents as to the types of chemicals or additives that would be used, how they may affect the current treatment regimens and the potential health and environmental safety impacts of the different treatment technologies. So, I know that you are wanting -- you are all wanting to get on with it. I think we all agree -- I would venture to suggest that we do need to treat that we're out of options for variances or anything else. I would suggest one of the outcomes of today's hearing I would really like a little bit more time to hear more and to get more -- to get more buy-in, particularly from the pub and also from the league of women voter and from others who have been very diligent in this entire process of going through and that, I think, we could get some more answers. Obviously, not all of them in the next 60 days, but we could have some of these things like what you just suggested which sounds like a fabulous idea. We could have better understanding of what it would do for rates and for the low-income folks unless I'm certainly open commissioner Fish for your arguing why we should do something quickly today, but that's just what I'm thinking and it's different from what I thought at mid-day today.

Fish: Commissioner as you know, I have scrupulously avoided lobbying on this issue and instead have asked the bureau to present the information and let the community respond culminating in this hearing. I will have something to say in a few moments. I thank you for putting down your marker as always very thoughtful. I have questions of this panel and I

August 2-3, 2017

think they may be informative, but I'll defer to commissioner Eudaly.

Eudaly: Thank you. I am wondering what the purpose of the 60-day extension is if we're going to make a decision today.

Fish: We asked for three months, we were given 60 days the reality is whatever decision the council makes, it will take time to prepare a response to the Oregon health authority. So I just want to be clear we don't have 60 days to do something and then we sit down and figure it out. We actually have to have a road map to them in 60 days. So, we're really talking about and I don't want to speak for mike. We're talking about a matter of weeks so the question I'm going to ask everyone to consider as we review the options is in a matter of weeks, is there -- is there information that is so determinative to your decision that you think, in a matter of weeks, that could help you get to a decision or, do you believe that a lot of the questions raised by our oversight bodies go to the issue of how we implement a decision. I read a lot of the thoughtful concerns raised by the pub for example, as saying, as you plan and as you engineer and as you think about options and for filtration, I think mike said it could take two years. We want to be in that process at each fork in the road giving you guidance. We cannot anticipate those questions now because it requires hiring consultants and doing studies. So I think the question I would ask my colleagues is do you as a threshold matter think there are fundamental details you need to have in order to make an informed decision and we'll have that conversation?

Wheeler: If I could add to that, I want to be very clear about where we are in the process today. This is a resolution. So, we are not actually -- as mike said, even if we go down the road of a filtration system, there's a lot of conversations yet to be had about what that actually is and I think you mentioned there are four or five different types of filtration system all with their own implications and so, one question I would have is whether or not we can get to a consensus through the resolution about the general direction that we would like to give because I think what the bureau is waiting for is some guidance from us, from my own part, I've looked at the finances. I've looked at the probabilistic analysis. I have listened to much-smarter-people than me on this science perspective. I've kicked the tires as hard as I can on the fight against the federal government route, which I think people who know me, know I would always default to that strategy first if I thought I could win it. Believe me, my favorite preference would be to do nothing because it would require no work and it would cost us nothing that would be my favorite option, but I don't believe that's an option I don't think it's a real option I don't think it's a live option its just me personally based on my own analysis on this. So, I guess I want to treat this to the degree that my colleagues feel comfortable. Something like a land use hearing can we give some general guidance to the staff, today, and then obviously, they will be coming back to us and reporting to us on their progress. They'll be engaging our public advisory committees, the pub and cub and others in the community who have an interest in this subject. Can we get the ball rolling understanding that whether we like it or not, the state has put a fairly stringent timing on this process?

Eudaly: So, the mayor touched on my second question. Let's just briefly talk about what it looks like if we decide we're not going to comply. What happens to Portland?

Moynahan: I can respond to that, commissioner.

Fish: First of all I nominate commissioner Saltzman if someone has to be arrested and spend time in jail.

Wheeler: I'll second that. [laughter]

Stuhr: I would second that, also. [laughter]

Moynahan: And I'd advise you to get a criminal attorney and that would not be me.

[laughter] commissioner, under the state statute, as well as the oha regulation, at the point the city does not comply with the order -- so, actually, on November 22, if we were doing

August 2-3, 2017

nothing, we're subject to fines in the amount of \$1,000 per day throughout the period that we continue in non-compliance. Ultimately, if we're serving non-compliant water to the public, of course, oha could get an injunction against the city. Non-compliance is really not an option.

Eudaly: And I want to assure you, commissioner Fish, I wasn't suggesting it was an option, but I thought because the issue had been raised it would be good to go down that road a little ways. So, my third and final concern has already been raised by the mayor, but it is the low-income assistance program. I feel like I would need a little -- I'm interested in capping the utility license scenario. I just would need a little more assurance that we're really going to do that and what it would look like and how many people we'd be able to help and how we'd get to those rate -- well, how we get to those residents who are renters that don't have their own meters, which I've had initial conversation with commissioner Fish, but we know that there are thousands of low-income renters in the city that currently wouldn't qualify for the program, but it sounds like they might if we did the license cap.

Fish: Can I respond to that for a second? you have made it very clear to me and the mayor that this issue of the impact of increase rates on low-income and vulnerable tenants is fundamental to you. Through this process the idea of capping the license fee and creating a pool of general fund resources has come up. The advantage of that is we're not constrained by some of the nexus arguments that we have to have with ratepayer dollars. Currently, our discount programs run with a meter, but as commissioner Eudaly notes, many of the people who need the discount, who are in unmetered apartments and multi-family apartments are not reached through our program. I think whatever path we choose, this concept of capping the utility license fee and creating a pool of money which is general fund money which by definition is more flexible could lead to a breakthrough in our thinking of how to address this problem because I think we would have the flexibility to create a program which looks more like an entitlement program for low-income people with general fund dollars which is different from our current program with rates. So that is a number -- there are a number of options we could consider and what I would recommend is that through the budget process, we ask the bureau to come forward with suggestions.

Fritz: But we don't exactly have a lot of excess general fund so it would be competing with housing dollars and such.

Fish: No and I want to be very clear that what the cfo has suggested is to the extent any new capital spending on this project quote/unquote "inflates rates in a short term". We treat the marginal increase in utility license fee off of that increase as a pool of money and cap it at where it is now. That is money that is directly raised because of raising rates on people to cover an unexpected capital expenditure and so I think that's different. It's not money in our five-year forecast.

Fritz: It's money that could be spent on housing.

Fish: It is. Let me come back, though, if I could. I have a few more questions, just to hopefully clear up some issues on the record. Mike, we've had a couple of people make the case, my words, not theirs, that there's good cryptosporidium and bad cryptosporidium and that that should have some bearing on our decision. Would you just let us know, from the government's point of view, as a regulator, do they make a distinction between quote, "good or bad cryptosporidium"?

Stuhr: The government makes no distinction. It's just crypto to the government.

Fish: The 10 year variance that we successfully got and it had the strong support of a number of people who are still on the council was in the nature of a one strike or you're out. It said you have to meet strict requirements or you're out. Did the document make any distinction between so called good crypto or bad crypto?

Stuhr: It did not. It stuck with the federal language.

August 2-3, 2017

Fish: I want to go back to the march 18, 2017 letter that the bureau sent to the Oregon health authority. We had at least one person testify, my words, not theirs, that in that letter, you requested that the Oregon health authority find you in violation of the order. Is that true or how would you characterize the purpose of that letter?

Solmer: That's not an accurate characterization. The letter that we sent on March 8 detailed the status of what we had found at that point and gave that information to our regulators. What they did with that later was their concern.

Fish: We've had concerns raised about the introduction of chemicals into the water through a filtration process. I think a number of people have referred to it as chemical filtration. Can you describe the filtration process and what if any chemicals are introduced into the water so that the council has some baseline understanding of that.

Stuhr: So, we can't tell you exactly what would be used because it's somewhat dependent upon what filtration option you pick, but the common uses are aluminum salts or iron salts. Aluminum that's used is alum it's in your kitchen probably if you bake or can or preserve food or, various iron salts and you may take iron supplements yourself. Those are mixed in on the front end of the process to build what's called a floc. It makes bubbles that things stick to, in English and it makes them clump up so that when you go through the filter, the filters catch it all. I can't say that all of those chemicals are caught in the filter, but 99.99% for removal are caught in the filter. So, it meets -- there is no health risk anywhere and all 76 of the big utilities that do big filtration use it and everybody else and their brother. I don't know how many filtration plants are in the united states it's just very common.

Eudaly: What about the impact on the taste or other qualities of the water for our bigger commercial users, like brewers?

Stuhr: One of the things that we do when you do the planning studies for this is we look at all that and we would coordinate with the craft brewers. Ultimately, we have to make the plant work, but there's usually choices that have to be made and we would work with them and either they would have the time to adapt or we would be able to devise something that wouldn't impact it. I can't tell you the answer now without having done the appropriate studies, but I would tell you that other cities produce beer besides Portland.

Eudaly: I think it's good for people to know, it's very much on our radar.

Stuhr: It is very much and we talked to the craft brewers. I can't tell you exactly what the answer is on taste, either. Fortunately or unfortunately, as a water bureau director, I'm kind of indifferent to the taste of water. To me, it doesn't taste that different unless somebody's put too much chlorine in it, but there are people who are very sensitive to the chemical taste and that's another thing we would look into as we did the planning studies.

Fritz: That is something I'd like as much information as you have about now because having been in many different places in America, the water doesn't taste as good as ours.

Stuhr: We have, I'm told, very good-tasting water.

Fritz: I would like to know what is it in the other water that gives it that taste and how can we avoid putting that into ours?

Fish: I have one more question, I'll direct it to myself. Nick -- [laughter] in 2009 when you said we're fixing a problem that we didn't need fixing, what did you mean? My first answer is, I can't remember what I said yesterday so it's unfair to go back to 2009. Since commissioner Fritz, commissioner Saltzman and I were knee-deep in the 2009 debate, I'll tell you what I think I meant. At that time, we were presented with what we believed was a viable option to seek a waiver from this requirement and the way it was explained to us was, if we can show that our untreated, unfiltered water was as good as or better than water subject to this rule, we had a fighting chance of getting a waiver and commissioner Fritz will correct me if I misstated that. From my point of view, at that time, it seemed like fixing a problem that didn't need fixing because we were told there was a path that had

August 2-3, 2017

some promise, that would allow us to get out from under the rule all together. Thanks to some really dogged work by the bureau and partners, we got the only variance of any water system in America and we had a good run, we had a five-year run and I think we should be proud of that, but we all understood that that variance was a one strike and you're out and we understood that because it was such a rare and unique circumstance that we were held to a high bar and if we could not meet that standard, we would lose it. So that was then and I will say that what has changed for me is that we no longer have the variance. We are now required to consider what's our next steps. And something else has changed, which I'll talk about when we have council discussion shortly, but in 2009 and I'd have to look back at the entire record -- I don't remember much of a discussion about climate change, about resilience and I certainly don't remember about editorial boards and key stakeholders coming in with such clarity in saying that filtration was the best long-term plan and again, Amanda may have a different recollection, but it was a pretty charged discussion at that time. I think it is fair to say that the context for this discussion is fundamentally different both from a regulatory point of view and a set of values which guide a lot of our big decisions has changed. One thing that has pleased me about this debate is it has been pretty much of the merits and the water bureau did not at the beginning dictate the outcome and I take some Umbridge when I hear people say that, because it really -- it really does a disservice to the professionals who were charged with getting information out, responding to people's concerns and then allowing stakeholders and third-parties to reach their own conclusion. We do have a variety of opinions on this, but I think it's unfair to say that somehow the water bureau put the fix in. This debate has been on the merits, reasonable people can disagree about the options, but we have a couple options before us. I'm going to continue to urge that the council see if we can get to some consensus on the option because I think it's important that we give direction from the bureau on this resolution. I think many of the questions and concerns that have been raised can be addressed in the days and years ahead.

Wheeler: To that point, I believe by virtue of the resolution before us, we have already come to a conclusion please tell me if I'm wrong that we have eliminated the do nothing option.

Fritz: Correct.

Wheeler: Is there a consensus on that?

Fritz: Yes.

Wheeler: So, that is off the table. So, let me ask this, could people come to a consensus -- or do you believe you're in a position today to come to a consensus between either the uv option or the filtration option. Without telling me what it is, can you tell me?

Saltzman: Yes.

Fish: Yes.

Fritz: No.

Wheeler: We have four yeses and one no.

Fritz: I believe I can get to a consensus, I'm just concerned about making this decision in august when people are out of town. Just remembering, commissioner Fish that the hearings we had in 2009 with both chambers packed and a lot of engagement. This is a huge amount of public money, whether it's rate payer or general fund whatever it's a very large amount of money. With our pub and the cub and the Oregon physicians for social responsibility, who were a big part of the advocacy back in 2009, all of them saying, could we please have some more time and you did go and get that 60 days. I'm understanding you we shouldn't take the whole 60 days, but even if we took 30 days to flush out some of the questions we heard today, I think that we could get to some more consensus on the way forward and not just amongst the council, but with the community as a whole and that

August 2-3, 2017

really is who we need to be listening to right now because they're the ones who are going to be paying those extra rates.

Saltzman: I guess I would say, I think -- you know, we're put up here to make decisions, tough decisions. This is a tough decision. I think we've had a lot of time for some of us, we've had years to ponder this decision. I don't think more time, 30-60 days, is going to bring people from one position to another. People who are against filtration are not going to rally around it with information they're going to gather in 30 more days. If anything, they're going to have more questions. I would say the same thing for people who may support uv treatment and we've just eliminated the do nothing option so we really have -- we need to make a decision for regulatory purposes. We need to make a decision for the health and well-being of our residents and I think we need to make a decision and I'm prepared to support filtration.

Fish: Mayor, if I could make a few comments?

Wheeler: Please.

Fish: In 2009, I strongly supported an application to seek a variance and I supported the fallback least cost option, which was uv, but I will be honest that, at that time, I was very hopeful that we would never actually have to go the uv route and I am pleased that we got a variance and I am grateful that we've had five years under that variance, but that has come to an end. When we had the work session, a couple of months ago, mayor, we had a pretty robust conversation and during the course of it, you and the director were kind of kicking around a third option and I know -- it would be unfair to call it your option or his option.

Wheeler: Now, let's call it his option, now that it's been thoroughly vetted. [laughter]

Fish: And some roundly criticized by some people here. This hybrid came and it was a short-term fix for a long-term plan. Bridging the divide between the uv only, which I think increasingly became a path to nowhere and filtration, which had a sticker shock. I saw that as a middle ground and I think that became something for us to think about. What's -- over time changed my view on this is the material we've received from our various stakeholders, from third-parties, editorial boards, from dr. Lewis and pub and cub the pub has held multiple meetings and has had large audiences and lots of people have come and testified. I did not anticipate that we'd have a rough consensus among dr. Lewis, editorial boards, the cub, the pub, wholesale customers and some other parties. The best year looking at this is the 100-year legacy look. In some ways, what I didn't anticipate is a conversation that began as, how do we deal with the threatened loss of our variance and the need to address cryptosporidium morphed into something else and it became a conversation about what is our responsibility protect the long term health of this system that we're stewards of and that shifted us away from short-term, dead end expenditures and I think dr. Lewis was the most eloquent person in that conversation. To the question of, let's plan for the next 100 years, just as people did a century ago that gave us this great system and as I have thought about and thought about the uncertainty and likely impact of climate change and the commitment we've all made to making our system more resilient as I thought about many things we cannot quite quantify, it has shifted my thinking to filtration and filtration, to me, I think we have enough information before us to say, that's the road map. I think many of the thoughtful questions that have been raised here, and before, are issues that we can address through a very extensive planning and implementation process and what I've heard the pub say loud and clear, and also the cub., is that they want to be full partners in every phase of the decision-making and you have my commitment on that but one of the things I was hoping with the 60 days is we could actually map that out so we'd have mutual understandings of how we consult with you, at what frequency, what kind of information and at every kind of key fork in the road, you'd

August 2-3, 2017

have a chance in a timely fashion to weigh in. So, that has quite frankly moved me. I will confess, I think I'm ahead of my own bureau on this, but I came with an open mind, having once before voted just for a uv fix and frankly, I think for all the reasons people have testify today, I think we need to think 100 years and not 20 years forward.

Wheeler: Commissioner Fish, if I may give my perspective. I did, during the work session, put on the table what I'll call now the hopeful suggestion that we could do uv today and that some percentage of that construction would actually be laying a foundation towards the longer term solution And that there could be some mechanism by which we begin saving for that longer term solution. In other words if you look at the probabilistic analysis do the saving in the early years when the probability favors the uv investment on a \$1 per output basis and then when we're teed up and ready to go all we had to do was add steps 5 through 10 and we're ready to go with filtration. Unfortunately it doesn't work that way, it doesn't work that way from a scientific perspective and it doesn't work that way from a risk perspective and it doesn't work that way from a fiscal perspective. As much as I wanted that to be the more pragmatic middle road, it just doesn't pan out from my perspective so I'm prepared to move forward with what I think is the only reasonable option left on the table which is some flavor of filtration, to be determined and there has to be a lot of feedback and input back to us in terms of what the right path is. I am prepared to call the question, today, but you know, I want to respect what commissioner Fritz has said and I want to hear from commissioner Eudaly, as well.

Eudaly: Well, mayor, I add that I was born and raised here and I don't relish the thought of the taste or any quality of our water changing and I would prefer not to have to do filtration, but the fact is, we've lost our variance and someone else has set a standard for public health and safety that we can't flout. It would be absolutely irresponsible for us to leave the city open to the liability of \$1,000 a day and whatever other penalties may come down the line. I went through a similar thought process although in a concentrated period of time since I wasn't here in 2009. First I thought, let's do uv because it's the cheapest option and it fixes the one problem we have. Right? But I think we probably all agree that that crypto problem isn't really a problem so it's a problem in that we've lost our variance but it's not a -- it's not a real threat to public health and, so it's really just one step beyond fixing a problem that doesn't exist. The -- sorry. What are we calling the other option?

Saltzman: Filtration.

Eudaly: The hybrid also made sense, if we could, you know, save money by slowly converting from the uv to filtration, but, I'm at the point where filtration makes the most sense to me because it actually will solve problems that are very likely to come in the future and, you know, like I said, I'm really concerned about low-income ratepayers. I am going to be working on stemming the tide of cost burdening and displacement and homelessness the whole time I'm here, so keeping people in their existing housing is very important to me and, I think, to the whole city, so I'm serious about wanting to hear a lot more about that and know that we're doing as much as we can to kind of mitigate the impacts on low-income and stabilize rates for everyone cause you know frankly, my water bills seems a little high. Yeah, so that's where I'm at.

Wheeler: Could I give a nasty hypothetical? Let's say we said, yes, to filtration and then we get five months into this process and we start tightening up on estimates or unforeseen problems come up, what happens?

Moynahan: Mr. Mayor, you know, at that point, we would have committed to a compliance schedule. On one level, I think the -- the legal answer would be, we'd be in trouble because we'd have to be in compliance with that order. I think realistically, I think we would be able to speak to oha and perhaps try to tweak the schedule with a new goal and try to -- you know, their goal is that we come into compliance as soon as possible. That's what

August 2-3, 2017

they said in the order revoking the variance, that whatever option we come up, they want it to be as fast as practicable. So if we get down the road in five months and we realize for some reason, unforeseen reason, we can't do it, I think we need to jump into action and show oha, okay, this is how we're going to do it and the train is not going to stop rolling.

Wheeler: Got it. Commissioner Fritz?

Fritz: So, first to commissioner Fish, I think maybe you've done too good of a job of making me revere the Portland utility board's advice. I wonder if you would please indulge me by allowing colleen to come back up and give her assessment. Sorry to put you on the spot here, but I'm just following your previous letter and it seemed really well reasoned to me. So now that you've heard all of the discussion, I'm going to give you just a minute to think about it while I maybe also offer a different suggestion. We could vote on the amendments today and not vote on the entire resolution until a certain point in the future when we might have more information so that's one way we could deal with this. The other concern I have, this is a resolution, not an ordinance and it doesn't say that it's binding city policy. So there's that to consider and then, thirdly, Jeramiah was correct, I did say I was being rushed and that was in march -- it was in spring of 2010 and that was because commissioner Leonard had put an emergency on the council's agenda with the deadline running out about five days later so I couldn't vote against it because we would have put it out of compliance. So we're not in that situation here, but I think we are in a situation where the resolution maybe doesn't direct as much in terms of this is what has to happen - - beyond the report. We don't have any certainty in the resolution that it will be coming back to council a various stages. So having giving you a little bit of time by stalling, colleen, could you give us your thoughts, please?

Johnson: Well, I have to be careful because they're not my thoughts, they're what -- what I can do is try to convey what the pub has said and that is embodied in the recommendation that we sent to commissioner Fish and I would -- I would point out two parts of that recommendation. One was that we have to comply which I think everybody agrees with. The third part was that if oha did not grant us an extension, that we thought filtration was the best long-term solution. The second part of that recommendation was that, should we get an extension? That we would like to see that time used public engagement, for trying to -- and I realize that 60 days, 30 days doesn't allow this, but to get closer to some sort of better cost estimates. To start down the path of maybe raising the engineering plans, the design plans to go from sort of low confidence to closer to moderate confidence. So, we had some pretty specific uses of that time. I don't know if that completely answers your question, but we -- we did ask for the time to be used.

Fritz: So if there was some delay before voting on the resolution as a whole, that would honor the -- the Portland utility board's letter.

Johnson: I really feel like I'm being put on the hot spot --

Fritz: I'm sorry. You're not.

Johnson: I understand. I think that would go along with the letter, yes.

Fish: Can I offer a compromise? Because many of the things that are in the letter and the distinguished co-chair has referenced as issues of concern, we won't have good answers for a year or more. So, I interpreted it somewhat differently what I read it as, this has been a compact process that was set by oha. It's extraordinary how much work this oversight body has done to get to this point, but they don't want to operate on this frequency indefinitely. If the council is to make a decision, they want an assurance that they'll have the time to make thoughtful contributions to critical decisions going forward and that includes which type of technology, that includes impact on rates all kinds of things. There's a whole laundry list of things in the letter and what I had suggested as a compromise is that if the council is prepared to act today, that we use the next month to engage the pub

August 2-3, 2017

not only on the specific terms that we're going to submit to our regulator, which has to be in, you know, within two months, but that we also hammer out an understanding about the way we are going to jointly approach this project so there's a clear understanding and that we do a better job of making sure you have the time to give thoughtful consideration to the critical decisions we have to make over the next two years, if council went that route. And that, I thought was a workable compromise which met the spirit of the letter but did not prevent the council, if they chose, from issuing a preferred option today.

Fritz: So, I agree with all of that. The be it resolved doesn't say that we're going to be coming back within 60 days with what we're going to present to the oha.

Fish: After this action, we would be completing the council action. The bureau will be charged with doing the plan, that would be responsive. We do not review plans of this nature, generally. What I have proposed is that they review that plan with the pub make sure they get their input and at the same time, anticipate how going forward we will collaborate in key decision-making over the next two years and that we could work out over the 60-day extension and does not prevent us today from giving clear guidance to the bureau about which direction they should go forward. Frankly, this is august, unfortunately, august doesn't get better in terms of getting people's attention and I think it would be very unfair to jam the bureau much longer because they have work to do in translating whatever our direction is, into the necessary documents that go to the Oregon health authority.

Fritz: Commissioner Fish, you have earned my trust and even though I think it would be better to have more public process before taking this vote with that statement on the record by you, I'll be willing to support your resolution.

Fish: And that means the world to me. Thank you.

Wheeler: Clerk, please call --

Fish: Mayor, I move Fish amendments one through four.

Fritz: As amended, second.

Wheeler: As amended second please call the roll actually to be on the safe side, I see legal counsel twitching out of the side -- [laughter] Fish amendment one, call the roll.

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

Wheeler: Aye. Amendment is adopted, Fish amendment two.

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

Wheeler: Aye. Substitute amendment two is adopted. Fish amendment three.

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

Wheeler: Aye. Fish amendment four is adopted. At the main motion any further discussion?

Fish: May I suggest that any --

Moore-Love: That last vote was on three.

Wheeler: I apologize. Fish amendment four.

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

Wheeler: Aye. Fish amendment four is adopted. Commissioner Fish.

Fish: So now we have adopted all the amendments and so is there now a final vote?

Wheeler: Yes on the main motion, the main resolution.

Fish: This is where we will have a chance to make our final comments.

Wheeler: That is correct.

Fish: Thank you.

Saltzman: And this main resolution puts on record in support of filtration, correct?

Wheeler: Correct.

Saltzman: I think this is the right decision, given -- I think a lot of us believe we should still merit a variance and I'm not totally convinced we shouldn't but I am convinced that that case is now closed and that option is not available to us. So, I think the direct filtration is

August 2-3, 2017

the best option of the two choices we have. I do have concerns about it costing more, but I'm also realizing it's not -- it could be \$350 million, it could be \$500 million. Hopefully not more. I purposely didn't offer an amendment not to exceed \$500 million, although I contemplated that. This will serve our ratepayers and all the people who enjoy bull run water throughout our region as a long-term investment in the safety and the safety of a resource that is irreplaceable and that is our bull run resource. So I think this is honoring -- honoring the needs of the most people and I -- with all due respect to those who have concerns about it, I think we will answer those concerns in the process of designing and executing -- designing, constructing and operating a filtration plant but it seems to be the best option to me and I'm pleased to vote aye.

Eudaly: Earlier, a gentleman expressed I missed testimony from the physicians for social responsibility and I just want to let him and everybody else know my office actually met with a representative from that organization and that I am well-aware of their concerns and wishes. I would also like to point out that commissioners are humans, like the rest of you, and they have human needs and I was attending to a human need. So, being away from the dais for less than 10 minutes during this lengthy hearing was not meant as any disrespect to the people who were testifying during that little break of mine. He also mentioned that he voted for me and I feel the need to point out that, well over 100,000 people voted for me and everyone else that's on this dais and a single vote, that is not in accord with your position, I hope, would not negate that vote in your mind because it is literally impossible for us to vote along with all 1,000-plus people who put us here and I just encourage everyone to watch and evaluate us, based on our overall performance. So, I want to thank everyone for the presentation. Thank commissioner Fish, who did a great job just providing copious amounts of information and generous briefings and really being supportive and encouraging of me to come to my own conclusion and I'm happy to say that my conclusion is, aye.

Fritz: This certainly has been a long process I do think back to 2009, when the motion -- the ordinance on the table was to build the filtration plant and at the last minute, literally, commissioner Leonard substituted it for an ultraviolet treatment because my colleagues who were there at that time, and I, felt very strongly that we didn't need anything and so why would we build a \$500 million plant if a \$100 million plant would do. Then as now, the ultraviolet really doesn't do anything for bull run water so to build an ultraviolet system might make some people feel better and get us in compliance and it would be a waste of money. I would disagree with the Portland business alliance that said do that and then think about doing filtration later. We know that filtration will do more than nothing. I was very pleased to see that the price tag on that has not gone up since 2009. The estimate is still \$500 million, so I'm very proud of having delayed that investment during the recession when everybody was scrambling to make ends meet. Now we do have the opportunity to look forward and to figure out how are we going to help low-income ratepayers? How do we do that at the same time of supporting all the things the general fund needs, including housing? What do we want to buy and how do we want to pay for it is always the question here. I would have preferred to have had more public process on this, as commissioner Fish rightfully notes. It's very hard to get any attention in August and yet we've been given the timeline by the Oregon health authority and so we have to make a decision. This is a preliminary decision and we will certainly -- I know that commissioner Fish will have a lot of process and doubtless many very long items at council where he and the bureau will go through every last detail, in which case I may need to take a human break as sometimes happens. [laughter] so, that's different from 2008, when there wasn't the public confidence in the water bureau and there wasn't really wasn't a relationship with Mike Stuhr and commissioner Fish so I'm very great to everybody who's participated in this. I believe we'll

August 2-3, 2017

great to the right place in the end. Aye.

Fish: Well, I want to begin my thanking my colleagues. First, to our mayor. He mentioned early on that he wanted to have this discussion and hold this hearing in the nature of a land use proceeding. One of the things I've learned from the most passionate advocate for that approach to issues, which is commissioner Fritz, who had a prior history on the -- on the --

Fritz: Planning commission.

