



CITY OF
PORTLAND, OREGON

OFFICIAL
MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **1ST DAY OF DECEMBER, 2004** AT 9:30 A.M.

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

Commissioner Leonard arrived at 9:32 a.m.
Commissioner Saltzman arrived at 9:33 a.m.

Commissioner Francesconi left at 12:36 p.m.

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

Items 1360 and 1364 were pulled for discussion and on a Y-5 roll call, the balance of Consent Agenda was adopted.

TIME CERTAINS	Disposition:
<p>*1354 TIME CERTAIN: 9:30 AM – Adopt a procedure by which owners of private real property may file claims pursuant to Chapter 197 of Oregon Revised Statutes as amended by Ballot Measure 37 passed by voters on November 2, 2004 (Ordinance introduced by Mayor Katz; repeal and replace Code Chapter 5.75)</p> <p>Motion to amend the section entitled "Investigation and Recommendation by Program Manager" adding a subsection d that would say "the Program Manager shall provide notice of the claim to all property owners within 500 feet of the property that is the subject of the claim and also notify the Neighborhood Association: Moved by Commissioner Saltzman and seconded by Commissioner Leonard. (Y-2; N-3, Francesconi, Sten and Katz) (Motion Fails)</p> <p>Motion to amend 1354 for any claims submitted before the Council establishes the fee, the City may bill the owner for the fee amount, so established: Moved by Commissioner Leonard and seconded by Commissioner Francesconi and gaveled down by Mayor Katz after no objections.</p> <p>(Y-5)</p>	<p>178924 AS AMENDED</p>
<p>*1355 Amend the Land Use Services fee schedule to include a temporary new claims processing fee to cover a portion of the City cost of processing claims for just compensation arising out of land use regulations (Ordinance introduced by Mayor Katz)</p>	<p>REFERRED TO COMMISSIONER OF FINANCE AND ADMINISTRATION</p>

December 1, 2004

<p>1356 TIME CERTAIN: 9:45 AM – Authorize expansion of the City public art program to include the Public Art Murals program (Ordinance introduced by Mayor Katz; amend Titles 5, 32 and 33)</p>	<p align="center">PASSED TO SECOND READING DECEMBER 9, 2004 AT 2:00 PM TIME CERTAIN</p>
<p align="center">CONSENT AGENDA – NO DISCUSSION</p>	
<p>1357 Accept bid of Par-Tech Construction, Inc. for the Fire Station 23 and Logistics Center Remodel Project (Purchasing Report - Bid No. 103370) (Y-5)</p>	<p align="center">ACCEPTED PREPARE CONTRACT</p>
<p>1358 Statement of cash and investments October 21, 2004 through November 17, 2004 (Report; Treasurer) (Y-5)</p>	<p align="center">PLACED ON FILE</p>
<p align="center">Mayor Vera Katz</p>	
<p>*1359 Approve settlement with Robertson Merryman Barnes Architects, Inc. and Tetra Tech/KCM, Inc. regarding the Portland Classical Chinese Garden Pond (Ordinance) (Y-5)</p>	<p align="center">178907</p>
<p>*1360 Settle Lawsuits of Lloyd Marbet, et al. and William Ellis, et al. (Ordinance) (Y-5)</p>	<p align="center">178923</p>
<p>*1361 Pay claim of Andrea Andrews (Ordinance) (Y-5)</p>	<p align="center">178908</p>
<p>*1362 Amend contract with Hennebery Eddy Architects, Inc. for continuation of architectural and engineering services for the remodel of Fire Station No. 28 (Ordinance; amend Contract No. 33921) (Y-5)</p>	<p align="center">178909</p>
<p>*1363 Authorize purchase of Constructw@re project management computer software licensing from Emerging Solutions, Inc. for the Combined Sewer Overflow projects at a cost of \$316,015 (Ordinance) (Y-5)</p>	<p align="center">178910</p>
<p>1364 Authorize revenue bonds to finance the Enterprise Business Systems Project (Ordinance)</p>	<p align="center">PASSED TO SECOND READING DECEMBER 8, 2004 AT 9:30 AM</p>
<p>*1365 Apply for a \$245,000 grant from the U.S. Department of Justice, Bureau of Justice Administration for the Gang Resistance and Training Regional Training Administration for the Western Region (Ordinance) (Y-5)</p>	<p align="center">178911</p>
<p>*1366 Accept a \$28,000 grant to the Police Bureau for the Lents/Brentwood Darlington Weed & Seed Program (Ordinance) (Y-5)</p>	<p align="center">178912</p>

December 1, 2004

<p>*1367 Authorize acceptance of a Historic Preservation Fund grant of \$40,200 to support the City historic resources program for the federal FY October 1, 2004 - August 31, 2005 (Ordinance)</p> <p>(Y-5)</p>	<p>178913</p>
<p>Commissioner Jim Francesconi</p>	
<p>*1368 Authorize Intergovernmental Agreement with Multnomah County to provide funds for Department of Community and Family Services Schools United Neighborhood initiative (Ordinance)</p> <p>(Y-5)</p>	<p>178914</p>
<p>*1369 Authorize acceptance of 90,200 square feet of property in the River District from the Portland Development Commission for neighborhood park purposes (Ordinance)</p> <p>(Y-5)</p>	<p>178915</p>
<p>*1370 Amend the Intergovernmental Agreement with Multnomah Department of Human Services' Area Agency on Aging for the period July 1, 2004 through June 30, 2005 (Ordinance; amend Contract No. 32024)</p> <p>(Y-5)</p>	<p>178916</p>
<p>*1371 Authorize a grant to Linnton Community Center for operational costs (Ordinance)</p> <p>(Y-5)</p>	<p>178917</p>
<p>Commissioner Randy Leonard</p>	
<p>*1372 Increase contract with Robinwood Consulting Group, LLC by \$4,000 for completion of strategic plan project (Ordinance; amend Contract No. 35272)</p> <p>(Y-5)</p>	<p>178918</p>
<p>Commissioner Erik Sten</p>	
<p>*1373 Amend subrecipient contract with Metro Home Safety Repair to provide an additional \$70,158 for a total of \$140,316, extend termination date and provide for payment (Ordinance; amend Contract No. 35355)</p> <p>(Y-5)</p>	<p>178919</p>
<p>*1374 Amend subrecipient contract with Unlimited Choices, Inc. to provide an additional \$77,953 for a total of \$155,906, extend termination date and provide for payment (Ordinance; amend Contract No. 35367)</p> <p>(Y-5)</p>	<p>178920</p>
<p>*1375 Amend subrecipient contract with Community Energy Project to provide an additional \$54,567 for a total of \$ 109,134, extend termination date and provide for payment (Ordinance; amend Contract No. 35426)</p> <p>(Y-5)</p>	<p>178921</p>

December 1, 2004

<p style="text-align: center;">City Auditor Gary Blackmer</p> <p>1376 Certify abstract of votes cast at Municipal Non-Partisan General Election held in the City of Portland, November 2, 2004 (Report) (Y-5)</p>	<p style="text-align: center;">ACCEPTED</p>
<p>*1377 Assess property for system development charge contracts (Ordinance; Z0750, K0071, T0085, K0070, T0084) (Y-5)</p>	<p style="text-align: center;">178922</p>
<p style="text-align: center;">REGULAR AGENDA</p>	
<p>1378 Amend City Parks exclusion provisions to improve public safety by defining more specifically the offenses for which no warning is necessary prior to an exclusion (Ordinance introduced by Mayor Katz and Commissioner Francesconi; amend Code Section 20.12.265)</p>	<p style="text-align: center;">PASSED TO SECOND READING DECEMBER 8, 2004 AT 9:30 AM</p>
<p style="text-align: center;">Mayor Vera Katz</p>	
<p>*1379 Adopt budget adjustment recommendations and the Minor Supplemental Budget for the FY 2004-05 Fall Budget Adjustment Process and make budget adjustments in various funds (Ordinance) Motion to accept the substitute Exhibit 2: Moved by Commissioner Leonard and seconded by Commissioner Sten. (Y-4)</p>	<p style="text-align: center;">178925 AS AMENDED</p>
<p>*1380 Authorize a labor agreement with the City of Portland Professional Employees Association for terms and conditions of employment of certain represented City employees with Information Technology classifications (Ordinance) (Y-4)</p>	<p style="text-align: center;">178926</p>
<p>S-1381 Amend Title 33, Planning and Zoning to clarify and improve the regulations for accessory structures including accessory dwelling units, without changing policy or intent of the original regulations (Second Reading Agenda 1349; amend Title 33) (Y-4)</p>	<p style="text-align: center;">178927</p>
<p style="text-align: center;">Commissioner Randy Leonard</p>	
<p>1382 Establish Development Review Advisory Committee membership, scope, and Council reporting relationship (Ordinance; amend Code Section 3.30.030)</p>	<p style="text-align: center;">PASSED TO SECOND READING DECEMBER 8, 2004 AT 9:30 AM</p>

December 1, 2004

Commissioner Dan Saltzman	
<p>*1383 Authorize the sale of the former Georgia Pacific Chip Plant site and provide an easement to the City of Lake Oswego to facilitate the construction of a new city park and open space (Ordinance)</p> <p>(Y-4)</p>	178928
<p>1384 Authorize Net Metering Agreements with Portland General Electric and Pacific Power & Light Company to buy and sell electricity from photovoltaic systems at Fire Stations 16 and 25 and a wind turbine at Sunderland Yard (Second Reading Agenda 1351)</p> <p>(Y-4)</p>	178929

At 12:51 p.m., Council recessed.

December 1, 2004

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **1ST DAY OF DECEMBER, 2004** AT 2:00 P.M.

THOSE PRESENT WERE: Commissioner Saltzman, Presiding; Commissioners Leonard and Sten, 3.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Kathryn Beaumont, Senior Deputy City Attorney; and there was no Sergeant at Arms.

<p>1385 TIME CERTAIN: 2:00 PM – Consider the Land Use Board of Appeals remand of the application by Michael and Suzanne Lehne for a 21-lot subdivision with adjustments to address the safety for bicycle and pedestrian traffic at 7915 SE 162nd Avenue (Evidentiary Hearing; LU 03-142811 LDS AD)</p> <p>Motion to tentatively accept the supplemental findings into the Hearings Officer's decision previously adopted: Moved by Commissioner Leonard and seconded by Commissioner Sten.</p> <p>(Y-3)</p>	<p>Disposition:</p> <p>TENTATIVELY UPHOLD ORIGINAL COUNCIL DECISION WITH SUPPLEMENTAL FINDINGS; PREPARE FINDINGS FOR DECEMBER 8, 2004 AT 2:00 PM</p>
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At 2:25 p.m., Council recessed.

GARY BLACKMER
Auditor of the City of Portland

By Karla Moore-Love
Clerk of the Council

December 2, 2004

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **2ND DAY OF DECEMBER, 2004** AT 2:00 P.M.

THOSE PRESENT WERE: Commissioner Saltzman, Presiding; Commissioners Leonard and Sten, 3.

OFFICERS IN ATTENDANCE: Susan Parsons, Acting Clerk of the Council; Kathryn Beaumont, Senior Deputy City Attorney; and there was no Sergeant at Arms.

<p>1386 TIME CERTAIN: 2:00 PM - Tentatively grant the appeal of Reed Neighborhood Association and overturn Hearings Officer's decision to approve the application of John Welsh, Michael Andresen and Pamela Andresen for a zone map amendment and land division and uphold Hearings Officer's decision on the adjustment at 3407 SE Steele Street (Findings; Previous Agenda 1179; LU 04-017115 ZC LDP AD)</p> <p>Motion to affirm tentative decision, grant the Neighborhood's appeal and overturn the Hearings Officer's decision and adopt the findings labeled option one: Moved by Commissioner Leonard and seconded by Commissioner Sten.</p> <p>(Y-3)</p>	<p>Disposition:</p> <p>GRANT APPEAL; OVERTURN HEARINGS OFFICER'S DECISION ON REZONE AND LAND DIVISION; UPHOLD HEARINGS OFFICER'S DECISION ON ADJUSTMENT; ADOPT FINDINGS</p>
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At 2:41 p.m., Council adjourned.

GARY BLACKMER
Auditor of the City of Portland

By Susan Parsons
Acting Clerk of the Council

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

December 1, 2004
Closed Caption File of Portland City Council Meeting

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

Key: ***** means unidentified speaker.

DECEMBER 1, 2004 **9:30 AM**

Karla, please call the roll. [roll call taken] we'll wait until we have a quorum. At least four people.

Katz: On the consent calendar, what items do we have? I'm pulling 1360.

Moore: And 1364 is also being pulled.

Katz: All right. Let's take the consent calendar. I'm pulling 1360 and 1364 for discussion. Anybody want to pull an item off the consent calendar? All right, roll call on consent.

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

Katz: Mayor votes aye. [gavel pounded] all right. 1360.

Item 1360.

Katz: All right. Come on up. I pulled this -- oh, the chief is coming, too. Good. I pulled this off the calendar because it is a large settlement agreement and occurred several years ago, and since the chief has been appointed things and procedures have changed, and I wanted the council and the public to understand that. And linda to explain why the city's attorney's office made a recommendation to settle on this. Go ahead.

Linda Meng, City Attorney: Good morning. This is a proposed settlement of two cases, with a total of 12 plaintiffs, represented by I understand nine lawyers who brought claims arriving from protests in august of 2002 and march 2003. Because of the similarity of issues and the plaintiffs' attorneys, we concluded it was -- made the most sense to attempt to resolve these cases together, and we reached this tentative settlement through a federal court mediation. The settlement of \$300,000 amounts to \$25,000 per plaintiff, plus attorney fees to be determined by the court. This is the first and we hope the last case in Portland of the kind of cases that have been brought other places in the country in which many plaintiffs join together to bring suit following a demonstration. Our office has learned from handling had case, and we're developing strategies to be able to respond more quickly when we get these cases to assess future liability and to hopefully short circuit attorney fees, which often end up being a major determining factor in this kind of case. We'll be happy to discuss those litigation strategies with you, but probably not at this juncture here. The police bureau's also learned from this, and so unless you have questions i'll turn this over to the chief.

Katz: Ok. Legal questions for linda? I think the discussion of the legal strategies, I happen to get most of that information, argue with you a lot of the time, learn from you as to why we're doing what we're doing, but I think the council needs to have some of that conversation as well. And whether we do it in executive session, whether it's appropriate in executive session, or at a work session, especially when the new mayor comes on with a new commissioner, that probably would be time to do it.

Meng: We'll be happy to do that.

Francesconi: Without getting into the strategy part, how big a factor was the attorney fees versus the injuries to the plaintiffs in your recommendation to settle this? 50% of it?

Meng: You always ask those kind of questions. They're always hard to answer. It's a significant factor, because in these kinds of civil rights cases if the plaintiffs win they're entitled to attorney's fees. If you go through a trial the attorney's fees build up. We've tried to guess. We've talked with

December 1, 2004

you about offers in judgment, and we're one of the things we'll continue to talk with the council about, to cut that off. In this case, the attorney fees is -- I don't know if I can give you a number, but it's a significant factor.

Katz: Significant?

*****: Yes.

Katz: In our conversations, it's how do you cut the attorney fees? They can roll on as time passes by. Ok. Chief?

Derrick Foxworth, Chief of Police: Good morning. I'm derrick foxworth, chief of police of the Portland police bureau. Today you've heard information regarding the pending litigation settlement for the august 22, 2002, visit of president george w. Bush and the antiwar protest of march 2003. I'm not here today to talk about the settlement or the litigation of it, but rather I want to inform the city council and the citizens of Portland on the police bureau's progress in regard to crowd control management. Demonstrations and marches have occurred throughout the many decades here in Portland, one that got out of control was the may day 2000 event. That was the first large scale demonstrations where officers used mobile force field tactics, essentially crowd control tactics, that the officers had received training on in the fall of 1999. The police bureau issued a report and later a follow-up report regarding may day 2000 and the issues surrounding it. The end result was that the bureau took a long hard look at its crowd control tactics and many other issues that came to light. Since that time, Portland has had many more demonstrations. In fact, since august of 2002 the police bureau has policed dozens of protests and demonstrations, including the weekly Portland peaceful response coalition events, the monthly critical mass rides, two large demonstrations before the war with iraq, several large demonstrations at the start of the war, the office building takeover, occupation of senator wyden's office, occupation of a military recruiting office, and many other events. This list does not include the numerous special planned events, such as the charity runs, the parades, rose festival, the events at waterfront park, or at pioneer courthouse square. And the many, many other events that the police are involved in throughout the year. 2004 was also a remarkable year for the Portland police bureau, and for the city of Portland. It played host to the president, the vice president, and presidential challengers numerous times. In fact, on august 13, 2004, Portland hosted simultaneous visits by president george w. Bush and senator john kerry. What you didn't see on the news this year was mass arrests or police taking action against numerous protesters. The reason, I believe, is because of better planning, improved communication, better outreach, better training, and experience, and improved command and control, all of which i'm going to address today. The members of the Portland police bureau spent a considerable amount of time planning for these types of events. As with any planned event, the members of the Portland police bureau work hard to create a flexible and well-rounded plan. The police response to demonstrations and protests is highly visible. The media often shows police with their helmets on and in full gear because it's a visual for the evening news, but what you don't see is all the planning and the outreach that goes into every planned protest, march or demonstration. Admittedly, it's not very exciting to watch police meet with event organizers, so it doesn't reach the television news, but yet this is one of the most critical things we do with each and every event. Over the last year, event organizers have come to the table repeatedly to discuss how they would like their demonstration or their march to proceed. They discuss the routes, if there's going to be a march, and they work through issues such that traffic disruption is kept to a minimum and that all the players buy off on the ground rules and that we also designate liaisons and people on the day of the event who can troubleshoot in the event something does develop during the march or protest. This kind of outreach and planning by event organizers goes a long way in ensuring that an event will be uneventful. Oftentimes the majority of people participating were peaceful, but others joined in whose sole interest was to come down and commit illegal acts. Commission releases tension. By talking to the event organizers ahead of time we're able to plan for this type of situation. The police

December 1, 2004

bureau goals for these types of events are simple. There are three of them. One, to ensure, facilitate that citizens have the right and ability to peacefully assemble and express their views. Number two, to protect life and property and the surrounding area. And number three, to ensure that we have the ability to continue to take calls for service citywide for incidents that are not related to the march or the protest. I want to thank the numerous community members who have come to the table and worked with us, and in doing so we have been successful in assisting them in making their events a peaceful one. This year there were many protests and marches that i'm sure most citizens didn't even hear about. There were peaceful and traffic disruption was kept to a minimum. And also, there were very, very few arrests made, if any. A lot of this boils down to planning and outreach, which is a basic community policing concept. Working with one another, doing problem-solving. It is rare that there's mass unlawful disorder. I also believe by clearly articulating the behaviors that won't be tolerated prior to the event, minimizes they will occur. Lastly, in regard to dignitary visits, these are very complex, because the police bureau works with several outside agencies, including the secret service and other local, state, and federal law enforcement agencies. This year's planning for each dignitary visit was extensive and appropriate. We worked in a highly coordinated fashion with all agencies, not only to provide appropriate staffing, but also to work out details, such as event access for the invitees, something that did become an issue in the bush visit of 2002. In regard to police tactics with each event, the members of the police bureau continue to improve. Our rapid response team, known as r.r.t., is a highly effective and trained unit. It's proficient in the use of crowd control tactics. They've refined their skills over the years by looking at national best practices in many other cities, as well as learning what works here in our own city. The police bureau has also developed bike squads as an effective problem management tool. Bike officers have become skilled with communicating effectively with individual crowd members, there by reducing tension and misunderstandings. The is not alarming, they stay mobile, stay ahead of the crowds, and officer fatigue is lessened. We ensure that all squads have effective leaders and also divide the responsibilities. We have two incident commanders who oversee different areas of the event. For large-scale events, we also open up an emergency operation center that works in tandem with the event to reroute officers, evaluate police response in other parts of the city, and basically supports any needs of the police bureau members involved in the event. There are also now numerous command staff members and officers who have significant frontline experience with crowd control. In conclusion, there will always be things we can't reevaluate as an organization. We look over all the large-scale events and continue to take lessons learned and apply them to our tactics and strategies and we do make changes. We will continue to refine our approach to demonstrations and protests, but I also want to take a minute to acknowledge the hard work of the many police bureau members involved in these events. The officers assigned to r.r.t., bike squads, the traffic division, as well as those officers who back up these events working at the precincts. These officers should be recognized for their hard work, especially this year, with so many events and so many visits. I also want to recognize our command staff who provide valuable input into each event and work tirelessly on outreach and planning. I'm proud of the growth and the development the Portland police bureau has made in this area, and i'm committed to ensuring that we keep refining our crowd control tactics in improving communications, outreach and planning. Thank you.

Katz: Thank you, chief. Questions by the councilmembers? All right. Thank you. Good work. All right. Do we have anybody that wants to testify on this? If not, roll call.

