



CITY OF
PORTLAND, OREGON

OFFICIAL
MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS JULY 5TH, 2001 DAY OF JULY, 2001 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Francesconi, Hales and Saltzman, 4.

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

Item No. 822 was pulled for discussion and, on a Y-4 roll call, the balance of the Consent Agenda was adopted.

At 2:45 p.m, Frank Hudson, Deputy City Attorney, replaced Ben Walters.

<p style="text-align: center;">DUE TO THE LACK OF A QUORUM THERE WAS NO 9:30 AM MEETING</p> <p>*814 TIME CERTAIN: 2:00 PM – Contract with Western Bank for a five-year lease agreement for furnishing and installing light emitting diode traffic signals for \$2,260,000, adopt findings, and create an exemption to the competitive bidding requirements of ORS Chapter 279 (Ordinance introduced by Mayor Katz)</p> <p>Motion to change the words in directive c to read Office of Transportation instead of Bureau of General Services: Moved by Commissioner Hales and seconded by Commissioner Francesconi.</p> <p>(Y-4)</p>	<p>Disposition:</p> <p style="text-align: center;">175751 AS AMENDED</p>
<p>815 TIME CERTAIN: 2:30 PM – Amend Title 18, Noise Control, to clarify authority for and means of enforcement, add regulations regarding certain sources of noise, and to increase maximum penalties (Ordinance introduced by Commissioner Hales; Previous Agenda 812; amend City Code Title 18)</p> <p>Motion to accept amendment to direct the Office of Planning and Development Review and City Attorney's Office to investigate solutions to late-night noise made by patrons of restaurants, taverns, bars and similar commercial establishments at the direction of council and replace section 7.4 to direct the Office of Planning and Development Review, the Office of Sustainable Development and the City Attorney's Office to investigate approaches to reduce the number of garbage and recycling truck trips per day and per street: Moved by Commissioner Hales and seconded by Commissioner Saltzman.</p>	<p style="text-align: center;">CONTINUED TO JULY 11, 2001 AT 9:30 AM AS AMENDED</p>

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<p>816 TIME CERTAIN: 2:45 PM – Appeal of Riverdale School District No 51J, applicant, against the Hearings Officer’s decision to impose certain limitations in the approval of a conditional use and adjustment to use the Collins View School at 9906 SW Boones Ferry Road for the District’s new high school (Hearing; Previous Agenda 811; LUR 01-00002 CU AD)</p> <p>Motion to modify the Hearings Officer’s decision, add new conditions, amend other conditions; prepare revised findings: Moved by Commissioner Hales and passed on a Y-4 roll call.</p>	<p align="center">TENTATIVELY MODIFY HEARINGS OFFICER’S DECISION, ADD NEW CONDITIONS, AMEND OTHER CONDITIONS; PREPARE CONDITIONS FOR JULY 25, 2001 AT 2:00 PM</p>
<p align="center">CONSENT AGENDA - NO DISCUSSION</p>	
<p>817 Accept bid of Rotschy, Inc. to furnish Columbia Blvd. Wastewater Treatment Plant solids lagoon reconstruction Phase I for \$768,700 (Purchasing Report - Bid No. 100600)</p> <p align="center">(Y-4)</p>	<p align="center">ACCEPTED PREPARE CONTRACT</p>
<p>818 Accept bid of Dunn Construction, Inc., to furnish Insley Basin Phase 2 project for \$1,389,351 (Purchasing Report - Bid No. 100630)</p> <p align="center">(Y-4)</p>	<p align="center">ACCEPTED PREPARE CONTRACT</p>
<p align="center">Mayor Vera Katz</p>	
<p>819 Accept contract with Western Waterproofing Co. of Oregon for repairs, painting and waterproofing of the east and west walls of the Portland Building as complete, authorize the final payment and release retainage (Report; Contract No. 32931)</p> <p align="center">(Y-4)</p>	<p align="center">ACCEPTED</p>
<p>820 Authorize the City Attorney to file an appeal of the denial of qualified immunity in Peter Gilbaugh, etc. v. William R. Balzer, et al., United States District Court No. 99-1576-AS (Resolution)</p> <p align="center">(Y-4)</p>	<p align="center">36006</p>
<p>*821 Authorize an amendment to the labor agreement between the City and the Portland Fire Fighters Association relating to terms and conditions of employment of represented personnel (Ordinance)</p> <p align="center">(Y-4)</p>	<p align="center">175731</p>
<p>*822 Pay claim of Robert Figley (Ordinance)</p> <p>Motion to accept amendment to change to the client-trust account: Moved by Commissioner Francesconi and seconded by Commissioner Saltzman.</p> <p align="center">(Y-4)</p>	<p align="center">175754 AS AMENDED</p>
<p>*823 Agreement with Multnomah County, acting by and through its District Attorney's Office, for the Portland Police Bureau to provide Sergeants trained in child abuse investigation to work on evenings and weekends (Ordinance)</p> <p align="center">(Y-4)</p>	<p align="center">175732</p>

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<p>*824 Contract with the Lake Oswego Police Department to participate in Police Bureau Department of Public Safety Standards Training (Ordinance) (Y-4)</p>	<p align="center">175733</p>
<p align="center">Commissioner Jim Francesconi</p>	
<p>825 Confirm appointment of Dawn Huddleston to the Taxicab Board of Review (Report) (Y-4)</p>	<p align="center">CONFIRMED</p>
<p>*826 Authorize 44 contracts with 32 professional, technical, and expert firms for mechanical engineering, electrical engineering, civil/structural engineering, surveying, and architectural services as required in support of Portland Parks and Recreation projects (Ordinance) (Y-4)</p>	<p align="center">175734</p>
<p align="center">Commissioner Charlie Hales</p>	
<p>*827 Amend agreement between the Portland Office of Transportation, Transworld Lloyd Place, Inc. and the Portland Development Commission for the reconfiguration of NE Lloyd Boulevard and NE 11th and 12th Avenues (Ordinance) (Y-4)</p>	<p align="center">175735</p>
<p>828 Accept a grant from the Oregon Watershed Enhancement Board in the amount of \$200,000 for replacement of a box culvert (Second Reading Agenda 789) (Y-4)</p>	<p align="center">175736</p>
<p align="center">Commissioner Dan Saltzman</p>	
<p>*829 Authorize a contract with Inter-Fluve, Inc. for Alsop-Brownwood Flood Mitigation and Restoration, Project No. 6908 (Ordinance) (Y-4)</p>	<p align="center">175737</p>
<p>*830 Authorize a contract between Wetlands Conservancy and the City to provide technical assistance to the Revegetation Program (Ordinance) (Y-4)</p>	<p align="center">175738</p>
<p>*831 Contract with two consulting engineering firms for electrical/instrumentation and structural design related services as needed in support of sewer, wastewater treatment and pumping, drainage and water quality facility projects and provide for payment (Ordinance) (Y-4)</p>	<p align="center">175739</p>
<p>*832 Authorize a contract between the City and the Rebuilding Center to fund the Deconstruction Services project in the amount of \$30,000 (Ordinance) (Y-4)</p>	<p align="center">175740</p>

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<p>*833 Authorize a contract between the City and FREE GEEK, Community Technology Center for recycling of computers in the amount of \$41,070 (Ordinance) (Y-4)</p>	<p align="center">175741</p>
<p>*834 Authorize a contract between the City and the Rebuilding Center to fund the Value Added program in the amount of \$31,000 (Ordinance) (Y-4)</p>	<p align="center">175742</p>
<p>*835 Contract with the Association for Portland Progress for crime prevention services in the downtown area of the City for the period July 1, 2001 through June 30, 2002 and provide for payment (Ordinance) (Y-4)</p>	<p align="center">175743</p>
<p align="center">Commissioner Erik Sten</p>	
<p>*836 Grant a temporary, revocable permit to Lewis and Clark College for shared tenant services and establish terms and conditions (Ordinance) (Y-4)</p>	<p align="center">175744</p>
<p>*837 Amend agreement with Fair Housing Council of Oregon for their program by extending the date for completion to September 30, 2001 and provide for payment (Ordinance; amend Agreement No. 33515) (Y-4)</p>	<p align="center">175745</p>
<p>*838 Agreement with Rose Community Development Corporation for \$96,081 to support its housing activities and provide for payment (Ordinance) (Y-4)</p>	<p align="center">175746</p>
<p>*839 Agreement with Community Energy Project for \$105,000 for the Weatherization Workshop and Senior Weatherization Programs and provide for payment (Ordinance) (Y-4)</p>	<p align="center">175747</p>
<p>*840 Agreement with Portland State University for \$100,589 for the PSU Business Outreach Program and provide for payment (Ordinance) (Y-4)</p>	<p align="center">175748</p>
<p>*841 Agreement with Outside-In for \$23,835 for the Needle Exchange program and provide for payment (Ordinance) (Y-4)</p>	<p align="center">175749</p>
<p>*842 Reaffirm termination of refund program in former City Code Section 21.08.070 (Ordinance) (Y-4)</p>	<p align="center">175750</p>
<p align="center">REGULAR AGENDA</p> <p align="center">Mayor Vera Katz</p>	

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<p>*843 Amend an Intergovernmental Agreement between the City and Portland School District No. 1 as to funding pending termination of District policing operations (Ordinance) (Y-4)</p>	<p align="center">175755</p>
<p>*844 Amend City Code relating to Burglary and Alarm Systems (Ordinance; repeal and replace Code Chapter 14.74) (Y-4)</p>	<p align="center">175756</p>
<p align="center">Commissioner Charlie Hales</p>	
<p>S-845 Amend City Code to provide funding for street maintenance and improvement (Second Reading Agenda 813; add Code Chapter 17.21) (Y-4)</p>	<p align="center">SUBSTITUTE 175752 AS AMENDED</p>
<p align="center">Commissioner Dan Saltzman</p>	
<p>*846 Authorize agreements for the conveyance of three properties from Mr. Marty Fleck, Mr. William Corbett, and Ms. Lucille Colasuonno to the Bureau of Environmental Services subject to certain conditions being fulfilled, and authorize acceptance of deeds and payments of expenses (Ordinance) (Y-4)</p>	<p align="center">175753</p>
<p align="center">Commissioner Erik Sten</p>	
<p>*S-847 Grant a temporary, revocable permit to Qwest Communications, Inc. for use of public areas for telecommunications equipment and establish terms and conditions (Ordinance) Motion to accept the substitute ordinance: Moved by Commissioner Hales and seconded by Commissioner Saltzman. (Y-4)</p>	<p align="center">SUBSTITUTE 175757</p>
<p align="center">Communications</p>	
<p>848 Request of Michael Rohd to address Council regarding theatre production of justice issues at Gus Solomon Federal Courthouse (Communication)</p>	<p align="center">PLACED ON FILE</p>

At 4:17 p.m., Council adjourned.