Fish: Planning commission. Is that when we approach issues using that model, we tend to get to consensus in a different way and I think a more sustainable way than when we just treat an issue as being subject to the whim of three votes. We can -- we can do our business by saying there's three votes and let's drive it but that's not as satisfying as bringing the entire council around a hard decision. Mayor, we've had tough decisions in six months and most of them were decided on a consensus basis so I appreciate the leadership style, I appreciate my colleagues for taking the time to really sift through the information and details and I think it's fair to say that commissioner Fritz and I had to travel the farthest on this because in 2009, we had clearly-defined positions and I was very proud to join her and in fact, she was the reason I joined a majority sentiment on uv and at the time, a commissioner in charge of the bureau disagreed quite strongly with that decision. So ultimately it was a very difficult decision, but commissioner Fritz's view persuaded me of the merit of that position, but I will say that during the time that I've had the bureau and the bureau has had some significant challenges and headwinds that it has faced during my tenure, hopefully not because of my tenure. Commissioner Fritz has been a great ally and has helped me navigate some very tough waters and I want to thank you for that. And, to commissioner Saltzman, who probably hopes he never has to have this issue come before us again because as a former commissioner in charge, he's been through many of the iterations, I just thank you, Dan, for the steady and thoughtful approach you brought to these issues and to commissioner Eudaly, you have my deep commitment that we work with you and the council to mitigate the impact on particularly rent burden residents of our community. In the editorials that I read, leading up to this discussion, I noted two themes. A number of themes, but two that stuck out to me because the editorial boards took the issues before them and they made it bigger and took it to 30,000 feet they got us out of the crypto debate and looked at it more broadly, but I thought there were two challenges running through the editorials I read. One was a question of whether government can still make the hard decisions and a question about whether we had the capacity and will to do that. Across levels of government, I'm not just talking about d.c., but at the state level and local level. And two is, are we willing to plan for the long-term or are we going to continue to engage in short-term thinking. I must say, both of those arguments caused me to reflect on my role on this council and what I want to leave for my kids when I'm no longer on council. A lot of work has gone into this over the last 10 weeks and in a perfect world we would have had more time, but I could not be more proud of the water bureau team and I want to thank the director, the deputy director and all the professional staff and all the line workers for the stuff they did and as my colleagues know if you don't get to put aside all the other things on your plate when something like this lands in your plate and this was unwelcome development this spring and they have a very heavy lift, but on top of everything else, they rose to the occasion as they do time and time again and I want to thank my team. I want to thank dr. Lewis for being such a great partner. He has the great virtue of being able to communicate public health issues in a way that most water bureau leadership don't do as well. He has a clarity of thought and a demeanor and a credibility when he speaks to public health issues and we I'm sure from time to time will find areas of disagreement but I'm so proud to call him a partner. He's a class act before he weighed in

August 2-3, 2017

on this he actually reached out to me and said, do you mind if I end up coming down on a recommendation that may be inconsistent with what every bureau lands? I said, I insist on it. I insist that you make your call based on what you think is best for our system. Because whether we agree or disagree with where you land I know it'll make the process better and I know we'll benefit from having your advice and that's what he did and I think -- I think your letter, and the thoughtfulness in which you crafted your letter, had a huge impact on thinking by all the actors in this process so I thank you, dr. Lewis, for doing that. I want to thank the pub and the cub I've been on the council for nine years, I've seen effective and in effective oversight bodies and I think I know enough now to know why some were effective and some weren't and I think it has to do with leadership. It has to do with staffing and resources and mostly, it has to do with whether the council is willing to engage as partners, the oversight body and I think we have a chance with the cub and the pub to take it to a much higher level going forward of citizen oversight, which ultimately means we'll be making better decisions and so I thank you for that. And finally, I want to -- I want to do a shout-out -- I want to thank ken Rust and Karen Moynahan. Ken is a terrific cfo a number of us fought to have that position reinstated and I think you see why and Karen managed to balance all the work she's doing and she got married so talk about a trooper and thank you for that. And finally, I want to thank the people on my team, Sonia Schmanski and Todd Lofgren. These are hard issues and there's a lot of stuff before council right now and this week will probably be one we'll look back and say, oh, my god, but they helped me do my job at a much higher level so I'm very appreciative of the work they do and I appreciate everyone who took time to testify before the pub the cub, emailed, sent letters, came here today. Whether you agreed with what we were doing or vigorously disagreed, I don't remember a time where we had such a hard issue and we had so much thoughtful input and based on what I heard I believe this is the step forward and therefore I will support it. Aye.

Wheeler: As a courtesy, I should have let commissioner Fish go last, I apologize. I will be brief. I want to thank commissioner Fish on his leadership on this issue. This was a very, very complicated issue and I want to thank the staff, who worked with commissioner Fish, who spent a lot of time with me and my staff to educate me on a very, very complex issue. Definitely want to thank everybody from the bureau. Ken, thank you for always entertaining my -- my questions around bonding and finance and all this stuff that most people think is boring and you and I go out over cocktails and spend hours talking about. In many ways, I feel like we've settled on the most challenging solution, but I also think it is the most responsible solution and, all the information that I've been provided has led me to that conclusion. I want to acknowledge something that really wasn't mentioned, except briefly today and I think it has to be said. There's a sadness that goes along with this decision, we're leaving something behind, we're leaving part of -- your hard-fought past behind. Similarly, is when we built the bridges over the Willamette river we left behind the ferries a lot of people my grandmother could remember that, and she felt the community, in some sense, had obviously made the right decisions and made the responsible decisions but she still felt a sense of loss at what we left behind. In many regards, commissioner Fish, I feel the same way about this decision, but it is the right decision, it is the responsible decision. It is the best decision for the future of this community and I want to thank you for your terrific leadership on it. I vote aye. The resolution is adopted as amended.

Fish: Thank you.

Stuhr: A brief comment. You guys don't -- don't hear this very often, I'm sure. But I want to thank you. My heart-felt thanks for being the leaders you are and providing us a path forward. Thanks. [applause]

Wheeler: We're adjourned.

August 2-3, 2017

At 5:28 p.m. council recessed.

August 2-3, 2017
Closed Caption File of Portland City Council Meeting

This file was produced through the closed captioning process for the televised City Council broadcast and should not be considered a verbatim transcript.

Key: *** means**

August 3, 2017 2:00 PM

Wheeler: Good afternoon everybody this is the August 3, 2017 afternoon session of the Portland city council. Please call the roll.

[roll call taken]

Wheeler: I'll shorten today we have a big agenda and I'll probably be reiterating it later. We're all here. People want to be heard. Everybody should be respectful. If people are testifying let's not interrupt them. If council is deliberating, let's not interrupt the council while the council is deliberating. Anybody who is disruptive of other people's testimony, that's just rude. Please don't do it. If you continue to do it we'll have you leave. If we ask you to leave and you don't, well, then you might get arrested for trespassing. I'm sure we all agree nobody wants to have that happen so let's do our thing and let everybody be heard. If you're signed up for public testimony today, come to the microphone when Karla calls your name. There's a light on the box. It will light up 30 seconds before your testimony is completed. You'll hear a beep. Then a red light and louder beeps when your time is up. We do ask you to state your name for the record. We don't need your full address. If you're a lobbyist we're required to know that information. If you're representing an organization that's helpful too. We have a couple of kids here today. That's cool. Nice to see you. How you guys doing?

*******:** Good.

Wheeler: Thanks for coming to the city hall. It's exciting. So with all that, first item, please. 868.

Item 868

Wheeler: This is exciting. About a month ago we appointed the new youth commissioner to the planning and sustainability commission and today we have an appointment for the last current vacancy on the commission. As with all regular psc appointments this position is designated a four-year term with possibility being reappointed for a second four-year term. Ben Bortolazzo is my recommendation for this position. If confirmed he will begin his term on the psc September 1 with a term end date of August 31, 2021. Susan will make some introductory comments first. We'll embarrass you a little bit first.

*******:** Sounds good.

Wheeler: Excellent.

Susan Anderson, Director, Bureau of Planning and Sustainability: Good afternoon, mayor, council. Susan Anderson, director of the planning and sustainability commission. We're excited the mayor has chosen to recommend Ben to join the planning and sustainability commission.

Fish: Susan can you hold one sec? This is such an important part of our hearing I want to make sure it's on tv. We're not getting anything on our screens.

Moore-Love: We're working up here.

Fish: It's not on our screens?

Moore-Love: I think so.

Fish: Make sure our honored guest and his father are on tv today. [laughter]

August 2-3, 2017

Anderson: Our honored guest's father, whose name is ben, leads the planning and design team for otac, known for its multidisciplinary approach of ranging other engineers and architects and landscape and planners altogether. Ben is director of planning and design. He worked in a multitude of places and creates really engaging dynamic successful projects and plans really all over the united states. He began his studies in Venice. I wish I had begun my studies in Venice, earning an architecture degree and earned a masters in architecture and urban design from the university of Washington. Ben will definitely bring some quality design and community engagement experience to the planning and sustainability commission. As many of you remember, the psc is a diverse group of 11 individuals. They volunteer many, many, many hours each month reviewing plans and policies that affect land use and all sectors of our community. Each psc member brings a particular set of knowledge and talents and experience from architecture to transportation, economic development. We have folks who are housing specialists, environmental, education specialists. This is different than most cities. Most cities their planning commissions are generally comprised of people who are part of the development industry. In Portland our planning and sustainability commission embraces a much broader approach. I'm personally very happy that ben will be joining the commission. I think he will provide a lot of value and a lot of knowledge and great perspective. I know he's very passionate about the city and his kids wanted to come along and say hello.

Wheeler: Ben, maybe you could tell us about yourself and why you want to serve on the psc.

Ben Bortolazzo: Sure. Thank you for the wonderful introduction. Mayor, commissioners, thank you for allowing me the opportunity to serve the community through this role in the planning and sustainability commission. I was born in Italy, influenced by some of the world's most known public spaces. I studied architecture and urban design. I met my wife Katie, who is in the audience today, while at the university of Washington. After which we moved to Italy. When my wife and I moved to Portland from Italy about 12 years ago we deliberately chose to live in Portland. A decision that was driven in part by Portland's livability, walkability and great public realm. We now have three children, Angelo, who is here today, teo, and Francesca, who is cheering from the audience. We live in southeast in the Woodstock neighborhood. We love our neighborhood and every day we get to reap the benefits of a well thought out city. Experiencing the benefits of great city planning in Europe and here in Portland inspired me to apply for a seat on the Portland planning and sustainability commission. I would like to offer my unique and diverse skill sets to help shape the city's future. Building upon the positive direction that's already been set by our predecessors. I'm passionate about urban form and design that contributes to creating a sense of place. Having grown up in Italy I'm familiar with places that are frequently regarded as humanly scaled, memorable and encourage people interaction. My academic and professional expertise spans the field of architecture, urban design and planning. I consider myself a generalist and a big picture thinker. I trust these skills match the planning and sustainability commission's mission of stewardship, development and maintenance of the city's long range plans. I'll be happy to answer any questions you may have or hear any ideas of guidance you may have.

Wheeler: Colleagues any questions or comments? Commissioner Fish?

Fish: Ben, you mentioned that you have spent a lot of time in Italy. My wife and I spent our honeymoon in Italy, Rome, Venice and Florence. Where did your family live and what was your experience?

Bortolazzo: Northeast near Venice. A small town called Bassano Del Grappa which is right at the edge of the alps so, northeastern part of Italy northwest of Venice. I went to school in Venice, actually.

August 2-3, 2017

Wheeler: Is there any public testimony?

Moore-Love: No one signed up.

Fish: So moved.

Fritz: Second.

Wheeler: Motion from commissioner Fish, a second from commissioner Fritz to accept the report. Any further comments? Please call the roll.

Saltzman: Thank you Mr. Bortolazzo for your willingness to serve. It's a very time-consuming job so we appreciate your willingness. [laughter] I want to acknowledge former planning and sustainability commissioner don Hanson. He has probably spilled the beans on the amount of time you spend on this commission, but we appreciate it and it does serve us we. We rely heavily on the advice of the commission. Aye.

Eudaly: Congratulations and thank you for your service. Aye.

Fritz: I served for seven years on the planning commission before it became the planning and sustainability commission and I appreciate your willingness to serve and your family's willingness to let you serve because it certainly is a lot of extra time that you won't be home for dinner and those kinds of things. So thank you to the whole family. Aye.

Fish: Thinking I have a 13-year-old at home. You have three young children so, that's going to be a lot of balancing. Thank you for taking on this assignment. Also we should note that otac has been a great partner of the city and a lot of work that we've done I remember I was the housing commissioner otac was a key partner in building housing and providing professional services and I think all of us here at one time or another have gotten robust advice about something involving the city's future. Congratulations and thank you for taking this on. Aye.

Wheeler: Well, I'm obviously thrilled that you're willing to step up. It's great to see your family here and sharing in this. Speaking a little more broadly we're very, very lucky that you will be joining a commission that has some really great people on it. I think it's terrific we're all in a city where we can attract such talent to be part of the public process and help this council and this city on what's obviously a very important function that we provide. Thanks to you, thanks to your family. Aye. The report is accepted and the appointment is approved. Thank you for your service.

Bortolazzo: Thank you. [applause]

Wheeler: Next item, please.

Item 869.

Wheeler: Could you also read 870?

Item 870.

Wheeler: Colleagues, we may not think very often about how our garbage recycling and composting is collected, but staff at bps are working to ensure for the most part we don't have to. 25 years ago the city launched its curbside recycling program as part of franchising garbage and recycling collection at single family homes. Every five years we have the opportunity to take a step back and review the franchise agreement, make sure that it's still serving our needs and helping us to meet our goals. This is obviously time for another midterm review. We have staff here today from bps to give us an update on the progress over the past decade and to get approval to launch a system review so, without further ado I'll just turn it over.

Susan Anderson, Director, Bureau of Planning and Sustainability: Thank you. Good afternoon again. I'm Susan Anderson, director of the bureau of planning and sustainability and with me here this is Bruce walker, program manager, and Arianne Sperry, the coordinator. The mayor mentioned 25 years ago we started the franchise and recycling system and Bruce was here. So pretty much all of the great things that have happened and all the thing that you haven't heard about because the system run smoothly a lot of it

August 2-3, 2017

has to do with because Bruce has been here all along. Today we're going to talk about two things. One is we're going to start with a progress report on city-wide recycling efforts and then after a vote to accept the report we will follow with a discussion on updating the residential solid waste franchise. So the Portland recycles plan was adopted nearly ten years ago in 2008 under the leadership of commissioner Saltzman. The plan sets goals for the amount of waste that's recycled and composted for reducing the total amount of waste generated and it sets goals to improve the overall sustainability of the waste collection system. One of the primary goals was not just to recycle more but to reduce the total amount of waste that is generated by everybody both what goes into the landfill and the recycling and composting. This includes residential and commerce waste because while it's great we do a great job at recycling, and we do, it's not the only answer and we need to reduce aggressively the amount of stuff over all that we purchase and throw away. We can do that by buying less packaging, more durable goods, repairing items, wasting less food, reusing products and so on. Portland residents and businesses have been doing a really good job in the past five to ten years in this area. As the diagram shows, total waste generated per person, so that's everything that goes into the landfill plus recycling, composting, has dropped by 16% from 4200 pounds to 3500 pounds, so 700 pounds less per person per year. That's still a lot of stuff. So we hope to continue this trends. Our goal for waste reduction is to cut per person waste down another 700 pounds to 2800 pounds by 2030. So we're going to hopefully keep moving in this direction. In addition to our efforts to reduce and reuse, we all know Portland is great at recycling. Portland residents and businesses recycle or compost 70% of all materials, so only 30% goes to the landfill. That's twice the national average, something we should be very proud of. Our residents and businesses should be proud of. We're leaps and bounds ahead of many, many cities. Chicago recycles about 10%, Denver about 20%, but we're not on top. San Francisco, San Jose and L.A. all recycle more than we do, recycling 75% or more. I think it's important as we promote recycling and composting to local residents and businesses that the city government walks the talk. That we need to be doing our part too. This slide shows three examples of work that the city is doing now, the first one on the left there is a waste identifier station. They are literally picking through the garbage this enabled them to quickly figure out how much they were throwing away and see how much they could recycle and/or compost. As a result all Portland fire stations now compost their food scraps. Over all city government recycles and composts about 75% of waste and we have a goal to reach 90%. Second, we're also making the collection system less polluting by cleaning up the privately owned fleets of garbage and recycling trucks. We now require waste and recycling haulers to use cleaner fuels like biodiesel or compressed natural gas and upgrade their trucks to run cleaner. We also have hopes or I have hopes for an electric garbage truck sometime in the next couple of years as a pilot. Finally, we have made recycling a much more visible part of our community, so we have containers on the transit mall something that I don't know why we didn't forever, but we do now, which is great. So for most of the people who live in single family homes and lived in single family homes over the past ten years, single family, three, fourplex, the most visibility change that came from the Portland recycles plan is the collection carts you all have at home. So in 2008 we rolled out the big blue and green roll carts that serve single family duplex, triplex and fourplex throughout the city. Three years later in 2011, we changed the system. So everybody had the roll carts and what we decided to do was pick up recycling and yard debris and compost every week while your garbage only gets picked up every other week. Literally this one changed caused the total tons of residential garbage thrown away to drop by more than 30,000 tons so, it was almost overnight. About a third of the garbage disappeared because there wasn't as much room as there was before and almost

August 2-3, 2017

immediately people figured out how to get that stuff into the compost bin, into the yard debris bin and the recycling bins. So that's great accomplishment at the same time it was a political risk of great groundbreaking at the time those of you who were here, every other week garbage, people did complain we knew they would and the complaints lasted about three or four weeks and then it became normal. I think just like riding your bike or walking or anything else that we do once you do it a few times it becomes normal and it's just the way we do it here. That's how we have done residential waste and we have been copied around the country in terms of switching to every other week garbage collection and it's working great.

Fritz: Can I just add excuse me. I don't think the complaints to council offices fell off all that much after four weeks but the bps information, waste information email, your staff were absolutely fantastic at getting back to people and explaining, helping them through so, thank you very much.

Anderson: Thanks. That was a while ago. I think maybe -- I tend to remember things different than they really were. That's residential waste and when we say residential we're just talking about single family and duplex, triplex, fourplex. We need to remember as much as we seem to talk about it residential waste and recycling accounts for only 20% of the total waste stream so 80% coming from businesses, construction sites and larger multi-family properties. So what's up next? We're going to focus a whole lot more on the commercial areas. For multi-family we will increase our efforts to make sure we provide quality recycling opportunities for multi-family residents. 80% of our growth will be in apartments as we know through the growth scenarios through the comprehensive plan. We need to do a better job there. Then second for the commercial sector, we will primarily focus on construction waste and food waste as those are the two largest waste sources that are going to the landfill still. Since the adoption of the Portland recycles plan in 2008 food-related businesses such as restaurants, grocery stores, they have been required to separate food scraps for collection. Our enforcement has been really focused on technical assistance and we now have more than 1200 businesses collecting food scraps, which is great but unfortunately many of some of our largest grocery stores still don't this so in response we're going to ramp up our technical assistance to ensure all large food industry companies meet the requirement within two years. Metro's now working alongside us and is proposing to ban all food scraps from the landfill from businesses by 2023. Other places have already done this we're a little behind on this. We have been in the I call at the Portland way, we pass a rule then cajole people into doing it before we get around to enforcement and at this point it's been many, many years and it's time for us to just move on this. So that's a report, recycling, composting 70% of all our waste we reduce the total amount each is throwing away and in the next five years we'll focus on construction waste, food waste and improving recycling for multi-family apartments.

Saltzman: When you say multifamily recycling does that include food waste?

Anderson: Yes. Currently if you want food waste, if any apartment building wants food waste to be collected, their hauler needs to do that. So, it's a requirement now on the haulers. It's just there isn't quite as much demand and we have worked with hundreds of buildings really already but it's a little different. There's not yard waste so we're working on a whole bunch of different ways that other cities that are more urban than us that have a huge number of apartments, how they have done it. We'll get there over the next two years.

Saltzman: Thanks.

Anderson: If there's not any questions I think we need a vote.

Wheeler: I'll take a motion now.

Fritz: Don't we have to talk about the testimony?

August 2-3, 2017

Wheeler: We can a motion leave it open and then take testimony.

Fritz: I move the report.

Eudaly: Second.

Wheeler: So, we have a motion from commissioner Fritz and a second from commissioner Eudaly is there any public testimony on either of these items?

Moore-Love: I have some people that may have signed up on the wrong sheet.

Wheeler: I would like to hear them together and have testimony once for both of these. So, if you wouldn't mind giving the presentation for the resolution as well.

Anderson: Okay. Then the next item up is the renewal process for solid waste residential franchise system. Bruce will describe how the system works and Arianne will lay out the work plan for how we're going to get a revised agreement in place over the next six months. When you vote today on this you'll be setting the renewal process in motion. The current franchise requires us to get your approval to kick off the process and then once we start it requires us to finish it within six months. So, I'll hand this over to Bruce.

Bruce Walker, Bureau of Planning and sustainability: Thank you. Mayor wheeler, commissioners, so as a reminder, our residential franchise system, the services, the collection services for garbage recycling and composting are provided by 14 franchisees or private collection companies they service approximately 160,000 single family through fourplex. As Susan described earlier, the five plex to multi-family residential units are considered commercial. Commercial businesses and multi-family are able to negotiate directly for the -- with the hauler and it's not part of our franchise system. So the franchise agreement, think of it as a framework. Yes, it's a contract, and it aligns that most of rules that are governing the collection services extensive set of administrative rules are separate from the franchise agreement itself to allow us more flexibility in fine tuning rules but this contract is with the haulers and it directs them to follow the rules that we establish the franchise agreement also establishes the geographic territories where each company service provides services to the residential customers. It also lays out the methodology for which we oversee a rate review process that establishes the franchise fee, that comes to fund programs that we use to oversee the program, the solid waste and recycling program, as well as it sets a target operating margin for the haulers. It also the franchise agreement establishes a renewal process and that's what we're here to discuss today. In terms of franchise renewal, our current agreement was signed into or went into effect in February of 2013. It is a ten-year agreement so will run through early 2023. We currently are at the point in the agreement, the midterm point, where we launch a review. That's what we're hoping you do today, and that agreement will give us guidance for how to move forward with that review. We're asking you to approve the next steps and at that time we will set forth in this outline here we may come back with a new agreement for another ten years. There could be additional options that you include in the franchise agreement for us to or another range of approach, but what we will take under consideration is we look forward are going to be the guiding principles and methodology that Arianne is going to cover.

Wheeler: Thank you.

Arianne Sperry, Bureau of Planning and Sustainability: So as Bruce mentioned franchise review is required in the franchise renewal process and it's a time when city staff take a look at the franchise and ensure this is in the public interest, it's still helping the city meet its goals. The review factors that are identified in the franchise agreement itself are quite broad and give staff a lot of latitude in terms of what to focus on. So we have developed a set of guiding principles to provide focus for this review and this is exhibit a to the resolution that I'm going to go over. Of course we need to make sure we're continuing to advance our climate action plan goals related to waste, which are reduce food scraps sent to landfills by 90%, reduce per capita solid waste by 33%, and then we want to

August 2-3, 2017

recover 90% of all the waste generated. We also want to ensure cost effective, safe and environmentally sound operations. This includes establishing rates through a process that promotes operational efficiencies while meeting policy goals including equity, employing a rate setting methodology that provides franchisees the opportunity to earn a reasonable operating margin without guaranteeing a specific return to any franchisee. Developing programs and conducting operations to ensure public and worker safety, reducing air emissions from collection vehicles and improving safety of collection vehicles for hauler employees as well as other road users. We want to ensure exemplary customer service, which means responding promptly to and communicating appropriately with customers using technologies to provide more responsive, reliable and convenient customer service and keeping and maintaining accurate and accessible customer and operational records and finally we need the ability to develop a resilient and equitable system. We want to increase participation of women and minority workers, we want to reduce barriers to economic opportunities for minority owned and women owned companies, we want to collect clean and marketable recyclable and compostable material streams and maintain the ability to adapt to emerging policy goals. So those are the guiding principles that we have laid out. As mentioned earlier we're asking you to vote today to formally launched franchise renewal review. So your vote would start the clock on a six-month review period and we would go away, conduct our research and our analysis, have conversations with stakeholders, and come back in January with our report.

Fritz: And if we vote don't vote to accept it, what's happens then?

Sperry: Pardon.

Fritz: If we don't vote to this what happens next?

Sperry: The franchise agreement would just continue along and expire in 2023 and we would have to come up with another system to have collection of residential recycling, compost and garbage.

Fritz: Thank you.

Wheeler: Any questions before we open it up for public testimony? All right, you get a few minutes to cool your heels. Thank you for the presentation. Karla, do we have people -- you mentioned two before how many do we have now.

Moor-Love: I have about 11 on the list.

Wheeler: Very good.

Wheeler: Come on up, state your name for the record, you have three minutes. If you're a lobbyist let us know, if you're here representing an organization let us know. We don't need to know your specific address or anything like that. Thank you. Good afternoon.

Tony Jones: Good afternoon council members, mayor. I'm tony jones I'm the executive director of metropolitan contractor improvement partnership. We're the education arm of the national association of minority contractors. We are here to support resolution 870 to have the franchise review of the waste hauling system. Mcip, for short, we provide business technical assistance focused on minority and women owned construction businesses. We work with about 40 to 70 businesses a year in providing business technical assistance and training to those firms and we welcome the review of the franchise agreement and how we include minorities and women particularly minority women businesses in particular that has waste hauling capability to provide them the opportunity to do this work, so we support this review. The comments I want to make real quickly is most of you are very aware of the economic disparity between African-Americans or other minority groups and our counterparts. When we look at wealth I believe the numbers are white families have a net wealth of \$111,000 a year and African-Americans have between \$9,000 and \$13,000 a year in terms of net wealth. So the economic disparity is huge, so anytime that we have an opportunity to provide economic

August 2-3, 2017

opportunity to african-american, other minority businesses and groups it's strongly encouraged and we were very encouraged to see in the resolution and in language prepared by the bureau of planning and sustainability that that is a goal of theirs, to make sure there's economic equity for minorities and women in the waste hauling system. We think this is a great opportunity, the time to review the policies, to review what we can do and the biggest barrier I would say for minority women owned businesses is entry. It really is many times they have the capability to do the work, they have some system to do the work and understand what the work is. The biggest barrier is getting their foot in the door and having the opportunity to do the work. We encourage you to support this resolution and really hold the bureau of planning and sustainability accountable to come up with a process and a system to get more inclusion of minority women construction businesses to do this work. Thank you very much.

Wheeler: Thank you, sir. Good afternoon.

Harley Bird: Good afternoon, mayor and commissioners. My name is Harley Bird I'm here today in support of this resolution. I was involved in this waste hauling business in Seattle, Washington, from 1984 until 2007. I only got that opportunity because the city council in 1983 set goals for minority and female participation in the contract. The contract was not a franchise system, it was bid city-wide contract. Prior to that time, no minority or women companies had any participation in the largest contract that the city of Seattle led at that time. I'm very thankful that I had that opportunity. It provided a good living for myself and my family. I was able to help my two kids graduate from the university of Washington with no debt, by the way, and I have two great grandchildren that's also benefited from my time in the waste hauling business. This business traditionally has been dominated by large companies. You know, multi-national companies, that not only pick up garbage in the u.s., but around the world. Waste management, republic, allied, waste connections, you know, sometimes the names change because they merge with each other, you know, and so allied waste today becomes republic tomorrow. Same thing with respect to this franchise system that you have here. You started out with how many? 60-some franchises and now you're down to 14 and during that process, the big boys gobbled them up like the pac man. That's what they do, they acquire and extend their territory, you know, grow their business and so the little guy, you know, is very tough to break into that system. They can only break in if you provide a vehicle by which they can do so. I thank you. Appreciate it.

Wheeler: Thank you, sir. We appreciate it.

Noni Causey: Good afternoon, mayor and commissioners. My name is noni Causey I'm the executive director of beam, which stands for black educational achievement movement. Our organization has been around for five years, and we have had the honor of bringing groups of black high school and college students together each year to work with colleges and employers because in our city, if students can't see you, it's hard for them to be you. This year we were able to bring together 600 african-american high school and college students in with businesses so they could see people that look like them and ask them about the industry that they are a part of. In Oregon, we have one company that is owned by an african-american family and I'm here to actually support -- in support of this resolution. It's very important for me that our students get an opportunity to look at a wide range of industries and waste management is huge. Recycling it's international, global and usually minority owned women owned businesses tend to have a larger percentage of folks that look like them it's just the reality. So I'm here to support one of the only companies in the state of Oregon, so they can expand, so our young people can see that company grow because it's very important for them to see people that's in this industry and that profits stay local. How will we grow if we don't have the language that are in resolutions to make this happen? So I just wanted to come and support this.

August 2-3, 2017

Wheeler: Thank you. We appreciate your testimony. Thank you all three.

Fritz: Thank you all for taking time to come.

Wheeler: Good afternoon. Nate you want to start us off?

Nate McCoy: Mayor, commissioners, thanks for having me. For the record my name is Nate McCoy the executive director of the Oregon chapter of the national association of minority contractors. I won't belabor some of the points you've heard already today because I think you guys get it. What I do want to stress the point noni stole a little bit of my thunder it's about that next generation that I'm most concerned about. She was spot on when she said if you don't have one in which these youth can see the potential to become then you have nothing. What I have come to find with this current franchise agreement and I don't want to correct my elders in Harvey but there was actually 104 businesses in the franchise system and consolidated down to 14 and of that 14, the question on the table is are any of them considered mbe, minority owned businesses. I think you'll find as you ask our opposers in the room today if that's true the answer is no and it strikes me that the great work of the bureau of planning and sustainability has already put forth a resolution with guiding principles which I think is positive that speaks to this. As we have heard, these are only documents, so until we actually put action behind it it's kind of meaningless. What we're here today is to really stress the points that I think Amanda Fritz was raising as what would we do if we didn't co-sign this, we go back to what we have been doing all along. Status quo, which is a concern because it's a barrier and I think given that we have one that's viable for this opportunity, it opens the door for others in the future, so what I would stress is let's give somebody a chance who doesn't always have access to these opportunities because they are already working with the youth today. I would love nothing but over time to see our home-grown businesses in a state that has a majority of small businesses, it strikes me that we have one at the table and we have some big conglomerates at the table but they get the lion's share and some don't get any. I would stress to keep some of our dollars local as much as we can and give opportunities where we don't have them today. So those are my comments and I thank you for the time.

Wheeler: Thank you. We appreciate it. Good afternoon.

Mike Dewey: Thank you. For the record Mike Dewey representing waste management and I'm a lobbyist. So I do represent a large company, there's no question about that. Dean Kampfer is here if you have any technical questions. First of all I want to congratulate the city for the vision that you have. I have been involved with solid waste and waste management for 25 years and there are perhaps four cities, one to four, that have the best recovery recycling rates in the country. You're either one, two, three or four so you ought to be congratulated for that. Waste management and we're proud of this is an integrated system. We own a lot of facilities which we think it makes us more efficient, it's much better for the taxpayer, the ratepayer. We have and you probably don't know this, in Hillsboro a dry waste facility which is only infill and we take demolition waste and construction waste for recycling. It's amazing how many tons of recycling we do at that facility and it's not large enough and we're going to basically enlarge that facility. We are about 260 employees in the state of Oregon, so obviously it's a substantial work force. We have 140 compressed natural gas trucks, we're converting all of our trucks over time to diesel, excuse me from diesel to cng trucks. Obviously, the emissions and health effects are significant and those trucks are more expensive, there are some tax credits, but nonetheless, that's where we're going. You talked about plan, we support the plan, it's good to get ahead of the curve. The low-hanging fruit and because I know this from time to time I have dwelt in Portland and on the multi-housing recycling in Portland there's no question we need to do more. Perhaps you don't know this, but waste management in the city of Portland, environment services have partnered up on the metro food scrap program.

