



CITY OF
PORTLAND, OREGON

OFFICIAL
 MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 12TH DAY OF SEPTEMBER, 2001 AT 9:30 A.M.

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

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

On a Y-5 roll call, the Consent Agenda was adopted.

<p>1080 TIME CERTAIN: 9:30 AM – Accept the Dickinson Park and Dickinson Woods Master Plan as proposed by Portland Parks and Recreation as a guide to the future improvement of the sites (Resolution introduced by Commissioner Francesconi)</p>	<p>Disposition:</p> <p>CONTINUED TO SEPTEMBER 19, 2001 9:30 AM</p>
<p>1081 TIME CERTAIN: 10:00 AM – Presentation of Twenty years of Minority Enterprise Development successful business achievements (Presentation introduced by Mayor Katz) (Y-5)</p>	<p>ACCEPTED</p>
<p>1082 TIME CERTAIN: 10:20 AM – Amend City Code relating to parades and processions (Ordinance introduced by Mayor Katz; repeal Chapter 16.60, add Chapters 7.22 and 16.65, and adopt administrative regulations)</p>	<p>CONTINUED TO OCTOBER 10, 2001 10:00 AM TIME CERTAIN</p>
<p>CONSENT AGENDA – NO DISCUSSION</p> <p>Mayor Vera Katz</p>	
<p>1083 Approve the appointment of Martha Schwab Harris to the Housing Authority of Portland Board of Commissioners for a five-year term to expire September 11, 2006 (Resolution) (Y-5)</p>	<p>36023</p>
<p>1084 Recommend organizations eligible to participate in the City 2001 Combined Charitable Campaign (Resolution) (Y-5)</p>	<p>36024</p>
<p>*1085 Authorize contract with Black United Fund of Oregon, Inc. for the 2001 Combined Charitable Services Campaign (Ordinance) (Y-5)</p>	<p>175916</p>

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Commissioner Charlie Hales		
1086	Apply to State Farm Insurance Corporation for funds to study intersection safety and recommend improvements at the intersections of SE Division and 122nd Avenue, NE Glisan and 122nd Avenue, and NE Sandy Boulevard and 39th Avenue (Resolution) (Y-5)	36025
Commissioner Dan Saltzman		
1087	Consent to transfer of Dee's Sanitary Service, Inc. residential solid waste and recycling collection franchise to Pride Disposal Company (Second Reading Agenda No. 1065) (Y-5)	175917
Commissioner Erik Sten		
*1088	Agreement with Portland School District for \$30,177 for coordination of the Outer Southeast Caring Community and to provide for payment (Ordinance) (Y-5)	175918
*1089	Amend contract with Rapidigm, Inc. for \$115,000 and authorize payment (Ordinance; amend Contract No. 32300) (Y-5)	175919
*1090	Agreement with Salvation Army - District Office for \$209,910 for the provision of emergency winter shelter for homeless adults and provide for payment (Ordinance) (Y-5)	175920
*1091	Agreement with Clark County Alcohol & Drug Program for \$87,951 for the Transitional Housing HIV and provide for payment (Ordinance) (Y-5)	175921
*1092	Agreement with School District No.1 for \$416,973 for the Home Repair Training Program and provide for payment (Ordinance) (Y-5)	175922
*1093	Agreement between the City and the Oregon Food Bank to provide real property and design services for the Oregon Food Bank facility (Ordinance) (Y-5)	175923
REGULAR AGENDA		
Mayor Vera Katz		

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<p>*1094 Authorize a contract for assessment of the water and sewer utility customer information and billing system (Ordinance)</p> <p>Motion to amend item 10 of the finding to \$100,000 and the highest bid should be struck. Item f of the directives should be adjusted: Moved by Commissioner Sten and gaveled down by Mayor Katz after no objections.</p> <p>(Y-5)</p>	<p align="center">175924 AS AMENDED</p>
<p>1095 Establish a procedure for documenting City rules and policies (Ordinance; add new Code Chapter 1.07)</p> <p>Motion to adopt the amendments to Exhibit A: Moved by Commissioner Saltzman and gaveled down by Mayor Katz after no objections.</p>	<p align="center">PASSED TO SECOND READING SEPTEMBER 26, 2001 9:30 AM AS AMENDED</p>
<p>*1096 Approve a contract with CH2M HILL for Endangered Species Act Strategy and Technical Support Services (Ordinance)</p> <p>(Y-5)</p>	<p align="center">175925</p>
<p align="center">Commissioner Jim Francesconi</p>	
<p>*1097 Contract with the Leach Garden Friends to construct the East Terrace Renovation Project and related improvements at Leach Botanical Garden (Ordinance)</p> <p>(Y-5)</p>	<p align="center">175926</p>
<p align="center">Commissioner Charlie Hales</p>	
<p>*1098 Create the Boise/Earl Boyles Park Local Improvement District for construction of street improvements (Hearing; Ordinance; C-9998)</p> <p>(Y-5)</p>	<p align="center">175927</p>
<p>1099 Assess benefited property for the costs of constructing street and storm sewer improvements in the SE Ivon Court/125th Avenue Housing and Community Development Local Improvement District (Second Reading Agenda No. 1076; C-9962)</p> <p>(Y-5)</p>	<p align="center">175928</p>
<p>1100 Repeal Ordinance No. 175752 amending the City Code to provide funding for Street Maintenance and Improvement (Second Reading Agenda No.1077; repeal Ordinance No. 175752)</p> <p>(Y-5)</p>	<p align="center">175929</p>
<p align="center">Communications</p>	
<p>1101 Request of Bill White to pray for Council (Communication)</p>	<p align="center">PLACED ON FILE</p>

At 12:30 p.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 12TH DAY OF SEPTEMBER, 2001 AT 2:00 P.M.

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

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

<p>1102 TIME CERTAIN: 2:00 PM – Hear appeal of Shawn Tombe (PIIAC #00-27, IAD #98-222) to the Police Internal Investigations Auditing Committee per City Code 3.21.085(4)(d) (Report introduced by Auditor Blackmer)</p> <p>Motion to table this item: Moved by Commissioner Hales and on a Y-4 roll call so moved.</p>	<p>Disposition:</p> <p>CONTINUED TO DATE TO BE ANNOUNCED</p>
<p>1103 Hear appeal of Jeremy Emmi (PIIAC #00-30, IAD #99-173) to the Police Internal Investigations Auditing Committee per City Code 3.21.085(4)(d) (Report introduced by Auditor Blackmer)</p> <p>Motion a finding of insufficient evidence and change the finding for officer b on courtesy to sustained: Moved by Commissioner Hales and hearing no second the motion failed.</p> <p>Motion to uphold the PIIAC Advisor's findings: Moved by Commissioner Sten and seconded by Commissioner Francesconi.</p> <p>(Y-3; N-1, Hales)</p>	<p>APPEAL DENIED</p>

At 3:20 p.m., Council Adjourned

GARY BLACKMER
Auditor of the City of Portland

By Karla Moore-Love
Clerk of the Council

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

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Closed Caption Transcript of Portland City Council Meeting

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

Key: ***** means unidentified speaker.

SEPTEMBER 12, 2001 9:30 AM

Katz: roll call.

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

Katz: Present. Let me open it up with a couple of words and then we will have a moment of silence. I want to take this opportunity to thank Portlanders for staying calm and for all their efforts of help and assistance through this very difficult time. I also want to thank the council for their patience, their support, and their suggestions, as well. One of the things that we've been telling the public and urging them not to take out their fear and anger and anguish at those who might be of a different ethnic origin or race or religious persuasion. It's also important at this time to connect with each other, to connect with your friends and your families, and to do one thing we can all do, because there isn't today very much that we can, in fact, do directly as a community, but we can pray and we can show a little additional compassion to members of the city. Most of our religious institutions will be open tonight for prayer. We're working on the possibility of a city vigil at pioneer square on friday to bring the city together. But, I want to say that what I think, after thinking through the day's events, that what's important is to talk to our children. This is something new for america. They don't understand why. They don't understand how. They have very little understanding of where we go from here, so it is time to comfort them, to talk with them, and to listen to their fears, and to express your fears, as well. We are a very strong and resilient nation. But, I will be very honest with you, we will never be the same. So, let's take a moment of silence for those whose lives were shattered on an early tuesday morning. [silence]

Katz: Thank you, everybody. Okay. Let's do the consent agenda. Any items to be removed off the consent agenda? Anybody in the audience wanting to remove the consent agenda? Roll call on consent agenda.

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

Katz: Mayor votes aye. All right. Time certain, 1080.

Item No. 1080.

Katz: Commissioner Francesconi?

Francesconi: This dickinson park was part of our land swap, where we helped Portland public schools and we got a park in southwest Portland. Very park deficient area. I guess life, if the mayor of new york can say that life goes on, I guess life goes on here for us, as well. So, let's have david and I am not sure who is coming from southwest, come on up and we can have a brief presentation on the future plans for the park.

David Yamashita, Planner, Bureau of Parks and Recreation: I am a planner with Portland parks and I want to thank the council for giving us a time to present the plan to you. I think -- there are several things that make this project distinctive. We worked on this plan with the community for about a year and we were able to develop a consensus around a site that people looked at for a long time and actually the city could pick it up in, or pick up half of it in 1999 from the school district to turn it into a park. For me, it's a wonderful example of a planning process and a project that succeeded in several ways, not just in terms of a plan, but also demonstrated that planning can also be a vehicle to help achieve other goals. It's just a few examples. As I said, we did, through the process, create a plan that outlines a common vision for the site, which had never been done before. Interestingly, also, there are three agencies that were involved in the whole project. We

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were involved in it as a landowner. Bes also owns the dickinson woods site, and so bes was involved. Metro also owns one of the sites as part of dickinson woods and metro is involved so we all worked together to help create this common vision. The third thing is that we also worked successfully with the neighbors to meet their goals and also to meet Portland parks goals of trying to create a neighborhood park here, and so it was a great partnership between the city and the southwest neighbors to, to work together to come up with a common vision. And finally, I think in terms of a, part of the legacy for the project, the neighbors continue to be involved. They haven't stopped with the whole project and they formed the friends of dickinson park to help do things at the sight while they are waiting for development money to be found. So, it's not as if they are going to become standing still. For me, personally, I just want to say that I am appreciative of the work that dickinson park neighbors put into it -- dickinson park neighbors put into the project. As with many of those projects, one of the benefits for staff is just meeting wonderful people, and some of them are here today but I want to say thank you to sweeney, to the southwest neighbor's parks committee, to darren reese, to wes mcmullen and a lot of the other people that are here because it was a wonderful experience to work with them. We have got someone from metro and also someone from bes and they will have the neighbors come up and just describe their views of the plan.

Heather Nelson-Kent, Planning and Education Manager, METRO's Parks and Green Spaces Department: Good morning. My name is heather nelson kent. I am the planning and education manager for metro's parks and green spaces department. And I am pleased to be here today to support this plan, as david described, this is a, a portion of the plan area, the area we referred to, refer to as dickinson woods area, is partly owned by metro and by the city of Portland. And the city manages the property through an intergovernmental agreement with metro, which is a great arrangement for us. And for you, as well, I think. The main goal is establishing metro's open spaces, parks and streams bond measure for this area, the fanno creek greenway target area. We are really continuing to be met through this plan and we are very pleased to support the plan because of that. The key goals are to protect water quality, fish and wildlife and recreational values and a key finding from our plan was that purchases in the area should be multi-purpose, that they should meet these multiple objectives and I think the plan does a good job of, of continuing to address those multiple objectives. The plan allows great and appropriate public access, connecting dickinson woods to the main dickinson park area, and emphasizes the importance of protecting and restoring the natural resources of this area and in particular, the restoration of the creek corridor. There is an existing trail in the area and the plan does call for moving that trail slightly so that it's not impacting some of the natural resources quite as much, and that's a high priority for metro and we are really pleased to see that place at the top of the list in the implementation schedule. So, I just want to congratulate staff and the citizens who participated on this. On really a great plan that we all can support, and whatever we can do to help implement the plan, of course, we will be happy to do so. Thank you.

*****: Okay.

Nelson-Kent: I guess I just wanted to thank you on behalf of Portland parks. We have many great partners, but you are among our very best so thanks.

*****: Thanks.

Katz: All right. Public testimony.

Amin Wahab, Manager, Bureau of Environmental Services (BES): Good morning, mayor Katz, commissioners, I am amin wahab the manager for bes. And I am here to represent bes and to say that we are very pleased with the dickinson park and dickinson woods master plan. The parks bureau has spearheaded in the past two years and finally it is here before you. The process truly was one of partnership between the bureaus and also with the public and the neighbors. We believe the master plan will not only enhance the livability of the southwest, and also fill some of

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the, or at least the void that is there to, some degree, due to lack of parks in the southwest but also enhance our common goals of what quality fisheries and other resource issues in the southwest. We will be working with parks in the future to implement some of the recommends in the plan and work with parks on enhancing ash creek in that area, which is kind of taking the brunt of the run-off from i-5 and some of the other impervious areas to restore that and do it in a comprehensive manner and we believe this is really kind of the right structure for it. So, we are here, and I am here to just say that we are pleased to endorse and support this plan and we will continue to work with parks in the future.

Katz: Thank you very much. Questions? All right. Are we ready now for public testimony? Come on up.

*****: Do you want to explain what that is?

*****: I actually do in my statement. We will just spread it out for you.

Jere Retzer, Vice President, Crestwood Neighborhood Association, 5115 SW Alfred St., Portland, 97219: 5115 southwest albert street in Portland. Vice president of the crestwood neighborhood association and acting chair. I am here with darren reese. I will make a very brief statement and turn it over to darren who has had the lion's share of the effort in this particular project. This really marks a major transition for us in the crestwood neighborhood and a major accomplishment for us. It goes back a long way to a dream we have had a number of years, those of us in the neighborhood, mountsy, and her husband and john alan and darian and a whole lot of folks to protect the head waters of ash creek which we fought to do a number of years ago and arranged the purchase with metro and so forth. So, we are very excited to see that particular phase come about, as far as the protection and preservation and enhancement of the creek. We are extremely excited to see it come together with the potential for recreational park, with the help of commissioner Francesconi and the park's bureau, a great partnership to build the park's plan together, and we are extremely excited about that. This was, by the way, one of two actual plans that we worked together with at the parks bureau to create in our area. The other one for the woods park and we will hope that we will get that particular plan accepted sometime in the near future, as well. As dave commented, we are very excited about moving forward with this. We recognize the limitations of funds. We are in, as the commissioner said, a parks deficient area. We are blessed in our area, and south of taylor's ferry with a lot of kids, both in ash creek and crestwood and so we are very anxious to have playground equipment for those kids and so we are very anxious to start moving forward and see what we can do to actually raise money through foundations or whatever kind of things that we can do to help this sort of development happen on an ex indicted basis for the future of our area. With that, I will turn it over to darian, who really had the lion's share of the work for this project, thank you.

*****: Hi. I am nervous, I am just going to read my statement.

Katz: But get close to the mike.

*****: Okay.

Katz: And let us know who you are.

Darien Reece, 10632 SW 55th, 97219: Okay. My name is darien reece. I live in the crest wood neighborhood at 10632 at southwest 55th avenue. I represent crestwood on the southwest parks and trails committees. And I served on the citizen's advisory committee for the dickinson park master plan. First i'd like to say that john alan regrets he can't be here to celebrate the culmination of years of work by our neighborhoods. He called last night to let us know he is safe but grounded in new york. And will probably be sending a letter with his statement because he's just, has been very committed to this whole process. And it is safe to say that john has been one of the most persistent advocates for the protection of streams and green spaces in southwest from his initial efforts to establish the environmental zones in our area, to serve on the cac, john really has inspired us all to keep working on these goals. I also wanted to mention that patti lee, the president of swni, and an

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ash creek resident who we worked with a long time on plans like this, the joint neighborhood plan and plans like this. I just wanted that is patti is here to support us, as well. You see us often enough to know the community energy that we have in southwest. In 1999, barely a month after the purchase of the new parcel from the school district, teachers at marquam elementary, asked their students to use dickinson park as a case study for their park planning project. We gave them a little laundry list of the current potential uses for the new park and this is before any process or any outreach but just sort of, you know, down in a cocktail napkin, these are the things that might be needed and two, first and second grade classes make presentations of their ideas with great visuals and just -- we are so, they were so poised when they made their presentation, marcy's son participated, so this is his classes vision for the park with the exception of the proposed veterinary hospital, which is probably not within the budget, it includes a lot of the same elements of our completed master plan. I am really proud of the plan that we drafted. I am referring to it at least weekly now, especially that we are starting to work with the parks natural resources area to develop a stewardship agreement for the park. Parks and bes are already stepping up the restoration efforts in the park, and will help us identify and coordinate projects like ivy removal and planting that can make use of a lot of our volunteer energy and creativity. We are also working with mare nevaro to place amenities in the active area of the work, to help us start enjoying it more fully before full improvements to be made so sort of an interim effort. I think that jerry mentioned the proposed playground is really our high priority and highest priority in the active area. I am expecting my baby girl when we were working on the plan and now that she is --

Katz: Now she's married.

Reece: Well, I am hoping that we will have a playground before she is married, so I have a real personal stake in seeing a playground there, and we are starting to investigate what we can do as neighbors to raise funds and rally resources to make it happen, and I am really encouraged to see community efforts of places like hamilton park and smith school. We recognize the scope and the scale of our projects are a little larger, so having the master plan in hand is the first and best step for us. We owe it to ourselves to explore all of the possible options to realize our goals. Of course, I am hoping to come away today with a better idea of the process, possibly nominate the parks projects like dickinson for the upcoming bond measure.

Katz: Thank you. Further testimony? Karla?

*****: That's all I had signed up.

Katz: Anybody else want to testify?

Hales: I have a question for david. I would like to get david back up and maybe get jerry and patti to address this, too. Maybe I ought to preface the question by just getting the -- getting the council for just a moment to look at the map on page 5. The gabriel park is a mixture of active recreation and passive natural area. April hill park is a mixture, that is gabriel park has soccer fields, baseball fields, a community center, tennis courts and a large natural area. April hill has a soccer field, although undersized, and a natural area. Woods is entirely a natural area. Maricara is a natural area. And lesser is an entirely natural area. Now please look at page 34, which is the proposed site plan for the work in which it is designed to be used by a very small number of people as passive natural area. And then finally let's, as I asked my question, turn to page 20, which is the photo of the site. Jerry, patti, the rest of you I really respect the strong environmental emphasis of the small number of people who are park activists in southwest Portland. You are great, and I understand your agenda and your agenda is natural areas, and I agree with it. Yeah. This is the frisbees test.

*****: I know.

Hales: There is another constituency of parks in southwest Portland and it is the thousands of parents I am just graduating from that category because my daughter is going to high school now so because of the way the rec league system works in Portland when you go to high school you are out of the rec leagues, something else we need to work on for all the kids that don't qualify for high

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school soccer. But, there are thousands of parents who will spend this saturday morning getting in automobiles in southwest Portland and driving their kids to east side soccer fields. If not here, where? Look at that site and tell me why we are not having this --

Yamashita: You tell me, when you had your move before to put in soccer fields I proposed this open field for a soccer field but the parks bureau staff informed me the slope is too great, okay.

Hales: I mean, I am not arguing with you.

Yamashita: The problem is the slope.

Hales: Look at slope at gabriel park we started with. You do have to grade to create flat land in southwest Portland and people don't like that because it means disturbing the site but folks, if we are ever going to create another soccer field in southwest Portland, I believe this is it. If we adopt a master plan --

Katz: Let him finish.

Hales: That says it's a natural area today, which I am not going to vote for because my recommendation is this gets returned to the parks commissioner for further study because if we, the city council, bless a plan that says, it shall be natural area, guess what? We will never put a soccer field in there because the momentum will all be in the other direction. So if we are ever going to consider putting a soccer field in there, this plan needs to go back to the drawing board because I am not going to adopt one and bless one that I am not arguing with you, jerry. Sounds like you and I are in the same camp on this but folks you will have to get the bulldozers out to create a soccer field in southwest Portland. One will not fall flat out of the sky and land some place. So, it has to be a site like this that is not in the e-zones, or if it is in the e-zones, it's not in ep, and it's clear of trees. Again, folks, I know that we have to disturb a meadow some place to build a soccer field but what's the environmental cost of thousands of parents starting thousands of motor vehicles every weekend to drive to the east side for their kids to play soccer?

Katz: All right. Thank you. Why don't you respond and then if, if you have a chance to respond as you worked on this, this was discussed and how you feel about it. Go ahead.

*****: All right. Thanks, commissioner. Actually, when we started the process, let me just --

Katz: Identify yourself for the record because there is three of threw.