Francesconi: Well, you know, this is hard work. We have freedom of speech in this country that we work really hard to honor, and then we have highly-charged emotional events surrounding war and demonstrations that create a very often tense situation, as we all struggle to provide constitutional rights to everybody. So it's hard. What this is doing is hard. Then we have plaintiffs here who were exercising their legal rights to -- in a time-honored system here, justice system, to

December 1, 2004

provide rights to individuals. And so it's all coming together here. All we can do is the best we can do, and learn from our prior experiences to try to preserve and protect everybody's rights, as we proceed forward. The key here is, are we as a city learning? I mean, that's the critical factor here. And if you go back to the first may day episode, we did not handle it well. The command and control structure broke down in the first may day episode. And so it's how you improve and learn from that. That's all we can ask. And that's what our citizens expect. So here we have a circumstance where we've learned, and some mistakes were made in terms of how crowd control was exercised, and we need to continue to learn from that as we justly compensate the victims. And the victims were few given the numbers of people that were protesting. So we have to recognize that fact and continue to learn from this and move forward. Aye.

Leonard: I appreciate chief foxworth coming and explaining the changes that have occurred. It's relieving to me to hear him explain what they've done to react and change the police bureau and not excuse or create explanations about why what occurred occurred. I very much appreciate that approach. I also focused on his emphasis on command and control breaking down. In my view, in an organization, when there is misbehavior that occurs, you look at the supervisors first, because in my experience misbehavior doesn't occur where supervisors don't tacitly approve with a wink and nod or turn their back and allow it to occur. So my view, the chief and the mayor, have a responsibility to hold the command staff responsible for misbehavior with front-line officers. If that's done consistently and with no tolerance for misbehavior, the word will get down to those they supervise. Aye.

Saltzman: Aye.

Sten: I'll be brief, but I think to some extent community policing at times in the years past has become something that everybody subscribes to but doesn't always happen. And in this case I think the city did not focus, did not do, a good job of community policing. We did wrong by these protesters. When that happens we should settle and make it right. I believe we're doing that in this case. I have much more confidence in chief foxworth's approach to these issues. I was vocal on these, although I can't say I have a perfect answer, and things will go wrong even when the police do everything they can do to prepare, and I recognize that, but I do think chief foxworth has brought more of a community policing approach, and we get into the next round of inevitable protests, which I march in as well, that protesters will take him up on his offer to meet ahead of time to work, to make things better, because I do believe this last time around, under the former chief, there was an attempt to do that from the protesters, it wasn't as well met as it should have been, and I believe chief foxworth is on the right approach. Aye.

Katz: Chief, thank you. You haven't disappointed me in the kind of work that you said you would do when I offered you the position of chief of police for the city of Portland. It's greatly appreciated. I did look at the tapes and had conversations with chief kroeker at that time. Mistakes were made. There were no question about it. You had to be blind not to see that. So the question was, how much do we compensate those who were injured by the mistakes? And those decisions were made in collaboration with the city attorney's office, the bureau, and my office. And that's why we're here, and that's why I asked both linda and the chief to explain that to the public, because the public needs to understand that things have changed over this last year, year and a half. Aye. [gavel pounded] 1364.

Item 1364.

Katz: Is this a nonemergency?

Moore: It is a nonemergency.

Eric Johansen, Debt Manager, Office of Management and Finance: That's why we requested it be pulled off consent. Eric johansen, debt manager in the office of management and finance. This ordinance authorizes the issuance of up to \$14 million in bonds or lines of credit to finance the acquisition and installation of the proposed enterprise system or e.b.s. project. Council may recall

December 1, 2004

that the e.b.s. project is a financial and human resources management system that will replace the existing ibis financial system. The cost of the project will be spread among city bureaus based upon the projected usage of the system. Annual debt service costs are projected at about \$2.6 million per year over a period of about eight years. If there are questions about the project, I have jim wadsworth and glenn myer in the audience. Otherwise i'm happy to answer questions concerning the ordinance.

Katz: All right. Questions? Anybody want to testify? It passes to second. All right. We are now on our time certain agenda. Let's read item 1354 and -- well, let's read 1355 as well.

Items 1354 and 1355.

Katz: We have a limited time period to deal with this issue, and I want to thank the committee that has worked on it over the last couple of months to get prepared for the enactment of ballot measure 37. These are preliminary ordinances before us. Unfortunately there was no consensus as to the amount of the initial temporary fee. And because of that i'm going to have a hearing on that issue and then ask the council to return it back to the proper office, but we also have an amendment to the first item to deal with the fact that we are not going to be able to adopt a fee. I want katherine to hand that out. It basically says that the council can establish a fee and that the city may bill the owner for the fee amount so established at the time that the council establishes the fee. Ok. Go ahead.

Marge Kafoury: Good morning, mayor and members of the city council. I'm marge kafoury. I direct the office of government relations for the city and i'm also chairing the internal measure 37 executive committee, which also consists of tim grewe, gil kelley, linda meng, brant williams. When we last met with you on october 8, we proposed a number of short-term and longer-term programs that we would have to bring to you if the measure passed on november 2. We're now on the other side of passage of that measure, and it takes effect, as you know, tomorrow. So what we have before you today are two, actually I guess one today and one subsequently to today, a measure that allows us to receive claims when they are filed with the city beginning tomorrow morning. Katherine beaumont from the city attorney's office is going to walk through that ordinance and answer your questions.

Katz: Thanks.

Kathryn Beaumont: Good morning, mayor and members of the council. I'm Kathryn beaumont with the city attorney's office. Measure 37 authorizes the city to establish a procedure for processing claims under the measure. You have two ordinances before you for consideration. The first ordinance, item number 1354, would amend the city code and replace an old chapter which adopted a procedure for processing claims under the former measure 7 with the new chapter 5.75. As marge indicated, this code language is a preliminary first step to enable the city to accept claims and start processing them in an orderly fashion when measure 37 becomes effective tomorrow. An owner must submit a claim on the form and supply information. The measure 37 program manager may investigate claims and prepare a report and recommendation to the council. The program manager may also deny certain limited categories of claims that do not qualify under measure 37. The city council is the final decision-maker on all valid claims and may choose from a number of options. It may choose to deny a claim, to grant the claim and pay compensation, to grant the claim and modify or waive the land use regulation identified in the claim, or grant other appropriate relief. The council's decision to either pay compensation or to waive or modify regulations is based on which option best serves the public interest. We recognize that there are a number of policy issues the council will be discussing over the next few months that may result in changes to this code language. As we receive claims and discuss the policy issues with the council, we can and will make adjustments to the process as necessary and appropriate. Again, the proposed code language before you today is just a first step to enable us to begin accepting and processing claims. And then

December 1, 2004

the second matter before you is the fee ordinance, item number 1355, which I understand is likely to be referred back, so I will not address it further.

Katz: Ok.

Beaumont: As mayor Katz indicated, there is a proposed amendment to the code language, which would allow you to bill the owner for the fee at such time as the council establishes --

Katz: We'll take that amendment at the very end, but that will give the public an opportunity to comment on that amendment as well. Questions by the council?

Francesconi: So how are we working with the league of cities or other --

Kafoury: We are in very close contact with the league of cities, the association of Oregon counties, and the state through the department of administrative services and the department of land conservation and development. Lane shetterly, the executive director of the l.c.d. has been tasked by the governor to work with state agencies on their process for administrating and receiving claims. We're in close contact with them. We have all their materials. There's a website that the league of Oregon cities has established which we read constantly. A lot of communication between the cities and counties participating on this issue in terms of sharing information and trying to sort through the many ambiguities we're trying to understand.

Francesconi: The procedures we're adopting, how do they compare to what other cities are doing?

Beaumont: There's a whole range of different approaches to procedures that different cities have adopted. Some cities have adopted a very aggressive, very elaborate approach to procedures, some have adopted an approach that's in the middle, some have adopted a fairly minimal approach. The approach in this ordinance is a fairly simple, straightforward, conservative approach. And the reason we took that approach is at the moment it starts the process going, it leaves the council great flexibility, and it doesn't prejudge the outcome of the future policy discussions we'll have with the council about different issues that are ambiguous and unresolved in the measure.

Francesconi: Conservative approach, that's a new term here. It's one we don't often hear. So can you elaborate on why you describe it as a conservative approach?

Beaumont: Well, some of the most aggressive approaches that some cities have taken involve charging very high fees that attempt to recover every bit of cost the cities incur to process these claims. Others approaches involve elements of establishing private -- private rights of action, so that the neighbor -- neighbors of a property owner who makes a claim -- a successful claim might be able to sue that property owner for any reductions in value they're able to establish for their properties. Some jurisdictions have taken -- have included very, very elaborate claim submission requirements and have said that until you meet every one of those requirements your claim isn't complete and your 180-day clock doesn't start to run under the measure. Each of those approaches may have merit and the council will be able to discuss the pros and cons of each of those approaches when you meet in -- in the coming months. All of them involved elements of risk under the measure as well. So we have opted for a very simple approach that provides great flexibility and that allows us to modify it as we become more experienced at handling claims and as the council makes policy decisions.

Francesconi: My last question. Marge, for now at least, not forever, because the council needs to weigh the policy, both legally and politically in the future, in council sessions in the next few months, but for now why do you recommend this more conservative approach?

Kafoury: As katherine has explained, it gives you the option to make decisions later. We don't know the kinds of claims we'll be receiving here in the city. We don't know the volume, the quality, or anything else. We're kind of walking into the wilderness together. And so our approach, we thought, would be to leave the council a lot of latitude for future decision-making based on some experience on the ground when we finally see what those applications are going to look like. I would also remind you that we do have a legislative session coming up. The legislature will spend a great deal of time with this, no doubt about it, the legislature will have to weigh in at some level.

December 1, 2004

It was our thinking on the executive committee that it would be very prudent to take a conservative course here so that we don't set a bar that looks like it's being set a little too high for effective processing of claims.

Saltzman: Is this the first reading? Oh, this is emergency.

Beaumont: This is an emergency.

Saltzman: I guess i'd like to elect to propose language that would notify neighbors within 500 feet of a claim being submitted. I think it's important that the public, particularly immediately affected adjacent publics, have notice of a claim. I realize it's not a land use action, but nevertheless I think it's an important element of how we move forward in this wilderness of implementing measure 37, that neighbors know what they're neighbors are suggesting.

Katz: Let me suggest that there are a lot of those issues that the council needs to address and have discussion about, whether we do that or not. We can't even agree -- the council can't even agree on a fee, and my hope is that before the -- before we really begin working through these issues that you will be meeting with the council to get to that issue. I'm sorry, I interrupted you.

Saltzman: In the meantime, we'll have claims starting tomorrow. Who knows when we get back to these. I'd like to add language that would provide notification of neighbors within 500 feet in a claim --

*****: Commissioner --

Leonard: Let me say one thing. If you propose -- I appreciate what the mayor is saying, and I agree. If you propose that as an amendment, I will second it.

Saltzman: I'm proposing it as an amendment.

Katz: Just a minute, just a minute. We'll proceed with that. But you have to help me out. You're not willing to agree on a small fee to assist the bureau in the notification, but you're now willing to add --

Leonard: That's not accurate. I don't agree with the small fee because it's too low.

Katz: Ok. The council can't agree yet. If the council wants an amendment right now, I want to hear from gil, and then we'll proceed. I'll take the motion if the motion is made. Go ahead.

Kafoury: Commissioner, the policy that you're proposing as an amendment is one that we have intended to bring you in early january, among a number of other policy decisions you have to make. We've discussed the matter of notice extensively in our executive committee and intend to bring you a recommended approach for providing notice so that there can be a full discussion of that in january. The reason that we didn't do it now is because it's not the intention of the city to make any decisions on claims in the immediate future. We have 180 days in order to process those claims. And it was our thinking in the executive committee that we would not make any decisions about claims in the short term. We would get our policies in place without rushing through the policy decisions, being more deliberative about making those policy decisions, and we would make them in the aggregate rather than piecemeal. Unless we had a full panoply of policies in place, then we would start processing claims and making decisions.

Katz: All right. Let me ask the question, if you had a claim coming in tomorrow, how would you then -- what would the time period be to make the decision for notification that I think everybody here on the council supports?

Gill Kelley, Director, Planning Bureau: Gill kelley, planning director. Thank you, mayor. We discussed this issue at some length, the executive team working on this, and we're sympathetic to the notion of public notice. To add on, we have 180 days, and we want to come back early in that period for a work session. What we are doing in the meantime is establishing a website. And every single claim will be posted on that website, so the public in general can tap in, find out the claimant's name and the nature of the claim. So we're establishing that database and that access for citizens right off the bat. The notification process is one that I think needs some discussion amongst the council. It may not be the same in every case. For example, you may want a wider

December 1, 2004

notice in certain cases than in others. It's also directly tied into the fee and the cost recovery issues, it is expensive, that's not a reason to not do it, but we need to have that discussion in coordination with the fee discussion.

Katz: So answer my question. You're not coming back until when with some of these major policy questions?

Kafoury: Mayor, we have reserved two times on the council calendar, one in december and one on the 11th of january.

Katz: Ok. So you do have time to do the notification.

Kelley: Absolutely.

Katz: On those claims.

Kelley: If council made a decision in january, for example, we don't anticipate acting early on the claims, because it's so complex. So there would be two to three months at a minimum following a council decision when notification could occur before a decision would be made.

Katz: Ok. So if we don't act on it today, we're not precluding that?

*******:** I think the council supports it.

Kelley: No. We promise you we won't act on any of the claims or forward them to you for consideration until --

Katz: Whether it's 500 feet or 1,000 feet. Ok.

Saltzman: Well, I guess -- I mean, these are adequate explanations, but I think you're -- I think we're missing an important dynamic, and that is the power of neighbors speaking to neighbors. Although websites are great, you know, most neighbors don't do that. But, you know, if they get a notice in the mail about something happening next door to them, or two doors down, you know, you can -- we can use the dynamic of neighbors talking to neighbors. And I think that's an important dynamic. I guess I think it would make sense to go ahead with this notice of -- within 500 feet. We can come back, we can always change it, modify it, but we're going to end up with something that looks like one way or the another, so why not get something going at the same time claims are going to be coming in. That would be my preference. So I guess I would appropriate an amendment that we provide notification of the claim within 500 feet.

Katz: Commissioner Sten, did you want to say anything? Not on this. Ok.

Leonard: Before we have public testimony, I wanted to say a couple things so people have an opportunity to respond to that in their remark. To deal with some of the most egregious examples that we end up seeing as tv ads, that were unfortunate, now having had this measure pass, i'm not of the mind to subsidize those that make claims. So I don't support the \$200. We have a policy of cost recovery, cost recovery in our permits at the bureau of development services, and I see no reason to veer from that policy on these claims. I do agree very much with commissioner Saltzman's perspective that by notifying neighbors immediately people are going to begin understanding the implications of what measure 37 did, that in essence, with some of these other examples that we tried to address, we're throwing the baby out with the bath water, with the adoption of measure 37, and the first time a claim comes forward, asking for compensation because a homeowner in woodstock, for example, won't be allowed to put up a cellphone tower in their backyard, and the neighbors find out about that, there'll be a discussion about what measure 37 really did. And that's an example that I predict will happen. And so I completely agree with the approach of notifying as many people as possible, claims made, and make sure our fees reflect our cost recovery.

Katz: One second. I need kind of a heads-up from the council. If the council would like to deal with that issue of notification today, i'd like to propose we talk about 1,000 feet versus 500 feet, and whether that makes more sense or less sense, since there has been no discussion on this by the council.

Francesconi: What was the recommendation going to be? Was it going to be 500 feet? Was it going to be 1,000 feet? Was it going to be --

December 1, 2004

Kelley: We did not get to that discussion, about how broad it should be, because we recognized that we'd like to get a little experience with actually getting some claims submitted to see what the variety of claims is. It may be that you don't want to have one standard notification because some of these may be quite minor, some of these could be major in terms of your choice to either compensate or waive regulation.

Leonard: What's the harm in overnotifying, then later changing it --

Kelley: I don't think there's any particular harm. Two issues we kept coming back to. One is it's tied to the fee issue. If you want to do cost recovery or not. The broader the notification, the more expensive it is. That's not a reason not to do it, but again it goes to the fee issue. The second reason is that it's really important to distinguish -- in fact, I heard commissioner Leonard use language, this is not a permit, not a land use action. This is a claim under measure 37. It's very important, when neighbors are notified, that we work through the procedure and the differences between the land use process and this process. And I think that we wanted to take some care in getting that message right, because that could come back to haunt us actually in these proceedings. So for those reasons we didn't want to take extra time, but take a little more time and come to the council with the proposal.

Saltzman: And i'm not saying we shouldn't do that, i'm just saying we should have a default notification mechanism to start with. We can come back, fine-tune it, but I think it's the only way to start the process, neighbors understanding what measure 37 is and neighbors talking to neighbors, which is an important dynamic.

Katz: Ok. Commissioner Sten, now you declined to support --

Sten: I can wait a couple weeks, if that's -- if that's the best.

Francesconi: Something this serious, we should have a staff recommendation, and do it once. As long as it's done in the next month.

Katz: Ok. So i'm not -- i'll take a motion. I'm not sure there's support for it today. I'll take the motion at the very end. If things change, then we'll come back and discuss whether it's 500 or 1,000 feet.

Beaumont: I guess a question of clarification. If you're going to make that motion, is that language that you want added to the code that's before you today or is this simply an administrative directive that you want to give to us?

Katz: The council, if they vote for it, they want it in code. Ok. Any further questions? Let's have the public hearing. I just want to make it very clear, even though we spent time on this discussion, I think it's fair to say that everybody on the council will support a notification to neighbors. The issue is the timing of it and then the distance, and then how we pay for it. Peter.

Peter Finley Fry: Peter fry, 2153 southwest main, Portland, Oregon, 97205. Nearly everyone in this process, to date, on both sides, has never developed anything in their life. They've never created any value on land. So what's emerging from this process is not, in my mind, a well-reasoned process to deal with this issue. It's actually basically a claim process for people who come before you and ask for money with really no basis. There's no way to establish the validity of development proposal. Some may argue a regulation will prevent their development, but there is no validity of that proposal. There are no methods in the market for appraisers to accurately determine the value of the regulations that are affecting the development. An approval of development is never determined by a single regulation or even a collection of regulations. It's determined by a process. The requirement that the value be established at the front end essentially rediverts all the resources away from the process of paying for a real development to the process of attorneys fighting for claims. And lastly, there's no way a jurisdiction in this process can accurately weigh the benefit or liability of weighing the regulations since you have not yet seen the development. So i'm proposing that the -- the following language at the front end. I'm not a lawyer, so i'm saying it's best established. I'm not saying it shall be established, which would be my preference. The value

December 1, 2004

and validity of a measure 37 claim is best established by the denial of a development proposal based on findings that the development proposal violates criteria that there are stayed by ballot measure 37. What this does, is it requires someone to come in to the city, ask for a development, go through the process, make findings against regulations if 37 stays that regulation. If that development is successfully approved, then that's the end of it. If it fails, then you have a claim. Thank you.

Katz: Thank you. I want gil and katherine and the team to respond to any of the recommendations that the public comes forward with. Thank you, peter. Go ahead.

Brooks Koenig: Good morning, mayor, council members. My name is brooks koenig. I live at 2833 southeast harrison street. I'm a member of the hand neighborhood. I just wanted to come before you and encourage you to continue this process and to make sure that indeed our land use structure stays in place and as we continue the discussion on how these claims are processed, that you work diligently to see whether these fall proper within the call for compensation, but I think that there are a number of exemptions that should be thoroughly examined and I also encourage you to have the notice provision, whether it is today or whether it is in two weeks. And so I encourage you to use the neighborhood structure and to make sure that these claims are reviewed by the public and with a structure in place. Thank you.

Katz: Thank you.

Moore: That's all who signed up.

Katz: Anybody else signed up? Ok. Staff, you want to come up and respond to peter's recommendation. Or is it something that will be part of what you're going to come back with, come back and share that? I don't know if anybody wants to make a motion or not. We have one on the table already.

Beaumont: I think what mr. Fry's language proposes is something that will arise naturally as the claims, or potential claims, make their way through the process. One of the ways -- one of the trigger points for a claim will be someone's -- will be an owner's application for a land use review that may end up being denied, if the owner feels like the regulation that was the basis for the denial gives rise to a claim. At that point they will be able to file their claim. So to the extent that peter is suggesting that -- essentially what his language suggests is that the best trigger for a measure 37 claim is denial of a land use application. I believe that's already contemplated by the measure as one of the triggering mechanisms for a claim. So I don't believe it's necessary to adopt this language in the code.

Katz: Thank you. All right. Any further questions by the council? All right. I'll accept the motion. Let's -- do you want to state the motion again?

Saltzman: The motion would be to require notification of people within 500 feet of the proposed claim, or a claim submission, I guess.

Beaumont: Commissioner Saltzman, if I could be so bold to translate it into code language.

Saltzman: Sure.

Beaumont: It's the section entitled "investigation and recommendation by program manager." adding a subsection d that would say "the program manager shall provide notice of the claim to all property owners within 500 feet of the property that is the subject of the claim."

Saltzman: I would make a motion, yeah.

Leonard: Could I add a friendly amendment, that would include the neighborhood association in that jurisdiction as well, whatever that was?

*****: Ok.

Katz: Do I hear a second?

Leonard: Second.

Katz: Ok, roll call.

Francesconi: This seems reasonable to me. You have to do it as part of a package. There has to be notice to the neighborhood organization. I can think of other organizations that need to be notified,

December 1, 2004

in some cases the business organization needs to be notified. We need to have this worked out. Plus citizen input on the notification itself. But if you bring it back in two weeks, I won't support a procedure without sufficient notice. If it's later than two weeks, may not matter from my perspective. So i'm going to vote no.