August 2-3, 2017

The rfp is complete and in that we have talked about how we would use the wastewater treatment facility to produce additional energy and it's under our core system and the nice thing about it our it facility is about two miles from the wastewater treatment facility. Excuse me, I have a cold, so that's why my voice is a little bit different. One thing I did want to talk about is diversity in that rfp, 20 points is awarded to diversity and so we had to look at our programs. Last year we 100 military recruits in terms of the camps that we went to and we now have 3,000 employees that were veterans. We have a women's program and we continue to reach out to minorities. One thing I want to stress very quickly, if I may. We want to be a little bit careful about what you do over the next five years because you want to encourage if you're going to change the system significantly you want to encourage companies that exist in the system today to continue to invest. You don't want them to stop because they may not be in the system in five years. That's something that you need to think about.

Wheeler: Thank you.

Fish: Quick question. When your clients shifted to renewable natural gas on the trucks, we know about some of the environmental benefits. How did the cost structure change in terms of the operations of those vehicles?

Dewey: That's a good question.

Dean Kampfer: To convert our fleet over to compressed natural gas first thing we had we couldn't buy the trucks without having a fueling station so we invested in the fueling station, which was about a three, \$4 million investment. Once we did that we also had to upgrade our shop, which was another four or \$500,000 to make it safe to maintain and work on these trucks. From there we have invested in over 100 trucks, each of these trucks are in about \$325 to \$350,000 apiece. So we have made significant investments in the clean fleet program and it was from the direction and the foresight of the city of Portland's direction.

Fish: Just not exclusive of the fixed costs you incurred at the front end, what is likely to happen to your energy costs going forward compared to buying diesel or gasoline versus natural gas?

Kampfer: Three, four years ago there was quite a spread between the price of natural gas versus diesel. That spread has come closer together, but there still is a little bit of an economic advantage on the fuel, but the big advantages are the emissions, lower particulate, lower greenhouse gases, quieter for the communities, quieter for our drivers and lower maintenance costs as well.

Dewey: We're going to continue to invest in cng.

Wheeler: Thank you.

Dewey: Thank you for your time.

Kampfer: My name's dean kampfer I municipal marketing for waste management of Oregon. I Just wanted to share a little bit about my history in 1952 my parents moved from the dairy farm to Portland. My father purchased a small company in lower southeast Portland. In 1979 I acquired that company from my father and then in 1995 my partner and I were at a point where we would have had to make major investments to upgrade our fleet, our containers, and it was a turning point where we said it's time to exit the system and we sold to waste management and waste management has taken that company and continued and brought the company to a higher level. Myself personally, I have continued to work for waste management for the last, gosh, 25 years. Thank you.

Wheeler: Thank you.

Wheeler: My understanding is that you have two more after this? Three more, is there anyone else who would like to testify on this item? Let's close the list. Good afternoon.

August 2-3, 2017

Mike Mercer: Hi. Mayor wheeler, commissioners, my name is mike mercer and I'm the Portland city resident and principal for a local business called m. Mercer consulting. So, I do work with clean energy, climate transition at the state level engaging business leaders in that policy work but also here in Portland I work with companies that are looking to become b-corps and help them steward that process for them. I'm here today testifying in support of the resolution but even more specifically the guiding principles for franchise hauler review as we have seen. The proposed guiding principles provide waste haulers and those making franchisee decisions with greater clarity on the desired outcomes of our waste management system. We should look beyond the lowest cost, greatest efficiency and look to those outcomes others -- put those outcomes with others such as climate impacts, benefits of our local economies and equity and inclusion of our historically disadvantaged populations. These outcomes are not just feel-good measures, they are driven by a merging shift and how business owners like myself and others in the B-corp community view the function of capitalism. What is that shift their seeing? That shift is rather than focusing object maximizing shareholder value, how do we maximize our stakeholder share which includes our communities, the environment and the employees that work for us. This movement is being by business leaders and not government as one of those business leaders I appreciate when government takes action in support of the business community and the vision that we hold. I ask you to support the proposed guiding principles for franchise haulers. Thank you.

Wheeler: Thank you. Good afternoon.

Valerie Hill: Good afternoon mayor wheeler, and city council members, I'm Valerie Gruder hill, president of the Portland haulers association. I'm also an owner of gruder sanitary service, a family owned garbage and recycling company serving Portland residents and businesses since 1951. I'm speaking as a woman owner of a small hauler business. Our company was started by my hard-working mother and father. My father was an immigrant from Europe and he and my mother lived the American dream. They were able to build a successful small business which offered a needed public service and provided for their family. I have been privileged to continue building our company through perseverance, long hours and customer purchases. In 1992, after arduous negotiations, facilitated by the city of Portland with other haulers, we negotiated an equitable designated residential franchise area. As a small business owner, I wear numerous hats, management, administrative office duties, customer service, public relations and even roll cart assemblies with occasional deliveries. My brother and I have followed the example demonstrated by our parents through steady work and stepping up to challenges. Our company has grown from one open truck for collection to six specialized trucks that pick up specific materials. I'm proud of the partnership that we have formed with the city of Portland and the staff. We have been committed to implement and carry out the programs that have made the city of Portland a leader in the collection of garbage, recycling and compost. We have been able to safely and efficiently reach mutually agreed upon goals. Gruder sanitary service has many grateful and appreciative customers. We have invested heavily monetarily and have made several changes to reach the city goals. The last 25 years have seen changes to equipment plus improved methods of sorting and collecting materials. It is my hope that the city of Portland appreciates the successful partnership that has been formed with our company and the other haulers in the city of Portland. The franchise system has served the citizens of Portland well and has been a good vehicle to reaching waste and recycling goals. Let's continue our relationship so we can achieve, improve and meet new goals for the citizens of Portland. Please approve the resolution before you to renew the franchise system.

Wheeler: Thank you. Good afternoon.

August 2-3, 2017

Brian Heiberg: Good afternoon. Mayor Wheeler, members of council, I'm Brian Heiberg. My brother Bruce and I own and operate Heiberg garbage and recycling in Portland. Our parents purchased their first collection company in Portland in 1947. This year we're celebrating our 70th anniversary of providing garbage recycling collection and serving our customers in Portland. Heiberg grew and developed for some 45 years prior to the city's decision to franchise in 1992 to meet the state mandated recycling goals. At that time we along with the other haulers worked with the city to develop a residential franchise collection system that has involved into an award winning program that it is today. We have worked closely with the city to help meet the solid waste recycling and compost goals. We have been part of the pilot project to include food in the yard debris and change to every other week collection. We increased automated collection and transition from cans to roll carts. We have gone above and beyond the clean fleet program by investing in clean natural gas ourselves. These vehicles are quieter, are clean burning and this investment was huge on our part. It's kind of scary at this point to think that we may not be able to use that in five years from now if this program doesn't continue. Through the hard work, dedication and continuous investment we have made over the years we have been able to grow our company and provide the quality of service to our customers at a cost effective way that they deserve. According to the 2016 community survey conducted by the city auditor 76% of residents felt positive about the garbage recycling and compost service quality. This represents a significant increase over the 66% report in 2012. This brings us back near the level of satisfaction it was before we changed to the every other week garbage collection program in October of 2011. We are not a large company, but by reaching out and approaching other companies we have been able to expand and grow over the years. Just this past year we negotiated a purchase of cloud burst recycling. This is not a closed system, we have grown from one truck and one employee to a family owned business that we are today. We're proud of the family wage jobs that we're able to provide as well as the diversity of our work force and quality service our team provides to our customers. We look forward to working with the city during the periodic franchise review so we can continue to make long term financial decisions needed to upgrade our fleet, to compress natural gas and provide good service to the citizens of Portland. Thank you for the opportunity to address you today and I would be happy to answer any questions.

Wheeler: Thank you for your testimony. Looks like you're off the hook. Thank you all three. There's two more?

Moore-Love: Last three.

Wheeler: I'm sorry.

Wheeler: Good afternoon.

Beth Vargas Duncan: Good afternoon. Mayor Wheeler, members of the city council, I'm Beth Vargas Duncan, regional director with the Oregon refuse and recycling association. In that capacity I represent another association separate from ours, the Portland haulers association whose members provide residential and solid waste and recycling collection services within the city of Portland. Portland haulers represent a diverse group that range from large publicly owned companies as you've heard to the family and women owned businesses. We actually have about 12 different companies represented within our membership and three of them have women owners. Portland haulers are proud that their customers have historically rated solid waste, recycling and yard debris collection services they receive among the best city programs and services. Considering the goals identified in the franchise review resolution before you today including waste reduction and recovery, providing cost effective rates, developing resilient, equitable system, Portland haulers evidence there supported these goals by continually examining, improving and investing in

August 2-3, 2017

the current system. As you've heard they were part of include the food and yard debris program that started in 2011. They have embraced the clean fleets with their clean natural gas trucks which cost about 25 to 30,000 more than the diesel trucks. They have invested some of them have invested in natural gas fueling stations which are necessary to support that activity. They have also looked forward to enhancing the automated service and roll carts. We have committed to purchasing residential roll carts for all customers to further increase efficiencies to reduce greenhouse gas emissions, streamline service and promote worker safety. The Portland haulers association proposed a transition from cans to carts this summer to city staff however an actual transition date has not yet been identified. The pha haulers, Portland haulers association, are committed to work with staff for planned implementation of that soon. Pha members are committed to diversity and actively seek to do more. Some members hire workers and provide training for new employees to gain required certifications. Some advertise new positions to older customers inviting everyone to apply. Pha also is currently discussing options such as employee education, expanding outreach to under-represented neighborhoods and helping folks with their commercial driver's licenses, maintenance, scholarships for minorities and developing new relationships. We also support the resolution before you today and I'm happy to answer any questions.

Wheeler: Thank you. Good afternoon.

Susan Mead: Hi, mayor wheeler, members of the city council, my name is Susan mead here representing the recycling advocates of Oregon. I just wanted to be here and applaud the city of Portland for the last ten years of progress in their recycling program. I think we did some of the activities with them and they were met with a lot of success, however I don't feel like this is any time to be complacent and I want to state that recycling advocates stands behind the city of Portland goals for the future as was stated by Susan and they aligned very closely with recycling of Oregon and I look forward to working closely again with the city in the future.

Wheeler: Thank you.

Alando Simpson: Good afternoon. Mayor wheeler, members of the council, for the record Alando Simpson, owner and vice president of city of roses disposal recycling, local minority owned business B-corp certified business and as far as I'm concerned the only african-american owned solid waste company in the united states of America. I'm here today to actually support and compliment the bureau of planning and sustainability and the planning commission in their efforts to try to figure out ways to make this system more equitable, more diverse and more inclusive. I myself spend countless hours trying to figure out what it is city of roses can do to truly support the city of Portland and its efforts to becoming the most sustainable eco-system in the world and I feel there's still a lot of work to be done but one important element to become the most sustainable ecosystem in the world is we have to find ways to sustain our local businesses. We have to find ways to maintain efficient businesses and operations and systems that allow our profits to stay local so we can reinvest those profits local and have hire impact and return on investment for our local communities. Nothing against larger entities I believe this is the paradigm and path we have to go down to truly find a way to make things work for everybody and create true prosperity and I'm here to let you know I'm willing to work with industry, the city and a partnership in any capacity that is available and afforded to us to achieve some of these barriers that still exist here so we can not only become the most sustainable region in the world but we can set the precedent and the model to how others can follow behind us.

Wheeler: Thank you Alando and thank you for your service on many efforts here at city hall and around the region. Thank you. Very good. So could we get the staff back up,

August 2-3, 2017

please? I'm sure we have a couple of questions. Thank you again. Colleagues, any questions?

Saltzman: I guess I sense a tension here. I'm trying to discern what is the tension underlying the testimony? All in favor of this resolution but clearly there's underlying issues here. So could you in a nonpartisan city staff way explain to us what the tensions are here?

Anderson: Sure. We have an existing franchise system and the only way to gain entry into the system is to buy out one of the existing franchisees. So the barrier to entry is having the cash and the ability to do that and having a willing seller. I think our two opportunities in terms of increasing economic opportunity are, one, making sure that we look at the work force of all of the firms that are haulers in the city, large firms, small firms, not just ownership. So that's first and then second, looking at opportunities to either help people negotiate and purchase existing franchises or and here's the tension do we want to blow the whole thing up, which basically would be do we want to not have a franchise system, have contracts, you could have three or five or six contracts for the whole city and have people bid on it. We have a whole lot of investment currently in all of their system in the trucks and we don't want to just walk away from that, we don't want those companies, smaller companies, to be harmed. We have two goods we're trying to get here, and when we have this discussion five or ten years ago it was all about should we keep the franchise system because it allows us to have small businesses thrive. So we still want to have small businesses thrive but we also want to have women and minority owned businesses be a part of this system. So what we're asking you for today is go figure this out. You're telling us, you're going to pass a resolution. We'll have lots of meetings and discussions and come up with some options, have individual meetings with all of you to come up with what might work and then put some options before you.

Saltzman: Contracts are different from a franchise in that they are good for a finite period of time and franchises are more or less indefinite?

Anderson: No, the franchises are for a particular geography also. The franchise is the way we have them is our ten-year franchise but we take a five-year pause and look at it all and start over again. It's not impossible that – I need to look at the city attorney again, we need a lot of legal advice to be able to make sure that what we propose is a legal option that we're not going to end up not being able to stand behind. I think we are all on the same page and that's why I think you heard a lot of agreement that we want to be able to both support small business but we also want to have more opportunity, so there's potential.

Saltzman: Thank you.

Wheeler: Any further questions, colleagues? Very good. So we have a motion on the table and a second for the report. Please call the roll.

Saltzman: Well, I appreciate the staff explanation and I do appreciate the need to support our small businesses but also at the same time to be able to provide more opportunities for more diverse businesses to also enter this field. I'll be looking very keenly to the recommendations that the experts at this table and others will provide. I know we have a solid waste advisory committee and I believe that will also weigh in on this, but it's a very important issue. I do think that many of the families we heard testify have served this city for a long time and served us well but there are also new entrants that wish to be players as well and we need to provide for that as well. So look forward to meeting with you in the future as we get this right. Aye.

Fish: Mayor wheeler just a point of order, to be clear we're taking up 869 first and accepting the report then take up the second matter?

Wheeler: Correct.

August 2-3, 2017

Saltzman: I guess I spoke on the wrong item. I had it directed towards the resolution in front of us.

Anderson: We don't have a solid waste advisory committee anymore we've moved that over to the planning and sustainability commission.

Eudaly: Thanks for the report. Aye.

Fritz: I'm going to make my speech on this one too thank you, everybody, who came to testify. I heard lots of support on all sides and a willingness to drill down and figure out how we can both provide certainty and provide opportunity. Thank you very much to the staff and thank you commissioner Saltzman, for really initiating all of this a while ago. Mayor Adams then combining the offices of sustainable development with the planning bureau and look where we are it's actually working. Thank you very much I have to figure out what is the ten pounds per day that I throw away and see if I can find a way not to do that. Aye.

Fish: Thank you for the report. Congratulations on the progress and I live in one of those apartments buildings where we're looking forward to being brought into the family of recycling. Aye.

Wheeler: So I want to acknowledge the past here because this is definitely building on a past legacy and it's a very proud legacy. As the director mentioned up front we're 25 years into what was a cutting edge program in its day. I want to acknowledge my three fellow commissioners who have been here for a while and I also want to give acknowledgment to former mayor Sam Adams who initiated the green bin program along with commissioner Saltzman, and my recollection is that that was not overwhelmingly positively received at the time of its implementation and now look at the results and I would argue that it is actually a very popular program. Not universally, there's no program here that is universally popular, but it has made a significant difference and it's a national model and one Portland should be proud of in terms of diverting the waste stream to the landfill and as Susan mentioned that had a significant measurable impact almost overnight. From my own part as a newcomer I look forward to seeing what the next innovations are and I believe that this provides us with that opportunity. My only admonition to those who are engaged in this business and my only admonition to you as the leadership of the bureau is think big. Let's not just be marginal. Let's think big and think about those new innovations. I was thinking in particular about the multi-family opportunities and continuing to seek leverage there but also on the commercial side I think we can -- there's been fair warning. People know where we are going and I'm perfectly okay with an aggressive posture to continue to meet our overall objectives on this program. Good report. I vote aye. The report is adopted. Now to the resolution. Any further conversation before I call the roll? Please call the roll on the resolution.

Saltzman: Those remarks I gave were directed towards the resolution. Aye.

Eudaly: Aye. **Fritz:** Aye. **Fish:** Aye.

Wheeler: Aye. The resolution is adopted. Thank you very much. We will take a three-minute recess and then we will reconvene.

At 3:14 p.m. council recessed.

At 3:22 p.m. council reconvened.

Wheeler: Good afternoon everybody this is a continuation of the Thursday August 3 afternoon session of the Portland city council session. We're back in session. We're going to read the three following items for the afternoon together. If you could read 871, 872 and 873, please.

Item 871.

Item 872.

Item 873.

August 2-3, 2017

Wheeler: Colleagues and folks, welcome, and thank you all for being here today. There are people in this chamber and in the overflow room. I want to assure people. [shouting] excuse me. Sit down. [shouting]

Wheeler: You are already disrupting the proceedings. If you continue you'll be asked to leave. [shouting] [applause] [shouting]

Wheeler: This will all become relevant later. This is an important hearing on a subject of great importance to all Portlanders. I know that today's conversation is going to be a tough one and that these are emotionally charged issues. Our community is ever changing and evolving and policing must evolve too. I was elected in part on a platform to improve the police bureau. During my campaign I identified ten key reforms for improvements that I want to see as both the police commissioner and as the mayor. Those ten reforms are still available. They are on my website and I'm completely committed to seeing those reforms through. The ordinances we're going to discuss today address some of those changes. It's important to me that we continue to build trust between our police bureau and the community by strengthening accountability and providing meaningful opportunities for public engagement. The ordinance that I'm bringing today come after months of facilitated discussion, mediation and other input. These ordinances give us a path to compliance with the DOJ settlement agreement a agreement that I made clear during my campaign for mayor that I would support. I support the tenets of that agreement regardless of who is in the white house. In the absence of these ordinances being adopted today, the path to compliance is much less clear and you're going to hear why during the testimony. There's understandably a lot of public interest in these matters. The council is here today to listen with an open mind. None of my colleagues, none of them, have pledged support to any of these ordinances prior to this hearing. All of them have indicated that they want to hear public testimony on these three ordinances before making a decision. Therefore, it's important that we get through public testimony without disruption. All of us here today I assume want everyone, regardless of their point of view on these ordinances, to have the opportunity to express their views. For the benefit of everyone who came today who wants to be heard I'm asking everyone to adhere to the council rules of conduct. They're basic be respectful of people testifying. Allow them to have their voices heard. Allow them to speak uninterrupted. Under council rules disruptions are not allowed. If you disrupt the proceedings you will be asked to leave because if you're disrupting the proceedings that means somebody who waited to come and speak their piece doesn't get to be heard. If you're asked to leave because you're disrupting other people's testimony or council deliberations and you choose not to leave, then you could find yourself arrested for trespassing. Those are the council rules, we don't like to do that and I assume nobody here today wants that to happen. I'm convinced that here in Portland, Oregon, we can have a forum on policing while abiding by the rules of decorum. I'm convinced that we can both be heard and that we can hear. I ask for your help in ensuring that we do so. Today we're going to hear on three ordinances that are essential in fulfilling our responsibilities under the DOJ settlement agreement. Here's the run of show so you know what to expect. A brief introduction by me. I'm going to talk very, very briefly about the three ordinances, not get into any detail. Call it the 30,000 foot view and why I think each of the ordinances is important. There will be a staff presentation. We'll have invited testimony and in case you're wondering I have actually invited people who do not agree with these ordinances. I think it's fair to hear all sides of this issue. I'll ask my colleagues if they have any questions or wish to offer amendments based on the staff presentation or invited testimony. We'll take public testimony. Council amendments will then be offered based on public testimony of people council members so choose. We'll have our deliberations and then we'll make a decision. So that's the run of show. With regard to the three ordinances there are three.

August 2-3, 2017

The first one item 871 court review of compelled interviews, the first ordinance attempts to resolve questions around the so called 48 hour rule, much has been written about this, much has been said about this, unfortunately with regard to my position on it much of what has been said and written is inaccurate so.

Fritz: Mayor apparently the captions are not working.

Wheeler: One moment we're going to wait while we're seeing what's happening with the captions. I'm sorry let's take. Are they back up? Okay thanks. Please let me know if the captions stop working. The first ordinance attempts to resolve questions around the 48-hour rule. It's my belief that we can, in fact, compel an officer-involved in the use of deadly force to interview within 48 hours for the purposes of an employment investigation. Further, I believe that the employment investigation can be effectively walled off from the criminal investigation. Unfortunately, the Oregon constitution, as interpreted by people who are very knowledgeable about the Oregon constitution, the Multnomah county district attorney, the Oregon department of justice and others, indicate the compelled interviews and walled off employment investigations are not sufficient. This interpretation of the law is the best interpretation we have, at this time, but I'm not convinced that a case from 1982 should be the final word on issues critical to police accountability and the public trust today. That's why this ordinance, if passed, creates a policy that would compel interviews and wall off employment investigations. I oppose the 48-hour rule. I'm clearly on the record to that effect. The previous council paid a steep price to eliminate the rule and I want it gone. While I oppose the portion of the use of force policy that refers to compelled interviews, I am not prepared to immunize an officer who uses deadly force from criminal prosecution. The policy before the council today is a good policy. We think it's legal and we're going to take it to court so that a judge can tell us that we're right. The next ordinance, 872, piece up and other amendments to the doj settlement agreement. The next ordinance makes amendments to the doj settlement agreement. The item that's obviously gotten the most attention is the Portland commission on community-engaged policing or pcccep. Meetings of the former coab devolved into shouting messages, racist and sexist slurs and even threats. Appointed members expressed actual fear about attending meetings. Many felt threatened or harassed. Many members of that organization called the coab resigned, including two of its chairs, the police refused to show up, and the city council, for the most part, refused to appoint replacement members until the process was reformed. The new engagement body that this ordinance contemplates, pcccep, will allow for the dissemination of information to the community and meaningful, public feedback. It will turn what was previously chaos into credibility. Pcccep will propel community engagement in the subject areas that go beyond what was originally contemplated in the settlement agreement and pcccep is planned not just to exist for the remainder of the settlement agreement, while it's in place, but it's intended to go on long after the settlement agreement is gone. Providing a permanent and reliable community engagement vehicle. We interviewed many, not all, but many former coab members for this process. They rightly complained that the city had also contributed to the coab not being as successful as it could have been. I listened to them and I agree with them. They rightly complained that there was insufficient orientation and training. The pcccep fixes that. There was no responsiveness from the city government to their recommendations and often their questions went unanswered. The pcccep fixes that too and it requires responsiveness on the part of the city. There is also no self-direction. The pcccep gets to set its own direction, the broad parameters allow them to take up any issue related to constitutional policing, but to go into new areas, that the coab was not allowed to go into, including racial justice issues. Something that I hope people understand is important to me and to my administration. The board will hold quarterly town halls with the public and they'll have other times set aside to do their work. They'll also have the

August 2-3, 2017

ability to schedule additional public meetings and outreach activities, if they so choose. The police will be required to participate in the quarterly public meetings. Unlike at the coab where the police chose not to participate. The pccp, in my opinion, is a key part of bringing us into compliance with the settlement agreement. Third and finally, the independent police review code changes. The final ordinance will improve the independent police review and the police bureau's internal affairs. If passed, these bodies will be able to provide recommended findings, following an administrative investigation of alleged officer misconduct. This conforms with national best practices around police accountability. The complainants and involved officers will be informed of the recommended findings when notified of the police bureau's ultimate disposition of a complaint. So, those are my 30,000-foot assessments of these three ordinances. At this point, we'll get into the invited testimony. First up, we have the city attorney, Tracy reeve. The senior policy advisor on the Portland commission on community-engaged policing, Nicole grant from my administration and Constantine Severe who's the ipr director. They will come up and discuss issues more in detail and my colleagues will have the opportunity, as always, to ask questions should they so choose. Tracy, I'll start off with you if you don't mind and, thank you for being here. All three of you.

Tracy Reeve, City Attorney: Thank you, mayor, commissioners. I'm Tracy reeve, I'm the Portland city attorney and I'm here to outline, today, the legal reasons for and the effects of.

Wheeler: Are we losing the -- are we losing the -- is the green light on?

Eudaly: It's on.

Wheeler: Okay.

Reeve: Am I to talk into the mic? The mic is on.

Wheeler: Thank you. Please do raise your hand if you cannot hear or if we lose the captions, please let me know.

Reeve: I'm here to briefly outline the legal reasons for and effect of the two ordinances before you today.

Wheeler: I have agree, it sounds like -- would you mind, Nicole, passing your mike or and see if that one works better?

Reeve: Does this work better?

Eudaly: No.

Moore-Love: Hold on just a second.

Wheeler: Keep talking, Tracy. Is that good?

Reeve: So, I'm going to briefly discuss -- not as briefly as I would like, but as briefly as possible the legal bases for two of the ordinances before you today, in addition to item 873, which director severe will cover. First, I want to take this opportunity to acknowledge my continuing appreciation for the partnership the city has enjoyed in its police reform efforts, with the attorneys from the united states attorney's office and the civil rights division of the u.s. department of justice. U.S attorney Bill Williams and his team are here today. They have been working with the city of Portland since the beginning of the doj. Investigation, to support the city's --

*****: We can't hear you.

Reeve: Commitment to the principles of 21st century policing.

Wheeler: Tracy, could you stop? We're having problems with the sound upstairs. We'll take a break until we get that sorted.

[break]

Wheeler: Is it on? Could I please have one of my staff members go to the overflow room and I want to know asap if either the video, the sound or the captioning's are not working. It doesn't have to be Mustafa, but if you could make sure somebody goes thank you. So

August 2-3, 2017

it's working now? Sorry Tracy.

Reeve: Thank you so to provide context, I would like to briefly summarize how we got here. In 2010, Aaron Campbell, an african-american man who was experiencing a mental health crisis was shot and killed by a Portland police officer. Commissioner Saltzman was the police commissioner at the time and he and mayor Sam Adams, together with a number of community advocates, including dr. Bethel and dr. Haynes who are also with us today, requested that the united states department of justice conduct an investigation of the police bureau. In 2011 the U.S doj agreed to do so and in September of 2012 they completed their investigation and issued a findings letter acknowledging the openness and cooperation of the city and ppb and recognizing that ppb was committed to improving its processes. In fact the findings letter acknowledged that ppb had begun to take steps to address the concerns raised during the investigation. The doj investigation found that while most uses of force were constitutional, there was evidence that ppb had a pattern or practice of using unnecessary force interactions with people experiencing mental illness or perceived to be mentally ill. The city and doj had already begun to work to develop a plan to address the findings and to improve ppb's provision of services and in November of 2012 mayor Adams brought a proposed settlement agreement to this council for its approval following some amendments that agreement was approved by council on November 14, 2012 and was signed by the city and the united states, December 17, 2012. Immediately thereafter as the parties had agreed to would occur the department of justice filed a federal court lawsuit to ensure that should it become necessary to do so the court would have authority to enforce the settlement agreement. Although the settlement agreement was not finally approved by the court until 2014, the city began implementing the reforms right away. The settlement agreement had seven major categories of actions to be taken by the Portland police bureau and the city of Portland. Those seven categories are use of force, training, community-based mental health services, crisis intervention, employee information system, officer accountability and community engagement and the creation of the community oversight advisory board, known as the coab. The structure of the settlement agreement was set forth in section 10 and it was unique. The oversight and implementation provisions, the parties sought to continue the collaborative relationship that they'd established and to reflect the fact that the city had been willing and active participant all along the way. It was determined that it was not necessary or desirable to have a traditional consent decree or a court-appointed monitor. The agreement placed direct responsibility for compliance with the city's elected officials, all of you, the city council. Also unique were the implementation in enforce provisions in section 10, which provided that the city would select a compliance officer and community liaison, now known as the cocl, who would collect, analyze and synthesize compliance data and who would oversee the coab which would engage the public in the process and overseen been the cocl. The cocl has responsibility for preparing compliance assessments for the doj and the public. The doj is ultimately responsible for monitoring compliance with the agreement and if the department of justice finds that the city has failed to comply with its obligations under the agreement after a reasonable opportunity to do so, there are certain steps outlined for the parties to attempt to resolve the issues and if that does not work the department of justice can go to court and ask to have the city held in breach and the federal judge has broad authority to order remedies to correct the city's breach. A fairness hearing on the settlement agreement was eventually held and the agreement was approved as fair, adequate and reasonable. The Portland police association was allowed to intervene as a party and the Albina ministerial alliance coalition was granted enhanced amicus status. Over the past five years, the city has made very substantial progress in six of the seven key areas that I mentioned and I'm just going to briefly identify some of the key items that

August 2-3, 2017

the city has undertaken. In the area of use of force, all reportable uses of force are reviewed up through the chain of command. The Portland police bureau has a force audit team with certified force auditors, which permits the bureau to analyze members uses of force to ensure conformity to directives, laws and the settlement agreement on a quarterly basis, which is provided to command staff for review and feedback, as well to the training division for identification of possible training implications and new use of force policies have been adopted and those force audit reports are also available to the cocl and the department of justice. Training. Ppb now has a brand new -- a new one-stop training facility with a wide range --

Wheeler: Tracy, could I ask you to slow down a little bit because we have some translation going on.

