



CITY OF  
**PORTLAND, OREGON**

**OFFICIAL  
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **24TH DAY OF FEBRUARY, 2010** AT 9:30 A.M.

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

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Ben Walters, Chief Deputy City Attorney; and Ron Willis, Sergeant at Arms.

<b>DUE TO THE ABSENCE OF TWO COUNCIL MEMBERS EMERGENCY ORDINANCES WERE NOT CONSIDERED AND ITEMS WERE NOT HEARD UNDER A CONSENT AGENDA</b>		<b>Disposition:</b>
<b>COMMUNICATIONS</b>		
<b>251</b>	Request of Randy Toole to address Council regarding activism and social justice (Communication)	<b>PLACED ON FILE</b>
<b>252</b>	Request of John Blair to address Council regarding activism and social justice (Communication)	<b>PLACED ON FILE</b>
<b>253</b>	Request of Thomas Patrick Allen to address Council regarding activism and social justice (Communication)	<b>PLACED ON FILE</b>
<b>254</b>	Request of Lew Church to address Council regarding activism and social justice (Communication)	<b>PLACED ON FILE</b>
<b>TIMES CERTAIN</b>		
<b>255</b>	<b>TIME CERTAIN: 9:30 AM</b> – Free Geek program update (Presentation introduced by Commissioner Saltzman)	<b>PLACED ON FILE</b>
<b>256</b>	<b>TIME CERTAIN: 10:15 AM</b> – Tentatively approve the proposal for a Demolition Review to demolish the Historic Kiernan Building-Dirty Duck Tavern, a contributing structure in the Chinatown National Register Historic District, in order to allow the construction of a new 3 to 4 story residential group living and soup kitchen building to serve the new Blanchet House of Hospitality at 421-439 NW 3 <sup>rd</sup> Ave (Findings; Previous Agenda 186; LU 09-171259 DM)	<b>CONTINUED TO MARCH 3, 2010 AT 10:40 AM TIME CERTAIN</b>

<p style="text-align: center;"><b>REGULAR AGENDA</b></p> <p style="text-align: center;"><b>Mayor Sam Adams</b></p> <p style="text-align: center;"><b>Bureau of Transportation</b></p> <p>257 Authorize an Intergovernmental Grant Agreement with TriMet for City financial contributions to fund the final design and construction of the South Corridor Phase II: Portland-Milwaukie Light Rail Project (Second Reading Agenda 249)</p> <p>(Y-3)</p>	<p style="text-align: center;"><b>183554</b></p>
<p style="text-align: center;"><b>Commissioner Amanda Fritz</b></p> <p style="text-align: center;"><b>Position No. 1</b></p> <p style="text-align: center;"><b>Office of Cable Communications and Franchise Management</b></p> <p>258 Authorize City to participate as intervenor in petitioning for review of Federal Communications Commission's decision to preempt state and local regulations for cell tower siting (Resolution)</p> <p>(Y-3)</p>	<p style="text-align: center;"><b>36765</b></p>
<p style="text-align: center;"><b>Commissioner Dan Saltzman</b></p> <p style="text-align: center;"><b>Position No. 3</b></p> <p style="text-align: center;"><b>Bureau of Environmental Services</b></p> <p>259 Authorize an Intergovernmental Agreement with the State of Oregon, Department of Environmental Quality for administration of National Pollutant Discharge Elimination System 1200-Z, 1200-COLS and 1200-A General Permits for stormwater discharges from industrial activities (Ordinance)</p>	<p style="text-align: center;"><b>PASSED TO SECOND READING MARCH 3, 2010 AT 9:30 AM</b></p>
<p>260 Authorize the Bureau of Environmental Services to acquire certain permanent easements necessary for construction of the NE 33rd Drive Culvert Replacement Project No. E07154 through the exercise of the City's Eminent Domain Authority (Ordinance)</p>	<p style="text-align: center;"><b>PASSED TO SECOND READING MARCH 3, 2010 AT 9:30 AM</b></p>
<p>261 Amend Ordinance authorizing the Bureau of Environmental Services to enter into agreements for the conveyance of properties located within the East Lents Floodplain Restoration project area (Second Reading Agenda 239; amend Ordinance No. 181880)</p> <p>(Y-3)</p>	<p style="text-align: center;"><b>183555</b></p>
<p style="text-align: center;"><b>Commissioner Randy Leonard</b></p> <p style="text-align: center;"><b>Position No. 4</b></p> <p style="text-align: center;"><b>Bureau of Development Services</b></p>	

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**262** Amend fee schedule for site development permits (Second Reading Agenda  
230)  
(Y-3)

**183556**

At 10:34 a.m., Council adjourned.