Leonard: Aye.

Saltzman: Well, again, this is just a default measure. We can change it in two weeks, but I think it's important that we take advantage of letting neighbors know right away, when something's coming in and taking advantage of the dynamic of neighbors peeking to neighbors, and raising the visibility of measure 37 claims. We can change it later. Aye.

Sten: Well, i'm in agreement on the concept. I'm going to vote no. My assumption in voting no is that any claims come in before we get something in place will get the same notice, and will get it in ample time before the 180 days are up. If for some reason beyond your control we don't have a full package coming to us relatively quickly, I would then -- I would look to go back and institute this to make sure it happened, but I certainly don't have a problem with giving more time given the circumstances. No.

Katz: What I hear is anxiety about the notification of neighbors on any of these claims. And if you can't come back within two weeks, I don't know what the timetable's going to be, maybe three weeks before commissioner Francesconi and I are gone. On a package, that should include notification, that should have conversations about the distance, especially when you take a look at the map of where -- of where the voters supported ballot measure 37, it's probably more rural areas, 500 feet in rural areas like pleasant valley may not make any sense if those claims come from that part of the city. I'd like some thought about that, and come back and include the notification, as well as some of the other issues that jurisdictions around the state have been dealing with. No. Motion fails. [gavel pounded] all right, I need a motion to amend 1354 for any claims submitted before the council establishes the fee, the city may bill the owner for the fee amount, so established.

Leonard: So moved.

Francesconi: Second.

Katz: Any objections? Hearing none. So ordered. [gavel pounded] all right. Let's take a vote on 1354 as amended.

Francesconi: I appreciate your approach on this. This is a little preliminary because the real important thing is going to be when you bring it back in the next two or three weeks I think on some of these things, but we must begin the process. So I appreciate you doing this. I think it is important, because -- to understand that the voters who passed this statewide, but it has the potential to create such a devastating impact on the quality of our life in the city, in this region, in this state.

So we have to proceed very strategically as we move forward in order to protect this quality of life. So we do have to understand that there is a legislature that is convening. We have the benefit, as we move forward with the new council, of having experience right here of a former legislator to help us sort through this. I do think that the most conservative approach is not the right approach. I don't think we should be quite as conservative as we're beginning, from what my personal feelings are. I also do not believe that we should take the most aggressive approach either, given the dynamics of Portland with the rest of the state. So that's where i'm signaling I am. I think the fee of \$200 is too light. The fee that i've heard some other cities charge as an attempt to -- is too aggressive, because it will be perceived as Portland trying to thwart the will of the statewide voters. And so, again, measure 37 was bad. It's one of the greatest threats to our quality of life here, but the voters have passed it. So now we have to be strategic in how we move forward. Aye.

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

Katz: Mayor votes aye. [gavel pounded] all right. 1355.

Francesconi: Aye. **Leonard:** Aye. **Saltzman:** Aye.

December 1, 2004

Katz: Wait a minute. Not roll call yet. Did you want to add anything on 1355? No. Let me make it very clear. You need to take a look and see whether you can support 1355. My understanding was that there wasn't any support on 1355 because of the \$200 fee.

Leonard: We amended it to take that out.

Katz: No.

*****: It's a separate ordinance.

Katz: I'm going to ask that 1355 go back to my office and then we bring it back.

Leonard: I understood the amendment we made to replace the \$200 fee.

Katz: No. The amendment was that you can then charge on a claim that's made before you adopt the fee. In other words, you can go back and charge somebody --

Leonard: Oh, I see.

Katz: I'd like to take this back into my office. We'll bring it back and back to meeting, whether it's in two weeks or three weeks, but we need to bring a package back for the council.

Leonard: From my perspective, my thought was, what we were doing was, having 100% cost recovery with that amendment, and I won't support anything that isn't that.

Katz: Ok. Well, that amendment only said that you can -- you can go back and charge the claimant.

Beaumont: That's right. The amendment gives the council the authority to establish a fee. It says if fees come before it's established, you can bill the claimant for the fee.

Katz: Any objection to me taking it back to the office and bringing it back? Hearing none, so ordered. [gavel pounded] ok, thank you. 1356.

Item 1356.

Katz: Let me introduce this. I'll have Tracy Reeves go through the legal issues, but let me introduce this by thanking a whole host of people who worked on this for I would say over a year. It all started with a conversation with a member of this council, and I don't want to deal with that issue right now, but I do want to share with you that a piece of the history, the council was very clear over the many years that they wanted to exclude murals from the sign code, and in fact we did that.

And we were hauled into court by then a.k. Media, later Clear Channel, a change, and we were told that we couldn't do that, that that was unconstitutional according to the Oregon constitution. And so the decision was made to include murals under the sign code. That limited, unless you went for an adjustment, that limited the ability of muralists to paint large murals, larger of 200 square feet, on buildings. There was an article in the newspaper. There was an uproar. How can we do this? We kept sharing with the public the constitutional issues. Well, you could have made other changes. I don't want to address this. I want everybody to focus on the -- on what we did. And it came to me that we were going to have to do something rather unique if we wanted to address the issue. And the unique thing was to -- to pull the murals out of the sign code and call it public art. And just calling it public art isn't going to get us from here to there. There's still legal issues. So we pulled Tracy, who spent an enormous amount of time researching this issue nationwide. We asked Eloise to help us think through this issue, and Hanna was the staff person in my office that worked through the details of the issues. You'll hear from other people in the mural community that participated in working through this with us. I've worked with the -- the group several times. We solved many of the issues that they've raised. This is not an easy issue. It's complicated. It does have some risks. It may not be perfect. But at least it's a start. And everybody's made the commitment, if it doesn't work, we'll come back, and you have my commitment that I'll be watching this closely, and I'll be back, too, to make recommendations for changes for improving it or rejecting it totally. I hope that doesn't happen, but I think we have a solution that will give the muralists an opportunity to do their artwork and satisfy the council's desires to see more murals and larger murals on buildings. So Tracy?

*****: Thank you.

December 1, 2004

Katz: Ok. Tracy and then eloise.

Tracy Reeve, City Attorney's Office: Thank you, maybe. I'm Tracy Reeve with the Portland city attorney's office.

Katz: Tracy, slow down.

Reeve: And as the mayor has just alluded to, starting in about the mid 1980's the city of Portland enacted an exemption in its sign code for murals. Basically murals could be painted on the sides of buildings and were unregulated. Subsequent to that the definition of sign and the definition of mural, they were termed "painted wall decorations" was changed in an attempt to have a bright line distinction for what was a mural on a side of a building and what was a sign. At that time, put into the definitions, was the definition that sign was something that contained text, numbers, registered logos or registered trademarks, and that a painted wall decoration or mural was something that did not contain text, numbers, registered logos or registered trademarks. In 1998 the company then known as a.k. Media, which has subsequently been purchased by Clear Channel, brought a lawsuit contending that that distinction was an unconstitutional content-based regulation of signs, and that the sign code was therefore invalid in its entirety. At the time they brought that lawsuit they had filed 87 applications for either new or enlarged billboards, and said that because their legal argument was that since the sign code was unconstitutional, there were no regulations, and they could put up billboards wherever they wanted as long as they met building codes. A court issued a summary judgment under the Oregon constitution that this definition was unconstitutional. At that point we came to the council and said, ok, our sign code has been found to be unconstitutional in this regard, and basically the day after that judgment was entered the council reluctantly made the decision to remove the exemption for murals from the sign code, and to remove the language about text, numbers, logos or trademarks from the definition of sign. The alternative choice would have been to not regulate anything on the side of a building, and the council at that time made the policy choice to remove the exemption for murals rather than allowing unregulated signs on the sides of buildings. Currently the largest allowable sign in any location in the city is 200 square feet, absent an adjustment. And because murals are regulated as signs, as the mayor has indicated, it's limited murals. The mayor raised the idea of could we do this under our public -- existing public art program that we've had for 25 years now. We did some research. Talked to a lot of other jurisdictions that have exciting public artwork programs. Los Angeles has one, Philadelphia has one, other cities as well. There's been litigation in Los Angeles about their program. So far upheld by the federal courts. Philadelphia, I'm not aware that they've had litigation on their program, but we do have the added issue of the Oregon constitution. There is authority under federal law that where a government is acting as a patron of arts or engaging in government speech, there is some more leeway to make decisions on what art you want to fund, what art you don't want to fund, what speech the government wants to engage in. And so we have looked at those cases and have -- there is really no law directly on point in the Oregon constitution I should say. So we're looking at the federal law. And interpreting what the Oregon courts might do. The idea of this program is that the city, as it sponsors other public art, would sponsor public art murals, either placed on -- where already publicly-owned buildings, or that building owners who want to donate to a public art mural, would provide the city with an easement that would allow a mural to be placed on the side of their building. All public art would be exempted from the sign code and would instead go through the r.a.c. process. I want to emphasize it's all public work, because our definition of sign law is so wide, we're exempting all public work because there's an alternative process. The goals of the sign code aren't designed to address art and the goals of the r.a.c. approval process really are. Along that same line, the ordinance before you would exempt all public art from design review and historic design review because the r.a.c. process really addresses many of those same aesthetic considerations, appropriateness, scale, context, of the review that is currently performed through design review or historic landmarks review and both the design commission and the landmarks

December 1, 2004

commission support the proposal. And we've agreed in your ordinance, that if passed, that the r.a.c. Will not approve murals on historic structures, or in historic districts, until there's an approval process worked out, that there's -- that both the landmarks commission and r.a.c. agree is appropriate for those areas. So the nuts and bolts, if a building owner granted an easement to the city for placement of a public art mural, then the proposal would go through the r.a.c. approval process. There's a variety of funding mechanisms that could be used. Eloise will address those. The easement would be tracked by the property manager, the city's property manager, at b.g.s., just the rest of the way the city's interests in real property are maintained, that they'd have responsibility for that. Easements would be for a minimum of five years because in conversations, both in Portland with muralists, and with muralists in other locations, that's the minimum expected life of a public art mural on the side of a building, is it something that's supposed to have a life span and be there for a while. However in order to not make it too onerous for property owners to be willing to convey these easements, there's outs if they want to redevelop their building, need to do renovation that would cause the mural to be destroyed, if they want to sell the building and the new owner is not willing to assume it subject to that mural. There's out provisions on that, in the mural, that will be developed by staff if you pass this ordinance. There'll be maintenance agreements with property owners, giving the artists first rights to refurbish in the event of tagging or graffiti. The contemplation is there will be -- you know, new materials that they're using in philadelphia and los angeles that make it a lot easier to clean graffiti off of murals, and we anticipate that would be a requirement for a public art mural. And in terms of enforcement, there's going to be provisions that the city could seek liquidated damages if necessary, if, for instance, somebody -- because the city will own the murals on the side of the building. And if someone, say a property owner, donated an easement to the city, got a mural approved, and then went and painted something completely different, we'd have a contract with them that says if that's to happen, that they agree up front, that there could be specific performance, meaning the city would be entitled to have the mural put back the way it was, and then liquidated damages for the city's costs in going through that process. There are other remedies just for defacing public property, that sort of thing, that already exist, that we could also look to. One thing that we're doing, because as I say there's no law specifically under Oregon law addressing public art and how that functions, we've been looking more to federal law, because this is not a risk-free area under the Oregon constitution, one thing that we did is put in a very explicit severability provision that says that you as the council, specifically with regard to this ordinance, stating that should this exemption for public art be found to unconstitutional, you want it severed from the rest of the code and want the sign regulations, otherwise in effect, to remain in effect. And that should avoid the kind of problem where we had before, where because the language that was ultimately found unconstitutional was in the definition of sign, the court said, yes, we can't sever that, your whole sign code is unconstitutional. I'd be happy to respond to questions, but in a nutshell that's the legal framework.

Katz: Before we get to questions, let's hear from eloise.

*****: Ok.

Katz: Eloise, did you want to go next?

*****: Yes, please. If you allow, mayor.

Katz: Ok.

Hannah Kuhn: I'm hanna kuhn, a member of the public arts mural project team. I wanted to briefly tell you about the outreach that we did over the last year. After the mayor came up with her bright idea about how we could allow more murals. Starting fall of 2003, it really has been over a year, and january of this year, the mayor held six meetings with a diverse group of stakeholders, including local mural artists, representatives from metro murals, and representatives from the city club research committee on billboards. This fall, after we worked out a lot of the details internally with different members of city staff and all the bureaus you can think of the mayor reconvened her

December 1, 2004

original murals work group and really had some intense discussions with them about remaining issues that you may hear about in testimony. I think we've addressed most of the main concerns that were raised by that group with the mayor's leadership. Starting this year in January, into the spring, we met with the citywide land use group to talk to them. We talked with the alliance for Portland neighborhood business associations, and had a meeting with several of the local sign companies that specialize in wall signs, as well as with representatives of Clear Channel. Throughout the spring and into the summer we met a number of times with representatives of Metro Murals, both to talk about proposed changes as the proposal evolved, and also to discuss best practices in other U.S. cities. Some of our Metro Murals mural artists had actually gone to Philadelphia for a conference to learn about their program, and we wanted to adopt as much of that as we could within the legal constraints that Tracy had described. As this moved along, a new group emerged, a stakeholder group, called Portland Mural Defense, and we also had meetings with them to make sure that we heard all of their issues. And Eloise will describe how some of those were incorporated into this proposal. We also met a couple of times with the chairs and then with the full bodies of the Portland Historic Landmarks Commission, the Design Commission, and the Planning Commission, and of course the document you're considering today does reflect the recommendation from the Portland Planning Commission. I wanted to note, because it ties in with outreach, that as a result of discussions with many of the stakeholders in our community, and because we are proposing something unique and different, that people are not familiar with, if you decide to adopt this, we're committed, we the team here, working with other stakeholders, to develop both a brochure, kind of 101, you know, public art murals process 101, how does the R.A.C. process work, what would the easement entail, what sort of funding options are available, to sort of get people over the barrier of, you know, this is -- this might be too difficult. We want to really conduct some additional outreach and education once we go into implementation to make sure this is accessible, because community murals are in their own way a grassroots form of artistic expression, and we want to make sure we reach not just the usual suspects, but also people who are linguistic and cultural minority groups who may not normally have access to City Hall. Eloise will describe the R.A.C. process.

Eloise Damrosch, Regional Arts Council: Thank you. I'm executive director of the Regional Arts Council. This is a public art program that's approaching its 25th anniversary year, and we're looking forward to some exciting celebrations. And I really hope that unveiling the first community -- large community mural may be part of that celebration. As both people have talked about, we're talking about incorporating public art murals into our existing program, and using the national best practices that we've been using for 25 years to consider these new murals, but we're tweaking the process a bit to make it easier and simpler for the community to participate. We'll be using the same criteria that we've been using for public art for 25 years with some additions. I'll mention those in a minute. But the typical process that we envision is that a property owner and/or artist would come to R.A.C., have a meeting with staff, present the idea, the location, the willingness of the building owner to participate, and the design -- the initial design. Staff would review it for the -- to see if basically seems to fit the criteria, and then place that item on the next public art advisory committee agenda, which it meets monthly. At the same time, and this is a new part of the program, we would be making contact with community stakeholders to invite them to come to the public art committee, weigh in on the mural, pro or con, and make their voices heard. This is not something that we do all the time. This is something we feel is particularly appropriate for community murals. At that point the public art advisory committee will vote to approve it or to not approve it. The owner will then offer the easement to the city. And the funding will be determined for the mural and I'll get into those particular possibilities in a moment. But that's the basic process. So we're looking at a staff meeting and one public art committee meeting hopefully. But as Hanna mentioned, we heard from our stakeholder meetings that there's specific things we wanted to

December 1, 2004

address beyond this basic process. One of which is that we wanted to expand our selection criteria to include the five-year minimum that Tracy talked about for the easement. The community support piece, which we think is really important. And then underscoring some of the diversity issues that are already in our criteria. We don't envision any application fee for this process. We would -- we have promised to add a member to our advisory committee, a person who is particularly versed in community murals, brings that particular expertise to weigh in, along with the other art experts on the committee, to streamline the process so it's not a long, drawn-out, bureaucratic effort. We've also agreed if a mural is turned down, the proponent has the ability to respond to some of the concerns from the public art committee and return at a later date. Funding options would be the same as they are for our existing program. If there are public art funds available, those would be available, either to fund a mural or to match a private offer. A bureau could be completely donated through private funds to the city or it could be actually a finished work of art that is then donated to the city's public art collection. These are all funding mechanisms that are in place. So in summary, I'd like to say that we're trying to bring murals back to the public art program, and we have a national model for our program here, and it's such a shame that we can support all the other visual art forms, but not large community murals. So I really, again, applaud the mayor's effort, and I hope that you can support this proposal.

Katz: Thank you. I'm going to ask that council to hold off on the questions, because you're going to hear testimony, I'm assuming from opposition, and that will maybe help you formulate questions that Tracy can answer. All right, let's start with public testimony.

Katz: Go ahead, sir.

John Early: My name John Early. I live at 330 Southeast 52nd, 97215. I'm an artist. My partner and I have lived in Portland for the last 10 years, and we have a business called Site Painters. And we do commissioned artwork of various kinds. And including what had been murals, outdoor murals, and then when we first moved here, of course, as you know, that was easy to do, if you could find a client and a commission, but as far as legally, there was nothing to be done, except form a contract with a willing partner. Our murals -- we have a mural on Division Street at Whole Foods. It was done about eight or nine years ago, and I think is -- is still in very good condition. It's kind of part of that whole revival and reinvention of Division Street, and there's a mural at the other end of the street that has been caught up in this because it came later. When the code changed through a number of opportunities that I'm aware of, that we couldn't follow through on because of sign code regulation absolving the difference between art and advertising, so I personally know that it's affected our business and our ability to do our work in public. And of course I don't pursue commissions anymore either, so we would really welcome the opportunity to get back into the public sector and do work that people throughout the city can see. And I thank the mayor and her staff who have put in a lot of time on this, and the council for considering the proposal. I also particularly wanted to thank people like Joe and Joanne and people from Metro Murals who are really citizen activists who volunteer their time, tremendous amount of time, in generating huge files of emails and meetings to pursue this issue. So we have the government side, but also have citizen activists, really pushing and pushing this issue, keeping it alive. And in contrast, we saw in the -- the hearing recently with the planning commission, the opposition to this compromise proposal, R.A.C.'s billable hours for pursuing a selfish program, what they want with their billboards in exchange for -- basically sacrificing the arts community -- pitting the arts community against the city. I just want to highlight the citizen volunteers that goes into this, and those mural artists do -- [inaudible]

Katz: Thank you. Your time is up.

Early: The one concern I would want to underline, as written, and I heard what Eloise said about funding sources, as written, what I'm seeing, public artwork be that approved by R.A.C., which is

December 1, 2004

fine, but also funded. I'm not sure if the wording has caught up with the negotiations concerning the possibility of private contracts paying for the --

Katz: It has. Want to make sure, Tracy, that you respond to the questions that are raised.

Early: As an artist, I have some concerns.

Katz: Ok.

Alex Taylor: Good morning. My name is Alex Taylor, Northwest Hoyt. I'm a member of Portland Mural Defense, and I've only recently become involved. But I really wanted to commend the Mayor. Thank you very much for putting this together, because I realize that you're dealing primarily with litigation against the city and threats, further threats, of litigation against the city. I just wanted to point out that there have been some efforts by Clear Channel to make an agreement with the city alone, one-on-one agreement between Clear Channel and the city, but Clear Channel does have a history of censoring art proposals, billboard proposals, and I fear that if Clear Channel does have an agreement with the city, that those -- those concerns -- censorship concerns will not be met. And it's interesting to note that Clear Channel claims to be standing up for free speech rights, but on other occasions, including an occasion recently at New York's Times Square, they've taken different stances on free speech. During the Republican National Convention, they rejected the design of a billboard that stated "democracy is best taught by example, not by war." and whether or not it's coincidental that the Republican National Convention -- they rejected it when the Republican National Convention was in town is up for debate, as an organization generally they do support the Republican causes, but I think probably they're more sensitive to offending any political entity, whether Republican or Democrat, with the power to launch investigations into its business practices. Not only has Clear Channel engaged in perfectly legal content-based censorship, such as the Times Square case, and I would like to be clear that they've not violated any censorship laws, but the company has also been accused of engaged in predatory monopolistic practices. If the city were to take -- make some exclusive deal with the company to provide an arts program, the company would not be legally liable for censorship, whereas R.A.C. would be liable for claims of censorship. To sum up, although I do not think that Clear Channel's ample legal resources could make that assertion in court, I do doubt their sincerity of free expression when it doesn't serve their short-term or long-term bottom line.

Katz: Thank you.

Kathy Oliver: I'm Kathy Oliver, the director of Outside Inn, 4323 Northwest Ainsworth. My interest in public murals came three years ago when Outside Inn decided and built a new facility, and included a three-story curved art panel hung off the front of the building. And to us that was an integral part of the building design. To the city, that was an illegal sign. In the end, that sign, that mural, went up, and subsequently the building has won 10 design awards, including the Governor's award, and an award from the National Institute of Architects, and it's a signature building for the city of Portland. Today Outside Inn proposes to start a new business in a new facility, and we want to put the new, very large mural, on the building. The business is a little bit unusual, a dog daycare center --

Katz: A what?