Reeve: With a wide range of capabilities with various disciplines, more scenario-based training are conducted. The bureau has an increased and continued focus on de-escalation and disengagement additional training has been developed for the use of electronic control weapons and what we know as tasers. Equity training has been provided to all sworn members at in-service. In 2018, all members will receive implicit bias training and command staff has received that training. The training division developed and now utilizes a more formalized needs assessment to determine future training topics and the bureau has purchased and is in the process of implementing a new learning system for tracking all elements of the training program. In addition all officers have received 40 hours of core crisis intervention training. In terms of the section of the agreement that related to community-based mental health services, the agreement recognized that the city was not responsible for community-based mental health services, but nonetheless, the city agreed to try to advance the objective of improving the community based mental health system. The city and ppb were instrumental in organizing various stakeholders to explore the creation of a psychiatric emergency center in Portland, for persons who were in behavioral crisis in lieu of having to take those persons to general hospital emergency rooms, which were not designed or staffed to respond to their needs. This collaborative effort and it was the work of many, many organizations, certainly not just the city, many health providers, private donors, the hospitals in the area and others came together and this collaborative effort lead to the opening of the unity center in February 2017 which is the first facility of its kind in the state of Oregon. The city worked with the state addictions and mental health divisions and county mental health to amend state administrative rules so that amr the ambulance service could transport persons on civil commitment holds to unity, which was important so that ppb no longer had to cuff and place persons experiencing a mental health crisis into a caged car to be transported for care and treatment and ppb is now out of the business of transporting persons who are only on behavioral health holds or mental health holds, except in extraordinary circumstances although the bureau continues to work with unity, as there have been some issues of concern. With regard to crisis intervention, the bureau created the crisis intervention training and enhanced crisis intervention training. As I mentioned all officers received 40 hours of core crisis intervention training and 133 officers have volunteered to be trained as enhanced crisis intervention training officers and received 80 hours of enhanced crisis intervention training. The bureau established the behavioral health unit and expanded the number of behavioral health response teams, which pair clinicians and an officer so that ppb has the ability to coordinate a response for those in behavioral health crisis. The bureau created the behavioral health unit advisory committee that includes peers and family members along with representatives from local government, county, state and social services organizations and advocacy groups and that advisory committee is deeply involved in providing feedback to the behavioral health unit on policies, procedures and trainings and there is the enhanced crisis intervention program

August 2-3, 2017

and continues to conduct annual trainings for interested officers.

Fritz: Can I just interrupt you for a second there. It's my understanding that all of the things you just listed have been deemed by the department of justice to be approximately the same as the Memphis model that some mentioned in the settlement agreement. Is that correct?

Reeve: So, the Memphis model was a slightly different model than the -- what has been called the hybrid model that the city adopted and there was back and forth with the department of justice as to whether the city's crisis intervention model should be evaluated on its own merits or should be evaluated as more effective or less effective than the model in the city of Memphis and the city felt there were many features in its program that were better than the Memphis model, but, it was sort of an impossibility to take something of apples and oranges and compare the city's and say it was better or worse than the Memphis model and the city in the course of the negotiations with the department of justice, we've now come to an agreement that they're going to evaluate the effectiveness of our model on its own merits and we don't need to interject Memphis into the analysis. Does that answer your question?

Fritz: Yes. Thank you.

Reeve: Ppb has implemented early intervention or eis system, which is intended to alert the bureau early with problems with officers use of force or other issues its created criteria for forwarding alerts to supervisors, increase the number of alerts sent to supervisors and the chain of command for review rather than being reviewed by the eis administrator to improve internal accountability. One of the more technical amendments to the settlement agreement concerns how teams and supervisor groups performance is going to be evaluated and the early intervention system has not proven to be effective for that so in discussions, we have come to at least a conceptual agreement that the audit data, the force audit data, will be used for that one function, so that's one technical amendment. On the accountability front, the bureau has worked collaboratively with independent police review and the department of justice and director severe will talk more about this. To establish a merit system of policies and procedures for ppb, particularly internal affairs division and ipr to handle all administrative investigations to ensure accountability through complete and thorough investigations in all cases. The bureau's also and council has approved, prior to today some code changes that allow for all complaints of misconduct to be investigated. Previously, some complaints that meet the standard for a full-on internal affairs or ipr investigation were administratively dismissed. Now those will go through a supervisor investigation route so that all complaints will be investigated at some level. So, that's the good news, but despite all of this progress, there have been significant and thorny issues which has arisen as the city has sought to comply with both the letter and the spirit of the settlement agreement. First, a very serious issue as the mayor adverted to has arisen with regard to the investigation of officer-involved shootings and other uses of deadly force. Second, the city has struggled to successfully achieve the meaningful community engagement contemplated by the settlement agreement. Item 871 relates to the first of these issues how the city investigates uses of deadly force resulting in death. The council has previously been very clear that it wants all uses of deadly force resulting in death to be promptly and thoroughly investigation by the internal affairs division and I just want to clarify two types of investigations occur following use of deadly force resulting in death by an officer. The criminal -- a criminal investigation is conducted and under Oregon law, that criminal investigation is under the direction of the district attorney, in our case, Multnomah county district attorney, Underhill who is here today. In addition ppb as an employer the city, through the bureau and its internal affairs division conducts an administrative investigation to determine if the use of deadly force was within city and ppb

August 2-3, 2017

policy and training. Those investigations have different potential outcomes the da's investigation could if the facts warranted it result in criminal charges. The administrative investigation by the city as an employer could result in discipline up to and including termination. So, to try to achieve the council's desire of prompt administrative investigations of officer-involved shootings, in particular, including prompt statements from the involved officer, the city negotiated a new contract with the Portland police association in 2016 that eliminated the 48-hour rule. It provided that in most circumstances, a statement would not be compelled within the first 48 hours after a deadly force incident. Unfortunately and despite the fact that the city put substantial effort into achieving that contract amendment, it's become clear that additional steps are necessary to achieve council's objective of prompt administrative statements. We've known for many years, in fact since 1967 when the supreme court decided the Garrity case, that police officers have constitutional rights against self-in crimination. The Garrity rule says that if a public employer compels a police officer under threat of discipline or termination to make a statement, that statement cannot be used against the officer in a criminal proceeding without violating the officers fifth amendment rights and so, as the city and the department of justice have been working for some time to develop procedures for administrative investigations of deadly force incidents that comply with Garrity rule and cases following it and with Oregon law. Like t the city council the department of justice has been consistent that it wants to see prompt reforming on uses of deadly force from involved officers and as I mentioned, district attorney, Underhill, as the district attorney for Multnomah county, has the legal responsibility for criminal death investigations in this city. Da Underhill has expressed concerns that some of the policies the city and the department of justice have contemplated or wanted to implement could negatively affect his ability to carry out the criminal investigation and if necessary to criminally prosecute. While these discussions between the city.

Wheeler: Can I interrupt you, so give me a scenario. You know, I'm not a lawyer and I don't prosecute. Give me a scenario where it could become problematic.

Reeve: Well, if a shooting occurred and an individual was killed and the city, within 24 hours, compelled a statement from that officer, the concern is that while federal law is clear that so long as that statement is put in a locked box and kept completely separate from the criminal investigation, it will not provide transactional immunity, which means full immunity of prosecution for the events in the transaction about which the statement was compelled full immunity that you can -- you can segregate the administrative investigation from the criminal investigation. What the concern is, is that under Oregon law, there's a line of cases which, at least in some circumstances, says that's not good enough. Putting it in a lockbox isn't good enough and if you compel the individual -- and this case, it's important to note, did not occur in the context of a police officer, but the court did say if you compel someone in this grand jury context, you afford them transactional immunity full immunity from prosecution around the subject of the statement. So, hypothetically speaking, god forbid this happened, hypothetically speaking, if we have a Portland police officer who engaged in a completely unjustified shooting and shot someone in -- and engaged in behavior that would constitute criminal homicide and we compelled that officer to give us an employment statement within 24 hours, the district attorney's concern and certainly his interpretation of the case law is not unreasonable -- is that that person would very likely have full immunity from criminal prosecution. So the city, by implemented the 10-10-10 policy it would like to implement which is our force reporting policy and doing that runs the risk of before a full criminal investigation can occur before it can be determined that whether or not the conduct was criminal, of immunizing the officer. The risk is admittedly small because not a lot of criminal prosecutions of officers occur, but the -- you know, you

August 2-3, 2017

always have to take the -- the likelihood of the risk occurring and the severity of the risk that you're facing and the likelihood that occurring might be relatively small but the severity could be very extreme if somebody essentially commits criminal homicide as a Portland police officer and we take conduct that means that, that person cannot be held criminally responsible.

Wheeler: So let me paint you a scenario. Tell me whether this is plausible or just ridiculous. Either way, I'm fine. So, if I am the individual who is engaged in that shooting -- and it is definitively a bad shooting -- and I would obviously have a criminal defense attorney. What would my defense attorney do?

Reeve: They would tell you not to voluntarily offer a statement.

Wheeler: But I already was compelled, so then he goes to the judge, my criminal defense attorney and I assume he taking the district attorney's well-reasoned argument and the department of justice -- the Oregon attorney general's letter, which supports that argument and he'll show it to the judge and say, dismiss the case. Won't he? Isn't that the risk?

Reeve: It is exactly the risk we're taking. The district attorney has a policy of taking all in-custody deaths to grand jury, assuming that a grand jury returned a true bill meaning that they a criminal prosecution was warranted. The grand jury would seek to prosecute that individual and the individual would make a motion to the trial court judge and say, no, I'm entitled to immunity I have a statement compelled over here my constitutional rights against self incrimination have been violated and because this issue has been very prevalent and the district attorney has explained his reasoning in a memo and the attorney general has agreed with that, you know, it's just the circumstances that that would be exhibit one on the motion to dismiss and I don't think a trial court would say, gee, the district attorney agrees that this likely confers transactional immunity and the ag agrees that I am going to try him anyways.

Wheeler: So the balance here is a long shot risk? But that long shot risk comes with significant consequences? The balance is, we're losing the opportunity, right now, to compel in administrative employment investigations.

Reeve: Correct.

Wheeler: But the flip side the risk is we could potentially lose the opportunity to prosecute an obvious crime.

Reeve: That's a very highly-likely outcome the way things currently stand.

Wheeler: It's a long shot risk. To put sort of a stupid frame on it, it's the same conversation we have around major earthquakes. It's a long shot risk but if it happens, it's significant.

Reeve: Correct.

Wheeler: And meanwhile, so the action here isn't to throw our hands up in the air and say, oh, gosh, we quit. We're going to a state court and we're asking -- we believe we stand on strong, legal ground based on what happens elsewhere but we want the clarity from the courts?

Reeve: That's correct. What's before council today is the policy that we would like to implement, which requires prompt, compelled statements from officers following a deadly force incident within 48 hours -- with 48 hours being the outside edge. It's not that we're going to wait until almost 48 hours it's the outside edge of when that could occur and then because there's a state law process for seeking, where you have something like this, where council passes a policy, but there are questions as to the legal validity of that policy, state statute provides a process to go to court please opine on whether this if this is legally valid or not. So if you pass this ordinance you'll be adopting an alternative 10-10-10 policy that will compel employment statements of officers involved in uses of deadly force resulting in death in less than 48 hours from the incident, that policy will take effect after a court says, yes, this is a legal way to do it.

August 2-3, 2017

Wheeler: And the 48 hours here, where does the 48 hours come from? I got an email from a friend of mine that said, well, why not 24 hours? Why did you pick 48 hours?

Reeve: So, as I mentioned, the 48 hours, I think, reflects council's intent to get the value of its bargain with the ppa and the policy it feels is really critical, which is getting that prompt statement from the officer after one of these events. The 48-hour rule, of course, comes from the form or provision in the contract. As I mentioned, this policy -- the new 10-10-10, nothing in this policy would require the bureau to wait 48 hours or anywhere -- in fact, it is quite the opposite. It says it's expected that the officer will be compelled no later than within 48 hours. But, it does not, anyway, preclude internal affairs division from doing that 24 hours.

Wheeler: Very good. Before I get to commissioner Fritz, prior to this being an issue we have had four officer-involved shootings in my first tenure. The first one was quanice Hayes and for the record since that criminal proceeding is over, I did compel testimony prior to 48 hours.

Reeve: Correct. And frankly that is where all of this came to a head because once that occurred, you know, the district attorney was very concerned that that -- had that been a criminal shooting, it went to a grand jury, they returned a not true bill so it did not end up being that bad situation that we talked about, but that is sort of what brought this issue into clear focus for all the parties. As we were working with doj to accommodate these two things, united states attorney bill Williams who is again here with us today said, I'm getting everybody together on this issue. The united states is not going to tell the elected district attorney of Multnomah county that we're going to override his interpretation of the law in an area that is entrusted by state law to him. So, we all got in a room. We talked about it. We got a full understanding of the district attorney's position. He furnished us with a written analysis by his office, that analysis has been reviewed and in essence blessed by the Oregon attorney's generals office and we put together an alternative -- the 10-10-10 policy that recently went into effect, which no one is happy with because it provides the officer will not be compelled to give a statement until the district attorney either says, I'm fine with you compelling a statement at this point or until the criminal investigation is concluded.

Wheeler: Commissioner Fritz?

Fritz: What's the significance of the 48 hours under the present policy? Is the officer compelled after 72 hours? Does that not mess up the criminal investigation?

Reeve: No, the currently policy that ppb just implemented, it does not -- it provides an officer will not be compelled to give a statement in the employment administrative investigation until either the district attorney says, yes, I'm okay with compelling him or her or, until the criminal investigation process is complete which would normally since the district attorney takes everything to grand jury, it would be after the grand jury proceeding if there's no criminal prosecution. If there's a criminal prosecution it will go longer.

Fritz: Even under the previous rules, they couldn't compel after 48 hours, either. Is that what you're saying?

Reeve: That is what became -- that issue is what became very clear after the quanice hayes shooting. Yes, that's when, you know, we all sat down in a room and fully-understood the import of the da's analysis of Soriano. The city's -- my office was focused on the Garrity analysis, which is the federal fifth amendment analysis and because the Soriano case did not involve administrative employment investigations, we were not viewing that as clearly applicable to this situation as the district attorney does again the legal argument could be made either way, but it is certainly not the position that the district attorney is taking, based on that case, is certainly not an unreasonable legal interpretation and the risk is real.

Fritz: So what we're doing here is we agree with the community. Most people in the

August 2-3, 2017

community we do want to be able to compel. So we're having a policy that says we can, but we're going to stay until the court says we're over right or not is that accurate?

Reeve: Correct.

Wheeler: I want to put this on the record. We want the right to be able to do that without ramifications for a criminal prosecution. There may also be logistical reasons or investigative reasons why even if we have that right, we do not do it and I just want to be very clear with people. There could be circumstances where it's better for the investigators to do work prior to that compelled statement I just want people to be aware of that.

Reeve: Correct. I know one of the requests that I saw, at least on some of the testimony -- or community input that was submitted was that it should be within 24 hours instead of 48 hours. That could, on occasion, not provide the investigators the time they need to get their ducks in a row before they sit down and interview the officer.

Wheeler: Commissioner Eudaly?

Eudaly: Thank you. I didn't -- I think we're getting a little confused on the 48-hour rule. I hadn't heard it clearly stated what we had previously was officers who used deadly force were entitled to 48 hours notice before being compelled. Is that --

Reeve: Correct and the practice was -- and the interpretation was that officers generally were not compelled within the first 44 hours after the event.

Eudaly: Well, they couldn't because we had to give them notice.

Reeve: There were certain circumstances which the city could have.

Eudaly: So now we're saying, we can compel -- well, I mean, given a ruling in our favor, we'll be able to compel with no notice?

Reeve: You know, I would have to look at the specifics of the contract. I doubt very much if it's no notice because --

Eudaly: One hour? 12 hours? I'm just trying to -- it's not -- I feel like we were talking about this backwards as if -- the 48 hours comes from notice to the officer. So, we're not now saying it has to happen within 48 hours?

Reeve: The policy --

Eudaly: We can give a shorter notice?

Reeve: The policy you would be adopting if you passed this ordinance has the expectation, it is not just notice. It has the expectation that circumstances, the officer will be compelled within 48 hours.

Eudaly: Okay.

Reeve: Okay. And I just wanted to -- as we've already identified, we believe that there are good arguments to be made that in this particular circumstance where it's an administrative employment investigation, the Soriano line of cases should not apply and the city should be able to -- assuming it has appropriate procedures in place to wall that statement off get a statement promptly after the event and that's what we would be asking the court to rule. I will say that the district attorney has said in conversations with me and in public statements that he supports that effort to get a court interpretation and he acknowledges there is some gray area in the case law. Okay. The second item before you -- where there any other questions, right now, about the first ordinance? The second item before you is item 872, which relates to the amendments of the settlement agreement. As previously touched upon, the city's made very significant progress toward compliance and as of last October, partial or substantial compliance with all sections, except for section 9 which provided for the city to create coab. For a variety of reasons and I wont belabor them the mayor's touched on them it's clear with the benefit of hindsight that the city did not provide the training and vetting and other support to the members necessary before they began their work. That the charge to the coab was very broad and, that for a number of reasons, and despite -- I really want to emphasize this -- despite the

August 2-3, 2017

incredible efforts of many coab volunteers who dedicated literally countless hours, well beyond what was expected when they agreed to serve, to work on this very important experiment in direct community participation in police reform. The coab simply was not successful and, we've attached, as an exhibit, Kathleen Saadat, who was the second chair of the coab. She's an incredibly well-respected and talented leader in the community. Deep ties to the civil rights community in Portland, the African-American community in Portland and the LGBTQ community in Portland and she really put forth incredible effort to try to get the coab back on track and did make significant improvements and was, herself, the target of terrible and abusive behavior and she eventually resigned and when she did so, she provided the city with an exit report which is attached to the ordinance and details some of the issues that occurred, a lack of clarity regarding the coab role, mission process and structure and that resulted in what eventually became insurmountable barriers to the success of the body. So, as the mayor noted, we reached a point where many coab members had resigned, others felt unsafe. It was difficult for the body to obtain a quorum and several coab members called for a temporary halt to coab activity and in late August of 2016, after consultation regarding these issues, the city and the United States agreed to a 60-day hiatus of coab activity. During that time, the city took numerous steps to engage with the community on a way forward and reported on those efforts at the October 2016 status conference. The city circulated a survey, participated in a forum hosted by Maranathal Church and representatives in the Mayor's office and my office reached out to and spoke with mental health peer support specialists, advocates and providers for those experiencing or with a history of mental illness. City representatives spent many hours in discussion with members of the steering committee of the Albina Ministerial Alliance coalition, sought advice from other community and faith leaders discussed it with the Coab and Kathleen and the first chair of the coab. City staff interviewed almost every former and current coab member to get their perspective. As a result of those efforts on October 12, 2016, the city shared its first proposed framework for conceptual amendment to the coab provisions. The city then -- that same month, October, there were additional meetings with the Amac, United States and PPA to discuss how to move forward with improvements. Mayor Hales and Commissioner Fritz attended those and reassured the Amac of the city's continuing commitment to meaningful community engagement. The city suggested a facilitator might be useful to further advance discussions. The Portland Police Association and Amac had discussions among themselves and they proposed two facilitators to the city. The city retained one of the two suggested. In November and December of 2016, the Amac and the PPA had additional meetings and provided a proposed document regarding their discussions to the city. In January, February and March of 2017, the city, the Amac, the Department of Justice and PPA held facilitated meetings to discuss how to move forward with the community engagement board. Various proposals went back and forth and at the last meeting in March, it was agreed that the city and Department of Justice would meet without the other parties to prepare a more detailed proposal. Many of the meetings concerned the issue of whether the community engagement body should engage in oversight of the settlement agreement and following many discussions the parties agreed to accept Reverend Dr. Haynes' definition of oversight as the ability to review and make recommendations. In the meantime the city and the Department of Justice entered into a 9th Circuit mediation process to address issues raised by the city in a review as to the appropriate scheduling and role of the court, but since that time, the parties utilize the mediation process to have meaningful discussions on how to move forward on the areas where progress has stalled. Principle was the coab. The other key issues related to the accountability issue we just discussed about compelled officer statements. How to harmonize this and in particular the time for CRC appeals. An improvement to the

August 2-3, 2017

accountability system, which director severe is going to discuss to give the investigating body to make recommended findings based on its investigation and the issue about the employee information system. So, the parties recognized in these discussions -- and had recognized for some period of time -- that some amendments to the settlement agreement would be necessary after the five years of work under the settlement agreement and the settlement agreement had contemplated a process to make amendments, should they become necessary. The parties knew that with 180-paragraph agreement, they were unlikely to get absolutely everything right in the first place. So, as a result of the mediation discussions, the members of the department of justice team assigned to the case, city staff and the Portland police association reached conceptual agreement on a number of amendments and on a new framework to achieve the community engagement objectives intended for the original coab and Nicole grant will speak to the policy considerations underlining that framework in just a few moments. The draft settlement agreement amendments and framework plan for the Portland commission on community-engagement policing were provided to the Albina ministerial alliance coalition for justice and police reform on July 7, 2017 and an all-day mediation session with the 9th circuit mediators, attended by the city, the department of justice, the amac and the Portland police association occurred on July 14, 2017. At that mediation, amac provided the parties -- all of the parties with thoughtful comments and concerns and the parties agreed to several revisions resulting from those comments and concerns at that time. We then circulated a revised draft pcecp plan reflecting those revisions three days and later and the amac provided additional comments in a letter dated July 21, 2017 and we made further changes to the draft-amended settlement agreement and the draft pcecp plan in response to those comments. The proposed amendments that resulted from all of that process that I just outlined are in exhibit four and the pcecp amendments or the community engagement amendments are at section nine and one change to note is that because the new body, as the mayor mentioned, is intended to endure beyond the effective date of the settlement agreement, only the key components are set forth in the agreement. Most of the framework is attached to the agreement as an exhibit and city council would be adopting that framework as binding on the city when it approves the amendments to the settlement agreement, should it do so and during the lifetime of the settlement agreement, while the settlement agreement is in effect, amendments would have -- any amendments to the community engagement plan for the pcecp would have to be approved by the department of justice. The city also, at the request of the amac, included in the settlement agreement, amendments that during the term of the settlement agreement, the amac would be consulted about any amendments, as would the Portland police association. So, the reason for putting it as an attachment in a plan was, again, that we're well on the road to and hopefully nearing a time when we will come into substantial compliance with the settlement agreement and within a year after that occurs, the settlement agreement will no longer be in effect and it was department of justice staff who suggested it would make sense to have the pcecp framework be a stand-alone document, once that occurs. So, just very, very briefly, we've already discussed the companion ordinance regarding the alternative 10-10-10 policy. Paragraph 117 of the draft settlement agreement enables the city to use force audit data whether that eis data to conduct certain analyses of the supervisors and team levels, which have proven problematic using eis data. This is something that the doj thinks will work for them at the staff level. Thanks

Wheeler: Tracy, we have a lot of people signed up for public testimony, but this is all important -- [applause] let's focus on the main points and I'm going to ask Nicole to focus on the main points and Constantine -- the council has had the chance to go through these documents in detail.

August 2-3, 2017

Reeve: Yes, I think the other amendments are of less interest to the public.

Wheeler: I agree, but I didn't want to necessarily want to make that presumption.

Niccole Grant, Mayor Wheeler's Office: I will keep my remarks brief, my name is Nicole Grant and I'm a senior policy advisor for Mayor Wheeler and I'm here to talk to you about pccp the proposed Portland commission on community-engaged policing. I feel compelled however to address one critical area of concern to all in this room. Trust. There's a lot of distrust in city government, within Portland around community engagement, in part resulting from the coab. Multiple parties share the burden of the coab's failure and much of this burden falls on the city of Portland. The city failed to create a structure to withstand a poor process, lack of training, lack of buy-in and the public disruptions that plagued the coab for a period of time. It's understandable that this new plan for community engagement, which is intended to reach beyond the settlement agreement, has stigma attached to. City staff including myself actively engaged the Portland community over the course of several months, ultimately asking, what should community engagement look like in Portland? Much of the pccp plan was developed in consultation with the doj, ppb, amac and the wider Portland community we interviewed community leaders, religious leaders, mental health advocates and former coab members on the failures around the coab and what could be done better. Moreover, the community was invited to complete a survey and the responses to that survey informed the plan you have before you. That survey was distributed online on the coab and oni websites and distributed at community forums and advisory council meetings. The city actively engaged amac during this time and has done so for the last several months through a series of facilitated meetings and amac's involvement in mediation with the city and doj. Additionally, as Tracy mentioned, the city has incorporated a number of amac suggestions. The people of Portland need to know that this proposal was born out of thoughtful engagement with the community. We know what's at stake. If we do not move forward with a plan, we will be faced with continued and unyielding strife between the bureau and the community it is bound to serve, creating a lose-lose situation for everyone in our city. Pccp was developed with increasing and strengthen the community on systems of government and increasing the communities access to those systems. Pccp was developed with the intention of elevating those voices that have been consistently marginalized throughout Portland's history and that continue to be marginalized. One of the major lessons learned from coab is the need for clarity around a board of commission's charge of responsibilities. The coab was given little direction and they were forced to describe meaning to vague settlement agreement language and this became an area of contention. With the goal of achieving meaningful community engagement around key policy areas, pccp's mission will be two-fold. One, it will assess the bureau's community engagement initiatives and recommend strategies focused on strengthen the bureau's relationship with the community. Two, as it relates to this first piece pccp will function as a facilitator soliciting and disseminating information between the bureau and community to improve transparency and accountability top to bottom. This empowers pccp to facilitate the communities feedback to the bureau on key policies of concern, uses of force, officer discipline, interactions with those experiencing mental illness and racial justice. The bureau in turn will be required to provide timely written responses to pccp and by extension the community. The bureau must hear about what it is doing and not doing from constituents who have not been fully engaged in city processes. Equally important is the community's need to learn about what the bureau is doing and what it could be doing better. Pccp is a tangible step toward a larger ideal of what we want our city to be, a city that encourages and upholds accountability through informed, critical and civic engagement. Thank you.

August 2-3, 2017

Wheeler: Thank you Nicole.

Constantine Severe, Director, Independent Police Review: Good afternoon, mayor. Members of the council. My name's Constantine severe I am the director of the city's independent police review. I have served as a director of ipr since June of 2013 and been a staff member of ipr since 2008. I'm here to request that council approve all the ordinances in front of it. I'm going to -- in the interest of brevity, kind of skip through my prepared remarks and get to the essential points. So, ipr was created in 2001. Basically as a complaint intake point. Over the years, ipr's role has grown significantly to us conducting our own investigations, acting as a monitor and observation of all shootings and a lot of the growth of ipr really started with the settlement agreement with the department of justice and the ability for ipr to be fully-staffed. Ipr, back in 2012, had two and a half investigators now we have seven investigators. From 2001, when we were created, until 2012, ipr did not do a single independent investigation. In 2016, we started 30 investigations we're able to conduct an investigation of a former police chief. I had the resource to be able to set my investigator across the state to Harney county to be able to talk to a number of witnesses and that is the result of the settlement agreement where the city and the department of justice and in particular, the hard-working individuals in the civil rights division and folks in the u.s. attorney's office of Oregon, without them, the city would not have the accountability system that it has today. There needs to be more improvement, but I think it's really important, given the difficult times that we live in right now, that we recognize the hard work of the career civil servants and the department of justice they work for us, not for a particular administration. So, one of the main goals of the settlement agreement is -- or, one of the several goals of the settlement agreement, particularly section eight, which is the accountability section, is that all investigations are completed in 180 which is paragraph 121. Paragraph 122 administrative investigations are done concurrently with criminal investigations. Paragraph 123, that the city has to have a plan if it can't meet its targets. Paragraph 128 calls for the city to reduce redundancies and that ipr as the ability to conduct meaningful independent investigations. In May of 2015 the department of justice met with city representatives and asked the city to develop a framework that the city would be able to consistently meet the 180-day investigation framework, that all complaints should be investigated with administrative findings attach. The city reduced the redundancies and ipr would articulate which they would do its own independent investigations the result of that ipr moved forward in investigating the following cases, cases of captains or higher, cases where there is a crowd control or a demonstration, complaints alleging disport treatment and complaints involving vulnerable populations, such at the juveniles, elderly and those experiencing mental illness. Agenda item 873 includes an addition to city code that ipr and internal affairs provide recommended findings after conducting administrative investigations that is a national best practice for investigations, period. That it would lead us to have better administrative investigations, it would save time and I think, as important as all of those other goals are, most importantly, responsive to something this community's been asking for prior to ipr's process. The other significant change in agenda item 873 is that it would change what we now call dismissal to administrative closure and the reason we want to change that is to be more reflective of the process that we undertake at ipr and nicole brought up a really good point about trust. As ipr director, I want to own that our process is -- is supposed to be a process that can lead to healing and holding officers accountable for their actions. For a long time of ipr's history we were not listening to the community we hurt the community and, you know, we want to listen to everyone. Even people that we disagree with and, there was a period of time where somebody could call ipr and an investigator on the phone with them would say, well, you know, you got a traffic ticket and, you know, officers can give traffic tickets, that

August 2-3, 2017

doesn't seem like misconduct to me and hang up the phone. That seems unacceptable and every complaint that ipr receives will receive a two-week preliminary investigation for us to determine what's the best path for it. Whether that's investigated by ipr or internal affairs or if it's really something of a quality of service, this officer -- I called about a burglary and the officer didn't get out of his car. That should be dealt with at the sergeant level if it's not a continuing behavior. So, those two aspects of 873, I would urge you to approve because, one, it would make our process better and this was -- I was trying to count the other day, this is, I believe, the fifth code change to ipr since 2010. It's been a significant road and there have been times where the changes, in themselves, did not seem to be very big or monumental but I think the city can rightfully look at the administrative investigation process that we have now and say with a straight face we have a much more robust administrative investigation process that we did prior to the department of justice intervention. I would also ask you to support agenda item 872, particularly the revisions to paragraph 121, which exclude appeals to the citizens review committee from the 180-day timeline. The community members who serve as crc volunteers are extremely hard-working and the -- the and extends the days that the crc has to complete appeals of misconduct of points. The community members who serve as crc volunteers are extremely hard working and the language and agreement as it exist right now gives the crc 21 days and that required the crc to meet twice a month for over a year to try to deal with that and as a result, we ended up losing some very good community members who volunteered to serve their city that they care and love, but not at the expense of never seeing their family. So, I think the amended language in the settlement agreement is much more reflective of having shared goal of having a robust accountability system and having true community input of a diverse group of community members. I would also ask you to support agenda item 871. I won't go into a lot of depth about this, but, you know, one of the things about ipr is that every officer-involved shooting, an ipr representative shows up at that shooting the night, the night of the shooting within -- I would hope -- within an hour or so and, just luck of the draw, for 2017, I have been at every officer-involved shooting and we have been able to create, over the years, I believe, an administrative investigation process for officer-involved shootings that has gone from where it would take literally years for the city to be able to investigate an officer-involved shooting, in the situation with quanice Hayes and his death, the city was able to conduct the -- as the mayor pointed out -- the interview of the involved officer, within 26 hours. That was the fastest, in my recollection. That's really what we should hope, in the city. You know, I've met with the Hayes family and I've seen the hurt of what occurred that day. It is something that affected me and I think we owe it as a city, we owe it to the relatives of someone who is shot by the Portland police bureau to say, we have done everything within our means to look into what happened and we also owe that obligation to the Portland police officers. We send them out there to do a very difficult job and the concerns that I have about the current deadly force investigation process is that we now have a process where we can be weeks, months, possibly years before the city, as the employer of the officer, being able to interview that employee about what occurred. That is something that violates the public trust and I support the mayor's resolution in the hopes that we can get the Soriano issue clarified. I wrote a memo back in early June, stating the position of the independent police review. Frankly, I believe state case law is clear. There is a case called state versus beugli done by the Oregon court of appeals back in 1994. I'm not going to go into the weeds about that, but that was an administrative investigation case and the Oregon court of appeals said, quite clearly, that Soriano did not apply in that particular context. There was no transactional immunity for -- in that case, it was a state trooper. That said, the city's failure to look at all of these issues when it approved the collective

August 2-3, 2017

bargaining agreement with the Portland police association we have to own that. We made a promise to the community that the 48-hour rule is gone. We're sitting here, six, seven months later, looking at alternatives and I'm going back to what Nicole said about trust because really, I'm a police accountability professional. Basically I'm in the trust business. When ipr was created, one of the stated goals and ordinance and something I go to a lot is the ipr was created to increase the public's faith and confidence in delivery of police services and unfortunately, I feel that ever since the memo came out at the district attorney's office, there has been a significant tension between the community and the city and the Portland police bureau that didn't need to be there. I think all of us who work for different governments are adults and we should have done our due diligence and folks don't need invitations to participate in important community conversations about these types of issues. That said, I'm going to really keep it really short, the last thing about the officer-involved shootings is that there has been a significant detrimental effect in the timeliness of the ability for the city to do administrative investigation in officer involved shootings. In the Quanice Hayes case, the city was able to go from the incident date to the case going to the police review board in under five months. In the situation, in the case involving Mr. Terrell Johnson, that officer was not interviewed for six weeks. That is something that, frankly, the city of Portland employee, that is something I am ashamed of and I -- with all of my soul and being, support the mayor's resolution. Thank you.