**LAVONNE GRIFFIN-VALADE**  
Auditor of the City of Portland

By Karla Moore-Love  
Clerk of the Council

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

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**WEDNESDAY, 2:00 PM, FEBRUARY 24, 2010**

**DUE TO LACK OF AN AGENDA  
THERE WAS NO MEETING**

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**February 24, 2010**  
**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.

**FEBRUARY 24, 2010            9:30 AM**

**Item 251.**

**Fish:** Just give us your first and last name and you have three minutes, sir.

**Randy Toole:** My name is randy toole. I'm here to discuss basically what the city is doing about the homeless problem that's here going on in the city and also about the rampage in old town on the drugs. The drugs, about our living standards down there. I've been homeless. There's a new breed of homeless people that are coming into the market, while -- the homeless market, but it's people that have been -- are suffering from the economy. There's educated people out there now. That have ended up on -- in this predicament because of our economy and ended up having to go in subsidized housing because of I job market. I personally live in a subsidized housing. Right down in the middle of it. Right above sisters of the road. Where, you know, this is now our bus mall. Where the city has invested, tri-met has invested, the federal government has invested money into bringing a mass transit through here. This is the first thing that people see when they come to our city, from the bus depot, the train station, they're going to walk or take the max down the street and see what's going on here. And this isn't the way our city should be portrayed as. As a relief station for the homeless, for drug dealing, for just all-out crime. I have to live in this thing. There's property people in there, I live under a ccc building. The stuff is filtered into my building to where it's bringing my standard of living down. I don't like -- you know, i'm not there because of alcoholism or drug addiction, i'm there because of the economy. I can't find a job. I'm stuck there, trying to do something about it, but yet the stuff keeps filtering in. I want people to take accountability, you know, for their position on, you know -- you're providing housing here, you should be accountable for what you're providing. You know, there's -- you're allowing it to happen. There should be a line drawn here and i'm asking the city to really step in and, you know, make these businesses accountable for it. They're accepting federal money. You know, there's federal grants out theres that accepting this. They should be held to a standard on, you know, what you can -- you know, do. You know, if you're going to be accepting that money, you've got to police your own property. The action that's happening here. You can't allow this stuff to happen no more. And just -- you know, basically i'm asking the city to step in on this. You know, to investigate some of this stuff. And it looks like my time is about up.

**Fish:** Mr. Toole, thank you very much. Appreciate it. Karla, please read council communications no. 252.

**Item 252.**

**Moore-Love:** He's not able to make it today.

**Fish:** Ok. Please read council communication no. 253.

**Item 253.**

**Moore-Love:** He, too, is not able to make it.

**Fish:** Ok. Please read council communications no. 254.

**Item 254.**

**Fish:** Mr. Church, welcome.

**Lew Church:** You can call me lew, please.

**Fish:** You can call me --

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**Church:** In 2009, maybe -- amanda and randy to be helpful at times. Nick Fish continues to stonewall and many continue to look for leadership from the office of the mayor. In terms of tenant rights projects versus central city unconcerned which randy came and talked about. And tri-met's assaults on transit riders through fare hikes and service cuts and putting a tax on the workers and poor and communities of color. Housing, nick Fish, and central city continue to attempt to paper over mismanagement by the so-called non-profit, slumlord central city unconcerned. They -- persistent pest control problems and tenants from being banned from attending the board meetings and on tri-met, tri-met ignored 1400 transit riders who petitioned to save fareless square. In 2010, tri-met proposes another fare increase. This is unacceptable. There are alternatives for many social justice activists. Support barbour over nick Fish. For more details, [www.electjasonbarbour.com](http://www.electjasonbarbour.com), and [www.trimetridders.org](http://www.trimetridders.org). And on solutions, is Portland the city that works for yuppies or a city that belongs to all of us? Many Portland organizers believe that jesse jackson was correct last week.

An execution by Portland police. In addition to the justice department investigation, calls have been to take away the police bureau from dan Saltzman and we agree. And the housing bureau be reassigned from nick Fish to amanda Fritz. In terms of city-funded slumlords, Portland police budgets and transit agencies that dismantle and dismember public transit, these are our taxpayer dollars. This is our city.

**Fish:** Thank you, mr. Church.

\*\*\*\*\*: [inaudible]

**Fish:** It's nick, lew, but we won't get technical. [laughter] we have two time certain and i'm going to preview for anyone who is here that the 10:15 time certain which we'll call in a little bit is going to be rescheduled to march 3. So if you're here for the 10:15 time certain on the so-called dirty duck block application we'll be taking that up on march 3, but normally setting it over a little later there the agenda. Karla, please read time certain council no. 255.