GARY BLACKMER
Auditor of the City of Portland

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By Karla Moore-Love
Clerk of the Council

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

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Closed Caption Transcript of Portland City Council Meeting

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

Key: ***** means unidentified speaker.

(Due to lack of a quorum there was no 9:30AM meeting)

JULY 5, 2001 2:00 PM

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

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

Katz: Present. I think commissioner Sten is on vacation. We're going to hear time certain but I have -- i'm going to ask the council's indulgence to squeeze 843 somewhere in between. We won't vote on it, just in case other citizens want to testify, but assistant chief -- not yet, mark. Has come from his vacation to answer any questions, and so I want to let him go as soon as possible. So, let's start with the consent agenda. Any items to be removed off the consent agenda? I've got 822 that will be pulled and if there are no objections, i'm going to place it on a -- the regular calendar. There's some amendments. Any other items? Anybody in the audience want to pull any other items? If not, roll call.

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

Katz: Mayor votes aye. All right. 814.

Item No. 814.

Katz: Okay.

Bill Close, Signal and Street Lighting Manager, Office of Transportation: Good afternoon. Mayor Katz, members of city council, I am bill close, the signal and streetlighting manager for the city of Portland. Plan to talk to you today about this project, how we are going to save energy and money. So, what are we doing? Well, we're changing light bulbs into the light emitting diodes and bill is demonstrating here, as we switch those out. We go from 142 watt light bulb, very bright, to a 17 watt led, and on some of the smaller ones we go from a 59 watt light bulb to a 10 watt led, and what this means is we are saving 83 to 88% of the energy used by the traffic signals. This particular project we are going to change 14,200 light bulbs. And for now, we're just doing the reds and the greens. We're not doing the yellows because it's not as cost effective. They are only on for three seconds out of every 77 seconds so we are just doing the red and is greens and it happens that quickly. How much of the project is saved? We are talking about saving 5 and a quarter million kilowatt hours a year, which is enough to power 400 homes. And for us, that means saving 265,000 a year on our own energy costs. How much will it cost? It cost us \$2.2 million for this project. But, we're fortunate to have utility rebates. We have \$439,000 projected from pge. 196 from pacific power but in addition to that, we have an incentive from both of the companies that if we complete by december weight another \$160,000, so 800,000 there, and in addition to that through the leasing opportunity that we have, we are saving another 500,000, so a 2.2 million project -- excuse me, we need to find the 900,000. What's the payback period? The product lasts about five years but with the rebates and the lease arrangement we are talking about a payback less than four years. You may ask why we didn't do this sooner. Well, there weren't any economical green ones at that time. It's been a new technology to get the right color green at a reasonable price. There was some unproven technology. This is the, the led are just like the other technology

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stuff that changes every week, and also we have better rebates than ever. I would like to acknowledge the utilities and management because it wasn't just us doing this, and, of course, utilities are stepping up and will speak to you in a moment, and also doing management with the lease arrangement and I want to recognize the office of sustainable development, and in particular, I want to recognize curt nicoles, he's not here today, but I sometimes think, is this the energy office, when curt is the one that really made this come together. And we have had a lot of help from omf and our own staff. So, today, michael will speak to you a little bit and we'll have representatives from pge and pacific power, and if needed, pat dooling is here from the leasing company, so again, this is our project. We're installing these leds and hopefully by doing this, we're going to avoid that.

Katz: Thank you. Let's put the lights on. Let's hear some testimony.

Michael Armstrong, Office of Sustainable Development: I am michael armstrong with the city's office of sustainable development. Bill explained this is a really good financial investment, and certainly saves energy, as well, and i'd like to audits an excellent environmental investment at this time. It's an important piece of the city's global warming plan and the kilowatt hours saved here will avoid about 2300 tons of green house gas emissions each year which is about 2.5% of the total emissions from total green house gas emissions from the city operations. Equal to not driving a chevy suburban for a million miles, so there's a lot of cache that we are able to save so we are happy to see this. So, it's a good idea of how we can reduce emissions and save costs, so many compliments to pdot, utilities, to purchasing for working together on this. We are glad to see this come together and i, as well, would like to extend my thanks to curt nicoles, who had the wisdom to be on vacation this work, but worked quite hard and congratulate him as well as the others. Very supportive.

Katz: All right. Did you mention --

*****: Utility representative

Katz: One of the utility representatives, come on up. Okay. Who wants to start?

Mike Porter, Portland Electric Company: Thank you for asking us, mayor Katz, and councilmen, I am mike porter with the Portland electric company. One of the things i'd like to say is we have a partnership with the city and pge that goes back many years where we have done -- you have done audits for us. We participate in programs with you, and this is one of the success stories that, that makes me real happy and the company happy to be able to say it's going to be a success. The 3.6 million kilowatt hours saved on our system is equivalent to about, well, a little more than 300 homes, and so that's 300 homes that will be able to have electricity, that maybe they couldn't have had, if we go into the bad situation this winter. The big thing is, though, it's a partnership between what, what was said, I still refer to as energy office, and I apologize about that. But the people are still the same, curt nicoles and susan andersen, and that partnership continues and as a result, will save this 3.6 million kilowatt hours, and we're really happy that it's going to work, and it will help not only our utility but certainly the region.

Katz: I still call it monmouth college. Go ahead. [laughter]

Don Jones, Program Manager, Pacific Power: I am don jones, I am a program manager with pacific power. Happy to be here in support of this. Pacific power has had programs for ten years, and one of the things we have with the programs is there is always, how to evolve them, keep track of the market changes, the technology changes, and what's here today is actually a combination of those changes from our program, a chance to partner up with a leading owner, traffic signals and get some of the technology into the market. We basically enhanced our programs in may of 2000. We targeted municipal owners as a, as a market sector, wanted to see more activity in. We enhanced these programs, again, recently in june of this year, in reflection of the current energy

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situation. We looked at traffic signals, what we realized was that the red market, there was a difference in technologies, that the reds had sort of reached their own. They were getting better but the greens had still were coming into their own, and now the greens have sort of arrived. Greens also, on the other hand, saved a little less energy because they were on less of the time. They cost a little bit more. So, we looked at in conjunction with the office of sustainable development, which has done a lot of research, how do you actually wind up providing an incentive package from a utility to a city that actually does cause them to do both of these lights at the same time. How can you do that, make a cost effective for us and for you. What we arrived at is a way to package the utility incentives. We pay you more if you do red and green at the same time, so that's a recent provision. Designed to do exactly this, capture these mature technologies. The other thing that we have done is responded to the local power market conditions, and that's where we came up with our short-term incentive, which is, essentially, shared by our colleagues, the 25% if you are done by december, so ware very excited about this, have an opportunity to save 1,600,000 kilowatt hours. That's our side of the system. Get almost \$80,000 in budget savings. We get energy savings that are on peak, which is very attractive to the region, to us as a utility, and the other thing we look forward to is using the city of Portland as an example with some of the other city owners, how can you take and combine technology, utility programs, creative financing, and get energy savings right now. Happy to be part of the partnership, and urge your support.

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

Katz: Wait a minute, before you do that, there is a scrivener's amendment to this.

*******:** It should be transportation instead of bgs.

Hales: So moved.

Francesconi: Second.

Katz: Any objections? Hearing none, roll call.

Francesconi: This is a terrific thing. The bureau folks that put this together, under commissioner Hales leadership, public/private partnership that saves energy, helps the environment and is a good thing for the taxpayers so it's a great combination that this came together. 2.5% of the global warming plan, being realized is no small measure. And so that's the kind of example, it was nice that the industry representative said it, that the city of Portland can set for other jurisdictions, and that 2.5% can multiply pretty rapidly. So thank you for putting this all together. Aye.

Hales: Yeah. This is a great collaboration between the bureaus and with the local utilities and I think it's a great partnership. I think it's impressive, too. I like the way this was structured so that we do it all quickly. You could make a case that we should only wait until we are replacing each of these bulbs, to do this work, and that would take a long time to, for the savings to show up but I think every now and then, particularly energy conservation, it's good to do something fairly dramatically that achieves something quickly and gets people's attention, so hopefully, there will be other municipalities around the state. Not many other cities have -- well, no one has 14,000 stoplights like we do. But, I think enterprise has one, for example. But, there are other cities out there that could add to the savings by following this very quick conversion between now and the end of the year. We'll convert them all. So I like that aspect of it and appreciate you fine tuning it to make that work, as well. Aye.

Saltzman: Well, really good work. This is very important from both an environmental energy perspective and a global warming. I did want to thank all the bureaus and the utilities for making this happen. And you got 14,000 lights, so the end of the year is not too far away, let's make sure we meet the deadline and I wanted to alert you to one other innovative arrange we are building on this cooperation. We do have a grant pending with a group called the climate trust, that would provide us major money to do traffic signalization to coordinate our signals, which also saves a lot

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of energy in automobiles, particularly if you can have the stoplights operating together. Traffic moves more smoothly and generates less pollution, so that grant, again, is a collaboration between pdot and office of sustainable development. I'm not sure if the utilities involved with that, but hopefully we will get that. Aye.

Katz: Good work, aye. 843. Let's skip over to 843 for a second.

Item No. 843.

Katz: All right. Let me say that after the disappointment, the frustration, the anger at the school district for putting the city in this kind of a position after expenditure of close to \$40 million over several years, by this city council, the shift then went to what do we do with the officers who are currently school police officers, and how do we treat them as new city employees. I happen to have been to several meetings, but one where this got to be a very emotional part of the meeting, and there was a desire on the part of everybody involved to see if we could strike the same kind of arrangement that we did when we took some of the Multnomah county deputy sheriffs over to the city police bureau. In looking at the language of the ors, it was very interesting to find out that the school police were exempt. I don't know the history of that, or what the reason was, and so we made a request, my office, through a lease and my request to, to senator minnis, to see if he could amend the ors so we could treat the school police the same way we treated the deputy sheriffs. Senator minnis is a police officer here, and was very amenable to doing that. Part of the -- I will get to you in a minute. Part of the language that was negotiated was that the issue of seniority came up and we now have people around the table, both management and union personnel, that will try to resolve that issue, that was one of the touchy issues that people were concerned about, since we were talking about a significant number of potential of police officers making -- school police officers making the switch. That is sort of the history. The next thing was the negotiations, and I turn it over now to assistant chief, pericey and to everybody else who wants to testify, cliff, chief madison, who is, and I think, will continue to be you don't know that?

*******:** Yes.

Katz: You know that, all right. Okay. I didn't want to break any news then to the public yet, that the chief hasn't broken, but I assumed after your roll at the table you will continue that job. So, mark, go ahead.

