



CITY OF
PORTLAND, OREGON

OFFICIAL
 MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 2ND DAY OF FEBRUARY, 2011 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Adams, Presiding; Commissioners Fish, Fritz, Leonard and Saltzman, 5.

OFFICERS IN ATTENDANCE: Susan Parsons, Acting Clerk of the Council; Ben Walters, Chief Deputy City Attorney; and Gary Crane, Sergeant at Arms.

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

	Disposition:
TIMES CERTAIN	
<p>107 TIME CERTAIN: 9:30 AM – Appoint André Pruitt and Steve Yarosh and reappoint Michael Bigham and Dr. Rochelle Silver to the Citizen Review Committee advisory body to the Auditor’s Independent Police Review division (Resolution introduced by Auditor Griffin-Valade) 30 minutes requested</p> <p>(Y-5)</p>	36843
<p>*108 TIME CERTAIN: 10:00 AM – Ratify a successor Labor Agreement with Portland Police Association for terms and conditions of employment of represented employees in the bargaining unit (Ordinance introduced by Mayor Adams) 15 minutes requested</p> <p>(Y-5)</p>	184401
<p>*109 TIME CERTAIN: 10:15 AM – Authorize an Intergovernmental Agreement with Multnomah County for the design and construction of the Sellwood Bridge Project (Previous Agenda 85; Ordinance introduced by Mayor Adams) 30 minutes requested</p> <p>Motion to amend to accept substitute Exhibit A: Moved by Commissioner Fish and seconded by Commissioner Fritz. (Y-5)</p> <p>(Y-5)</p>	184402 AS AMENDED
CONSENT AGENDA – NO DISCUSSION	
Mayor Sam Adams	
<p>110 Appoint Hermann Colas, Jr. and Jeffrey Cole and reappoint Richard Michaelson to the Development Review Advisory Committee (Report)</p> <p>(Y-4; Fish absent)</p>	CONFIRMED

February 2, 2011

Bureau of Planning & Sustainability		
*111	Authorize Intergovernmental Agreement with Metro to accept \$85,000 in funding for the Green Development Resource Center (Ordinance) (Y-4; Fish absent)	184390
*112	Authorize Intergovernmental Agreement with Metro to receive sponsorship for Bureau of Planning and Sustainability ReTHINK educational series and Build it Green! Home Tour in the amount of \$8,000 in FY 10-11 (Ordinance) (Y-4; Fish absent)	184391
Bureau of Police		
*113	Amend contract with Cascade Occupational Medicine to provide medical examinations for anticipated new hires (Ordinance; amend Contract No. 30000994) (Y-4; Fish absent)	184392
*114	Accept donation of a horse for the Police Bureau Mounted Patrol Unit from Kathryn Kleinwachter (Ordinance) (Y-4; Fish absent)	184393
Bureau of Transportation		
115	Grant revocable permit to Jake's Restaurant to close SW Stark St between SW 12th Ave and SW 13th Ave from 7:00 p.m. on March 16, 2011 until 6:00 a.m. on March 18, 2011 (Second Reading Agenda 92) (Y-4; Fish absent)	184394
116	Authorize an agreement to accept \$223,760 in funds from Cascade Station Development Company to install traffic signals at the intersection of NE Alderwood Rd, NE Holman St and NE 105th Ave (Second Reading Agenda 93) (Y-4; Fish absent)	184395
Office of Emergency Management		
*117	Amend the Intergovernmental Agreement with Multnomah County in the amount of \$35,507 for the procurement of an emergency call-out and notification system to protect the continuity of the City's business operations (Ordinance; amend Contract No. 30001796) (Y-4; Fish absent)	184396
Commissioner Nick Fish Position No. 2		
Portland Housing Bureau		
*118	Amend subrecipient contract with Portland Development Commission to add \$85,061 for the coordination of the Economic Opportunity Initiative Programs (Ordinance; amend Contract No. 32000393) (Y-4; Fish absent)	184397
Portland Parks & Recreation		

February 2, 2011

<p>*119 Authorize contract with 2.ink Studio, PC for design and construction administration services for improvements to Dawson Park and Streetscape for a total not-to-exceed amount of \$177,845 (Ordinance) (Y-4; Fish absent)</p>	<p>184398</p>
<p style="text-align: center;">Commissioner Dan Saltzman Position No. 3</p> <p style="text-align: center;">Bureau of Environmental Services</p> <p>120 Authorize a contract and provide payment for construction of the Wellhead Sump Retrofit Phase 2 Stormwater Treatment Facilities Job No. E07623 (Ordinance)</p>	<p style="text-align: center;">PASSED TO SECOND READING FEBRUARY 9, 2011 AT 9:30 AM</p>
<p style="text-align: center;">Commissioner Randy Leonard Position No. 4</p> <p style="text-align: center;">Portland Fire & Rescue</p> <p>121 Add the Jeff Morris Fire & Life Safety Foundation to the list of those organizations eligible to use the payroll deduction system (Second Reading Agenda 97; amend Code Section 5.08.140) (Y-4; Fish absent)</p>	<p style="text-align: center;">184399</p>
<p style="text-align: center;">REGULAR AGENDA</p> <p>S-122 Create an independent citizen oversight committee for City information technology projects and direct the Office of Management and Finance, City Auditor and City Attorney to prepare all necessary implementing ordinances (Previous Agenda 100; Resolution introduced by Commissioners Saltzman and Fish) 15 minutes requested</p> <p>Motion to accept substitute as amended to direct Mayor to designate “Lead” member of Council in Resolved paragraph 7: Moved by Commissioner Saltzman and seconded by Commissioner Fish. (Y-5) (Y-5)</p>	<p style="text-align: center;">SUBSTITUTE 36844 AS AMENDED</p>
<p style="text-align: center;">Mayor Sam Adams</p> <p style="text-align: center;">Bureau of Transportation</p> <p>123 Declare intent to initiate local improvement district formation proceedings to construct street, sidewalk and stormwater improvements in the SE 82nd Ave of Roses and Bybee Blvd Local Improvement District (Resolution; C-10039) 15 minutes requested (Y-5)</p>	<p style="text-align: center;">36845</p>
<p style="text-align: center;">Office of Emergency Management</p>	

February 2, 2011

<p>*124 Amend contract with ESi Acquisitions, Inc. in the amount of \$700,500 to provide additional WebEOC services (Ordinance; amend Contract No. 38293) (Y-5)</p>	<p align="center">184400</p>
<p>Office of Management and Finance</p>	
<p>125 Authorize revenue bonds to finance a portion of the costs of the Sellwood Bridge replacement project (Ordinance)</p>	<p align="center">PASSED TO SECOND READING FEBRUARY 9, 2011 AT 9:30 AM</p>
<p>*126 Update Procurement Code to conform to new state law and make technical corrections (Ordinance; amend Code Chapters 5.33 and 5.34) Motion by unanimous consent to remove the word “separate” from Exhibit A 2(C)(1) (Y-5)</p>	<p align="center">184403 AS AMENDED</p>
<p>*127 Authorize Class Special Procurements to permit the City to enter into classes of contracts for goods and services (Ordinance; amend Code Section 5.33.220) (Y-5)</p>	<p align="center">184404</p>
<p>City Auditor LaVonne Griffin-Valade</p>	
<p>128 Assess property for sidewalk repair by the Bureau of Maintenance (Hearing; Ordinance; Y1073)</p>	<p align="center">PASSED TO SECOND READING FEBRUARY 9, 2011 AT 9:30 AM</p>

At 11:57 a.m., Council recessed.