Wheeler: Thank you, director severe and I want to acknowledge our independent auditor is here, as well, Mary hull caballero, has been listening patiently.

Saltzman: Is there anything in the changes to the settlement agreement that removes the council oversight of the settlement agreement and shifts that to the mayor's office only?

Reeve: No, the only change -- the only area that is specific to the mayor's office is the -- the pcep. But otherwise, council remains responsible, as the elected leaders for the compliance of the settlement agreement.

Fritz: I was just going to say that commissioner Eudaly and I have amendments that will further make that clear.

Wheeler: I'd like -- we have three more invited guests. I'd like to call up --

Eudaly: I have questions for them.

Wheeler: Commissioner Eudaly, I apologize.

Eudaly: I'm going to decide where to start. I am curious if there will be any difference in how we proceed with the ability to compel testimony in less than 48 hours? I mean, what -- what happens after an officer is involved in a shooting and how would this meaningfully change the way we proceed?

Reeve: What happens, under the policy that just went into effect and how would the policy that you'd be adopting change it? Am I understanding your question correctly, commissioner?

Eudaly: I guess I don't want you to have to outline the past policy, the current policy and the new. So let's compare current to how this would change and what that means, moving forward into an investigation.

Reeve: So, right now, under the policy that just went into effect at the bureau, an officer will not be compelled until either the district attorney says, yes, it's okay to compel the officer it won't negatively impact my criminal investigation or until the criminal investigation is complete. That does not mean that the bureau doesn't start the administrative investigation. They do start the administrative investigation immediately. Iad is interviewing everybody else, they're just not getting the compelled statement from the officer.

Eudaly: I don't want you to have rehash all of that. I'm asking, what is the difference as far as, you know -- does the officer go on administrative leave, either way? I want to know what the difference is.

August 2-3, 2017

Reeve: The only difference is compelling the officer's statement within no more than 48 hours.

Eudaly: So it makes no difference to what happens after that?

Reeve: Correct.

Eudaly: Okay and, I mean, just to be clear -- because I'm not sure that there's widespread public understanding -- if a citizen commits a murder, they cannot be compelled, right?

Reeve: Correct.

Eudaly: Okay and so, compelling is a higher standard, I guess, or a different standard that we apply to certain public employees?

Reeve: We are the government and so by compelling, we are exercising governmental authority, even if it's our employee. If we are taking that statement that was compelled from the officer under threat of termination or discipline and we're giving -- this is clear under federal law -- and we give that statement to the detective's division that's investigating on behalf of the district attorney and then that is used either to investigate or, as actual testimony -- actual evidence in the trial, that violates that officer's fifth amendment right against self-incrimination that anyone has. A normal citizen who's not employed by the city we couldn't compel them to do any statement not could the district attorney. The issue arises because as the employer, we have a right to compel the employee or to discipline or terminate the employee for refusing to answer our questions, as the employer, because there's -- the government also is wearing the hat of prosecuting, that's where the difference comes in. Does that answer your question?

Eudaly: Yes. Thank you and the rest of my questions, I'm not sure who's the best person to direct them to so I'm just going to state them and whoever wants to answer, can answer. So, I received dozens of emails from people that don't support these amendments and, I've kind of called some of the most common concerns or the most compelling concerns to me. One question is, are we somehow eliminating tracking analysis and review of racial profiling data through any of these amendments?

Grant: So, the creation of pcep directly involves the office of equity within the Portland police bureau. Specifically, it references ppb's racial equity plan which addresses tracking stops data and how we're going to implement policies around that. The reason why this was included, it replaces the cprc's 2009 racial profiling report. The cprc disbanded I don't know how many years ago it's no longer in operation and the racial profiling report is outdated. No additional work was being done on that and so in reviewing the settlement agreement and also wanting to connect this work to equity, we thought the most appropriate kind of avenue would be to engage ppb's office of equity and involve the racial equity plan. It addresses community engagement, racial profiling, stops, data, et cetera.

Eudaly: So, we're not eliminating tracking? We're adding it back?

Grant: Correct and the framework for pcep, and not referenced specifically in the settlement agreement. Much of what was formally in the settlement agreement, regarding section nine, has been placed in the pcep framework. The obligation to track the data remains in the settlement agreement.

Eudaly: Okay. Good. Another concern that is going to be addressed by one or more of the amendments that will be proposed later is that the entire pcep task force or commission will be appointed by the mayor. Why not conclude -- include any language around ensuring that the make-up of this commission would either -- or both -- reflect our actual community, as well as place emphasize on the groups that are most impacted, which are probably going to be people with mental health issues, people of color, perhaps people with disabilities. Why no language around that?

Grant: I believe there is language around that, in the settlement agreement, if I'm not mistaken and in the document, the framework itself. We're open to specifying groups. I

August 2-3, 2017

have no opposition to that.

Eudaly: Okay. Another concern is that we're eliminating independent community oversight. It's my understanding that we do have that through ipr and through the citizens review committee. Would you say part of the misunderstanding or confusion around coab is that they were also supposed to provide oversight or --

Grant: That's accurate.

Eudaly: Okay. So, we're not eliminating it, but we are, in effect, taking away additional oversight that was supposed to have been provided by coab?

Grant: So, one of the things -- the areas of consensus that we reached with the amac, ppa and doj during our facilitated discussions was the definition of oversight. To review and make recommendations. That said, I think the common understanding of oversight is to oversee something. Coab was never intended to be a monitoring body and I think that's the rub and so if the question is, will pccp be an additional monitor? No, pccp will not be a monitor.

Wheeler: And just to be clear, in addition to ipr and crc, during the life of the settlement agreement, you still have the doj and the judge and the cocl.

Eudaly: So, in your opinion -- whoever wants to answer this -- what should coab have been doing to satisfy the settlement? And, what will pccp be doing and how will that be functionally different from what coab was intended to do, if at all?

Grant: We'll start with pccp. In our conversations with -- during the facilitated meetings and mediation, the focus really was community engagement. And, this is in line with a 2015 technical assistance letter from the doj where they address what it meant—what it should have meant to independently assess the settlement agreement and also how coab was to go about doing that. In that letter, it directs the reader to various paragraphs within the settlement agreement that specifically address community engagement and so, with pccp, it really is a focusing that did not occur with the settlement agreement language. We are trying to correct that by being very clear about what we need for this community engagement board and what the originally intentions for the parties were in drafting that language.

Reeve: Just briefly from a legal perspective there was one thing that was a deliverable for the coab and that was a community engagement plan and the city needs that community engagement plan and needs ppb to work with the community engagement body to adopt one to be in compliance and that deliverable never occurred and, perhaps, because coab was really focused more on monitoring-type roles.

Eudaly: Are pccp's recommendations optional?

Grant: No. Pccp will be making recommendations to the mayor, to ppb, to the doj

Eudaly: But, is adopting them optional?

Grant: Yes.

Eudaly: And then my final question, or concern, is just, I'm hearing from a lot of community members that they didn't feel that there was adequate public engagement. I'm hearing from -- I'm sorry, I've forgotten who detailed -- it might have been you, Nicole -- what our outreach was and what those opportunities were and if you could just detail that again?

Grant: So, I'm a carryover from the hales administration and myself with former policy advisor Deanne Mitchell and Judy prosper compiled a list of every possible person and organization that we could think of to engage on the issue of community engagement. We hired someone part-time to conduct the survey and synthesize information so we went around meeting with former coab members, mental health advocates -- and there's a spreadsheet that details all of this. I'm happy to provide you with that after this meeting, but, we met with -- who else? The categories of groups and individuals I listed earlier, over

August 2-3, 2017

the course of six to eight weeks, if I recall. Perhaps an hour or an hour or an hour and a half each taking copious notes. We had the part-time employee there with us taking notes we engaged additional staff to keep track of this information and once it was complete, it was compiled into several documentations by the part-time employee. The survey was distributed at various meetings and posted online, as I mentioned. To be frank, during that time, we just didn't have as much feedback from folks. There was a lot of outreach and not a lot of responses and so, there were people that I engaged -- it would be great to speak with you on this issue, would love to hear your thoughts. You are very active in the Portland community and we were met with silence on the issue. That is simply what happened.

Eudaly: Twinkle or fingers or thumbs down, people.

Grant: We really did our best to conduct the outreach and make sure. I mean, I don't think anyone can say that this board could be successful without actually engaging Portland on these issues.

Eudaly: How many people responded to the survey?

Grant: I'd have to pull that for you, I can find out.

Eudaly: Did we speak to Kathleen saadat?

Grant: Yes. We engaged Kathleen heavily and at that time we did sit down with her.

Eudaly: Okay. Thank you.

Wheeler: So, I'd like to -- unless there's -- are there any questions, right at this particular juncture? I'd like to invite the next panel, which is dr. Bethel and dr. Haynes to come up and speak I believe they have been waiting very patiently and I believe the district attorney would like to say a few words and then we'll get into public testimony. I want to correct the record on something I said earlier. I was incorrect, I stated that the police refused to show up at the coab, that was not correct. That was very imprecise. Former chief o'dea advised Portland police members to not attend one crc meeting, two separate issues. So, I want to correct the record on that, I apologize.

*****: [audio not understandable].

Wheeler: I'm sorry?

*****: [audio not understandable]

Wheeler: We're going to hear from dr. Bethel and dr. Haynes and then I'll ask my colleagues if they have any comments or amendments they want to introduce and then we'll go to public testimony. Gentlemen, thank you so much for being here and thank you for your patience.

Reverend Dr. Leroy Haynes Jr: To honorable mayor ted wheeler and distinguished members of the Portland city council, I'm the reverend dr. Leroy Haynes junior. Amac has led the major effort in police reform in the city of Portland the last 13 years, beginning with the Kendra James shooting case, through the James Chassie and the Aaron Campbell case, as well as many others. These men and women were victims of police violence that led to the u.s. department of justice investigation of the Portland police bureau and subsequently, to a lawsuit in the federal court and the settlement agreement that was filed in federal judge Michael Simon court. On the December 19, 2013 the city of Portland police association, u.s. department of justice and the amac coalition for justice and police reform they were given advanced amicus status. In the case decided to move forward on the settlement agreement adopted by the council in November of 2012, I'll remind you that the settlement agreement was created to be a different kind a model from the traditional model of having a administrator selected by the judge to supervise the progress or non-progress of the agreement due to entities of cocl and coab. All parties agree that cocl and coab models have both strengths and weaknesses that created inefficiencies in achieving the purposes and goals. Now, following the second appeal by the city of Portland to

August 2-3, 2017

remove major parts of the settlement agreement and to remove judge Simon from the case the ninth circuit court of appeals for mediation was called for and granted. In this mediation process, although focus groups had previously been held in the community to receive feedback on the community engagement proposal, amac, the only grassroots voice, with enhanced amicus status was intentionally left out from having a seat at the mediation table until everything was drafted, and then called upon to approve and to make limited recommendations on the revised proposal. In light of the narrative, amac still continues to engage and make recommendations. I would not attempt to cover all of them, but a few critical ones of the new ordinance of the settlement agreement and the community engagement. First, we want to say that community engagement is an essential component of police reform and settlement agreement, but it is only one of several major components of 21st century community policing. We appreciate the community engagement focus, but additionally to the replacement plan called the Portland commission on community engagement, pcccep, it does negate and dilute the language of the importance of citizen oversight. When you compare the language that is in this settlement agreement and the language of pcccep, there is a dilution of the language and as the ability in the settlement agreement to have an independent assessment in order to make a recommendation. Amac defines this recommendation overview as the ability to review or make recommendations separate and independent from the city. Removing this community oversight part of the agreement undermines the building and the trust between the community and the police. After all, there is when it comes to the difference between ipr and the difference with overview of making recommendations on the settlement agreement, those are two distinct differences that exist. Secondly, amac has serious reservations about the city's proposal for pcccep member selection. It limits the diversity expectation and efficiency when there are excusable absentees. We went through a variety of things with coab, with sickness and delay in replacement of members of the board became dysfunctional because there were not enough members for a quorum. Furthermore, the selection should be diversified and larger. The responsibility we believe should be with the whole city, with the mayor as the chief administrator of pcccep. Amac understands the need for limited meetings for efficiency and to prevent burnout that did take place in coab, but if the board is only having two meetings a month, both closed to the public, that limits the amount of engagement from the community and participation. One of the two meetings should be open to the public and fourthly in reference to the 48 hour rule, it is critically important that we don't go backwards on the 48-hour rule and still follow it. We must push forward to interview officers engaged in the use of deadly force against citizens within a 24-hour limit while legally petitioning judicial clarification of the district attorney's legal opinion, as well as seeking legislation for clarification by our state legislature. One thing to remember in this 48-hour rule: When we first started pushing this some 13 years ago, it took two weeks to get an interview from a police officer in the Kendra James case. Two weeks for the interview. Eventually, we went to 72 hours and from 72 hours, eventually to 48 hours. So as you can see, the case was -- whenever the officer was ready, and let us keep in mind the historical context. One of the reasons why the community pushed this 48-hour rule is because the officers that killed Kendra James met over at the Lloyd center in Applebee's and got their stories together and then went to the d.a. and so this is a critical moment to create trust and accountability within our community and the police. Thank you very much.

Wheeler: Thank you, sir. We appreciate it. [applause]

Fish: One thing you said at the end on the 48-hour rule and I wanted to ask you. We had been told repeatedly that one of the challenges that we face on the 48-hour rule has to do with a constitutional issue in how we balance a constitutional right on the one hand with

August 2-3, 2017

our right as the employer to do a prompt investigation. And so you said there might be some recourse in the legislature to fix this problem and my question is if it is a constitutional issue, what is it that the legislature could do to facilitate the goal we all share of preserving the right to get a prompt interview?

Haynes: First of all, I think the strategy of going for a judicial clarification is the most rapid way, but there can be amendments, have our lobby group for the city to lobby the legislature for an amendment to put some clarification that would clearly define what is separating the administrative from the criminal.

Fish: Thank you, sir.

Wheeler: Thank you for your patience.

Reverend T Allan Bethel: Thank you, mayor and to the council members. I serve as the president of the Albina ministerial alliance and cochair of the amac. This is not a power play or a test of wills, but it is for the good and the betterment of the fabric of our community. Coab number one as I referred to it did have its issues, but also, we've had a change in those who sit at the table, which means that it has brought us those who have very limited institutional memory as well as institutional history as to what has transpired over the years we have been working with the settlement agreement. For long, the amac and the broader community has called for the removal of the 48-hour rule and celebrated its removal in the last Portland police association contract, though it came at a high dollar cost of increased salaries etc., to now discover the policy or interpretation serrano that jeopardizes and presents a potential extinction of up to 10 times the 48 hours and possibly no report or prosecution, not persecution, prosecution. But I am indeed thankful to know that this interpretation is not new to the district attorney's office and to know that the district attorney will prosecute all cases. I urge the council then, even though there is still tension about the interpretation of the statute for Oregon, to place directives in place known as exhibit b. That's proposed by the mayor and not enact exhibit c., nor wait until an opinion has been given by the judicial authority, but we do want the support that we need that judicial authority for clearance, but we cannot afford to risk not knowing or having certainty when another involved officer shooting occurs that results in death or an in-custody death. We will be playing Russian roulette if I can use that term and we will have not have anything really in place that will bring us about a way of moving forward. We support officers in the use of force cases to be compelled to provide statements within 24 hours and further that with proper walls in place between administrative and criminal investigations, proceed in a parallel track and not waiting until one is finished, then starting the next. So the council's approval and wanting to go beyond the settlement agreement ending, it has been my full understanding and hope from the beginning of this that it was not going to end after the five-year period, that it was going to continue and not revert back to business as usual. I did not put all of my time into this to this day to do an exercise in futility for five years and not see any permanent changes that would move the city farther towards reform and police accountability. Now, as it refers to the new plan, the pccp, which attempts to create an entity to replace coab one and I refer to coab one because that was the first one. I agree that there were issues with coab one, but not beyond repair and to this day, it's still out of compliance, the city is, in regards to having a coab in place and operating. This removes the new plan. The responsibility of the coab and focuses on the community engagement piece only. However, it does remove one of the most critical pieces, that is community input with oversight, the right to review and make recommendations and transparency. It is proposed to have a mayoral appointed and controlled committee of five to nine people. This removes the responsibility from the rest of the council members for any responsibility for its success and accountability. We strongly believe that it should be between 11 and 15 to have a broader and more diverse group of

August 2-3, 2017

people that will hold meetings publicly at neutral locations, not as proposed two times per month behind closed doors. I know with coab there were a lot of things that happened. There may be reasons to say we need to close the door. Closing the door is not fixing the problem. Fixing the problem is addressing what caused those issues and making sure we don't repeat the same issues again. Precep the group should be charged with holding regular community forums at neutral locations and I say neutral locations because there are some individuals in our community who are thoroughly traumatized to walk into police facilities and some have distrust of even walking into city owned buildings at this time. To present information and seek community input and give progress reports on the work being done. It must be said as well that there should be a collaboration with the cocl to hold forums for review of the reports. We're not letting the cocl off the hook that he, because it is a he, is to prepare reports and present them. We still need a mechanism included in this that says this will happen. This is lacking as well as community oversight of the first responsibilities in the original settlement agreement, which now has been taken away from community participation and/or involvement. So I urge the council to give due diligence to these areas of concern before rushing to put in place this new plan in the hands of just what we think will address the issues. It is not believed that this will get us to what the community has been crying for over the decades: Reform and accountability of the Portland police department. The Portland police department must work with the community, but the bureau needs help because it is to be maintained that the department and the city knows best and refuses to hear from the community, I submit to you that if that was totally true, doj is out of a job and the settlement agreement needed to have never been signed but doj came in because we had patterns and practices of what was happening and a settlement agreement was signed, though the city did not admit any liability. They saw the need that we must do something about what's happening in our bureau, to this day, I think two officers have been indicted, none of them have been prosecuted, but one. But continuously after continuously, individuals are losing their lives at the hands of officer-involved shootings that are always justified and no discipline is ever seemed to be given to those persons for what they are doing. I submit that what we have in the new plan of giving this long period of time before things are done will create another mentality within the bureau of saying, not only must I say I feared for my life therefore, I used lethal force to defend myself, but I've got to wait now, I've got a whole lot of time and if it doesn't seem like I'm going to be charged with anything, I don't even have to say anything, I can just wait the time out, that is not acceptable to the community. The fix is not doing the same thing, it must become innovative. The innovation must also come with a strong determination for forward movement, identifying the underlying issues and correcting those issues before we move in the same direction and find out that we've got the same thing again and you know the definition of doing the same thing the same way all the time. Let's change the definition, let's change our action, let's take a new road so that we can solve the issues. I understand that 405 was built to help alleviate traffic around the city of Portland. Oh, boy oh, boy oh, boy. What a mess it has given us. Let's not create another mess. Let's take the time to get this right so we don't have to go oops, let's give it another try. Thank you for your commitment, what you have been doing, what you are continuing to do and know that as you are continuing to move in a way that creates a better fabric for our community, you will see a community who will rise up and give you all the support that you need. If not, you will find the community that will rise up and say, no way, not going to happen, try all you want, we're not going to support it and need I not remind you we know how to vote. Thank you very much.

Wheeler: Thank you. [applause] thank you for your testimony and our last invited testimony before we get to public testimony, district attorney rod Underhill, he's probably

August 2-3, 2017

very tired of me trying to interpret his legal interpretations so we thought who better to do it than the district attorney himself? Thank you for being here.

Rod Underhill: Well, thank you, Mr. Mayor. Thank you, members of the city of Portland's commissioners. My name is rod Underhill, I am Multnomah county's district attorney. Again, I want to thank you for inviting me to speak today. First, I do want to make it very clear that my office has, as a standing practice, taken every case in which an officer's use of physical force results in death to a Multnomah county grand jury to determine whether the officer's actions were criminal or not. My office will continue this practice without interruption even after today. If the grand jury returns an indictment, I believe that legally, and ethically, we can and we will continue to make our best efforts to argue the legal viability of that indictment if a motion to dismiss is filed. We will make every appropriate argument available. As your district attorney, a primary goal of mine has been for our citizens to have confidence in the public safety system. Now, confidence in the public safety system includes among other things: A faith in a fair and thorough criminal investigation while at the same time, providing individuals with the protections found in both the u.s. and the Oregon constitution; confidence in our system is enhanced when we have responsible transparency. This is a significant part of why I, not by law, but by policy, refer all officer-involved use of deadly physical force where a death occurs to a grand jury of citizens selected by the court. Not by law, but by policy. Further I have obtained from the court permission to transcribe those proceedings and release the testimony of witnesses that came before the grand jury. This practice is among the most transparent in the country. I believe this has increased, it's helped to increase the community's confidence in the public safety system. I do have a deep concern that if the grand jury were to return a true bill and an indictment is issued for homicide against an officer, the indictment will be at substantial risk of being challenged and quite possibly dismissed if involved officers are compelled to give statements on the administrative side hearing matter. I assert if an indictment for homicide were to be dismissed by the court, the public confidence that we all strive to obtain in our criminal justice system would be seriously undermined. In its simplest terms, we need to get this right. Because one of my primary duties as your district attorney is to prosecute the perpetrator of criminal acts, I believe that I owe it to the community to let them know when a policy or a practice by one of our criminal justice system partners may impact or inhibit my performance of that duty. I have informed the city, the federal government and others of the potential, the potential ramifications of some of the proposed changes to the Portland police bureau's use of force policies that have existed over the last handful of months and beyond. Notably the belief of the need for a criminal investigation to proceed the compelling of a statement of the involved officer. Let me be clear. That is not to say that the administrative investigation cannot occur concurrently with the criminal investigation. It can, what I'm saying is there are substantial legal risks to the investigative action of compelling the statement of an involved officer, understanding that this is just one, albeit significant, aspect of a thorough investigation. This is not a new position of the district attorney's office. My office's track record on this issue has been clear and it has been consistent for years. My concern regarding my office's ability to prosecute an indicted individual stems from a reading of a string of Oregon cases, the analysis of which is supported by the Oregon department of justice. The cases include as you've heard today federal and state to include the 1984 adopted supreme court opinion in the state of Oregon versus Soriano. Where Soriano states when a person is compelled by external factors to choose between making a statement that may place them in legal jeopardy and some other result, such as losing employment, three things may occur with regards to that statement: Number one, the statement may yet not be used as evidence in the criminal case, commonly referred to as use immunity; number

August 2-3, 2017

two, in addition to use immunity, any evidence that was obtained as a result of the receipt of that statement may not be used in a criminal case. We refer to that as use and derivative use immunity. Or number three, a potential ramification is a criminal case may not be brought against a person. That is commonly referred to as transactional immunity. In state of Oregon versus Soriano, the court settled on number three and says that the state may only legally compel a statement from a person asserting his or her right to remain silent when a promise of transactional immunity occurs. The court in Soriano further commented that it was not possible for the state to erect a wall between a compelled statement and the criminal investigation. Since the Soriano decision, the Oregon appellate courts have revisited it on a handful of cases. My office produced a memorandum explaining our analysis, several pages long, but included in that analysis we wrote, quote, "the breadth of the consequences for not providing full transactional immunity is what remains unclear. "certainly, the consequence is use and derivative use immunity. However, it is also possible transactional immunity may be required in certain circumstances." I acknowledge today as we did when we wrote our memorandum and asked the Oregon department of justice to review our legal analysis that the case law since Soriano is not completely clear on this point. I am here to point out that I believe that there is a risk that the court may determine that transactional immunity would result from the compulsion of a statement from an involved officer and that that risk is substantial. In other words, a risk of dismissal of a grand jury's indictment is real. I understand that there are reasonable legal analysis can result in a different opinion. That's what we point out as well is there is tension in the law and a lack of complete clarity. It is critical that the legal analysis surrounding the issue of administrative-side compelled statements of involved officers be accurate. As I said earlier, we need to get this right. This will result in either the continued support of the public confidence or the lack thereof if we develop a system that would result in the dismissal of an indictment for homicide against an officer if appropriate. The council must have, this council, you make these decisions, must have your best possible legal analysis available and to that end I continue to completely support the city of Portland's effort to attempt to seek guidance from Oregon's courts. Particularly I support the city's efforts to have our courts review the constitutional implication of the city's administrative practices surrounding the issues of compelling statements from involved officers. The Oregon revised statutes chapter 33 provides for a validation action and I support the city continuing to explore that option. Everyone will benefit from the clarity that a reviewing court can and we hope will offer. I encourage you to act with a strong sense of urgency. The sooner the better. Thank you.

Wheeler: Thank you.

Saltzman: In your testimony, you believe there can be a parallel administrative investigation and criminal investigation?

Underhill: I do, but point of clarification.

Saltzman: It's the compulsion of testimony under the administrative that has to wait for a criminal investigation to finish?

Underhill: Commissioner Saltzman exactly. It's because of that -- if I can summarize, investigations are often immense. There are numerous aspects of a crime scene that need to be looked at carefully and thoroughly. A very important aspect of a criminal investigation or an administrative investigation is a conversation with the involved participant of course, that's important. We can and I believe we should have parallel investigations doing all the work that needs to be done, but I'm asking because of these concerns to not compel the involved officer until the criminal proceeding is complete for genuine concerns that we have a legal exposure relative to an indictment if returned.

Saltzman: And complete means action by the grand jury?

August 2-3, 2017

Underhill: Yes. Essentially that's what I mean. In almost every circumstance upon the grand jury review, if they've returned a not true bill, then that criminal side investigation would be complete.

Fish: Let me go back to the question and thank you for walking us through your analysis. It was very clear. But I think someone who is not a lawyer and who is listening to this conversation might say that the idea of use immunity makes sense, there's a basic fairness behind that and the idea use and derivative use immunity has a certain logic, but I look at transactional immunity or may look at this question of transactional immunity and say this is a leap here. And they may think there's a leap because the premise of these -- of how you structure the administrative and the criminal investigation is that there be a strong firewall between the two. And that strong firewall ensures that the evidence gathered in the administrative side does not lead into the criminal investigation and we know from our understanding of criminal law whether we practiced the law or watched law and order that the court has the tools to keep evidence out of the proceeding that should not be there, that's why evidence is suppressed, that's why all kinds of things are kicked out. So let me go back to what I think a lot of people is the sticking point here.

Underhill: Sure.

Fish: Again, I'm not quibbling about use immunity or use and derivative immunity, that seems to have a logic. But if there is a sufficient firewall between the two investigations, how does the compelled statement on the administrative side ever bleed into the criminal investigation and therefore create a fifth amendment problem?

Underhill: So commissioner Fish, thank you for the question and your question is one that in most all states in the country is a proper analysis of the status of those states and how they proceed relative to this critical question. We've had numerous talks with our partners from the u.s. Department of justice, some of whom were here, the chapter in Oregon and main justice and that is an accurate reflection of most of the country. None of the country, no state other than ours, has state of Oregon versus Soriano and Soriano tells us in very clear language with respect to the wall aspect, justice Julette who at the time was a court of appeals justice but went on to a career on the supreme court bench, told us it was impossible in Oregon to erect such a wall and had an analysis about why that was impractical in today's modern society.

Fish: Whether or not you can actually show actual prejudice?

Underhill: They're just refusing legally to recognize the existence of the attempts to build a wall. Now, can a wall be built securely? There's a lot of -- short answer is yes. I believe it can, but the justice Julette found that it can't in his opinion and used that word impossible and this is why I encourage the passage of I think it's 871 in order to have a reviewing court determine whether, can we build a wall as suggested in the ordinance because Soriano tells us that in Oregon, it will not legally recognize your attempts, whether successful or not, to use the word impossible to build a wall.