Mark Paresi, Assistant to the Chief, Bureau of Police (BOP): Thank you, mayor and thank for you fitting me in today. I am assistant chief, mark paresi, and to my left is scott madison, chief police of the Portland school police and rita drake, fiscal director. We are here to talk to you about an agreement with the Portland public schools to the tune of about \$463,000, at a stop-gap carryover from july 1 to november 1, when the bureau would assume full responsibility for the operation of the school police in the Portland public schools. We believe this is an effective bridging measure for us. It will allow us to transition the school police officers currently assigned to Portland public schools into the Portland police bureau, allow us to work and actually transition Portland police bureau members into the school environment under the direction of captain madison and with the assistance of the incumbents, allow us to set up an adequate training and simulation process for the new officers, sergeants and command of the school police, and probably most importantly allow us to meet with the school district administrative staff, the principals, the teachers, and, of course, the parents and our clients, the children. We will have an opportunity to meet with the school attendees themselves as part of this process, and introduce the, the Portland police bureau officers into the school environment. Our proposal would involve eventually a replication of what is occurring in parkrose and david douglas, which is an sro process, where the officers are actually responsible for the school community, itself. Their whole function is to work within the school environment. We have found it to be very effective and it is probably the best

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role model experience that we have in early intervention practice that we currently have within our agency to work with children. I think it's the most positive way of introducing police and school-age children that we currently have. Any questions about it?

Katz: Cliff, did you want to say anything? Identify yourself for the record.

Cliff Madison, Captain, BOP: I am captain cliff madison, excuse my voice, kind of lost it here. Basically, I would like to say that [inaudible] things happened and I think the product we will put out from the Portland police bureau will be an excellent product and something that will make the city proud as far as our communications and relations with the staff, student, and the public.

Katz: So you will, one of the reasons for doing this, is to -- our concern was, whether we had enough time for the transition during the summer, when not everybody is onboard. The youngsters are not in school, most of the staff is not in school. And having the youngsters come to school and see the same familiar faces, but you will be able to transition quickly from regular -- from current police officers who might want to take the job at some future time.

Madison: Right. We will be able to make a nice transition, got to take a few days but at the start of the school year isn't -- there is a lot of new faces around the schools and in this case, there will be new officers around the school but you give it a couple of weeks and they will become part of the environment there.

Katz: So, the youngsters will come back and see some of the same faces and slowly integrate with other officers who might want to choose to be school police officers, is that correct?

Madison: Yes.

Katz: Okay.

Katz: Questions?

Saltzman: A number of people, parents, as well as child caseworkers that I have spoken to, mainly in the context of their concern about the whole transition because of the expertise that a lot of the school police have developed in child abuse reporting detection, et cetera. And I always told them I think that the city of Portland has second to none child abuse team that, you know, can pick up that ball very well, but now that it's actually happening, this transition is happening, which I think is a good thing, I am wondering whether there might be some opportunities for some of these officers to transfer into the child abuse team, is that something that has been thought out or is that all subject to all the seniority negotiations and things like that? I just -- is that something that's even --

Paresi: If I could, commissioner. It's all subject to the orientation and their training progress, once they move into the organization. Once they pass their performance time, they are open to put in for any position like anyone else. And as far as the csd or the family service issue, we have a relationship of both parkrose and david douglas, consistent with the relationship of Portland public schools, and part of our transition proposal, we will bring in the family services folks and they will meet with the officers assigned to the schools to go over the particulars that we want them to make sure that they understand relative to children and child abuse issues.

Saltzman: Our family services division will do that training?

Paresi: Our unit, we will do that training with us.

Saltzman: How long is the performance time?

Paresi: That is unknown at this time. Some of the people transferring over, commissioner currently on proceedings, they will finish the probation and will be able to position themselves where they want as far as uniform work.

Saltzman: Thanks.

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Katz: Further questions? Anybody else want to testify? Robert, did you want to testify? Okay, I am glad you are here. Anybody else? All right. We won't vote on it now because there may be citizens who want to testify later on this afternoon when it's on the regular agenda. But thank you.

Francesconi: I wanted to say, that your comment about david douglas and parkrose as being models for this is right on. They are great examples of how to get the police involved early on and a way that benefits the police and the schools, so i'm glad you padded them on this. Thanks for your help in making this happen.

Katz: Okay. 222, are we ready for the noise? It's on for 2:30, but basically we have got a substitute, as well. Why don't we read 815.

Item No. 815.

Katz: Let me check with ben. This is not an emergency. We have an amendment. We wait until next week? Okay. Go ahead.

Denise Kleim, Office of Transportation and Development Review: Denise with the office of planning and development review. There's two amendments to this. One is to add section 4.8, would you like me to read it?

Katz: Yes, why don't you.

Kleim: Direct the office of planning and development review and city attorney's office to investigate solutions to late-night noise made by patrons of restaurants, taverns, bars and similar commercial establishments, and this was added at the direction of council. And then the second amendment is to replace section 7.4 to direct the office of planning and development review, the office of sustainable development, and the city attorney's office to investigate approaches to reduce the number of garbage and recycling truck trips per day and per street. And that was it. Your request.

Katz: Okay. And you did cut down the time for some action? Did you not?

Kleim: The implementation would all take place near the beginning, and the concerns were during the, the fourth year, that those are really monitoring. Those are not really new implementation. It's just monitoring and follow-up, and what we would like to do is have a continual program, reviewing the ordinance and the code and our, our services, so that we continue to improve them and not wait so long to do that.

Katz: Okay. Questions? Anybody in the audience want to testify on the two amendments? This was basically something that the council heard from citizens who testified and agreed with them and denise has included this in the ordinance. I need a motion to accept the amendments.

Hales: So moved.

Katz: Do I hear a second?

Saltzman: Second.

Katz: Any objections? Hearing none so, ordered. Thank you and we'll go on for a final vote. We'll get this passed eventually. All right. Do we have -- actually, we can take 845, and then we can take communications, all right. 845.

Item No. 845.

Hales: That's just second reading.

Katz: Roll call.

Francesconi: Aye.

Hales: I want to thank the folks, some in absentia, dick rhodes who has worked so hard to make this happen is on vacation and I told him the only thing worse than how long it's taken for us to work on this would be for him to have to come back from his vacation for second reading so he didn't. [laughter]

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Hales: We will have a chance to thank him in person. Mayor, I want to thank you for your leadership on this issue and working with us to get this done in this year's budget much this is a responsible move for a public asset that we all want and I appreciate the council's careful consideration of it, and the fact that we have gotten it to this point where we can adopt it and have it go into effect and make a difference, so thanks, everyone. Aye.

Saltzman: Aye.

Katz: Just want to flag to the public that you won't see this on your bills for a while, and we'll keep in touch with everybody as to the timing of this. Aye. 846.

Item No. 846.

Saltzman: This ordinance, I don't believe anybody from the bureau of environmental services is going to be here or public, but we wanted to put it on the regular agenda to highlight a successful partnership between parks and metro and fima to acquire properties in the johnson creek area to take properties that are in the flood plain and take them out of commercial development or residential development, so we have acquired some parcels, I believe that they are upwards of 40 acres, frequently flooded properties, and since 1997, we acquired over a hundred acres of property under this program. It's very consistent with the johnson creek restoration plan, that we adopted just last week. And as I said, it is a partnership and in keeping with our sustainable city principles, bes will be pursuing a contractor to deacon instruct rather than demolish the buildings on these properties, so we will be using these properties, so that we can use them many times over in future markets so we wanted to highlight this.

Katz: Roll call. Anybody else want to testify on this?

Francesconi: The bureau is doing a terrific work at johnson creek, which is one of the few areas where we're actually having spawning fish and salmon. And it's partly because of the work of bes protecting the land and property through programs like this. And I wanted to add, last week, I will do it now, parks is very pleased with the partnership of bes. We've been very active, as well, with bes's leadership in johnson creek, so thank you for this. Aye.

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

Katz: Mayor votes aye. All right. 822.

Item No. 822.

Katz: I forgot all about 822. We can take that on now. There has to be an amendment and you have it before you. We shouldn't be using -- they changed to the client-trust account. Do I hear a motion to accept the amendment?

Francesconi: So moved.

Katz: All right. Second?

Saltzman: Second.

Katz: Any objections? Hearing none, anybody here to testify on 822? Roll call.

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

Katz: Mayor votes aye. All right. Working around the calendar. 848. Is michael rhode here?

Katz: He may not be here yet. Okay. I think what we are going to do is take a 15-minute recess and come back at 2:45 to hear the continuation on the appeal of the riverdale school district. We stand in recess for 15 minutes.

At 2:34 p.m., Council recessed.

At 2:45 p.m., Council reconvened.

Item No. 816.

Katz: Okay. When we left this drama off last time, one of the council members was ready to make a motion. Rather than hearing the motion right now, what i'd like to do is ask for staff, if

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there is anything you want to add. Second, to have a discussion with the council as to what their intentions are to any conditions, and I will give both the school district and the neighborhood an opportunity to comment on that. All right. Discussion of -- did you want to add anything before we start?

Miriam Hecht, Bureau of Planning: Miriam Hecht. I did have a handout that does have three minor amendments to the hearings officer's decision, if that's going to be approved, that the applicant reviewed. One is a little more description about the size of what's being built. The first condition for parks to review, building permits which was recommended by parks and they were here at the last hearing, but I don't think they stayed until the end. And a condition about parking on the south.

Katz: All right. There was discussion certainly about the traffic and the transportation issues and the parking within the neighborhoods, that was one discussion. The other one was the time of the day that schools should start. Whether it's 7:15 or 9:00 and the impact of either one of them on either the youngsters or on the neighborhood. There were other issues involved with regard to late evenings. I recall some testimony, and I sort of chuckled to myself, this may be one of the reasons the youngsters can't get up in the morning is because you have too many late evenings, but that's just a mother speaking. So, why don't we just open it up and get a sense of where the council is at.

Saltzman: Well, I apologize I had to leave early last time, but i'm not quite sure where the council was in terms --

Katz: The council, there was a motion that we stopped.

Saltzman: But I did want to at least get on the table for discussion purposes several conditions that I perceive from what I sounded like a reasonable proposal here with respect to the transportation issue. I guess I do tend to have concerns that the traffic impacts will be more severe than stated in the studies. And I wanted to just sort of get this out, his ideas out on the table, and see whether council was on that, and hear testimony --

Katz: We'll hear from both sides.

Saltzman: His proposal, in a nutshell was to have riverdale high school establish a shuttle bus system to transport students from various stations to the school site, I would imagine one of the feeder sites would be, no doubt, in dunthorpe. Restrict student parking to really the, what's been agreed upon, basically, 90 spaces, which, I object, is 25% of the full student body. Prohibit dropping off and picking up students during peak hours, except in cases of emergency, and then require the riverdale high school begin classes no earlier than 9:00 a.m. Sounds like reasonable proposals to me, although I haven't had the time or opportunity to hear from anybody other than joshua.

Francesconi: I had a question on the last one. Commissioner Saltzman, no earlier than -- you wanted to preclude the 7:15 start time? I'm not sure why they would want to do that or why anybody would want to do that. In other words, I can understand it -- no start time between 7:15 and 9:00 but i'm not sure why eliminate the 7:15.