February 2, 2011

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 2ND DAY OF FEBRUARY, 2011 AT 6:00 P.M.

THOSE PRESENT WERE: Mayor Adams, Presiding; Commissioners Fish, Fritz, Leonard and Saltzman, 5.

OFFICERS IN ATTENDANCE: Susan Parsons, Acting Clerk of the Council; Kathryn Beaumont, Chief Deputy City Attorney; and Pat Kelley, Sergeant at Arms.

At 7:25 the meeting recessed. At 7:43 the meeting reconvened.

	Disposition:
129 TIME CERTAIN: 6:00 PM – Amend and consolidate existing tree regulations into new Code Title 11, Trees, adopt companion amendments in other Titles, and direct the establishment of customer service improvements and implementation funding (Ordinance introduced by Mayor Adams; add Code Title 11 and amend related Titles) 2 hours requested for items 129-131	CONTINUED TO MARCH 9, 2011 AT 2:00 PM
130 Amend the Intergovernmental Agreement with Multnomah County to transfer land use planning responsibilities to address the administration of tree-regulations that require a development permit (Ordinance introduced by Mayor Adams; amend Contract No. 51712)	CONTINUED TO MARCH 9, 2011 AT 2:00 PM
131 Encourage integration of quality tree preservation and tree planting in early site design, land divisions, and certain land use reviews; improve consistency and effectiveness of tree regulations in specified overlay zones and plan districts; update definitions and amend the Ladd's Addition Conservation District Guidelines to clarify that planting trees on the Nuisance Plants List is prohibited on City property and City rights-of-way (Ordinance introduced by Mayor Adams; amend Title 33)	CONTINUED TO MARCH 9, 2011 AT 2:00 PM

At 9:08 p.m., Council recessed.

February 3, 2011

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,
OREGON WAS HELD THIS 3RD DAY OF FEBRUARY, 2011 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Adams, Presiding; Commissioners Fish, Fritz,
Leonard and Saltzman, 5.

OFFICERS IN ATTENDANCE: Susan Parsons, Acting Clerk of the Council; Kathryn
Beaumont, Chief Deputy City Attorney; and Ron Willis, Sergeant at Arms.

132 TIME CERTAIN: 2:00 PM – Appeal of East Portland Neighborhood
Organization Land Use and Transportation Committee against Hearings
Officer's decision to approve with conditions the application of the
Portland Water Bureau for amendments to the 2003 Powell Butte
Conditional Use Master Plan, environmental review and adjustments for
construction of water system, park facility and trail improvements at
15800 SE Powell Blvd (Hearing; LU 10-169463 CU MS EN AD)
1.5 hours requested

**Motion to tentatively deny the appeal, and uphold Hearings Officer's
decision with modification that 1) Portland Office of Emergency
Management be directed to develop a notification system for those
residents along the floodplain of Johnson Creek; (2) Water bureau shall
provide evidence to Bureau of Development Services that applicable state
and federal permits or approvals have been obtained for the discharge of
stormwater overflow to Johnson Creek prior to the issuance of Bureau of
Development Service construction permits; (3) amend findings, page 28
regarding safety matters of notification and evacuation of the affected
neighborhood that references proposal (1):** Moved by Commissioner
Leonard and seconded by Commissioner Fish. (Y-5)

**TENTATIVELY DENY
THE APPEAL AND
UPHOLD HEARINGS
OFFICER'S DECISION
WITH MODIFICATIONS;
PREPARE FINDINGS FOR
FEBRUARY 16, 2011
AT 9:45 AM
TIME CERTAIN**

At 3:30 p.m., Council adjourned.

LAVONNE GRIFFIN-VALADE
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.

February 2, 2011
Closed Caption File of Portland City Council Meeting

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

Key: ***** means unidentified speaker.

FEBRUARY 2, 2011 9:30 AM

Adams: It is February 2nd, 2011. And it is 9:30 a.m. And City Council is in morning session. Sue, please call the roll.

[roll call]

Adams: A quorum is present. So we will first tackle the consent agenda. Does anyone wish to pull any item off the consent agenda? Hearing none, sue please call the vote on the consent agenda.

Consent roll.

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

Adams: Aye consent agenda is approved. [gavel pounded] Why don't we go ahead and -- we have a very special presentation today. To honor and proclaim black history month. The celebration will kick off today at noon, at least for us, in the Portland building auditorium with a free concert featuring local jazz legends and all people in the city are invited. In addition to the three people today, we're going to hear from three folks, if you want to come up. We have Barbara Leonard, President of the Portland Chapter of the Links. Professor Felicia Williams, black studies department and Barbara Rice, coordinator of today's proclamation. And other special guests. And I would like to read the proclamation. We've got an exhibit on pacific -- before I do that, we have an exhibit on February 11th through March 11th on pacific northwest black pioneers brought to us by the links and the reception will be Thursday at work. February 17th. On Wednesday, February 23rd, we have a program called history, hope and harmony, a tribute to Portland's great jazz heritage, honoring our city's jazz elders. With Grammy nominated and community ambassador, native Portlander Esperanza Spalding and before us we have Donny Adair and Tim Hall and Professor Williams, and Karen Hansen, who are all the co-chairs and the leaders in putting together the black history month. I would like to read the proclamation. Whereas, the month of February is officially celebrated in Portland as black history month and whereas, in 1976 black history month was normally adopted to honor and affirm the importance of black history dating back hundreds of years and whereas, black history month is a time for all Oregonians and Portlanders to remember African American history, particularly the contributions of Roscoe Lee Dixon, Beatrice Morrow Cannady in 1929, Jess Stahl in 1915, just a few of the citizens who helped pave the way to advance civil rights and fortify communities and families and educate and employ other African Americans and whereas, with dedication and hard work, the African American citizens of Portland have uplifted and transformed our communities and whereas, the history of the city of Portland has been made richer from the economic, political contributions of African Americans and their invaluable achievements in business, education and the arts deserve recognition and during plaque history and beyond all Americans are asked to be accountable to themselves, their families, and neighbors and community to continue efforts toward the freedom, justice and equality of opportunity for all Americans, now, therefore, I Sam Adams, Mayor of the Portland, Oregon, the city of roses do hereby proclaim February, 2011, to be black history month. Congratulations. [applause] Mr. Adair do you want to --

Donny Adair, Bureau of Human Resources: Yes, I'll start -- I'm Donny Adair, commissioners, with the Bureau of Human Resources and co-chair of the committee for black history month for about the last five or six years. It's been my pleasure to be a co-chair with Karen over that period of

February 2, 2011

time and also work with Tim, who is our president of the city African American network and a board member of the divorce empowered employees of Portland. What I want to do is talk about what we're doing and Karen's going to talk about -- and Tim is going to focus on some particular activities that he's put together. That we think will broaden our program this year. The city of Portland employs community organizations and community activists as well as educators have joined together this year. We're really happy to have the links as part of our black history month this year and bringing that regional black history exhibit with Oregon, Washington and Alaska, black pioneers. It's going to be absolutely wonderful from the 11th of February through the 11th of March. It will be right here in city hall. And so you're going to see a lot more school kids and others coming through the building to see that information. And that's one of our goals was to really reach out to the community. The other was to have for our employees some additional venues outside downtown. And through our work with -- and generosity of BES, we're going to be out at the water treatment plant, Columbia Boulevard, and also water pollution control at their conference center with lectures and films and programs so that we give a chance for all of our employees out in the field to get these very important and fun activities around black history. And this is information that will help them in their work. Also, this year, we're expanding, really, what we started last year in focusing on our local history with Vanport and looking at other communities such as what Tim will talk about in a little bit. But again, our focus is on local history and regional history in bringing that to life. And that's been helpful to our employees. I'll give it over to Karen.