Fish: Okay. That's helpful. Thank you.

Wheeler: Thank you very much. We appreciate your testimony. So I want to do a little bit of house cleaning here. First of all, I want to ask my colleagues before we get into the public testimony, are there any questions you need answered now? Is there a desire to introduce any amendments at this point or would you rather wait until after public testimony?

Fish: It was my hope that the amendments that our colleagues have prepared would now be put on the table so that anyone testifying would have an opportunity to address the amendments as well as the ordinance.

Wheeler: Okay and how many people do we have signed up for public testimony?

Moore-Love: 33.

August 2-3, 2017

Wheeler: 33 so that's a little over three hours of public testimony so I need to ask my colleagues are we --

Fish: Hour and a half.

Wheeler: If we give 3 minutes.

Eudaly: I'll be here all night.

Wheeler: We'll have a quorum. So we can allow three minutes of public testimony. So let's go ahead and introduce amendments I will propose we take a three minute break after that since we've been convened for three hours and 40 minutes I could use a break. And then we'll come back and hit the public testimony. So at this point colleagues I will entertain any amendments that people would like to make.

Eudaly: Mayor, I have five amendments I would like to offer now. I may have more by the end of this. Okay. Amendment number one, increase membership of the pcccp from five to nine members to nine to eleven members.

Fritz: Second.

Wheeler: We have a motion from commissioner Eudaly, we have a second from commissioner Fritz regarding the membership of pcccp we will call that Eudaly amendment one.

Eudaly: Number two, change item number two in the selection process framework section from initial screening of applicants by mayoral staff to initial screening of applicants by mayoral staff and representative from any council office who wishes to participate.

Fritz: Second.

Wheeler: We have a motion from commissioner Eudaly, second from commissioner Fritz. That will be Eudaly amendment number two.

Eudaly: Number three, change item number four in selection process framework section from candidate interviews with mayor to candidate interviews with mayor after soliciting feedback about final candidates from each council office.

Fritz: Second.

Wheeler: Commissioner Eudaly moves, commissioner Fritz seconds, that will be Eudaly amendment three.

Eudaly: Number four, add under city responsibilities the mayor's office will publish on the city website an annual report commencing from the date pcccp begins meeting through the duration of its existence that includes updates on progress made by the city and key areas of concern and community engagement recommendations.

Fritz: Second.

Wheeler: Commissioner Eudaly moves, commissioner Fritz seconds, that is Eudaly amendment four.

Eudaly: And finally, number five, add under member responsibilities the agenda and minutes from all pcccp meetings will be published on the city website within 30 days after the meeting date.

Fritz: Second.

Wheeler: That is moved by commissioner Eudaly, second by commissioner Fritz, that is Eudaly amendment number five. Any further? All for now. Very good. Commissioner Fritz.

Fritz: I have a lot of technical amendments. They're all related to engagement by the entire council and the community in this ongoing process. The first one which is my amendment one is a very technical one, there's a section about the responsibilities of the police members along with the community members in the citizens review committee and so that's exhibit four, paragraph 131, subparagraph I. Which is about the police members is disconnected from the other sections with the police members. It's not changing the language at all, it's just reordering them.

Eudaly: I'll second that.

August 2-3, 2017

Fritz: And I'll put this up on my website so it's clear.

Wheeler: There's a motion from commissioner Fritz, a second from commissioner Eudaly. That will be Fritz amendment number one.

Fritz: Amendment two is speaking to the concern that in the proposal everything reports to the mayor and the mayor is also in charge of the police bureau. So, my second amendment says amend exhibit four, which is the proposed amended settlement agreement paragraph 142 to add the following language: Make recommendations to the chief police commissioner and the director of the office of equity and human rights and the community during the effective period of the agreement to the department of justice.

Eudaly: I'll second that amendment.

Wheeler: So that is moved by commissioner Fritz, seconded by commissioner Eudaly. That will be Fritz amendment number two.

Fritz: And then so those are both actually in the settlement agreement, and then I have a number of amendments to the exhibit, 4.1, which is the plan for the Portland commission on community engaged policing so on page two again, under the specific authorizations of the pcccp, number two says gather and synthesize information from the community and make recommendations based on that information in key areas of concern to communicate to the mayor, ppb, add the office of equity and human rights and the doj and public at large. So again bringing in the office of equity and human rights, which as many of you know staffs the human rights commission and the Portland commission on disability.

Eudaly: I'll second that.

Wheeler: Commissioner Fritz moves, commissioner Eudaly seconds, that is Fritz amendment number three.

Fish: Commissioner Fritz I have a question. We have the red line version with all of your changes.

Fritz: Yes.

Fish: Are you planning to introduce every one of those as a separate technical?

Fritz: These are all amendment three I think if it is all right with you mayor.

Fish: I think it's cleaner because we have a red line version.

Fritz: Unless anybody objects to any of them, just to get them in the record. I'm going to get them to you, as well.

Wheeler: I'm sorry for clarification, you do not want these --

Fish: The third amendment on that sheet references the document we've been given that has red lines.

Wheeler: The entire red line document is offered as an amendment, correct.

Fritz: And what you have also in exhibit 4.1. My guess is if we have a couple of hours of testimony we might not get to vote on things tonight anyway. I apologize, I only just got back from England 48 hours ago, I was working until 5:00 a.m. This morning on these changes.

Wheeler: And just to be clear, these are non-emergency ordinances so they'll be moved to second reading.

Fritz: That's right, next weekend, we'll be sure to get them up on my website as soon as possible. So under membership and reporting, it currently says the pcccp will report directly to the mayor, who's the police commissioner and that's it. I'm proposing to add and separately and at least quarterly to the director of the office of equity and human rights.

Eudaly: I'll second that.

Wheeler: That is moved by commissioner Fritz, second by commissioner Eudaly. That will be Fritz amendment number four.

Fritz: And the next piece is complementary to what commissioner Eudaly proposed. We haven't talked about it but mine --

August 2-3, 2017

Fish: I'm sorry, what you just marked as exhibit four, Fritz four, well, we were going to do three as an integrated document. It is now apparently being marked as each one as a separate amendment. So I'll call what the mayor has called it, which is exhibit four. I mean, I want to go back to this idea of reporting to the mayor and the director of the office of equity and human rights. I mean, the office of -- the director of the office of equity and human rights reports to the mayor so what's the additional value of having that report if that person ultimately is accountable to the mayor?

Fritz: Actually, the director of human equity and human rights is responsive to the entire council, if you remember how we set up the office of equity and human rights.

Fish: I understand, but the mayor has taken the bureau in his portfolio.

Fritz: These are my amendments, we can certainly discuss them, I would like to get them on the table so that the community knows what they are.

Fish: Okay I'll withhold my clarifying questions at this point, but I think the council has a right to ask questions about amendments.

Fritz: I'm willing to wait so you can do that after the community testimony. The next amendment is under the selection in exhibit 4.1 to add at the beginning the mayor in consultation with the other council offices shall develop selection criteria and public outreach strategies for the pcep selection process, currently exhibit 4.1 doesn't say how the selection criteria are going to be developed. Then on the next page, page three, we're going to add the selection process has the application, screening, review, by the panel of community members, candidate interviews, the mayor's appointments, and then we're going to add council confirmation so there will be a public hearing on the confirmation of the members of the commission. The next one is under removal, again, it currently says the mayor, the pcep manager and pcep chair, will have discretion to decide when pcep members are no longer fit to serve. I'm proposing to insert the mayor after consultation with the council and those other entities will have full discretion. I'm going to keep going here. This is just a typo on page four of seven. It refers to the Portland police bureau's office of equity --

Wheeler: I want to make sure I'm keeping up. Is that last set you just read, is that still part of Fritz four? Are you waiting for a motion on Fritz five?

Fish: It's part of Fritz three.

Wheeler: Very good mayor.

Fritz: Thank you. So there's references to the Portland police bureau's office of equity and diversity. I believe they have a manager of equity and diversity so I'm proposing to add that as a typographical as a stenographers mistake. Sorry. And then on page six of seven, I'm concerned about the specifications for how soon the public hearings need to be held, whether the pcep will consult with the community. One of the mistakes that I made with the coab formation was we had in the settlement agreement that the town halls had to happen by a certain date and so the coab was forced to have a town hall before they had even gotten to know each other so I'm suggesting that we add, it currently says to be completed within 120 days of when the pcep members are being seated. I would suggest we add if practicable so that we don't get into that same rush and not do it correctly. And number two, I'm suggesting that the pcep shall meet at least quarterly with the director of the office of equity and human rights and Portland police bureau's manager of equity and diversity, including a review of Portland police bureau's current racial equity plan and evaluating the ongoing efforts to implement it.

Eudaly: What page was that?

Fritz: That's on page six of seven, number two. It currently says that the pcep is going to be responsible for evaluating ppb's racial equity plan. That's the one of the functions of the office of equity and human rights. Number five, the pcep shall strive to submit its

August 2-3, 2017

recommended strategies in writing within 180 days without having an absolute hard mandate there. And then the chief's office will consult with the pccp and give it final review and comment within 45 days of receiving the pccp's recommendation rather than within 210 days. I'm really sorry, I know this is a lot of stuff and I didn't get the handout prepared, but I will certainly correct that by next weekend, I'm sorry.

Wheeler: Great. Anybody else?

Eudaly: When do we discuss these amendments? After testimony? Okay.

Wheeler: Let's take a three-minute break. We'll come back and we'll start the public testimony. Who are the first three people?

At 5:52 p.m. council recessed.

At 6:00 p.m. council reconvened.

Wheeler: We are now back in session. A quick reminder, please be respectful of everybody's views. If you want to testify please sign up over here with the council clerk. Everybody gets three minutes to testify. Rather than interrupting, if you really like something you hear, a thumbs up is, if you hate something, a thumbs down is fine. That's the most respectful way to be registered here and without further ado, we'll jump in, thank you all for your patience.

JoAnn Hardesty: Thank you. Good evening, mayor, city council members. For the record my name is JoAnn Hardesty and I'm the president of the naacp Portland branch. There may be some naacp Portland members left from the four hours of being here and if they are, I would appreciate them coming to stand behind me as I speak. I have given a written testimony, I will deviate from my written testimony because you have it and I believe you all have the capability of reading it and so I want to highlight a couple of things in my time with you today. Number one, it's really demoralizing as a community member who is part of team that invited the department of justice civil rights division to come from Washington D.C. to address the inequitable policing that was taking place in the city of Portland. It is disheartening to be in a place.

Moore-Love: JoAnn could you hold on just a moment.

Eudaly: We lost our captioning.

Wheeler: Folks the problem here apparently is the closed the captioning has to call in for whatever reason their system keeps going offline.

Hardesty: As I was saying, it's really demoralizing to be in the room when I know why we invited the department of justice to come to town. So here's what you're being asked to do. You're being asked to eliminate the community's voice and the oversight of reform of Portland police officers. You are being asked to make the mayor the arbitrator of determining what appropriate community oversight of the police department would be. Now, we might like the mayor that we have now. We may not, but having one person make that decision is not oversight. Especially when that person also has the role of police commissioner. You are being asked to put a -- for lack of a more polite word, a pr group together so they can sell to the community what a great job the Portland police bureau is doing, what you have not acknowledged is that every person that has been killed since the department of justice has been in town is people with mental health issues and if anybody on the city council believes it's appropriate that to shoot someone running away in the back and our grand jury process works when that happens then you are living in a fantasy world. I am pretty disappointed that the d.a. and the police union and the department of justice went behind closed doors with the d.a. since early January and February and came up with this crappy proposal and then it was published on your website on Friday. Now, believe it or not, we, the community, read every word of it, because, after all we invited the doj because we thought they would help. We read every word. So having the department of justice spend an hour and 15 minutes telling us what you are going to be voting on was

August 2-3, 2017

extremely disrespectful to people who took off from work, took off from school, and took off from their families to come down and have their voice heard. As someone who has been following this process since its inception and two of the five of you weren't even here when we did this -- I have been at every meeting about police accountability since the department of justice has showed up, and I can tell you what you're being asked to support is a smack in the face to community members who want accountability, justice, and who don't believe that someone without a weapon and even if they have a knife, quite frankly, deserves to be killed in the streets in the city of Portland. We have a long, long way to go before we have police accountability, and this p.r. group that's being proposed to you is a smack in the face to committee members it is unacceptable and the reason you're out of compliance with the settlement agreement is because of the city's inability to respond when the coab was in crisis and it became in crisis because people decided that a free speech zone putting people in a corner little box was the appropriate way for community members to be able to videotape what was taking place. When you invited to a community meeting and then you have to listen to the police talk for an hour and 45 minutes and people wonder why the community was upset. I'm appalled that the way its being presented to the city council is that the community was the problem, not the doj, not the overpaid cocl [applause]

Wheeler: I'm going to ask people not to interrupt testimony, please.

Hardesty: And what I find interesting is that no one is talking about the overpaid Chicago consultant who continues to get his full salary, but yet the problem is the community members, mean while there would have never been a community report if the ama coalition for justice and police reform had not organized two community forums so the community could hear what this overpaid consultant from Chicago had done. So I'm just appalled that you're even contemplating removing the community's voice not actually reporting annually on racial profiling numbers, who's being stopped.

Wheeler: I'm going to have to ask you --

Hardesty: I'm wrapping up right now. I have a copy of your promises, mayor wheeler, when you ran for office, you made some commitments to the community, and I want to read a couple, because I know I am out of time. But one of them was, we were going to have community policing, we were going to have police officers walking the beat and adding foot patrols we were going to actively demilitarize police, we were going to eliminate the 48-hour rule. We were going to embrace crime prevention through education by deploy cutting-edge and effective crime prevention, which uses education and engagement to achieve results. This is what you promised us. This is not what we're getting. Thank you.

Wheeler: Thank you. [applause].

Wheeler: Again, ask you to please not interrupt the testimony. Let's be respectful. Thumbs up, thumbs down. Three minutes, please.

Dan Handelman: I'm Dan Handelman with the Portland cop watch and Portland cop watch and Portland cop watch has numerous concerns about the three items on the agenda. We're equally disturbed about the content and the process that was used to propose changes to the deadly force policy, the settlement agreement and the ipr. The city should not cheat the community out of time meeting for a meaningful dialogue of its crucial policies to meet deadlines for training officers and report to judge Simon. The city would drop its rift to the ninth circuit and concede that the judge could call extra conference hearings, he could rule on the changes being proposed in early 2018 rather than trying to rush things through for November and item 871, it's good, mayor wheeler is stepping up to challenge the da's interpretation of the supreme court case about compelling officer testimony, but the politically brave thing to do would be to require compelling testimony

August 2-3, 2017

right away and then let a legal challenge play out, not write a draft policy and ask the court to weight in. Receiving a opinion may take years or may not happen at all moreover the draft says compelled interviews have to happen within 48-hours and as you've heard the community calls for it to happen within 24. There are other issues with the force of deadly force directives, which suggest that council should not allow these policies to go into place also the police association contract needs to be revised to allow ipr to conduct independent investigations of deadly force cases including the ability to compel officer testimony, this would create a firewall between the criminal administrative investigations that you're seeking. Item 872, about the agreement and the replacement of the coab, the pccp reminds me of a Monty python sketch where a pet shop owner tries to replace a man's parrot with a slug and the man is told it doesn't talk so he yells well, it's hardly a replacement then, is it? The first order of business for coab was to independently assess the implementation of the agreement that causes struck from the new agreement. The pccp is allowed to host forums by the compliance officer to take community input, but the guidelines do not suggest pccp can comment on implementation. More over having pccp meet behind closed doors will have the opposite result of what the city is seeking and so the building trust with the bureau will create mistrust and contempt. The bhuac already meets behind closed doors as well as the police review board if you want to build relationships, stop cutting the community out of important discussions. This outrageous the city is putting their own interpretation of why coab failed into the cover ordinance the worst offending part is in paragraph 46 that says "criminal behavior became a regular feature of coab meetings". Really? But the city's admission on one key issue was the failure to give adequate training, there was poor facilitation by the facilitators that help lead to the devolvement of the coab and that will not be fixed by the new structure, and as JoAnn hinted the main focus being on community engagement makes us seem like this is a public relations arm of the police. We also, we've made dozens of recommendations for amendments and only one or two of them are being addressed today, and regarding the ipr change, we hope that ipr being of closed findings will not create an argument that crc will not be able to hear appeals anymore just because there's more eyes on it.

Wheeler: Thank you prefect timing.

Aj Mendoza: Good evening mayo Wheeler and members of the city council. My name is a.j. Mendoza my pronouns are he, him, and his, and I'm the racial justice organizer at basic rights Oregon the states largest lgbtq policy and advocacy organization. The lgbt community knows well what it's like to be the target of police raids, violence, abuse, and profiling, which is why we continue to stand with this coalition on this issue of police accountability and transparency. The mistrust and fear our collective communities have about our criminal justice system is based on real experiences and a long history of misconduct from the system in desperate need to change. This mistrust will not disappear until we deliver an open and transparent process around police accountability and we recognize this process can be painful and uncomfortable, and that's democracy at work. The process of openness, transparency, and inclusion will go a long way toward building the trust the community needs in the criminal justice system. So on behalf of basic rights Oregon we join our partners in asking the city council to one open to the membership to the citizen review committee to members of the community in order to increase transparency and community trust, we would also ask to see it expanded to a membership from 11 to 15 members to better reflect the diversity of the community. We would also like to see the proposed 48-hour rule shortened to 24-hours. It is vital that officer system is collected as soon as possible following the use of deadly force of police and it is national best practice to conduct administrative and criminal investigations at the same time. We would like the department of justice to stick by the agreement they made with the

August 2-3, 2017

community. We appreciate the work that has been done towards progress, and those who call Portland home deserve better. Thank you for the community to testify today.

Wheeler: Thank you.

Wheeler: And just for the record, and there's no reason anybody would know this, but we will be announcing tomorrow, there are six new foot patrols that will be deployed, starting in August. The question was asked, whatever answered to community policing we've actually been working aggressively on that and it will be addressed tomorrow. Good evening.

Jan Friedman: Good evening Mayor and members on the commission, I'm Jan Friedman, I'm an attorney with disability rights Oregon. I've been on the advisory board for the Portland police bureau crisis intervention team training since 1999. As an organization member of the Albina administrative alliance coalition, and we agree with what the doctor that spoke so eloquently said tonight and I'm also a member of the Portland police bureau behavioral health advisory committee and has been on that since the inception. What I'm asking you to do is slow down and to allow adequate community involvement. You can call it community involvement because well we sent out this many e-mails and got this many response, that's not adequate. This is a big issue, we had the U.S. DOJ make a finding and it's not just a finding that's people's lives. People with mental issues have been subject to a pattern or practice of unlawful use of force. These are people in our community, so you can't hand-pick five to seven people and not have people involved and think that's community involvement. I attended some of the COAB meetings too and I saw incredible dedicated people working hard to get their work done. I saw them submitting like 52 recommendations and wondering, why aren't we hearing anything? They go into the air and never come back. That's not oversight, that's not engagement, that's not getting the community on board it has to be something different. As you've heard over and over again in the mental health community, it's "nothing about us without us." and you haven't done your work in including people with mental illness, people with disabilities, and people are interested in this issue, I didn't really hear about it, it never crossed my desk and nobody asked me and I've been a part of this organization for a long time and a member of the police bureau for a long time. As you know the behavioral health unit advisory committee is not subject to public meeting laws so people can't show up to that. I've asked for it to be there's been a sort of group of people who think that it should not be subject to public meeting laws so then there's meetings and agenda. And from what I'm hearing about this new group maybe not subject to public meeting laws now how is that including the community? It's not. I mean, it's just not. You can't pretend that's including the community. Maybe it's messier, maybe it's harder, maybe it's more difficult and it's been that way for years in our community. So to require that sort of engagement that's more challenging is needed. We don't want compliance with the U.S. DOJ, we don't want deliverables. We want change. We want something to happen for people that's positive with mental health changes, and we don't want a continuation of unconstitutional force. Am I done?

Wheeler: Yes.

Friedman: I thought, that's the weirdest phone ringing.

Wheeler: Yes, it's definitely designed to be annoying.

Friedman: That's basically it. I can go on and on, but thank you for hosting this meeting and taking it seriously and recognizing that our community is at large.

Wheeler: Thank you. We appreciate your testimony. Good evening.

Jason Renaud: I'm Jason Renaud with the Oregon mental health association and the Oregon law mental health conference. Mayor, council, thank you for staying so late and listening to all of us. The proposal makes changes to the settlement agreement, and reopens the agreement, but it doesn't include the community in those changed

August 2-3, 2017

decisions, and it doesn't go far enough to fulfill the goal of the settlement, which is to rebuild trust between police and people with mental illness. My suggestion is to repair and not repeal and replace. The coab failed because of city-led management and not the inherent structure. There were problems with the structure, but those were not what called the coab to be criticized or to fail. Poor management led to mistrust within the coab, which led to mistrust by the community members. Police brutality is a hot issue. Don't think people are going to be called unreasonable. That wouldn't be a good management decision. I think there's four distinct problems with the proposal. One, public meetings, doing public business that's a nonstarter I can't endorse private meetings for public business. Two, the proposed plan knocks or public assessment to the agreement, that's no good, others have spoken about this, and will speak about it. Three, too few people are involved. It's fair to say that five to nine are not representative of Portland so there will be discontent because of representation, review what you're asking volunteers to do, even with management, we'll be back here in a year asking why items have been ignored. It's too much work and volunteer's will end relying on staff and that's not community oversight. Four, exclusive mayoral control gets the council off the hook, the council needs to stay engaged not as monitors, but as legislators and that's because the DOJ will not be here forever, we're going to have to take this on ourselves and this is a continuing conversation really never ends things right. Police understand, harm to people with mental illness is not really a Portland problem. Most people killed in the metropolitan area that's Clarke, Clackamas, Washington, Multnomah county, 71 persons in total, 89% were in a mental health crisis of one sort or another in the past decade. So it's not just a Portland problem. It's not exclusively a police problem because those persons came in a crisis. It's a multi-government, multisystem problem where the state, county, sheriffs, police chiefs, d.a., parole and probation, community mental health and addiction health providers as well as community members need to be a part of the solution, and as soon as the council comes to understand that this is a systemic problem, the sooner your people will stop killing my people.

Wheeler: Thank you. Good evening.

Lindsay Burrows: My name is Lindsay Burrows I'm here representing the Portland chapter of the national lawyers guild, pronoun she, her, her's. I have a brief prepared statement and I'm happy to answer questions. The mlG wishes to express serious concern about the policy changes before you today. The policy changes are too numerous and have been public for too short a time for meaningful community input this evening. We ask the city to take time on the community feedback presented today and postpone the issues to a later date when they can be more thoughtfully considered. Speaking of the proposed testimony ordinance, the mlG has provided a detailed legal memo to you and we strongly urge the city to immediately adopt a proposal requiring compelled testimony within a 48 hours of a deadly force incident.

Fish: Can you ask you a question about that? I would like your professional opinion on that. I understand why you're asking for that and I understand the effect of it, but if it results in an indictment being dismissed, isn't -- how would you and others react to that?

Burrows: Our position is that there's an extremely low chance that an indictment would be dismissed. So the problem with the d.a.'s analysis of the issue is that the court of appeals has decided it. So the d.a. is saying, commission, the court of appeals is wrong. I support the mayor's effort to get legal ruling on the issue, but in the interim, I think we can all agree that the court of appeals has decided it and we should say that the court of appeals is right.

Fish: So what we're being told, by you and others, you want us to take that chance, because you think it's a low risk.

August 2-3, 2017

Burrows: We've been taking that chance.

Fish: Correct. But we're also being clear to the community, that it's not without risk.

Burrows: I think that's absolutely right. I mean, how many indictments have been returned? That's the issue here, the administrative interview has to happen, because in some cases, it's the only oversight of the issue, and it's the risk that the prosecution wouldn't go for it, it's a low risk, especially because we have the court of appeals telling us that the remedy for an article on section 12 violation is use and derivative use immunity not transactional immunity, so it's an entirely different circumstance where a statute granted and the full legal analysis goes through it, it's complicated. What I'm saying is, let's go with the court of appeals analysis justice, the former chief justice authored that and they proposed the interpretation that we're advancing in that court case.

Fish: That could not have been clearer. So thank you very much. It's 6:30, and that was extremely clear, and I appreciate it. So specifically, you're asking us to take the draft policy that would otherwise be held in abeyance until a ruling and simply implemented?

Burrows: I'm saying let's compel officer testimony within 24 hours and a seek court ruling, but in the interim, let's not wait until the criminal prosecution is over to compel testimony.

Fish: One of the items before us is to draft policy, but it would not be in effect until a ruling. Are you satisfied with that draft policy?

Burrows: I'm not sure. My position is, the -- the testimony would be compelled as soon as possible. The problem with the draft, I understand, it allows the d.a. to make the decision about whether the compelled testimony should happen. I think has a rule, the compelled testimony should happen as quickly as possible t at the very latest within 24 hours.

Fish: This will not be counted against your time. I appreciate that.

Burrows: That's got a main point, and I also want to note that the aclu of Oregon has submitted written testimony supporting our legal analysis of the transactional testimony issue. With regard to the other two ordinances, with respect to the proposed ordinance speaking to modify the settlement agreement, the city proposed changes remove two necessary components of successful police accountability, community oversight and public transparency, the nlj whole heartedly defers to the expertise of the ama coalition on this subject and supports their position. Regarding the proposed ipr modifications the nlj would like to see significant change toward truly independent investigations by the ipr, the ipr maybe should be the entity conducting the administrative investigation such as the power to compel testimony. Ultimately, no deadline or agenda should be important enough to rush forward with the policies in front of you today. These policies will greatly impact the lives and wellbeing of our community members which means the proposals deserve careful review and complete analysis. Thank you.

Wheeler: Thank you very much. Thank you.

*******:** Good evening. Thanks for staying.

Wheeler: Thank you for your patience.

Barbara Bachinski: My name is Barbara Bachinski with Portland cop watch and we have process concerns. Portland cop watch is concerned that the city sought to fix coab a year ago by suspending the boards activity for two months rather than come up with a plan the city dwindled from 15 members to 5, finally drowning in the bathtub in January. The cover ordinance indicates that the city, ppa, doj and ama coalition were involved in discussion from late 2016 to 2017 on replacing coab, but then the city used confidential mediation sessions in the 9th circuit to continue the discussions without the coalition per paragraph 59. Paragraph 58 and 62 show that the amac asked to be included but was denied to do so until January 14th just two weeks before this plan is released. That is not enough time to digest and debate such an important matter, especially when the members of the ama coalition allowed into those mediations weren't allowed to share information with the

August 2-3, 2017

community and that includes a member of cop watch could not ask for feedback from the rest of the group. It's not clear why the city believes that using a confidential legal process is a good way to create a community based panel charged with advising the bureau on how to effectively engage the community. The agenda items were put forward after pcw and/or alley asked the bureau in early July for more time to review the force and deadly-force directives, since 40 substantial pages were released on a holiday weekend with a two-week deadline. Chief Marshman told us the bureau and doj had spent nine months working out the details including their discussion with the district attorney about compelled testimony. Yet the d.a.'s memo from late March suggesting the city delay compelled interview and the ipr June memo telling the city that was per policy were not released until after we and the coalition uncovered the new 48 hour rule in the deadly policy. There needs to be more transparency, more open dialogue and more time given for people who are paid to review these documents and as far as the oversight system, pcw does not have a strong feelings about ipr being allowed to propose recommended findings when they conduct independent misconduct investigations. Repeat that this should not affect crc's ability to review cases and make proposed findings under the current or future standard of review. For the agreements requirement for meaningful independent investigations to take place, ipr has to be given the power to compel officer testimony rather than having police and internal affairs order officers to answer ipr's questions. The new ordinance will allow officers supervisor to return cases to ipr or ia for further investigation, which the prb and crc can already do and this can have more delays even though the goal is to streamline the complaint process. With all the ideas the auditor failed to put forward to council ipr is sneaking in a new code change to rebrand dismissals as administrative closures. Perhaps this is to indicate that sometimes ipr conducts preliminary investigations before dismissing cases, but it seems like pr.

Wheeler: That's the definitely the standard to beat tonight that was within half a second of three minutes well done.

Carol Landsman: I hope I can be somewhere as close to that as she is. Hi I'm Carol landsman, I'm also with Portland cop watch and I'm going to talk for a minute or two or three about the 48-hour rule that gnarly 48-hour rule which came into being because police authorities and police unions said that a police officer or anyone.

Moore-Love: Excuse me we lost the captioning again.

Wheeler: Sorry we'll give you the full three minutes for that.

Landsman: As I was saying the 48-hour rule came into being when police unions and police authorities decided that an officer needed 48-hours with which to remember what had happened to him or her. Now we all know or believe in our heart of hearts that that 48-hours is used to consult with their fellow police officers to get their stories straight. So the ppa has been strongly been against giving up the 48-hour rule. They tried to squelch coab recommendation that it be done away with however when the city rushed last October to get a contract done with the police ppa for millions and millions of dollars the police were willing to give up the 48-hour rule. However, now we hear that in fact it's legally constrained. One of my questions is I listened to the very knowledgeable city attorney and the very knowledgeable district attorney. They didn't tell you? I find that very strange that nobody mentioned this before the contract was entered into. Anyhow, it's been 48 years since -- it's been 48 years since a person, a police officer, has been accused of any act of violence against a citizen. Indicted. Thank you. So we of Portland cop watch say, let me get this straight, "compel officers to testify to internal affairs". If they admit wrongdoing or refuse to testify, fire them. We have a 48-year rule, not a 48-hour rule. It doesn't matter. Make the police review board be more public.

Wheeler: Thank you. Good evening.