Yamashita: I am dave, the planner for the project. When we started the project, one of things that we talked about was the need to accommodate, not only the demands of the present but of the future so we talked about this site getting a lot more use and how do we do that, but also how do we protect the resources. And in looking at the range of possible issues, a soccer field came up and an off-leash area came up and things that people don't typically think about at this site. We had actually done grading study of this site for a soccer field, and someone else from our staff had actually laid a soccer field in there and if you looked at the amount of grading that was going to be involved in it, to carve out a soccer field and then thought about parking for the number of people that might be going there, and then the other part that entered into our discussion, it may not be clear here, but there's a part of the site, if you look on page 6, and maybe darian can point it out. There's actually -- there's a wetland in that whole strip from 55th to 57th. It doesn't appear as a wetland but it's a very wet area, and it extends, I am guessing, 50,60 feet at least from the forest this way and we were there in the spring and I went out there with ralph rogers, who some of you know, and we stuck a shovel down and water in about a minute came this close to the surface so he identified it. That whole strip is a wetland, and so the usable part of the site is a lot smaller than just looking at the aerial photograph and seeing a meadow, and so that, also, became a consideration.

Hales: I understand your perspective. But, was the Portland use soccer association involved in the committee? The folks that don't get involved in this process, it's the way our neighborhood systems works and doesn't work. The folks who don't get involved in this kind of committee. I suspect you didn't have more than a couple of soccer parents on your committee because they are busy driving their kids to games, okay. So, we have got to get them involved in these discussions and weigh the

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balance of natural area, which this park should be a substantial part of this park should be a natural area, in my opinion, and obviously, in yours, but 100% when we need soccer fields?

Katz: Let him continue.

Yamashita: Okay. Anyway, we did talk to the youth, I think someone from the youth soccer association about this. We also had, I think, two or three open houses and we got a pretty good attendance. We got like 50 people on one saturday and 30 on another. This was also, I guess, discussed at the sweeney park committee. We had, I forget her name, come out. So we tried to get as many people involved in this discussion as we could. To talk about some of these things. And I think from my perspective, we had to weigh the pros and the cons of this commissioner, and I relied on a committee to help us make the decision.

Katz: Let's hear from the committee members.

Reece: Okay. First, I certainly hope that it's more obvious than the plan that we envisioned the field area, the open field area that was just acquired, as the active area, as truly an active recreational area in the parks, so I hope, I mean, you should come away from reading the plan thinking that that's the case. I mean, it's surrounded by natural area, but we certainly did target that as the area that we desperately need in the neighborhood to have active. One of our -- to mention one of our committee members was mike did he have lan, who is a soccer dad so we did have a soccer dad perspective on the committee. I think that john, again, regrets that john isn't here because john, I think, has the furthest vision for what could happen here and yes, john said, time line way out and the active area of the park, we may be sitting down and revisiting this in 25 years and saying, yes, it's now is the time to start thinking again about digging out and doing things, so I think that, you know, we know that this is, you know, sort of a working document and an evolving document and we already said this is going to be the active area. I don't think if we did revisit it would be going back on this. I think it would just be a continuation of --

Saltzman: What is the active recreation you envision.

Reece: At this point the main active recreation is having a playground there, which --

Saltzman: Which is a pretty small part of the parcel, just that little circle there. No ball fields or anything like that?

Reece: Not at this time, no.

Hales: Let me say this one more time.

Katz: No, no, let him finish.

Retzer: One of the things you can't really tell is you have actually got a 17% slope here. When we went through -- when you had your soccer program before and with the program that we support and I strongly advocated and I said why aren't we getting the seven soccer fields in southwest and I sat down with the parks bureau and the planner and we laid out a soccer field, or attempted to lay out a soccer field in this meadow and basically it took up the entire meadow area, and with very little space. I mean, it was extremely tight, so even though it looks quite large, you would be surprised how large the soccer field is. The amount of grading it would require is a huge amount of dirt removal with that slope, and plus the infrastructure requirements so it was actually the park staff that said, this is simply not a good place for you to spend your money for a soccer field and that's when you decided to go ahead and invest and rickey and also in the park. We looked at that closely at the time and really, in fact, we did -- we had the soccer committee, which you created, involved in that process. They looked at this area closely and they actually eliminated this as a potential. You are right, the primary active, you know, developer of recreation for the area is the playground. We have a fairly extensive set of trails through there with the whole vision in mind of people being able to go down and throw frisbees and run their dog and is stuff like that. We are actually not taking away, I think, in any of the meadow that's there, there is a little corner, that is wetland as dave pointed out they plan on planting but for the most part, what is there and open today will be there and open ten years from now, so and available if, you know, if plans change. In

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the meantime we desperately need a playground. We have a lot of kids, they are isolated by Taylor Ferry and I-5 that have no access to a playground so we would like to see this adopted and move forward, thank you.

Katz: All right.

Hales: Let me restate this another way. If we adopt a plan now that looks like this, and that's why Jim I would urge we send it back, it becomes enshrined. I want to remind the council of the experience of trying to site an active recreational use at the Gabriel Park Community Center on three acres at the corner of a mixed use park. Those three acres were never designated one way or the other. They were never designated as natural area or as recreational. But, in the local acquisition to recreational use which always happens, to face it, any of us who lives next door to a park, we would rather it be passive and have trails in it than be full of noisy kids on Saturday mornings. It's just human nature. That's the way we are. But, as a community, it's better for us to find some place for the noisy kids to be, okay. So, we have to accept that bias, that the immediate neighbors to a park are never going to want active use. But in the debate and opposition to the Gabriel Park Community Center, one might have thought that that site was Walden Pond from its description despite the fact it was an unused corner of the park with a sewer pumping station. If we adopt this master plan, my prediction is that we will never site a soccer field on this park. And if we are ever going to site a soccer field on this park, ten years, 20 years from now there ought to be a dotted line on the plan that says, there might be one. Otherwise, some future council will have a day like the day that we had sighting the community center.

Katz: Commissioner Saltzman?

Saltzman: First, I want to say, as one of the soccer parents now who is driving my daughter to Delta Park, what Commissioner Hales says has some world resonance with me, and I think he raises some good points and it's frankly a history that I am not familiar with, other than we need active recreational facilities in southwest, too. You mentioned running dogs. Is there a proposal to make an off-leash area here?

Reece: There is not.

Saltzman: Would it be something the master planning committee would --

Reece: We discounted it. We discounted it again because of the slope.

Saltzman: What's the slope got to do with off-leash?

Reece: The slope and the hydrology of the site --

Saltzman: We have an off-leash park at Gabriel Park and that's a substantial slope and wetland, too.

Reece: Which probably some would count as an example of an issue.

*******:** Can I answer that one, too?

Yamashita: Just for perspective, I actually was a staff to the last reiteration of the off-leash task force so I have some considerable amount of perspective on this. And I brought this up with the committee but what happens with a slope, Commissioner Saltzman, is that typically, as we found in Gabriel, a lot of people don't pick up their stuff. It rains. It ends up in the water. And it's not only a public health issue, it's a sanitation issue. Really, what we found in off-leash task force was you need at least 10,000 square feet to have any kind of a reasonable off-leash area, and it was just, again, a grading issue.

Saltzman: 10,000 square feet?

Yamashita: Yes, 5 to 10,000. It's better to have a bigger site. But, it was just difficult to site something like this, much less put it next to a playground where you have the possibility of kids stepping in this stuff, going into the playground and climbing on the stuff and having some transmission of things you don't want the kids to get their hands on so that was, that was discussed, and we brought it up at the meetings, at the public meetings, I made a point to bring that up. And there wasn't a lot of support for it. And I mean, my personal perspective -- this is not the right site

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for something like that. I think gabriel, I think bes would say that that's probably not a great site, either, for the same reason. And if we are, in fact, sincere about trying to protect our watersheds and are committed to environmental quality, where do you find better places and this is not the site for that.

Katz: Commissioner Francesconi?

Francesconi: First I want to say to both commissioner Hales, especially commissioner Hales and also commissioner Saltzman, that you have raised valid concerns. We need more places for our kids to play soccer. And we need more off-leash areas. On the soccer side, in addition to looking at sites, I believe that we have to do things like light fields at delta park and have synthetic turf there, as well as riki, that allows more use of existing places and take the pressure off the neighborhoods so we have some strategies to try to do that. On the off-leash areas with the help of the district coalitions, we are actually looking at off-leash hours in parks, in each part of town, as well as the issue of building more off-leash areas. But focus more on this question. Parks is trying very hard to be more responsive to citizens. I think we have always been responsive, but we are trying even harder so the council adopted a master planning process that actually we are following in this case. The questions that are being raised are legitimate in the sense that we have to be careful to make sure that every interest is represented. There is -- can be a tendency where people try to protect their neighborhood, which is appropriate, and sometimes that can work at the expense of young children. For the reasons commissioner Hales articulated but I have also noticed that many neighbors, including you, are very concerned about your children, and you want to make sure that there are places for children to play. And I appreciate that. If anything, I am seeing that tendency is growing, and we really need that, including in the neighborhood association structure or it's not going to survive. On the particular questions of this park and the soccer field, this is not an emergency item I see. What I want to go back and do because I have heard some things about the grading and 17% slope that there's actually a plan out there that shows how much grading would have to be done. That's number one, so I want to see that, and I want to get the construction people -- david, I appreciate your testimony. You have done a terrific job and I want to run this by zeri in terms of her analysis of this. That's one thing that I want to do. The second thing is I heard some testimony from the soccer association looked at this site and ruled it out so I want to double-check that. And the third thing is, I do think that the group was inclusive. So rather than, if I see that there are some issues there, then I think what we have to do is present this back to the group. Fizz that there are not some issues but they have -- that they have thoroughly considered, we will vote on this next week and I will vote to approve it so those are the things that I want to look at and that's what I suggest. So let me do some work on this and I will send out a memo to the council early --

Katz: So you want to take it back and put it back on the agenda?

Francesconi: We would vote next week. No, I would rather not pull it right now. I will either proceed and we will vote on it next week or --

Katz: We will put it on the agenda --

Francesconi: Or ask to pull it next week or, it will be one or the other.

Saltzman: Guys, one question, as part of that? I would be interested in seeing, I don't know if it is in here or is, just tell me and I will look it up but demographic information. What are the, you know, how many kids do live around this park right now, you know, what kind of age range, things like that. That would kind of help me have more of a context, because I think, you know, having a playground is great. But, once you are out of elementary school, you don't use playgrounds. So, I would kind of like to get a sense about that.

Hales: I appreciate that, jim. I think that's the right move, and there is no reason to change the schedule. You are right, it does come back on second reading.

Katz: Folks, this is a resolution. It doesn't come back at second reading.

Francesconi: I made a mistake then. Well, then I am asking us to hold it over for a week.

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Katz: We can hold it over for a week.

Hales: That's a good solution. I guess my plea is, you know, remember that in inform she's cases, although the cost estimates were substantial for the grading work we got the Oregon national guard to do it for a lot less than the cost estimate and you have been especially good, jim about, getting volunteer resources like that. Remember, there is no such thing as an easy site for a new soccer field.

Francesconi: I want to say, cost is not one of the factors I want to be looking at, but also because the need is so great. The only thing that I want to add is, in addition to, I think, citizens concerned about places for kids to play, I know that the parks bureau is and I know that the parks bureau has thoroughly examined every possible inch of southwest in terms of soccer fields. So, I have a feeling that parks has some strong feelings on this subject in addition to david, and I just want to check that out.

Katz: Let me ask the question. Can you have a playground with the wetlands issue? Is it possible to have a playground and a soccer field in that same location?

Yamashita: The playground is actually in the area that's close to the road, so it's generally a flatter area. A field is a lot more difficult, and the extent of the wetland also is, is not real clear. It may be much larger than what we think. The other thing that I would point out is that there's another, there's a potential for another wetland uncovered by the biologist that's in the meadow area, as well, and that's got to be checked out. So, you can get a playground in there. I think it's going to be difficult to get any kind of a flat area in there without some serious impacts.

Katz: And so, so I am going to ask you, because I would support what you presented to us, but commissioner in charge would like to take a look at some items, fair enough. I wish it was done earlier, not at the time that it's before the council but, so be it. This is a fair game. I would like to know in addition to the wetlands, also, what you would need in an infrastructure for cars and for parking. Because if you are going to have soccer games, that's probably going to require a lot more need for parking. I don't know that. So, okay.

Francesconi: And I should have -- it's my fault that we have to pull this. Or pull it --

Saltzman: Are you also looking at ball fields? I would like to see not just the soccer field but all fields, too. I am assuming that they have less of a footprint than the soccer field.

Yamashita: Well, it depends, there are little and big fields. But, either way, this is, I mean, it's really more a 30% slope more than a 17, and if you go out to the site and look at it, you just get a sense that this is probably not the best place to try and grade a large flat area, so even to grade a small area, would take a certain amount of, or quite a bit of, I mean, you are an engineer. You understand sort of trying to create slopes to create a flat area out after 30 percent slope.

Francesconi: Is it 30 or 17?

Yamashita: It's 30.

Francesconi: It's 30%?

Retzer: Taylor woods next door was 17, so I applied that but it's a very steep slope.

Katz: Okay.

Hales: Okay, one more time --

Katz: No.

Hales: When you come back, bring us the original slope, the original slope, of gabriel park where the soccer fields are. The original slope, not the slope today, it's flat. I will bet you, it's less. In this site.

Katz: All right. So, we are interested in slope. We are interested in the extent of wetland. We are interested in the parking requirements. We are interested in making sure that there are playgrounds for children, and you might want to also touch base with your colleagues, who have worked on this, as well. Okay. If there's no objection we will bring this back possibly bring this back next week. All right. 1081.

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Item No. 1081.

Katz: All right. Let me open it up by saying that part of the strategic planning exercise we are beginning is the analysis of the most recent demographic information that we have for Multnomah county and for the city of Portland, as well as the state. And it is very clear that the community, the ethnic communities are growing dramatically. Minority communities are growing dramatically in the state, as well as in this region. And so we have a wonderful diverse community and the exciting part of all this far, we have a wonderful diverse business community, and every year, we recognize the accomplishments and the successes of our minority businesses. We all have a responsibility to further the assistance and the success of these minority businesses and to publicly recognize the businesses that are successful and provide examples for those who have big dreams of being successful. And so the week of October 1 through October 7th has been declared the national minority enterprise development week by presidential executive order and even a proclamation from the mayor, and I hope the state to recognize the minority, success of minority businesses. There's one lady who has led this effort over all the years that I've been here. Grace, who will brief the council with a presentation and celebrate with us the 20 years, the 20 years of successful achievements by minority businessmen and women. Come on, Grace.

*****: Good morning, Mayor.

Katz: Good morning.

Grace Gallegos: Commissioners. Thank you for your continued support. You get it, have always gotten it, and I am so pleased to know that your support has been, is, and will continue to be in the support of the development, as you indicated, of a very growing group of individuals that make up the community and quite frankly, that support, contribute to the economic support of our cities, our counties, our state and our nation. This year, the 20th year, I am a little somber today so you will forgive me. I usually a little bit more chipper.

Katz: We made a decision to continue city business the best we can.

Gallegos: And I really appreciate that. This year, the annual luncheon will be held at, on Nike campus at the Tigard Woods Center. Nike is hosting us. They are laying out the red carpet. We are all excited. It's to be held on October 2nd. Networking sessions begin at 10:30. Official ceremonies at 11:00 to 1:00. We are going to miss you this year. You have been there and so I send you a special hug. I know you are out in central Oregon. And I thank Commissioner Hales for consenting to sit in your slot, which are pretty big shoes to fill. But, I know that he's going to do us a great job. And we thank you for acknowledging, through your proclamation, once again, this 20th year of recognition for minority men and women.

Katz: Thank you. Questions? All right. Let's have public testimony.

Moore: We had no one sign up.

Katz: Anyone in the audience wanting to testify? Okay. Roll call.

Francesconi: Well, thank you for all your work on this. You were there before anyone, and we have made a lot of good progress, and we have a ways to go. Aye.

Hales: You know, we brag about a lot of things in Portland that we should brag about but one is how we really try to make it a city of opportunity for people, and you have been a real champion of that, as well so, thank you for your effort and all of us here believe in what you are doing and want to support it, and we want to do more good work together. Thank you. Aye.

Saltzman: Good work, Grace, aye.

Sten: I agree and I think it's important we take the time to point this out, and as Commissioner Francesconi said there is more work to be done but we have got a lot to celebrate, aye.

Katz: We all know that minority groups, especially women, hit the glass ceiling very quickly, and what we are also discovering is that there's an increasing number of women-led minority businesses because of that. And that's exciting, as well. So, as we go through all of this information that we are collecting and analyzing, we will keep everybody informed about the changes in our

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demographics and in the communities, so grace, thank for you your leadership, and much luck to everybody. I am sorry I won't be there. I am meeting with chambers out in central Oregon, in eastern Oregon.

Gallegos: We know that you have always been with us, mayor, and I say that honestly and thank you all for your support.

Katz: Thank you, aye. All right. 1082.

Item 1082.

Katz: All right. Let me -- let me start by saying that the reason for this item before the council came out as a result of the discussion that we had with a segment of the community on the last may day march. And my office, with the help of the city attorney and others, began addressing concerns raised by Portlanders about the complexity of the permitting process, and the requirement for insurance and liability's statement. Now, what you have in front of you doesn't respond to all of the issues, but it's a good first start. The underlying goal of the system is to allow citizens to use the streets and sidewalks for their purpose, while also balancing the needs of the wider public to be safe and to have timely access. There is a lot of law or at least some law on this issue and we will have a very brief presentation on the league aspects. The permitting process now and code is described in detail, clarifying the types of permits and the criteria for each type of permit. I don't believe that all those regulations were in place in the code before. Fee and insurance requirements now reflect the relative risk involved in different types of events and you will hear that there are some events that are riskier than others, especially those that include animals and cars, and also athletic activities. The fees are also lower for events that do not have risks, and are less expensive that, less expensive for the city to support. There are a lot of people that worked on this and let me thank them and then bring several of them up. Cynthia warren, nancy airs, christina jermaine, jim wadsworth, madeleine wessel, cat madell, sam adams and valuable feedback from Portland citizens as we distributed this information to the community. So let me have sam and jim and nancy and perry, come on up.

Francesconi: If it's all right, let me add a word at the beginning saying how much we appreciate your work on this, and we worked with the mayor on this, the bureau of licensing, and in fact, we should have co-sponsored this with you, and the other thing I want to say, there is one advantage here that the mayor already said that's important, that we found a way not to require insurance for some of the groups because we determined that really, it wasn't an added barrier and we could handle it. And so I -- the city could handle it, without any exposure to the taxpayers. And so I appreciate the work that sam did, especially, nancy, and harry, as well as jim, so just as the mayor said, is not going to solve all problems, and we are still going to have issues about who wants permits and who doesn't. My view is people need permits and but this will make it easier for many, so thanks for your work on this.

Katz: Okay. Let's -- this has been an important issue for a large segment of the community. So, I would like for you to take a little bit of time and I recall the discussion about constitutional rights and the first amendment and those issues kept coming up over and over again, and I understand that there was a memo that both of you wrote with regard to that. We might want to cover that. Jim, you are in charge with a lot of this activity, so we want to hear from you, and mr. Adams, there is a little history to this, and a little bit of work from you and cat so, we want to hear from you. Who wants to start? Mr. Adams, why don't you start. Your name starts with an "a," last name.

Sam Adams: My name is sam adams and I work for you. [laughter]

Adams: Probably what I would like to underscore first off is this really has been a great partnership between the city attorney's office, the bureau of licenses, commissioner Francesconi's office, and our office. It also has been informed by our, our work has been informed by consultation with all of the folks, or at least were given an opportunity for consultation with all the folks who received a permit from the city in the last couple of years. We also sent out a draft about a month and a half ago to members of the community, including those who have participated in the

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may day event of last year, and also the no ftaa event last year. For their comments, as well, we did receive back some very valuable questions and comments and that's included in your packet of information as a matrix that quotes the comments directly and that policy and legal responses to it. We did make changes based on that, those comments to the draft, and I think those changes reflect an improvement over the initial draft. You will be hearing more about what we are proposing specifically from the folks to my right. One point that I did want to underscore, is that on page 19, the draft regulations, is a list of all the other permits that depending on the kind of event as a citizen or as a sponsor that you want to have, you might be required to pursue, as well, and as you said, mayor, this is, I think, a good step in the direction of simplification, having clear policies on the book but by no means have we as a city, in my estimation, addressed all the opportunities for one-stop shopping as it were for permits and events. So, page 19 I think reflects sort of a list of work plans for the months and years ahead to try to simplify further and make this a more you customer-friendly process. The last thing I want to say is I want to thank pat, who worked, in addition to everyone here, and others worked very hard on this, and she did a great job.

Katz: Thank you. All right, nancy. Jim, did you want to jump in? Why don't you do that first.

Jim Wadsworth, Director, Bureau of Licenses: I am jim wadsworth, director of bureau of licenses. We are very proud of the effort that we are bringing forward to you and as you said, it's a very good first start. It reflects many things in the ordinance now and in the regulations that were being done, but not really documented so that the event sponsors could see what criteria we used and how we looked at things, and most of the time we could tell through our conversations, but they couldn't really tell right up front. The indemnification and hold harmless part of it is, has been a problem before. The bureau has always looked at the, at the permitting processes, the way that we encourage free speech and that we encourage citizens to, to express their beliefs, and do it in such a way that we can balance the needs of other citizens, and their rights, as well. And still maintain some public safety. We have worked very closely with all the other bureaus, that participate in this, the police bureau, and the, the transportation, and tri-met and the county and all of the other folks that participate in helping us permit these events, so I want to thank them for their input, as well.