Karen Hansen, Bureau of Environmental Services: Hi. I'm Karen Hansen, an engineer with the Bureau of Environmental Services. First, I'd like to express my gratitude for the opportunity to be involved in this type of celebration of black history. We've been doing this for, I think, five years time and we've felt supported by the city and there's wonderful opportunities for all of our events and thank you very much for that. My involvement has centered around the jazz concert that begins our event each year. We've highlighted the best of the best in local jazz, if you will recall. Daryl Grant. Devin Phillips. Reggie Houston and thank you for the announcement. We're bringing a local hero to many of us. We say that the jazz concert is the kickoff for the month because it gives us an opportunity to announce all that's happening and kind of get people on board and aware. But really, it's more than that. Jazz is a uniquely American art form. And its roots truly are a reflection of African American experience. So we begin the month with jazz as ceremony. Because number one, it's welcoming. It is also radically honest. And it expresses emotions that are complex and, therefore, it's real. And it instills courage. So this is a tone that we wish to set for the employees and for the public. For a month-long focus on our history, which shows the best of us and the worst of us, but ultimately, demonstrates our continuous commitment to building community. So that's why we start with jazz and I'm pleased this year that we're also at the end of the month, we have a new event, which the mayor has referenced. We are celebrating the history of jazz here in Portland and we have Esperanza Spalding, which I'm so excited about. She's such an inspiration and one of Thara Memory's students and she's truly a product of Portland education and Portland's heart and spirit. We look forward to that too. Thank you.

Tim Hall, Portland Water Bureau: Good morning, I'm Tim Hall, do I -- I'm an outreach coordinator for the Portland Water Bureau and the chair of the African American network. Mayor Adams, members of council, my friends, before World War II there were just over 2,000 African Americans living in Portland. Most of them in an area called south Albina. During the war, the need for workers for the shipyards caused Henry Kaiser to recruit both black and whites from all over the country to come to Portland. More than 18,000 African Americans responded to the report to support the war effort. Once in Portland, they settled on Kaiser and government housing where most races mixed. Between schools and churches and they staffed police and fire departments and these were early models for integration before it was law. These neighborhoods were a section of

February 2, 2011

Guiles lake court, fair view homes and Vanport City. Vanport was once the second largest city in Oregon. They're all gone now, including south Albina, a race from -- erased from Portland because of urban renewal, industrial development and there was a flood. Next Wednesday, February 9th, the city African American net work joined by the Portland Water Bureau will host a exhibit to remember these neighborhoods and their people. Ed Washington, the former metro council will speak of the -- of his days in both Vanport and Guiles lake. We hope that others will come and share their stories as well. We're honored you, Mayor Adams, will attend and we thank you. We invite the commissioners to stop by. It's going to be a wonderful exhibit. Thanks to our other sponsors. Kaiser Permanente and Portland State University, this event is free. The city African American network has organized another college recruitment fair at city hall, next Thursday, February 10th. More than 100 students from local high schools will have an opportunity to talk to admissions representatives and recruiters from six of Oregon's top colleges. The student transportation is actually paid for by Oregon State University and the U of O. We thank you for your support of black history month and the hard and difficult work you do for the city of Portland. Thank you.

Adams: Thank you, thank you all very much.

Adair: I want to thank you all again. Each one of your offices made a contribution to our programs and we want to thank Cary Clarke in the Mayor's office, the art and culture director who has been helpful in helping us bridge the communities and the sponsors we've listed in our information and our committee members deserve praise because this is truly a group successful it's not just a few individuals but a very large active working committee of people from your bureaus.

Fish: Donnie, could I observe since it is black history month, there's a significant new book coming out from Oregon state university press, the memoirs of Avel Gordly.

Adair: I'll purchase it because she's a friend of yours and mine.

Fish: All of the proceeds go to Avel, so --

Adams: Thank you very much. Really appreciate it. That takes us to the 9:30 time certain. Can you please read the title for resolution item number 107.

Item 107.

LaVonne Griffin-Valade, City Auditor: Good morning, commissioners. LaVonne Griffin-Valade, City Auditor, here to previously introduce two new members of the CRC, the Citizen Review Committee for your point and two returning members. The new members are André Pruitt. He's currently clinical supervisor of the Oregon Health Science University Avel Gordly center for healing and provided diversity training and lectures nationally and we're pleased to have him be part of this very important committee. Our second new committee member is Steve Yarosh. He's an attorney and small business owner and has experience handling claims alleged police misconduct and civil rights violations and worked extensively on both sides of the issue. First in Chicago where he's represented clients in cases alleging police misconduct and as a city attorney where he successfully defended officers in cases alleging misconduct and we're pleased to have Mr. Yarosh be a member of this very important city committee. And then returning to the citizen review committee, we have Michael Bigham, a retired police lieutenant and volunteers with low-income housing residents, the homeless community and special needs individuals and drug treatment programs and he was initially appointed in 2005 and been the chair since 2009. And we are happy to welcome back Michael to his chairmanship and this committee. And finally, a returning member, Dr. Rochelle Silver, served as chief psychologist, the Dammasch state hospital and provides supervision to Oregon licensed psychologists and volunteers tutoring students with the senator program and teaching English as a second language and acting as a certified ombudsman and I'll ask them to come up and introduce them to you a little more informally.

Adams: Good morning, welcome.

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

February 2, 2011

Adams: Would you like to begin?

Steve Yarosh: I'm Steve Yarosh, very pleased to be here and looking forward to service on the committee. I have some experience in this area on both sides. And my interest in serving is to give back to the city. I have a 6-year-old son and my family lives here and we plan to stay in Portland our whole lives. I think that there is probably no other branch of government more important in fostering good relationship among the citizens and the relationship between the police and people. And I think CRC's in a unique position to foster that relationship and I look forward to being part of that.

Adams: Thank you.

Michael Bigham: I'm Mike Bigham, the chair of the Citizen Review Committee and it's a pleasure to be back with you again. I'd like to thank the commission for your commitment of civilian oversight of police and support of the CRC and IPR through the last several years, thank you.