Saltzman: I guess it was my feeling that 7:15 is early. I'm not fur if they opened it up for further discussion, but I tended to agree that that was too early of a start time and would result in many students, perhaps, being dropped off other places. The 9:00 a.m. -- the only thing I am concerned about is overlapping into the p.m. Rush peak period. I do have concerns about that. It's a fairly narrow window between 4:00 and 4:30.

Katz: In the morning.

Hales: If they start at 9:00, they run late.

Saltzman: So anyway.

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Katz: Okay. Well, why don't we do this. Commissioner Hales, what are the issues you want at least to look at?

Hales: I think those issues, we have also got some -- we have got the conditions that miriam talked about. I guess we didn't hear a lot of testimony directly on this point, but i'd be willing to consider further reductions in the amount of student parking, but glenn pierce has thought some about this, and i'd like to hear from him. Just fundamentally, you know, I think that this is a close call, just in terms of meeting the conditional use criteria, at all. It's fundamentally a commuter campus, not a neighborhood school, so how we calibrate that, if we are going to uphold the hearings officer's decision at all, how we calibrate that matters a lot because it's, it's a square peg trying hard to get into a round hole, and that requires some sanding so, and the question of how, you know, how much student parking you allow, versus what that does to people being dropped off or is there any other choice for how to get there. All that stuff happens fundamentally because the cool is outside of its district, and we are having to get there by car, it's not, it's not a k-5 school, which is what this was originally, so all of those mismatches are the reason for the conditional -- the conditions of the conditional use. So, I guess i'd like to hear a little bit from glenn, who has looked at some of these transportation issues.

Glen Pierce, Office of Transportation Engineering: Glenn pierce, transportation engineering. Commissioner, the question of numbers of student parking, my understanding is that the proposed 90 spaces for student parking really is driven by the lease agreement with Portland public schools, that restricts the percentage, and miriam if you could keep me here. There's minimum number of parking spaces for the site required in the conditional use, and a maximum, and with, within that, there was the lease agreement with the school district that limited parking of students in order to minimize congestion, and if we can find the percentage here, it was riverdale will limit student parking to 25% of the student body to ease traffic.

Hales: But that's more than the minimum, isn't it?

Pierce: The minimum is 112.

*******:** 112, for all.

Hecht: 16 classrooms.

Hales: The minimum required parking?

*******:** Yes.

Hales: 112 for students and teachers or --

*******:** I believe it's total.

Hales: And how many do they have?

*******:** 120.

Hales: Right. So barely --

Pierce: And I think the maximum was 168.

Hales: Okay. So there's not much room, in other words, to reduce the minimum. Until we get rid of minimum parking in our code.

Katz: So the restrictions on a student parking to 40 cars is not doable?

Pierce: Well, I guess anything associated with the parking really comes down to a matter of enforcement, and I believe that you have all received the same information I did today from the applicant, beefing up the tdm plan and the parking management plan, and the way I read the new information, it's, it's trying to speak to the enforcement issue, where they have added provisions to those plans to, to clarify in some cases how they are going for allocate permits, to clarify how they are going to promote and better promote carpooling, and to clarify how they are going to enforce violations of the, of the parking restructuring.

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Hales: And I certainly want to hear from the applicant about that stuff, and why, why they think these are improvements and why we should adopt them but from a traffic management standpoint I am trying to figure out, you know, kind of from your perspective on this, if it is a school, in other words, if we have, if we have 25% student parking at grant high school, in the neighborhood where people could ride their bike or take transit to the high school, and we tell them they have less, then that isn't necessarily going to generate more automobile trips getting kids to and from grant high school because it's flat terrain, a good street grid, relatively high population density so nobody has to go very far to get there but in this case we have a school outside of the district in a low density area with lousy street grid, no sidewalks and you tell people, sorry you don't get a parking space, means mom or dad is driving the kid to school so we generate more trips by reducing the amount of student parking.

Pierce: Potentially, you do.

Katz: And traffic and parking in the neighborhood.

Pierce: And to reduce the trips, it would take an aggressive stance to carpool matching and those types of activities, which the tdm plan that they prepared speaks to.

Hales: And you think that goes fairly well in the direction it needs to go in order to solve that?

Pierce: It's a fairly, with the modifications that they have offered today, it's, in my opinion, it's a fairly aggressive tdm plan.

Katz: Let me ask you this -- it includes part of what commissioner Saltzman put on the table was the establishment of a shuttle bus system.

Pierce: It does not, other than special, let's see, special, for special events. Excuse me, there is part of the tdm plan does have the school district operating school bus, that goes from the, from the neighborhood and the grade school, wasn't it? Right. So, yeah, there is a shuttle bus and then as part of the special events, why overflow parking would be located on the grade school, then there is a shuttle system for that.

Saltzman: Does the capacity of that shuttle system designed to accommodate all the students that would be attending originating in dunthorpe or originating at some other feeder site, given --

Pierce: They haven't really specified and the applicant could probably speak to this better than I can, but they haven't specified how many buses would be involved, just that there would be the service available.

Katz: Okay. Let's, let's try to resolve this issue before we get into some of the other issues. Tim, why don't you come on up. Go ahead. Yes, come on up, too.

*****: Go ahead, glenn. Thanks. May need you back, but.

Katz: If you want the superintendent here, or --

*****: Jim might want to join us here.

Katz: Okay. Tim, why don't you respond.

Tim Ramis, Legal Counsel, Riverdale: Tim ramus on behalf of riverdale. We think the suggestions you put on the table are good ones, and let me just comment on, on each one. The shuttle bus concept expanding it so that it isn't just one pickup and drop-off location, but some others. We think would be an improvement. That's a good, creative idea, and we'd be happy to do that. We think the details are probably something we need to work out with mr. Spears and pdot, as well as the neighborhood because we don't want to pick a location that's going to make things worse. We want a location that would be better. We don't want to run a tri-met service, but we think that there could be an improvement there so some language included in the transportation demand management plan would probably be a benefit, so we, we agree with that. The second restricting parking on campus to, for students, the concept is an agreeable one, what we have previously agreed to is the one in four, 25% number that you heard, the history of that is that it was

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negotiated directly with the neighborhood. They wish to have that issue protected and endentured in the lease and the school district included in the lease. We agree with mr. Pierce's comments, that at 25%, it's a managable and workable situation that we can police. We do have the concern, if you cut it back to fewer than those spaces, we're going to have a much tougher policing situation with respect to drop-off. We think that we can police that, but you are going to make that a lot worse if you cut back the number of spaces available. So, we think that 90 was the right number. We agreed with that with the neighborhood, and certainly it planned for it and we think that's a good approach. The other two matters discussed were dropping off and picking up of students, prohibiting that during peak hours, except in emergencies. That's good language. We would agree to that and could include it, again, as a condition core in the management plan. And finally, the class, the class start time no earlier than 9:00. The mayor expressed a legitimate concern about, does it push us into the p.m. Peak, and we would be happy to accept a condition that says that school must close at 3:45. The evidence in the record is that a half hour is sufficient and the peak starts at 4:30, we think if you close school at 3:45, that gives you 45 minutes and gives you a reasonable time period to get cars off the site. So, we would accept that. And in terms of the prohibition on the early start time, clearly we prefer the option and flexibility to be able to go earlier, as well as later, key issue for us, though, is, of course, the 9:00 start time.

Katz: So, I think your language was 7:15 to 9:00.

Ramis: Yeah. Prohibited in that 7:15 to 9:00 time period.

Saltzman: Oh, I see.

*******:** So arrive before the peak, you are okay, or of a the peak but not during the peak.

Saltzman: I understand commissioner Francesconi.

Katz: Dave?

*******:** Well.

Katz: Identify yourself for the record.

Dave Johnston, Co-Chair, Collins View Neighborhood Associaiton: Dave johnston, land use chair for the collins view neighborhood association. The idea of the shuttle bus system was something that we proposed even march 8th in our original submission in this case, well before the hearing of the staff report. We proposed it in the form of a very aggressive and mandatory busing from the great school and also probably from the burling-game transit center where the tri-met buses stop. It seems reasonable to require all students or the great majority of them that come in by that system, it's not untried in the neighborhood, lewis & clark is running a similar sort of a thing with a very extensive shuttle bus system, although i'm sure it's not mandatory for their students. And apparently, successfully, which raises the possibility that, perhaps, riverdale could make some agreement with lewis & clark to share a system that's already in place and perhaps, successfully. Our main concerns, of course, are the traffic, as we read the hearing officer's report, he became sufficiently concerned about the inadequacy of the traffic reports that he would have probably disapproved the conditional use permit, were it not for the fact that the apparent solution was to start early and get riverdale's traffic out of the peak hour. Is centered on two things, the intersection at terwilliger and taylor's ferry but a lot of testimony of the left turns in and out of the driveway of the site through heavy traffic at the bottleneck in the street system that was of a tremendous concern to the neighborhood, from the standpoint both backing up traffic and safety. We thought that the hearing officer's conditions to start classes by 7:15 was a good answer and perhaps, a better answer than our idea that joshua has picked up on and brought forth to you of using a shuttle service to get everybody to class to avoid this problem and turning through the traffic. If you look at the traffic reports, while there is a greatest traffic time, the peak is not a real distinct peak. At least during the day, it tapers off and comes up gradually so you don't have really heavy traffic

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from 4:30 to 5:30 and light traffic before that. You have it build up from 3:00 and heavy traffic during the day, as well. Now, the studies, themselves, only went from 4:00 to 6:00 in the evening and 7:00 to 9:00, I believe, in the morning. However, there is also a speed study that gives hourly traffic volumes for the whole day that you could refer to on that. With respect to the parking, yes --
Katz: Before you move on to that, so with the shuttle bus system, are you changing your mind on the starting time?

Johnston: Well, i'm saying our position really hasn't changed. Originally, with the start time proposed at 8:00 a.m., as it came up on the hearing, before the hearing's officer, our thoughts were that the solution to that was a shuttle bus system and a mandatory one, perhaps even taking roll as children board the bus. The hearing officer came up with the early start time to avoid these problems all together, and we recognized that as possibly a better solution. So, I suppose our position would be, we like the early start time and think it's better. Our idea of the shuttle bus still sounds like a good one if the early start time won't work but it needs, in our opinion, to be a mandatory condition, and very strongly enforced, to be workable. Otherwise, we think that people will drop children off anyway. Does that satisfy that issue? Going onto the parking, we tried to become aggressively involved in the lease with Portland public schools, as you probably know, the neighborhood association did not favor turning the property over to riverdale, but worked with Portland public schools and riverdale at that time to make the lease as desirable as possible, as far as preserving the nature and the livability of the neighborhood, and so we did accomplish a good deal with respect to the lease. With respect to 90 parking spaces, I don't think that we have a strong feeling that that's necessarily appropriate. That's what we were able to reach as an agreement at the time, less would make sense, if we can get busing or shuttle service. The site probably doesn't have enough plain room on it for more. If you look at the diagram, pretty crowded, to get the buildings in and have something left for the youth sports and get that much parking in, that's been a problem with respect to buff erring the neighbors that are so close and still getting the parking, so I would think that we would look favorably on a way to have less automobile traffic and less parking on the site and preserve more of the room as open space and for youth sports, and other uses.