August 2-3, 2017

Peggy Zebroski: Good evening I'm Peggy Zebroski I'm with Portland cop watch among other nefarious groups. This is another addition to the changes we would like to see in the settlement agreement. The proposed changes to the settlement agreement do include one good item. The citizen review committee, crc, will have 90 days to hold hearings, not 21 days, and their time will not be counted against the bureau's efforts to close cases in 180 days. Crc, the community, even the council members raised this concern in 2012 but there are also problems with the proposed changes. New paragraph 69 c codifies deferring to the d.a. under Oregon law about compelling officer testimony. It changes the rules for writing reports including officers' reports and after-action reports based on the new directive. We're concerned that if the city really wants to find an alternative to the d.a.'s plan cover ordinances paragraphs 75, 76, the revised agreement is going to make that difficult. The changes also create and limit pccp to replace a community oversight advisory board including creating the cumbersome new name about a community engaged policing and removing the word oversight. Cutting out the existing agreement's description of a diverse membership. Assuming the new board will be selected, trained and seated to meaningfully advise a new community survey within four months of the agreement being amended. Removing the requirement that meetings are open to the public. Some of the major issues pcw asked the doj and city to address are not contemplated here are defining de-escalation as calming down a situation using verbal and physical tactics. The bureau incorporates that definition but also seems to think that threatening someone with a taser is de-escalation or that moving from using a taser to using pepper spray. The first example is a threat, and the second is the abatement of a use of force. Explaining what a higher level of force means since the force continuum has been dropped as per old paragraph 68 and 74. Closing the loopholes to use tasers in situations which do not present an immediate threat as required by the 9th circuit. Loopholes exist for tasing handcuffed subjects, using multiple tasers on one person or using the stun gun without a warning. These are all reflected in the new force directed horrifyingly and apparently outside of constitutional law. So not good.

Wheeler: Thank you. Appreciate your testimony. If there are people -- are there still people in the overflow room?

*****: No.

Wheeler: I was going to say there's some seats in here if people wanted to come in. Thank you, ladies, for your testimony.

Wheeler: Good evening, sir.

Mr. WG Barnett: Good evening. My name is Mr. Citizen, Mr. Barnett, and I want to thank the citizens on the board before me, mayor, citizen council members, since we are all in this together being a democracy. I think it bears no repeat necessarily but to remember that democracy cannot exist without an informed citizenry, which really seems to run through much of the testimony that you've heard this afternoon and into this evening. I am african-american, 40 years resident of northeast Portland and I have seen a lot of the dynamics that played between the citizens, particularly the african-american and Hispanic, and citizens gay and lesbian citizens and the police and the city, and it's been a real disturbing experience for me. But I'm not speaking right now from my own personal experience but this is some of the highlights of concern from the Portland cop watch, which I'm representing at the moment. Pcp remains opposed to creating a body to replace the coab, which has no ability to review and make recommendations about the implementation of the agreement. The problem about appearing so late before you is many of the topics and issues you're going to hear probably repeated has been addressed before, but these are some of the things that I was given to report on. Oh, I just have to agree with my colleague that spoke before me, which was as compared to the coab, the very name of

August 2-3, 2017

this new body, pcep, Portland commission on community engaged policing, is a downer from the beginning. That says something to somebody. Okay? [laughter] so one of the points was that the mayor would be picking all the members meaning no community involvement and the rest of the council will no longer have an investment in engaged police reform and I think my buzzer just went off.

Wheeler: No, sir, you have 33 more seconds.

Barnett: Furthermore, well, I'll go down to the stop data, which is very important. It was previously shared with the now defunct community police relations committee will be shared with the pcep, but they are not being asked to help develop enhanced data collection as the coab was just another one of the indications of some of the -- you got me now?

Wheeler: If you have a couple more key points --

****: I'll give him my time.

Barnett: One of the things is that the cocl will move back from semiannual compliance reports to quarterly reports but they do not have to cover all aspects of the agreement. Even though the revised paragraph 159 doesn't say so, the cover ordinance, paragraph 80, indicates all aspects have to be reviewed over the course of a year. Also the cocl does not have to give its reports to the pcep, as they did with the coab. That's agreement paragraph 159. The cocl's town halls to present the quarterly reports will be created in consultation with pcep, but the commission is not expected to make comments on the reports. Paragraphs 160 and 161. They are merely given as an option. They are merely given the option to host cocl quarterly meetings. Since the cocl has no connection to this community, it should not be incumbent on the amac coalition for justice and police reform to hold these forums. However, this duty should be required of someone. That pretty much sums most of what I had to do.

Wheeler: Thank you, sir. We appreciate your patience tonight.

Barnett: Thank you very much.

Wheeler: Good evening.

Brandi Dieterle DeLa Hoz: I'm at least in Colombia you can still say afternoon. I'm Brandi Dieterle DeLa Hoz representing the human rights commission of Portland. On behalf of the commission we would like to express our gratitude for the opportunity to participate in the invited testimony regarding the inclusive city resolutions recently. Up until recently hrc has been concerned with the lack of communication regarding the hrc's role, and the doj settlement and disintegrating coab. A request to the mayor's office has gone unanswered for more than a year. Effectively leaving the hrc merits commission sidelined, unable to participate. The lack of transparency was recently punctuated on Friday when not through letters or memos or meetings but by reading in the up in the human rights commissioners and the Oregon office of equity and human rights oehr became aware of the changes and the dissolution of the coab. The same time as the rest of the community I should say as Jan mentioned. Just a few comments we heard in our meeting last night brought from commissioners heard from community members, community organizations, mayor was elected on a police reform platform, and the sudden exclusion of the hrc from the proposed settlement agreement is jarring resulting in erosion of trust, confidence and police oversight and confidence in the city's commitment to uphold the settlement agreement. The move to remove the addressee is perceived to be a move to control the conversation and attempt to control who is allowed to be at the table. These are perceptions that we're hearing from constituents. The current situation we know that many communities are feeling abandoned, alienated by government at any level so the sudden changes without sufficient public notice and involvement further victimize vulnerable community members. To reiterate the hrc is formed to eliminate discrimination and bigotry, to strengthen enter

August 2-3, 2017

group relationships and foster understanding inclusion and justice. We urge you to consider how representation with these such a purpose as the hrc fits into the pcep and the amended settlement agreement provision. Please consider what the proposed amendments and the manner they were formed communicate to the constituency, especially those from vulnerable communities about the city's priorities and allegiance. Thank you.

Fritz: Hello? Commissioner, thank you for representing human rights commission. I just wanted to note that my amendments to have quarterly reports directly to the office of human rights are intended to then -- report to you and to the Portland commission on disability. That was the intent because I share your concern that previously both the human rights commission and commission on disability weren't mentioned in the settlement agreement and I want you to continue to be involved, so thank you very much.

Dieterle DeLa Hoz: Thank you. I did notice that.

Wheeler: I would just like to respond briefly. As you know, this was the process first that facilitated conversation which then led to formal mediation in the construct of the settlement agreement. I can tell you there's nothing public about that process. As mayor I obviously didn't get to design that process or shape that process. That is a process that was determined by people beyond the purview of the Portland city council. So now the real question here is input and inclusion if I'm hearing you correctly as well on the pcep or whatever people want to call it I'm always happy to have better branding advice. I hear you and I appreciate you expressing your opinion.

Dieterle DeLa Hoz: I appreciate your comments, but those comments I hope are directed to every person in the Portland area because that's what they need to hear about.

Wheeler: That's exactly right. Again, unfortunately, or fortunately, some people see it as a positive, I actually support the settlement agreement and I support what's in it, but the process is actually a very closed process, and there are proscribed players in that process and ultimately what happens is we go before the judge and the judge either says yes, and the doj, you're in compliance or not in compliance. That unfortunately in this case is the construct in which we're dealing. I don't know if legal council wants to later on clean that up. She probably will, but that is the gist of it. I just want you to be aware of that.

Dieterle DeLa Hoz: I am aware. I would like to reiterate the last part, what your actions are doing are communicating to the community at large. Me as a commissioner I can understand that, but just hearing the perceptions that are going around, that's very important.

Wheeler: Absolutely. I do agree -- I do agree with that. Thank you. I appreciate your being here to testify.

Phillip Wolfe: Okay. Hello my name is Phillip Wolfe and I was the chair of the coab. I would like to just a minute of my time I would like to read a letter then I'll sign it. I'm asking for a little bit more time because I have to look at it then make sure. Can I have one more minute of time to talk?

Wheeler: Sure.

Wolfe: Okay. As far as transparency the comments that I believe I wanted to clarify that because of the coab before I was the chair of that and I stood strong with the coab organization because I valued that experience with the coab, and I volunteered full-time with that and I missed one meeting of the whole two years when I had surgery. So my heart was in the coab, and my comment is that coab fail was not for a bunch of different reasons, it was because we refused to -- they refused to replace the vacant seats. They didn't replace them for six months and we said we need someone to replace the vacant seat. As time got closer to the two years they decided that they were going to be suspended for the additional amount of time and then people -- it got all messed up, which

August 2-3, 2017

was not their fault. I think the city was to blame for that, they did not follow what the compliance. The doj found that the city was not in compliance. That's weird to know that they did not follow that and remember we did volunteer unpaid full-time work and that city was paid full-time and they were not in compliance, so who is the criminal here? [laughter] anyway. Anyway. I wanted to clarify those points from those comments made before. I wanted -- let me check. A person taking up -- a straight person taking up a gay platform I'll explain that's not representative of the gay community. Another perspective is the person that would take up the police -- the police reformation table and my concern is when you want to take up the police that I can only see your actions and I don't see the representation of what is happening so far. And having both of the investigation -- as a gay and as a straight person taking up the gay person platform you cannot interchange those two like you cannot have a woman that would take up the men's table and so that would not be comfortable. One thing I wanted to talk about is that I don't know if on the over 4,000 people were in the u.s. in 2013, as best as I can with my understanding of the investigation and I'm not exactly sure if it's right but I did the best that I could to understand that 18 people were killed by police in Portland since 2010 and the u.s. there were 4,000 people were killed by the police and only 16 police officers were held responsible for that. 16 out of the 4,000 people that were killed. 16 policemen and here 18 people were killed since 2010 and there's been no police being held responsible. Now trying to wrap up, my concerns about your proposal, your proposal, the concept is I know you mean well. I understand the motivation behind your -- with your proposal. The organization that's set up maybe will remove our only community oversight for the community and the organization would remove the committee, which leaves our mayor as the one who chooses the body of the organization and the only person who gets the report. It does not conclude fair representation for a hearing and it displays the community members that the actions in the criminal behavior, they are not responsible for that. I want to impress that the organization probably would remove our outside review process and instead put in an organizational control for the p.r. department. And lastly, I would close -- it would close the door of discussions and that has got to stop. We want to set up to make change and open the door and have community be involved so I'm asking to hold your proposal discussion until a later time that we have more information and that we can go ahead. So I'm going to ask if you could wait and to remove the 48-hour rule. Thank you so much. If you have any questions --

Wheeler: Thank you. Colleagues? Very good. Thank you.

Joe Rowe: Hello, I'm joe row. Is the captioning working? No. I want to thank you all for having this meeting. I don't thank you for the rush time scale and like most community members I urge you to listen to them and the cries that this is too rushed, much too rushed, Chloe. We want less talking about amending the doj agreement and more compliance with the 2014 agreement. Who knows best that you are talking too much? Terrell Johnson and quanice hayes. I'll say it again Terrell Johnson and Quanice Hayes. Too much talking. As dr. Bethel said earlier, we know -- I keep cutting out but as dr. Bethel said we know how to vote. Don't pull a Steve novick and vote to remove the oversight. If you remove oversight you remove yourself from your office. The letter o stands for oversight in coab. Coab. Travel back in time. The December 2014 contract did not predict that three years later we would see you in this room waiting for a trump doj and strip the agreement today. Okay? Travel in time, three years ago did we think we would be here doing this? No. The d.a. is saying that the court of appeals is wrong. Nick Fish asked Ms. Burrows, the national lawyers guild, a question. In essence nick asked the lawyer how would they sleep at night? Well, how do you sleep at night if you follow the sky is falling Rod Underhill and ignore the national lawyers guild? Think about that. You have to weigh

August 2-3, 2017

those two lawyers, the national lawyers guild or rod Underhill. You ask who I would trust? I trust the national lawyers guild. Coab or pccp nomination should be stripped of the mayor monopoly and the five council members each can appoint four members. How about that? I'm going to make a citizen amendment. Keep the contract we have got, ditch wheeler's amendments, all of them, convert the new coab to 20 members, five from each of you. Okay? I urge you to stop talking about escaping your duty. Okay? The city staff have lied that the ipr has an exclusively oversight role. I urge you to read the doj and on page 50 it says that the coab has oversight so please don't strip that out. You made an unconstitutional closing today. I have only 35 seconds left so I'm going to go to every time I speak whether it's in Salem or here it's three minutes. Next person. Three minutes. Next person. Three minutes next person. You ignore the public input. I have got to go home but I urge you not to vote on anything tonight other than finding four members each and getting coab back into compliance and working so we can let community -- this is not acceptable to have a microphone that keeps cutting out.

Eudaly: It's fine. Yeah.

Rowe: Please get us a coab working into compliance so we can get the community to bring police oversight. Thank you.

Wheeler: Appreciate your testimony. Good evening.

Reverend Bill Sinkford: Hi I'm reverend bill sinkford of the first Unitarian church. I thank the mayor and commissioners for holding this opportunity for community input as late as it is and as short as the time we're offered is. The most important thing that I want to tell you is that I am here and first Unitarian is here strongly in support of the ama coalition and their recommendations which you heard so eloquently from dr. Haines and dr. Bethel. It seems to us at this point that that group has been carrying the water for the community for such a long time that the priority becomes for them to be heard and involved in solution to this problem. You've heard from many people and said yourselves that trust is a central issue here. What I know about trust as a minister is that when it is broken, the only approach to restore it is to bring people into the conversation and so I'm strongly affirmative of increasing the seats at the table on what I will continue to call the oversight committee and searching out and reaching out to make sure that a diverse group of voices from the community is present from day one in that construct. The other thing that I am most mindful of is that the protections that have been built into our system for police who are involved in killings have worked extraordinarily well, not only here in Portland but across the nation. This community is not the only community which is struggling to understand what real police accountability needs to look like. What I do believe is that it is time for you, the decision makers, to look beyond the specifics and I know that you have to look at the specifics, to look beyond the specifics but to try to reach for solutions which will make all of us safer and all of us served better because I believe in fact that the police who serve us feel more at risk than they were before. Just as the community that is being served feels more at risk than it felt before and many parts of our community have been at risk for a long, long time. So try to look outside the box and begin with as much input from the community as you can manage. Thank you.

Wheeler: Thank you, sir. Good evening.

Isabel Sheridan: Good evening. I'm a member of first church, and I'm proud to be. So you have my statement. I sent you an email and the statement I gave to the clerk is similar. I'm just going to go off script here.

Wheeler: Can you state your name for the record?

Sheridan: I'm so sorry. Isabelle Sheridan. I'm going to just talk to you from my heart. I'm here because I have been a teacher in New York city, a very young teacher in Philadelphia suburbs for most of my 30 years, appeared I taught an awful lot of black children that I

August 2-3, 2017

came to love, and Puerto Rican children in New York city. I lived in New York city in the '60s, and I lived in Philadelphia in the 70s through the 90s. I was there when Rizzo was the police chief in Philadelphia. It wasn't pretty and we got to community involvement and isn't that they solved their problems as reverend Sinkford mentioned, but it's pretty hard to shock me and when I came here in 2008 as the place of choice to live out the rest of my life I thought it was, you know, pretty wonderful. Then I started to be shocked by one young unarmed black youth or young man after another being shot by the police, and there was no -- there was no response in terms of not even getting knuckles rapt. It was a shock to me. It continues to be a shock to me. I know I think of Eric Randall. I think of shahe brown, I think of the other black young males that I taught and I know they are having really good lives because they didn't get shot. I want to talk about risk. Every death of an unarmed black person in the last nine years that I have been living here has been a serious incident that came up as a serious incident in the legal conversation that I listened to for over an hour. That person, his or her family, the larger black community and I gotta tell you, me in the larger community of white safe people, I'm really shocked. We have to do better. I know that it's happening beyond all the detail of all the rules and regulations, when I don't hear that another young person of color has been shot dead and I know people who a year or a little more ago were simply humiliated, shouldn't be happening any more. Just fix it. I'll be with you.

Wheeler: Thank you. We appreciate your testimony.

Sheridan: You're welcome.

Wheeler: Karla, how many more people do we have signed up, please.

Moore-Love: About 15 maybe.

Wheeler: Can I see a show of hands of people who have not testified who would like to? We have about nine. If you just read through the list and if your name is called --

Wheeler: Good evening.

Jennifer Nicklaus: Good evening. I'm Jennifer Nicklaus and I'm really sorry, I haven't eaten since 9:30 a.m. and I have changed my testimony like 700 times because everybody else has been so much more eloquent than what I said. If I ramble I apologize. To me the overriding themes of this meeting and what you guys are trying to do are trust and really ramming this down our throat. We have had very little time to digest what's going on. Mayor, you have promised over and over and over again transparency. You've promised us oversight, you've promised us a lot of things and you haven't followed through on those things, and you're young in your tenure, so we can forgive you but for trying to move so quickly and for us to take what you guys are saying and at face value we don't have that trust with you yet. You haven't earned that trust yet from the citizens of the city. I'm sorry, you just haven't. So I don't trust you. I don't know you. I don't know what your intentions are and to be honest the promises that you have made I feel like you haven't followed through with. You promised transparency. You promised an open process, and you invited community members like the amac then when they express doubts and when they said that they weren't comfortable with some of the things you were trying to do you did it anyway. Now you're telling us this is what's going to happen, and you guys are all going to sit here and vote about it. Person after person is coming up here saying don't do this. Wait. Let us have a little bit more time. Let's work out the kinks before this happens.

Fish: Can I just clarify something? This is an ordinance this is the first reading. We are not going to vote tonight on the ordinance.

Nicklaus: Okay.

Fish: It was published as an ordinance, not an emergency.

Nicklaus: I apologize for my confusion. I can't speak to what some of the other people have testified here to but I can speak to what I have personally had happen to me at the

August 2-3, 2017

hands of the Portland police bureau. I was in the crowd on June 4th, in the back of the may day event with my 64-year-old mother. I got pepper sprayed both times but the Portland police now have pictures of me and my photo identification and I don't feel safe. I'm a business owner. I am a taxpayer. I'm a concerned citizen. I have repeatedly tried to get hold of your office, mayor, and I have gotten the run-around. I myself have put in two requests to speak and meet with you. I have gotten no response. My husband has put in a request to speak with you and gotten no response. To be honest Michael Cox is the only person in your office that has been willing to spend any time answering my questions and he is a spin doctor and as much as I appreciate him doing that I don't trust him. That's the overriding theme of what I have to say tonight is earn our trust, don't just expect it.

Wheeler: Thank you. Good evening.

Thomas Etienne: Good evening. Glad to see Mr. Mayor and the council here working late. I'm Thomas Etienne. I recently became a veteran I came back to civilian life, took off the uniform so I'm familiar with working late. It's part of service. I thank you for that. So I tried to think over the past couple of days what I might say that is either convincing or persuasive to reflect what others have said here why it's not a good idea to not listen honestly to what the community is telling you because they are here and they are telling you. So I came back about a year ago and I first came into the army here at the Oregon army national guard. I was commissioned out of the university of Portland. From 2006 to 2015 I trained and studied and fought in our wars on terror. I just wanted to represent something from that that may reflect here. So what have I seen in that environment that we went into areas where we were trying to establish security and gain trust, and it's a difficult thing to do and we were doing it in an environment where violence was part of the equation, very hard to do. We learned by paying the highest price for years what it takes to actually gain the trust of foreign nationals and indigenous communities. We finally discovered that we cannot disregard those populations. We cannot disregard stakeholders. We actually had to find ways to turn enemies into stakeholders. It's a hard thing to do but not impossible. Actually accepting what they tell us on face value, the way they are going to explain it to you really can't get the community to communicate or operate on your terms. They are going to do it on their own terms every time. It's just been interesting after coming back here seeing what's happened here, very impressive all the growth that's happened since I left but then immediately seeing the homelessness, knowing some of those people are veterans as well, then also seeing this environment that's related directly to this issue is actually fomenting the circumstances for extremism. And why that can't be resolved, why you can't find a way to actually meaningfully interact with the community in such a way that they are actually dictating not terms but setting the agenda for how he can protect themselves. The main point that took us years to establish, they gave them a shout when we were desperate, you have to protect your populace no matter what. We had to shift away from intervention and use of force and going after bad guys aimlessly to protecting them. It was a hard thing to do. Maybe if we had more resources infinite amount of defenses or whatever, but it wouldn't work otherwise and we did it in that environment so you should be able to do it here. I don't thing cutting out the community and redefining what your compliance standards are, moving the goal posts closer, is going to work.

Wheeler: Could I just make a comment? Several people in a row have raised this theme of cutting out the community, squashing the public voice, getting rid of oversight. People have testified and I would like to respond. I think that's a reasonable thing to do. You elected me. You need to hear from me as well. First of all with regard to oversight, it's true that the coab, the o is for oversight. The a, weirdly enough, was for advisory so it had a conflicted objective from the beginning and as we interviewed people on the coab they made it clear to us that there was confusion as to what their mission was. And it's great to call it

August 2-3, 2017

oversight body but the reality is the mayor rarely attended, the police were not always able or at least in one case were not to show up by the then police chief, members who were well meaning and were prepared to work hard felt threatened and did not show up and in fact resigned including two chairs in a row. So while it looked great on paper, as an oversight board, the reality is they sent recommendations to the city that were all summarily ignored. It became almost irrelevant-- just a second. Despite the best efforts of that board. With regard to shutting out public input I just want to reiterate something here. We can quibble about it being a public body or not being a public body. I'm fine with that. I have no particular pride of authorship, but this is specifically done so that it will have public engagement at least once a quarter. That is in the document and the committee itself can choose if they so choose to have more input, more public engagement processes. It's at least once a quarter which by the way is consistent with many other boards and commissions that we have. I have heard testimony tonight -- [shouting] I'm answering a question not filibustering. I'm your elected mayor. We're having a conversation here.

Nicklaus: I can ask you a question? [speaking simultaneously]

Wheeler: Certainly.

Nicklaus: Why aren't you just trying to fix it, start over with the coab? Why are you trying to completely scrap it?

Wheeler: Jenny this resulted from conversations we had with coab members and we did in fact this document addresses many of the issues raised by coab. For example, I'm just going to take off the list that I remember off the top of my head. They asked for orientation they'll get it. They asked for more training, they'll get it. They asked for more permanent staffing, so they're going to get a full-time administrator, they're gonna get somebody who helps coordinate the meetings and what not. I'm not even done yet. [speaking simultaneously]

Nicklaus: Why not keep the coab and fix the things --

Wheeler: I believe in many regards this is exactly what we're doing. It requires a timely response from the city, people here who were on the coab will tell you they got virtually no response from the city. That issue gets resolved. The police will be required. They will not be able to opt out. They will be required to participate in the public engagement process. This does not item for item square with what drs. Bethel and Haines, people I have a tremendous amount of respect for, even knowing they disagree with me that's why I wanted them to be here to testify. I value their opinion and their role in this community. We're doing our best to get most of the good advice. My colleagues here as I said this isn't lined up. They have introduced some amendments that address some of the concerns that people have had. So let's see what we get put together here. I respect the difference of opinion but I wanted to respond to that because that issue has come up several times and I felt like I needed to reflect back on your good comments. I appreciate it.

Etienne: I thank you, Mr. Mayor. The only thing I can say on that, let me add that I don't understand like reflecting right here why the need to fix things requires removing that oversight component which the community seems to think is extremely important.

Wheeler: There's for several reasons. First with regard to the doj settlement agreement, you still have the doj. They will be playing the oversight role. You'll still have the cocl. They will play an oversight role, and you'll still have the judge, who has a very important role in terms of determining our compliance or noncompliance. Don't forget you still have me and you still have the city council. So I believe there's plenty of oversight worked into this. Can we address a lot of the other issues?

Etienne: I hear you.

Wheeler: By the way, this committee or commission or whatever you want to call it, they will have the ability to chart their own agenda. That is very different than what the coab

August 2-3, 2017

was offered. The coab was very proscribed in terms of what issues they could address. So it ain't perfect. We're not all going to agree but I think this does in fact address most of the issues raised.

Etienne: I have seen where goal lines have been moved closer and consequences were devastating. I actually had a flashback when I looked at the cocl report and the color bars of their assessments of whether the benchmarks have been met for the Portland police. I had a flashback to assessment of the security forces in Iraq and Afghanistan. Knowing those bars could always simply be -- every time we were ready to transfer out to complete a rotation somehow they seemed to have magically they need improvement but they met the standard and we were out of there. Then the next unit came in and boy did they discover all the issues immediately again. In the long run when those things don't represent reality, those forces, we said that they were wonderful, they could take over their own security and years later Iraq almost fell to an internal enemy. It's a different circumstance than we're talking about here.

Wheeler: It's a fair admonition and I see your point.

Fritz: Thank you for your testimony and for your service to our country. I really appreciate your perspective. I want to give a point of information that the cocl is still going to have public meetings quarterly and where in the current settlement agreement it says the cocl shall report to the coab it now says the cocl will report to the public and that the coab and the new commission will jointly go to the quarterly meetings and arrange them together. So actually it's more public oversight because everybody will be allowed, encouraged to do that rather than there being a designated -- well --

Wheeler: I'm getting the stink eye from people who have been waiting. I'm sorry. I was going to -- the one who started this ball rolling but I wanted to comment. Thank you.

Fritz: Thank you.

Sarah Iannarone: I got used to listening to you talk. I'm good. There's not much I can say that hasn't been said already. I think dr.s Bethel and Haines and also Sinkford were pretty succinct and JoAnn was pretty clear with her thoughts. Maybe we could -- should pull it out to the p.r. level. My job is repping Portland in the global marketplace as a livable city. Hundreds of people come to see me from around the world because we're known as a model and one thing they come to see is civic engagement. They want to know how is it that you enable your citizenry to be so engaged to create such a livable place. We talk about oni, we talk about all the ways our citizens are empowered. We talk about the commission, about equity, human rights then they come out, look at the cover of the Oregonian, the tribune and see another police shooting they see the homeless people on the street and wonder why are the elected officials not listening to the people. Where is the actual governance, not just a bunch of public testimony but the true oversight of our city, the governing of our city according to the will of the people. I think the point here is along lines of Susan Anderson talked about with the composting. It was very difficult when we tried to switch from weekly garbage pickup to every other week and people had garbage cans overflowing it smelled horrible, and it was terrible. No one knew what was going on but we persisted because we knew there was a better alternative and we needed to try it. We needed to persist, to move the needle forward to innovations that were nothing we had ever done before. In my business we say the greenest building is the one that's already built. We're spending \$200 million to fix up the Portland building. On the outside it looks great and on the inside it barely works. The coab is the same. Why put all this energy and effort into selling the ppcp to the people going through the amendment whatever prosper Portland is the same thing I can't track, but putting this new wrap-around on everything trying to sell them to the public instead of actually fixing like he's saying real fixes and having an innovative model that says we stuck with this. We invested. The failure of the

August 2-3, 2017

coab was not its members. It was a failure of investment right out of this building in training, in understanding what those people needed to succeed. It's exactly like when we send a minority student in to be on par with a Caucasian student and expect them to win. They are not equipped to succeed. So I would suggest to you and argue please do not take dr. Bethel's advice. Think of it as coab 1 and coab 2 and fix the things that are wrong with it. Keep your model, perfect it but do not reinvent the wheel or move the goal posts because I think it's antithetical to what we're trying to accomplish and I actually think it looks really bad for the city.

Wheeler: Thank you.

*****: Is one of those people missing?

Wheeler: You can start.

Lisa Wright: Thank you for taking testimony today. I'm Lisa wright. I'm a co-chair of the political action committee for the national association for the advancement of colored people Portland branch. We have submitted testimony via joAnn earlier so I'm here to speak as a constituent. I want to say I appreciate commissioner Fritz for staying up late and reading all the documents. I have had several late nights reading all of the documents. I appreciate commissioner Eudaly being very responsive to the feedback that has come in as we have been moving quickly through this. I want to say that as I have read every word of all of the documents and I have listened to all of the testimony I come back to I think what Sarah was just saying, that I cannot find the reason why you want to not fix the coab and deal with the problems that were not with the coab but with the city and with the police department instead of coming up with something new. This just does not make sense and I fully appreciate the amendments you're putting in to make the structural problems and frankly the embarrassing lack of detail in the exhibit 4.1 better, but I think the real problem is that you're trying to remove the independent community oversight which was put in place for a reason. It was not put in place just for fun. The other thing I want to talk about is trust. We have heard a lot about trust today. We have some reason why this process is not being trusted and some reasons why individuals are not being trusted. You send police in riot gear to peaceful demonstrations by default. Including when there were white supremacists that counter protesters were demonstrating against and the police were facing the counter demonstrators, not the white supremacists. You shut down a community member who expressed disagreement with your actions in this room. You have promised public and transparent proceedings for things like the police hiring process then made them largely secret. You changed the amount of money that could be approved without city council approval a couple of weeks after the naacp objected to the over \$300,000 dollar rfp for a strategic plan for the police department that has an interim police chief. I just have one more point. That's that you remain silent in the face of police violence including in city hall until elderly white women are affected. Those are all very real reasons why there's a lack of trust and that doesn't get to all of them. I acknowledge there have been very difficult situations that you have had to deal with. Some very challenging individuals, but you're asking for transparency and for us to respect the process and at the same time there's consistently reaction to shut things down instead of opening them up. You are not going to win that way. If you want to create connection and make a better process with people you have to open things up. I apologize for going over time.

Wheeler: No worries. Thank you. Good evening.

Tara Parrish: Hi. I'm Tara parrish with don't shoot Portland. I have been sitting here for about four hours listening to a bunch of stuff that makes me really angry, and I'm really disturbed your analogy, indictments for murders by police to earthquakes and earthquake preparedness. I can't wait to see the transcript.

Wheeler: It was actually the risk that I was talking about.