Rochelle Silver: Hi, my name is Rochelle Silver, I want to thank you for the opportunity to serve on the citizen review committee and I've learned a lot in the last two years about the police and its relationship with citizens in the community. And my purpose here is to continue to work toward an ever-better relationship between those two entities. Thank you.

Adams: Thank you.

André Pruitt: Hello, my name is André Pruitt, the clinical supervisor for the center for healing and my purpose is to continue to bridge the police department and the citizens of Portland, even though the police are also citizens in our community. I'm a Portland, Oregon and -- come from a activist family who's been involved throughout the city of Portland and the state of Oregon and this is my way of giving back and upholding my grandfather's tradition of giving back to the community.

Adams: Thank you all very much. Really appreciate it. Is there anyone who wishes to testify on this resolution?

Parsons: We had Dan Handleman sign up.

Adams: All right. Thank you all. You can return to your seats. Mr. Handleman.

Dan Handleman: Good morning, I'm Dan Handleman with Portland cop watch and I -- we have been following the citizen review committee from before the time it was created back in 2001. And we're very careful to review the applications of the people. And I know that since the ordinance requires you to do so that you've had a chance to review applications as well. We have no immediate concerns about the people being proposed for appointment today, what I would like to point out is that the two new members who have not -- I've not met before are -- seemed to be the ideal candidates you'd want on CRC, which is they have both -- especially Mr. Pruitt, he didn't say this in his testimony or biography. But they have experience on both sides and Mr. Pruitt relates in his application having friends in the police bureau and who had been mistreated by police officers and we've had members like that in the past and it's been a valuable point of view and probably something that the police should appreciate as well. It's interesting that the ordinance calls for these members to be appointed for two years and if their term changes they will be appointed for however long the term will be. This is a reminder to all of you that the stakeholder report came out in early December and the Citizen Review Committee, no changes were made to the citizen review committee last March and everybody on the citizen review committee I think is waiting for expanding their abilities and powers and duties and perhaps length of their terms so I'm hoping that comes back before council sooner rather than later. And I guess finally, the -- the outreach for this, I know there was a lot of outreach done and they had a limited pool of applicants, but at this point, Ms. Silver is the last remaining female member of the citizen review committee and we have not had a Latino member of the Citizen Review Committee for six years. Or more. And one way to ensure more diverse pool perhaps would be to create a larger citizen review committee and do more outreach into the communities that aren't represented on the board. So thank you for your time.

Adams: Thank you. Sue, please call the vote.

February 2, 2011

Item 107 roll.

Fritz: Thank you all for serving and especially to Dr. Silver for being my liaison. It's helpful to getting ongoing updates. Aye.

Fish: Thank you for your service. Aye.

Saltzman: Thank you very much to the continuing members and welcome for our new members. Sounds like a great -- great additions to the CRC. Thank you. Aye.

Leonard: I do appreciate the work each of you are going to commit to doing. Michael has been a great member of the work that the committee does and I appreciate him staying. And I'll also note, André, your uncle was Earl Johnson. He was a highly decorated police officer as well who was injured in the line of duty. Very well thought of. So you come from good stock. We expect good things from you. Aye.

Adams: Thank you very much. It's very important responsibilities you're taking on. We appreciate it. Aye. [gavel pounded] resolution approved. Can you please read the title for emergency ordinance item number 108.

Parsons: Mayor, there's a 10:00 time certain, we've got five minutes to go.

Adams: Please read the title for item number 128.

Item 128.

Parsons: That's a hearing -- they're expected at 11:30.

Adams: Sorry.

Adams: This is the usual customary hearing as required by state and local laws regarding sidewalk repair. Are there any discussions or questions from council? Does anyone wish to testify in this matter? If anyone arrives later in the hearing and wishes to testify, we'll accept their testimony as well. Barring that, moves to a second reading. [gavel pounded] why don't we do 124.

Item 124.

Adams: What was identified out of the toff exercise years ago was a lack of inner connectivity on the communications side. So when I took over as and been a participator and took over with the office of -- to expand WebEOC services to all needed partners.

Carmen Merlo, Director, Office of Emergency Management: Thank you Merlo. [laughter] Thank you mayor. Wow. Carmen Merlo, Office of Emergency Management. Let me tell what you WebEOC is. It's a web-based secure real time crisis information management tool that we use across the region. We have three instances in the Portland urban area. We have one in Portland, one in Clackamas county and one in Clark county, Washington. The instance that Portland hosts also hosts Multnomah county, Columbia county, ODOT, Tri-Met, the Port and several other organizations. So what this amendment is doing is three things. One, extending the contract carried for an additional two years to reach the full five-year maximum period. It's also establishing a master price agreement so that any of the other agencies we host and also Clackamas and Clark county can purchase off this price agreement and third, it's providing additional plug-in software such as what's called macro, a GIS layer that adds functionality to WebEOC and allows for the purchase of additional software and hardware needed to maintain the system for the additional two years. With that, I'll be happy to answer any questions.

Saltzman: My question relates to the fact it talks about the additional compensation to the provider being 167% increase in the original compensation amount?

Merlo: It's not just to the ESI. What the contract also pays for it is a regional WebEOC administrator. It translates the emergency response into what is called a board.

Saltzman: A what?

Merlo: A board. Imagine a Facebook page. They have to translate how the agency does emergency response operations and translate to a process that makes sense on a board, a webpage and we've hired for the region, a WebEOC administrator. That will do it for Tri-Met, ODOT and other agencies we host.

February 2, 2011

Saltzman: That's who is being compensated?

Merlo: It's not just that salary. It's the other things too. The additional maintenance and warranty for two years and additional software to add functionality to WebEOC. Not just the compensation for the administrator.

Adams: Where do the monies come from?

Merlo: Through federal homeland security funds. Specifically, the urban area security initiative grant.

Fritz: Is there any local match required?

Merlo: No local match required.

Fritz: Are we required to do this?

Merlo: We're not required. As the Mayor indicated we felt it was needed as a regional crisis information sharing tool and we use this for any event. Real or exercise. Winter storm events, shelter operations and use it on a daily basis. We have a duty officer protocol. They post to this board on a daily basis.

Fritz: Thank you, that's helpful.

Adams: Any other discussion?

Saltzman: This was a contract -- we've accepting the funds and contracting with ESI administrators -- ESI acquisitions.

Merlo: That's right. They're the vendor for the product called WebEOC.

Saltzman: And to not to exceed amount of 1.2 million.

Merlo: Correct, which is extends the contract for additional two-year period. It will good through 2013.

Saltzman: Who pays -- is the web administrator being paid for on with this money.

Merlo: The regional administrator. The local WebEOC administrator.

Saltzman: Thanks.

Adams: Additional discussion from council? Anyone who wishes to testify on item 124? Sue, please call the vote on item 124.

Fritz: Thank you for your work. Aye.