**Item 255.**

**Fish:** Commissioner Saltzman.

**Saltzman:** Thank you, president Fish. One of the things that -- go ahead and come on up to the table. One of the things that struck us a couple years ago was the fact that the city, which goes through many, many computers, oftentimes has to pay gateway, in, or dell, an extra amount to dispose of these computers when they had run their useful life or some new software program that certainly replaced the old ones and we thought that was a strange thing to do. These were good computers by almost any other standard. Didn't meet the city's standards but still had a lot of utility for other people. So in 2008, we brought forward and the city entered no an agreement to donate surplus city equipment, computers to free geek, which is a local non-profit that donates equipment in exchange for community service. Whatever can't be refurbished is responsibly recycled. Since starting the program, almost 1500 computers have gone to free geek and out to community organizations. The city has seen several benefits, including, as I said, no longer paying gateway or dell to take them off our hands and also saving the city money in storage space, but the real benefit is that people in our community, who have limited access to computers are able to use these machines and to learn refurbishing skills along the way and these machines, as will be explained, and you go to worthy non-profit organizations and which we have albertina kerr as one of them. To tell us more is free geek director, dave has kins, don, from the youth employment institute and craig from the albertina kerr center. So dave, are you going to start?

**Dave Haskin:** Sure I can start. I'm dave from free geek. Thanks for having me. I have a little slide show here. I'm to let you know what actually happens to these computers once they come to free geek. When we get them, we bring them in and our volunteers in our build program who are trying to learn about computer, they open them up, look them over, make sure there isn't anything terribly wrong with them. Or trying to make sure that they are new enough that they are still -- can be made of good use. The ones that can't be used go to our recycling area where they get pulled

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apart and the ones that can be used go into our build classroom where they have hard drives and operating system and test them and retest them to make sure they're good systems in good working order and can be given out into reuse to those who need them. The main way these computers go out from the city is through our hardware grant program. And any school or not for profit can request through a web form on our website, computer technology and we get these requests, we try to give these organizations anything we can because it's our belief after the free geek that organizations that do good shouldn't be spending money on computer technology. They should be getting that from us and with the money they save, they should use to further their programs and missions. Since we have received these computers from the city, it's really amazing the increase in both quality and the -- increase in both quality and quantity of systems we're able to provide. It's phenomenal. Another program we're starting because of the computers we're getting from the city, it's called "plug into Portland." we just piloted it last summer. Any student in the Portland school system, k-12, that can proof to us of volunteering anywhere in the community, will get from us a free computer, a free class of how to use it and a year of tech support. Our pilot program was a big successful these kids were excited about volunteering and getting their computers and we had whole families going out and volunteering and coming in and getting these systems and we're looking to expand this program this summer. I'm going to go over a few numbers. Since we started this program, the laptop systems, 1500, we have so far refurbished in our build program, which runs twice daily. Two classes a day, five days a week, anywhere from six to 12 volunteers at a time. Getting a lot of hands-on experience and exciting about these computers and successfully refurbished 1,050 so far. And systems from free geek, from the city that free geek volunteers have recycled. 350, unfortunately not every system can make it. Sometimes they're just too broken or too old to be saved by our volunteers and there's no need to worry. These systems, when they go to our recycling area, they get recycled to the highest standards possible. Free geek is a certified e-recycler. And we're the only one in the state certified and a -- you can be sure we recycle these computers, we do the right thing with them. 950 systems have found new homes and over 100 different schools and not for profits organizations within the city. So these computers that were going back to dell and gateway, so far, 950 of them have found new homes and they're being reused right here in our community and today we have with us, two people from nonprofits that have received computers from free geek. Don, from youth employment institute. And craig from albertina kerr. Turn it over to you guys.

**Don Rossington:** Hi, thank you for the invitation. My name is donald, i'm a lead educators at the youth employment institute we're a non-alternative -- an alternative school that provides training for youth aged 16-21, and the computers that were provided by the city of Portland has helped our program tremendously in many ways. And the equipment we had previously, a lot was 10-plus years old and it was very inefficient for us and we couldn't open email and it was very frustrating and trying to get the kids to be motivated to come to school when the equipment was not up to par was very -- up to par was difficult. Since we've received those, the staff morale has gone up and we've been more productive and updated our computer labs for the students and helped them get résumés and cover letters and teach them how to use technology and the internet and it's helped our organization tremendously and we appreciate the generosity of the city and the free geek program. Thank you very much.