Oliver: A dog daycare center that will function as a job training site for Portland's homeless youth. And I do have a name for it. It will be the Virginia Wolf Dog Daycare Center. [laughter] and my concern is that we will not own the building. It's a building in downtown Portland, a visible storefront. We will be leasing it. And we will be in the position of trying to talk the owner into allowing us to have the mural on the building. And while I support the -- the document today, my concern is the provision about easements, that essentially you're asking a building owner to give up -- they will perceive it as giving up some control of a portion of their building in order for us to put public art up there. So I -- like I said, I do support the document, but my concern is that the easement provision will provide a disincentive to owners.

December 1, 2004

Katz: Thank you. Tracy, you need to spell out the opt out provision on the easement a little clearer, because that was a concern everybody had. Thank you.

Katz: I want to extend my appreciation to rose, who kept all of the muralists, including joseph sitting next to her, sort of in line, if that was possible. She kept talking to them and explaining the issues, and taking back some of their concerns to our little group to work through. Rose, thank you very much for that.

Rose Griego: Thank you. My name is rose griego, the chairperson of metro murals. As a representative of a group whose mission is to create and promote community-based mural art, about this proposal, I can only say it's about time. Six years is a very long time to wait, and time wasted where we could have been creating positive change through mural art. I'm sure by now through your studies of the sign versus art issue, in great city programs, as they mentioned in philadelphia and los angeles, that you're well aware of the tangible benefits of mural art, but i'm also hoping that by approving of this new approach, you will be sending a message, not only to the artists and supporters of mural art, but also to the oppositional forces that place the city in the situation to begin with, that the city of Portland supports public art in all its forms, and will not tolerate anyone other than its own community voices to dictate the vision of what our city should be. I thank the mayor for her strong support of public art and for bringing this issue to council through the help of the community outreach this past year. With the anticipated passage of this proposal and subsequent lifting of the financial and regulatory constraints effectively discouraging mural creation these long six years, you now have the opportunity to right a grievous wrong. We hope you join us as we literally paint the town in celebration. However the outcome, we stay committed and offer to work together with the city in the development of a mural arts program. Thank you.

Katz: Thank you. Joe?

Joseph Cotter: My name is joe cotter. I live on southeast wildcat mountain drive in eagle creek. I've been a mural artist for about 15 years now, and i've worked on a number of projects in the city of Portland. I also belong to the Portland mural defense, and i'm a member of the art association in estacada. I want to thank the mayor and city council for taking up this issue. It's been a long time, like rose just said. And it's been a very difficult issue due to the legal constraints placed on the city with the litigation that's taken place. We're giving it qualified support, because we realize, do to these legal limitations, that it's not the best of all possible worlds, but we're -- we're hoping that we can come back in maybe a year and revisit and see how it worked out, the easement issue as kathy stated is -- is a burden. We're not sure how that's all going to work out. Also the implementation, I think we'd like to continue discussing implementation with r.a.c., because there needs to be some discussion about how to make this thing work and reach communities that aren't normally part of the public art process, and many of us are hoping to be part of that. In addition, i'm really hoping that this proposal is not attacked. I'm hoping it is allowed to move forward, because I don't think it serves anybody. I don't see the point. I guess we have to wait and see. I understand there's constitutional issues. However, at the end of the day it's a good step forward in the midst of a very difficult situation. And I applaud the city council for taking it up. I hope that you pass it unanimously. Thank you very much.

Katz: Thank you. Thank you, joe.

Paul Leistner: Good morning. I'm paul leistner, i've been following these billboard and sign regulation issues for many years now, and I want to clarify the city club hasn't taken a position on this particular package, but it does support a lot of the positions the club has about maintaining the billboard regulations as they are not -- [inaudible] also, the mayor did a wonderful job with the process of involving the community and having a genuine good policy discussion about how to reach a program that would serve the broader needs of the community. I want to thank rosy and the muralists for being such wonderfully constructive members of that discussion, and the staff. I think this is a way public policy should be made in Portland. It's a great example. So speaking as an

December 1, 2004

individual, I think this -- I as an individual strongly support this proposal. I think we've wrestled for years with how to get around some of the limitations that have been put on by the clear channel and from the a.k. Media lawsuits. This is one that genuinely tries to get to that issue. It deserves your support. Let's try it for a year, see how it goes, and come back and take a look at it. But this is a great opportunity for Portland. Thanks.

Katz: Thank you.

Cotter: Kohel haver was here.

Katz: I saw him.

Cotter: He had to leave. He just wanted to let you know that he did turn in testimony that I think will -- might be in front of you now.

Katz: Yeah. We have it. Thank you.

Kurt Wehbring: Good morning. I'm kurt wehbring, northeast eighth avenue in Portland. I have not a great deal to add to this. I was on the city club committee that looked at billboards, and the only one perspective that I think you're aware of, is that this comes in the context of controlling billboards, and as I drive around the city these days what bothers me a lot is to see walls that have butterflies on them as place stakers, just a few months ago and are now huge wall advertising. I think this is a very creative proposal that can control that in the future, and on the positive side lead to very good wall art. And I support it.

Hector H. Hernandez: Hector h. Hernandez, from metro murals, 4047 southeast brooklyn street, Portland, Oregon. I'd like to thank the city council and mayor vera Katz for addressing the public art issue. I'd like to support this, with hope that it will be an incentive for public art. As an artist and resident of the city, it's hard for me to think how public art has been reduced to free speech like a sign. It is sad that art has to compete for commercial interests in order to legitimize its presence in the life of a city, and as a consequence artists have experienced discouragement in the form of human expression. This is welcome to encourage artists to work in the public art scene.

[unintelligible] it is my hope that the selection process for mural and public art is conducted by, such as r.a.c., to encourage artists and community members to participate in art. Mural painting is also very vulnerable piece of art. It's a way in which communities can reflect their interest in public art. [unintelligible] at the same time I applaud and appreciate the problems we've seen in drafting this recommended proposal. Again, thank you very much for having the opportunity to testify.

Thank you.

Katz: Thank you for working with us. Amanda.

Amanda Fritz: Good morning. I'm amanda fritz. This is an issue that makes me very proud to be an american citizen, and especially proud to be a citizen of Portland, Oregon, where we value freedom of expression even more than the rest of the united states. It involves not only freedom of speech, but private property rights, public safety, public spaces, the rights of municipalities to regulate for the long-term public good. And best of all once we took out the moving image signs, nobody dies according to what we decide. I think this is a very exciting solution. When I was on the planning commission, we considered the previous set of regulations. I voted against them, because my preference would have been to have billboards and art rather than neither. And the council didn't choose that route, but kept working at it. And this is a great solution. This is a very innovative solution that doesn't preclude commercial art with commercial signs and it's very important to note that. That if someone comes up with an advertisement that is a beautiful thing, that inspires the city and is passed by the r.a.c., that can go up, too. That's the beauty of this solution. A very, very good process. I particularly want to thank the mayor and hanna and the staff for coming to the citywide land use committee multiple times, but very early in the process, and that was really very helpful in helping the community to understand and support this process. This has been a very difficult issue that we've considered over the past 10 years, and more. And I think it's

December 1, 2004

one of -- another of mayor Katz's crowning glories, that we've come to this solution, and that you're going to leave us with this legacy. Thank you.

Katz: Thank you, amanda.

*******:** I want to --

Katz: I'm sorry, I didn't hear you.

Isaka Shamsud-din: Visiting professor and ethnic art professor at Portland state university, and member of mural defense. I'm particularly interested in the spiritual aspect of community murals, and I think we all recognize what a great value public art can be when it can educate and inspire all who pass, all who see it, regardless to class or economic condition, and that is what I see as a great value of being -- having a very progressive murals project that the city acknowledges and the city acts, the city advocates. One day -- my first mural was at Portland state university. I've received so many comments from people who, although they didn't know what the -- the subject matter was about, there was something about the mural, the fact that it was there. It was a commemoration of Portland state's beginnings as its link with the vanport flood, those of us that know the story. Through the years, the responses, the comments that i've received from people who have looked at the artwork, my work and the works of others, for instance in 1977-1978, we had a project called albina mural project, six artists employed for a year. We had a big community festival when we unveiled the murals. We roped off the streets. You know, it was just a whole day affair. And that type of community involvement, that kind of community coming together, rarely happens. This proposal, which, again, I want to thank the mayor and the staff and the city council for considering this, much more of this kind of action needs to happen. We talk about healthy communities. I think you can see the health in the community through its art, through its public art particularly. In 19-- well, several years after that project in 1978, which was african american history in particular western history, western cowboys and cowgirls, the beginnings of Oregon and so on and so forth, some years after that I was walking across the park in front of the art museum, and a woman, a black woman hollered at me from across the park, getting my attention. She came up, and her daughter, who was 11 years old, and she said she just wanted to thank me for the mural, those murals, that were on the human resources building on vancouver and alberta, because now her daughter has an interest in black history.

Katz: Thank you.

Shamsud-din: Now, those are the kind of things -- you know, sometimes we don't really realize how important these things are. It may seem to be intangible, but they're vital.

Katz: Your time is up.

Shamsud-din: Ok, my time is up.

Katz: Finish your thought.

Shamsud-din: I want to say that some of these projects have ended up in some -- some of the most comprehensive books on murals, and one of them is "community murals" by allen barnett, 1985. Another is "wall of heritage, walls of pride," 2000. Take a look at that.

Katz: Thanks. Thank you very much. Ok, why don't you three ladies come on up and let's see if the council has any issues, further issues. Questions? Go ahead.

Saltzman: I guess -- so as I understand, a mural could be a painting of a campbell's tomato soup can, and that's fine, I mean conceivably approvable, or something with a nike swoosh?

Damrosch: As long as it meets all the criteria listed in the proposal. We would not discriminate if it were a fabulous mural that met all the criteria.

Saltzman: What about -- and will there be public or r.a.c., the public art advisory committee, have any kind of public hearings on the art, on a particular mural being proposed?

Damrosch: Whenever we put a mural on an agenda, we would then notify the community and invite them to come and participate in the discussion at that meeting.

December 1, 2004

Saltzman: Ok. And the public art advisory committee can reject anything for any reason, it doesn't have to be a stated written decision or anything like that, or an appeal process? Is that correct?

Damrosch: No. It's based on a vote to approve or not.

Saltzman: Ok. So there don't need to be findings as to why it was approved or disapproved?

Damrosch: Yeah. It's not a land use decision. It's a public art process decision.

Katz: But there is an appeal?

Damrosch: Yes, they can come back -- if they want to respond to the concerns that the public art committee had, then we invite them to come back, but there's no appeal to city council or --

Reeve: It's not a technical appeal, but through this process r.a.c. has agreed that there could be an opportunity to come back.

Saltzman: And what's the composition of the public art advisory committee?

Damrosch: Usually about 10 people. They're visual artists. Our appointee to the design commission, who's an architect, sits on it as a liaison members. One or two of her board members, and a couple of citizens who have particular interest and expertise in visual arts.

Saltzman: Ok. It's a standing committee?

Damrosch: Yes.

Katz: And now there will be somebody involved in murals.

Damrosch: Although we already have somebody who has worked with judy on muralists, as it so happens.

Saltzman: I guess my final question to tracy, we have a letter here from schwabe, williams and wyatt, that we're not meeting constitutional muster. We'll probably argue these things till the end of time, but if you want to --

Reeve: Right. I've seen that letter, and have looked at it, and actually the mayor had asked me to respond as well, I did a memo to her. Some of the cases --

Katz: Why don't you send that memo to the council as well.

Reeve: Ok. I'd be glad to do that.

Katz: Go ahead.

Reeve: But there's a particular case that they cite in there that they say shows that this program doesn't work, and in the memo I go into some detail to say why I think that case in fact supports what we're doing, and i'd be glad to provide that to you. But it's something we've looked at and analyzed.

Francesconi: I want to follow up on that just a little bit.

Katz: Go ahead.

Francesconi: Before I do, eloise, so we've kind of switched from the design commission, the planning, to r.a.c. to decide what's art and what's commercial speech, I guess. We haven't done that? Ok.

Reeve: We're not making an art commercial speech distinction. We're making a distinction between something that someone comes in and self-identifies as a sign, and they go through the sign approval process, or a proposal that someone comes in and says "i have a public art proposal, and I think it meets the r.a.c. approval criteria and have a building owner that's willing to donate an easement to the city." but there is no distinction, there's no commercial speech art distinction, there's a distinction as to which avenue the proponent of whatever it is chooses to pursue. It could have a mural proposal that can commercial elements in whatever way, whether it relates to the business that's conducted on the site, whether it has a logo somewhere in it.

Francesconi: And in that circumstance, the applicant can choose which way to go?

Reeve: Right. I mean, someone who wants to paint something on the side of a building, can look at the sign regulations and come in without any evaluation of what it is that they want to put up at all if it meets the sign regulations and go through the sign process. That remains completely as available as it is now. What this would do is if someone has something they want to paint on the

December 1, 2004

side of the building and the building owner is willing to donate that space to the city, then that proposal gets evaluated by r.a.c. To see if it meets the criteria for being included in the city's public art collection.

Francesconi: Ok. Let's say it's one of those campbell's can kind of cases and the applicant chooses to go to r.a.c. then the criteria are the ones listed on page eight. Is that the criteria we're talking about?

*******:** Right.

Francesconi: So then it's judged on artistic quality. Are these given equal weight or are there some that have greater weight than others?

Damrosch: It's really hard to say when you're talking about hard. We don't give so many points to each one. But I think artistic quality is not a mistake that's -- that that is listed first, because the basic charge to r.a.c. On behalf of the city is create a collection of public artwork of the highest quality. So that's why we state it first. So if something met all of these criteria, but was not of a quality that we thought was fitting for this the city, it would not be approved. But equally, if there were not a sign and agreement that said, we'll leave it up for five years, it wouldn't be approved.

Francesconi: What percentage of public art requests does r.a.c. Now approve of those requested?

Damrosch: Well, the only -- the only proposals that we receive -- most of the public art that we deal is the percent for art program, which is public funds generated through construction. The thing that's most -- the aspect of our program that's most connected to this would be potential donations. So if you have a piece of -- a piece of art in your attic that you think belongs in the city's collection, we would follow this procedure.

Francesconi: Ok. Tracy, back to you, you know, the memo's fine, but I think we have to vote on it right now, and I don't have the memo in front of me.

Katz: No, we don't. It moves to second.

Francesconi: Ok. So that memo's important. I mean, you cited, I think, in your opening, the national endowments for the arts case. They submitted it in the brief, that that was a purpose for funding, not for regulation. Does your brief address that, or do you want to address it right now?

Reeve: Well, this really isn't a regulatory program. I mean, it's an exemption from a regulation for the city's own public art collection. So it's really city speech and what the city is funding. And in the draft ordinance in front of you, you know, one of the findings is that the sign regulations have not been a good fit for public art because it's really not signs. And so this is not a regulatory program. It's really the city trying to sponsor and affirmatively support art, which is really what the n.e.a. case. In that case they weren't looking at specifically at could the n.e.a. exempt its art from sign regulations, but that issue wasn't presented by that case, but the case does stand for the proposition that the government can evaluate and make decisions as to the artistic merit of art that it's sponsoring, which is essentially what r.a.c. does.

Francesconi: Ok. Your memo's going to be important. I mean, clearly we want public murals, to the point -- I mean, it has to happen. I mean, the question is, is this constitutional? I mean, so that memo is kind of important to me, because it has to -- just like in the earlier case, you know, when we appropriately gave protesters money for violating -- the city violating their constitutional rights, people have a right to claim constitutional violations, and we have to be blind on that. And so that's why I want to vote for this, but it's important that it be constitutional. So a legal memo from you is important to me.

*******:** Ok.

Katz: Further questions?

Leonard: Yes.

Katz: Go ahead.

Leonard: You said something that I found interesting, that r.a.c -- I tried to write it down after it, so tell me if I didn't get it right. You said r.a.c. will approve art that is suitable for the city. Is it

December 1, 2004

possible that one composition of r.a.c. would think that is something of quality suitable for the city, a completely different competition might have a different opinion?

Damrosch: I think that's inherent in the whole public process, because -- yes, I mean our public art committee turns over periodically, they serve for three years, but for every single public art project that we manage, there's a specific selection panel put together. So that's a group of people making a decision.

Leonard: I guess i'm trying to try have to ask, would you agree it's a subjective process that each of us go through when we decide if something is of quality or not?

Damrosch: It's subjective, in that there are human beings talking about art, however given the fact that we have a collection building for 25 years -- sure, there's -- there's variety within the collection. You know, everybody is not matisse.

Leonard: Sure.

Damrosch: But I think that's part of the beauty of public art, that -- and I think Isaka addressed that, public art speaks to all populations. What we're trying to achieve in our public art collection is a wide range of media interests, voices, images, that speak to many people. And judging art is -- has to be somewhat subjective, but we do have these criteria, and we use them --

Leonard: Thank you. Tracy, my question, then, for you is, given that answer from a member of the r.a.c. Committee, and given that the supreme court, which I would -- with all due respect -- is the body that's going to consider this, not the federal supreme court, because our provision -- free speech provision is, as most people understand, more liberal than the u.s. Constitution, or any other state, so it's our provision that will dictate. So with all due respect the federal cases don't mean a lot to me. What means to me is what the court decides in this state. They've said in a prior case, and i'm quoting from the language provided to me from your office, the city has made an unconstitutional distinction between two types of speech, and therefore regulating speech based on content. So we go through this entire process, we establish this process for approving public art, you're standing in front of the supreme court, and justice durham leans over the bench and asks you to explain to him how this is any different than anything else the city's tried to do, distinguish between what they like and what they don't like, and you say --

Reeve: Well, a couple of things. First of all, there the court found very specifically that because we had this specific thing -- things that contain this are regulated, things that contain this are not, that that was the content-based distinction, if it had text, numbers, logos and trademarks, it was regulated. If it doesn't, it was exempt. That's what they found to be the content-based distinction in that particular case. The Oregon supreme court has never said that where the city is -- you know, obviously elected officials get to put out the materials that they want to put out. They can distinguish in those materials for what they're saying, because it's their speech. When it's the government's speech, then the government gets to decide what the speech is. To some extent, when you're displaying and funding art, that is to some extent the government's speech, and the government gets to make some distinctions as to what they want to fund and sponsor. I think presented with that question, the Oregon supreme court would agree with that. The other thing is that this is, again, an avenue where the person who is he the proponent of the speech gets to choose which of the two ways they go. We're not looking at something and saying, ok, if it's this, it falls into this category. If it's this, it falls into this category. That's akin to one of the cases where the supreme court said it's not the government that makes that distinction, someone comes in says this is an onsite thing or this is an offsite thing. They said the person who is the proponent of whatever it is comes to us and says this is a sign and I want to put it up here, and we evaluate under that criteria. If they come to us and say this is a public art mural and I want to put it up here, they're making that determination of which way they want to go. We're not looking at it and saying, something that has text, logos or trademarks is in this category or this category, so it's distinguishable.

December 1, 2004

Leonard: Obviously what's going to happen, and it's unfortunate how we demonized one of the parties in this, as though they're somehow a culprit, what I predict will happen is, somebody's going to come to r.a.c., some political group not popular in the city, and say, you know what, we want this art to be put up, and the reaction is going to be severe and fast from all of us to what it is that someone may want to put up. That will end up before the supreme court. And the prior city attorney's, Jeff Rogers, as I was bringing myself up to speed on this issue, and trying to get him to make me understand what the court ruled, he said the best way, Randy, for you to understand this, is imagine this blank piece of paper. The court said, we can regulate the borders, the sides, of that piece of paper. We can't regulate what's inside it, period.

Reeve: Right.

Leonard: So I guess my -- my taking a few steps back and looking at this, I would call this a subterfuge to the first -- to the free speech provision of the Oregon constitution. And I've tried to look at this from as many ways as I can. I do not understand how the court is not going to come back and say, call it what you want, but you cannot have a censorship process to decide what you like and what you don't like within those borders. That's what we find unconstitutional.

Reeve: If -- well, if the court -- if the city decided that they wanted to have a painting or some artwork in the council chambers, and they said, come to us with your proposals for what it is, and someone came in and said I want a swastikas behind you all at council chambers, I think it's clear that the Oregon supreme court would say, you don't have to let somebody put up a swastikas.

Leonard: I agree with that. That's not going to happen. What's going to happen, we've created this process where by we'll go to a private property owner and wink at them, and say if you deed over to us a part of your wall we will put public art up on it, and I believe the supreme court is going to catch that wink and go that's not the same as a mural in city hall. That's on "private building that you've developed a scheme by which to decide what the content's going to be on the side of that wall.

Reeve: I respectfully disagree that it's a subterfuge or that it's just a wink. One of the major issues we've had through this whole process is that we're requiring property owners to donate to the city an easement which is a legal interest in real property, and it's been one of the concerns that that's too onerous of a requirement, and one that I've kind of stuck to my guns on, because I believe that that is granting the city an actual interest in that real property. It's somebody saying to the city, I am willing to donate a real property interest to you to have a piece of public art placed here in a space that you now own for that purpose. If it were a wink and a subterfuge, we couldn't go through all of that process.

Leonard: How does that encourage public -- I mean, let's assume that you're right. Let's assume that that is constitutional. I mean, how does that encourage the proliferation of public art in that you have to convince an owner of a building to give us a part -- the city a part of that building?