August 2-3, 2017

Parrish: Right. Right. The risk. Okay. Again, I see that as police commissioner your grasp of what's really going on at the Portland police bureau is poor. A lot has been said already by people far more qualified than I am. What I do know is that Portland police have murdered two young people this year already. I know that yesterday would have been Quanice Hayes' 18th birthday and again, all I hear because I come to these a lot, all I hear is provisions for the comfort of the officer and the protection of city liability rather than the citizen affected. Portland police officers should be held to the same standards after murdering a human being as the average citizen is. Really makes me sick. I hear testimony that there has only been a certain amount of feedback but how is a group of citizens repeatedly blocking trimet demanding transparency in the police bureau not feedback? After I leave here I'm going to an art exhibit called Stolen Angels, about young people of color who have been killed through white supremacist violence, the majority murdered by Portland police and I would like to invite everyone, if they can get there at 8:00 p.m., the opening reception is at Williamson Night Gallery it's at 916 Northwest Flanders and it goes until 8:00 p.m. It's powerful if you can make it. Regarding the reorganization to attempt to comply with the settlement agreement only reinforces the racist patriarchal system in place already, your trying to make yourself king just like the president. Today I'm here because I want to speak for Christopher Kolanje, Quanice Hayes and Lawrence Albers, say their names.

Wheeler: Thank you.

Desiree Helligos: My name is Desiree Helligos I'm a long time member board member of Peace and Justice Works Portland Cop Watch, faculty with the Collective for Social and Environmental Justice at WSU Vancouver though I live in Portland and my comments reflect only my own perspective. So I was deeply disturbed to hear about the proposed changes to the settlement agreement. Quick clearly the replacement of the COAB who's primary charge is to provide community oversight of the implementation of the settlement agreement representing abandonment of spirit of accountability and transparency at the heart of the settlement agreement forged with the Department of Justice. The replacement of the 15 member COAB with its mechanism for insuring broad and diverse community representation with the 5 to 9 member whose primary function is to provide community engagement and which would be handpicked by the mayor which further ignores the public trust in the office of the mayor, the city council and the Portland Police Bureau. I ask you what kind of meaningful community engagement can be fostered by a board that is handpicked exclusively by the mayor and out of some 24 to 28 meetings a year conducts all but four behind closed doors. For years, we've watched the police bureau act with impunity lethally shooting civilians like Quanice Hayes unarmed civilians like Quanice Hayes, Kendra James and Keaton Otis whose loss at the hands of the Portland police continues to haunt and traumatize the community. The community has spent years arguing, organizing and agitating for transparency and public accountability from the PPB. Like so many others, I'm deeply concerned at the prospect of police officers being given a wide window of time and the latitude to try to manufacture false testimony to cover their own tracks. We know that mechanisms exist to wall off administrative investigations by Internal Affairs from criminal investigations and that it's important to promptly interview police officers involved in the lethal use of force as it is to interview civilians involved in incidents that result in loss of life. So I ask you commit to ensuring officers are interviewed within 24-hours of officer involved shootings including fatal shootings. Finally, I ask the mayor and every member of the city council ask yourselves whether you want your own actions as elected officials to be guided by the spirit and policies carved out under the Obama DOJ for all its limitations or whether you want your own political legacy to be one of active collision with the Trump and Sessions DOJ. The president whose DOJ would eagerly

August 2-3, 2017

submit to the eliminating of the coab in favor of pr and window dressing is the same president that publicly encouraged police officers to assault people during the process of arresting them by slamming their heads up against squad car windows. Is this the DOJ you want to be aligning yourself with and under mining the settlement agreement? The question is which side are you on? I assure you we the public will remember where you stood on this issue and who you stood with. Thank you.

Wheeler: Thank you and just for the record, the U.S. attorney who we have been working with through this mediation process was appointed by Barack Obama.

Helligos: We know he's in charge of the DOJ right now.

Wheeler: He's committed to the settlement agreement and that's why we're moving forward with this. Good evening.

Linda: Good evening, Mayor and Commissioners. It's getting awfully late. I'm going to just say

Fish: What's your name?

Linda: Oh, sorry. Hi, I'm Linda. I am here as a reasonable community member. I also have participated in the COCL and COAB meetings. In particular, I'm aware of the 48-hour law. Some of my language was used in the amendments of that it's not really a law, it was a protocol more along the lines of that and as well as I'm a board member at Sisters of the Road. Today I speak in my own capacity, I will use I statements as much as I can. My pronoun is queen or anything respectable. Having said all that, I do echo what the Reverends have said and that's enough for you guys to digest right there. I feel the amendment to the settlement agreement would engrave our community. Which is charged to participate in the accountability process. Picking a few folks isn't what I think is engaging the community. When the community's voice are removed from the table, it is approaching and hindering the vital transparency that settlement agreement was forged to encompass the community to whose voice shall we hear. Accountability is imperative when we're working with public servants. The A.M.A., I pray that you heed what they are speaking to and you use the lenses that truly impact the community at large that you are charged to take care of. That's all I have to say.

Wheeler: Very well. Thank you. We appreciate your testimony. Good evening.

Laura Moulton: Good evening. Thank you for being here so late. I paid for plenty of parking and I'm pretty sure I have a ticket. So I was wondering if the Council would write a note? Pretty sure I might have a ticket. I'll forward that. I'll be quick. I want to thank you all for being here thanks to the Mayor and the Council. I am Laura Moulton I'm a professor and operate a nonprofit called Street Books a bicycle powered mobile library that serves people who live outside. In the last week or so, as was previously mentioned, our current president joked about police officers roughing up citizens that the police and bumping them into patty wagons. This caused a number of police departments across the nation to respond pushing back against this sentiment reinforcing a commitment to serve the communities and it's easy to laugh or just hold this at remove and talk about what an egregious thing this is, but it does speak to a general tone we see across the United States right now. In this claim my hope would be that Portland would be a leader in stepping forward and being a beacon with police accountability open and transparent and all dealings and if the U.S. Department of Justice declared we're out of compliance, my hope is that as has been mentioned, there's broad community oversight and inclusion rather than something small that feels inaccessible to citizens. I've lived in Portland since 1998 and in that time, I have seen a number of Portland citizens die at the hands of police. James Chassey, Kendra James, Keetan Otis and Aaron Campbell are a few. In some cases, we pay millions of dollars to their families because officers get it wrong. If we don't have an open public discussion about what it means to get it wrong, how do we improve as a police

August 2-3, 2017

department and a city? I knew Aaron Campbell's grandmother. On the day she lost one grandson to a heart condition Portland police shot another grandson Aaron in the back he wasn't mentally ill. He was grieving the death that morning of his brother and after a hostage negotiator talked him outside, the officer Frashour shot him in the back. It's my understanding that Frashour was eventually reinstated to the police force. Maybe there's something updated but my understanding is he's back and if that's true, what have we learned 7 years later? If this is the system, what does the idea of 48 hours even mean? What does it matter? And the writer Claudia Rankin has written because white men can't police their imagination, black men are dying. She says when white men are shooting black people, some of it is malice and some is an out of control image of blackness in their minds. Darren Wilson told the jury he shot Michael Brown because he looked like quote "a demon". Blackness in the white imagination has nothing to do with black people, end quote. My question for the council and for our city as we discuss the terms of these ordinances is what will we do to prevent shootings in the first place? What do we need to do to police our own imaginations? Thank you.

Wheeler: Thank you. We had two more to come on up.

Moore-Love: If you signed up to speak, come on up.

Wheeler: You will be our final two voices tonight. Thank you.

Ethan Harrison: Hi. For the record, my name is Ethan Harrison. I'm an Oregon class queer person who uses rando pronouns. It's important not to assume gender. I was born and raised in Alabama and I'm a working class queer, live and work in Irvington the historic district they have some great produce up there. Before my comments I just wanted to note something that I read on twitter. It's a screen shot from a conversation with Michael Cox, the mayor's communication director. He said experience tells us when we have to plan for the possibility of disruptions could require council be moved to another room. That room is on the third floor along with the balconies. It's necessary to keep the balconies closed for that reason there are overflow rooms for viewing, everyone will have an opportunity to testify further. He noted that in complication with and at recommendation of our facilities and security teams, made that decision. So I just wanted to note that so you met before and you made plans to exclude the community and we can't pretend that's open. So yeah. I remember city council where commissioner Eudaly talked about town halls and I was inspired by that. Where you get to come up and talk and meet your neighbors and things. So I was wondering how many town halls were held before you put this on the council's agenda? I live in Irvington and I thought it was funny and scary. My time hasn't started and stopped. I'll just note that I have three minutes on the clock here. Robert's rules are dear to my heart. In July, I received a notice on Portland city letterhead and as a tenant I thought that was an eviction notice. As a renter I live with that fear everyday due to Portland's inadequate laws for the houseless population and the renter class. Although we have new strides with relocation assistance which I'm really looking forward to talking to the commissioners about this fall. So turns out it was a notice for a change to an apartment building in Irvington historic district and so the city has to in compliance send the letters to everyone in the neighborhood. Oh, cool, let's read this. They were going to change some windows. In a building and I got a notice from the city. I felt really cool. If we're going to do the same thing for brick and mortar, we have to do the same thing for people's lives. We need to be sending out similar notices. Hey, wouldn't you love to come and talk about the Portland police? Granted, it's civic engagement and you find a lot times at their empty meetings, but we should at least try. We should be leveraging the officer neighborhood involvement, like why wasn't my neighborhood association getting in contact? Although I do realize some of those only meet like twice a year which is interesting. Lastly, I guess breathing is good. So the comment about the process with the department of justice being

August 2-3, 2017

closed, I would just note the public found out about this on a Friday last week and it was moved to council's agenda the following week. So if I were the mayor which I don't think I would want to be. My question is just like you had that closed meeting that had to be secret you had to follow like not secret, but you couldn't talk about it. Why then wasn't there a public comment period? Why didn't you go to Willamette week and be like got a cool story for you? Portland mayor wants to talk to you about this cool thing and involve you. To call these meetings sufficient is we know that's not right. We have the ability to back and forth talk. When it happens, I'm the person talking about how you are filibustering so that's not good. Self-jab. I don't know. I'll close this. You have the capacity to be cordial and congenial. As you've shown by like joking with people earlier laughter is like a fear response and it's something that we use to be human and I just wanted to Kurt Gracy Bongs the person who passed away at 100 years old a lifelong Detroit has some really great ideas and we just need to work in service of being more human, human beings and actually engage in community meaningfully before you develop the rules to develop community involvement bodies. That's where we need to be. Thank you.

Wheeler: Thank you. Appreciate your testimony. Good evening.

Martha Balshem: Good evening. It's a big responsibility to go last. My name is Martha Balshem and I'm a retired sociology professor from Portland state. A proud member of the local NAACP and intern facilitator for the alternative deviance program, but I'm just speaking for myself. Everything I have to say has already been said, but I would offer my own insight into it. First of all, I'll say that speaking for myself means I'm speaking for an upper middle class white woman who lives in southwest Portland and I feel anxiety of police I've never in my life felt before. I've had political anger about these issues, but feeling something visceral is completely different and I think it's associated with the stress of our society is under now and that's the context of everything. All of these issues about policing for multiple reasons are a real key issue in how our social fabric is going to evolve, fray, strengthen, change because these issues, once they are felt visceral, are consuming. Also, I think that the incidents of people losing their lives are only the tip of the iceberg of the kinds of things that go on between police officers and residents of Portland even southwest residents. I'm extremely close to a young man who is a social worker in training and in his professional job, he saw a Portland police officer escalate a controlled situation into a crisis that evolved my young friend a licensed social worker and a 10 year old child having a freak out because of mental health issues. It was a situation that was controlled by the social work professionals there, but the incident ended up with the officer putting the licensed social worker and the child together in a double neck hold, if you can imagine that. We're not insulated from those stories and from the impact of it in the southwest Portland. You have to remember that we're talking about not certain communities but all of Portland. Can I say a little bit more?

Wheeler: Certainly.

Balshem: Two major things I want to add to. First of all, I think that you really can't escape from the fact that this PCEP is a step backward. It's not the step we need to take, we desperately need to take that step forward in order to preserve our social feeling of togetherness and what that means for the community, the whole city and I think it's very important to realize that the body is described in a very vague terms and we certainly must have all have had the experience and come to the insight that things that are vaguely described are easy to torpedo. I think that I would predict as written this morning with worthy amendments to it that it will be an effective body and last thing I wanted to talk about is just the question about input. I understand how painful it can be to go through a lot of work with the best of meaning and come to the belief that in your mind, this is going to be a stronger than the original body, but I think for whatever reason, the input that was

August 2-3, 2017

gotten was from a narrow band. When you have a narrow band of input, you have an incomplete output and I think that's what you've got here. Narrow in, narrow out. There are people you need to hear from that you haven't heard from, you even know who some of those people are. I would urge you to remember the city of Portland has not because of some of these issues I've talked about earned the trust of people who have consistently and historically been targeted by violent policing. So please don't act on this now. You have an incomplete proposal to look at.

Wheeler: Thank you.

Balshem: Thank you.

Wheeler: All right. Thank you, everybody, for your testimony.

Eudaly: Are we going to make any comments?

Wheeler: We have the opportunity to bring staff back up, if you'd like to ask questions. You have the opportunity to make comments.

Fish: We may be on the verge of losing a quorum. Can I make a suggestion? It's been a long day and a lot to absorb and we're not voting tonight. I suggest we move first of all, the proposed amendments that we now have your staff has kindly created an integrated document. Have you had a chance to review these amendments?

Wheeler: Yes. I want to make sure the proposed proposers have had a chance. Commissioner Fritz, I don't know if you had a chance to read through yours and commissioner Eudaly I think yours are verbatim off of the sheet you provided earlier. Those shouldn't be problematic.

Fritz: And Nicole Grant has got all of these entirely right.

Fritz: This document looks like a complete set of amendments. Mayor, do you accept these amendments?

Wheeler: I accept these amendments so if there's no objection what I'd like to do is call the question on the amendments and move them forward.

Fish: I propose we do two votes. One on Eudaly amendments as a package and second on Fritz amendments as a package.

Wheeler: Any objections?

Eudaly: I didn't think we were going to vote on the amendments tonight.

Wheeler: We're going to carry well, here's what we can do. We can carry the amendments forward as part of the package.

Eudaly: I would rather carry them forward. Oh, wait, sorry. I cut you off. Carry them forward.

Fish: Here's the one advantage if we adopt the amendments now and there's consensus around the amendments, we have all the flex ability of how we want to handle this matter going forward. If these amendments are acceptable to council, I see no reason not to adopt them. This matter does not go to next week for a vote. The mayor is going to give additional time for us to consider these and hear from the public, but I have another amendment I may bring but I'm not prepared to offer it tonight other than foreshadow I might bring it. I think we should adopt these as a matter of good process since they are on the table, but that does not preclude the council from offering additional amendments at a future hearing.

Eudaly: All right.

Wheeler: Good?

Fish: So I would move Eudaly amendments 1, 2, 3, 4, 5 as a package.

Fritz: Second.

Wheeler: We have a motion and a second to move amendments 1 through 5. Could you make a similar motion for Fritz?

Fish: And you move Fritz amendments 1 through 12 as a package.

August 2-3, 2017

Eudaly: I second that.

Wheeler: We have a motion to move Fritz amendments 1 through 12 by commissioner Fritz. And a second by commissioner Eudaly. Any further discussion on the amendments before we call the roll?

Fritz: As a point of information did commissioner Saltzman say he's left for the night or is he coming back?

Fish: He took his glasses so he may have left.

Fritz: Okay. Thank you.

Wheeler: Please call the roll on Eudaly amendments 1 through 5.

[roll call]

Eudaly: I guess I'm going to take this opportunity to thank everyone who has made it through this hearing with us. It was a remarkably civil, productive, informative he's making faces at me over there. Meeting. Compared to many of the sessions that I have been sitting up here for. I've attempted to respond to concerns that were expressed by community members before this hearing. I may have a couple more to introduce but I have concerns to mull over in the meantime. We're looking at the 48-hour ceiling and whether or not they can lower that to 24. I also feel the need to express on the record that despite the fact we've included the extra report from Kathleen Sadat, former chair of the coab, she does not actually support these amendments and she said that she submitted testimony by email to us but unfortunately it didn't come through and otherwise, everyone up here would be aware of that. I'm going to vote aye on my own amendments but there may be lots more to come. Aye.

Fritz: Thank you to everybody who is still here and participated in this hearing. It has been a remarkably constructive and informative hearing. Thank you commissioner Eudaly for these amendments. I want to state very clearly I am very committed to continue of being extremely involved in the department of justice settlement agreement. Whether the language says so or not, the answer is try to keep me away and one is not happening. As a retired registered nurse who worked for 22 years at Oregon health and sciences university, I didn't expect I was going to get to work on that crucial issue when I came to city government and I will continue to cease the opportunity. I want to particularly thank Cristina Nieves on my staff who have attended almost every meeting of the community oversight advisory board and every meeting with the Albina ministerial coalition for justice and police reform. Who unfortunately is on vacation this week so thank you to Nicole Grant for pin shifting and getting my amendments into order. We are committed to making sure this works and I just wanted to explain that part of the urgency is that we don't know how much longer U.S. attorney Billy Williams will be in his position. We know that he's committed to this. We doubt that somebody following him being appointed by the current administration would be thoughtful and as determined as he has been nso that has been part of the urgency to get agreed to soon. Whenever we get to it, it will go through a fairness hearing with judge Simon. I know the mayor has many other things he has to get on the record as well so this is an interim phase here. I appreciate Ethan Harrison's comments and your honesty and intelligence that we hadn't started the clock I actually noticed because I thought your testimony was especially elegant. What we are trying to do, in fact, is to establish procedures for community engagement. So it's really going to be a community engagement oversight committee or commission. The question is how to get that done in a way that inspires trust and continues to respond to community concerns and I think there's many things in the settlement agreement still that will require that. So thank you very much, everybody who stayed with us tonight. Aye.

Fish: I join in my colleagues in thanking everyone who joined us today over the last six hours. Karla's having fun. Can we suspend the rules and thank Karla? We have the best

August 2-3, 2017

council clerk in America and we're grateful for her. I think these amendments strengthen the proposal that's been put forth. I also have no doubt my colleagues are deeply committed to the difficult work the very difficult work of police reform and accountability. I thank both the commissioners Eudaly and Fritz for offering amendments which move us in the right direction. I'll vote aye on the Eudaly package.

Wheeler: I agree with all of these amendments put forth. I'll give my speech on commissioner Fritz as well. These are good amendments. They address many of the concerns. Not all but many of the concerns raised by the public tonight. I think they are all still within the spirit of what we're trying to accomplish. I think they are still within I believe we still have a strong case that we can make that we're in compliance, we're in compliance with the settlement agreement. My guess is the DOJ would not have too much heart burn about the amendments. I think it's great. I appreciate my colleagues taking the time to listen to what people were saying. Aye. The Eudaly amendments are adopted and now if you can call the roll on Fritz.

Eudaly: Before the roll, I do have two small concerns. Fritz amendment number 9 and 11. Both of these amendments insert language that, I guess, provide more flex ability than I'm comfortable with because there's no out by limit. Number 9, is pcept shall consult with community members and hold two public hearings to be completed if practicable within 120 days. I ask just ask that we have the outside number if we're going to give that flexibility.

Fritz: I appreciate that suggestion. I suggested at first to change it to 180 days maximum. We want to get it going as quickly as possible.

Eudaly: Should we say 180 day limit then?

Fritz: And take out if practicable.

Fish: We'll treat that as an amendment. I'm not the presiding officer, but I think we have a consensus on that.

Wheeler: That is a substitute

Fish: They are deleting under Fritz amendment 9 we're deleting the clause if practical and we're amending the 120 days to 180 days.

Wheeler: That's team work folks.

Fish: It's been first and seconded can we vote on that first, mayor?

Wheeler: We're amending the amendment. Call the roll.

Fritz: This is to change drop practicable and change the time line to 180 days.

[roll call]

Eudaly: Aye.

Fritz: Thank you commissioner, aye.

Fish: Aye. **Wheeler:** Aye.

Wheeler: The amendment to the amendment has been adopted. Continue, please. Commissioner Eudaly.

Eudaly: Fritz amendment 11 pcept shall strive to submit its recommended strategies for the community engagement plan to the chief in writing within a 180 days of pcept members being seated again. Again, if we're going to use language like strive I want an outside limit.

Fritz: Again, that wasn't what I originally proposed.

Wheeler: In the microphone, please. You have to identify yourself again.

Reeve: Tracy reeve, city attorney. I think it would be fine to substitute as you did with the other amendment to the amendment specified time period.

Fish: If we deleted the term strive, can we realistically meet the goal within 180 days?

Fritz: That was my original concern and I was going to actually have it changed to 270 days or something like that. I think six months to get seated, get trained, take all the input

August 2-3, 2017

that you have too and be able to get back. That was one of the key mistakes we made with the coab was requiring things to come too fast so there wasn't time to do all of the training.

Reeve: How about leaving it strive for 180 days but in any event 270 days?

Eudaly: Yeah, I like that.

Fritz: Thank you very much.

Wheeler: Can I call the roll on the amendment to the amendment?

[roll call]

Eudaly: Aye.

Fritz: Thank you Tracy Reeve, aye.

Fish: Aye **Wheeler:** Aye.

Wheeler: The amendment to the amendment 11 has been adopted.

Fish: I move the Fritz amendments as amended.

Eudaly: I second that.

Wheeler: Commissioner Fish moves Fritz 1 through 12 as amended, commissioner Eudaly seconds. Any further discussion? Call the roll.

[roll call]

Eudaly: Aye.

Fritz: Well we did hear some concern that the office of equity and human rights currently report to the mayor and I want to thank director Dante James who has been here all afternoon who helped craft this language that I suggested. Just from the Portland city code chapter 3.128 which is the creation and the functioning of the office of equity and human rights, "the director's powers include b, implementing the policy directives of the city council and the commissioner in charge. D, working with the human rights commission, the Portland commission on disability and all other bureaus, et cetera, to increase equitable outcomes and reduce disparities". That's what I mentioned to the human rights commissioners by including reporting to the director of the office it there by brings back in human rights and commission on disability. And then finally, it also recommends implementation strategies on other equity and human rights policies adopted by city council which will be this revised settlement agreement and the director provides reports to council and the community annually and as requested. So we can specify whether or not we want the director of the office to do that. For all these reasons, I'm really grateful to the mayor who agreed to this change. Aye.

Fish: Aye. **Wheeler:** Aye

Wheeler: The Fritz amendments are adopted as amended. Commissioner Fish.

Fish: Mayor with two other items of business before we conclude this hearing. Unless you want to break for breakfast. The two additional items are I have listened carefully to the testimony tonight about concerns raised relating to ordinance 871. I'm not prepared to make proposed amendments now because the way the ordinance is structured, you have to go through it line by line to conform it if we were to make a change in the resolve. I do want to have a follow up conversation with the city attorney. I don't feel that with as little gas in the tank I have right now I'm prepared to resolve a legal dispute between the national lawyers guild, the district attorney and the aclu. I do think, though, there's a clear balance of interest here that I want to think through. So, I want to just preview that I will be talking to city attorney and my colleagues and may offer an amendment on this particular ordinance and, again, I understand the public policy tradeoffs. My concern, however, is that history tells us the likelihood of an officer being indicted in officer involved shooting is limited, very minimal. At the same time we are pegging the enforcement of our policy to an exhaustion of an appellant process which could take years and I'm concerned about the negative impact on the city's ability as an employer to discipline officers and to perform the functions the community expects of us separate from the criminal investigations, but I'd

August 2-3, 2017

rather not make that call right now because I would like to have a conversation with my colleagues and city attorney. Mayor, I may well bring forth an amendment on that issue.

Wheeler: So let me suggest something. Tracy, if you can come up, I have a couple questions about the path ahead. In a minute, I'm going to move these three ordinances forward as amended. Tell us about time frame. There are people in the community who said they wanted to have an opportunity to digest this. That's thing number one. Thing number two is tell me the consequences of keeping the written record open until the second reading.

Reeve: So thing number one. We are working with the department of justice and a lot of this endeavor was to have a meaningful status conference ideally in mid november which would also be the opportunity for the court should it choose to do so, of course. The court controls its own schedule but would provide an opportunity for the court to hold a fairness hearing on the amendments if council passes the amendments. Once council passes amendments, if council does approve amendments, we have been working with the local united states attorney's office. Here are the folks we've worked with all along. We also have the team of civil rights division career lawyers we've continued to work with. None of that team has changed and I can tell you the focus of that team has not changed, in my experience, in the work we've been doing. Any final approval has to get run completely up the chain to the top of the civil rights division which just had another leadership change as things continue changing in Washington. That will only occur once city council approves it because the one thing that's been made clear to us is the current administration will consider changes that have been approved by and that are approved by the local government. They don't want to be dictating down they want something the local government already approved. So all of which is to say that will take some time, the united states doesn't move on a dime and the goal was to have a fairness hearing in the middle of November the parties were already asked for a status conference hearing at that time. So those things aren't immovable, but the other goal was to get a couple of these things in place. Not so much the pcccep but the trainings and things so those are in place and the cocl can then evaluate them and the department of justice can then evaluate them so by the time we have that status conference in November, they are being evaluated. So that's the deadlines we are looking at.

Wheeler: So the intent here assuming it looks like we were moving these to second reading, as amended. When was the time certain that we had pegged for this? And maybe that's a question.

Reeve: So second reading normally wouldn't be a time certain.

Wheeler: That's correct. I'm sorry. What date?

Reeve: Next Wednesday.

Wheeler: Okay, but we have the ability to extend that?

Reeve: Yes.

Wheeler: And the question is could we extend it two weeks, three weeks without disrupting that time line that you've provided? If the answer is no, I'm fine hearing that. I'm just curious.

Reeve: Probably, two weeks without disrupting that time line cause we're right up against it.

Wheeler: So I'm putting this out as an open proposal. I don't have a particular pride of authorship. We could extend this for an additional week and we could keep the written record open if that is useful. If it's not useful, I'm open to different ideas.

Reeve: Could I just offer one other alternative? Which would be this could continue until next week if there are further amendments or anything at that time those could be offered

August 2-3, 2017

or a vote could be held either way. If there are further amendments or anything of that nature, we could then go forward.

Fish: I think that gives us the maximum options. We might also, colleagues want to lock in a time certain for the following week. If it comes back the following week would probably be the vote. If we continue it until next week, can we continue it until Thursday afternoon?

Fritz: Is there a time certain open?

Moore-Love: You are talking about next Thursday?

Fish: Yeah.

Moore-Love: It would be 4:30.

Fish: That's not optimal but I will miss part of Wednesday morning. What's on earlier on Thursday?

Moore-Love: That's the press blocks land use case and growing transit community plan is at 3:30 for an hour.

Fritz: Do we have Wednesday afternoon?

Moore-Love: We have returning Ankeny apartments land use case and returning Hayhurst.

Fish: That means they are both ten minutes. Can we lock in 3:00 Wednesday time certain?

Moore-Love: They are already going the 2:00 is asking for an hour and a half and 3:30 hasn't given me a time estimate.

Fish: On returning land use?

Moore-Love: That's the Ankeny apartments are asking for an hour and a half and Hayhurst has not said how much time they've needed yet. I don't know where they are at on this and the next week, commissioner Eudaly is gone and the week after that commissioner Fish you are gone.

Wheeler: So we better lock on that.

Fish: It's not optimal but can we grab Thursday at 4:30?

Wheeler: Sure. I think.

Fish: My guess is that it may be if it isn't a day we cast a vote, I don't anticipate it's a long hearing.

Fritz: What's the date of that?

Wheeler: That would be the 10th.

Moore-Love: The 10th at 4:30. I've got 15 minutes in the morning. Oh you are gone in the morning, sorry.

Fish: Who is gone in the morning?

Moore-Love: I show you out from 10:30 to noon.

Fish: You know what? Let me make a suggestion. Next Wednesday at 9:45 I don't want to get sideways, but we have a time certain at 9:45 for phil to come in and show us videos. We are very jammed right now. I hate to do this but could we reschedule Mr. Bussy and the student videos just him over a week and take that 9:45 time certain?

Fritz: I would think it's possible.

Wheeler: I'm getting a thumbs up.

Fritz: Sometimes students are going back to place of residence.

Fish: Bump it a week.

Fritz: Sometimes students who have just been here for a summer and they've done their filming and they're just going to present.

Fish: We're moving mountains, we're talking about the difference between settling the doj amendments and hearing student videos. As much as I love those videos, I have a feeling we can move it around even if we have to move till Thursday. Why don't we substitute this for the 9:45 time certain on Wednesday.

August 2-3, 2017

Fritz: How long is that for?

Moore-Love: They have 20 minutes.

Fritz: They only have 20 minutes.

Fish: Well, we did it to have a controlled date.

Moore-Love: Affordable housing is the next one at 10:05 and then the crc appointments

Fish: I have an idea. Probably not endear myself with my colleagues, but we have precedent for this. Mayor, why don't we schedule this at a time certain on either Wednesday or Thursday at 1:00? We have the power to do that and rather than go late, we bump it up early and take it as the first item on either Wednesday or Thursday.

Wheeler: I'm fine with that.

Eudaly: I have nowhere more important to be.

Fritz: You have option to do it in the evening on either of those two days.

Fish: I can't. Wednesday or Thursday at 1:00, what's your preference Karla?

Moore-Love: I would say Wednesday at 1:00.

Fish: Can we make that a time certain?

Moore-Love: Uh huh. If you say so right now. You can.

Wheeler: I'm getting a thumbs up.

Fish: You are the best. Let's do it. In the interim, I'm going to review the 48-hour rule ordinance that's before us with the city attorney and reserve the right to bring an amendment. Colleagues, the idea of shifting it to 24 hours, we're getting so lost in this right now. The idea is to eliminate the requirement we give notice. If we don't have to give notice, it doesn't add anything to say 24, 48, because it is exclusively at the digression of the police bureau when they give the interview.

Wheeler: Does anybody have any problem keeping the written record open? Great. So get the word out the written record will still take emails, whatever. So we are continuing these three items 871, 872, 873 to next Wednesday August 9th for a second reading at 1:00 p.m. Here in Portland city council chambers. Thank you, everybody it was excellent testimony tonight. We are adjourned.

At 8:18 pm Council adjourned.