**Craig Rush:** Hi, i'm craig rush with albertina kerr centers and we've been working with free geek almost since the inception, since about 2004, 2005. Over that time, at the beginning, we used to see donations in the range of you can come down and pick up four, five, something like that, for the agency, but that was difficult because we're an agency of 800 people spread out over 55 locations and our needs tend to be more in the -- you know, we need 20 or 30 computers. To support us. So we can get them out and keep everybody working. We saw a dramatic difference starting when the program -- we didn't even know the programs with going on with the city, but all of a sudden, we

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found that, hey, you can pick up 30 today or come get 45 next week and as we picked up the computers, not only did we find there were so many more available, we started seeing that, hey, these are quite good computers. You know, something that our staff wasn't used to using.

and we've seen that the quantity and the quality continue. As a matter of fact, just yesterday, we picked up another 30. I'd estimate since the beginning of the program, kerr has been able to not spend between \$100,000 and \$150,000 on this hardware and that's real money to us. It's money that goes directly back to our programs instead of spending it on the computers so it's been a boon for us.

**Fish:** You have a famous sibling. Will you remind us who your sister is.

**Rush:** Dani swope is my sister-in-law and started the children's book bank and works closely with hands on Portland and received an award from hands on Portland for their innovative use of volunteers in the community. I think they used something like -- about 800 or so volunteers in the first year of operation, and it's a great program. They give out books to three to five-year-olds through primary the head start program, although they're branching out. It's books kids have in the home, as opposed to just being able to read them while at school or somewhere else, I was at the awards banquet where she received the award and the program is outstanding.

**Rush:** We're proud of her.

**Fish:** Congratulations. Any other questions.

**Saltzman:** So the program continues. 1500 is what you've received to date. No problems with the arrangements with the city, in terms of the procedures are worked out. The discs are clean and --

**Haskin:** When we get them, we take them and rewipe them. So there's double security that all data is removed from the hard drives.

**Saltzman:** And I think one of the questions I wanted to ask. I've gone out a lot and talked to groups and organizations and visited schools and often telling them about the program, so I think we need to get the word out to more organizations, because when they find out about it, they're like thrilled. So -- I don't know, do you have any kind of publicity on this? On your website or --

**Haskin:** We have links on our website. And always trying to get the word out more, but any help we can get would be appreciated.

**Saltzman:** The new program?

**Haskin:** Plug into Portland.

**Saltzman:** 24 hours of volunteerism anywhere --

**Haskin:** K-12 and we'll be reinitiating the program over the summer. Summer break.

**Rush:** The children's book bank is also a recipient of computers from free geek as well. Not coincidentally.

**Saltzman:** Thank you for you for your good work and this is a true innovation and a good way for the city to be using computers rather than, as I said, selling them back to the vendor. This is a more worthy while application to get the computers out to the community.

**Fish:** I want to acknowledge albertina kerr -- albertina kerr's partnership with the city.

**Leonard:** They call that the rose building now, commissioner Fish.

**Fish:** The rose building. Thank you very much, commissioner Saltzman for the presentation.

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

**Fish:** I want to just, again, alert people in the audience, we'll not be taking up the 10:15 time certain and shortly be setting that over. Because we only have three members of the council present, we will not be taking up any consent agenda items so we'll now move to the regular agenda. Karla, please read council item no. 257.

**Item 257.**

**Fish:** This is a second reading. Please call the roll.

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

**Fish:** Aye. [gavel pounded] would you please read council item 258.



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**Item 258.**

**Fish:** Mary beth henry from the cable office is here and I want to acknowledge that commissioner amanda Fritz who has played a leadership role on this issue is visiting family abroad so she can't join us.

**Mary Beth Henry, Office of Cable Communications and Franchise Management:** Good morning, i'm mary beth henry from the cable office and with me is ben from the cable office who is available to answer your tough questions. We ask that you support the resolution before you which will authorize the city attorney's office in challenging a ruling by the federal communications commission. The fcc ruling imposes a mandatory shot clock to review wireless facilities. It's a capricious imposition on the ground that wireless needs to be sped up. It's significantly shorter than Oregon's long standing 120-day window for processing land use applications. Without a wireless applicant's voluntary extension of the fcc shot clock, city staff will be forced to process all land use reviews associated with wireless proposals within a hurry-time frame, which will include a shorter notification and public comment period. These abbreviated time frames imposed by the fcc directly conflict with the public involvement process built into Oregon's land use reviews. If the city fails to render a final decision within the truncated timeline of the shot clock. It allows a wireless applicant to proceed directly with a federal lawsuit against the city. The net result of this rule-making is not only unfunded work for a limited staff in development services, but also increased risk of legal costs for lawsuits based on time frames that are not consist. With Oregon law and the city's zoning code this is an unacceptable erosion of local authority. I think it's important for the council to understand that this is one piece of a larger strategy on the part of communications companies to preempt local authority and control. In addition to effect to preempt local zoning for cell phone towers, the fcc at the behest of these same companies is parentally poised to preempt franchise fees in the upcoming national broadband plan. It's set to file it with congress on march 17th. As you know, franchise fees represent a significant portion of the city's general fund. In lobbying the fcc on the broadband plan, the industry is seeking to limit the franchise fees to the cost of managing the right-of-way as opposed to paying fair and reasonable rent for the use of the right-of-way. The negative financial impact to the city would be significant. Especially in these tight budget times. I'd like to end by thanking katherine beaumont and ben walters of the city attorney's office and sylvia kate of development services who continue to defend the city and the citizens' interests in the fcc's assault on local authority. We're available to answer questions. Thank you.