Fish: You know, the Mayor has -- responsibility over this bureau so he knows what a great -- daily what a great job Carmen and her team do. I want to thank you for two specific things. The severe weather emergency planning. You convene the stakeholders and we've tightened the plan and could not do it without your leadership. Thank you on that. And following the attempted bombing on -- the Christmas tree lighting episode. There was talk in the community how we -- are we prepared for unit a significant event and I just want to comment, now, at least twice in the last two years, this council has been asked to participate in a simulated exercise you've run involving a 6.2 earthquake which devastated our community. And, you know, what I take -- have taken from this, not only do we have a good plan, but we're training and updating it on a regular basis so people need to feel confident in the event something terrible happens in our community, you and your team are prepared to lead us through it. On both fronts, I want to compliment you for your good work.

Merlo: Thank you, commissioner.

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

Adams: So in addition to the toff exercise, every time we have a major inclement weather event and one included where there was local roads backed up near a freeway interchange that then backed up the freeway for miles and the lack of adequate communication, real-time communication capacity in suburban transportation officials with ODOT and us and other, you know, local transportation operators made untangle that unnecessarily long. And a lot of people stuck in their cars for many hours. So what we're doing here today is important, that administrator or translator is important. Not all of the electronic equipment throughout the region is able to talk to each other without that human bridge. So you've worked hard on this and I really appreciate it and I know the

February 2, 2011

next time we have inclement weather, the region will see the difference. So thank you. Aye.
[gavel pounded] Approved. That gets us back to -- can you please read the time certain at 10:00
emergency ordinance item 108.

Item 108.

Adams: By way of introduction, I want to thank the team in the Bureau of Human Resources and thank the Portland Police Association. I want to thank my staff, everyone has had to be very creative and everybody has had to had to make compromises and also stretch and what we have before us achieves some very important council-held goals around accountability, around drug testing, and it also provides and addresses very real life legitimate quality of work life concerns by folks in the Police Bureau. So pleased to bring this before council today for their consideration.
Ms. Deckard.

Yvonne Deckard, Director, Bureau of Human Resources: For the record, I'm Yvonne Deckard, the director for the Bureau of Human Resources and I have Steve Herron who I assigned to be chief spokesperson and I invited him to come up because it was a collaborative effort between the PPA and the city, I think it's appropriate for both of us to be here today.

Saltzman: His last name.

Deckard: Darryl Turner, PPA president.

Saltzman: Portland Police Association?

Adams: He'll be able to speak in a minute.

Deckard: All right. Portland Police Association -- Portland --

Leonard: I don't think Darryl is shy. He'll take care of it.

Darryl Turner: Darryl, Portland police association president.

Deckard: We began bargaining in March of 2010 and because of a legal technicality and issue, the City and PPA stopped negotiations and didn't return to the table until about September 17th. By then, the PPA had actually -- leadership had turned over and Darryl and I were able to sit down and really talk about how we get back to the table and resolve the legal issue and get on with the business of negotiations and we successfully did that. The city, as the Mayor mentioned had pretty critical issues we needed to accomplish, both financial as well as policy issues. On our docket, we needed to adopt and agree to adopt the changes in our IPR which the city council adopted. And interested in adopting a random drug testing policy that was comprehensive and to dovetail with our reasonable suspicion drug testing policy and during that time, we also lost a critical arbitration concerning compensation -- where they had the right to accrue and use comp time at their own discretion without the bureau's ability to deny the usage or comp time. The bureau itself, the chief had issues as far as being able to incent veteran officers to work third shift in order to get that experience at very critical times. And so he wanted to see if we could do something with shift differential for both third and second shift. He also was interested, right now, we require an AA degree or 60 college -- in order to apply to be police officers. We don't have a four-year degree requirement because of the adverse impact it has on our ability to recruit but we wanted to incent officers to continue their educational training and object a four-year degree and looking at developing a premium for that. So what we're able to accomplish at the table on the financial end was this is a three-year agreement. There's a zero CPI in year one, fiscal year '11 and then years two and three is a CPI of a floor of 1% and a ceiling of 5% and that's consistent with what we've done with other bargaining units and we were able to actually agree on the -- the IPR changes in its entirety in which council adopted and we were able to actually develop a comprehensive random drug testing policy, which is the first for the police bureau and the city. And the unique piece of this drug policy is that it has a strong treatment first component to it for alcohol. And for marijuana. And we also do retain the ability to when it's appropriate and when we can do it in a cost-effective way to do steroid testing and as it stands right now, with our reasonable suspicion, if we had belief, reason to believe that was a problem, then we could deal with that through that

February 2, 2011

policy but it is not a part of our ongoing random drug testing at this time. Mainly because there's not a lot of labs that actually test for steroids and so that technology for us is still in the making and -- and we can do it but it would be extremely costly because of the limited labs that are there. We're actually agreeing that we would be testing 660 police officers through our random testing out of the 914. And it's a comprehensive policy compared to our policy where we test only 400 of our CDL drivers under our federal mandate. We actually were able to agree upon the city being able to restrict and suspend police powers, you know, during investigations and impositions of discipline and that was a big one for us. But the other one that's really critical for us was the coming -- coming up with an agreement on -- on having the bureau to have sole discretion over how -- to deny and approve comp time. And to actually make sure that the award that the arbitrator -- it did not impact the bureau but gives the bureau the ability to manage its overtime cost dramatically and so for that economically we actually gave the PPA a 2% across the board because that was a huge win for them and they were giving up their ability to use comp time and to earn comp time at their own discretion and gave sole discretion to the city to actually approve comp time or to counsel comp time once it was on the book and for the third shift we did a 2% shift differential premium and 1% shift differential premium for the afternoon shift. The chief was real concerned about the officers' fitness and so as an industry standard, we noticed that a lot of police force versus a fitness premium and we actually put in a 1% for a fitness premium where officers are eligible or required to do through a fitness -- a physical fitness type test and if they are able to pass, then for that year, they have a 1% premium and then for the educational premium, which is also an industry standard, we did a 2% requirement for -- percent for anyone with a four-year degree and hope that will continue to incent our officers to continue their education and -- toward a four-year. Right now we have about 56% of our officers that have a four-year degree and there's a lot of work there to be done. I think that those are the highlights. We accomplished a lot more, but those are the real highlights of I think our accomplishments during these negotiations.

Saltzman: I'd like, Yvonne, for you to elaborate further on the drug testing protocols, specifically what substances will be tested for. You alluded to the frequency of the testing so -- and I think I met with Darryl Turner this morning, so 6% of the officers are tested each month, is that --

Deckard: Yeah, about 6% of the officers will be tested each month or a number -- so 55 officers a month for a total of 660 a year. Out of the 914. And we are testing for five drug classes. Drug classes not actual drugs because there are a lot of drugs within the classes, which are marijuana, cocaine, opiates, and amphetamines, pcps, and those are the classes --

Saltzman: If it was a positive, there's a confirmation test done?

Deckard: And there will be a confirmation test.

Saltzman: If that's positive, there's a treatment option?

Deckard: If it's illegal, such as the five classes I just named, if there's a positive in the confirmation test, then we actually move toward discipline. If it's alcohol, if it's marijuana or prescription medication, then we have the ability to have a treatment, you know, program first where the officers can go through treatment and then if there is a positive after treatment has occurred we would move into discipline rather than more treatment.

Saltzman: And it's a prescription drug for which they have a prescription, is that correct?