Katz: All right. Let me go back, tim, in your memo, dated june 26th, you folks are recommending an earlier start, 7:30 to 8:30 in the morning.

Ramis: In the, the original proposal we made, to the, to the, in the application, we proposed an 8:00 start time, and during the course of the proceedings, asked for the flexibility to start earlier, say, 7:15, in order to spread out some of the load. After seeing the hearing's officer decision and the concept of keeping the peak hour protected, we decided the best way to achieve that would be a prohibition on any start of school time between 7:15 and 9:00, and allowing school to begin either 7:15 or earlier, or 9:00 or later. We really need to be able to have the majority there at 9:00 or later to make it workable.

Katz: Okay. Let me ask david. There was also some amendments from riverdale on event closing time, earlier on, on -- closing earlier on sunday, later on friday and saturday. You have in problem with that?

Johnston: That seems reasonable to us. We had originally proposed march 8th, 10:00 on weekends, 9:00 during weekdays with only one large type of event during the week. The hearing officer interpreted weekends to be saturday and sunday, I think we would have originally supposed them to be friday and saturday anyway.

Katz: There was also a recommendation to have the parking lot closed by 10:30. You have no problem with that?

Ramis: The idea was to chain it off and make sure that it's protected.

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Katz: One of the reasons is the neighborhood was concerned that the youngsters would be hanging around. Which, trust me, they probably would. So, we might want to do that. All right. Where's the -- what else does the council want to hear about?

Saltzman: I'd like to hear, dave, you are saying that you support the shuttle as long as it's a mandatory condition? I'm not sure how that differs from us making -- I would like to hear from tim, the superintendent, how you intend to make that condition fulfilled, the expectation, I think, we all have here.

Ramis: Suggestion I would make would be to include it as a requirement in the demand management plan because that puts it in a process that puts the neighborhood and the district together, talking about how to implement it and makes pdot the decision maker on that. So, I think that's a way that we can structure a process so that we both get the table and we can design it together and if we need an arbitrary, it's pdot.

Johnston: As we look at mandatory, as we mentioned, and as I mention it now, we think it should be mandatory for the students that would be appropriately served by the shuttle, in other words, the students would have no choice as to whether to come to school by the shuttle or be driven. Rather than, than mandatory in the sense that the school would have to offer the shuttle as an option, so our thinking is the school should require the students to use the shuttle.

Ramis: That goes far beyond anything that we have ever discussed or agreed to, and I think probably takes it into a mandatory area that goes beyond what we can probably, reasonably make work. Enforcing that prohibition on drop-offs, limiting the number of parking spaces will create a number of students that need alternatives and the shuttle would be the alternative. We want to make sure that the alternative is available, and that impacts that would affect the neighborhood are prohibited, and we think that that's the way to deal with it.

Hales: And i'm sorry, how is it that, that the prohibition on drop-offs is going to be enforced?

Ramis: We would do it this way -- and it is described in our management plan. The idea would be first frequent notices to both students and to parents. Backed up by monitor, that is responsible for enforcement, then sanctions imposed, to the students that violate it, which would go up through and include expulsion for repeated violations. That's the key, first step. The next institution that would be available to make sure that there is enforcement is the transportation omnibusman, so to the extent that the neighborhood is observing people violating the rules, at specific locations they will let us know. It is the omnibusman's responsibility to investigate that and tell us, and impose sanctions, if necessary. And the third element is the transportation task force. Where we would, together, with pdot, the neighborhood and the district, be there to hear complaints and make adjustments to the transportation management plan, if what we are trying isn't working, or if what works today doesn't work in five years.

Francesconi: Remind me, who hires the omnibusman?

Ramis: The district pays for that person.

Francesconi: So will it -- and this person could decide the sanction, I take it?

Ramis: I will let jim answer that.

Jim Abbott, Superintendent Riverdale School: The -- jim abbott, superintendent. The sanctions would be clear spelled out in the communications that we give to the seams families. At one point I wanted to mention is that if we -- and we are willing to do this, if we provide a subtle service from both riverdale grade school and the burling-game transit center, I believe then as a superintendent of the school district I won't have any qualms of imposing those sanctions as tim said, up to and including dismissal from our school because if students have options and they are refused to follow those, we will have no hesitation in having those sanctions, and the sanctions will be sent home in letters to parents, it will be very clear as to what's going to happen.

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Francesconi: The problem, sir, is that we don't have any sanctions over you. Should that not happen. And see, we really have no leverage over you once this decision is made. So it's really important if the council this, that you do exactly what you just said.

Ramis: Commissioner, one comment related to that --

Katz: Because we have three people, identify yourself for the record.

Ramis: Excuse me, again, for the record, tim ramus, on behalf of riverdale, that concern is the reason why the transportation management plan is in the hands of that task force. Because to the extent that things aren't working, the neighborhood can bring that to the attention of pdot, and we can have amendments to that plan. And to the extent the system isn't working for the school district, they can also bring it to that forum, and we can seek amendments to the plan.

Katz: All right.

Saltzman: A little education. How binding is the transportation to management plan on your overall ability to operate? I don't understand that.

Ramis: As structured by the hearings officer, it is a mandatory condition that we comply with -- that we have a transportation management plan and we comply with it.

Saltzman: Is if pdot were to determine you are not complying with the transportation management plan, what would that mean?

Ramis: It would be a violation of our conditional use permit and we would be in violation of our conditions and subject to your enforcement process. Through your enforcement hearings officer. That's the way the system would work. To the extent that changes in that plan need to be made, they are put in the hands of -- that decision is put in the hands of pdot, except where the change would require an express amendment to an existing condition. In that case, we would have to apply and come back through the process. If we violate the plan, we ultimately end up in front of your enforcement hearings officer.

Johnston: I suppose from the neighborhoods --

Katz: Identify yourself.

Johnston: Dave johnston, for collins view neighborhood. From the neighborhood's standpoint, I think we like the idea of this being a specific condition in the conditional use permit, as much as anything for the ease of enforcement and as commissioner Francesconi noted, that the city and bureau of buildings as the enforcement agency have a good lever that's readily available to follow up if there are problems.

Hales: So if it's in the conditions of approval, tim, it's still, can still put it in the tdm plan.

Ramis: Certainly that's the case. It's really the detail of how you put it together, that needs to be worked out, and the tdm.

Katz: All right. Let me -- folks, are you satisfied on the parking issue? Let's --

Johnston: May I add a comment?

Katz: Identify yourself.

Johnston: Dave johnston for collins view, and a comment given to me by my co-chair aren't with respect to parking lots and emptying out and that there would need to be some special effort to get them emptied within a half hour after school ends because if you end near the evening peak, then if people don't leave promptly they will in fact --

Katz: In violation.

Johnston: And coming out of the parking lot.

Saltzman: We are talking 45 minutes, rather than a half an hour.

Katz: Are you talking about the evening one? Evening events.

Johnston: As people leave the school to insure that if there were a later starting time, there needs to be a provision to get that parking lot emptied promptly so it doesn't get into the evening peak.

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Katz: I misunderstood you, okay.

Abbott: Jim abbott, superintendent. Two comments on that. One is that that same monitor person that we have already in employment with us, would monitor that just as he's monitoring the, the onstreet park and go so forth. Secondly, we are okay with a 3:45 dismissal time, which would give us 45 minutes to get folks out of that parking lot. One thing I want to make sure that we are clear on, though, is there will be some students who will stay after school who will be doing, you know, a small number, but we have athletic teams, they are small, there's not a tremendous amount of, of participation, but some of those teams would stay after to practice, but the great majority of the student population would be leaving at that time.

Katz: All right. Let's talk about the class time. What's the sense of the council on that?

Hales: I believe that a time after 4:00 --

Katz: I'm sorry, before?

Hales: No, both, both, right, isn't that where we are now? That either classes -- students arrive before 7:15 or at 9:00, not in between?

Katz: Not in between.

Hales: Right.

Francesconi: Can you close at 3:30 or 3:15?

Abbott: Can't close at 3:30 because if we start at 9:00, 3:45 is as far as we can go because of the number of hours we have got to get in with the state. Mayor is very acquainted with those rules, and --

Katz: They need more instructional time anyway.

Abbott: That's right, and we have graduation requirements and so forth, so 3:45, I was agreeable to, 3:30, we could not do.

Francesconi: I think it's important we add that one, too.

Katz: What?

Francesconi: They have got to close, school has to end at 3:45, at the latest, under any scenario because I am worried about the back end, as well. We need to add the 3:45 as a closing time at the latest because i'm concerned about the back end, despite the kittleson study.

Katz: And you think, superintendent, that starting those classes will probably start at 9:00, that you can get your instructional time in from 9:00 to 3:45?

Abbott: Yes, we can. I have already gone through the, with our principal and the class times and cutting down on our break times and so forth, and we can get the time in between 9:00 and 3:45.

Katz: Commissioner Saltzman, did you want to add anything on the time issue?

Saltzman: So a student that arrives at 7:15, what time does he or she get out?

Abbott: If a student arrives at 7:15 they would get out earlier but it wouldn't affect the, any kind of peak time traffic.

Saltzman: I can seagoing with, you know, the original of this, the current condition of 7:15, 7:15 or after 9:00, I wouldn't want to give up the ability to have the shuttle system, though.

Ramis: Again, tim ramis, for the record, the current condition allows 7:15 but prohibits the 9:00. And I guess what we're suggesting is that it makes a lot of sense, if we get the right to begin at 9:00 that we also include the shuttle as a part of making that work.

Johnston: I suppose -- dave johnson, for collins view neighborhood. I suppose from the standpoint of the neighborhood, we like the 7:15 and note that our own children have often started wilson high school at 7:00 so it doesn't seem unreasonable. I know not all wilson high school classes start at 7:00 but I had four children that seem to like that so it seems reasonable. If we go to 9:00, we think we do need to have some sort of mandatory shuttle system and probably, right, in

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the conditions need some sort of mechanism to insure that children are not dropped off during the peak hours, early for their 9:00 classes.

Katz: So you think -- that's what concerns me.

Ramis: And if we look at Kittleson's original submission, with respect to traffic, they do note in that that a lot of the folks work downtown and would normally drop children at the site on their way to work. And a lot of them start work about 8:00, which puts the drop-off right in the, the rush hour. And as a parent, trying --

Saltzman: We are prohibiting doing that.