**Fish:** Dan?

**Saltzman:** So the fcc ordered the truncated timeline for cell siting?

**Henry:** Yes.

**Saltzman:** But it has to be -- any attempt to cap the franchise fee has to be congressionally approved by congress? Or -- [inaudible] the rule-making also?

**Ben Walters, Sr. Deputy City Attorney:** These are two separate proceedings. The second one is a report to congress and then there's follow-up action. We're not sure how the broadband plan will encapsulate the limitation. Either it could be a recommendation to congress that congress take action, or it could be a -- initiation of a rule-making at the federal agency. All we know at this point in time is that in discussions with the commission's staff, who are working on the broadband plan, local government officials have been advised that this is a part of what they're considering and are contemplating moving forward with. And mary beth wanted to give you a heads up that that's also proceeding at this time.

**Leonard:** So that I understand, is the issue solely one of expediting the application process or does it include preempting what are criteria -- our criteria is for the placement of a cell phone tower in any given place?

**Walters:** The cita petition, which is what triggered this shot clock determination, only affects the timing of the processing of the applications. But to the extent that they come in and then are -- have

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to be given a different priority than what they ordinarily would receive because of the 120-day application, it does throw things into a little bit of topsy turvy for staff.

**Leonard:** If the council were -- and this is something since i've been here that i've asked and talked about, in the forums we've had, relative to appeals for the placement of to you are, if the council designates specific areas within the city, that is locations, like let's just say on the corner of mcloughlin and holgate, would allow a cell phone tower there, and on s.e. 39th and reed, for an example, if we were to actually -- and reed. If we were to map as a city where we allow them and by definition, no other locations are allowed, does that run into federal interference?

**Walters:** Responding to that hypothetical, because i'm not --

**Leonard:** At least one-fifth of the council is.

**Walters:** So noted. [laughter] the ctia order, the shot clock order does not address that particular question. There are other aspects of federal law relating to restrictions upon the abilities of cities in terms of the ability to offer telecommunications services and we would need to work with council, if that comes forward, we need to work with the council in making sure however we were proceeding, it was consistent with federal law.

**Leonard:** But i'm just asking, I guess i'm asking more broadly, because this issue is before us, if we were to have a set of -- not even a set of criteria, but a predesignated locations we would allow -- one of the issues that's always rubbed me wrong and I don't know that i've ever voted to uphold an appeal for the placement of a cell phone tower and typically it's because they don't follow our own rule and they have to make a good faith effort to co-locate their cell phone antennas on an existing cell phone tower. I've never found that companies make a good faith effort to do that. Let's just say we say as a city, we have designated those areas within which actually specific areas where we'll allow a cell phone tower to be constructed, does that, by itself, violate any of those other rules that you know of? Is there some requirement that we actually allow them in residential neighborhoods?

**Walters:** To the extent that the regulation could have the legal impact of interfering with the ability of the provider to provide services, there would be a legal question presented. There's a federal statute that prohibits local governments from adopting regulations and that was part of what we went through in the years of litigation with qwest with their challenge to our regulations and we did get a relatively recently, 2008, improvement in the legal situation at the ninth circuit level in terms of their interpretation of that statute. But that doesn't mean that the path is clear to prohibit outright the offering of services. And so we would have -- the evaluation would have to occur on a case-by-case basis. And to the extent that if the company came in and able to demonstrate they needed to be at a particular site in order to offer services and no other site would suffice, then we would be in a legal position of not having the strongest case.

**Leonard:** I guess what i'm saying is, technology coverage -- or cell phone coverage technology is not a mystery. We understand what it takes to have adequate coverage by company a, b, c, or d and if within this placement -- and this is not just something i'm thinking about here. I have this office for a while and it was something that I thought about at the time but if we were determined as a city, we'd know from our own research that if cell phone placement, cell phone tower placements occur at these specific locations, any company can provide coverage. It just need to be at this pre-determined location and it can be city-owned property or any one of a number of privately or publicly held pieces of property, but we determine that's where it has to be and we can demonstrate that provides adequate coverage for whatever cell phone company.