Deckard: Right. Any illegal substances would result in discipline, whereas, substances that there's a legal nexus to and maybe we're looking at an officer that has a problem, such as alcohol, you know, then we would actually look at a treatment program.

Saltzman: And we have the right to test for steroids when we decide we have a cost-effective way to actually do the test?

Deckard: Correct.

Saltzman: That's a discretionary power with management at this point?

Deckard: Correct.

February 2, 2011

Saltzman: Ok.

Leonard: Positive tests for marijuana would be treated the same as a positive test for alcohol?

Deckard: Correct.

Leonard: Giving the officer the opportunity for treatment?

Deckard: Yes.

Leonard: And in the other classes that don't fall under the -- [inaudible] And the other classes that don't include marijuana or alcohol, is there -- is the option available for treatment or are you saying that we would not even provide that option, such as amphetamines?

Steve Herron, Bureau of Human Resources: The option is there, but at that point, it's a management discretion as opposed to a employee right.

Deckard: Right.

Adams: Other discussion? Did you want to -- Mr. Turner?

Turner: Yeah, I wanted to add in. I just wanted to add in on a treatment first policy, as far as we know, none of the larger agencies in the country have those, so that's a precedence setting along with the random drug testing for the city of Portland. I think it's a part we need to monitor closely to make sure it's adhered to closely and I think that for us, Portland police officers we want to help our officers but we understanding the impact of any police officer in any part of the country that uses illegal street drugs during their duties or off times, so it was a large area of controversy during these negotiations, and along with the people next to me here, a lot of people worked hard to explain it to membership and city and council members to make sure that everybody understood it so that all the myths and misconceptions about drug testing were put aside. So we're happy with it.

Adams: Anything you want to add?

Herron: No, sir, thank you.

Saltzman: It's a three year contract and the cost?

Deckard: The estimated cost is about \$5.5 million over the life of the contract.

Saltzman: Over the three years?

Deckard: Yes.

Adams: Thank you all very much. How many people have signed --

Parsons: We have three people.

Adams: Feel free to take a seat, if you would. How many?

Parsons: Three.

Adams: Ok. Glad you're here. Give us your first and last name, no address and if you represent an organization, or you're here to lobby on behalf of anyone else, you need to declare that. Mr. Handleman.

Handleman: Hi, again. I'm still dan handleman with Portland cop watch. One of the frustrating things about trying to testify about this agenda item, there were no explicit details included in the city council agenda item. The proposed contract wasn't attached. It was just a list of individual points that weren't spelled out and so we just learned the information that you did about the steroid testing and the drug testing. Those questions were raised during the open negotiations, which were terrific and we really hope the city will continue them but at some point, the meetings were closed to the public and those details were hashed out out of the public eye and we're for a more open and transparent government especially around police issues because police, unlike other bureaus in the city carry guns and have the ability to hurt and kill people and I'm hoping we can have more open discussions about these in the future. And the -- one of the concerns our organization has had for a long time the failure for the council to address the parts of the union contract around rights on being interviewed when they're under suspicion of misconduct, that the independent review division does not have the power to ask questions directly to the police officer and the ordinance gives them the power to ask questions if the union contract doesn't prohibit it. But chapter 61.2.2 provides that all

February 2, 2011

of the interviews of officers shall take place at Portland police station and the officer interviewed will be informed of name rank and command of the officer in charge of the investigation and the interviewing officer and persons present. The union contract prohibits the IPR from compelling officer testimony and the union has the right to object if the IPR tries to subpoena officers, and the new ordinance says the subpoena power is not for officers. They could claim a fifth amendment right but compelling to testify means they have to testify or be fired and we're hoping this can be worked out before the three years of this contract is up and we have to go through this whole thing again. We do appreciate what I would call the Chris Humphrey clause which allows officers to be put on desk duty while investigated and it's interesting that the union marched on city hall and looks like it's a city policy. And thank you for that. The police review board that the union said they'll accept under certain conditions and again, we're concerned with public policy made in these contracts behind closed doors, it's -- I need to point out the officers have the right to sit in during executive session but the citizen who filed the complaint doesn't get to attend those hearings at all.

Adams: Thank you, sir. Ms. Bowman.

JoAnn Bowman: Good morning, mayor and council members. For the record, I'm JoAnn Bowman, representing the Albina ministerial alliance coalition for justice and police reform. I appreciated the opportunity to sit in on most of the union negotiations and I have to say I sit here today really disappointed that the city did not work on the public's behalf to ensure that Portland police officers would have an annual evaluation like most working people have. Apparently the union contract article 59 states before the city implements a performs and evaluation system it shall discuss the system with the association and will bargain with the association aspects of the system which are mandate subject of bargaining. However, in all the contract talks I sat in, no one ever mentioned evaluations. I know the previous police commissioner committed to evaluation, the current police commissioner committed to evaluation, and guess what, we're here today, no evaluations. You're shaking your head no, mayor, but unless it's something I haven't seen. That's a problem, because the community expects to have police officers understand what their job is and to be evaluated on an annual basis. One of the other concerns that we have is that again, it -- you know, we were told before there were things we couldn't do because we had to wait for the union contract to come up for renewal. When we started this process, we thought it was a two-year contract we were negotiating and sometimes behind closed doors it turn nod a three-year contract. I'm here to ask, what are the citizens getting for another \$5.5 million? It doesn't appear we're getting much. The drug testing, while it's -- I -- I don't have a strong opinion about -- what do I want to say? Just testing people for no reason -- what do you call that?

Adams: Random.

Bowman: But what the AMA coalition asked for after a incident of force that police officers be tested so we can determine whether or not they were on steroids or some other drugs that actually amped up their activities. Sitting here today, I hear you're not going to start testing for steroids until sometime when somebody figures out how to test for it. Which is not acceptable. I'm disappointed sitting here today. I thought we were on the road to building a contract that the public would have trust in. But if there's no evaluations, no testing for steroids, it seems this is just business as usual. So I'm done.

Adams: Clarify with staff after.

Bowman: Thank you. That's a big issue.

Adams: Sir.

Rahsaan Muhammad: Good morning. Thank you. Thank you for the process. My name is Rahsaan Muhammad, I'll be reading a statement you the Portland city council vote whether or not to approve the recent negotiated Portland Police Association contract. After this year of police killings, you must decide either to reward the PPA and the police bureau with both a pay raise and further immunity or to send a message that Portland is a -- Portlanders lost conversation in the

February 2, 2011

police. We urge you to stand with Portlanders who are tired of police abuse and murder apt hands. The Portland police. The officers who not only brutally helped murder James Chasse but fired a shotgun on a 12-year-old girl and Ronald Frashour who killed Aaron Campbell in the back and killed him, the PPA and Portland Police made clear how little they care about our lives and safety. And in the arbitration provisions have guaranteed blanket immunity for such behavior. This new contract changes nothing. To approve this contract with the arbitration clause intact guarantees that Portland Police continue to harass and brutalizes members of the community and face no meaningful consequences when they do. We believe it's time for the city council to show backbone and stand up for Portlander's rights and lives and must let police officers know if they beat and murder Portlanders and at the very least, their jobs will be on the line. The refusal to address the arbitration loophole is not just a disappointment that makes you complicit in any further killings and brutality by the Portland Police. Our demands have not gone away. We demand the firing of all killer cops and demand that all police association negotiations be open to the public and I can stress all. And we demand an end to binding arbitration in the Portland police association contract. We can be contacted at firefrashour@gmail.com.