Katz: While we hear from nancy and harry, you might want to think about where we need to go next. Because I am sure that that's going to be a question. All right.

Nancy Ayres, City Attorney's Office: Nancy ayres, city attorney's office. Our office worked with the license bureau, as you have heard, I specifically worked with cynthia warren, who was the coordinator for this program, in the past and although her name has changed, will be the coordinator in the new regulations, as well. Her title, I should say. We spent many hours going over the process, figuring out what the analytical basis of the regulatory process should be. We came up with a process that I believe is workable and legally defensible. Case law has been well established over, almost 60 years that the city has the ability to control the use of its streets and sidewalks, and more recent case law also adds, other city property types of city property, as well. The leading cases go back to 1940s and '60s, cox versus new hampshire, cox versus louisiana, and adderly versus florida. These cases say that the city does have the ability to control the time, place, and manner for use of city streets and sidewalks, specifically, for the kinds of first amendment expression. The city also has the ability to use appropriate limited discretion in deciding how those, how those events will be structured. So, with that legal basis in mind, we developed a regulatory system that's in front of you today. This system limits the discretion of the bureau on paper. The -- it provides for the uniform treatment for all of these types of events and it's a nondiscriminatory system. The way at that we achieve those legal goals was by creating nine categories of uses. Those categories are listed on pages 3 and 4 of exhibit 3 to the ordinance, which is the, the administrative regulations. Of those nine categories has been judged by the same five criteria. The criteria are also listed on the pages 3 and 4. And we use those criterias as we talked and talked. We decided that there were certain things that could always be measures of how these permits should be

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granted and that's what we decided to use for the criteria. And so, each category then, as you look through the rest of the regulations, up to page 20, are detailed applications of the criteria to each of the categories of use. These criteria are used to determine the amount of the fee that will be required, if any, and whether or not insurance and the liability agreement will be required for any specific category of event. The categories are based on the size and location of the event, and not on the nature of the use. And this helps to reinforce the content-neutral basis of this regulatory process. In exhibit 3 20 the ordinance on page 4, you will find a summary sheet, and this -- it's sort of a chart, and it lists all of the categories and indicates whether a permit is required, 5 fee is required, and whether the insurance and liability agreement is required. The first three events, types of events, the sidewalk and what are called sidewalk and street events do not require insurance or liability. The ones below that line do, and the reason for that is they are parades or athletic events or other types of huge events with human numbers of participants that cause the risk factors to increase. Use of motor vehicles, use of animals in the processions, or athletic activity. As the mayor said, so the idea behind this was to describe these uses, these categories of uses, and then let the sponsors determine which of these best suit the needs of the particular use. We did provide an exception category that, if the sponsor comes up with a unique type of use that we have not seen in the past, that this category is available, and in that case, the idea of the sponsor would -- the same criteria would be applied to this unique idea, so that we maintain the same process even though it's not specifically laid out for the exceptions. There are some other changes that we have made to the former regulatory process. We have reorganized the city code and taken out a lot of the bits and pieces that are more appropriate to the regulations than the code, so the code now just contains the broad authority of the city to regulate these kinds of events. The administrative regulations, exhibit 3, contain all of the details, both process and how -- and the descriptions of the types of uses. Another change is that the street and sidewalk review committee, or special event review committee as it used to be called, the focus of that group has been changed slightly. It will now be more of an advisory group, rather than a group whose charges to review every application, I found that in talking with Cynthia Warren, that, in fact, that was practically impossible for this committee to review every single application, and so we have made this committee kind of a way to help Cynthia if she has questions, if there's any, you know, way that they can assist her in making decisions, then that body is available. There's a brand new application form that we redesigned and tried to make a little easier to read and understand. And the application process has been clarified in the administrative regulations, as well. We have provided for refunds in the event in, case an event needs to be canceled and we have provided for insurance and fee waivers in the event that someone is unable to pay for insurance or the fee, if it is required. For uses to which the insurance and liability agreement language will apply, the actual language is now in the regulations, so instead of having a separate type of document that the sponsors would have to sign, by submitting their application, they are agreeing to comply with the regulations, and the language is in the regulations. So, that eliminated another piece of paper. We have included a participant and sponsor acknowledgement, which just, by participating in the event, we are requiring people to acknowledge that, in fact, these facilities are not designed to be used for the purposes to which they are being served by the uses and that the participants and sponsors acknowledge that there is some risk involved in, for instance, conducting an athletic event in the street. And they have agreed to accept that risk. We have also developed an appeals process, which is at the end of your regulation package. A much more detailed than had been available in the past, and provides for quick review of any appeal that may come up for denial either of a permit or revocation of a permit.

Katz: Harry?

Harry Auerbach, City Attorney's Office: Thank you. Mayor Katz, and members of the council, I am Harry, from the city attorney's office. I think that Nancy has very ably described the ordinance and why we think it's constitutional. The only thing that I want to add is a little, just a back drop on

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why we have to go through this process and analysis at all. And that grows out of a couple of different relationships. One is that there is attention between what the, the street system is designed for and the uses that people traditionally make out of it. That is, that the street system is designed for transportation, for pedestrian and is nonpedestrian use much however, from time and memorial, people have used the street systems, of the american cities, as, as means to communicate ideas, and their right to do so has been recognized by the supreme court of the united states and the Oregon supreme court under federal and state constitutes and we don't question that. We value that. But the council has sort of a competing obligation. One is to make the street system available for people who want to use it for expressive activities while at the same time, maintaining its essential function as a transportation network because the courts also recognize the right of the people to use their streets for the transportation purposes. So, that's the tension, and the way that we have tried to work it out. And I think that we have done in this particular is by imposing a set of reasonable limitations on the time, places and manner in which people can use the streets for their expressive activities and when I say that they are reasonable, we have made them truly content-neutral, and what I mean by that is, there is no basis in these regulations, either as they are drafted or as they can be applied for decisions to be made upon about whether a permit is required or withheld or whether a fee or insurance it required or withheld, that relates to the nature of the speech that people want to engage in. That is, we can't decide that because a rally by nazis would cause more police problems than a rally by the rosarians, we are going to charge the nazis a fee, require insurance from them where we wouldn't from the rosarians, that's not the distinctions that this ordinance and the regulations will either as they are written or in the application. We have rather tried to identify what the city's interests are that require us to impose any sort of regulations on the free use of the streets and have limited our regulations as closely as we can finally distinguish them to meet those specific needs and criteria. I think we have done a very good job of that, and I am confident that we have not only met the requirements of the constitution, but have created a system that will, in fact, make the streets more functional, both in terms of their transportation and nontransportation uses.

Katz: Thank you. Questions by the council?

Saltzman: One question. Who makes the determination about the anticipated number of participants because I could easily see something that's permitted for under 75, perhaps as probably may day did --

Ayres: This sponsor makes that determination. The sponsor in the application anticipates the number of people that will participate and the permit is granted based on that number.

Saltzman: So if we, for instance, question whether that's a valid estimate, we don't have an ability - that's part -- is that part of the content?

Ayres: There is no ability to question the sponsors.

Hales: What about the next year?

Katz: Let me follow up, what about the next -- the next permit for the same purpose?

Adams: We obviously can take into account and the bureau of licenses does, any sort of experience with similar kinds of events. I think that, I mean, this is a formal product here, but I think that in reality, jim, maybe you ought to speak to it, that there is a hick of a lot of experience in the bureau of licenses and they have a good sense of, and a history of different kinds of events so sometimes, even if the actual individual changes but the same event, in some cases licenses knows more about what to expect for that public event than the new staff coordinator.

Katz: Harry, you wanted to add something?

Auerbach: I believe the regulations do have a component that allow the police to intervene if the event exceeds what it's permitted for.

Ayres: If there are less participants, then a certain number, then the regulations allow for either the street and sidewalk use coordinator or the police supervisor assigned to that specific event to

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modify the permits, so if only 10 people showed up for an event that was anticipated to have a thousand, those -- that permit would be modified and the people would be move to the sidewalk.

Katz: I think the question was what if it was in the reverse.

*******:** Yeah, there's --

Saltzman: The police have the ability to decide it's major event and treat it --

Ayres: Well, no, the criteria of the permit would not be changed so the amount of the fee would not be changed. The insurance and liability requirement would not be changed. It's based on the anticipation as opposed to the actual event.

Katz: But jim, you would have the experience for a following permit and some history?

Wadsworth: Absolutely. And we work very closely with the event sponsors, and in trying to help them, if they don't have the experience in estimating how many people they are going to have, we try to ask them the right questions that would help them identify how much that would be. And I think that one thing that we have done in the, in the ordinance and the regs is look at the different sizes of events and look at the, enough leeway between the size requirements in those events to give the event sponsor a little leeway to have more people or fewer people. And then to be able to give the different city folks that are involved the opportunity to have some criteria to use to modify that so that they event sponsor knows that as well.

Francesconi: I just want to make a brief point, in following up to sams comment that licensing has a lot of experience and cynthias back here in the room. Commissioner Saltzman your question was a good question, but we've handled thousands of permits and this has really not been an issue at all in our history. Except for one or two high profile events. So we do need to pass this ordinance to clean up some things. And to make it easier. And to address some potentially high profile events. But the history of this issue of permitting is its worked really well including on the issue of the numbers. There's been a good relationship developed with licensing and 95 % of theses people that do what they need to do lawfully. I just wanted to throw that in to give some perspective here.

Katz: let me ask the question on your small sidewalk events where only the sidewalk is to be used, there is no permit required and nothing else really required. What happens if the parade goes out of control and takes over the streets? Who has the authority to make a decision?

Auerbach: what the permit allows you to do depending on what you get the permit for is the permit allows the event to disregard certain regulations that would otherwise apply for instance obedience to traffic signals and obstructing sidewalks. If an event that was anticipated not to need a permit because people weren't asking for exceptions from the, they didn't want to have to cross the street against the lights, they didn't expect they were going to have to do that and they didn't think they were enough people to obstruct the sidewalk. If they exceed those requirements, then there're going to wind up being subject to being cited for obstructing the sidewalk or crossing against the signal. Because they won't have a permission that the permit would give them to disregard those laws.

Katz: that would be really at the discretion of the police bureau, at that time?

Ayres: yes.

Adams: the incident commander.

Katz: let's open it up to public testimony.

Andrea Meyer, Legislative Director, American Civil Liberties Union of Oregon: thank you mayor and members of the council. My name is andrea meyer, I'm the legislative director for the ACLU of Oregon. We urge the city to proceeded with great caution prior to adopting an ordinance that would effectively impose higher restraints on the constitutional and protective rights of assembly and free expression. While the proposed ordinance provides guidelines that many organizations would be willing to comply with the city has to understand that the most difficult situations will arise when event organizers are unable or unwilling to comply with some or all of the requirements in this proposal. In our view the city could not import some of these provisions

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without violating the Oregon and u.s. constitution circumstances. These rules set up a mechanism of prior restraint. Less an event organizer complies with the required timelines, insurance, payment of fees, providing names and telephone numbers of event monitors, then the ordinance prohibits such an event from taking place. And/or its subjects its organizers to substantial fines and other penalties. Such prior restraint to the highest level of scrutiny by the courts and would almost certainly be found to be unconstitutional in any circumstance involving an otherwise lawful public assembly. The council should be aware that with regards to prior restraint of expression Oregon supreme court does not distinguish between commercial and noncommercial expression. In an acLU case the court overturned a state law that required paid lobbyist to pay a registration fee to the Oregon standards and practices commission, prior to engaging in lobbying of the legislature or other state government officials. The court held that such a requirement acted as a prior restraint and violated the Oregon for expression production. In addition while the ordinance permits the city, specifically the bureau of licenses director to wave fees and insurance requirements, there are no criteria or standards for approval of such waiver. This gives far to much discretion to an individual city official and in our view such broad discretion violates both the Oregon and u.s. constitutions. In the recent past the city has acted with restraint and wisdom when it issued a permit for the 2001 May day protest. Despite the fact that organizers did not request such a permit. We also commend the cities wisdom and common sense when a few months ago the police allowed access to sw Broadway during a protest that originated from pioneer courthouse square. And actually I just happen to be there at the time this happened, so that I could witness how the city appropriately responded and made sure that the protestors could access and peacefully move on and the transportation could continue as well.

Katz: that's the point that I made a few seconds ago.

Meyer: in summary we strongly urge the council to postpone action on this proposal, until modifications are made to remove the—

Katz: excuse me, those are our f15's, go ahead

Meyer: until modifications are made to remove prior restraint provisions of the ordinance. Thank you for considering our views.

Francesconi: Do you have a list of the specific modifications that you are requesting?

Meyer: not at this time. I think that generally, to the provisions that, as I spoke to earlier, if you fail to comply with them, you either are not allowed to engage in what we are speaking of is engaged protected expression or if you fail to, you are subject to a civil fine, as well. Our means of prior restraining of chilling the opportunity for someone to go forward and engage in lawful activity.

Francesconi: One way to interpret your testimony is that any permits, any requirements by the city would be prior restraint and I am not saying you are going that far. But that's one way to interpret everything you have testified so what I am trying to get an idea is that do you agree that we can allow a permit and if so, what are the provisions you specifically object to?

Meyer: Well, I am happy to get back to you further on the specific provisions.

Saltzman: You mentioned things like required time lines.

Francesconi: wait, could I hear the answer to that question.

Meyer: What our focus is on people who are engaged in lawful assembly and expression. When you have, for instance, the rose festival, it takes over and puts down structures and brings in vendors and does all of that. That, there are city laws and regulations, when someone takes over the street, goes and walks in the middle of the street, I am subject to disorderly conduct charges. But, if I am gathering or others are gathering with me to engage in lawful free expression and assembly and I fail to comply with these provision, it is a chill, it is a prior restraint that I must comply with certain steps before I can go and exercise my free expression. As to specific things in the ordinance, I am happy to get back to you.

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Francesconi: Here's the problem that I am having, and just correct me if I am wrong, the, if we accept your point of view, then we have to get in the business of content, which is unconstitutional.

But, because we would have to distinguish between the rose festival kind of events and these other events and would the, the whole idea is to remove discretion based on content so that we can protect people's constitutional rights.

Meyer: And I didn't intend to imply and we do not support any content-based regulations. It's a type of use that it's lawful for me to gather on the sidewalks and engage in free expression and assemble people.

Francesconi: But then you put the licensing bureau in a position of having to decide the difference between your friends and the rose festival, and the way you do that is based on content, and we can't be in that business.

Meyer: And I only brought up the rose festival as an example if I stand in the middle of burnside and hold up a sign, I am engaged in that, however, I am violating the law, not because of the content of my sign, it could be by my merchandise, it could be, come to the rose festival. But, I am engaging in disordering conduct because I am violating the traffic laws at that time. And I think the mayor spoke to it earlier, if there's a gathering that spills out to the street that an organizer didn't anticipate so, someone who even chooses to comply with the process, communicates with the bureau, that's something they anticipate that this number of people are coming, and they spill into the street. The city has two options of responding, but we don't think it is finding the person, or removing their permit and telling them to leave, you know, that they must leave, but --

Katz: Doesn't have a permit --

Meyer: No, I was talking about a situation where you have a permit but spills out into the street. A sidewalk permit but more people showed up, it spilled into the street was what I thought you had spoken to earlier. But if I am mistaken. The police have two options, just as similar as you just spoke to earlier when I talked about the southwest Broadway. They can start arresting people for disorderly conduct at that point. They can take the action when the criminal conduct actually occurs. They can't anticipate it and say, we aren't giving you a permit or you must have a permit because we think you are going to engage in unlawful activity. It's the chilling effect that's a prior restraint that for you to go out and exercise your free expression, you must be in touch with us, you must obtain a permit. You must give us your route and information, when unlawful activity occurs, the police have, have every right to --. There have been very few situations where people have chosen not to comply with and get guidance from and work with the city. That's how you have a successful gathering.

Francesconi: And this will be the last question. So then if, taking that argument, which I think now I understand, that would then just throw out the permitting completely because it would chill, I mean, I am just trying to get to your point.

Meyer: I think the point is, to those things that are required and if you fail to do it, you are subject to either denial by a city, to the city to take action in any lawful, expressive activity and/or you are fined a penalty because you, you did not comply with what your permit said. Those are impermissible, we believe, to the degree you are engaged in lawful free express and assembly.

Katz: Okay. Commissioner Saltzman?

Saltzman: I guess I am a little confused. I want to go back to the question, commissioner Francesconi asked, at the outset, maybe I didn't hear. Are you opposed to the concept of requiring a permit for any sort of expression? Public expression in the streets or sidewalks?

Meyer: Yes, we would be opposed to requiring a permit for any lawful expression and free exercise on the streets.

Saltzman: So the only recourse available to us would be arrest, criminal arrest for disorderly comment.

Meyer: When the illegal activity occurs.

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Saltzman: And on the point of the license director having the ability, or the need to establish standards and criteria for waving fees and insurance, I thought that that's -- that point I would like to, when we come back.

Katz: I will bring the group back.

Saltzman: Thanks.

Katz: Let me just absolutely be sure what I just heard and I will try to -- you are opposed to the city having a permit process?

Meyer: No. I didn't say we are opposed to the city, requiring that someone to do it if they fail to do it and they are engaged in lawful expressive activity, we do not believe that they had to and that they could be fined, or penalized for failing to do it.

Katz: We will get back to that.

Sten: Is it, I mean, do we have a philosophical breach here that can't be practically or is it possible that this will go to second reading that the aclu could propose some specific amendments that I could look at, to see if I could support them because I am almost understanding the questions and the answers but not quite, and I need to look at something specific to decide if I can support addressing your concerns.

Meyer: And we are happy to work with the council to see if there are ways that we can all come to an agreement. I am not sure that we can, but we would like to.

Katz: And if we can't, as somebody that's won an award from the organization, if we can't, it's okay, too.

Meyer: It would be our hope that the way the city actually implements it and the way it comes into effect is if people like the recent events, the may day 2001 protest, the one on the pioneer courthouse square. The city acted with wisdom. They didn't arrest or fine, made sure the protest could happen peacefully.

Hales: Let me join commissioner Sten in that request and clarify it a notch further and that is, andrea, I think that frankly the request that we are making to you at this juncture is within the next week, give us the proposed amendments, I am not interested in a further protracted legalistic philosophical discussion about this. I think you know and everyone here knows that I was fairly critical of the police bureau's conduct at the may day 2000 event and have been in a debate about this on the civil liberties end of the spectrum. I believe that these permits are an administrative convenience. However, if they are an optional administrative convenience at the option of the person having the protest or whatever, that makes them a nullity, so either, in other words, what's the permit for? Is it for control? No. I am not a vote for that. Is it for cooperation? And communication? Yes. I am a vote for that. And I think this draft is close to the mark on that objective. I am interested in people suggestions for how to get it closer to the mark. And I think that there are others on the council that may, maybe all five of us are in that camp that we think this permit is for cooperation and communication and that that's a reasonable request of us as a city, as a community to make to anyone who wants to conduct a protest or a parade or anything else on our common property of the public streets. It's not about control. I am not a vote for control. But I am a vote for communication and cooperation and if you think that we need to adjust this to get to that goal, I am interested in seeing specific proposals.

Sara Manowitz: My name is sara and I am a member of the organization and one of the organizers of the september 1st anti-police brutality march. To begin with I want to let you know that we echo the voices of the may day coalition in reminding you it is our right to assemble and speak our minds as per the first amendment. However, when we began the undertaking of the organization of the march, it became clear to us that although we had nothing but peaceful intentions, due to the brutality and harassment that occurred at the may day 2000 march this year, we would be endangering all involved and making everyone a target of police oppression. We decide to attempt to work within the guidelines set by your administration, and found the current permit process to be

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nothing more than an unmanagable sham for the following reasons -- number one, in order to be the peaceful procession from point a to b, which is basically what a march is, with a limited noise level, it is necessary to obtain not one, but several permits all with different rules and fees. And insurance, if we expect it over 125 people. We feel that these fees are deliberately prohibitive and intended to stipel such events from occurring k also, you know, we are interested to know where is all of this money going that we are putting into this process. Also, in our initial communications with lieutenant rally, regarding the police who will be escorting us, when we requested the same methods of police deployment as preceeded by the may day coalition, meaning no mounted police, police in protective gear or atvs anywhere inside of the march and these were not to be utilized unless it was found to be absolutely necessary, we were told that this agreement was unreasonable and nonexistent and this is obviously a lie. In order to insure this precedent be upheld we were forced to contact sam adams and negotiate this very reasonable request once again. And it was granted. Then, you know, on day of the march we found our starting point overlapped with the pearl arts festival. We were placed in the middle of the pottery section so we moved ourselves over across the way because we, we were not there to start any chaos or, you know, conflict with anything else that was going on and we understand that a big part of the permitting process is to insure when there are several events going on the same day that they are not conflicting but obviously, this made us think what was the point of all of this when we went through this whole process and there we were. So, I really hope that you take our public comment into consideration and examine the points that I have made for you today and really examine the amount of police control that is allowed within this process that is separate from the actual permitting, you have -- what you have to deal with until the day you get the permit and the day that you are there.