**Fish:** If I can jump in. Commissioner Leonard, we had a lengthy and delicate conversation about this last year because of the opportunity to be sued on each of these issues and there's -- to my knowledge, there's a bunch of preemptions and federal law that goes against us. We've been preempted from looking at the health impact. That's why mayor katz used to abstain on those, because she thought it fundamentally wrong. The council took action to authorize a challenge to that preemption, because the council believes the health impacts should be assessed. And the

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question of siting, you raise an excellent point about our ability to determine if there's coverage issues. But my recollection from the conversation last year, when the council went from encouraging placement on arterial, the legal advice we got, because of the federal statute and the interpretation, the advantage was to the wireless companies to make the judgment about conference and if we had unlimited resources we could challenge it on a case-by-case basis. The problem here is that this preemption before us, puts the clock on us to even if we had another 100 people in the cable franchise team looking at this and doing scientific studies and advocating, we're under a time clock that makes it virtually impossible to do that.

**Leonard:** I've sat on appeals where we've denied cell phone towers, citing the criteria that had been told to us was legal criteria, including good faith efforts to co-locate on a site. And we have not been overturned on those decisions so --

**Henry:** If I may, there are two different programs we're talking about here. The resolution before you today is cell phone tower siting which is governed under our land use process and the lead is the planning services and planning bureau. What commissioner Fish is referring to is the program managed through our office, which not placing cell towers in the right-of-way. But rather placing cell attachments on existing utility poles. So there are two different wireless programs --

**Leonard:** Understood.

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

**Leonard:** What i'm saying in reaction to this, this theoretically, if a cell phone company came in and said we're making an application to put a tower on up on this particular site, we reject this instantly and say we have a pre-approved set of sites that we have determined provide adequate coverage. So we can meet the timeline, the fcc says no, you can't have it or they come in, conversely and say we want to put a cell phone to you iron this site you previously identified as being ok. Yes, you can have it. It's a pre-approved site.

**Walters:** And for purposes of discussion, if that's something that you are interested in pursuing, our office will work with you in developing something that's as legally defensible as we can make it.

**Leonard:** Assuming we have the resources and if cell phone towers are located here, they would provide adequate coverage and, therefore, we can limit the placement?

**Walters:** It would be possible. Whether or not it would limit a cell phone company from obtaining a permit to locate in a different spot if they could demonstrate the engineering need is not absolute.

**Leonard:** But if we'd done the work previously, basically it's no different than our land use law.

**Walters:** Part of the complexity is that each of the -- complexity is each of the cell phone companies use different technology and different demands based on the users and the traffic experience that they're having and so that's -- to reach an absolute determination prior to receiving any applications is not something that I think we're going to be able to arrive at but we can do the best we can given what we can forecast in terms of need. And go forward, if that's something that you're interested in doing, we can work with you on putting together a proposal.

**Fish:** And there's also an irony, mary beth. Last year one of the fcc commissioners was in town. And I believe he was a democrat on the panel. I believe he was considered at least nominally responsive to our issues and what prompted this rule, was the fact that there are some states and localities where they've used the land use process to delay by many years a decision on and application and the irony here, the city has never been faulted on the timeliness on which it acts on these. The city is nationally a model of prompt review. We've not been an abuser. But this one size fits all clock, which was to curb abuse in other places now handcuffs us and we were -- we weren't the problem. Is that a fair statement?

**Henry:** Yes.

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**Walters:** Perhaps doubly ironically, although there were claims of those types of delays by the industry, local governments ask the industry to specifically identify where those problems had cropped up so we could evaluate the situation and how it may have arisen or what the specific problems were and those requests were not answered and so the suspicions on the local government side is we're not getting the full story as to what exactly may have happened in those unidentified situations.

**Fish:** Am I correct that any rule-making by the fcc, once it's final, is subject to congressional oversight and congress has the authority to overturn a particular rule?

**Walters:** That's correct.

**Fish:** We have two bites of the apple. One with rule-making and the second is with our congressional delegation?

**Walters:** That's correct. And to give you an idea of the posture, the city has asked the fcc to reconsider and it's taken in advisement by the agency. In the meantime, the city of arlington, texas, has filed a challenge in the fifth circuit and that's the legal challenge that the city attorney's office would be moving to intervene on behalf of the city of Portland. To join with the city of arlington and other local governments in a challenge to the fcc's ruling in the fifth circuit.