Reeve: It doesn't encourage it as much as the complete exemption for murals that we had that was found unconstitutional. I'll agree with you there. However that exemption was found unconstitutional. We have an existing public arts program. It doesn't -- it's not going to be what we had before, which is you can put anything up on side of your building that you want. It's going to encourage public art murals that go through the city's public art program, and that why it's legally distinguishable. It's not as free and open as what the council did before, found unconstitutional. It may not allow for the creation of as many murals as we would all like and may not allow private property owners to put murals on the sides of their building that we would like to allow, or some of us would like to allow, but it would allow for more murals than there are now, which are none, or very few.

Leonard: So I wasn't on the council prior to that action. Was there a proliferation of commercial wall signs that caused some concern versus public art? Why was that a problem, not having a regulation? What happened?

December 1, 2004

Reeve: I can't speak to that. That was a policy decision that the council made.

Katz: Do you want to further pursue this?

Leonard: If you could answer that, that would be helpful for me. I'm trying to figure out what problem they were fixing when we passed just the wall mural regulations.

Katz: Well, the court made a -- told us that we couldn't distinguish between the two, and so the murals had to be folded into the billboards.

Leonard: I understand that.

Katz: And it's the billboards -- it's the proliferation of the billboards that created a problem.

Leonard: I thought we could treat them separately.

Reeve: The decision that the council was faced with, at the time that the summary judgment was entered, was whether everything painted on the side of a wall should be unregulated or whether everything painted on the side of a wall should be regulated.

Leonard: So the billboards weren't part of that?

Reeve: Correct.

Leonard: Ok. So i'm asking, then, what -- i'm not talking about billboards. That's a separate, as I understand it. We can treat it separately as I understand it. What were we treating with respect to wall murals when we passed the ordinance? Not what the court said, but when we originally passed the ordinance what were we addressing?

Reeve: When the council passed the ordinance removing the exemption for murals based on court's ruling?

Leonard: No. At some point in time the city adopted some regulation --

Reeve: In 1986, when the sign regulations were being reworked in 1986, and commissioner strahan at that time, out of her office, the sign regulation -- she had planning at the time, and one of the exemptions, at the time that there was an overhaul of the sign regulations, was to exempt murals painted on the buildings. I can tell you what she testified to for the purposes of that exemption.

Leonard: I guess i'm trying to figure out, if we just did not regulate signs on the sides of walls --

Reeve: That's a policy determination.

Leonard: I understand that, but i'm trying to figure out why we just don't approach it that way.

What was it this was happening at the time that we were trying to fix that would open the gates to something occurring now if we did it that way? What if we just said, there are no regulations on -- on anything painted on the side of a building?

Reeve: That would be constitutional.

Leonard: I know it would be.

Reeve: I assume the council made the decision at the time that it was in the public interest to have some regulation of advertising.

Leonard: Ok.

Katz: One of the issues -- and I think dan raised was it -- was whether this applies to the commercial signs, and I think it's a good idea to apply it to commercial advertising as well. It may in fact raise the bar for some of the commercial advertising that we've seen. And it would be very interesting to see some very fine art on advertising signs that would pass all the criteria that eloise and r.a.c. have identified. All right, folks, we have a --

Sten: Can I make one comment?

Katz: Sure.

Sten: Since we'll be going next week, won't be coming back, I wanted history on commissioner leonard's question. I'm very pleased to support this. I'm optimistic that it will work. I don't think there's any guarantee -- actually there was -- in 1998 it was a 4-1 vote on this issue, and I was the one vote. The choice was really allow everything on walls or allow nothing on walls. And it was -- it was a good discussion actually with the council, and my opinion has been, and remains, that I would rather have everything than nothing. That being said, if there's an opportunity to have works

December 1, 2004

that are of some value, and I trust that you make those kind of judgments all the time as your r.a.c. Commissioner, it's a very common distinction to be made, and we put citizens to do it, and I think they'll do just fine, I think as long as they act on their judgment and conscious and act duly, it will held up. I'm surprised we got here and like it better than the choice I had in 1998. The choice I had was everything or nothing. I went for everything. I think this is better. So I really do commend both the tenacity and patience of -- tenacity of the mayor and patience of the muralists who had to go through this for six years. I was on your side wishing you had a way to do this for six years. I'm enthusiastic in supporting this, and having studied it myself, believe it will work.

Katz: Thank you. All right, everybody, this moves on to second. Let's get on with the regular agenda. Item 1378.

Item 1378.

Katz: Commissioner Francesconi, do you want to address this. Come on back. This was an assignment that was given to parks, and became part of -- a story that expanded in our little gang -- it's the other friday gang group. It's the old town/china town livability -- downtown livability group that meets every other friday. And the decision was to bring all the stakeholders to the table and get them to agree on a lot of the issues that have become contentious. I want to thank bob from commissioner Sten's office for taking on the assignments a subcommittee chair to work through contentious issues, with the homeless committee, with the legal community, with the police bureau, and with elected officials offices, specifically commissioner Francesconi, who's in charge of the parks, and then the police bureau that has to enforce the ordinance. And I want to thank charlie mckinney from my office, as well for working through these. You'll see other issues coming to the council. What used to be called the sidly, and hopefully others that have created an issue with the community. This one is an expansion of the park exclusion, when you have to notify people to exclude them and when you don't. So commissioner Francesconi.

Francesconi: That was a good introduction. I guess i'd just like to thank malik bell as well, as well as bob, very helpful in helping work through this. Rosy, thanks for your persistence on this. As I think we're going to hear, what we're doing here is to make sure, and the council had a very good discussion about this, to make sure that the park exclusion is not used to interfere with a person's free speech rights.

Katz: Right.

Francesconi: And to give warnings as much as we can. And what the problem is, is that warnings now, we can't -- cannot exclude -- and the commander will get into this -- for menacing, misdemeanor thefts, indecent exposure, various weapons offenses, including knives, guns, and prostitution. What we tried to do is be much more specific about this as to when we can exclude and not so that discretion is not used, because if you give discretion, that's too much, then it could be used to unfairly target a group of people, specifically the homeless, which we don't want to do. On the other hand, when these offenses happen, there's a public safety issue for the good of all the citizens. So thanks. Go ahead, commander.

Rosie Sizer, Portland Police Bureau: Good morning. My name is rosie sizer, currently the southeast precinct commander, coming back to you with a revision to the park exclusion about ordinance that went into effect on may 1 of this year. And in a little bit in the way of background, we lost the park exclusion ordinance due to a federal court challenge this spring, and the ordinance that was enacted on may 1 was a replacement ordinance. And there were a couple points that council made most clearly in the discussion in april, and one of them is that the park exclusion ordinance should not be used to interfere with a person's free speech rights, and that was made most explicit in the new ordinance. And secondly, that council preferred that warnings always be given for minor rule violations before an exclusion is issued. Currently warnings are required for all offenses with the exception of felonies, offenses involving drugs and alcohol, and offenses involving damage to property or injury to persons. And so with this new ordinance on the books,

December 1, 2004

why are we here today? I feel that the current ordinance is too restrictive, and that there are important crimes and ordinance violations that should have been included on the list of immediately excludable offenses. And had I been more forethoughtful and had we not been in such a rush to get something on the books, I think -- I hope I would have foreseen this better than I did. What the current --

Francesconi: Well, I pushed you. You wanted more time, as I recall. Said you were very diplomatic just now.

Sizer: The current ordinance adequately addresses high frequency, highly problematic behaviors, like drug and alcohol consumption and major felony crimes. But there are significant number of lesser offenses that we feel should be immediately excludable. I'll go through a list of some of those that I think are of concern. Menacing, the menacing statute, which involves threatening somebody, threatening somebody with a weapon. Misdemeanor theft, any theft of under \$750 is a misdemeanor. Currently we can't exclude for a misdemeanor theft. We currently cannot immediately exclude for indecent exposure. A man exposing himself to women and children in the parks. We can't exclude for that immediately. Various weapons offenses involving knives and guns are not immediately excludable. Prostitution is not immediately excludable. While these are not felony crimes, these offenses are clearly serious in nature and I think we can all agree we don't want them occurring in our public parks. These offenses are all crimes. In most other counties, and in Multnomah county, in times of better jail funding, they could be jailable offenses. Currently they are not. Subsequently when we arrest somebody for, for example, carrying a loaded gun without a license in a park, or exposing himself to women and children in a park, officers are forced to hand the suspect a ticket, a citation in lieu of custody. Frighteningly, we're then forced to merely warn the offender that this -- that if he's caught carrying a gun or exposing himself again, he will be excluded. More frightening still, the same person can expose himself one day and be warned, return back to a park the next day with a gun and have to be warned about a separate offense, still not excludable. Anyway, so there were some oversights clearly to some of the work we did this spring. I want to acknowledge that we went through quite a bit of process to arrive where we are today. And this process was facilitated by the mayor's downtown livability group, and particularly by charlie mckinney from the mayor's office and bob dursten who hosted meetings of competing interests. There was intense discussion, particularly with homeless advocates, and on this case particularly around the issue of public convenience stations, also known as bathrooms. We pared our proposal down based on the feedback we got and anticipated from people we disagreed with. I think we've been extremely transparent. I'm currently in the process of providing crossroads with copies of the exclusions issued by park rangers, police officers, and security contracted through the park bureau, so they can look at issues of disparate impact to particularly homeless people. A short update on the current ordinance I thought you might be interested. So far we're finding that there is a sharp decrease in the number of exclusions that have been issued. For the period of may 1 to november 18 of this year, we've issued, collectively, 906 exclusions. Last year for the same period, it was 1727. The year before, it was 1500 exclusions. There are probably a number of causations for that, but I think that changes to the ordinance figure prominently. I unfortunately don't have crime data available for you today because of an illness in our planning and support division. Preliminary information I got does not indicate that we're getting a crime wave of reported crime in our public parks inordinate to what we've seen in years past. Calls for service of police officers in the parks generally appears to be trending upward, however. I'm aware personally of some significant crimes that have occurred in our public parks this summer. As you may recall, there was a homicide in one park involving a robbery after hours at 1:00 in the morning. I'm aware of a double stabbing in the south park blocks. I'm aware of an incident involving a robbery with a gun and alleged kidnapping in mount tabor park. All of us are aware of the wilding robbery incidents that occurred in waterfront park and other downtown parks several months ago. We are on the

December 1, 2004

verge of systemizing the warning process, and so if an officer warns a person one day, that information will be captured on paper, a warning will be given out on paper, and then it will become part of our Portland police data system. That's ready to come online in about the next month. We've also found that most of the exclusions, preliminary data, indicates, including those issued to homeless and other people, are for alcohol offenses, for drug offenses, and then a smattering of other offenses, including failure to abate behavior when an officer is warning somebody to stop, and they simply refuse to stop. Vandalism, trespass after being excluded. I think what you will find, and I know that Mark Jolen is here to testify, is that we've -- the preliminary indications is there's some disparate impact of exclusions on homeless people. My personal opinion is the offenses that we are excluding for immediately now are so serious that regardless of the housing status of the person involved, it's behavior that we don't want occurring in our parks. During one of the mayor's meetings, Jack Defary, one of the founders of Dignity Village was there, and he made the point that -- that people who have houses have a place to hide to do drugs and alcohol, and homeless people have to do it in public. But he also indicated that because alcohol and drugs affect bad behavior on the part of the people participating in drug and alcohol use, they ban the use of drugs and alcohol at Dignity Village. One other thing that's a trend is that in some cases we were officers simply use an exclusion instead of using a citation through the criminal justice system. I think what we found this summer is when immediate exclusions are not available for criminal offense, officers are defaulting to citations, citations in lieu of custody, and that's getting people jammed up in the criminal justice system, and all the attendant effects of that -- cost to the court system, the suspects have additional court proceedings, fine, jail time, or community service, warrants if they don't appear in court, and in some way a 30-day notice not to appear back in the park is a more benign way of handling some of these behaviors. And then on some of these issues, I think the real -- the solutions are more drug and alcohol addiction services. More public restrooms. And that sort of thing.

Katz: Rosie, correct me if I'm wrong, we really didn't get into the public restrooms. We talked about it. We did talk about a -- a possible solution to get rid of the needles in the places that they're found, that we didn't get into the toilet issue yet. Ok.

Sizer: It's coming, I'm sure.

Katz: It's what?

Sizer: It's coming, I'm sure.

Katz: Go ahead.

Saltzman: That was one of the questions I had. I don't understand the exclusion of the public convenience station.

Sizer: That is for, lack of a kinder term, peeing and pooping in a park. The provision, what the new ordinance would say, is you're subject to immediate exclusion unless you, like pee in the grass, but if you defecate or pee, urinate, on a hard surface, then that's subject to immediate exclusion.

Katz: And that's a green -- a green building issue. [laughter]

Saltzman: So, and then games of chance.

Sizer: Games of chance is particular to Holiday Park. There has been a historic three-card monte problem at Holiday Park, and the three-card monte is often the precursor to robberies. And that park has kind of a history of having pedestrian robberies.

Saltzman: So playing chess in Pioneer Square is not --

Sizer: No.

Saltzman: Are skateboards excluded from parks?

Sizer: This is the provision -- we just gave you the titles, but this is the skateboards where it's grinding on ornamental surfaces and damaging fountains, that sort of thing. Not simply skateboarding, but using it to grind and eventually damage property.

December 1, 2004

Katz: Yeah. That's very important. If anybody has questions as to what is specifically referred to, that information is not in the ordinance, but it is --

Sizer: Right. The ordinance, the violations are cited, but for the most part not explicitly named. And then on some of the questions, I would really direct you to lori abraham who's an expert on this kind of stuff.

Katz: Further questions? All right.

Sizer: Excuse me. We had the park ranger and park security here as well.

Katz: Let's get them first. Come on up. Mark is designing needle boxes, right, mark?

Sizer: That would bring you a real live sample in the next livability meeting.

Katz: We'll all come.

Mark Warrington, Portland Parks & Recreation: Good morning. Mark warrington, public safety manager for Portland parks and recreation. I'd like to comment very briefly in support of the proposed amendment before you, and first of all echo the thanks offered by the mayor for the good work by our public safety partners, police bureau, district attorneys, and many others who have worked through the wide range of issues with a lot of stakeholders to get us to this point. Park exclusion ordinance is essential to the city. It's essential to a park officers and police officers to be able to maintain our parks in a safe, welcoming place, for everybody. Besides the police, for the park rangers, it's the only formal enforcement tool they have to deal with persons who refuse to follow the law, obey the law, and who cause problems in the park. The amendment so well described and explained by commander sizer simply refines and expand the list of existing laws, violations that, you know, should have been included in the first round as we made this ordinance last -- crafted this ordinance last march. Again, commander sizer outlined firearms, indecent exposure, prostitution and so forth, obviously have no place in parks. And it follows, we should not have to warn people to -- before issuing an exclusion for these. I urge you to pass this amendment. It's important to us. One -- a couple of issues, just to reiterate. In parks, we're interested in making sure everybody is welcome. We don't care what you look like, what your life circumstances are. Everybody is welcome in the parks. One issue that came up was the fair application of alcohol consumption in parks. And the example that is used is that park concerts, the fact is alcohol is allowed in parks only by permit. And if you see people with a glass of wine at a parks concert, whether it be couch park, wherever, that's by permit, it's part of the permit for the concert. So that we feel that the alcohol permitting system is being applied fairly.

Katz: Thank you. I want to thank you for your work.

Francesconi: Mark, I just have one question, and I meant to ask commander, but it's on the question of training, the training that park rangers have received, I hope, since the last council hearing, because that was an issue we talked a lot about, to make sure that proper -- that whatever the ordinance was, we were enforcing it appropriately through our park rangers. Can you talk a little bit about the training that's been -- how we train our rangers?

Warrington: Well, of course, last spring, with the new ordinance, now again, if this goes through, yeah, we work shoulder to shoulder with the police bureau, with the district attorney, lori abraham and rosie sizer have been very helpful. Now we train together. The seasonal park rangers as they come on board in the spring and early summer, they get a thorough session on park exclusions and how to apply it. And we also -- we just train together with the police bureau on this.

Francesconi: Ok. Thank you.

Katz: Go ahead.

Mark Cline, Portland Parks & Recreation: Good morning. My mark klein, I supervise the park ranger program for the city. On average, Portland's park rangers issue from 250 to 300 exclusions per year. As the lone full-time ranger, I issue the largest proportion of exclusions within the program. The majority of exclusions are issued for the possession and consumption of alcohol, but violation of the camping ordinance, drug possession and violation of the lease law account for a

December 1, 2004

number of exclusions we issue each year. Typically the rate ranger issued exclusions that are appealed in a given year number in the single digits. Last spring's retooling of the exclusion ordinance did not drastically alter the operating procedures for the ranger program. For example, it has been our standard practice to give the homeless found camping within a park an initial opportunity to correct the activity prior to any formal enforcement action. Likewise, the ability to immediately exclude for alcohol or drug possession is critical to our enforcement strategies given that generally those involved are habitual in time and place of their behavior. To that end it's been my experience that the proposal before you to expand the laws for which no warning would be required has a positive effect in our ability to promote a safe parks system. Whether it's because of that habitual characteristics of those committing the crime, such as prostitutional activity or the clearly disturbing nature of the act like public urination or defecation, immediate enforcement is our most effective tool. Additionally, given the time sensitive complexities of the stay process in the appeal provision, I would support the amendment that would require any documentation should an excluded individual currently under appeal be back at the park. I've had firsthand experience with this method, even though it was not a requirement. This past summer I observed an individual who had excluded the day before sitting calmly within the same park. Prior to contact, I notified the police for response for the purpose of issuing a tracy pass citation. The officers and I approached the individual, and explained why we were contacting him. He produced his copy of the appeal, which he had filed at southeast precinct, the same day I excluded him. As neither the police or I had access to that information given the time sensitive nature, this act of production saved all of us a considerable amount of time as well as the legal system.

Katz: Thank you. Ok. Who want to start?

*******:** I'll start.

Katz: Grab the mike.

Marc Jolin: I'd love to have a chance to answer questions, but i'll try to stick to my written testimony and come back if you have questions. Thanks for this opportunity to testify, mayor, and commissioners. My name is marc jolin, the staff attorney of the homeless law project at the Oregon law center. I'm here to ask you not to support the proposed amendment and to instead temporarily suspend enforcement of the ordinance altogether for at least for minor offenses. I want to start by acknowledging mayor Katz, her staff and staff of the other commissioners, who have convened the downtown livability task force for the amendment before you received extensive discussion. My review revealed 48% of the exclusions went to individuals who were identified as homeless. Looking at fact patterns, addresses and other factors it's very likely well over 60% of the exclusions actually went to people experiencing homelessness or fit the profile. This is an enormous overrepresentation among excludeds given homeless make up only 3% of the population. Some of this overrepresentation can be attributed to the fact homeless people use the parks to a greater extent than nonhomeless people and may be responsible for a number of incidents in the parks. It does not explain why this has -- this overrepresentation -- it is hard to escape the conclusion that the only way this pattern could emerge is if homeless people who break park rules are highly likely to be excluded while nonhomeless people are unlikely to face exclusion. This is only a month's worth of data but it's the best information we have. And it should be enough to cause us to take a step back and require a full review of the exclusion practices before passing a liberalizing amendment and I would urge to you suspend enforcement of the ordinance altogether. If you choose to go forward there are two things I would ask. First, especially when park rangers there is a practice of using violations of an existing exclusion and -- initial 30 seconds? Of an existing exclusion to issue a longer exclusion turning a 30-day exclusion into a 90 or 180-day exclusion even though no new he phones has been committed. I don't believe this is appropriate. And I would ask you to clarify your intent and amend the ordinance as necessary. You required a report on the use of the ordinance I would ask you insist on this report and insure that includes the housing status of those excluded I

December 1, 2004

would also ask that you direct the steering committee of the mayor's livability task force to receive monthly reports on the issuance of parks exclusions again including the housing status of those excluded.

Katz: You don't need to ask the council. You want that, you get it. Charlie and rosy and bob, be prepared to respond to these issues. Thank you, mark.

Genny Nelson: Good morning, mayor and commissioners. My name is genieve nelson and I am co-founder of sisters of the road. Sisters of the road and crossroads people's organization is honored to have a place at the table at mayor's downtown livability group meeting where this issue of park exclusions has been addressed. Homeless people are their own best advocates. While the rest of us at these meetings representing diverse constituents can reach agreements through compromise and good faith, in the final analysis, it is what men, women, and children dealing with homelessness 24 hours each day can tolerate. These laws in particular target them. We abuse our legal system because of our failure as a community to eradicate homelessness. That failure stems from how we prioritize our collective resources. Sisters and crossroads urge you to honor your original decision made earlier this year. Please look at a full year of data and then decide. Thanks.

Katz: Thank you. Go ahead, sir.

Dave Hillman: Hi. I'm dave hillman. I am chairperson of the friends of mt. Tabor park. And coordinator of the mt. Tabor foot patrol. We have been actively involved in mt. Tabor park for four years and, in fact, as of today have completed 1,045 foot patrols. We have become aware of many the situations where the authority to issue park exclusion would help protect the safety and security of our park visitors. I would like 2 provide examples. Over the past you're our foot patrol members have either personally observed or been notified of case of indecent exposure, theft of personal and public property, serious and or rampant vandalism, open fires and massive littering. These actions have been taken by perhaps a small fraction of 1% of park visitors. But they have a huge negative impact on the remaining 99 plus percent. When individuals openly and brazenly expose themselves or they burn and destroy restrooms beyond use, they carve, cut up and permanently deface memorial benches others have provided in the park, or leave behind massive piles of trash, bottles, clothing, garbage and human waste these are not people who should have an undisputed use of the park. When such behavior is noted and the people are identified, I personally believe it's that the police and park rangers should both be granted the authority to issue park exclusions and have the support of city government behind them.