Katz: Thank you.

Dan Handelman, Peace and Justice Works, and Portland Copwatch: Hi. Mayor and city council, I am dan handelman with peace and justice works and Portland cop watch. And I have a number of concerns about the rewritten permits. Some of this may be true for the current permit process, too. But, what I read in the draft, I read, says organizers will be required to provide parade marshalls and give police their names and phone numbers ahead of time, which I think is sort of chilling in terms of -- what's that?

Katz: I think it's required.

Handelman: Well, as far as I know, i've been in lots of marches where we have had parade marshals and it was the organization that decided whether or not they thought that they wanted to have marshals and decided how many they wanted to have. And they didn't have to give over names and phone numbers to the police because that sort of is asking for a for a list of names of who is involved in certain kinds of political activity, if you are doing a political march. Another thing is that the planners, according to this draft, have to receive written permission from businesses who may have their access blocked to a building for substantial amounts of time. I think that that's an undue burden on the people who are organizing something, if it's not, if they are not deliberately blocking the door to a business, if they are going to be out on the sidewalk in front of something like, they are protesting against nike, for instance, nike will not give them premise to be out there on the sidewalk for an hour. That's unreasonable. Fees that I read about jump from 7570, if the march is longer than a mile, to 2300 if you have more than 750 people in the march, and the march for justice -- we are organizing about seven or eight days, it was march longer than a mile. And we had between 750 and 1,000 people there. I would suggest that you consider something like a sliding scale, and if you are going to have fees that go up to 2300, that is more reasonable and based on the overall budget of what's going on and perhaps, you know, the number of people and how much really inconveniences, quote-unquote, there is to the city. Also, it states specifically, actually, sarah, that some of the money is going directly to the police bureau, and these cases where fees go over 70, and I am wondering if this is going to make privatized police where you have to pay every

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time they come to your house and you know, examine your break-in at your house. If you are going to be paying police for use of their time individually. I am running out of time so I will kind of summarize some of my other appoints. The appeals process to city council only comes after you already appealed back to the permits department. You were talking to in the first place. Police are very heavily involved in the reviewing of the permits and deciding whether or not the permits should be granted, and were very concerned about police being kind of the decision makers about these things, and the most important thing that I want to say is that you have to have the ability for spontaneous demonstrations. You can't require 30-day advance notice for the marches of 750 or more people. If, for example, the united states were to bomb a country now and get retaliation for what happened yesterday and thousands of people thought that that was inappropriate because they hadn't decided that that was -- that country was responsible, you shouldn't be able to say, we need to do this 30 days in advance or you can't march. It's just not -- it's not fair. And also, if one of the issues is transportation and traffic, perhaps the transportation department should be more heavily involved and the police bureau less involved.

Katz: Thank you.

Francesconi: Thanks for your specific comments on what you are concerned about and just a flag to staff that, question of 30 days --

*******:** Doesn't apply for what?

Katz: I am sorry, what was the question?

Francesconi: Well, I raised the question of 30 days because I wanted a response because that's a valid point.

Katz: We will get responses from all these questions. Thank you. Let's keep going.

Les Smith: I am less smith, an attorney in Portland. I also have been for many years on the specialty events review committee. I have watched the development of this process that we are talking about today. I also serve as the event director for the Portland marathon and have done so for about 20 years now. So, we are against the large athletic event that gets impacted by this. I agree with commissioner Hales that this is about communication and cooperation. That's the key. I also basically endorse the work that has gone on, the process that has been established and the regulations and so on the way that they are out right now and I think that there is more work that's going to be done on those. My one comment and my one concern is this -- we are blessed with a city that does a good job with special events and encourages them rather than beat them down and charge them out of existence and do things like other cities do. I have seen that. And it's really great to work with this city in that regard. What I am concerned about with this particular regulation is as somebody has pointed out already, there is a lot of other permits and heads that we have to work with. Now when we work with cynthia warren and we work with jim wadsworth, that's great. They serve as the funnel to get through with this kind of special activity and I really think a little more work should be done to do that with respect to these other permit areas that we have to deal with, in other words, if you are this kind of special event, you deal at the top and kind of with cynthia and with whoever is there and let that process, which equals the communication and cooperation, work its way through until you have the actual plan that you are going to do and not have one of these other groups serve as an inhibiting factor which could really kind of stifle the event, itself. And that's, that's kind of where I have, I have come from, where, we are set to do our event. This year we are expecting 10,000 people that's going to bring about \$3 million into this city, and raise about \$2 million for charity. So, we are okay, but I would caution that I think we need to work with the good process, which is those who have got the experience of this, cynthia and jim and so on. Make sure that that's ironed out.

Katz: So your issue is the issue that sam raised that there is still a lot of work to be done to make sure that we have a one-stop permit?

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Smith: That's right because this is a special kind of, of thing. Those other permits and things, they are out there for other things that go on within the city but I think that for this kind of activity, whether it's a march or whether it's a parade or athletic activity, it should focus down through the center.

Hales: I am sorry to ask a dumb question because I haven't been involved in drafting this but what other permits do we require?

Smith: You have sound, you have variety of permits that are out there.

Katz: They are listed on the exhibit.

*******:** It's on one of the pages.

Smith: Bridges. There's just a myriad of items which, you know, you start to think about it.

Katz: On page 19 and 20. Thank you.

Francesconi: So are you suggesting that we change special language in this proposal to make it more of a one-stop or we deal with it in the future?

Smith: Well, how you deal with it, whether you change the language, I suppose, it's the same thing, isn't it? I mean, I think that it --

Francesconi: You are right. I don't have any language in mind. I am just thinking the concept, I would be happy to suggest something. I would be -- I think you could do it in a paragraph. Maybe two.

Katz: We will ask the folks because I think that this was an issue that they raised, as well, if you look at 19 and 20, you are dealing with, with a lot of other bureaus here, plus the county, and the state and tri-met, so, we will go back and ask the, the drafters what they had in mind.

Smith: Remember, the original process here kind of dealt with that, with our special event committee because there were representatives from most of those areas on that, so we kind of were able to get an understanding of how an event would work within those groups and we would have people like tri-met, sign off on it is say, that's fine, we have done that, so what we are looking for is to prevent something that, that, that would inhibit. If you have the process, which orients around what we have had with cynthia and jim, and that works toward the end, that's fine. That includes the committee.

Katz: I think we understand that. All right.

Brent Foster: Good morning, mayor Katz and commissioners. My name is brent foster, I am an attorney here in Portland and I have been involved in a number of events getting permits for them and both as getting permits for them and as a participate. Around may day and fta had a number of good discussions with cynthia warren. Sam adams, iran paul and commissioner Sten's staff regarding the problems of the indemnity and the insurance agreements and the permit requirements in general so to the extent this is a reaction from that, I appreciate the interest in fixing some of the problems with the old permit. I do think that there is some tweaking and some significant tweak that go needs to be done to these, though, before the council adopts a set of policies that I think are really going to like work for Portland in reality on the ground. It's going to take me more than three minutes if I could -- I would like to tag some specific issues the way I think I could get it better. It may take over three minutes.

Katz: Did you have an opportunity to respond to this?

*******:** I did.

Katz: Okay. So what I think the council is going to ask you, could you stop the clock? Yeah. Is that we will give you the three minutes, and then you will have an opportunity over the next week to give us whatever amendments you want, okay.

Smith: Well, I will try to run through them just because that's how I organized my comments. I guess I start also by just adding that, you know, and my couple experiences working with jim wadsworth and cynthia warren, they have been good to work with. I think they have had a bad set of regulations but they have gone out of their way to get me some regulations on occasion and I do

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appreciate that. Some of the good things about the proposed permits, loss of the insurance and indemnity requirement for the street event, for the sidewalk events. And loss of fee for the small sidewalk event, those are positive things. Some of the big problems that I see, though. One is a creation of additional fine. I saw that in the draft, Portland city code changes that would create a \$500 fine for violation of these regulations. There are already fines and I think the woman from the ACLU was referring to this. If you go out in the street without a permit, you will get a ticket for blocking traffic or obstructing traffic, things like that. There should not be an additional fine for taking part in a free speech event which also happens without a permit. Additionally, the small sidewalk event, I have concerns, as long as it is clear that, whether it's a small or large event is determined based on the applicant's anticipations. I guess I don't have a problem with that. But again, I think it's the application's anticipations not what actually happens because it is very difficult to control. I don't think that there should be the, the \$70 managers support fee for either the street event or the large sidewalk event, the bottom line is it will not generate that much city revenue and it is absolute sore point with people, many people don't think that they should have to pay anything.

If you want more people to get permits, it's a pretty cheap way to try to get more people to get permits. I have real problems with route review and the criteria by which the sidewalk and street use coordinate determines whether or not to grant a permit. Among all the criteria, there is nothing, there is no criteria which says that they should consider the right, the right of Portlanders to exercise free speech. There is just safety and city considerations. It's really important that one of the factors at least is, in fact the citizens right to free speech and expression. Several other things, the monitoring requirements, I find very troubling. People are doing it now for the most part. If you make it a city requirement, we are not going to want to do it. People aren't going to want to be monitors because they will be required by the city. And the requirement to give names and phone numbers of monitors, I think, is also a serious problem. Again, I have submitted comments on these, and I will submit additional comments.

Katz: And may I suggest, because we have, I think we have your comments, that we will go over them even though you haven't had time to identify them.

Sten: That's one question. I think I understand philosophically why people don't want to give their names and phone numbers but at some point doesn't somebody need to know you are the monitor and your name, I mean, I get the sense you could give your organizations phone numbers. It seems like you need to place to contact somebody and a name. As opposed to creating a list of who is demonstrate and go where to find them.

Smith: They are going to need a name. You will have the name of the person who is holding the event, the person who is ultimately responsible and the person who is the police contact. What I think the city has a responsibility to do and it's reasonable to say, hey, as an event organizer we want you to be sure that your event runs smooth, people aren't violating the law and things like that. Perfectly reasonable, and we would encourage you to use monitors. That's what people do. That's what happened at May Day and FTA, and et cetera. But, when the city says we are going to require you to have monitors, to me, that's the city inserting itself in the organization and process of the protest. Under the proposed regulations the, the street and sidewalk coordinator would not only set the number of monitors required, but also, the location of where the monitor is supposed to be placed. I find that problematic. Again, it's, if, if the people don't have monitors and they don't do, you know, what they need to make the parade or march go in accord with the permit, then that, in itself, is the problem. It's not somebody is going to get a permit again or what have you. But, I think that, you know, there is a big level of distrust right now between the city, between the police, and between people who want to be out on the street. I, myself, got a ticket three weeks ago for supposedly blocking the sidewalk. I was dressed like I am today. I was holding a sign. I assure you I had no intent to block anyone wandering down the sidewalk. And yet, because I was walking back to my car with the sign, no other problems that day, you know, there was 30 them, it inferiorated me and

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makes it very hard for me to go out to future protests because going through the back of my mind is do I want to face a \$300 ticket, court costs, attorney's fees and a threat to my reputation as an attorney so the more that the city can cite we are going to trust you to monitor yourself, and give, give protesters and anyone else responsibility, the -- that will go a long way toward trying to mend the kind of chasm of distrust between the police and the protesters.

Sten: Thanks.

Benjamin Dawson: I am benjamin dawson, and I am, like brent, I had some small role in provoking the city to issue this proposed code. I have already submitted some detailed comments on what I think is wrong with, with this proposal, so I will confine myself in my comment now to what I think is the central problem. The representative of the aclu raised the issue of the discretion that these provisions give to the bureau of licensing, and I am glad that she did, but anyone who has any experience of attending public events knows the discretion that counts is the discretion afforded to the police bureau. And this proposal essentially does not change and in some ways worsens that situation so basically, police retain a central role in the reviewing and granting or denial of permit of applications. They are allowed to review and set the time and route of any march. And they are also on the scene given pretty much the authority to invoke permits. And all I can say is that giving the police, the military arm of government the authority to regulate free public expression is not the mark of free society. It's not how things should happen. And in particular, in this city, it does not take large experience or long memory to, you know, to see that people have reason not to trust the Portland police bureau. For instance, just to give a few examples, last fall, there was in northeast Portland, an anti-police brutality march that was subjected to outrageous levels of surveillance and provocation from hundreds of police officers. The whole thing was videotaped, multiple times. Which has to have a chilling effect on, on people's right to expression and assembly. You know, we can give dozens of other examples. Not all of which were political events, you know, a number of years ago, we had the Portland police famously bust up the party of african-american picnickers in sellwood park, which I am sure that everyone on the council remembers. Or, you know, there are a lot of individual instances of police brutality, you know. The death recently at the hands of Portland police officers. What I am saying is that, the event organizers have no particular reason, and the general public has no particular reason to trust the police to exercise the very broad discretion that they would retain that's in the system.

Katz: Thank you. Let's go on.

Kristian Williams, Portland Copwatch: I am a member of the Portland cop watch. I am glad you are realizing finally that the permit systems are good. The changes proposed here do nothing to address the largest problems in the process. The discretion of the police bureau and the, and the bureauization of descent, the physical barriers and the prohibition of spontaneous speech all remain under the new system. The system may also continue to require protest organizers, to work with various agencies whose behavior they are protesting, which creates tension. The basic problem is that any process which determines that some public events are going to be legal and some are not, has the effect of authorizing the police use force against activity which is caught to be protected by the first amendment. And I guess I need to echo mr. Dawson's remark earlier that this isn't the mark of a free society.

Katz: Thank you. Why don't you bring the mike closer to you.

Liz Copeland: Hello. My name is liz copeland and I am a substitute teacher registered with the Multnomah esd and I am here today because I have not yet been requested for work. I am a member of jobs for justice and working on the ad hoc group to defeat the ftaa, I am speaking for myself but also feel that I am speaking for all the teachers and students who are learning about democracy in our schools. The fact that democracy rests on freedom of speech and assembly. As an educator I am an educator and may I recommend to this council that you and all your staff take 60 minutes to view this video which is available through Multnomah county library, free speech for

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sale. Bill moyers special. It may give you a very good idea of a broader context in which this conversation is taking place and help you understand the concerns driving many of the lively public assemblies and exercise of free speech rights these last few years. This council needs to take as its fundamental precept the recognition that democracy is by its nature inefficient, democracy is less efficient than bureaucracy. It is less efficient than mono thinking or culture. The city values diversity, must take an unequivocal stand for freedom of speech and assemblage even if it means a less efficient city government. For example, we do not need any criteria that a person -- a permit process, the criteria to support or protect the right of free speech and assembly must be included as well as valid of city resources and event safety. As soon as you begin assessing fines and fees associated with cost of free speech you begin discriminating based on wealth. Which is egregious for reaching -- those exercising these rights in the street do not have deep pockets generally. Rather than seeing lively defense as a problems this council must embrace public dissent at what makes Portland and city recognize for its livability and its democracy. If citizens want to live in a municipality in which streets are silent and efficient, they can move to a lot where the efficiencies of the dictatorship are in place, rather than the inefficiencies of democracy. They may be able to find such locales in other municipalities but Portland should not be one of them. You will attract the best brightest most progressive in terms of business if we define the city committed to the inefficiencies of democracy. In closing, in my graduate school training at Portland state, my cohorts voted me as most likely to teach future civil rights activists. This, I ask this council to refuse to enact any fees or fines whose effect is discrimination based on wealth. I don't want any requirements that require any citizen to register him or herself prior to exercising free speech rights, except for the names of the organizers and the police contact. This sort of attitude of registering prior to exercise of free speech in keeping with what would police mussilini rather than martin luther king, jr. -- mussilini rather than martin luther king, jr..

Kathleen Juergens, 3229 NE 7th Ave.: I am kathleen, 322 nine, northeast 7th avenue. We are here today to discuss reform of the city's permitting code. Now, this council has a very curious definition of reform. Your so-called reform of piiiac involved ignoring the recommendations of your own blue ribbon committee and ignoring all of the citizen testimony you received. So, we should not be surprised to find that the current proposed reforms represent yet another monumental achievement in the field of not getting it. I agree with the specific technical criticisms of this organization that have been made by the members of the may day committee and I will not reiterate what others have said better than I could. My remarks will be more general. I come before you today in the wake of a terrible tragedy that has already started for all of us. A tragedy that, by the way, no amount of joint terrorism task forces could ever have prevented. And I hope that that point is not lost on the members of this council. In comparison with yesterday's atrocities, what we are here today to discuss may seem minor. But, in fact, yesterday's events could not more clearly illustrate the need for peaceful dissent to be tolerated. Grievances that are not allowed to be resolved in a peaceful and constructive manner will, inevitably play themselves out in a manner that is violent and destructive. I would like to take you on a little historical journal. Not to may day 2000, but to serbia a year ago. Bear with me here. You may recall that serbia's last election was stolen through blatant voter fraud. The people took to the streets in protest by the tens of thousands. Since serbia is an official enemy, those people were lauded as heroes in the u.s. Even though they did things like grab police officers and burn down the parliament building. We did nothing like that on may day and we were said as criminals. But my point is I want you all to ask yourself, would the world be a better place today if the serbian people will gone through channel and is gotten a permit? Waited 30 days? Allowed the police veto power over beirut or better yet just stayed home and written their congress persons. Now, you might ask, was the comparison with our own society? Well, a very apt one, actually. Like preelection serbia, the people who run our national government are a bunch of war criminals. Like serbia, our last presidential election was stolen through blatant

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fraud and intimidation and this theft was ratified by the judicial authorities. Unlike serbia, the people of our country did not have the courage to take to the streets and rectify the situation. And I ask you again, is the world better off for this? Democracy absolutely requires the ability of the people to take to the streets in huge numbers on a moment's notice. This is not just our right, it is our duty as a free people. We do not have democracy in america today because the majority of the population is too afraid to exercise our right and duty to take to the streets on mass when the situation requires it. The american citizenry is reaping the terrible consequences of our failure to hold our own national government accountable. And while, of course, this city council is not responsible for the crimes of our federal government, your current proposal is a step in the wrong direction. If you pass this ordinance you should expect to see as much and more defines of the new permit code as there was of the cold permit code, and rightfully so. Our duty as citizens requires nothing less. Thank you.

Katz: Thank you. All right. Karla? Anybody else want to testify? All right. Why don't we have the panel -- in your packet you have responses to all of these issues. We collected all of these comments of those who, who provided them in written form, I understand the aclu did not?

Adams: We gave -- we sent them a copy of the original draft a couple of months ago and asked them for any comments or questions that they had. They did not give them back to us until today.

Katz: Okay. So, what we will do is you have heard the issues. You know the issues. I am sure -- you want to comment and then the council will ask you questions.

Adams: Let me make an introductory comment. You all were very clear with us, both at may day and after may day when we began this project, that your intentions were to have a workable system but that you were very interested in that system promoting as much as possible, freedom of expression and assembly. We have gone through this process with that clear charge in mind. I am glad that over the last five months that we have been working on this. I don't think that any of the issues that were raised today we haven't discussed as a group or talked to others for consultations, so if nancy and harry, who are keeping the best notes would go through each comment and give you our sense of the discussion, it will obviously be your decision.

Katz: Harry, move closer.

Auerbach: I just want to talk about a couple of the free speech issues and then, and make one comment about coordination. Fundamentally I think that there is a, a difference of belief between some folks who think that the government should impose no regulation on their ability to use public facilities for free speech, and those of us who have looked at it and have, well, determined, a, that you do have the right to it, and b, under certain circumstances you have an obligation to do it for the protection of the public, as a whole. I don't know that we can ever bring people together on that issue. We have been conscious of the interest of the people to use the, the public streets for free speech and we have tried to impose on that activity as little as is necessary in order to protect the public as a whole. I believe that some of the comments of the aclu are based on a fundamental misunderstanding of the ordinance as a whole. There is no permit required for the mere expressive use of a public street, that is an individual who walks down the street with or without a sign and obeys the, the traffic laws and doesn't unreasonably obstruct the sidewalk, doesn't need a permit. Doesn't have to -- isn't subject to any sanctions at all. The only time that, that we get into this whole permitting arena or any other regulatory process is if you want to use the streets in a way that unreasonably interferes with the normal purposes for which they are established, and that means you are going to either block the sidewalks or you are going to walk in the streets or you are going to --. [inaudible].

Auerbach: The reasons that we have imposed a permit requirement is so that the city can take the steps that it needs to take in advance of that permit to make that activity safe, so that you don't have cars running over marchers, you don't have a chaotic situation in which people get hurt. So, we have -- the whole idea behind this ordinance is to establish a system where people can have their

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events in a safe way and where nobody has to be arrested. I mean, that's the whole idea. We are trying to make it possible for people to have their events whether they are free speech events or they are races or whatever it is that people want to use the streets for that we can accommodate, we are trying to do that in a way that they can have their event and the public will be safe and nobody has to be arrested and I think the, the code as drafted achieves that balance. The only -- we have tried to minimize, actually, discretion in the ordinance, in order to protect specifically against the viewpoint discrimination, so that, that, that the, as far as the fee waivers are concerned, that the, the administrator has been directed to develop objective criteria to allow the, the grant of fee waivers that will be unrelated to the nature of speech, but will be related to essentially the ability to pay.