**Leonard:** I've been a party and initiated some of these actions myself when I was in charge of the office. We continuously were acting in a defensive posture, as commissioner Fish pointed out. So much so that mayor katz recused herself from all hearings because she was upset with not being able to consider the health impact of cell phone towers. What i'm suggesting is to do a 180-degree different strategy. But to be on the offense and think of this as possibly a opportunity. Cell phone companies ask for a quicker application process. Ok, we can do that and look at an opportunity for perhaps revenue so we identify places throughout the city that are publicly-owned properties, for instance, school properties and parks. If they're going to be placed somewhere, it would be nice to pre-decide where they're placed and be able to say here how a cell phone tower works. And when I had the office of cable and franchise, there's a variety of different designs. You can have the horrendously ugly ones that anybody can see from i-205 when you pass on the very east side of 205, there's three of them that stick out for miles around. Or you can have the other design that are so cleverly designed one would never know they're a cell phone tower. That some of which mimic growth of trees, and a variety of designs. If we approach this in the way that i've come to believe we should, which is to own the sites ourselves or where possible and get revenue for it and here's the design that it's going to look, and you want it done quick, the answer is question or, no, based on the mapping and pre-determined locations we have.

**Fish:** I'd like to work with you on that, with one caveat. On the issue of preemption of health issues, has not prevented public health officials from looking at health issues and I watched a documentary on this question and there's a significant body of evidence that the most vulnerable group impacted by cell phone use and towers is children.

**Leonard:** Right.

**Fish:** And i've asked my parks bureau to under take a review of all cell phone sitings. Attachments or towers located adjacent to parks, recreation centers or other place where is children congregate because I believe we have to make an independent judgment as to whether it's appropriate to have that technology concentrated in places where there are children and the growing body of evidence is that children, whose brains are not formed and in development, are at greater risk of adverse health impacts because of the cell phone technology. So to the extent they're in industrial areas, commercial areas and arterials, that we can be proactive on I think is a great point.

**Leonard:** But the problem is the schools come in here with deals and i've sat and listened to an appeal involving a school within the city of Portland, that couldn't -- wanted to place a cell phone tower because of the revenue. I'm not talking about coca-cola machines. I'm talking about cell phone towers. What i'm suggesting we can do what you're talking about by predetermines the sites.

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Since i've been here, we've been in a defensive position. They come to us and tell us where they want them and we react. They come up with a regulation, we don't like it, we react. I'm saying we change our strategy and proactively, say, if we don't want them in a school, we've predetermined sites. Here's -- behind the fire station on interstate. You drive by the park and the fire house, and it's surrounded by a tank -- with cell phone repeaters and we get revenue from. At the Portland water bureau. So i'm suggesting, there's a collection of publicly owned properties that don't have to be schools or parks that are strategically around the city, so if we change our strategy from what it's been to a more proactive strategy and do the work upfront and make the determination specifically where the sites can be docketed. If they want to ask for an application, it's yes or no, based on whether it's on a pre-approved site.

**Fish:** We'll be spending a lot of time in court, because it's something that cable should look at?

**Leonard:** We're in court anyway.

**Fish:** Every time they preempt us, we buy a lawsuit when we test that. I think it's a good test. We should be proactive and budgeting for the lawsuits that follow because fundamentally, there's little we can do until we actually get congress to do adequate oversight on the health issues.

**Leonard:** I absolutely disagree. The reason why, we do spend a lot of money in this forum, but it's on the defense. What i'm suggesting, we can spend the same money defending a thoughtful creative program that could address neighborhood concerns and health concerns and a lot of concerns by coming up with a coverage system and i'm not sure why that would be overturned if we can demonstrate why those sites would provide adequate coverage. I'm not sure how that would be overturned.

**Fish:** I think this issue is framed for further discussion and let's come back to the resolution before council. Any questions or comments on the resolution? Karla, do we have anyone who signed up to testify?

**Moore-Love:** Veronica would like to testify.

**Veronica Bernier:** Good morning.

**Fish:** Good morning, veronica, you have three minutes.

**Bernier:** Good morning, council members. Good morning to you all veronica, Portland state community health graduate. Alumni, 2005. Good morning, commissioner Leonard. Good to see you, good job on the water.

**Leonard:** That's good.

**Bernier:** And good morning, commissioner Saltzman, you're doing a great job with the police department. We appreciate that. All of those women out there are grateful you're working for the department. And commissioner nick Fish, good morning. Good to see you're holding together the housing frontier. It was chilly last night. Down into the 20s or below, you can really feel the coolness. But we're talking about electrical fields and also city towers and things like that and federal communications projects. Work projects. I'm a vernal of san francisco public health. I was there in the '70s and '80s, working with mike hess. We did a retroactive study on the towers in san francisco and the electromagnetic fields on children in the a quarter mile radius, primarily, most of the people with the children of doctors and medical residents and interns. Around the towers, I would suggest, that the residential community, the houses be at least a half a mile or more. The reason I say that, is electromagnetic fields have an adverse effect on people with pacemakers and maul children and pregnant women. We know this from public health and there's data to back it up.