Adams: Thank you for your testimony today. We'll have staff come up and the issues of steroids, evaluation, immunity, arbitration clause were raised. So the issue of steroids, when the tests become available, they'll be tested, is that accurate. It's at our discretion?

Deckard: That's accurate. At our discretion and we have the ability to do it, just don't have the mechanism. There are few labs in the country that actually does steroid testing. But on the reasonable suspicion piece, if we suspect that an officer is under the influence of drugs, steroids, alcohol, under that reasonable suspicion clause we have the ability to take action and test. And so if an incident occurred and we assess we believe something is wrong with that officer, they're under the influence of something, we have the ability to take and test them right then.

Saltzman: Including steroids.

Adams: Officer-involved shooting, if we have any reason to believe any suspicion, it's at our discretion to test?

Deckard: Correct.

Adams: We've handled that. Evaluations.

Deckard: Evaluations is a management right to do at police bureau is currently working on evaluations. The only thing we've obligated to actually negotiate as far as evaluations would be if there's any mandatory subjects that are impacted. And so as a strategy, I directed the team to not compromise our ability to do evaluations, and asked the bureau to work on the evaluation program and we are working on that with them. And to the extent where the evaluations depending on what the comprehensive evaluation program is that I'll review and that you, mayor, will review and we'll be talking to with the council, at the point in which there may or may not be, if there are mandates - we'll sit down and have that dialogue with the union. The gel here was to try and get the contract to get the IPR things in place and the council adopted and get the drug testing in place. Without holding it up. And so the call I made is that we're working on evaluations and get them done. Another thing I want to remind the council and public, this is a three-year deal but we're halfway through it. It's not that we're not at the table for three years, we'll be at the table in a year and a half in order to -- that gives us an opportunity to see how the things are working that we have put in place and address them quickly in the next year and a half.

Leonard: Can I follow up, Mayor? If the contract expires in a year and a half, you'll be at the table I would guess in 11 months.

Deckard Correct, right.

Leonard: Start bargaining in the January of the year it expires, typically.

Deckard: Correct, commissioner.

February 2, 2011

Leonard: And evaluations, I'm glad you have clarified that, because I want to make clear for people listening. So you could implement an evaluation program that doesn't impact what you characterize as mandatory subject, wages and hours and working conditions. I want it give you a example I'm familiar with and see if I understand what that means in terms of evaluating annually police officers. If a supervisor of a represented employee of the PPA were to sit down and simply literally evaluate for that person what their performance the last year but didn't include any chance of the work shift changing or any chance for discipline to occur strictly out the evaluation or any chance for the hours of the employee to be altered as a result of evaluation, it is a permissive subject, of bargaining, that we're not then required to sit down and negotiate with the union or with the terms of.

Deckard: Correct. And I wasn't interested in giving that up by adding it into these negotiations so -

Leonard: You didn't include it in the contract is actually a good thing because acknowledged it was -- not putting it in the contracts with a good thing so you could evaluate without having to bargain.

Deckard: It gives us maximum flexibility.

Fish: On that point, a number of the comments that preceded you from the public, seemed to address concerns with state law, and what -- what state law does or does not provide. Binding arbitration, some of the distinctions as commissioner Leonard has noted between permissive and mandatory and things of that nature. In fairness, to the extent someone has a concern with arbitration, for example, or a number of these things, it is a creature of state law, it's what governs these negotiations.

Leonard: Public employee bargaining act.

Fish: We don't want to turn this into a seminar on the law but there's rules we have.

Deckard: You're correct and that's the next issue I was going to bring up as far as binding arbitration. It's covered under state law and that's not something that we have the ability to just negotiate out of the contract.

Adams: Commissioner Fritz. [laughter]

Fish: I thought we had that fixed.

Adams: I'm trying.

Fritz: It's very challenging. The cost of the contract over three years is estimated at \$5 million and includes a 2% raise. Can you remind me what was the Seattle experience when the union agreed to do drug testing?

Deckard: When Seattle actually put in their police review and changes in what they thought was discipline, it actually cost them between 25% and 36% of wage increase over a four-year period.

Saltzman: That wasn't drug testing in Seattle?

Deckard: No, that was just to do what we call IPR and to look at discipline.

Fritz: And does this contract include the added day off after the day after thanksgiving?

Deckard: It includes a extra floating holiday and the police bureau, of course, functions 24/7 and there's an extra floating holiday in this.

Fritz: Remind me, what was the total cost of that for citywide for the extra day after thanksgiving or the floating holiday versus the savings on the not doing the .7 cost of living increase?

Deckard: The actual cost for the extra holiday is zero. The savings for not doing a cost of living is about \$10 million.

Fritz: \$10 million?

Deckard: Yeah.

Fritz: I thought this was a little bit of increase in overtime, like the Police Bureau would actually get paid for working the extra shift.

Deckard: Because it's a floating holiday, the bureau gets to manage it and shouldn't result in additional overtime because they can request and assign as needed without backfill and that's the

February 2, 2011

important thing about the comp time. The bureau no longer has to do backfills because they have the ability to deny or counsel comp time if it results in having to bring extra officers on and increase overtime costs.

Fritz: On the comp time issue, we did get a ruling in arbitration which says that the officers can use it whenever they want to which resulted in increased overtime because the managers weren't able to spread it out and that's partly what the 2% increase is designed to avoid.

Deckard: Correct, commissioner, and we knew in order to counteract such a ruling, we could have -- counteract that, that's what the 2% was for. Everything else in the contract is mostly incentives in order to improve officers' performance and, you know, and education.

Fritz: Thank you.

Saltzman: A couple of questions. I wanted to return just to the steroids because that's something that I care a lot about. And I want to make this is clear. So right now, under reasonable suspicion that an officer has used steroids, we can test. That test costs how much? \$1,000, maybe?

Deckard: I would wager it would cost more than that. It's a pretty expensive test but I don't have the exact cost.

Adams: But we expect the costs to go down?

Deckard: Correct.

Saltzman: And labs, who do it are not local?

Deckard: Correct.

Saltzman: What is the tipping point, because under this proposed policy, then, we have the ability to test for steroids under the random basis but will not choose to do that until there's some intersection of cost effectiveness --

Deckard: Yeah, I think --

Saltzman: -- and the public safety, I think the public safety argument is a strong one. So yeah, what -- at what point does it become the right cost that we would do this as part of the random?

Deckard: We will start to work with the lab it is bring them on to do the ongoing random testing and our hope is that we will work with them and as they develop their ability to do the -- the testing for the steroids and at that point, we would add it into our regular random testing.

Saltzman: So the lab your going to choose to work with will make a commitment to develop the steroid testing capacity?

Deckard: That would be -- no. I'm not saying they're going to make a commitment, but our goal is -- I think steroid testing is sort of like right now in its infancy and as labs are able it actually perform the test, then we will add that into our normal random testing. It's right now --

Saltzman: [inaudible] I understand the reasonable suspicion. It sounds like the goalpost is illusive when we start the steroid testing. On the random basis.