Adams: And I think on that point we would be happy to develop some of those draft criteria before you vote on this if you so choose.

Auerbach: My final point, I guess overarching point on this part of the topic is that while I think we all value the right to dissent. Dissent does not equal engaging in illegal or unsafe behavior, and so that, you know, and if you want to do that, and if the element of your dissent is that you do want to engage in that behavior then you have to be prepared to do what martin luther king did and that is go to jail. So we are not telling people don't dissent or use the streets for that purpose. But, we are trying to, and I think that we have achieved a regulation that allows that to happen in a way that is lawful and safe. On the coordination, the list of other permits that may be required is permits that may be required, they won't obviously all be required for every event. Whether or not they are required depends on what event organizer is doing so if you want to exceed the city's noise regulations, you have to get a noise permit. If you want to use a park you have to get a park permit and that sort of thing. The difficulty that we haven't been able to resolve at this point but, but is how do you coordinate all that far through the one street use permit. Now, the license bureau is going to be very helpful in tracking those things for people, so if you come in for an experiment and you talk to cynthia about what it is that you want to do, she will say okay, sounds like you want to use sound equipment that requires a noise variance. Here's, here's the form for that. And they will have it on their website available to people and they will point folks in the right direction for that sort of thing. So, the one thing that we haven't been able to do, and I don't know to extent to which we will ever be able to do this, is to give one central coordinator the authority to make permitting decisions for the other agencies who have other concerns that their regulations address, that is how the noise -- how the special events coordinator is going to be able to make noise variance decisions, for example.

Adams: I do think, however, that in terms of somebody asked about the next steps on the list. I think that we, in terms of the next step, my recommendation is that we proceed with trying to better coordinate the noise parks and the sidewalk and street use permits to try to at least provide those three city related permits in a more coordinated fashion that's easier on the, the citizen making the application.

Katz: All right. Let's run down --

Francesconi: Can I ask a question about this one?

Katz: Okay.

Francesconi: It's the question of police, where the police grant the permit instead of licensing that was raised a couple times here. Could you explain that?

*******:** We are actually going to --

Katz: If you let --

Adams: We have got all the comments, and if we miss any at the end, then please question us. Nancy is going to go through specific comments.

Ayres: The criteria for fee waivers and for insurance and liability waivers, it's true they have not yet -- it's been developed. We have a section knowing the regulations that requires them to be developed, and certainly that is the top of our list of next steps.

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Saltzman: Did Harry say earlier it would be based on an ability to pay?

Katz: No.

Saltzman: I thought it will be based on ability to pay so there won't --

Ayres: We don't have the criteria developed as of yet.

Auerbach: What I want to make sure is clear it will not be based on -- [inaudible]

Katz: On content.

Auerbach: Correct.

Ayres: The number of people raised questions as to the amount of the fees. Cat made a survey of other cities and I think in the western United States and our fees are comparable or less than many of the other cities or for different types of uses.

Francesconi: Where does the money go? What's the purpose of the fees? Can you maybe respond to that?

Cynthia Warren, : Permit fee for a pedestrian only event would be \$70. The permit fee goes to the license bureau for administration. The other permit fees are 575, 1150, and 2300. And of those, slightly more than half goes to the police bureau to help defray their costs about a third of it goes to the bureau maintenance because those events need barricades to help defray the costs and a smaller portion stays in the license bureau for administration.

Katz: Let me just add they don't do very much in defraying the costs.

Warren: Last time we did a report it was about 30% city-wide is what we recovered.

Sten: How much did we bring in total?

Warren: Commissioner Sten, I think it's about \$32,000.

Francesconi: This is an editorial comment. \$32,000 may not seem like much but to the bureau of licensing it's a lot.

Ayres: I would like to emphasize that the police are not involved in the process of granting the permit. The permit will be granted or deny by the license bureau and then if someone has an objection to that, they can use the appeal process, which will go first to the license bureau director who will initially hear the appeal, and the director has specifically been uninvolved in the granting and reviewing of permits, so that he will be able to participate in the appeal process in a more objective basis. If that appeal is still questionable, the person can bring the appeal to city council. The police bureau does have a representative on what is now the advisory committee but that committee will no longer have the charge to review and decide whether or not to grant permits. They are strictly an advisory committee.

Adams: And on the issues related to safety, convenience, those kinds of issues?

Ayres: Um, monitors was another issue that came up frequently. This is on page 27 of the exhibit 3. We felt that monitors are absolutely necessary for these kinds of uses. They helped to organize, keep people safe.

Katz: The issue was the requirement.

Ayres: Yes, and we felt that they -- we should require them because they are necessary in order to help keep the event organized and safe. We have made in section c of section 8 at the request of the coordinator, the sponsor is required to provide proof of an adequate number of monitors, proof consisting of names and contract information, so I don't know of any other way to provide proof that there are an adequate number available unless there is some way -- some way to identify them, your name certainly is not, is, you know, generally public information and provided in any number of contexts.

Saltzman: It doesn't require personal phone numbers or home addresses, simply contact information?

Ayres: And it's not required in any every single case, only, for instance, in a large event, like the rose festival or whatever.

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Warren: And this is one that we did respond to concerns of some of the people that wrote in, and we did limit that I may require that to the kinds of events on the chart that are the small parade and larger, so sidewalk events and street use events that are pedestrian only we are not going to ask for that information.

Adams: It is on page 27. Section 8.

Warren: And it says that it applies to small parade, large parade, small and large athletic, extra larger exceptions so the ones that are further down the chart of events early in the administrative regulars.

Ayres: This is the same ones that require the insurance and liability agreement, in other words.

Adams: So events such as the no ftaa or the million march, that requirement does not apply.

Hales: Because it's a street use permit, not a parade.

Adams: Right and limited to pedestrian.

Katz: I remember, I mentioned animals and cars, which is one of the risk items in large sport events because things are moving so quickly.

Hales: So what do we really gain though? I understand the distinction you are drawing and it seems fairly reasonable but what do we, as a community, really gain, I mean, you could certainly encourage people to have monitors. And I want to get to that same question on the 30-day thing.

We would certainly encourage people to apply, and you almost --

Adams: That's not correct and we will get to that, and you almost wrote that one that way. It's a little tentative. It says should instead of shall, but we will get to that. But I am saying what do we gain by the next increment of directiveness, see what I am saying? That there's that point of saying, boy, you sure should have monitors and here's what the monitors can help do if you haven't had an event before here is how it works and we recommend that, versus you will have monitor and is this many and you will tell us who they are. What do we, as a community, gain by that next increment of control versus the more passive, more passive approach.

Warren: Commissioner, I don't think that I would have a problem from using the second -- excuse me. Second sentence in section a of 8. What we do gain by having monitors is orderly events for sidewalk events of course we encourage them to have monitors, to help people with -- crossing, with signals. The main thing where we use them is for the athletic events and runs.

Hales: I am not disputing the values of them. Sounds like a good idea but what people are reacting to is the city's level of control that is at least written in the ordinance, that you could, not that you are going to be unreasonable, or that most, or event organizers will fail to take your good advice. But, on paper, it says that you get to decide how many, and they must tell you who they are. And I am saying, what do we gain, not from the practice of monitors, but what do we gain, what do you think that we will gain, from that increment of control.

Adams: I got the question. What we gain is, you have been up to the events and what you gain is, you gain contact people. At the events and hopefully a way to contact them and with technology, hopefully a cell phone that prevents problems. Takes care of the problems before they become larger ones and require more formal responses which nobody in this room wants to do, so the biggest value operationally for monitors, anyone would tell you, is that they prevent problems. And having -- and knowing who they are before the event will do that because one, in one of the events where things went -- didn't go very well, there was really a lot of confusion about who they were in the communication confusion, as well so, that's one of the, one of the important reasons to have at least the knowledge of who they are.

Katz: knowing who they are before the event will do that?

Adams: Exactly and frankly, folks will, on the city side of things will settle for knowing who they are the day of the event before it starts. I mean, that's what we will settle for.

Katz: Harry?

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Auerbach: I just wanted to echo what sam says. I mean, you have a choice in how you are going to deal with problems that develop during the event. If you require people to have monitors it gives you that extra steps of intervening in a problem before it gets out of hand and you have to start going to your sanction level of issuing citations or arresting people, which is the place that we don't want to go. I mean, the whole idea of this regulation is, is to have a system that's minimally intrusive on street users that allows the activities to happen and doesn't require anybody to get cited or arrested. That's the whole name of the game and that's what monitors will give you.

Adams: We will take a, a third and fourth look at this section and make sure that we are being really clear on paper with what we are saying to you verbally today.

Katz: Keep going, nancy.

Ayres: Okay. The 30-day requirement was raised a couple times. This appears on page 21, section 6. There is, in fact, no requirement for 30 days prior application for a permit except for the large events listed in section c. Others are in section d are urged to apply as soon as possible to give us time to process the applications, but for the types of events that are typically used for the first amendment purposes, there is no 30-day requirement.

Hales: So you have written it, actually, the way that I was leaning towards.

*****: Correct.

Hales: Please do, and if you don't, we may not have time.

*****: Yes.

*****: You could, you know --

Ayres: We recognize that sometimes these events need to be addressed more or less immediately and we try to do that in the regulations. The \$500 fine or civil penalty has been raised. This was always in the quote. If used to be a -- this was always in the code. It used to be a criminal penalty. We have taken away the criminal aspect in this draft and made it a civil penalty for violation of the code of regulations.

Hales: Where is that? I am sorry.

Ayres: That's actually in the code, which is in exhibit 1. 722030.

Hales: Okay. I see it.

Francesconi: What's the advantage of having a civil fine if it's a criminal violation of the traffic?

*****: We --

Francesconi: Or did I misunderstand?

Ayres: It's not a criminal violation. It would no longer be a criminal violation if this ordinance is passed.

Auerbach: You are talking about two different things. One is, having a permit, having an event for which a permit is required, and not having a permit. And that's a civil anxious. The other is, if in the course of doing that you engage in behavior that's otherwise criminal you may be cited for obstructing sidewalks or --

Francesconi: But there's not an additional civil fine through the permitting system? If you violate the permit? I guess that's where I misunderstood.

Ayres: No, the civil penalty would be for violation of this process, any criminal activity would be -

Francesconi: But when you step outside the rules of the permit, is that violating the process? In other words, could it be both?

Ayres: If you violate the code or the administrative regulations, yes.

Auerbach: Conceivably somebody can do something that will subject them both to a civil sanction for violating the code relating to the permits and to criminal sanctions for violating --

Francesconi: Cynthia, practically have we ever done that?

Warren: No.

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Francesconi: One of the things you might look at. I understand the fines for violating the process, but if there's a criminal sanction, I am not sure you gain much.

Adams: Let me ask a clarification question. The criminal sanction would only exist if a criminal activity occurred, right?

Auerbach: Right.

Ayres: So, you know, the issue is, whether or not we want to punish people who do not comply with our code as opposed --

Katz: And the question that was asked was have we ever used it and Cynthia, the answer is?

Warren: I am not aware of it.

Katz: So the question is, do we want to keep this one in there or not?

Auerbach: My recommendation on that is the advantage of it is, it encourages, it increases the likelihood that people will comply with the regulations because they know that there is a sanction if they don't. That way, and if they do comply, you don't have to use it.

Katz: Keep going.

Ayres: Some of these same issues came up numerous times. That's close to about addresses all the main issues that were raised.

Katz: All right. Council, did we cover everything a few minutes ago?

Ayres: There was one other thing. Someone -- Liz Copeland raised the issue that, and I think that Brent Foster did, too. That we should put in the criteria, the right of the citizens to express themselves as one of the criteria for deciding whether or not to grant the permits and in fact, we have done that. That's on page 25 of exhibit 3, and this was in response to some of the public comments that we had.

Katz: We were thinking of doing it in a resolution, as well, but then I think you changed your mind on that.

Ayres: This is in section 7-a-1. It's not one of the five criteria, but it does give direction to the street and sidewalk use coordinator to take those issues into consideration. For the types of uses that are listed there.

Adams: There is one other issue, I don't think it was raised today but it's been raised in the past and it's worth just sort of airing out to clarify and that is, there is -- there is concerns raised that neighboring businesses could veto a permit application and I just wanted to give everyone an opportunity to clarify that that's only enclosed course events and Nancy, why don't you explain what is meant by closed course events.

Ayres: The closed course, and Cynthia might be able to explain this better than I do but this is when a neighborhood or a block or something, a portion of a street will be closed for a period of time to any traffic whatsoever, as opposed to like a march, which moves through the streets, so that both in front and behind of the group can still be used for street purposes. This will absolutely barricade off an area for six hours or more. And in that event then we have required the sponsor to obtain the permission of the persons whose property is essentially their access is limited.

Katz: Okay. Council, did you -- all of you, the questions, do you have any additional questions?

Sten: Just one. I don't know what I think. I am interested in kind of seeing how the budget breaks down and explicitly what I am getting at I buy the argument that something with the \$70 permit would be a very good show. I have no argument that they ought to pay \$2 million. I am curious how much comes in 70 chunks and how much comes in a couple of \$1,000 chunks and if there is anything to be said for Brent's argument that there is a show of goodwill on some of the other fees.

Katz: Actually, I asked the question, what really is the impact financially and now, the impact even a slight impact for some of these bureaus is substantial, but we can look -- that's a very valid, valid issue.

Sten: I may conclude -- I would just like to look at it.

Adams: Our estimate is about \$2100.

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Hales: What's that?

Adams: The aggregate amounts that come in the course of year is about \$2100.

Hales: Yeah. I guess I am interested in the other side, too. Although you know, we might feel a little better because we charge the Portland marathon a couple thousand dollars, my understanding from pdot is that that event probably costs what that one bureau, \$25,000. And we have to decide as a community how much of that kind of activity we want to have and understand that fees aren't going to pay for very much of it, and then decide what the fees are for. You know, is it a token amount? Is it enough to make people stop and think twice? It certainly shouldn't be enough to suppress, and that's not anybody's intent. But, we have got to be, to get real about that. I understand your point about the bureau of licenses but, this is an issue with pdot because of their budget problems. We spend money on special events sport. We have no day dream that we will recover it with fees.

Francesconi: I guess, we are talking 2100 for \$70 permits. That's okay with me. I guess the better way to approach it, is the progressive approach, which is what I think I heard you say, sam, which is that you are going to look at the criteria by which you can waive these fees.

Adams: Right.

Francesconi: Based on ability to pay and other factors. And then present them to us because money should not stifle free speech. I want to be clear, and that's the way to get there.

Katz: I have got that down, draft criteria for fee permit waiver. Okay. Any other issues? So we have got the amount of dollars, whether you want to impose that, whether you want to provide, spell out the criteria for the waiver. We will take a look at that. Anything else?

Adams: Monitors, will clarify that.

Francesconi: I want to make two broader points here. Because I don't think that we are going to do any closing statements here. The broader points first of all I want to reemphasize what harry said, and it was one of the reasons I was asking the question of the aclu. I actually believe, if we have permits, it allows you to block streets. It allows you to do more and therefore, encourages more free speech. I am not sure that point has come out clearly enough until harry said it, and I wanted to reemphasize it. The second point, I don't want to spend much time on it but there was testimony on this point. The aclu's mission became more important even as of yesterday. The balance between how we continued to preserve free speech and freedom in this country has just gotten harder. So it is incumbent upon us to remember why we need to protect the country and the city. And that is the issues of freedom of expression, and ideas. But my request is, on the other hand, people do have to understand that the need to protect our citizens is also real, so when we are trying to reach a method that protects our citizens and allows free speech, help us.

Hales: I guess one thing that I would like to sort of request, mayor, and I am a little concerned, I am not sure who is here from the police bureau.

Adams: Nobody is.

Hales: Yeah. And I guess I think this has been a really good hearing, and I agree with jim's points here, this has been a really good discussion, and although I am interested in further work on, you know, minor issues here, like we talked about, I don't mean they are minor in importance, but they are minor in size, compared to the work that you have done, I think you are on generally the right track but what we have to get to is a shared understanding of what, how this is going to work in practice, you know, the words matter but how it works in practice matters, even more. And, you know, for my viewpoint, watching this issue over the last couple of years I think that we have had excesses on both sides of the debate, and that, that we have to get to a shared conception of what the streets are for. That our goal is not that our city be a sanitized shopping mall, nor that it be the wild west, and if everybody has a pretty good idea of what that middle ground is, then these words, the words of the regulations will fade into the background. But, we had at least as much disruption to traffic and at least a couple of events by police bureau practices who, at that point, in at least some

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of their thinking, were, in my opinion, closer to the sanitized shopping mall view of downtown, and i'm not being deliberately hard on them. They, like the rest of us, have to get to a shared conception of how this is going to work. So, their absence here today is, unfortunate. I hope we can, that you them having conversations with your office, get to the same understanding of how this is going to work. As well as what's on the page.

Adams: I take responsibility for the fact that the police bureau isn't here today. They wanted to know whether they should be here and I said that I didn't think it was necessary. I know that they would welcome an opportunity next week or the week after to talk about this.

Katz: Okay. Let's -- how much time do you think you need, a week, two weeks?

Adams: A couple of weeks would be great.

Katz: Three weeks?

Adams: Two weeks I think would do it.

Katz: Are you sure?

Adams: Yes.

Katz: Okay. We will bring this back in two weeks.

Adams: Thank you.

Katz: Okay. Thanks, everybody. Let's get down to regular agenda. 1094.

Item No. 1094.

Katz: Neither commissioner Sten nor I need to make any -- everybody knows where we are at this point, so go ahead.

Ron Bergman, Director, General Services, Project Manger, CIS Assessment Project: Mayor and commissioners, ron bergman, general services director and project manager for the cis assessment project. The ordinance before you authorizes the county, excuse me, the chief administrative officer of the city to negotiate a contract for the assessment. The ordinance was filed prior to our having made a final recommendation so it's in a generic form. I can tell you that we have now selected tmg from austin, texas, and the ordinance identifies 316,000 is the highest proposal that we received. Tmgs proposal was not to exceed of 100,000, so that's what the contract will come in when it is finally put in its final form. Any questions?

Saltzman: If we amend the ordinance to reflect the lower amount?

Bergman: Either way the contract will come in at \$100,000.

Sten: I was going to suggest that we amend it to \$100,000 to be clear for the record.

Bergman: There really are two places in the ordinance. Item 10 of the finding says it should be adjusted to 100,000 and the tail end identifying it as the highest bid should be struck, and then item f of the directives should be adjusted, as well.

Katz: You got that, ben? Any objections to those amendments? Hearing none, so ordered. Anybody else want to testify on this item? If not, roll call.

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

Sten: Aye -- three very quick updates. I wanted to thank ron and the team, I was concerned about both quality and cost on this issue, which is sometimes can be counter to each other and in this case they have actually come in with a very high quality proposal and actually dramatically below what we estimated the cost could be, and so when we are in a very tight budget cutting mode at the water bureau it's very nice to have a high quality reasonable cost proposals, so thank you for your hard work on this, and also to do the, to the outside experts who are not here today. Secondly I recently have shared with the council and certainly it's available publicly, fairly thick financial management plan that the water bureau has issued to show how we are going to work through our current fiscal problems, generally speaking, and that we will do a bit more thorough update at a later date. But, since the council last looked at this issue, we have four just over two months consistently exceeded our best case scenario in terms of revenue collection, that will not be a final, be something I can land on until the computer is fully functioning because until it's over, it keeps us out of hot water

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but we are not in a position to say if the finances are where they need to be which is why we have a cost cutting package before you in that memo. And then finally we will be, we are really at what I would just describe as, it has been -- it has been for some time, but really a kind of critical 30 to 60-day period in which we are either going to get some of the key missing functions back online or I think some of the more stringent measures would have to come into play so I will be working very collaboratively with ron's team and sds who is our computer vendor and the new consultants to time how they do the assessment in a way we don't disrupt the current work but get to their assessment as absolutely quickly as possible and have a complete -- have it completed. So good work and I am glad to vote aye.

Katz: I am so happy that I don't have to ask you next monday, how this is going. Thank you for your work. You need to know that every monday I get an update and i've been waiting for this, so thank you, ron. Aye. All right. 1095.

Item No. 1095.

Katz: Let me start by saying that some of us are very interested in policies because policies drive the direction of a city and a community. However, policies are not always in the city code. And policies aren't always known by city administrators. And policies are sometimes very vague. And they often guide how we spend our limited resources. So, what we are going to do here today is create a place, a safe place that everybody not only behind this table, but all of our city employees, but more importantly, all of our citizens have access to those policies. It is truly a different way of doing business for the city. It increases the transparency of government because sometimes we have the tendency to say well this is our policy and nobody quite knows where, how did it develop, what's the history of it, and it holds us a little bit more accountable. I have to tell you that I have had personal experiences on policies. I can tell you some night mares on that one and also add some stories on cell phone policies and internet use policies. And so it's high-time that we had a central place for policies and on those issues, high-time that, and moved in that direction have a centralized policy so not everybody bureau has their own, necessarily. So, that's -- issue you are pointing to gary and I will talk to gary. I also need to tell you that sam in my office has been collecting policies from all your bureaus, since the time we were in the old building and they are about this long and this thick. And now, we are going to give gary the opportunity to do something meaningful with them. Gary, why don't you go ahead and start?