If a man, at the blue he is festival can hit a g string -- and we're not talking about the g string on the guitar, ok, if the man can actually hit the g string and affect traffic on that freeway over there nearest the blues festival, imagine what a cell phone tower would do, also, that's got to be more electricity and volume and power and all of that stuff. So try to think about it quantitatively, the net effect of. That was a joke, but the guitarist really did affect traffic for two hours. With communications and cell phones and things like that, actually bus drivers can be zoned off by cell

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phones and the field around a cell phone, my cell phone was the range was -- I think about 20-miles. I had a former politician cell phone and whenever I turned it on, I would swear that people 50-miles away could hear t. Be careful with the electromagnetic fields.

**Fish:** Thank you very much. Karla, anyone else.

**Moore-Love:** No one else.

**Fish:** This is a resolution, call the roll, please.

**Saltzman:** Good presentation and I wish us look in the city -- and the city of arlington, texas, in our intervention here. Aye.

**Leonard:** Aye.

**Fish:** I'd like to acknowledge the good work of mary beth henry and the commissioner in charge, who is not here today, but is visiting her family in europe. Amanda Fritz. There are a number of moving pieces here. One has to do with the shot clock which is an outrageous intrusion in local control and while ours was not a problem by the fcc or regulatory body, this appears to be an example of burning the barn to roast the chicken and we're singled out even though we haven't had a problem. And the second is the consideration of healthcare impacts and there's a growing body of scientific literature that says it's a serious issue and i'm pleased that under amanda's leadership, has asked congress to investigate that issue. And the third has to do with how we can get the siting issues aligned with existing law. I think commissioner Leonard has a good idea and I think the constant tug and back and forth on this, is causing havoc and we're spending too much time in the neighborhoods, as randy said, fighting a rear guard action on the placement. I suspect that the cell phone industry will always have the scientific edge as long as the playing field is tilted on terms of making the arguments on coverage, but as randy, said, we should move on the offensive on that. Thank you for your presentation. I vote aye. Karla, please read the title of time certain no. 256.

**Item 256.**

**Fish:** This matter has been rescheduled to march 3rd, 2010 for a time certain. Anyone here to testify today.

**Moore-Love:** I did not set out a sign-up sheet.

**Fish:** That's rescheduled to march 3. Please read 259.

**Item 259.**

**Fish:** Is someone here from bes on this?

**Saltzman:** I'll present it.

**Fish:** Commissioner Saltzman.

**Saltzman:** Thank you. This authorizes a intergovernmental agreement between the city of Portland and department of environmental quality to fund industrial discharge permits within the city limits. Portland's industrial stormwater discharge permits began in 1994 in response to the city's federal stormwater permit which requires the city to monitor and control pollutants and run-off from industrial facilities. The deq and the city had this agreement since 1999 to share stormwater discharge permit revenue, to support administration of these permits and the revenue generated for the city's permit program is about \$132,000 a year. I believe this is the first reading.

**Fish:** Questions from council? Karla, anyone signed up to testify.

**Moore-Love:** I did not have a sign-up sheet.

**Fish:** This matter proceeds to a second reading next week. If we could suspend the rules for a moment and acknowledge the guests from the national peace foundation. Welcome. Who is your sponsor here at city hall? [inaudible]

**Fish:** They're all from russia?

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

**Fish:** Are they able to understand anything that's going on up here? [inaudible]

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**Fish:** Well, we want to welcome our friends from the national peace foundation and honored to have you with us during our council session. Thank you very much. Karla, could you please read council item no. 260.

**Item 260.**

**Fish:** Commissioner Saltzman.

**Saltzman:** Thank you, mr. Mayor. This -- mr. President. This authorizes the city, its eminent domain authority for culvert replace. In the columbia slough. To replace the culvert under northeast 33rd and improve Fish passage and water quality and has support from senator blumenauer and senator wyden. They're willing to sell the easements to the city. The corps will spend about \$3 million on the project and generate around 30 family wage jobs. This is a second reading.

**Fish:** Karla, anyone signed up to testify?

**Moore-Love:** I did not have a sign-up sheet.

**Fish:** This goes to a second reading. Please read council item 261.

**Item 261.**

**Fish:** This is a second reading. Please call the roll.

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

**Fish:** Aye. [gavel pounded] and that matter passes. Next up is 262. Could you please read the item, Karla.

**Item 262.**

**Fish:** This is a second reading. Vote only. Please call the roll.

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

**Fish:** Aye. [gavel pounded] matter passes. Are there any other matters that council would like to raise? Hearing none, we're adjourned. [gavel pounded]

At 10:34 a.m., Council adjourned.