Johnston: That's right, and the question then becomes, can we effectively enforce that with parents going to work, with the route that they could take right past the school, probably going by there, a little before 8:00, 7:45 or so, and how can the superintendent object but effectively enforce that considering he's enforcing it against the people of his own district who elect his school board which hires him. So, this is, this is a concern that we have about effective enforcement of the 9:00 starting time. Unless, we put it in a specific condition in the conditional use.

Ramis: Tim Ramis for Riverdale, our view is whether you start at 7:15 or 9:00, you have an equal enforcement problem. We have got an enforcement issue either way. If we start at 9:00 we have the issue of people dropping their students off early. We need to deal with that. If we start early, at 7:15, we still have got the risk of people bringing their kids late because it doesn't fit their work schedule and we have got -- and taking them into the a.m. Peak and still have an enforcement issue so either way, enforcement is the key and that's why we put such energy into that.

Katz: Okay. Do we need these witnesses any more? Thank you, gentlemen.

*******:** Thank you.

Katz: Why don't you come up and see -- work through the conditions at that we, at least, have come to agreement, especially the ones that we identified. I will keep track, as well.

Hecht: Miriam, opdr, without exact wording, we are looking at a condition or program description that says, school will end at 3:45. We're looking at a requirement whether, and I'm not clear whether it's just in the transportation demand management plan, or, also, a condition of approval, that would require a shuttle bus, Riverdale to operate a shuttle bus that would probably have drop-off at the grade school or pickup points at the grade school and the Burlingame Transit Center. I am assuming adding a condition, written into the transportation plan but also probably a condition straightforward that does prohibit drop-off and pickup during the peak hour between 7:30 and 8:30.

Katz: You have got the language in this memo, in the Josh --

Hecht: I can get it but I don't have that memo but I am sure I can get it.

Saltzman: Prohibit or dropping off students during peak hours except in cases of emergency.

Hecht: And then the condition probably proposed by the applicant that would allow the alternative start times, set before 7:15 or not before 9:00. And a condition to close the parking lot at 10:30.

On the nights of events.

Katz: Right, and then the amendment on the evening, the evening hours.

Hecht: Is proposed by the appellant.

Katz: Right.

Hecht: I don't know if you have more questions about the ones I proposed.

Katz: I need to tell you, I don't know where the council is on -- I can support all of those. I can't support the 9:00 starting time but I think that there are three votes here to support the before 7:15, no later than 9:00. I think it ought to be 7:15, but that's -- otherwise, I'm fine on everything else. How does --

Saltzman: I'm still -- you are right. I can go with the 7:15 to 9:00 but I'm unclear about this issue of putting the shuttle bus in the TDM condition or as an actual condition.

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Hecht: Or both.

Saltzman: If I understand -- what i'm thinking, sounds like you put it as an actual -- you can do both.

Katz: I would recommend doing both because I think that pdot probably is much better suited to ultimately arbitrate this and I am thinking if we put it as a condition directly are we asking opd and r to do that.

Hales: You are giving people the opportunity to enforce it that way. Do you have a problem with it going both ways on that? If you put it in both, everybody is willing to work together and cooperate, it can be a matter of a meeting every now and then to make sure that the tdm plan is working. If all the players change and all this good will, you know, trickles away over time and there is a big fight, somebody can take the school district through the conditional use -- i'm sorry, the enforcement process, and, you know, everybody shows up here and has another hearing.

Francesconi: Is the drop --

Saltzman: Is the drop-off, pickup provision going into both?

Hales: The conditions -- anything that's a condition of approval is subject to that hand use enforcement process if someone wants to avail themselves of it and if somebody else doesn't comply.

Katz: But he would like to have it in both.

Hales: That's what i'm saying.

Saltzman: That's our intention?

Hales: I'm sorry, which, dan?

Saltzman: That's what we are doing, putting the prohibition of drop-off and pickup also --

Hales: Oh, yes, I was assuming that that was a condition.

Katz: Both management, traffic management plan, as well, as part of the conditions. All right. I think we are getting there. This is like making sausage, but good sausage. [laughter]

Katz: Well --

Hales: Barely edible sausage.

Katz: Time? Time? 7:15?

Hales: I could -- i'm not willing to be that micromanagement -- micromanaging here. I think if it's 7:15 or 9:00, our community issue, which is traffic impact, is addressed. And it's addressed enough that i'm willing to give the school district that much flexibility.

Katz: Okay.

Francesconi: So am i.

Katz: Okay. I vote -- I need to tell you I will support the motion when it's made, but I think we are making a mistake on the timing issue. All right. Are you ready --

Hales: Yeah. I will make a motion, which is I would move that we modify the decision of the hearings officer to --

Katz: This is a tentative decision.

Hales: Add new conditions and amend other conditions, and this is a tentative decision based on this discussion, the descriptions that miriam has just made and she will come back with revised findings and conditions that reflect this discussion point by point, and that that's what the council will formally adopt so that's what I would move.

Katz: Okay. You have got all of that?

Hales: So how long --

Katz: How long? Well, let's vote on this, all right. Roll call.

Francesconi: This is a tough decision for me, and for the council. The reason is, it would be easier to vote for this if riverdale high school was part of the city community because then they

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would be paying taxes that would contribute to the schools, to the road infrastructure to parks, and to other things, but they have chosen, as they have a right to do, to stay outside of our city boundary. It's also particularly difficult for this neighborhood, because they lost a school, their own school, where they sent their own kids, and that came out three years ago, 20 or 30 years ago. So, it's really a difficult thing to ask a neighborhood to accept a school for families and for others when they have lost their own. It's very difficult to do. On the other hand, it would be intellectually dishonest for me and actually, an act of hypocrisy for me not to approve this. The reason is this -- when you are looking at the transportation management plan, our experts have said that it's an aggressive plan, and frankly, it's better than we use in siting many of our own park facilities in neighborhoods. And they have done some things here to try to address the problems. I actually looked at the history of the french american school to see what's happened now because there were issues there about drop-off times, collection points, shuttle services, in a different neighborhood. I am pleased to report that it's working out well from a transportation standpoint. So, that's kind of one issue. The other is, parks has put some things in this agreement to say that the public will still have a right for little league and to use the building and to do some things. The district didn't have to agree to this. The school district didn't have to put those conditions in. So, it's not as good as their own school. It's not as good as their own park or community center. But, it's better that we have in many other places. The reason, I think, it would be hypocritical of me to not do this, support this, is because I went back and looked at the city supporting school district, you know, it was my idea to require a performance audit in the Portland public schools. The council passed a resolution on october 14th of 1999 requiring Portland public school district to progress achieving revenue through consolidating sale or lease of properties not needed for schools, in order to exploit all potential funding sources for core curriculum activities. The district entered into an agreement with us that when we gave them money, they had to show progress towards reducing the districts net facilities cost to the average for Oregon schools, by consolidating, selling, or leasing properties not needed for district schools. This is a requirement we put in there. 2 \$2.5 million is 30 teachers. So, when we asked them to do this, and they have chosen to do this when there is no condition in the legal agreement in front of me that says we can discriminate against out of city schools or, or customers, I have to apply the criteria which is really the transportation issues which they have addressed, so listen my heart does bleed for your neighborhood, but we have got to prevent other neighborhoods from losing their schools the way you have lost yours. And I think with the conditions, the 22 conditions of the hearings officer, plus the five or, actually, seven that we have added, this is the best that we can do. Aye.

Hales: Well, I found it's probably been evident, I found this to be a pretty frustrating case because the city council, the city of Portland has been relegated to doing damage control for some decisions by a couple of school districts that I think are fundamentally pretty questionable, maybe for a good, honest, and honorable reasons but, and part of that is just a good government, just good government guy, I can't help, I look around the landscape of the city and I see flakey decisions made for perocial reasons at the time that make no sense, and I am afraid this is another one, again, for understandable and good-hearted reasons we have a city of maywood park that most of us forget most of the time that exists wholly within the boundaries of the city of Portland. So, really, it's a dumb idea, but it wasn't a dumb idea at the time but undoing those kinds of dumb ideas, who knows when it will ever happen. The city's west side boundary, or the boundary along dunthorpe, for that example -- for that matter looks like a kid drew it with an etch-a-sketch. Doesn't make any sense at all, try changing it ever. We have a water district left inside the boundaries of the city of Portland called the rockwood water district that shouldn't be in the water district business, you are supposed to put districts out of their misery, water and sewer and fire districts when you a annex an

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area but we didn't, and god knows when we will get rid of the rockwell water district and there are probably people there that are mad at me for saying that, so this stuff lasts longer than we do. This superintendent and this school board, for riverdale, will long be gone and this city council will long be gone, and somebody will be sitting around in this room 25 years from now saying why on earth did they do that. Why did they put a high school, in one district inside the boundaries of the another district that serves kids mostly from somewhere else and it will be just another maywood park or rockwood water district and they will have to say well I guess it must have seemed like an expedient idea at the time, and that's the foundation I think of a lot of our frustration about this issue, so it makes you go back and wonder about all the if-only's. If only when they passed the bill requiring the districts to consolidate, the people of the riverdale school district put as much energy into amend that go as they put into getting the school sited, I would have been a happier route but you chose this route and so here we are. I think this damage control regime in the conditions that we have now approved can work, if people of good will continue to talk to each other and try to make it work. But, when you do something that's as fundamentally flakey as this, and again i'm not trying to be derisive to the people involved. I have had to make flakey short-term expedient decisions around here, too. It takes more maintenance. A higher maintenance effort than having a school district with its own school and own boundaries, with its own constituents and I would have preferred that, too. So good luck making this scheme work, but it is yet another scheme inscribed onto the landscape of the city and will take extra effort to make it work. I think this issue, also, raises some larger questions which we have all spent time on about the future of schools in general, regardless of neighborhood boundaries. The Portland school district has struggled to try to make things work in terms of its properties, in terms of its programs. And in some ways, they have done some things like magnet schools while it makes it a better system for my kids, it also makes it a better -- a worse system for transportation. I mean, I drove my kids to ainsworth school for eight yourself because they were in a magnet program and I didn't live near that, so these -- the way these school districts manage their services, trying to be competitive and effective in terms of providing a good education, and the properties, has all kinds of side effects on neighborhoods in the state's transportation system, and a lot of other stuff so we're going to have to work more together. Portland, david douglas, parkrose, reynolds, riverdale, all the school districts that are now entangle one way or another with the city, so we are part of this scheme, too, so I guess i'm committing myself to more meetings and more collaboration, and i'm happy to do that, so please, folks, at least while the folks that are here paying attention today are around, let's do our best to make this work and work well and still have this be a community asset, as well as a successful school site. So I wish all of us luck. Aye.