Katz: Thank you. How many? 1,000?

Hillman: 1,045.

Katz: Wonderful. Congratulations. Ok.

Katz: Lily, did you want to testify?

*******:** I will answer questions.

Katz: Ok.

Gregory Crawford: Gregory crawford, 300 n.w. 8th. I live right on the knot park blocks. First of all I would like to say, mayor Katz, and commissioner Francesconi, thank you for your years of service to this city.

Katz: Thank you.

Crawford: Greatly appreciate it. I have lived here all my life. I moved from sellwood where I lived for 49 years, five years ago and live right on the north park blocks. I am active in the community. I am chair of the pearl district livability public safety committee and also a board member there. I am a Portland police block captain but I am representing myself today as a resident. And I am in favor of this amendment. I think anything you can do to strengthen bad behavior that takes place in our parks is greatly needed. I have a great view of everything. And I can look out and I counted one day just knowing this was going to take place, I could have called 9-1-1 20 times in a five-hour period of things going on in the north park blocks. Commander benson's

December 1, 2004

crew does a great job down there, but they can't be there all the time. We have a lot of women in our loft that won't even go out after 6:00 at night. That's pretty sad. So I think there's -- we hear a lot about the social issues and things like that. But sometimes people have to be represented residents and businesses, and people who have made a committed to make this city denser and have moved there and made a strong commitment, and we need to be stand behind us as well. Thank you.

Katz: Thank you.

Irwin Mandel: Irwin mandel. I am a south park block resident and have been involved in fighting these park violations and the bad behavior by people who come into the parks probably for as long as I have been living there. We have had excellent cooperation from the police but, again, to drive the point home I made once before they are understaffed. We all know it and can't do it. All I can say south park blocks is thank god for p.p.i. The ability to call the clean and safe officers in when we see people urinating against trees, shooting up, smoking dope, having alcohol parties in the block, and having them excluded is of immense value to every resident and every visitor who comes to the south park blocks to go to the museum, or the concert hall, or to just to admire it, as charlie Hales once or I once called it, anyway, the most european of places and charles Hales's most european of cities. Skateboarding commissioner Saltzman remember, commissioner Hales at the time introduced the ordinance to prohibit skateboarding on the transit mall. We managed to get the walkways on the south park blocks included as prohibited skateboarding. This is not just a fill up to add in but when it is a downhill slope coming off p.s.u. And those skateboarders roar through there and they are public safety hazard, we need the expansion to do an immediate exclusion because just warning means, ok, I will go to another park and I will be back here after 30 days. In addition to which the shimansky fountain is under repairs now by park. That sandstone base became a favorite place to practice their high flying turns and wore away the sandstone base. We have to be able to exclude on that point. I am able to talk with the issue of -- unable to talk about the issue of public toilets but eight years or so ago the church decided to be considerate of the needs of the people who are homeless, and put a public toilet at the base of the south park blocks. I think it was the corner of main and south park block but in the park. That was nice. However, this public toilet soon became used as a place to shoot up. It was tipped over more than once and burned up twice. So we should be careful about the public toilet issue. We need this expansion to get rid of the people who exhibit this behavior detrimental to the living standards of all of us immediately. Thank you.

Katz: Thank you.

Kevin Montgomery-Smith: I'm kevin montgomery smith, 520 s.w. Yamhill. Portland business alliance and I supervise the clean and safe program. And I didn't pay him anything to say the nice things. This is a restrained expansion. I think that everybody understands through the really good work of the mayor and the downtown old town chinatown livability committee, the steering committee that mark and ginny sat on and I did as well that we try to make sure that it was fair. We tried that make sure that especially in the enforcement of it that there was across the board enforcement for people who broke the rules. And, you know, it didn't matter if somebody was of the housing tenure or housing status of anybody as long it was a rule that was broken, and it was a rule broken severe enough to kind of throw away the warning throws provost that it was something that we could all live with. We could argue another day about the existence of exclusions but this kind of retrained expansion to deal with real civility issues in our parks that stops the enjoyment of the parks by everyone, I think, is what this is about. Speaking on behalf of the downtown retail council and the Portland business alliance we would ask for the approval of this restrained expansion of the exclusion powers.

Katz: Thank you.

Moore: That was all who signed up.

December 1, 2004

Katz: Anybody else want to testify? Bob, did you want to say anything? No. Ok. What, rosy? Come on up.

William Warren: Good morning, mayor and council, william warren, city of Portland, I will be brief. The calls that I receive for the neighborhoods I am responsible for which are the pearl up to the border, generally the folks are calling me about the circumstances regarding inappropriate behavior. That's what they are calling me b they are not calling me about a particular status of an individual but the inappropriate behavior, which has been well documented earlier today. And those calls are coming from folks who, whether they are residents of the particular area or they are renters, or they are business owners or business employees, they have a genuine concern about how this impacts them directly as well as the visitors who come to the city and you can well imagine in the neighborhoods that I am involved with we have a fair number of visitors who come to those particular neighborhoods. The other instance which while not directly mentioned is something else that also must be considered is the fact that oftentimes our parks are site force graffiti. And that can happen from any number of individuals. I would ask for your consideration that as you debate this further and hear from both sides to look at this as an additional tool in terms of community policing, not just for the police but also for the community residents, visitors, business owners, and business employees in the city. Thank you.

Katz: Thank you. Council, do you have any questions of any of the individuals who testified? If not, it passed on.

Sten: We are not going to vote today?

Katz: No.

Sten: I wanted to make a quick comment, mayor. I don't do this often but I wanted to thank bob publicly for stepping up and doing this. This has been a very difficult task and I can go for a long time. I am not going to. I want to put this in a little bit of context. There's been way, way too much argument and sound biting and I plead guilty on it as well. I am not pointing fingers. Between this question of are we going to be tough on the homeless or do, you know, be lenient or whatever it might be and there's been I think a lot of focus on quite a few false choices about the ordinance. The context I want to put this in because I am actually very sensitive to market's arguments and very much would like to see that year review and the numbers that you are sharing on the june exclusions give me some pause. It really does. The context I want to put this in is that it's a broader effort to try and figure out how, instead of saying, this simplistic answer on this side or this answer on that is going to help the homeless or clean up the park to build the livability group that can take these issues on and this is one piece and I think a bigger strategy, there won't be any magic sort of unveiling of a solution because it's all fairly common sense. But we will be bringing back on december 20 to the greater community work of the citizens commission on homelessness that's been working for the better part of a year and part of that's going to be the argument that we actually, as law enforcement, business, social services and government, have to do much more direct intervention into the people who are chronically homeless, get them off of the street and I think those kind of efforts have to be seen as part of this and there's a cooperation going on that was not here a while back to be polite between all the key players and this parks exclusion I see as one piece of that. And, you know, bob's a very quiet public servant who gets passionate about this issue. And so the fact that he's working this hard I think should be noted. Thanks, bob.

Francesconi: Following up on that, again, the fact that the park exclusions have dropped from between 1500 to 1700 to 900 is significant on the part of police and parks that we are trying to make sure that we are not targeting the homeless or depriving free speech rights. I do think we should have a housing criteria so that we can look at these exclusions, and I do believe, harry and parks, you should work with mark on this 30-day versus 90 owe day, the double exclusion on the length of time so I think those are legitimate issues that you should look forward. But I do agree with commissioner Sten that this has got to be part of a broader approach so the answer has to be,

December 1, 2004

more low-income housing, more job training, more direct social intervention. But it's not going to be tolerating crimes in the park or decent see things that affect everybody's use of it. So that's why we have to bring this approach together. And I appreciate your efforts to do so.

Katz: Let me just thank the representatives of the homeless community. You don't see this hall filled with representatives of the homeless community. You see their legal or their leadership representatives. And that's because they were at the table dealing with all these issues. And though there may have been some dissent on it, even hearing from ginny and mark, it wasn't -- hammering on the table. So, mark, I take that very seriously. And some of these issues bring back to the committee and we will see what we can do to meet some of those needs. We probably will not meet everything but we will meet some of those needs. And, bob, we have thrown everything at bob. You point one little subcommittee and he gets it all. That's a good idea, let bob study it. And he then brings it, he does, he has the freedom to appoint his own subcommittee. We figured we at least give him that opportunity to do that. And then he brings it back to the full group for discussion. I have learned some things late in life, but bringing everybody to the table on every other week basis for a long, long, long time gives us the ability to solve problems that usually were very contentious. So for those of you who are hanging around, use that model. Eric's used it for the homeless housing. And I hope that whoever has the police bureau and the parks bureau will continue using that model in northeast Portland and downtown. And quite frankly, these are the parts of the city that need it as well. We will pass to second. All right. 1379.

Item 1379.

Katz: Charlie mckinney, thank you very much. All right. We need a substituted. You want to explain why we have a substitute?

Jennifer Sims, Financial Planning: Yes. Mayor, members of the council, jennifer sims, financial planning. The exhibit 2 for the fall 2004 bump budget monitoring process and minor supplemental ordinance incorporated removal of the parks endowment and parks construction funds that were inadvertently included in a minor supplemental budget before you today. These two funds are to be included in the major supplemental budget ordinance that will be brought Portland next week.

Katz: So I need a motion to accept these substitutes exhibit.

Leonard: So moved.

Sten: Second.

Katz: Any objections hearing none so ordered. Tell us what this item is all about.

Simms: This authorizes budget adjustments that either do not increase the budget expenditures of the fund but make adjustments within a fund. Or increase funds to recognize fund balance care and carryovers or grants but the increases are less than 10% and those are called minor supplemental changes. As I mentioned just a minute you ago major supplemental changes will be considered next week. Also I would like to mention that major supplemental increases or changes required a tssc, tax supervises and cause commission hearing and that is scheduled tomorrow 3:30 in the rose room. For the budget adjustments, the 10% increase, that will be heard tomorrow. An executive summary and detailed analysis. The budget monitoring requests were forwarded to council members on november 22. It's a rather large packet and I hope you all have lots of time to review it. There are nine funds that comprise the budget adjustment that will actually end up being a reduction of \$2 million and then there are 27 funds included in the minor supplemental that result in an increase in resources and requirements of over \$130 million. The largest increase is the general fund which increases by 36.8 million dollars. The bulk of this increase is attributable to carryover of grants in the amount of \$28.7 million. If all recommendations are approved through the recognition of additional beginning fund balance in the general fund, and the fact that we are not planning to use all of it, there will actually end up being a total general fund contingency increase to a total of \$2.5 million balance of contingency in the general fund. Included in the materials that you have received is a report on budget notes from the bureaus. The budget notes are those that

December 1, 2004

were adopted with the 2004-2005 budget and directed specific work or reports back from bureaus. I would like to specifically mention three of those right now before I talk in a little bit more detail about some of the fund actions that are included here. I would like to call to your attention that the special litigation unit that was, the council requested be returned to the council with a proposal from the city attorney's office has been determined that there must be delayed to next fiscal year because of lack of space. Also the office of neighborhood involvement has been directed to prepare a five-year financial plan and a cost of service study, and that has also been delayed and has not been received yet. The, there is also a proceeding with consideration of establishing a revenue bureau and the r.p. 4 detailed analysis and recommendations on that is actually due today. And I am mentioning these because some of them, all the other things that are included are really pretty much just routine reporting back. There's nothing that deviates from council direction or you have already heard within the first few months of the fiscal year from the bureaus.

Katz: When are we going to get the housing service financial plan?

Simms: The materials submitted by the bureau in your budget note indicated it would be submitted by november and we don't have it.

Katz: I raise that because I am sure that commissioner leonard may ask us to accept two positions as permanent positions and we denied it until the finance plan was completed, if you recall. There were finance issues running through that whole budget. So he may come back. I am sorry he left but there he is.

Simms: If it be the pleasure of the council I will proceed to go through in very summary version some of the major economies that are incorporated in these budget, in this budget action. I mentioned that the resources and requirements are proposed to increase by \$36.8 million. A significant items include use of the beginning fund balance. There is additional discretionary general balance and some excess program revenues. And I would like to call out a couple of those items for your attention and for information for the record. Brought in an additional \$1,040,000 budgeted under the general policy fund. These dollars are shared back to the bureau for their use as the rate of 50%.

Katz: Not all of it.

Simms: Right. This budget proposes that several strategic initiatives would be put in place using \$521,000 of those funds for pilot programs related to homeless and downtown requirements. Also you will recall that we made a reduction, in fact, a total cut in parks operations and maintenance funding that had been set aside in the general fund as an ongoing funding and there are still o&m cost requirements. And this amended will add \$265,000 one-time money to address current needs, and then this will be addressed in the 2005-2006 budget.

Katz: Let may make sure everybody understands. As you recall there was a list of o&m requirements that had been committed that were not recognized in the budget. And so that's what jennifer is talking about. Make sure that we cover that.

Simms: There is a transfer to the health fund proposed that will restore general fund amounts due to the fund and address a labor grievance. The budget includes \$250,000 to be paid to the Portland center for the performing arts as a 50% payment, one-time dollars for an agreement to shore up the lodging tax. There are other smaller changes for contingency that primarily involve carryovers and pass through. I would like to also specifically mention some items that are not included in reviewing requests from the budget or the bureaus. There were several items throughout, from different bureaus that were suggesting not be included and are actually not in these materials. The first is restoration of \$100,000 which was recognized as efficiency and budget balancing action for the bureau of licenses. We, in anticipation of creating the revenue bureau, that their bureau is currently balanced and we are proceeding with r.p. As I mentioned on looking at the creation of that bureau. So recommended against that change. In addition in the bureau of licenses there was a request for one f.t.e. For unlicensed compliance program. About a a \$60,000 amount. This was

December 1, 2004

work to be done in collaboration with the fire bureau to pursue unlicensed businesses that were uncovered during the fire inspection program. A corresponding action and support for that from the fire bureau was not submitted so we will not recommend that be included. The next item is, was a small item related to for an attorney to pursue unlicensed compliance and collections work and the attorney's office had agreed to, when was this was proposed, everybody agreed they would absorb the cost and therefore, since the attorneys absorbing it we also did not approve the request for licenses for their \$13,000 for this cost. Shall I move on? Office of neighborhood involvement, there were two positions that were created. Recommended to be created that were approved. But there are also two that because they had funding and a plan that we thought made sense, there were also two positions that were recommended to be converted from permanent, from limited term to permanent and we recommended against those. And only pending getting the financial plan, which should be forthcoming and when that plan is in place, and reviewed, we would assume that that could be incorporated in the winter bump if that makes sense. There was also a proposal to transfer program reserves to the neighborhood inspection program, again, pending the financial plan recommended that that not be actually -- action be taken at this time. And finally under oni there was a request for excess revenue under our financial policies. The bureau felt that, because they had excess program revenues, that they were due \$66,000, the sharing back that I had mentioned. But at the same time the bureau had used more discretionary revenue than they had budgeted. And so our position on that was that they weren't due money back when they had overspent the discretionary amount. In the police bureau, the dignitary protection, as you might expect, has exceeded what was budgeted and we do have a set aside program for dignitary protection. The police bureau requested \$200,000. However, it's so early in the fiscal year, and they're current projection for expenditure for personal services doesn't indicate that they will necessarily need this resource. They may. So we have recommended against including that pending how the rest of the year unfolds and most likely that would be addressed again in the spring bump when we have more complete picture for the year. For the, those are all of the items that we have for me, anyway, to highlight for you on the general fund. The transportation fund has a net resource requirements increase of \$845,000, again mostly related to grants and encumbrance carryover and they did request adding two anti-icing trucks. You might remember the ice storm last year. After that storm, they did a review of their equipment needs, and concluded they needed an additional truck, which we have recommended. We did not recommend that they receive the second truck. For the public safety fund, boac is requesting a transfer for partially funding nine limited term emergency communications operator training positions. These positions are sorely needed to keep up with the call demands. However, the bureau had a larger beginning balance than was budgeted, and we have recommended that they not draw on that special public safety fund but instead simply transfer from the operating fund. There are several other changes, of course, in other funds. Those have all been included in your materials both in the writeup, and as attachments to the ordinance. They are really most the rest of them are very technical in nature and so I will not take your time to highlight any of those.

Katz: Ok. Questions? Anybody want to testify? You have opportunities again, especially in oni, to get your financial plan together and then in the winter bump --

Leonard: We have our financial plan together.

Katz: We don't do it that way. Have you seen their financial plan? No.

Leonard: What we submitted was for these two positions was reallocating resources already given to the bureau to fund positions that are seasonably being funded now.

Katz: That's not a financial plan. And I am not going to accept the financial plan right now.

Leonard: Well --

Katz: If you have a financial plan it's got to go to be analyzed by a fiscal people.

Leonard: We submitted it and we submitted our plan.

December 1, 2004

Katz: When did you submit it?

Leonard: For the life of me I do not understand why your office has reacted this way. You have done nothing to help me figure this problem out and everything to create roadblocks for us to fund to serve the public. That doesn't cost the city any more money than what we are spending.

Katz: When did you submit the financial plan?

Paul Stewart, Office of Neighborhood Involvement: I wanted to make a clarification. Paul Stewart, office of neighborhood involvement. That I believe what commissioner Leonard is talking about is our approach to addressing short-term service delivery and funding needs for this fiscal year and the financial plan that o.m.f. is talking about here is a formal five-year financial forecast that we have not yet submitted to o.m.f.,

Katz: Thank you.

Stewart: That is we rolled back, well, we didn't meet the initial deadline that was set that was prescribed in the budget note which was September of this year. We had some challenges that we didn't foresee in collecting the data that we needed to build this thing from scratch for the first time in the bureau. It took a little longer than we had anticipated. And at the time of the bump submission we were hoping for the end of November. But as the formal deadline for submission of five-year financial plans, as I understand, was rolled back to December 15, we also decided we could probably use a couple extra weeks to tighten it up and have some discussions and that is our current target date for the delivery of the financial plan.

Simms: So basically we have a situation here for the council to consider where we have a five-year financial plan pending and the bureau's appropriation a plan to add two permanent positions without any context.

Leonard: Let me --

*******:** So.

Sten: I do want to preempt this discussion. I am not going to be able a decision on the information I have and it's 12:40. If the goal is to debate today I am not there. I am totally interested in hearing the argument later.

Katz: Ok. All right.

Simms: One other point. These are limited-term positions that we are discussing and they have, they are able to be extended.

Sten: I am saying that to everyone with all due respect.

Katz: All right. You do have limited positions. And they can be extended and once you present your financial plan, and come back, we will, the council will act on it. All right. Any other questions? If not it moves to -- no. Roll call.

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

Katz: Mayor votes aye.

Katz: Ok.

Item 1380.

Ed Rutledge, Bureau of Human Resources: Good afternoon. Labor and employee relations manager. Just want to bring you up to speed. There's two concurrent negotiations that have been going on with Coppea one for the master contract and one is for the information technology or i.t. employees. The ordinance in front you have with an agreement, ratification thereof for the i.t. employees. This covers about 150 employees in 12 classifications. As would be expected most of these employees work for the bureau of technology services, b.t.s. But there are others in other bureaus. These employees were previously not represented. They voted for representation and then there was a certification that they be represented by Coppea in June of 2002. However, after the certification, there was a disagreement between Coppea and the city on how best to proceed thereafter. That question was appealed to the Oregon employment relations board. And as some of you the e.r.b., those wheels move rather slowly. And the e.r.b., employment relations board, issued

December 1, 2004

a decision in october 2003, supporting the city's understanding of how best to proceed. The parties were able to engage in formal negotiations commenced in january of this year. Those negotiations came to a resolution with a tentative agreement through the assistance of a state mediator in october of this year. And subsequent to that, coppea ratified this particular agreement. What this agreement does is folds this group clearly into the existing agreement, master agreement with coppea which is currently running under the status quo pending negotiations of that master agreement. It provides for terms and conditions specific to this group of employees. And that deals with salaried ranges for the classifications, certain merit increases that were to become effective during the period of negotiations, compensation for work over 40 hours and some stand by pay. The tentative agreement facilitates the parties in their negotiations of the mast are agreement. They will now be able to focus on the master agreement negotiations. Those, the contract negotiations for the master contract are still, are still in progress and, in fact, I believe the next bargaining session is scheduled for tomorrow. What this does is that this clearly resolves the negotiations specific to this particular group of 150 employees and facilitators the process for the master. We recommend ratification.

Katz: Ok. Questions. Anybody want to testify? Roll call.

Leonard: Aye. **Saltzman:** Aye.

Sten: You are making this look too easy. Aye.

Katz: Mayor votes aye. 1381.

Item 1381.

Leonard: Aye. **Saltzman:** Aye.

Sten: This is a little bit different than plan. They are not here. I want to thank them for improving this package and listening to the neighbors. Aye.

Katz: Mayor votes aye. 1382.

Item 1382.

Katz: Come on.