Gary Blackmer, Auditor, City of Portland: Good afternoon. Mayor and members of the council. I want to say that this is a project that came, initiated by the mayor's office and carried for a number of years, through sam adams, and cat to the point where we are today where we have got an ordinance before you that allows my office to create some order and some easier access for those policies. There hasn't been any kind of organization of those in terms of binding, nonbinding, advisory, whatever the phrases might be to help guide us, guide our employees, guide our citizens in terms of the long lasting impact. I think council puts a lot of thought and energy into not just its ordinances and the charter that submits to the owners for changes but in terms of all those other things where it tries to provide guidance, where it is providing some binding expectations, and if we don't have a repository for those or make them available over time, they are forgotten, over time, we start becoming inconsistent, and so one of the things where this electronic age is we were able to put the charter in the code onto the internet so that they are available to the public and to employees, and this is the next step, which is to put those other things where council is setting direction and expectations there so that we can insure greater consistency and provide accountability so that the public know what we are expecting of them and what we can expect of our government. So what we are looking at is a way to categorize these policies by the type of activity it's addressing, but also will have the word search capability like you see on our code and charter so that people can actually go in on a key word and find any of these policies related to that. As we start getting these from the bureaus we will start putting them onto a web page under those

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categories and we will have a search engine there to be able to search on them. So that's, that's part of what I am excited about is I think that this is a way to provide expectations for all and for us to be able to understand what we have done in the past and enhance that rather than rewrite it go or reinventing it, which happens in many cases. So I am urging you to adopt this. There is a, I guess a substitute with some, some minor changes to it, some clarifications.

Katz: This is to the exhibit a?

Blackmer: That's correct.

Katz: Do we have -- yes, we do have the changes. Anything jumping out at you?

Blackmer: No, there were more clarifications and making sure that the timing was, was clear, that the syntax made it clear that what we are actually intending there.

Katz: Okay. Do I have -- hear a motion to adopt the amendments to exhibit a?

Saltzman: So move.

Katz: Any objections? Hearing none, so ordered. All right. Questions?

Hales: Geez, gary, I don't know if this is going to work. We will have the definition for the bureaus of binding city policy, nonbinding city policy, administrative rule, comprehensive plan policy, legislation but you don't have definitions for folk ways, habits or ways we have always done it. How are they going to operate with this le -- [laughter]

Katz: Well, this is the way we have always done it.

Blackmer: Hopefully better than we have.

Hales: Prohibit those three, right? [laughter]

Saltzman: Well, this is really great work and long overdue but I am afraid to ask this question because I think it's going to go like this but, okay, we get all the policies in one place which is great, whose job is it to identify inconsistencies or policies that make no sense and bring that to our attention?

Sam Adams, Mayor's Office: Fundamentally, my answer to that question is, it's the job of the city council, the bureau of managers, supervisors, the guardians of the various policies spread out across the city. The public, we will, we will enable and arm the public to also do that on our behalf with passage of this ordinance. I guess the short answer is, it will be all of our jobs.

Saltzman: So, we couldn't expect when we have a resolution before us on whatever policy, that legal council or the auditors office would bring it to our attention this may be a conflict with an existing policy?

Adams: Just like the financial impact of, that is required of certain ordinances and resolutions before council. We had a vision, that sort of policy impact, at a future point. We didn't include it, sort of phasing this in. We didn't include it in the first phase but that is definitely part of the vision.

Blackmer: Another response is that we don't know how many times we have been inconsistent in the past because we have never had any kind of --

Saltzman: That's what I am saying. Once we get things properly organized, we are going to see a lot of them and I guess I am hoping that it's, you are saying that is part of it? That's the next step to develop an affirmative means of dealing with the inconsistencies and cleaning up the books.

Adams: We hope a lot of that -- we hope a lot of that will just naturally occur but, the -- in the future, sort of a policy impact statement is certainly an option that council would have to create.

Francesconi: Well, we created it for major policy impacts, so it would -- it has to go through all the bureau and is in fact that process is being updated to see how we can make it more efficient but a minor tweak would be in those statements, where each bureau identifies is there any conflict with existing policy so we actually have a work group forming because we will bring this back to council, as to how's it working and how's it not. This would be a minor tweak to it. So, I will do that.

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Saltzman: As I read in the paper I think that we have an existing policy that says that we won't do business with south africa, that policy is still in the books. So. So, who is going to say, let's get rid of this policy.

Blackmer: And those are the issues where as you see these things accumulate over time, council may say well, we need to come back and revisit this policy, and as bureaus start bringing forward, you know, revisions or new policies, we would hope that they would also be able to say, this relates to another policy and we would recommend that you address this at the same time and make this revision. So, I mean, I think council has, has accumulated a huge file of resolutions and ordinances in the past, that have only gone away because people have gotten about them. [laughter]

Saltzman: Now you are digging them up again.

Adams: This actually does, we are saying in this ordinance that bureaus need to refile their policies by july 1st of 2003, and then we are cleaning the slate. The 150 odd years of city policies that aren't on the books by july 1st of 2003 are no longer in effect. So that gives -- we felt that gave the bureaus plenty of time, the bureau managers felt gave them plenty of time and cleans the slate sort of.

Katz: I need to remind you that we had code language that needed to be repealed, which is one of the reasons that the city attorney's office was cleaning up the code because there was language there that the supreme court ruled unconstitutional or the legislature changed the law and we still had it in the books. I have also to say that the legislature was as guilty as we are, so that's what we are also cleaning up. Okay. All right. Anybody want to testify on this? It passes to second. All right. Thank you very much. Cat and sam, you can now move on and do some other work. 1096.

Item No. 1096.

Katz: Okay. Your wife has not given birth yet?

Jim Middaugh, Planning, Endangered Species Act Program: I have my phone right here, so. Two centimeters. So, I am slightly distracted. [laughter]

Katz: Let's make this quick.

Hales: Not compared to next week, you aren't.

Katz: I didn't mean to pry. [laughter]

Middaugh: I have other details.

Katz: I thought your phone was two centimeters away. [laughter]

Middaugh: I have got the data here. Should I explain to you something or do you have any questions for me?

Katz: Quickly, quickly.

Middaugh: This contract is really important to where we are with the esa program. There is the quay points that I want to make. The funds are in the existing esa program, they were identified in our draft narrative and approved by the council. The contractor we are proposing to continue with was selected in two previous competitively awarded bidding processes. The contractor at issue is currently working not only with the esa team but also with the bes, watershed planning group, with the super fund team and with the folks doing bull run esa planning so, using this contract we will be truly integrating some technical work across the city silos and bureaus. The experience that this contractor has gained from two previously competitively awarded bids is extremely valuable at this time. We have some initial modeling work done and they have helped build that and we need to get now into the analysis of some of that work. And from our perspective, it would be very time consuming and potentially costly to go through another competitive process and bring a new technical contractor up to speed so for this year we would appreciate your support for the contract at this time.

Katz: Thank you. Questions? Anybody want to testify?

Saltzman: Simply for the remainder of this fiscal year it will become a competitive?

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Middaugh: I want to reserve the right to come back again, but at this point, it expires at the end of this fiscal year and it's a not to exceed \$100,000 contract.

Katz: Okay. Roll call.

Francesconi: It makes sense, and you selected a terrific contract. Aye.

Hales: Congratulations in advance, aye.

Saltzman: Aye.

Sten: Good luck, aye. [laughter]

Katz: It's been a hard road, aye. All right. 1097.

Item No. 1097.

Francesconi: If I can introduce this briefly. With parks, we think of a lot of tremendous assets, sometimes the botanical gardens and the horticulturist isn't at the top of the list but we have world class that we think of, leeches a world class facility and we have really done it on the backs of a lot of volunteers. Parks has contributed a fair amount, as well, but this is an exciting thing and tony, who has been very instrumental on our whole parks "20/20" plan and the next steps in implementing it, he's also been the one behind the leech botanical gardens and the fundraising drive and parks has assisted him but I thought it would be good to bring tony here briefly. It's also a very important asset for a natural area, as well as all of east Portland. It's a magical spot.

Susan Hathaway-Marxer, Property Manager, Bureau of Parks and Recreation: Good morning. Or good afternoon. I am susan hathaway. I am the property manager for parks. We are pleased to put forth this contract with the leech garden friends that will help to improve the botanical gardens, which, as the commissioner said, is a 15-acre calm train will place in southeast Portland and managed by the leech garden friends who are good, gentle people who, who are the stewarts of this property for us.

Francesconi: Except for tony. [laughter]

Francesconi: He was not gentle in his fundraising approaches. With parks or with other citizens.

Katz: That's not what I would call tony. Determined. [laughter]

Francesconi: But for everybody else, that was accurate.

*******:** The friends of the garden are good, gentle people. It's a wonderful place and everyone should go there and experience tank wilt. I will let tony speak about his fundraising efforts.

Toni Palermi: I am toni. I am the, for the last three years, i've been the temporary chairman --. [inaudible]

Palermi: All of you have been on volunteer kinds of committees and the first place you are there is because you want good things to happen. The botanical garden is in a period of rapid expansion. The parks department has really been outstanding in terms about acquiring additional land. The renovation of the terrace has been a high priority with the leech friends because this is the place where wedding receptions are held, and the volunteers gain over half of their operating budget from those wedding receptions. There are other reasons other than just financial because it wasn't ada accept -- assessable, I should say, and there were some other considerations that we needed to get at. We started a campaign to raise funds for this, and the city, through the parks bureau was very instrumental in getting us off to a good start. We had a fundraising drive. We contacted foundations, eight foundations responded to our request. Coming up with something like 5,000. As the ordinance says, the parks came in with 67,000, and the balance of the project, which is going to cost about 193,000, was gained from the membership drive. The contractor is -- we will have a ground-breaking ceremony on september 18th. And after this long period of time with the -- absolutely, a lot of help from the parks's department, we are ready to go, finally.

Katz: Thank you. Questions? Anybody want to testify on this? All right. Roll call.

Francesconi: It was a large contribution from parks because I wish that we had more money. Most of that was from the trust fund but we did such a significant contribution because the friends groups raised \$190,000 on their own. And that, combined with the importance of this to the city

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and to southeast Portland, is why the decision was done. So, it's a magical spot, maintained, operated in advance by special people. But, I would also like to thank susan, and david from the park's bureau for providing that extra little help to put him over the hump. Aye.

Hales: Thank you, aye.

Saltzman: Aye.

Sten: Good job, aye.

Katz: You said something that just caught my attention. We have -- we are going through some very difficult times, and there are some wonderful places around the city that are tranquil, where we can sit and reflect on what's been happening around this country. And leach is one of them. The japanese gardens, another. The chinese classical garden is another, and, of course, a large parks, all over the city, so that's another thing somebody, people can do, is go and visit the gardens and spend a little bit of quiet time with loved ones or by yourself. Aye. 1098. Boyles.

Item No. 1098.

Katz: Second reading, unless somebody has questions. Is anybody here to testify? If not, roll call.

Francesconi: I would just like to thank commissioner Hales and transportation because we need our parks to be accessible and this helps, aye.

Hales: Yeah, this is a nice partnership between parks and transportation and the other property owners. We are going do make it really a nice place. Thank you all, aye.

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

Katz: Mayor votes aye. 1099.

Item No. 1099.

Katz: This is the second reading, roll call.

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

Katz: Mayor votes aye. 1100.

Item No. 1100.

Katz: Second reading. Roll call.

Francesconi: I just wanted to commend and thank commissioner Hales, vic rhodes for being persistent in their efforts to secure a new funding source to maintenance our roads. I do think that we do need to listen to our citizens and businesses, and hold the plug on this fee now, aye.

Hales: Thank you, jim. We need to listen to the majority of our businesses in this community that have come to understand that this problem is real and we need to do something and I look forward to hearing back from them. Aye.

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

Katz: Aye. All right. 1101.

Item No. 1101.

Katz: I know it's difficult to ask somebody that's going to pray for us to do it in three minutes, but that's what you have.

*******:** We can do it.

Katz: Okay. [laughter]

*******:** In light of all of the tragedy that's happened --

Katz: Do you want to identify yourself?

Bill White: My name is bill white, Portland, Oregon, and --

Lee: Lee, Portland, Oregon.

White: In light of all the tragedy that's happened in the united states, I know most of your hearts are heavy, as well as mine and everyone else across the country, and I thought it just appropriate to come back again and just pray because as the mayor stated yesterday, new york is a lot closer to us than it ever has been before, and that new york bombing could obviously have been here in Portland, just as well, and the request that we have before the council is to strongly consider

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opening each council session with a prayer as well as establish the office of the chaplain, that way when tragedy does strike, you are already have all the bases covered and there is no reactionary process that's necessary. Because you are basically already in contact with, with the faith-based communities, different groups. But I will not be before you long, and I just -- like I say, I just want to come and pray for each and every one of you and to ask for the blessings of god on the city of Portland and on the city council, and since this is the very first prayer, I know since 1851, as the Oregonian reported, Portland has never had any type of open prayer for the city council or for the city so I think that we are definitely establishing some type of precedence here this morning. And the title of this prayer, I just wrote this, is the prayer, pray for our city. Heavenly father we ask you in the name of jesus to bless the city of Portland and each of its citizens. Let each citizen and council member have a personal encounter with you. We ask forgiveness of all our sins. We ask you to bless the mayor and the city commissioners, them, guide them, and protect them. Give them wisdom, knowledge, and understanding. We ask that you give each member of this council godly counselors. We ask that you bless each staff member, lead them, guide them, and protect them, and we bind the power -- excuse me. We bind the power of enemy for we know that he comes to kill, steal and destroy, but you came so that this city could have life and have it more abundantly. Father, I ask you for just a blessing of the city. Father, I thank you now for hearing my prayer and I thank you for blessing this great city of Portland. Father, we also ask you touch every member, every family member that's had a death in their family dealing with the terrorism bombing. We ask this for healing for this country, father. We ask that you bless this great country of ours. And in jesus name, I pray. And again, we ask you consider opening prayer for each council session as well as establishing the office of chaplaincy.

Katz: Thank you very much. We stand adjourned until 2:00.

At 12:30 p.m., Council recessed.

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2:00 PM

Katz: Please call the roll.

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

Katz: Present. Is the appellant here?

Item No. 1102.

*******:** The appellant is not here, your honor. I don't see him.

Katz: Okay. Then I will take a motion to table this item.

Hales: Move to table.

Katz: Any objections? Let's do a roll call to table.

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

Katz: Mayor votes aye. 1103.

Item No. 1103.

Katz: Okay. Come on up. Did we just table yours or -- yeah, it was yours, okay.

Gary Blackmer, Auditor, City of Portland: Let me just introduce quickly, this is, perhaps, the last piiac appeal under the previous set of rules. There are two others that we haven't heard back on, and we are waiting to see, so this could be the last one, so let me turn it over to mike, and you may have to go through this just this last time.

Katz: Go ahead.

Mike Hess, former, Police Internal Investigations Auditing Committee: Mike hess, former piiac examiner. The case that we are going to be hearing right now is the case that was brought forward to iad by jeremy emmi. He was a witness to this case, and became the complainant, and the citizen advisor who will be presenting this case is bob wells.

Katz: And then let me add that we also have reports from, I think commissioner Francesconi and others, wanted additional information, and captain shank has provided the council with additional information, and I want to make sure that everybody has that, with regard to these cases.

Hess: May I bring the attachment c up?

Katz: Yes, why don't you do that.

*******:** Okay. And we may want to ask you to come up, darryl, I am not sure that the council read all of that yet.

Hess: I made a note there that the summary of the second one there is the subject of the complaint, not the appellant.

Katz: Okay. Go ahead.

Robert Wells: Good afternoon, your honor, and commissioners. My name is robert wells, of southeast Portland.

Katz: Let me -- so let me clarify, this is the individual that was in the square, okay.

Wells: Yes, ma'am.

Katz: All right. Good afternoon. My name is robert wells of southeast Portland, and I am the piiac assistant advisor who was assigned to prepare this piiac examination, 00 -- 30, internal affairs division number 99-173 before us today. I assume the council has read all of the examination and the attachments, so I will give the public a brief overview of this case. The appellant watched as a man was contacted by two ppi security officers, ppi standing for Portland protection incorporated, a private security firm here in Portland. And at pioneer square in downtown Portland, this man was uncooperative with him and refused to leave pioneer square when a park exclusion order was written by the first security officer for the subjects observed littering in the park. After the subject refused to leave the square, Portland police were notified by the Portland protection incorporated

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security. Two Portland police officers responded to the scene and personally contacted the subject.

A melee began. Food was thrown about and the subject was taken to the ground. He was then handcuffed and taken into custody by the Portland police bureau officers who responded. The second thing I would like to present is basically a summary of the allegations, which you have before you, for the public, is basically the appellant makes the three basic allegations. Number one, officers push -- punched, excuse me, punched and need the subject, slammed his head on the bricks. Choked him and then wrenched the arms of the subject up behind his back far beyond a normal range of motion while walking him handcuffed to a police vehicle. Number two, an officer rubbed a tray of food into the subject's face. Number three, as the officers left the scene, one officer said to onlookers, quote, never mind, end quote, and another officer responded to an onlooker by saying, quote, fuck you, you want to go next, end quote. Basically, I would like to go over the letter of findings by the precinct commanders who did individual letters of findings on both of these two officers that were involved. On the gentleman, or officer who did rub the food, tray of food allegedly into the subject's, or the subject's face, was sustained, and a letter of finding was made that use of force was exonerated, courtesy was insufficient evidence, conduct professional was sustained. And the commander's analysis was basically both officer b. And officer a. Described the incident and how much force they used to subdue and restrain the incident subject. Their description of the incident is consistent with the appellant's and is within the police bureau guidelines and appropriate for the incident as described. Going further to the second letter of findings on the officer b., who was found for courtesy unfounded and use of force exonerated, captain kaufman's analysis was, as to the allegation that officer b. Was discourteous and used the word, quote, [*expletive*] end quote, the bystander is the only one who asserts this --

Katz: Can we refrain from using that language?

Wells: My apologies, ma'am. I am used to --

Katz: I know. Go ahead.

Wells: My apologies to the commission.

Katz: Keep going.

Wells: Officer b. Admits that he said that he -- do you want to go next. Basically, the findings by piiiic from the letters of findings, as well as the examination I did was 10-0 to affirm the bureau findings on this case. I would like to add one final thing, and that's the analysis that I made of this unfortunate case. Comparing the appellant's statements with reports and interviews in the file, the appellant's version of events differs from those of the police officers, and the security officers. I might add that one of the security officers wrote a written report describing very well what occurred. No other witnesses were identified. There were no medical reports or other evidence of injury to the resisting subject or to the officers. The allegations that the officers repeatedly smashed the subject's face into the squares brick work is not, repeat, not supported by the jail booking photograph. The takedown of the subject as described by the officers and security officers was, according to train police training procedures. The subject was led to the squad car on his tip toes because he was resisting arrest. This technique puts the subject off balance and can no longer resistor fight, and this procedure is also within training guidelines. There are inconsistencies between what do the appellant states happened and the officers describe. All three officers and two security officers, interviews and reports were consistent with each other. The subject of, of the alleged misconduct, could not be located for an interview, officer a. Admitted that he used the deli with the food container in retaliation for having food thrown in his face while arresting the subject.

And this act of misconduct was sustained. There was no evidence of excessive force. The investigators notes, comments in the iad file were consistent with interviews and were well

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prepared. Questions were well organized and specific to the allegations. I'd like to tell the city council at this time that I am used to using profanity and in the hearings as we quote them so my apologies if I offended anybody.

Francesconi: Listen, don't worry. We have heard it before.

Katz: You are fine. There may be young people -- I hope that they have some better things to do on some days, but there may be young people watching and we would rather not do that. That's all right.

Hess: That is a normal procedure, just so you know, that we usually do at our meetings.

Sten: He said quote-unquote. I heard you.

Wells: That's why I kept going, quote-unquote. [laughter]

Katz: All right. Bob, are you finished.

Wells: Yes, ma'am.

Katz: On the second page, captain kaufman analysis says, even the appellant's recollection of the events of the actual custody changes from his original letter to his interview. For example, in the appellant's written complaint, and I am reading that for you, jeremy, states that the officers were punching and kicking the subject and slamming his head into the brickwork in the interview with iad. The appellant states that the officers were actually pushing the subject down with an open hand and that the subject's head hit on the brickwork. Is that -- is that an important distinction from, from what you heard?

Wells: I believe so, your honor, in that the mcdc, Multnomah county detention facility did a booking photograph of the subject, and common sense plus I have would worked in radiology for ten years and to smash somebody's face into the concrete, or the bricks, pioneer square bricks continually, would sustain so much damage that there was no evidence on the booking photograph.