Saltzman: I look at the situation as we are essentially handed a willing seller, willing buyer, although in this case, it's a lease, transaction undertaken by the school district and the riverdale school district, Portland school district, riverdale. And both of them under duress for two reasons, Portland public schools because they are under an obligation as commissioner Francesconi said, to reduce their facilities' costs per capita, and the property being underutilized. The high school district, is an odyssey for five or six years to find a permanent home. And I think this is a pretty good fit. And it's going to enhance the Portland public school district in the process. So I look at that, that was a decision the school district, Portland schools and the riverdale school district reached, a willing seller and willing buyer, so I look at what we're faced with is trying to make this deal work, as best we can, given the real, very real concerns about the traffic upon the, the collins view neighborhood and that part of the southwest Portland. It is a real bottleneck or a neck-tie as dave johnston pointed out. And I think that we have come up with a process, and it assumes a good-faith willingness on the riverdale high school district to make this agreement work and I think

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that -- I feel confident that they know -- they will make this work. They have said a lot of statements to us today. Made a lot of statements to the neighborhood about the diligence that they are going to exercise, going beyond the campus boundaries on these issues of parking drop-offs, possible neighborhood -- well, parking in the neighborhoods, as well. They are going to go above and beyond and I think that they will exert control of the finite community of parents and students. So, I believe this is -- I think we've come up with conditions that will make this work, but it's certainly has to all be underlying by good faith on all sides and I think we are showing it here, riverdale it and the neighbors are, as well, so I think it's a good idea, aye.

Katz: By the time it gets to me, everything has been said, with regard to the approval and all the discussion. Let me approach it from a different perspective. I know that most of our commissioners get letters from constituents, asking them to do certain things because they think we are in charge of tri-met. We're in charge of the port, we're in charge of the county. I know if you don't, I do, in fact, I got an e-mail that asked me to fire one of you. And there isn't very -- I won't tell you who. [laughter]

Katz: One of you, so there really --

Hales: She would if she could.

Francesconi: Has my wife been writing to you again? [laughter]

Katz: On some days, not a very good understanding of separation of powers and who has the ability to make some kind of decisions that impact these particular jurisdictions. With the exception of the school districts. And here, I just want to reflect on the fact that today we had two issues brought to us by the school district. One on, well, we're not going to do school police any more, city, so here it is. Do whatever you want to do. It ain't our problem any more. But, it is our problem. And it is this council's problem, and it is the city's problem, and it is the school district's problem, and they walked away from it, and today, we're given another problem to solve, and so my message to the school district is, we've been partners over the years, close to 40 \$40 million, it keeps growing every time we take on one of your problems that you don't want to deal with. And so, as you begin thinking about who your next superintendent, public education is going to be, remember that you do have partners sitting here at the city council, who can and have taken up some of your problems and tried to resolve them. And so when citizens write to all of us in the next couple of months, do something about the school district, I hope that we'll have the opportunity to help choose the next school superintendent. Aye. Okay. Thank you, everybody.
822. -- oh, i'm sorry, timing.

*****: I would like to come back the week of the 25th, 26th because i'm supposed to be gone one of the weeks in between.

Katz: Are we going to have enough people here?

Francesconi: I'm not going to be here.

Katz: Do we have a quorum?

*****: No, we are missing two.

Katz: Do we have a quorum?

*****: For the 25th?

Hales: Yeah.

*****: Only three people.

Hales: Okay.

Katz: Deal with that.

*****: That's a wednesday.

*****: That's fine.

Katz: Okay. Good. Thank you. This should -- they should never have appealed this. [laughter]

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Katz: Okay. 822

Item No. 822.

Katz: Okay. We amended this, anybody want to testify on this? To this? If not, roll call.

Francesconi: Aye --

Katz: Oops, commissioner Hales, I need you. Commissioner Hales, I need you on this vote. This is 822. It's an aye vote.

Hales: We're voting, i'm sorry, aye.

Saltzman: Aye.

Katz: Mayor votes aye.

Item No. 843.

Katz: Thank you. All right. We read 843, which is the intergovernmental agreement between the city and the Portland school district, number one on the school police. Are there any citizens that want to testify on this item? Are you coming up, sir? No. Roll call.

Francesconi: This is a very good thing, and I guess I wanted to add my thanks, the mayor is going to, to representative minnis for shepherding this through, to the police bureau, starting with the police chief, who was reluctant to take this on, but especially to the mayor. The strategy, if it was a strategy, or how it was done was not pretty, but the fact that you were willing to kind of pick this up and not have the schools, themselves, the principal, the teachers, the kids suffer, and that you were willing to, to work this through and integrate this into the Portland police bureau, a model that we do with david douglas and parkrose, it's a very good thing for the schools, hopefully for the police, and certainly for the city. Aye.

Hales: Aye.

Saltzman: Well, I want to commend the mayor for her leadership in making this happen in a more humane manner, than a less humane manner, and I want to thank senator minnis for his leadership but he wouldn't have done this if the mayor hadn't gone down there and made the case to him. So I think this is a consolidation, which, in my mind, is long overdue and makes a lot of sense to me. And the school resource officer model makes so much sense from a community policing perspective, and I also think we'll have some benefit insist terms of our ultimate goals to recruit more people into the police force. This will give students much more access, I believe, to Portland police officers and the opportunity to pursue career paths by being upfront and close and spending time with police officers in the school. So I think it's a great move, aye.

Katz: I'm going to vote aye. I want to thank. Lise mash shawl from my office who worked on this with members of the, the management team and the chief's office and senator minnis, thank you very much. We'll make this work. And hopefully, it will be a better system than we have today. Aye. 844.

Item No. 844.

Katz: All right. Nancy, come on up. Who do you have with you? All right.

Katz: If you recall during the budget period when it was obvious that we had to cut several million dollars out of the police budget, and identified, unfortunately, desk clerks to be eliminated, we also began thinking about how do we begin recovering some revenues so that we, we lessened the impact on the desk clerks that we need to -- we needed to reduce, and we have the woman who thought of this, as well, and put this together so why don't you go ahead, nancy.

Nancy McPherson, BOP: Nancy mcpherson, police, and with me is amy, our alarm coordinator. The purpose of this transfer of services from Multnomah county to the city is as the mayor said to recover cost. We were able, with this transfer, and I can't take much credit because people have been thinking about this for a long time inside the police bureau, to buy back three desk clerk positions, as well as to administer the program, and as we -- those were just with projected

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revenues, so as we find out what our actual revenues are, we'll be in a position to use additional funds for additional desk clerk positions.

Katz: Did you want to add anything? Questions?

Saltzman: How did this happen so easily given the city/county relationship here?

*****: Actually the way you had set it up helped us accomplish it quite easily.

Katz: We didn't need their approval.

*****: We needed to give the county notice, actually. It was really conducted more like a contract, so they were given notice of termination of the contract.

Katz: Nancy is right, this came up several years ago, and it sort of died, the sheriff just wasn't really willing to do that, but we have had other discussions with the sheriff on this, so I want to thank him, as well, but nancy is right, it was a matter of just terminating the contract. And it makes a lot of sense. Thank you. Anybody else want to testify? Roll call.

Francesconi: I just want to tell you I think I contributed \$50 yesterday. We're on our way, going out to Oregon, the phone rings and the next door neighbor's 10-year-old went into our house to get keys to turn off the lights of our cars so anyway --

*****: Our personal thank you.

Francesconi: I am doing my part. Aye. **Hales:** Aye. **Saltzman:** Aye.

Katz: Mayor votes aye. All right. 847.

Item No. 847.

Katz: Do we have a substitute?

Ben Walters, City Attorney's Office: We do, your honor. Ben walters with the city attorney's office. There was a substitute turned in on tuesday and should be distributed.

Katz: Move the substitute.

Hales: Aye

Katz: Second?

Saltzman: Second.

Katz: Any objections? Hearing none, so ordered. Already. Do you want to talk to us?

*****: Your honor, city council, this permit was funneled last friday while further discussion can say continued between city representatives and representatives from qwest on the terms and conditions of the permit, and I understand that as modified, the permit is now acceptable. The permit is to serve the purposes of extending a grant of authority from the city council to qwest for use of the city streets. The permit as is reflects operating conditions contained in approximately 20 other telecommunications franchises, granted by the city council over the last decade, as well as conditions contained in other franchises granted by the city going back since the, the city charter was issued to the city by the legislature back in 1913. That city charter, the one we are operating under today has specific requirements for what the franchise must contain and the permit reflects those kinds of conditions. The permit conditions address such concerns as insurance and bonding, repair of street surfaces, after excavation and the right-of-way, and relocation of facilities and the right-of-way to accommodate works that are in the public interest. Part of the problem that we faced here was that qwest disputes the city's authority to impose some of these conditions, and has filed a federal lawsuit in pursuit of those claims. Madeleine was here today to describe the lawsuit in more detail. Staff and qwest have negotiated a reservation of rights clause to allow us to proceed forward and have qwest continue to serve it's customers in Portland without any surrounding questions under the city code of its authority to operate in the right-of-way and that's what this permit is intended to serve.

Katz: Let me, before we get to madeleine, I should have introduced this by saying that we tried to work out an agreement, same agreement that we worked out with other 20 telecommunication

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providers, and qwest responded by suing the city. They responded by questioning our authority to manage our streets. And they responded by saying that they are not particularly interested in paying a fair share and reasonable fee for the use of our right-of-way, city, local government property. I guess this is a larger corporate strategy because lawsuits have been filed in Colorado and Washington and California and now in Oregon and Portland and probably in other cities and municipalities in our state. They are threatening to reserve payment due to us on August 16th, payment that they have collected from ratepayers for the services that we provide them, and from that, those rate payments we support our basic services police via parks. Madeleine will talk about the 9th circuit court issue and the fact that we did join as friends of the court in the appeal and that we now have an appeal going and asking the 9th circuit court with other cities to reconsider the decision that they made because we felt that they have gone outside of the scope as we understand it, of our ability as municipalities to charge for the right-of-way and the use of our property. Rather than wait for the decision on the appeal, qwest has made a decision that they will no longer pay the city for the use of our right-of-way. It's unfortunate that we're in this particular position. We've always had fairly good relationships with all of our telecommunication firms, and I'm sorry that we're in this position, but we are. We will continue our court battle with qwest, and Madeleine will probably need some additional help to win the case. So Madeleine, why don't you explain the case. **Francesconi:** before you do that, can you explain to me what's going to happen in this agreement? So let's say that qwest doesn't make the payment. What happens? Just take me through the different scenarios before we get to the case?

Walters: Well, the payment to the city is the way it's proceeded previously is it's under chapter 714, and chapter 714 is the utility license fee. The utility license fee provisions provide for penalties and interest if there is a failure of payment, and then we would follow that up with a collection action.

Katz: After the payment.

Walters: So if they failed to pay us on August 15, the next due date, penalties and interest would begin to accrue under the provisions of chapter 714 and we would have to come back to the council authorizing a collection action.

Francesconi: But we wouldn't revoke the permit?

Walters: No, that's not tied to that.

Katz: I thought that the two were tied. They are not, so we're acting on them separately.

Francesconi: Why are we doing that? I am sure there is good reason but what's the strategy?