Ty Kovatch, Commissioner Leonard's Office: Amanda fritz had to leave. I will be as quick as possible. In the title 3 package that came before you last summer, and was send back to the bureau for work this is one of the pieces we broke out into three pieces and formalizing the draft is a council advisory body and the membership in its role and such is what's in front of you right now. And we had a good process. We had multiple public meetings where we established the role and makeup of the body and if you have any questions, I would be happy to answer them but I will turn it over to thomasina.

Thomasina Gabriele: Thomasina gabriel, 2424 n.w. Northrup. I am really sitting in front of you today as the chair of drac [Development Review Advisory Committee]. I will keep this very brief. This was one of our top priorities for this year to get this drac body formalized in terms of its role and membership. Ty has done a great job in talking with everyone and anyone who was interested in the outcome of the development process and I really encourage you to pass this as written.

Katz: What would amanda say if she was here?

Gabriele: My understanding what amanda would say is that she really -- I was privy to incredible stream of emails back and forth primarily between ty and amanda working out the details down to the exact wording of the membership list that was one of her key concerns. As well as making sure that the neighborhood interests were represented on the body and in the charge. So I think my understanding is that if she was here she would be asking to you support this.

Kovatch: She's authorized me to say she supports and I am proud to have tack upped on my wall a note from her that says "good work, ty" on this. Her tenacity was a good part of this process.

Katz: Thank you. All right. Anybody else want to testify? Go ahead.

Saltzman: We I know we talked about this last time when we decided to add an environmental representative or environmental organization representative.

*******:** Right.

December 1, 2004

Saltzman: As well as neighborhood representatives. So I see environmental conservation listed as one of the categories but where does that --

*****: In --

Saltzman: What do we mean by that?

Kovatch: If you read in the top part when we had the discussion before I meant to address this if we had more time but the understanding of everybody was that your concern was rooted in the idea that the person who would be appointed to that spot might be a member of an organization, for instance, on the other side of the environmental side of things, for instance, an environmental consulting firm for the company who is digging gravel out of ross island and pouring it back in. The reason we used the term conservation to clarify that the person who is appointed to that spot should be from a organization that represents people who are interested in environmental conservation issues and that the that was a direct result of multiple discussions where it was organization that it was representative and that it became environmental conservation for just a specific issue, I believe you are -- you intended.

Saltzman: Ok. And does this body report to the director of b.d.s.?

Gabriele: My understanding of how it's written is that it has the ability to report to the city council as well as any of the directors who are involved. There's more than one director of more than one bureau that's involved in the permitting process so it really, one of the important things that the existing drac thought was important to say in this was the permit process involves multiple bureaus and multiple directors and sometimes it has to go to city council because they are really the only body that can oversee all of it.

Saltzman: Ok.

Katz: Good. Further questions? Anybody else want to testify? Let's move it to second. Thank you. 1383.

Item 1383.

Katz: Ok.

Dean Marriott: Good morning, mayor Katz, member of the council. I'm dean marriott, environmental services director. With me doug schmitt, city manager from lake oswego and engineer, also from lake oswego. This is a very brief item and, mayor, there are two options. We can either just describe this or our colleagues have brought a couple of slides, if you would like to actually see the site.

Katz: They sat here for the entire morning. So -- and I think we would like to see the slides.

Engineer from Lake Oswego: I think you will be pleased. This ordinance would authorize me to sell approximately five acres of land to the city of lake oswego for \$1.6 million. It would also authorize me to grant them an easement over some land we will retain for recreational access. You may wonder what's going on here but many years ago the city purchased some land in lake oswego to construct a wastewater treatment plant and we did that and we provide water water treatment services to a portion of southwest Portland to and the city of lake oswego. We bought a little extra land as we usually do at these sites to prepare for some future expansion. It turns out we don't need all that land. We leased some of that extra land to georgia-pacific who for many years operated a chip facility there on this site. When they notified us a couple years ago they were not going to discontinue that operation we began having conversations with the city of lake oswego about the future use of this site and they expressed interest in having their own river renaissance along the willamette in the city of lake oswego. And one thing led to another, and commissioner Saltzman and I went down and met with officials from lake oswego and we agreed it would be a very good thing for the city of Portland to convey a portion of this property to the city of lake oswego to help facilitate their renaissance along the willamette. It was a complicated transaction. Involved three parties, georgia-pacific still involved, and a closeout of the operation of the site. It took a little time because there were some site soil contamination issues to be resolved. But I do want to thank linda

December 1, 2004

dobson of my staff and john o'donovan of my staff who were tenacious in working on this, pete casting of the city attorney's office and bob kincaid who is not here with us today from lake oswego who was also tenacious on their part and with that I would like to turn it over to our friends and colleagues from lake oswego.

Doug Schmitz: Thank you. Mayor Katz, members of the commission, thank you very much for this opportunity to do our river renaissance in downtown lake oswego. Lake oswegoans have long eyed this site hoping when georgia-pacific vacated it we could move on and do something significant along the waterfront of the willamette and you have given us this opportunity. I particularly want to thank you commissioner Saltzman and dean as well as linda dobson and pete in your city attorney's office for making this such a great relationship between two agencies.

Katz: Good work. Thank you. Anybody else want to testify? Roll call.

Leonard: Aye.

Saltzman: Well, I want to thank dean and linda dobson and the city of lake oswego, mayor hammerstad. This truly is a tremendous opportunity for the city of lake oswego to have a riverfront park which is something it's lacked. And this is a great opportunity. We are pleased to be able to be part of this dream. Aye.

Sten: I want to compliment you as your work as city manager. Not just because you stole our fire chief but I have had a long running debate with my friend carl rohde who is a republican although it's a nonpartisan city council who claims lake oswego is more progressive and points to your work on streetcar, open space. They have a transportation users fee that's doing good things in lake oswego. And he claims he succeeded on many things we have not been able to succeed on in the last couple years. I am coming next week to visit the mayor and say hello and congratulations on this good piece of work. Aye.

*****: Thank you.

Katz: One of the joys I have had is to work with the mayor who is a former colleague of mine in the legislature. She gets it. There's no question about it. And she's done some incredible work in lake oswego. And I am sure she's done it with your help so congratulations. We will be partners with you whenever we can. Aye.

*****: Thank. I appreciated that.

Item 1384.

Katz: 1384.

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

Katz: Mayor votes aye we stand adjourned until 2:00.

At 12:51 p.m., Council recessed.

December 1, 2004

DECEMBER 1, 2004

2:00 PM

[Roll call taken]

Saltzman: Please read the item.

Saltzman: Ok. This hearing is on the record. I'll now turn to our attorney, kathryn beaumont, and ask her to describe the hearing and how it will be conducted.

Kathryn Beaumont, Sr. Deputy City Attorney: Ok. Commissioner Saltzman, a minor correction, this is actually a limited evidentiary hearing.

Saltzman: Sorry about that.

Beaumont: No problem. I have several announcements that i'm required to make under state law. First, this is a limited evidentiary hearing. The focus of the hearing is on the single issue that this decision was remanded back to the city on, luba, and that is has to do with a transportation impact criterion which requires a finding that the transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. The criterion lists the number of factors that need to be considered, including the factor, safety for all modes. Luba remanded the council's prior decision back to the city so that the city could better address that safety for all modes evaluation factor with respect to pedestrians and bicycles. Because this is a limited evidentiary hearing, this means you may submit new evidence to the council in support of your arguments on this issue. The evidence can be in any form, such as testimony, letters, petitions, slides, photographs, maps or drawings. Any photographs, drawings, maps or other items you show to the council during your testimony should be given to the council clerk at the end of your testimony to make sure it becomes a part of the record. In terms of order of testimony, we'll begin with the staff report by stephanie beckman from the bureau of development services for approximately 10 minutes. Following the staff report, the city council will hear from interested persons in the following order, and all persons were here it would be the appellant would go first, 10 minutes to present her case. Following the appellant, anyone who supported the appeal would have three minutes per person to speak. Next we would have the applicant for 15 minutes to address the city council and rebut the appellant's presentation. We would hear from persons who support -- who oppose the appeal for three minutes each. Finally the appellant would have five minutes to rebut the opponents of the appeal. Then the vote takes a vote. If it's a tentative vote they set a date for the final vote. If the council takes a final vote today that would conclude the matter before the council. Several short guidelines for presenting testimony. These guidelines are established by the zoning code and state law and are as follows -- any testimony and evidence you present must be directed toward the transportation impact approval criterion for this land use review. B.d.s. staff will identify this criterion as part of their staff report to the council. If you fail to raise an issue supported by statements or evidence sufficient to give the council and the parties an opportunity to respond to the issue, you'll be precluded from appealing to the land use board of appeals based on that issue. Additionally, if the applicant fails to raise constitutional or other issues relating to proposed issues of approval with enough specificity for the council to be respond, the applicant will be precluded from bringing an action. That concludes statements I need to read.

Saltzman: Any members wish to declare a conflict of interest? Do any members of council have ex parte contacts to declare or information gathered outside this hearing to disclose? Ok, great. Then let's turn it over to stephanie for the staff presentation, staff report.

Stephanie Beckman, Bureau of Development Services: Thank you. My name is stephanie beckman, a planner with the bureau of development services. As the city attorney mentioned we're here to have a public hearing on a remapped from the land use board of pales on this land use case. A brief history of how we got here today, the city council heard this application on appeal back in march of this year, and upheld the hearings officer decision to approve the 21-lot subdivision proposal. That decision was appealed by linda bauer to luba, and they sustained one out of the

December 1, 2004

seven assignments of error raised by the appellant, related to transportation impacts and remanded that decision back to the city for further proceedings. So to address that, the remand, the city council needs to adopt official findings to address the remand and reissue a final decision on this case. Reacquaint you a little bit with the site and the proposal, it was to subdivide the 5.86-acre site to create 28 lots, two new public lots, a small private street tract and environmental resource tract that would contain environmental zoning on the site. There were also some adjustments requested to site building setbacks for six lots. This is a copy of the zoning map, the site is highlighted there for you. You can see the area is predominantly zoned r-10 to acquaint yourself with where this is, southeast foster is to the north. The site runs next to southeast 162nd and southeast clatsop is to the south. It's important to note that this site has only 41 feet of frontage on southeast 162nd, and that provides access to the remainder of the site where most of the lots will be created. And that entire 41 feet will be dedicated and approved as a new public street as per this proposal. This site is also directly adjacent to gaibler estates. Some of these same issues raised before luba were raised in that appeal, so some of these issues will probably sound familiar to you. This is an aerial photo that shows the site, basically what you might see from this -- this area does have a lot of development potential, a lot of big sites with vacant area. This is the preliminary subdivision plan. Again, you'll see two public streets coming into the site. There's a connection provided both north and south to adjacent properties. You'll see the small private street tract, environmental resource tract here. And again, a public street that's going to come out and connect to southeast 162nd. And all of the streets within the subdivision will have sidewalks and will be paved and meet city standards. This is going to show a couple of photos of 162nd, because that's the primary issue that's being raised here today. This is 162nd looking north, from the site. You can see that it's a two-lane road. Very limited shoulder. No sidewalks, bike lanes, etc. There is a ditch that runs along the roadside as well. And this is the driveway -- existing driveway entrance to the site now that will become a public street in the future. Similar photo looking south. And this is an entrance to the site. And the property abutting southeast 162nd, both north and south of this entrance, of course, is not part of the subdivision proposal. So the luba remand dealt with assignment of errors that involved the transportation impacts approval criterion, and the city attorney already read that out for you, but essentially the approval criterion has a number of evaluation factors, which includes safety for all modes. And at luba the appellant argued that safety for all modes had not been addressed in the decision, the final decision of the city, specifically raising concerns about safety for bicycles and pedestrians on southeast 162nd. Luba agreed with that, and remanded the decision to the city to address that issue. It's important to note that the luba decision states that all the evaluation factors listed in the approval criterion must be addressed, but they didn't find that there were any specific improvements or requirements that had to be made in order to meet the approval criterion. When this case came to both the hearings officer and the city council on appeal, the issue of adequacy of southeast 162nd was raised by the appellant, as well as concerned neighbors. It was recognized at that point that this was an issue, but neither review body, the hearings officer or the city council, found that it was warranted to require outside improvements. Unfortunately the final decision that was adopted by council didn't clearly explain that decision and the findings. And so at this point staff recommends that you adopt additional findings that clearly explain your previous decision on that issue. And I provided a memorandum as well as some supplemental findings in your council packet that would address that issue. I'm going to briefly go over some of the key points in those findings right now. The first point is that --

Saltzman: These are the supplemental findings you're going over right now?

Beckman: Right. And I do have additional copies if you need that, but you should have received that in your council packet as well. The first point I guess that the onsite street improvements, the internal street network, will provide facilities for bicycles just on the paved roadway, the local service street roadway, as well as sidewalks for pedestrians. And there will be street connections

December 1, 2004

both to the north and south that will allow people to connect to adjacent developments. The city has a longstanding practice of requiring street improvements only on streets that directly abut the development site. That allows for incremental improvements to occur as sites develop as opposed to requiring that all improvements be in place before any development can occur in an area, and offsite improvements have been required only in very -- very limited circumstances in the past. There's no evidence in the record that there's an actual unsafe situation here. That's not to say that the conditions are ideal or that there are necessarily adequate facilities for pedestrian/bicycles, but there's no accident history or other issues like that that would trigger -- necessarily trigger a more extreme response than you might have in other areas where there might have been accidents or other issues. There's a low volume of pedestrian and vehicle traffic expected from this development. It's going to be 21 lots. Don't expect to have a huge volume of people walking. It's in a low-density area, zoned r-10. Again, not as many people are walking or biking as you might expect in inner parts of the city. And there's also a lack of destinations within a reasonable distance, such as -- there's no transit service directly abutting the site. There are no schools or parks or commercial areas that are within a close proximity to this site that you would expect people to be walking to. And lastly, there are other technical and cost issues that add additional burden to offsite improvements in this particular situation. The nearest sidewalk that you might be able to connect is 1,000 feet to the north. That runs for about 1900 feet, and then it terminates without reaching any kind of significant destination either. There's insufficient right-of-way on southeast 162nd to do proposed street improvements. So if you put in a sidewalk in a temporary location, you probably have to rip it out later, or you'd have to acquire a right-of-way from property owners that aren't included in this particular site. And lastly, street improvements would trigger stormwater improvements and upgrade to the storm -- the ditch that runs along the roadside, which would include costs as well as engineering issues. And so the conclusion of the findings is basically that the impact of this development on pedestrian/bicycle traffic is not substantial enough to warrant offsite improvements. And then just to finish up, the alternatives facing you today are basically that you must adopt additional findings to address the lura remand and then reissue a final decision on this case. The findings that you do adopt could result in a number of different alternatives. The first would be to uphold your original decision to approve the application as it is. The second would be to add additional or modify the conditions. And the third would be to overturn your original decision and deny the proposal. And then in terms of the review timeline, the city has 90 days to respond to the lura remand. And at this point a final decision is due by december 27. And that concludes my presentation.

Saltzman: Ok. Any questions? Ok. So we have some written testimony from linda bauer, the appellant, but it says she will not be here. Do we just move to the applicant, then? So you will have 15 minutes if you so choose.

Steve Morasch: Well, I hope we can much briefer, briefer than that. For the record, my name is steve morasch, with schwabe, williamson and wyatt, Portland, Oregon. I'm here on behalf of the applicant. And we were here just about three weeks ago, I guess, on november 10, when a very similar issue -- actually pretty much the identical issue for gaibler lane estates, so we hadn't planned on repeating our entire presentation, which we'd already given to council on that, and just rely on that presentation, but here to answer questions the council may have, or if the council wants us to back through that we're happy to do that. I want to respond to one point linda bauer raise in her materials which I think is inaccurate. She basically says there's a safety problem because school buses won't be able to enter this development and will have to stop and pick up children out on 162nd. She says there's no room for school buses to turn around in this development. That's inaccurate for two reasons. The cul-de-sac is probably big enough for school buses to turn around, since it's engineered for fire trucks to turn around. More importantly, the gaibler lane development to the north, recently approved by council, contains internal sidewalks that connect with the internal

December 1, 2004

sidewalks in this development in a north/south direction, providing, you know, an alternative to 162nd. Because there's also a vehicular connection between those two developments, a school bus could enter gaibler lane, proceed through that development, come down through the internal street, into this development, and then return out to 162nd without ever having to actually turn around because it can turn around in all these internal streets being created through this development proposal. So the issue that she raises about school bus and school bus safety is really a nonissue because of the internal pedestrian and vehicle connection between this development and the gaibler lane development. And other than that, we're here to answer any questions council may have.

Saltzman: Questions?

Morasch: Ok. Thank you very much.

Saltzman: I guess I needed to ask, was there anybody in the audience that wanted to testify on behalf of the appellant? Ok, seeing nobody. Anybody who wishes to testify on behalf of the applicant? Ok. Well, so now we move into -- and the appellant is not here, so there will be no rebuttal, so we'll move into our discussion.

Leonard: I move the supplemental findings proposed by staff.

Sten: I second the motion.

Saltzman: The motion is to uphold the original decision with supplemental findings.

Beaumont: Yes. What you would do is add the supplemental findings into the hearings officer's decision, which you adopted last time, just before item I on page 14.

Saltzman: Ok. And then, as I understand from talking to you prior to this meeting, the intent would be to bring back the final decision with those findings at next week's council meeting?

Beaumont: Correct. That way you would have one clean document to look at and adopt.

Saltzman: This would be a tentative decision?

Beaumont: Correct.

Saltzman: And then it will be on next week's, wednesday's agenda, wednesday or --

Moore: In the afternoon?

*******:** Sure.

Saltzman: Do we have anything else?

Moore: We do. We have a 2:00 and then a 4:00. If you need a time certain -- do you want to make it a time certain or just put it on the regular afternoon agenda?

Saltzman: Just put it on the regular.

Moore: That will be december 8 in the 2:00 p.m. Session.

Saltzman: Ok. Any further discussion on the motion? Please call the roll, Karla.

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

Saltzman: Ok. That's it. We're adjourned until 2:00 p.m. tomorrow.

At 2:25 p.m., Council recessed.

December 2, 2004
Closed Caption File of Portland City Council Meeting

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

Key: ***** means unidentified speaker.

DECEMBER 2, 2004 2:00 PM

Item 1386.

[Roll call]

Saltzman: Could you please read the item?

Saltzman: Ok. This is a continuance from our october 7 council hearing on this issue. The council had tentatively denied the applicant's land division, setback adjustment and zone change and ask that the neighborhood and the applicant meet to try and resolve disputes over the proposed development. Council's understanding is that there have been two meetings and we will now provide an opportunity for both parties to report on the meetings. We'll give the applicant 10 minutes and be followed by 10 minutes for the neighborhood. And then council will discuss and make a final decision. Did you want to give us any kind of a staff report?

John Cole, Bureau of Development Services: Commissioner Saltzman, I was just going to go over the same material you already did.

Saltzman: Ok. Katherine, we don't need any instruction from you? Ok. Let's hear from the applicant first for 10 minutes.

Daniel Kearns: Good afternoon, commissioners, my name is daniel kearns, i'm the second attorney on this case, and mr. Welsh contacted me after his meetings with the neighborhood association. So i'd like to give a brief introduction and tell you where we are on this application right now. I was not part of the meetings. I got a report from both your staff and from mr. Welsh as to how they went. I wouldn't characterize them as a lovefest, but the message about what the elements that the neighborhood wanted I think are pretty clear. They gave a list of things they wanted. Mr. Welsh wasn't able to give them everything they wanted, but he did come with designs and I have a couple drawings about what the show -- to show what he's proposing on the lot here. I'd like to mention from the onset that we have formally withdrawn the partition and the adjustment because based on what I have heard from the neighbors, filtered through my client, but also from the staff, these are design issues and lot configuration issues. They aren't germane to the zone change, but what this thing is going to look like on the property is going to fit with the neighborhood, is it going to be a duplex, is it going to be tall, is it going to have bad traffic impacts, those are major concerns of the neighbors. What mr. Welsh has proposed I have two drawings. First of all to alie some of the neighbors, he has no interest in putting a duplex on these properties. I think by right he could put a duplex on the corner -- he has no interest in doing that. Since we're going forward with just the zone change, if you -- in order to give the neighbors a measure of comfort, if you want to impose a condition of approval, that would prohibit more than a single family residence on either of these resulting parcels, that would be fine, because he has no intention of duplexing any of the parcels here. Also he has no interest in going above a story and a half. I don't think there are many two-story houses close by. That's not what he has in mind, it's not consistent with the neighborhood. He wants eventually to split the lot, whether it's a straight line or crooked line, he wants to preserve the existing house that's there, and that's what has driven his design desires here and I think that was part of the reason for the adjustment, but however it can be cut, he wants to preserve the existing house. It's extremely sturdy, it's a 1950's house, custom made by a man in a wheelchair, so it's a pretty substantial house, it's well made, it's a custom house. So

December 2, 2004

it's solid. He wants it preserved if at all possible, and I think in a neighborhood like this that's a good thing to do. Here are some drawings of what he proposes. This is a connected house, here's the existing house with another unit added. It's a story and a half. It works with the neighborhood, as an example of what he was considering. Here's another one that shows two houses, the existing house with the garage taken off in order to make room for a second house, a story and a half, preserving the house that's there. And he's checked with pdot and they're not wild about it, but they could put -- he could put a garage behind this in order to do a garage on site for the corner parcel. So transportation is ok with the proposal that's he has come up with. So I guess the take-home message is that there -- these are the designs he wants to do, they're consistent with the neighborhood. In my mind they address the neighbors' concerns. The neighbors want a 50/50 lot, which would sacrifice the existing house. He's not willing to do that right now, but -- he's just not willing to do that. He is definitely willing to commit to not do a duplex on the property, which I think is good.