Hales: I think I am missing one piece of my paperwork but what did you -- what did you sustain?

Wells: Um, the only thing that was sustained was for officer a., with the tray of deli food when he responded with the subject throwing it in his face while during the tapedown he also used the food and rubbed it in his hair, slash face, we are not really quite sure.

Hales: So you found it was inappropriate conduct?

Wells: Yes.

Hales: What about the language?

Wells: The language was unfounded, courtesy and also courtesy, insufficient evidence for, for officer a, who was, who had the deli container and officer b. For courtesy was unfounded.

Katz: And these were the same recommendations from the, the internal review?

Wells: Yes.

Katz: So you did not -- you affirmed the police bureau's findings?

Wells: Yes, ma'am. 10-0 on april 23rd. Thank you.

Katz: Further questions? Let's have the appellant. Sit down by the mike.

*******:** This is fine.

Katz: I just want to say that I happen to have been at the meeting when this was heard, and regardless of what the outcomes are, if I recall the conversation, everybody thanked the young man sitting in front of you for bringing this up and filing a complaint, even though not all the items have been founded the way that you probably wanted them to occur. Identify yourself for the record.

Jeremy Emmi, 1012 SE Tacoma St.: My name is jeremy. I live at 1012 southeast tacoma street, Portland.

Katz: Do you want to tell us?

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Emmi: Everything?

Katz: Yeah. You have about ten minutes.

Emmi: Okay. Basically, the findings of exonerated and insufficient evidence, I did not agree with. First on the courtesy, for the officer using the "f" word, basically, when I lodged the complaint, nobody told me really anything about the procedure, of how to go about doing everything, so I just -- I submitted a complaint, and I can't even remember but it was probably more than a month before I heard from somebody, and I think that as far as procedure, if somebody lodge as complaint knows at that time that they should go out and find witnesses or try to talk to somebody else, or if the police are supposed to go out and find witnesses, I think that that would help in the future because basically, the reason that this was insufficient evidence because I was the only person who said they heard the officer use this language. And that three officers and two security guards said that they did not hear anybody use that language. So to me, it seems like it's kind of an unfair burden for somebody to come forward and say they saw this, yet they really have no hope of winning if it's just a sheer evidence problem. Officer versus the person who saw it happen, I mean, it's been over two years since this happened. There was nobody that I could find somebody at pioneer square that day to corroborate what I was saying. -- to corroborate what I was saying. So I don't know if this will be sustained but if not, it seems like there must be some kind of change in the procedure of rules because it's just never going to happen. First of all, how many people lodged a complaint and second of all how many people know that they should go out and find witnesses, so I think that it's pretty much impossible for somebody to win.

Katz: Well, you know, I took the discussion that the, the piiac and you had very seriously, and I can't recall when I saw and who gave me a sample of complaint forms. They were small. Gary, was it conversation with you? Small complaint -- or I asked you to get some complaint forms that officers in situations like that, could distribute it a certain place. It was you? And but I can't remember where those small cards came from. Do you recall?

Blackmer: I don't.

Katz: Tri-met. Yeah, it was tri-met t wasn't exactly on point. But, it was, it was enough on point for us to examine that to see if that, if that's workable and if that makes some sense. I think in tri-met's case, they may be giving it to the bus drivers, not necessarily to the people on the bus. Although, I am not -- that's why I say may or may not be on point, but it's close enough so that that's something that we might -- now that we are starting a new system, we might want to explore because that does put a burden on you, and it may be a way, rather than having officers come back to the square, days later, have something given out the day of the incident.

*******:** Okay.

*******:** And I don't even know actually if any officers tried to find witnesses or not. I am not sure. I think somewhere in the record it said that they did, but I think your suggestion would be better, as far as the person filing the complaint would have an easier time.

Katz: That's part of community policing.

*******:** On the use of force, I talked with, with captain smith, and another man at the last piiac meeting, and basically, I know what I saw, and it's kind of hard to argue with the fact that supposedly everything they did was within police regulations. But, part of the evidence that I talked about at piiac that I didn't put in my initial report was that the mental state of the subject, and we talk bad a little bit but they couldn't actually use it in the findings because it wasn't in my report. My report was basically just the amount of force the officers used and I didn't put in any extraneous circumstances. But, later at the piiac meeting, I said that I thought the subject was mentally disturbed. Or mentally ill, and that that distributed to the, to the way that the officers used

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the force and the way it just did not, didn't seem right. It was excessive because of his mental state.

And I guess basically, this wasn't too long after Jose Mejia-Poot was shot in Southeast Portland, so I talked with Captain Smith after that and I guess it's kind of hard to say but it seems like there should be some sort of, maybe extra training or something for officers, because, I mean, it was obvious the way that, that, that the officers talked about how they weren't -- they didn't seem to hurt him, and he just didn't seem to be affected by the actions that they were taking, as another characteristic of somebody who is, you know, mentally disturbed and is not reacting to that amount of force at all. And it just seemed like the way they came up behind him and grabbed him, I mean, it just seemed like if they would have just talked to him a little bit and you know, got him out of there, it just -- it's the whole, the whole thing could have been averted, although it may not have been excessive, once he resisted because the police told me that once they, the subject resists, they can use pretty much any force that they have to restrain him but before he resisted, seems like, you know, that initial amount of force that the police used was definitely excessive. So, I guess, some of my arguments here are more procedural than, than substantive, but since this whole system is being overhauled, they are starting a new review committee, it seals like, some of these things could be adopted. And I am not exactly even sure right now how this part works. I mean, you hear all the facts and then just redetermine, basically, on these two points?

Katz: Correct, correct.

*****: Okay.

Katz: Jeremy, the other -- let me just say that after looking at the attachment c, this reflects another major problem that --

*****: He doesn't have that.

Katz: Okay, all right. This reflects another major problem that was identified by Multnomah county sheriff, at the local public safety coordinating council. That there is a revolving door within the criminal justice system. Us, and especially also at the county level, that a very small percentage of citizens create a huge enforcement issue for the county and the city. And we asked the question, you know, what is it that we need to do to change that because I think that that's part of the issue, in addition to the training, that that's part of the issue. This individual's, you know, has, appears, just from what we have in front of us, appears to have a real problem, and we keep recycling him through the system without dealing with those issues, and it's probably more a county issue because we don't provide the mental health support. So, I want you to know, because I felt badly, I think it was what, almost a year ago, or maybe six months ago, because you identified some critical issues for us, and this one happened to have come up just about that time with, with the council, and we are trying to figure out what change at least the county, with our cooperation, what changes do we have to make in the system so we don't have somebody coming in and out without somebody identifying the potential of a mental health issue and then doing something about it as opposed to releasing them or citing them -- that's really what you are saying?

Emmi: That, and in combination with what actually happens if it occurs, if the subject is released.

I believe the officers called for backup, and the officer, which said, fu, to the people was the one who arrived and he came out of an SUV and he was like 6'4", huge, tattoo on his arm and I knew it was obvious that from that rabies, it wasn't going to be, let's talk. It was going to be, you are going down now. Instead of him arriving, it could have been somebody in a suit, who, you know, just would talk to the individual for a second, and I know that, you know, you can't spend this kind of money and time on every person who we arrest in the city, but just seemed --

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Hales: I don't know if you were finished with your testimony. I have some questions for you based on some of that. So make sure that I understand. You are here because you believe that the complaint about language should be sustained, right?

*****: Right.

Hales: And perhaps, about conduct?

*****: Yes.

Hales: Okay. And mr. Emmi, I don't know -- this may be in the record but I didn't see it. Did you know this person, this suspect? Did you have any relationship with him?

Emmi: No.

Hales: Have you ever filed a complaint like this before?

Emmi: No.

Hales: So this is an unusual event under the old system, probably would be fairly unusual event under a new system, which is a completely disinterested citizen for, I would have to conclude laudable reasons is here with a complaint, right? You have got no ax to grind or relationship with this guy. That doesn't happen very often in the system. We get lots of complaints from people that have been arrested, and, you know, some of them have had a hard time and some of them have legitimate complaints but this is pretty unusual. So, and let me assure you, you were fairly close, physically, to this incident?

*****: Yes.

Hales: And you clearly heard the officer use that language?

*****: Oh, yes. I was even closer to that incident than the actual physical incident because he was walking right by me.

Hales: And the language was directed at citizens that aren't weren't otherwise involved?

*****: Yes.

Hales: Okay. So frankly, I would have to regard that as very credible, and I want to hear from the piiac advisors as to why they didn't find that very credible, given his bone fides and the lack of any ulterior motive on your part to describe the language to the officer. Frankly, if I had to weigh what I had in front of me I would have to conclude that the officer said what you said he said. Secondly, go back to the incident here, this -- we do have the, the council in, this weird situation here is provided with information that you don't have, and I think that it's not unreasonable for me to summarize that in saying that the subject of this incident wasn't a model citizen, but on the other hand, his -- the actual offense that precipitate this had was dropping a candy wrapper, and arriving in the heart of a city, in a 5,000-pound motor vehicle to arrest somebody for dropping a candy wrapper, is bad police procedure in a city that claims to practice community policing, but I guess, I think that part of the context that the court ought to consider here is, is that the actual, the actual offense, make sure that I am reading the record right. The actual offense which precipitated the rent-a-cops issuing a citation from the exclusion of the park was dropping a candy wrapper. Then the incident escalated when the citizen used extremely bad judgment and threw food in the officer's face and you are not contradicting that that happened, right?

*****: Actually, I am contradicting that.

Hales: Okay. Tell us more about that. What did you see happen?

Emmi: I was actually behind the subject's back, so it was actually hard to see the subject's hands, but from behind what happened was the city of Portland police officers came behind him and grabbed his arms so, 50-50, maybe he could have, with his one arm thrown it but at the same time, he had no control over that food once they grabbed his arms. The way it looked to me was the footed flew up out of his hands because his arms were pulled back.

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Hales: But he didn't have his hands free and go like this, right?

*******:** No.

Hales: You could see that much?

*******:** Yeah, I could see that much, and that's when the officer that got the food on him, you know, became enraged.

Hales: And this was the officer who had arrived in the SUV to do the arrest or this was the original officer?

*******:** The original officer. The officer in the SUV was one of the two that grabbed him from behind.

Hales: So there were three officers at that point? Or two?

*******:** There were, I think there were three of the, the running cops had on.

Hales: Oh, I am sorry.

Emmi: There was a total of five, three officers and two other cops there.

Katz: Yeah, we will -- let's finish with Jeremy and then we will come back because I recall, if I recall correctly, there was very crowded square, event, which is one of the reasons that there was some concern. I remember. All right. Further questions?

Francesconi: I am still back on the excessive force part. Now, are you, so are you saying that, you never told us exactly what happened. Why don't you tell us what happened?

Emmi: Okay. Basically, it started, they issued him the citation. The cops did, and I didn't hear what he said but obviously he said something like, I am not leaving and he sat there. And the two running cops were standing in front of him, just talking, you know, probably asking him to leave still. And then another officer was kind of in front of him and one was behind and then the other officer arrived.

Hales: The actual Portland police officer, could you draw that distinction, there is two?

Emmi: At the time I couldn't but later when I realized that the two of rent-a-cops I realized their uniforms were different but at the time I didn't know.

Hales: All right.

Emmi: And so then the officer that arrived and one of the other officers behind came up behind him and grabbed his arms. And before that, you know, he had stood up. He was standing, so basically, he didn't really know who was behind. I am sure that he must have realized that it was the police officers behind him but, you know, I mean, there really wasn't warning that they were going to physically accost him because the two rent-a-cops were still standing in front of them when that happened, not, you know, within arm's reach, really. And then as soon as they grabbed him, the food flew -- and they landed on top of him.

Hales: They landed on top of him?

Emmi: Basically, it was two years ago, but --

Hales: Yeah.

Emmi: And basically it lasted for quite a while, I mean, it was just like slamming his head down into the bricks and I know -- I realize that the, the picture taken at the police department didn't show bruises on his face.

Katz: That's not what you said in the IAD interview from our record.

Francesconi: Well, wait, before we get there, I just wanted him to say what he --

Katz: I am sorry, go ahead.

Emmi: Anyways, eventually, with the choke-hold and cuffing him and then holding his arms up like past his head, they finally got him under control and put him into the SUV. Basically, the excessive force, what I thought was excessive force, was just during that time, once they grabbed

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him and just basically, started, you know, beating him up. Not, it didn't seem to me, like they were trying just to cuff him or something. I mean, it was definitely combined with the sustained allegation of, you know, rubbing the food in the face. It was just little things like at that that just were really uncalled for and definitely excessive. I mean, you don't need to rub food in somebody's face to arrest them --

Francesconi: But back on the 4th for a minute, my last question, so what -- can you distinguish what it was about the takedown that was the most excessive in your mind? Was it the whole thing or was it the slamming in your words, the slamming his head into the bricks or what was it?

Emmi: I guess it was probably that and the choking. Once they got him back up the choke hold, was straight on his neck. And, you know, you could hear him gagging and everything. So, I guess those two things were the most. I mean the arrest, I thought was fairly excessive but after talking with captain smith I realized that, I mean, they are allowed to do a lot of the things that they did.

Francesconi: The thing that did jump out at me was your allegation -- what you thought you saw about slamming, and then I did notice in the file before that piiiac examiner said at the end that there were no photographs taken, and you started to address that. Were you surprised that it didn't show any photographs? Did it look like -- the photographs didn't show any damage? Or --

Emmi: I was surprised -- I don't even know if I actually saw a photo. I just -- everybody said that the photo didn't have the damage on his face. A photo?

Katz: Supposedly a jail booking photo.

*****: Oh, okay.

Francesconi: It's in the file.

Francesconi: Thank you, sir.

Katz: Further questions?

Sten: Yeah. Did you see the initial conversation between the security guards and him?

Emmi: I didn't see him drop the candy wrapper but I saw everything after that.

Sten: Did you see him walk over and talk to him? What did they say?

Emmi: Yeah.

Sten: What did they say?

Emmi: I saw it. There was so many people there, it was fairly loud, but basically what I saw was, they came over and they were actually pretty cool. You know, I guess basically said, you know, you dropped this and I am writing you up for it. You have to leave the square because it's private property. Or quasi-private-public or something.

Hales: They get confused about that.

Katz: Well, wait a minute was he under a trespass order?

Sten: He wrote the exclusion order after --

Katz: Okay.

Sten: So what I am trying -- yeah. And did you -- it was a candy wrapper?

*****: Yeah. Like a fairly small candy wrapper.

Sten: What I am getting at, which I think is a little different, at the end, particularly to gary, is that at some point, somewhere in the course of, with this, what this case shows to me, in the course of our future conversations, I think that we need to take a little bit of a look at kind of how we interact with those rules, and what I see is a police officer comes and tells this person has been issued an exclusion order but they don't -- he's not leaving. Therefore, you need to enforce it. So, we come into the scene, and it seems to me somehow there ought to be more communication if we are going to be policing to our officers, where did this exclusion order come from because when I first read the case, it read as if this is a known trespasser who has an exclusion order against him, and then

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what turned out is that he dropped a piece of litter and I think a reasonable person wouldn't expect to be excluded from the square for dropping a piece of litter but if I am a police officer and I don't know that -- I would expect somebody to be very angry, would have been kicked out of the square for littering, and I don't see the officer had any idea other than here's a guy who you need to remove forcefully, and I am not saying that very articulately but the communication between the security officer and police officer seems poor, at best, if the next thing we know the police officers are behind the person, it seems to me this confrontation should have been avoided. Whether or not the force was justified, given that the officers were called in to pull somebody out of there and it already escalated, I don't know, but I don't think that the officer should have been in a position of being in a violent confrontation with somebody who littered and has got to be some procedure that could be improved to lessen the chance of something like this happening.

Francesconi: On that point, commissioner Sten, since the pioneer square -- this is broader than pioneer square but I think you are right in terms of that, so I will look into it in terms of the parking, you know, the park side of this, but I think you are raising a broader question besides pioneer square but because of park's exclusions I will specifically look into it.

Katz: Thank you, jerry. All right. Why don't you all three come on up. You heard some of the issues -- I am sorry, denise, you didn't -- it's not your case, all right. The two of you or three of you.

Katz: You heard commissioner Hales and commissioner Sten raise some of the issues. Do you want to, bob or daryl, do you want to respond to any of them? Identify yourself for the record.

Wells: Yes, your honor. Robert wells, piiac citizen advisor. The first thing I would like to respond to is I think that maybe, perhaps, the summary of officer a., and I won't read all of it because I don't want to belabor the point but I think that this would give this more because what I did was I listened to the iad interview tape carefully and then I transcribed them to put them into this examination. It's unusual -- I transcribed them to put them into this examination.

Katz: It is quite long.

Wells: Yes, but getting to officer a on page four. How long was your knee on his head? Answer, to get him cuffed and check --

Katz: Just a minute, I want commissioner Hales to hear this.

Hales: Thank you.

Katz: Go ahead.

Wells: Pardon me. Okay. On the profanity aspect of it, commander kaufman's finding was, as to the allegation that officer b. Was discourteous and use the word, "f," in talking to the bystanders the appellant is the only one who asserts this. And on the way to the patrol car, bystanders confronted the officers and officer b. Told one bystander to get out of their way. Officer b. Admits to saying, quote, do you want to go next. What I wanted to read briefly from this is basically, just one second here concerning the idea of profanity, is that officer b., who was also a principal with the other officer a., who had the tray of food, I will go to page 6, and I will start with answer, he was grasping the lid of the container. Question, did the crowd get involved? Answer, 12:15, sunny day, there was quite a crowd. Youth crowd. There was a lot of yelling and screaming. That pioneer square corner is a hangout for street use. Had the potential to get real ugly if we didn't get him out of there. Question, did you or officer a. Say, fu, or do you want to go next. End quote. And answer, I know the words, do you want to go next but not, "f." that is out of character for both of us and second of all, why? There were a zillion people there at lunchtime. Why would we say that, end quote. The interview ended after officer b. Mentioned that the subject was photographed at old town center and was taken to jail for booking. And this, to me,

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makes just plain common sense. I've been at lunchtime down at pioneer square. And for an officer to use that kind of language in front of those kinds of witnesses, it just doesn't work to me at all.

Hales: I am not sure if I have that page right here, but the officer didn't categorically deny he used the language. He asked a rhetorical question about that. He didn't say no, I didn't do it. He said, why would I do that. Is that correct?

*****: Yes, sir. He said that's -- I concluded from that answer a no because using logic on that, why would -- using common sense --

Hales: Well, frankly --

*****: Why would the officer say that in front of a whole crowd of people --

Hales: Robert, one could also conclude that that was a clever answer and that he didn't categorically deny it but he asked a rhetorical question, it's an old debaters trick and it may have been used in this case but you just told me something else pretty unusual. Here we have got -- it seems to me where there's smoke there is a fire situation. You have a citizen disinterested who says an officer said what he said. And then you have got a crowd confronting two officers addressing -- arresting someone, also not a normal situation. What's going on here?

Wells: It's one person's word against another, commissioner.

Hales: One person who has absolutely no interest in distorting this story --

Wells: Does that give him more value?

Hales: Gives him more credibility. If I was accused of something by something completely disinterested, I would expect people to take their story before mine.

Wells: I didn't see it that way, sir.

Katz: Darryl, did you want to add anything? Are you finished bob?

*****: Yes, ma'am.

Katz: Darryl, did you want to respond?

Darrel Schenck, Portland Police Bureau, Internal Affairs Division: Yes, darrel schenck, internal affairs Portland police. Commissioner Hales, I would agree with your conclusions there. But, I would add that in support of the officers statement about using that language, he was in his interview, he was asked specifically and he said definitely not, that he did not use that language, and generally, as I said, first I would agree with you that a disinterested person with no ax to grind would have some credence in this case, except for the fact that both officers and the other security guard at the site, at the time, also said that there was -- that the officer did not use that language. So, that, that kind of adds a little credency to the direction, and that, I think, is how I based -- how the bureau based its opinion as far as not being able to sustain the officer on language.

Hales: Is there -- is there general agreement that the officer said, do you want to go next?

Hess: Yes, sir.

Hales: And the piiiac advisors did not find that that was inappropriate language?

*****: I don't --

*****: I think the advises affirmed the iad finding.

Hales: That?

*****: That it was not inappropriate. That it was -- I believe that that was insufficient evidence on that one.

Hales: It sounds like there is plenty of evidence that he said it, but their conclusion was that that's okay?

Schenck: The officer admitted to making that -- the first part of that statement. Do you want to go next. As I described there was -- they were trying to get this arrested person out of a crowded

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square and there was a lot of yelling going on by the people in the square, and that statement was said to some person that was coming up close or getting in their way and that's reasonable.

Hales: Wow: Okay.