*******:** Madeleine can address some of that.

Madelyn Wessell, City Attorney's Office: Madeleine, city attorney's office. Commissioner Francesconi you always ask the good questions, when it comes to legal complexities but the answer is that we thought it made a lot of sense to resolve the issue for a short period of time. This is a six month permit only, to allow qwest to continue to have an ability under other sections of the city code to get into the street, to accomplish repairs, to move facilities, some of which are based on requests that the bureau transportation or other city bureaus have made because we, we are all doing work in the right-of-way. So, for qwest to maintain operating authority, is an indispensable component of the bureau of transportation being able to continue to allow them those street opening permits. Our sense was that to deny them that would be to create a crisis in the streets and for the citizens that was really quite unnecessary, especially given the fact that as Ben described, the duty to pay arises under a separate section of the code, as well, and has its own sanctions attached to it. So, this is a short-term solution to try to prevent an exigent circumstance from arising, which would be that people could not -- that exhaust could not get into the street to handle emergency and other repairs and installations. That's the rationale. We also, in working with representatives of the

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company, certainly have come to understand that they believe that they have a legal right not to pay fees and not to sign agreements that contain some of the terms and conditions in the temporary permit, and we recognize that we're going to be in court working on that.

Francesconi: Let me ask it this way -- so let's say that we should lose the lawsuit. We would have to grant these kind of permits anyway, is that another way of phrasing it? Or could we choose not to?

Wessel: If the city were to be found to lack the authority to impose the kinds of terms and conditions that it has in this current permit, we would have to work out a different relationship with qwest and other telecom providers in all likelihood. There would still be some terms and conditions that would be viable and would be legitimate even qwest admits that the telecom act that they think has preempted all of this authority, does contain certain safe harbor provisions for local governments but it would not be the same permit. It would look different from the kind of agreement and fee structure that we have today.

Francesconi: Thank you.

Katz: Now, why don't you go ahead and explain to the council where it all started and where are we right now.

Wessel: I will start by saying it seems like only yesterday, and practically it was, that I was in front of you requesting authority for the city and the city attorney's office to join a friend of the court brief in the 9th circuit, and I explained to you at that time that a ninth circuit decision, a panel decision had come out of Washington state litigation that caught many west coast cities by surprise, and that certainly cast doubt on the authority of cities to manage the right-of-way in the ways that we have long and historically managed our property. And made sure that there is compensation and adequate compensation to cover not only the expenses but the public's interest in its property. The city did, in fact, join a very lengthy, league of Oregon cities, California cities, all joined this particular brief urging the ninth circuit, first the panel and ultimately the entire circuit, to reconsider the panel decision, which we feel is out of line with other federal court authority elsewhere in the country k so, so that is an in process situation. There's no answer yet from the ninth circuit. Either at the panel level or the broader court as to what they are going to do with that particular decision. That's one issue. Now, another issue, which is pretty important, is that we do not agree with qwest's interpretation even of that decision. We believe that some of the points that they see anchored in the decision are not there. So, qwest has articulated to our office their position that the fees of the city and other cities have charged under Oregon statutory authority, are no longer valid. We just don't agree that that's what that decision stands for. We also have tried to explain, at least our view, that much of the decision is predicated on Washington state law, which is very different from Oregon law in terms of the ways in which cities rights to own and manage property have long been established in Oregon. So, we have a difference. We have that classic difference of opinion between lawyers. We also however, have a pending possible reconsideration of the decision. I have to tell you I didn't expect i'd be back here so soon, facing litigation from qwest and a challenging of the city's historic authority but we're here, and we're going to work hard to defend the city's position.

Katz: So, this is brought to you, the 13th hour, and it's not -- it's not pretty. All right. Further questions? Greg, I know it's been difficult for you to sit here. Do you want to come up and say something? Come on up.

Greg Peting, Attorney for Qwest: Mayor, commissioners, for the record, greg peting with qwest. Make a few brief comments and more than happy to take some questions, if you'd like. This is certainly a contentious issue here in Oregon, and in Portland, as it is around the state, excuse me, around the country, the telecommunications law is developing rapidly, and subsequently to the

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1996 telecommunications act. We certainly have our version of the even that have occurred here that i'm not going to go into today. But, be that as it may, I do want to say that I have worked well, personally, with numerous members of the city staff and the city council and the mayor's office, and so to be sitting here in front of you knowing that we're in court over an issue that is at the heart of my job, is a difficult thing, a difficult thing to swallow so I hope that we survive the lawsuit and moves forward.

Katz: You know it's not personal.

Peting: I absolutely understand that but I am an attorney with the organization, but i'm a negotiator, not a litigator so I feel like now that it's been turned over to litigation, been unsuccessful in resolving the dispute.

Francesconi: Maybe two questions related, so has the corporation made a decision as to whether it's going to make the payment in august and if so, what's the decision?

Peting: Commissioner, we have not made a decision at this point.

Francesconi: What are the factors, without disclosing the attorney-client privileges?

Peting: Well, we think that there is some liability here to the company in submitting a fee to the city, that has been ruled illegal under the ninth circuit decision, in a case in august, and I realize that the city attorney's office disputes the holding in that case with us, but given our position, we're unsure what our liability is now, and in acting in a manner that would be consistent with our interpretation of federal law.

Francesconi: We can cover that one, gragg. [laughter]

Katz: I just need to tell you that the financial impact of this is very severe to the city, and I told greg that what he calls 9-1-1, as a representative from the company, there may not be an answer. Because of the financial impact for us. I mean, I was half teasing him, but this is serious business for the city, and if we should lose this, this case, and I think that madeleine is prepared to appeal it, as high as it can go, then we have -- the telecommunications act will, will have to apply and the same decision apply to everybody else that we collect a franchise fee, so before anybody wants to reduce it or cap it, we may not have anything left to reduce or cap.

Saltzman: One question, I don't know who this is directed to, but qwest has not made a decision whether to pay the payment due august 15th. I thought I heard somebody say that they have declared that they will not be making future payments? Did I hear that correctly? Or is that all still subject to further refinement as to your legal position?

Peting: Commissioner, our next payment to the city is due, I believe, on august 15th. And we make payments.

Saltzman: From money collected already from customers.

Peting: From the second quarter of this year.

Katz: Before the court decision.

Peting: The court -- no, we remitted -- excuse me, mayor, we remitted our first quarter payment which would have been january, february, march of this year. The court decision was handed down in april.

Saltzman: I don't think I got an answer.

Peting: No, I don't believe you did, commissioner. The -- it would be -- let me back up for a second. Our existing license with the city was revoked by the city on june 30th of this year. Our position here is that on a going forward basis, the turnover, essentially, in the relationship moving from that old license to the new expired, excuse me, the new temporary revocable permit that new agreement needs to comply with the existing state of federal law. And that as long as the law is as it is under the auburn decision, we are in the required to pay the fees in the ninth circuit.

Katz: Okay. Does everybody understand? Anybody want to testify? Okay. All right. Roll call.

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

Katz: Well, the qwest company has a motto, ride the light. And I just want to say that the city of Portland will not be taking -- taken for the ride. Aye.

Katz: 848.

Item No. 848.

*******:** After the drama I just listened to, for the last several hours I feel presumption to talk about fictional drama --

Katz: Identify yourself.

Michael Rohd: Michael rohd.

Katz: Who were you representing?

Rohd: A non-for-profit theater company in Portland.

Katz: But you saw some drama, you may want to take that and do something with it.

Rohd: Well, that's actually why i'm here. We have quite a unique production at the solomon right now. It's a show made up of interviews with officials, social service workers, citizens, inmates, and other people who have contact with the justice system all over the city and state including police officers and the citizens who have experience with police officers. We have been running for the last two weekends, and we have had a tremendous response from both folks who work for and around the city and county and also citizens who have come as general audience, and it has been spoken to me over and over, in the last several weeks is the show has become critically well received, all the major papers in town have given it the critics pick for the weekend. It's important that I come personally and extend the invitation to those folks who lead our city, and lead our community, so that we have an opportunity to share with you both our work and also the voices of individuals we met. Some of them are very much a part of the system, and some of them are just citizens commenting on their experiences of it. I have a very short amount of time with you, and you have had a long day, I think. So, I wanted to ask permission, if I may, so their with you a brief story that comes --

Katz: Let me get a suspension of the rules to allow you a little bit more time. Any objections? Hearing none, so ordered. Go ahead.

Rohd: Is it all right if I stand?

Katz: You can do whatever you want.

Rohd: Thank you. This production takes place in the 6th floor courtroom of the gus solomon, the first time there's been live art in that space, and we use the whole space. I will speak loud.

Katz: Are you doing something that's in the production?

Rohd: Yes, very brief. It's how the production begins, comes from a person we met in town, basically, a man here in Portland. And I went through his house, I stayed there, as a matter of fact, late one night, he asked me to come. He picked up an object from his mantle, looked like a sculpture, large and oblong. He handed it to me. It was a giant egg, almost as big as a football. But, it wasn't smooth. It was covered with carvings, and as my eyes adjusted to the light of the fireplace I began to make out the images on this egg, they were images of the sea. He told me that years ago years ago, this gentleman from Portland, he had been traveling around ireland near the coast and he had come upon a shop which contained things other than books, which told stories. Items that men and women, like yourselves, had used to record the events of their lives in the most extraordinary ways. He talked about clocks, with gears in the shape of things. He talked about things of births and deaths, about a box with bits of clothing sown all over. But, this egg, he said, that I now hold, is an ostrich eggs and carved into it is a story of a man's life on a boat searching for whales. Carved by an irishman in the mid 1800s. Made its way here to Portland. There's no clear quest. Life is not that straightforward. But the story, the stories are right there, on the bottom, a

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signature, a bearded face, and an arrow, because some narrator says, start here, and don't know if you can make sense of these events, these moments that at times were extraordinary, but start here, so in a room above a pub in ireland, lives are on display. And although I am speaking of the gus solomon, this is also a beautiful room. There are not lives carved here but there are ghosts, there are must be. Every day, for years, some of you have been in here, discussing matters of justice. Our show is called, the justice, but justice doesn't happen in this sort of room alone. In a city like Portland, in a state like Oregon, justice happens all around us. And before us, and after us. In the voice and is experiences of individuals, some of whom never entered a room like this. In our show, it can't be told simply, in our show, it can't be told in a straight line, in our show, it simply can't all be told. But at the gus solomon courthouse, we try to pursue this idea of justice. [inaudible] we would love for any of you to come and be our guests at the show, bring family, bring friends, simply call and tell us that I spoke to you here, please.

Katz: Thank you very much.

Rohd: Thank you.

Katz: All right, everybody, this weekend, is that the last performance?

Rohd: Friday, saturday, sunday at 8:00 p.m. And sunday, matinee, at 3:00 p.m. And the reviews are in the package you have got there.

Katz: Thank you. We stand adjourned.

At 4:17 p.m., Council adjourned.