Saltzman: The first drawing, is --

Kearns: This is --

Saltzman: Is it still a single family residence?

Kearns: Two single family residences. But they share a lot line. It will work -- since it has an r5 comp plan designation, if it goes to r5 zoning it would be possible to split the lot and produce this kind of house. And i've -- you may know i've represented a lot of neighborhood associations around the city opposing infill projects that are pretty hideous. And when I saw this, this is not hideous, this is perfectly consistent with what the neighborhood has, and also what the neighbors are -- what they want. Like I say, they didn't reach agreement at the meetings that they had, but I think as commissioner Leonard pointed out the last meeting that personalities and feelings are a little raw right now. So by taking the partition and the adjustment gone off the table, it allows these design issues to be maybe a little more thoughtfully put together in a way that's consistent with the neighborhood. But --

Leonard: What was the nature of the disagreements?

Kearns: I wasn't there, but what they wanted was a 50/50 split in the existing lot, which would mean the sacrifice of the existing house. They wanted all parking on site, and they wanted no duplexes, and I think they wanted maximum of a story and a half. The neighbors are here so they can clarify those issues, but those are the list of issues that was recited to me by staff and by Mr. Welsh. Those were the important things that I got out of it.

Sten: Just as a technical matter, the original case was a zone change, a partition --

Kearns: And an adjustment.

Sten: And you're withdrawing the request for partition and adjustment. Have you done that formally?

Kearns: Yes, I have. I think the letter should be in your packet.

Sten: Right.

Kearns: So that allows these issues -- these are design disputes, it's not a zoning dispute, it's a design dispute. The zoning was resolved when you applied the comprehensive plan designation of R-5 many years ago in the 90's I assume, or before that. This is just implementing that, and I can understand the neighbors' concerns because i've represented neighborhood associations, I -- it definitely strikes a chord with me, and the issues that they've raised i'm confident can be worked out. And if you want to ensure that, you can impose -- if you're inclined to impose a condition of approval on a zone change, that prohibit a duplex anywhere on the property. Leaving just the rezone, it's consistent with the comp plan designation, and the other criteria is that our service is available to serve potential development, and they are. If you have any questions, I have asked my client, unless you're dying to hear from him, that he doesn't have any additional remarks, if you have any questions we'd be happy to try and address them.

December 2, 2004

Saltzman: Questions? Ok. Thanks.

Kearns: Thank you. Should I leave these up here?

Saltzman: Sure. Ok. Mr. Mccredie, are you going to represent the neighborhood?

Saltzman: State your name and --

Cameron McCredie, President, Reed Neighborhood Association: My name is cameron mcredie, I reside in the reed neighborhood association, and i'm president of the reed neighborhood association. Again, we weren't prepared for this twist. We were hoping to see an attorney and an architect early on in the game. Allow me to read five minutes of testimony, and then we'll discuss what we just heard. Before I proceed with my report of the last 60 days, I would like to briefly recall where we've been on this issue. Since march of 2004, the neighborhood has been united in their concern over this particular development. It is one of those rare instances where neighbors have been more active than neighborhood board itself. Nothing less than an issue that affects the very core of the neighborhood. As you know, we have successfully demonstrated to the unique character of our mid-century architecture and the history of how it came to be. A history that includes some of Portland's small business owners who were able to afford a little more for their families. We successfully argued the reed neighborhood is in a precarious position that requires the authority only the council is able to provide at this time. With the loss of city funding we've been left with an incomplete neighborhood plan. The comprehensive plan does not adequately address our unique neighborhood character, and with its r-7 to r5 conversion combined with a 3,000 square foot minimum lot size, we are open season for those developers looking to deconstruct and slice up the neighborhood at the expense of its existing character. We've demonstrated the preservation of architectural integrity is of value to the neighborhood and of Portland. We were surprised to find that the council postponed finalizing its vote in our favor. On october 7, the council directed the neighborhood to meet with mr. Welsh in an effort to reach an agreement. In a demonstration of good faith, the association proceeded to create a process for reaching such an agreement. October 12 we held an emergency board meeting to review and approve a process. Included in the proposal was a compromise we agreed to present to mr. Welsh. We agreed to a zone change from r7 to r5 and a lot split. Conditions were added that addressed key neighborhood issues. That the lot be divided equally to prevent any future lot division, that the new housing not exceed 1 1/2 stories and blend with the existing architectural character and off-street parking for two vehicles be provided for each new structure. I then sent a letter to john welsh's attorney, roger a. alfred of perkins coie. Copies were sent to city council staff. The letter described the process, our compromise, and neighborhood expectations. We accepted the attorney's office to attend the october general meeting as he expressed here before the council. I stressed to mr. Welsh the value and importance of bringing an architect, and that his presentation include preliminary plan and prospective drawing and other architectural renderings that meet the criteria as set in the letter. It was expected that during the meeting the general membership be given the opportunity to review and comment on the proposed development. The concerns and comments were then to be addressed in the following association board meeting held november 18. Again, mr. Welsh was encouraged to bring his architect with modified renderings for discussion and final approval. Any communication during the interim was to be through jacob rostauff of southeast Portland, who is here before you now. Over 500 newsletters announcing the october general meeting were printed and hand delivered to residential households. Over 200 newsletters were delivered to the largest multi-family neighborhood complexes for distribution. Approximately 65 neighbors attended the october general meeting held at reedwood friends church. The general membership voted to approve, continuing the process as originally stated in the letter. Approximately 45 neighbors attended the november 18 board meeting again. And the general membership was restricted to submitting written questions for board consideration. After careful adherence to the original proposed process, consideration was given to mr. Welsh's development plans as provided. The board unanimously

December 2, 2004

rejected mr. Welsh's proposals. The primary reasons for our failure in reaching a compromise is we were not presented with architectural drawings showing perspective footprint or to-scale plans. The developer failed to bring an architect or attorney to the meetings. Off-street parking was not adequately addressed, the developer refused to consider an equal lot split to prevent a future lot split. Many more reasons why expressed relating to issues of character. Now, I don't think that we've ever mentioned that we do not want to see a duplex. That was not what we were opposed to. What we were opposed to is him having a remaining lot that can be divided in the future by right. And as long as he has 6,000 square feet remaining or more, he would be allowed to come back and then divide that lot again. And that's been one of our main sticking points. We made that very clear. These drawings here look to me to be more of a real estate sketch artist, and if we had these 10 months ago we could have pretty much had this finished. But I think it's too little, too late, and i'm not sure if it is a standard practice to allow someone after a preliminary vote to then withdraw portions of an application before finalizing the vote, and i'm hoping that we can just put this to rest and then allow mr. Welsh to come back and do it right. Any other comments from either of you? Questions?

Saltzman: I was intrigued by your last statement, if you had seen these pictures ten months ago --

McCredie: Oh, well, we've been trying since march to see some plans, and this is pretty much what we've seen, what, november 18.

Leonard: If you saw these plans, they guarantee that the 6,000-foot partition couldn't be divided further, you would be ok?

McCredie: These plans are not equal lot division, and still the --

Leonard: If you just saw a scheme that guaranteed that the proposed division didn't allow for a further division after that, you'd be ok?

McCredie: We would -- yeah, I think we'd be good with that point. However, these plans do not show off-street parking for the remaining lot, and it was my understanding that transportation would not allow a driveway entry on to steele street, which is what he had suggested for the remaining housing. But this would have been a good starting point back in march, but we haven't seen a whole lot on paper. We would like to see, again, not to be able to divide this lot into three, and also these straight-on pictures do not show that's a snout house or not. The new structure. So we didn't have much of an option but to refuse to accept his plans based on them being a lack of plans for us.

Saltzman: Ok. Any further questions? Ok. Thank you.

McCredie: Thank you.

Sten: I have a question for the attorney.

Saltzman: Should john come up? Do you want to ask --

Sten: No, our attorney.

Saltzman: John, why don't you come up to the table too, just in case.

Sten: I just wanted a clarification on the question that was raised about changing the application in terms of, is that the -- is it the applicant's right to withdraw the request after the hearings officer and the council have met for two of those requests, or is that unusual, or is that something that's the council's call?

Kathryn Beaumont, Sr. Deputy City Attorney: It's not something we typically see, but an applicant does have the right to withdraw an application at any point up until a final decision.

Sten: And can you withdraw parts of an application? Is that what this is? Is he withdrawing parts of the application, or -- does he have three separate applications before us, or one application which he's modifying?

Beaumont: John, you can probably answer that from a technical standpoint. I believe he has one application for three separate land use reviews.

John Cole, Bureau of Development Services: That's correct.

December 2, 2004

Saltzman: Why don't you give us your name for the record.

Cole: John Cole, a planner with the bureau of development services. Maybe to expand just a little bit on that commissioner Sten, accepting this particular application, it's common for us to have development proposals that include more than one land use application in this particular case they would have paid an application fee for the zone change, and then they would have paid two separate fees, one each for the land division and for the partition. And then they're processed as a package.

Saltzman: I would ask the question, this is probably directed to you, kathryn, we have the ability to condition a zone change on something like no duplex, no further subdivision of the remaining lots? Are those legal conditions we can attach?

Beaumont: It's not something we typically do with zone changes. What the code says about conditions of approval is that you may impose them if they're necessary to help an application satisfy the approval criteria. I'm not sure to what extent that condition -- a condition saying no duplexes is relevant to the approval criteria for a zone change, but the applicant has offered it up, and by offering it up you may consider it. The code doesn't prohibit us from imposing conditions on a zone change. I think typically we haven't done that because it can provide -- sometimes it's a problem to track them administratively as property changes hands over the years.

Saltzman: What about further division of a remaining lot as a condition, or no further division?

Beaumont: I think that would be a difficult condition to impose under the circumstances of this land use review. If the applicant was willing to agree to that, you could impose that condition, but I think otherwise I think it's difficult simply because of its lack of relationship to the criteria.

Leonard: The applicant -- that would be a condition for me to -- for them to get a yes vote out of me, if they can start thinking about that.

Saltzman: Ok. Any further questions.

Sten: I guess one last question from a legal standpoint. I didn't think -- i'm not trying to hide anything, I think the applicant meets the criteria for the zone change. I'm not sure how much that's worth without all the other pieces. So my question is, the application before me is not for the zone change, it's for all those things, and so is the choice before me to -- I have not been convinced I was wrong on my last judgment that he did not meet the criteria for the entire application, which is why I made a tentative motion to overturn the hearings officer and turn it down. So that application still standing seems to me the choices are to turn down the original application -- i'm not compelled to accept the request to change the application, or am i? Do you see what i'm getting at? Is the applicant -- is it the council's choice whether it has an application in front of it for just a zone change? Is that a request he's making or is that a right? It seems to me that if he has the right to ask just for the zone change, I view that question differently than if he's asking me to just approve the zone change as a matter of judgment.

Leonard: All we have before us is the action we've taken in our prior hearings, which is as exactly as commissioner Sten has explained it.

Beaumont: Right. What you have before you is an application for three consolidated land use reviews. What the applicant has said is, i'm taking away two of those. I don't want the land division anymore, I don't want the adjustment anymore.

Leonard: That's not before us. Correct? What's before us is what we've been considering.

Sten: That's what i'm trying to figure out.

Beaumont: This is --

Leonard: Can we --

Sten: You understand the question?

Leonard: Can we affirm our prior decision and he can resubmit an application based on the zone change that you would think they would want to take into consideration some of the concerns listed here, and then we consider that on its merits separately?

December 2, 2004

Beaumont: Yes, you can. Yes, you could do that. What you might -- if the applicant were to appeal that further and it were to be sent back to us, we might find ourselves in the same position as we are today, with some additional direction from luba or not, depending on the outcome.

Leonard: It's not our job to perfect the application, is it, here? I mean, our responsibility is to consider what's before us.

Beaumont: That's correct. And I suppose you have a choice, at this point you have a choice of saying, yes, we'll let the applicant withdraw two-thirds of their application and consider the remaining one-third, or you have the choice of saying, no, we interpret this as being one application, and if you withdraw part of it you've effectively withdrawn all of it, and we don't have anything left. We have to consider it all or none.

Saltzman: I'll remind everybody that we need three votes to do anything today. I'll just state my preference and leave to it makers and seconders of the motions to decide. I would be inclined to grant the zone change with the condition proposed by mr. Kearns, if there's would a commitment to not subdivide the remaining lot.

Leonard: I guess my preference, i'm not -- I guess my preference would be to affirm our prior decision and have the applicant resubmit based on I think what all three of us are saying. We can look at it clean, give everybody a chance to then be on the same page. What i'm hearing is there are elements of an agreement, but it's unfortunate the applicant has interacted the way he has that causes us to be at this stage, but I think there's an opportunity to start again. And then we'll consider that based on its merits, if and when it comes to us.

Saltzman: Is that a motion?

Leonard: Sure. Do we need a motion?

Saltzman: We just need to motion to uphold our on tentative decision from october --

Beaumont: You do have findings before you, a set of findings before you, which is option one, which would uphold your tentative decision. So you could have a motion to affirm your tentative decision, grant the neighborhood's appeal and overturn the hearings officer's decision and adopt the findings which are option one. If you want to do something else, you're going to need a separate motion that clarifies what you want to do.

Leonard: I don't know quite how that would occur given what i'm saying. I would like to do what we originally intended. But also send the signal that I am as well open to a zone application that doesn't allow for more than the divisions proposed, and I think there should be an attempt by them to meet with the neighborhood and figure out the design part as well.

Beaumont: If that's your intent your motion would simply be to adopt the findings labeled option one as your final decision.

Sten: The last decision.

Saltzman: Come up to the microphone.

Sten: I'll second the motion. The motion was to affirm the prior decision, i'll second that.

Kearns: For the record, dan kearns, on behalf of the applicant. We would offer a substitute condition or an additional condition that would limit the -- limit to it a maximum of two lots on this property. It sounds like that's maybe more what the neighbors are concerned about.

Leonard: I think you need to do that in a brand-new application for a zone change.

Kearns: I don't think we need to, necessarily.

Leonard: You're going to.

Kearns: Well, one -- the problem when I saw this is that -- the way things are processed at Portland, you submit three application forms, you pay three separate fees, the zone change fee in itself is \$6,000, and it's the city process -- the city processes these in a consolidated fashion. State law gives the applicant the option of consolidating, therefore it's the applicant's call as to whether they want to consolidate. Portland processes it that way and luba has very clearly said the applicant controls the application or the applications until there's a final decision. When I heard the

December 2, 2004

neighbors' concerns, their design and lot configuration-type issues, I agree that warrants further discussion and if I have anything to say about it, for sure that will happen. I think mr. Welsh, this has been a steep learning curve for him and I think you've seen that. He has not been in the business long, this is his first time at this, and it's been a tough experience. He now knows that he's going to be going into an existing neighborhood. That's what most infill developers fail to realize there's an existing neighborhood, and you can get a feel for the character, but unless you talk to the people who live there you won't get a feel for what they have to say and how they feel.

Leonard: It's also important how you talk to them when you talk to them.

Kearns: No kidding.

Leonard: Not just talking.

Kearns: No kidding. But if he were to do this again, would I recommend he separate the zone change from the design type issues, which is what we're asking to do right now.

Leonard: I think we're talking about shuffling of paperwork. Basically what I think i'm saying, I hear my colleagues echoing, we want to dispense of this as it's before us, and if you want to take that portion that's left that's the zone change and come back and amend it or do something with it that reflects what you're hearing here, we're happy to consider that anew. But i'm sure our able staff at bds can help you figure that kind of paperwork shuffle thing out. I don't think we're saying different things.

Kearns: It poses a practical problem for someone who's applying for this. There's the \$6,000 application fee.

Leonard: I'm saying I happen to know the folks there at b.d.s. are very customer oriented and will figure that part out. I'll work with them on that part so you don't get hit again with the fee. I'm cognizant of that. But as far as this application on its merits, I think we're going to do what we're going to do, but I don't want you to have to incur additional expense for a new application, but I think it needs to be a new application. But we can figure that technical part out.

Kearns: So you would view favorably an application that included a stipulation of no more than two lots on the resulting parcel, or the end product? That's the only difference?

Sten: Can I weigh in for a second? I would very much like to see a proposal like the first one that shows the neighborhood what they're going to get. Because I think the only --

Kearns: The detailed drawings?

Sten: The proposal that -- what's at issue is what's going to be built there. If your client gets the zone change under the current discussion, I think it's inevitable that the loan partition and adjustment will be in front of this body. And so all i'm really doing by giving him the zone change is helping him save some money on an application that he didn't really earn because the application as a whole wasn't supportable. But with commissioner leonard I think being -- saying as the commissioner in charge he's willing to work something out on the fee, I think what you ought to bring back in is -- what we're saying is, clearly he's got a very strong case before anybody votes that the zone change is allowable. I don't think there's a solid argument that the services aren't opposed.

It's a fairly hollow victory if you don't get to build anything there. So I guess people are saying, even -- this thing is so heated, even the zone change that council is unlikely to want to do, even though he's without trying to get conditions out of him, I think that argues for come back in with an application to actually do something. It's a small lot, there aren't that many possibilities. Work with the neighborhood and come up with a design that doesn't end up in front of the council.

Kearns: But you would encourage processing the zone change separately?

Leonard: Again, I --

Sten: I would not. I think --

Leonard: I just think for the neighbors and for a lot of reasons we need to treat this as a separate issue that has been decided on its merits. I'm signaling to you i'm more than willing to bend over backwards to work with you so you don't have to duplicate expenses again. But on the condition

December 2, 2004

that commissioner Sten more articulately than I just laid out, I think you need to come back in with the conditions of the parcel not being able to be split again and also if you have designs there that the neighbors are interested in, they just indicated they were, sit down with them and get approval. And work through it.

Sten: I think there's been some talk up here about a zone change with a bunch of conditions that try and guess at what the neighborhood wants. If the issue is saving the money on the fee and commissioner Leonard is willing to work on that, I think you would be much better served to not do that, because it's hard to guess what the conditions are -- you may agree to something that's not the best design. You want the best design for the parcel --

Kearns: But usually that's not attached to the zone change.

Leonard: You're thinking as an attorney. We're thinking as a group of people responding to some upset neighbors. So we're trying to help you draft a solution, and the solution here is to go back, get your zone change, sit down with the neighbors, come up with some agreed-to designs, and you probably won't be back before us, and you won't have extra costs in terms of the application. We'll make sure that happens for you.

Kearns: So you are not even suggesting a condition attached to a subsequent zone change? Because it would be a standalone zone change--

Leonard: If you can sit down and work out a deal with the neighbors, you don't probably need to come before us again. Because there would be nobody to protest the decision.

Sten: I don't see what you're accomplishing by getting a zone change when you can't build without a partition headed right back to this body that's very unhappy to keep hearing this. That's what I'm saying. So I would suggest however you process the zone change first, second or different -- because you're going to need a partition that's much more subjective, that you work out the design concurrent to that. Exactly how you process it, my guess, I'm not trying -- my understanding for the reason to do the zone change today was to save the application fee again. Because it's a \$6,000 application fee, which I understand is a lot of money, and I see exactly why somebody wouldn't want to pay \$6,000 for the one piece of the application that's likely to be approved. I'm saying it's not much of a victory if we don't solve the bigger problem. So if we can take away the application cost, it seems to me that argument should come back with a full package.

Kearns: Especially after what I've heard from the neighbors, I think the conversations that you want to have us have that were there, we're getting on the same page. It's the design issues.

Leonard: And the concern about a commitment that there not be a further division.

Kearns: You can impose that condition as a simple condition to put on. We volunteer it. And you won't have anyone challenge that condition.

Leonard: Nor will we have to consider it if you can work out something in your new application.

Sten: Do we have a motion.

Leonard: Do you understand?

Kearns: I do. I do.

Leonard: I'm actually asking the staff person.

Cole: I do, and to maybe paraphrase it, the commission has considered the application package as a bundle. You're not interested in unbundling it as the applicant has requested, and that in doing so you are interested in denying this particular application. You've provided a message that you want us to work with the applicants on a subsequent application that they'll submit to the city after having had additional discussions with the neighbors, whereby the neighbors have an understanding of what the final development is going to look like, and they can process those independently.

Leonard: And we'll waive the fee because of the fee that's already been paid.

Cole: And we're willing to work with the developer to do that.

Leonard: Ok. I think the staff has a good sense.

December 2, 2004

Kearns: I've always thought you did too. So you are looking for a new application that will be separate zone change, and the partition, and there won't be an adjustment, I don't think, but it depends on what the design looks like, it will come after that. The next thing you won't see before you is a new zone change application, because hopefully it will be resolved. That's the plan.

Leonard: Yes.

Kearns: Ok. And the b.d.s. would waive the fee on the application for the zone change? I heard you say that. [laughter] I heard your commissioner say that.

Saltzman: Ok. Any further discussion? Please call the roll.

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

Beaumont: so the findings labeled option one are adopted as your final decision, and we're done.

Saltzman: We're done. We are adjourned until wednesday.

At 2:41 p.m., Council adjourned.