Francesconi: Officer I have a different subject and the questions are really not relevant to this. I don't think. I am less concerned about kind of -- well, I am more concerned about use of force, frankly, for a candy wrapper, and we don't know if the person is mentally ill or not, but now we have had an allegation that the person is mentally ill --

Katz: Whoa, allegation --

Francesconi: I know. We don't know that that's true. There is no evidence of that. But, what would you -- what would be the best way to handle this from a police standpoint? I mean, is there another way that we could handle this? The question is not relevant because that's not what's in front of us but you would not like to see this handled this way as a general rule, I don't think?

Schenck: No, no.

Katz: Darryl, you have been around for a long time. Answer commissioner Francesconi's question.

Schenck: Well, my approach would be to move a little bit slowly and take the information given to me by the witness or the security guard at this point and maybe observe the person, find out if he is causing a disturbance. Dropping a candy wrapper is pretty darn minor, and you are right, I wouldn't expect the kind of reaction to that, to have taken place. Although there were some other things that did happen. In the interview in our interview with the security guard, he said first that the person actually was doing more than just dropping a candy wrapper. He was throwing food at people so that was one of the reasons that he called us. And so we responded to that. The officers, in getting a little bit more towards the use of force issue, the officers talked to the security guard first and got some information, and in their statements, they did go up and make contact with the suspect in this case, and told them several times to get up, that he had to leave. And it was at that time that the person suddenly jump -- jumped up and threw the bowl of food into the officer's face, and became violent, flailing his arms and of course, the officers I expect immediately responded, grabbed the man and took him to the ground. These officers are pretty good sized officers, at least the one, and I know him, and I know he's a big officer, and so it would have been fairly easy for them to take this man right to the ground and hold him. Without becoming violent and slamming him and kicking him, kneeing him and several of the things that we have heard. The only supporting information about slamming the person's head into the ground and kneeing him and kicking him comes from the appellant in this case, and not from either of the officers and not from the security guard, and as we know, there were no other citizens that came forward with the complaint at that time. Well, at all. I would say to mr. Emmi, that this kind of an arrest is difficult to watch. It gets very violent, very quickly. It is very quick. It's easy to not be privy to everything that's going on, that causes officers to have to take some sort of action or that causes a person being arrested to take the action that they take. And so I can certainly appreciate why mr. Emmi feels the way he does and has stood it out for two years, almost, to make his point in front of city council. I don't blame him for that at all. And I appreciate him coming forward, too, as well. But, I do understand, and I can appreciate the quickness and the violent nature of an arrest where suddenly police officers are required to grab someone who is violent, to go to the ground. It is -- it's violent to see.

Katz: Further questions? Okay. Thank you. Council?

Hales: Well I haven't gotten to the point where I am ready to make a motion but seems like this one we ought to discuss a little bit. There are a couple of layers to this one. Jim, I think that there

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is a serious problem with the security officers in pioneer courthouse square and I know you are interested in looking into that, and I have some more thoughts about that, as well, and we can maybe talk about that later. So, that was one of the problems here. But, that's not what's before us.

But I guess part of the, you know, part of why we go through this process, whatever process we have, old or new, is we freight learn some things, and I hope the new process -- is we try to learn some things. And I hope the, I hope that we do that. The only person that hears these hearings is someone from iad. You wonder if management is listening. I suspect that they are not so, 24 discussion. You wonder if management is listening to the iad process and I guess at some point the commander reviews these cases in the old and new system so we hope to learn from these things, whether it's about how we contract for security and what is supposed to be the public square, not the center of a shopping mall, that sometimes folks over there get a little confused about that. And then I guess the other thing that I hope that we could do is learn about how we, we, how we practice policing, and I guess again, I hope the new system works better than the old one has. Because I think that there is some repeat offenders, quote-unquote in the bureau as well as repeat offenders out there in the community. Frankly my evaluation of this is we have two people at least two people, one on each side of this conflict. An anger management problem. The suspect had an anger management problem, and so did at least one of the officers that arrested him. So what do we do about that? And how do we do a better job next time? So what finding we attach, you know, may or may not influence our learning curve individually or corporately. But, I guess rambling, thinking out loud here but I am not prepared to change the finding on use of force because I think that there we don't have enough evidence. We certainly have conflicting stories, and I think that it's sort of a fog of war situation, everybody looks at a conflict a little differently, and it is hard to watch and arrest. But, we have a disinterested citizen who says he clearly heard an officer use very inappropriate language. I would say the language you want to be next is inappropriate. Not to mention the profanity. So again, I think that there's another -- another couple layers to this. Again, I think the -- there is a problem in our community about how we treat young people. There is a problem in pioneer courthouse square about how we treat young people. Some of those young people are street kids, and some of them have criminal records and some of them are neither. So that was an influence here. But, whether they are street kids or anybody else yelling or even saying, do you want to be next, is at least inflammatory, and using profanity is way over the line. So I guess I would make a motion that we adopt a finding of sustained in the matter of language. And leave the other findings as recommended.

Sten: You mean the courtesy on officer a.?

Hales: Yes, the courtesy, sorry.

Katz: And the piii advisors found insufficient evidence?

Hales: Right.

Katz: Because it was -- one person versus four. Or five. Okay.

Francesconi: If I could think out loud --

Hales: I said that I wasn't ready to make a motion, maybe nobody else is, either, so that's what I am thinking.

Katz: Let me go back -- let me go back and in our new system, would we place the appellant under oath since the officer, correct me darrel is, under oath in iad complaint?

Schenck: Well, he's under orders to tell the truth.

Katz: The truth.

Schenck: Subject to being disciplined up to and including termination, he's not sworn in under oath.

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Katz: But he's subject to termination or discipline if he doesn't tell the truth?

Schenck: Yes, ma'am.

Katz: And the appellants are not subject to any of that? In our new system, would they be subject to --

Blackmer: Ask them to sign a statement, attesting to the --

Katz: And I don't mean to impugn anybody at this point but you have a very unbalanced system here, which is probably why -- yeah, well, it is unbalanced because there is some --

*******:** I would like to add something --

Katz: And I think that we corrected that in the new code because I think that that was a discussion that the piiac advisors had.

Blackmer: On the profanity, this is an issue that piiac has brought before the chief council because there is a general order that says no members shall use profanity in the performance of their duties, except where necessary to establish control or to quote another person in the police reports or in testimony. And I guess to then, in order to sustain that complaint, you need to reach the conclusion that the officer didn't need to establish any control in that situation, and I guess we have -- piiac has made recommendations to the chief to take that profanity, that clause out and basically say, let's not do profanity and in those rare cases when profanity does come out, we can take it incident-by-incident. I would think that, I mean, basically, what -- you are saying that the officer maybe -- let me ask it a different way. Are you saying that the officer exceeded the general order or what you believe you would want an officer to do?

Hales: Both.

Blackmer: Meaning he didn't need to control the situation with profanity there?

Hales: Right.

Sten: Well, I mean, I am closer -- I think that he was -- in my -- I am real close on this one. I think that, that the professional conduct was sustained, so he had a sustained finding put on his record based on this. Had he not, because I do think that he, you know, I find it -- these things are hard to call and sometimes when you look at it on a fresh, you know, we don't hear as many things directly as you do. The thing I find hard is the argument, why on earth would I do that. I am a thoughtful person, when on the same record sentences before he's saying yeah, I did rub rice in his face because I was mad, and those are inconsistent. I mean, he says that he was mad and that's why, he put the food container on the man's head. But, then he's saying but of course, a reasonable person wouldn't swear in this situation. He was obviously angry. He probably had a right to be angry. I think more correctly he had rice thrown in his face. That doesn't completely square with, with the description that the person came up behind him so there's -- but he said in his own testimony that the guy treated him disrespectfully was mad and then he goes on to say but, of course I wouldn't swear because I was, you know, wanted to be in control so these things don't add up but truthfully I don't have sufficient evidence. If the -- with the security officers agreeing that they didn't hear him swear, that moves me that I am going to stick with insufficient even though I am kind of not sure about the whole thing and I want to make some comments about going out and getting third party witnesses. Which, in this case, I think we had. I think if, for example, if the, if this, if the person who was arrested had made this complaint and the complainant had been a third party witness I think that it would have been upheld. So, this is, I mean, I am just guessing but I think that if somebody else made the complaint and suddenly he had come forward and said yeah, I heard it, too, probably would have been upheld but we have a third party witness that -- so, I don't think is disinterested in how this played out but they said the person didn't say it so I have to call them liars, as well as somebody else to, to come to it, so I think insufficient evidence for me is

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there and there is a sustained complaint, I am comfortable with that because I think that the officer did probably act out in anger too far and but he has had a complaint on his record, as part of this, and I think that we can also learn from it. So that's where I am at. I will uphold it --

Katz: I just want to let everybody know, I had been in constant conversation on this particular issue, and I think that you have asked the chief why he doesn't change the change, why he doesn't make the change, and I think his response was if you get a situation out of control and you pull out some weapon, somebody is going to say well, why didn't you just say some nasty words to control him before you escalated the issue to maybe a more dangerous level. And I listened carefully to that, and I sort of -- I did what you just did, and I am still not convinced that that, that that is a response that I wanted to hear. I also need to tell you that we did some best practices in there, a lot of communities they don't have that general order, so I will continually pursue that and my open is, darrel, that you take a look at it and take a look at the report that we did on best practices and gary, that you follow up on that because I think that really does get us into a tremendous amount of, of difficulty with the community.

Hales: I want to go back to something erik said. I think that there is a sustained finding for officer a. But not for officer b.. It's officer b. Who was accused of using the language. So, officer b. At this point is walking away from this without anything on his record, right?

*****: Yeah.

Hales: Do I have that right?

Wells: Yes. Can I briefly say that officer a. Got sustained for the conduct regarding the food container thrown at his face. Officer b. Was the officer who was accused of saying the profanity.

Sten: Okay, that's my mistake then. That's my mistake.

*****: I want to make that clarification.

Hales: Right. That's the were you not that -- that's the one that I am interested in changing is courtesy on officer b..

Francesconi: The problem that I have --

Hales: Or conduct for unprofessional, whatever we want to call it, I mean, you know, I am sorry but that's, you know, that, I believe mr. Emmi's account, I believe it happened.

Katz: But there is a general order, and that's one of the -- that's one of the problems is that the question was, was he not following general order.

Hales: Let me put it differently. I believe officer b. Used poor judgment and poor police procedure in dealing with this incident. How we label that in some hearing, I am open to suggestions about. But, calling it unprofessional conduct or discourtesy seems close enough to me, given the parameters that we are now operating in, and hopefully won't operate in very much longer.

Katz: Darryl?

Schenck: Darrel schenck. The general order on the use of profanity to control someone, we will be looking at that.

Katz: Good.

Schenck: Very closely. The way that order is applied is to cases that I don't think are such as this particular case, are cases that are, that are serious where we have, perhaps, a, a close to a deadly force situation where an officer uses some sort of language to immediately get a person's attention or to stop a person or to impress on a person that they are deadly serious, and so that's kind of the idea. And suddenly if an officer does, in a situation that is wrought with extreme danger, and others, profane word, is he in violation and will he be held accountable to the go? The idea behind the way this is written, is to mitigate that particular kind of a case. This case I think is a little bit

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different. I think the officers, although they are struggling to control this person, the need for profanity directed toward a bystander is outside of what I think using profanity to control an officer is used for.

Hales: There is a difference between drop the blank gun or drop the blank baseball bat, and yelling at a crowd who are not suspects of anything.

Schenck: I agree. I think we go back, though, to the fact that the only person that hurt any profanity and reported it was, was the complainant in this case. And all the witnesses, the officer and the security guard said that definitely, that it did not happen. Not that they didn't just, I know that there was a question asked back. I wouldn't say that in this situation, would i, or something like that. But also, under interview stated absolutely not that did not use that language. The security guard said absolutely not, so I think that makes it -- difficult to overturn it and find the officer essentially not being truthful in this case.

Hales: We have got this nice fountain down in the corner of the city we are quoting about good citizens and here we have got one disinterested citizen. How many does it take to be credible? One is enough for me.

Blackmer: One of the things in the appellant's interview he does say at the end is that the officers were being yelled at by people at pioneer square and that was in response to it. That it was, wasn't just some quiet bystanders. So to that degree, I mean, if control is an issue, in those kinds of situations, then, you know, the general orders authorize it, and I guess, I am all for making sure that our general orders are in line with our expectations of those officers, but if an officer feels like he or she is found with the general orders, we are still finding that they are -- that they are doing something wrong, then we need to look at the orders first. And not necessarily the officer.

Francesconi: I guess that's where I am at. I heard you interpret the general orders, officer, but that's not exactly how it reads. And I don't want you to look at, the police chief kroeker to look at the general order on profanity, I want you to get rid of it. This is the kind of case because it just escalates that kind of behavior so it's just -- there's no place for it because it doesn't control even if you intend it to control. On the more serious question for me, at least, of excessive force, I am struggling with it just because again, of the credibility of an independent witness who I find very credible. And I guess I would say commissioner Hales if you are going to accept it on one side, you almost have to accept it on the other.

*****: Fair point.

Francesconi: And the only, again, we have no other witnesses, witnessing it. I guess the two reasons that I am not, although I am struggling with it, not ready to overturn this, is again, it is the photographic evidence and the fact that we have got ten of our people kind of considering this and saying that they didn't think it exceeded. I don't want to defer my judgment piiiic, but in this kind of case where it's a really close call, in fact it was 10-0, I have to say is influencing me, but the thing that I am more influenced about is the lack of photographic evidence, if he was really slammed three times in the brick, which I consider to be the most serious thing.

Katz: Let me say that again, that the appellant changes his story at the iad interview. Take a look at the bottom of page 2.

Francesconi: I did.

Katz: So now what do you do?

Francesconi: Well, I did. But that is hard to remember exactly what happens.

Hales: It's been a while.

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Francesconi: And when you have somebody that's not directly impacted by it -- it is a factor in my mind but not as strong as the lack of photographic evidence. If he was really slammed three times who takes those pictures, the sheriff?

Hales: Well, maybe it was the back of his head. Who, who reviewed the photographic evidence? You did, robert?

Wells: I did. I looked at the dso of the photograph that was done by the sheriff, and there was no lacerations or markings, whatever on him.

Blackmer: He was facedown.

Francesconi: So that's the reason I can't.

Katz: Okay. I will take a motion.

Hales: Well, so we have questionable recollection and conflicting information about the use of force, and therefore, I think a finding of insufficient evidence is the only appropriate one there. But, we have granted, we also have a dispute about at least the profanity, but not about the officer saying, you want to be next. I believe that, that the combination of the language which I believe was used and the language which it is agreed was used crosses the line of courtesy, and that we ought to change the finding for officer b. On courtesy to sustained. So I would move that.

Katz: You would do it on -- rather than insufficient evidence, you would do it on sustained?

Hales: We have a citizen coming forward --

Katz: You have a dispute?

Hales: Yes. We have a --

Katz: And how do you get to sustained versus insufficient evidence?

Hales: Because we have no way after the fact, other than he said, she said, to decide a question of language. No one recorded the incident. But we do have a recording of whether the guy sustained injuries and that recording, ie, the photograph, seems to indicate that he was not seriously injured. Therefore, I can't sustain that finding. But, I am giving the benefit of the doubt and making this motion to, unless the police bureau now wants to question his bona fides, and saying he has some reason for making this accusation of political or personal interest, say so.

Schenck: I have no reason to suspect that.

Hales: So -- okay so, we have what appears to be a completely disinterested person who stuck with this process for two years, who said the officer yelled, the "f" word and yelled to the crowd, do you want to go next, and we ought to sustain his accusation in the form of a finding, period. So that's my motion. To change courtesy to sustained.

Katz: Is there a second? All right, I will take another motion. Motion fails.

Francesconi: Do you want to go?

Sten: Well, I don't know if there is -- if it's actually -- I will explain my thinking if we have a vote on it, but I would move to uphold the piiac advisor's findings in total.

Katz: Second?

Francesconi: I was debating between going to unfounded and on courtesy will I will second it.

Katz: All right. Roll call.

Francesconi: I have already said my part. This is an extremely close case and this is not the kind of behavior that we want to model with our police. We are lucky to have this independent witness here, let's learn from it. Aye.

Hales: No.

Sten: Well, a couple of quick thoughts, and a couple of thoughts, particularly for gary. I think this case is a poster child for where the public doesn't have confidence in our past system. Because I don't think that we had a thorough enough kind of look at this. The reason I think the piiac

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advisors are right is that I think that the exonerated on the use of force, I think that they used -- I can't know for sure but I think that given that the situation escalated to this point, they used police tactics to take the person into custody. I believe in my head and heart that it didn't need to escalate to that point, and I don't see -- what I don't see from the bureau is, and this is what just, bothers me more than the ambiguity of the way these cases come to you, is that time in and again, a citizen makes a complaint and the literal words of the complaint are debated for two or three years to come up with whether it is sustained or not and nobody gets at the point of what happened and the point of what happened, I think, was that we had a violent confrontation over somebody dropping a piece of litter. If I am wrong on that, then the investigation should have shown me that that isn't what happened. The investigation didn't even get into that, and I want to see us take these cases and if we can't then I really think that I will probably support the citizen's measure on the ballot because I think the point of the cases has got to be how do we improve the situation, and the way that we improve the situation is to come in and figure out how do we avoid having to take a guy down over a piece of litter, and there is just nobody looks at it. It's like he said this, this, and this, so let's go down the list and say if we can say yes, no, and we miss what actually happened here. And I am not blaming you, I mean, it's just kind of the way it goes and I am looking for this new system to try and have some discussion of the bigger picture and it's far more important to me how does the security officers at pioneer square and the police handle potentially mentally ill, potentially angry person who litters, than it is whether or not this complaint gets sustained. Ultimately I think that that's very, very important. The reason that I think that I can't quite go there on the courtesy, even though I do believe you, is that we have two security guards on the record saying it didn't happen. If it was just the police officer saying I didn't do it, and an unbiased witness saying that you did, I would go with the unbiased witness because for the simple reason that, that they don't have anything to win or lose. In this case, the security officer, I think you can make the case that they have an interest in showing that the conduct went well but I think at the end of the day they are not accused, they are third parties and they did take that stance and conflict and that's the only reason I didn't go there. In my heart I have a hunch that maybe a swear word was used but we have witnesses that say it wasn't so i'm not going to presume to know that. I can't get that far. The other point that I think we really have to do, and it's going to take judgment, which is why, I mean, why I supported this because I think that we have people with good judgment who will be in power to use it, which is we have got to look at the cases quickly and the cases that seem like something seriously happened and there was a crowd around, we need to go out quickly and find somebody who is there and ask them because just time in and time again, I remember the one up at the high school, this one was even easier than pioneer square to figure something out, an officer got into a beef with the kid in front of teachers and students who go to it, the officer said it didn't happen and the kid said it did, that's ruled insufficient because they canceled each other out and nobody asked anybody who was there. And this is another one where, I think that, you know, when these things come in, before it gets to be two years, if we could just round up a little bit of, of, you know, we probably know what event was happening in the square that day, you know, just ask somebody who saw it, and I have got to say that I really don't think that this is -- I think that this would in the police's interest. The one up at the high school, I actually thought that there was a good chance that the police were right but no citizen could creditably that he said, she said and therefore nothing happened is a good investigation so this is one where I think that just a couple of hours into it might have exonerated the officer or might have proven your point but just a little more push into it and then a little more discussion of the actual context of what happened here. But I think that given the evidence that we have, the piiac advisors made the right, made the right findings and I

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very much appreciate your following this through. I hope it will have a beneficial effect and I think that it has. And you know, I can't see where you would have done this for two years if you didn't feel strongly about it so thank you. Aye.

Katz: Absolutely agree with everything commissioner Sten said so I don't want to take the time. I think the profanity, general order needs to be repealed, and captain, I think we have had other issues to deal with but that one needs to be repealed. I haven't heard any reason to keep it. I think that the chief has a group looking at that particular general order, but you may want to weigh in on it, and gary, you may want to weigh in on it, as well. Because I won't be -- in fact, had the motion been insufficient evidence, I probably would have supported it. I would not -- I can't support a sustain. So, I am at the point where if those are the issues that come before us, on profanity, I am going to be a little bit more of a hard nose on that one. The square was a volatile, and I see what goes on, on the square. It could have turned into a very difficult situation. But, this gentleman has had, run-ins with probably the same people on the square over and over again, and probably know him and maybe even the officers know him, and I think a little bit more care and moving a little slower would have diffused the situation. Maybe not. There was spitting, there was waving arms, there was throwing food, and that, I know, escalates the emotions but I hope you are professional enough to be able to control ourselves when that happens. We will be continuing to do additional training for the crisis cit teams, and we have to figure out what to do with the gentleman in the square when he keeps moving in and out of the criminal justices system, and it appears just from the record not a place for him. It appears that he has other issues that need to be identified and dealt with. Jeremy, I think I said that evening that this was a very difficult case, maybe not to you but to others, and I said we probably aren't going to agree with you. You said you were a law student, is that -- I hope -- did you graduate yet? You did? Are you practicing? No. Well, I hope that this will give you sort of a foundation. I don't know where you are going to go with this now but I do want to thank you for staying with it for two years, and wish you much, much luck. Aye. Thank you, everybody, and we stand adjourned.

At 3:20 p.m., Council adjourned.