Fritz: The challenge is that steroid testing is illusive. My father was considered an expert. Even in this sports world, there's lots of factors that can influence how the testing comes out. In addition to the cost effort, it's the validity of the testing has a lot of variables which is why we have so much in the news about whether or not athletes are using or not. And whether they admit rather than the test proves things. So it's not an exact science at this point.

Saltzman: I realize it's not an exact science. When you select the lab after we approve this agreement, to get back to us with some sort of -- more of a timeline about when we can expect steroid capacity testing or if it's really too illusive and expensive, I'd like to know that too.

Deckard: Sure, we'll provide --

Adams: It's not a lack of resolve in wanting to do this. Police officers should not be using steroids, end of story. Unless it's prescribed for a medical reason.

Deckard: Right.

Adams: It's a statement of reality, not our lack of interest. It's a statement of reality in getting access and the science needs to continue to improve.

February 2, 2011

Deckard: But we wanted the ability to do it as science catches up with us and we made sure we have it as part of our policy and we wouldn't have to go back, science catches up but then we have to go back and try and negotiate it.

Adams: We'll be happy it keep you and the rest of the council. We can come back.

Saltzman: You'll be selecting a lab within three months, is that right?

Deckard: We'll be working with the bureau to get that piece done and the goal is to have the random -- the lab on board and the random testing begins by the July, the beginning of the fiscal year.

Saltzman: Will that agreement come to council for contract?

Deckard: I'm sure it will, unless we piggyback off the lab we have now. And we have a contract, but if it's a new contract.

Adams: Whether it's above or below the threshold, happy to bring it back.

Deckard: Right.

Leonard: A couple questions on testimony regarding -- I don't know if LaVonne, if you want to come up and sit next to Yvonne. [laughter] I always get it right. The issue of subpoena power came up and so I wanted to make sure, LaVonne, I had this correct. When we included the subpoena power authority, when we beefed up the IPR's powers, that was essentially to address the issue of officers who had separated from the police bureau for a variety of reasons, who are no longer members of the Police Bureau to be compelled to submit to an interview?

Griffin-Valade: I'm going to ask Constantine to join us too. I think largely, it's to be able to get investigative documents and files, to ensure we can do that.

Leonard: But my recollection also -- because the criticism was we didn't include it for active members of the bureau. My recollection was that they're ordered to answer questions truthfully and we didn't need subpoena power for active members of bureau, but rather there had been specific incidents of the documents but specific incidents where retired police officers refused --

Griffin-Valade: That's where we've had the issues. Am I right, Constantine?

Constantine Severe, Independent Police Review Division: That's right. Persons separated from the bureau. We could talk to those persons or if they had documents on their person about those types of issues or witnesses involved in case where is Internal Affairs couldn't actually get to those documents but with the use of the subpoena power, IPR could collaborate and get the documents.

Leonard: We didn't lose the authority that we intended when we passed the IPR reform.

Severe: That was to be independent of the current PPA member.

Leonard: And the questioning by IPR of officers, as I recall the way the protocol exists currently, you may partner with the -- with a member of the bureau that asks the questions of the officers and up to now, the PPA has agreed to also allow you to question the officers as well in those interviews.

Severe: That's exactly right. I've attended numerous interview was involved officers or witness officers and been allowed to ask questions. And when it's a PPA member, they've been cooperative as well.

Leonard: Thank you.

Fritz: Just to emphasize your point, commissioner Leonard. The officer being present can then compel the -- the commanding officer can compel the current officer to testify which you can't, so that's one of the reasons to leave it the way it is in the contract.

Severe: Exactly, there's a admonishment given by the internal affairs investigator at the beginning of a interview with a ppb member. Explaining what you just said. And that's how we're able to get information from officers.

Leonard: Thank you for that clarification.

Adams: Thank you. Unless there's additional council discussion, sue, please call the vote.

Fritz: Thank you. Thank you to all who've been involved in this, Yvonne, Darryl Turner, it's one of our last contracts to come to council and certainly took the time and thank you for the community

February 2, 2011

members who monitored the process and gave input. There's many parts of the contract that I'm pleased with. The shift differential being established is crucial. 2% for nights and 1% for afternoon shifts and this gives the incentive for more experienced officers to work the off-shifts and likely to improve the consistency of delivery of services on those shifts and having worked evening shift for 27 years, I appreciate that it is an impact on family time to work hours that most people don't and I'm really pleased with that change and I hope we can do it in some of the other 24/7 bureaus moving on. I'm very pleased that the Portland police association accepted all the police board and independent police review changes and that's a tribute to the people who worked on this during the last year and to make sure that there were amendments put in at your suggestion to make sure that we as far as possible didn't do anything that would be a problem -- against the contract or against state law. As referenced by my colleagues. That's a significant success we have in the contract what is also in the IPR agreements and I appreciate commissioner Leonard's leadership on that. And the final thing I'm particularly pleased about is the health and fitness premium of 1%. Citizens might wonder, aren't police officers supposed to be fit anyway. Like firefighters, for example? The difference is that firefighters have time on the job to do their fitness training and keep their level of fitness up. Police officers largely don't and yet we certainly need them to get out of their cars and behind the desk and do the physical work that's sometimes required. As the commissioner in charge the wellness and with your help, Yvonne on the wellness staff, I think this is significant and it saves citizens money because taxpayer money pays for all city employees' benefits. The more healthy we are, the less we're charging to health insurance and the small incentive which is Mr. Turner told me it works out to be the cost of a fitness club membership for a month encourages officers to maintain their physical fitness. And the cost is over \$5 million, we'll need to budget and I appreciate Andrew Scott's analysis, even though we have a surplus this year in the upcoming budget, in the years out, we don't and this is something that we need to consider and keep in mind. But again, going back to there being no cost of living increase this year when there could have been a .7, that saves the taxpayers \$10 million a year and that's ongoing. Not just this year. So a lot of work went into this and Yvonne, I know you worked late hours, as did others on all of the contracts so that's a lot of heart ache and worrying and shepherding and I certainly appreciate you keeping the entire council in the loop on the contracts that -- is that we're able to get to this point where I can feel comfortable supporting this. Aye.

Fish: I want to associate myself with everything that Amanda said, I think she said it very well. You know, before I got elected I spent 20 years in labor relations and saw mostly the private side and commissioner Leonard spent about the same amount of time on the public side. What I came to appreciate, though, you don't get to agreement unless both sides are willing to compromise and they come in in good faith trying to reach agreement. This was a two negotiation because it happened during a -- during a recession. When our budgets were tight. And it was a two negotiation because the council made clear there were must have's in this process and it's fair to say that there were some in the community who doubted whether we would get to agreement. But we had a lot of must haves and they're reflected in this agreement and Yvonne, thank you for your good work. The mayor reminds me there's one more agreement to come. That means this is the penultimate agreement.

Saltzman: Do you know what that means?

Adams: The second to last, I think.

Saltzman: Who knows?

Fish: Showing off. Randy is the word smith. Anyway, thank you and congratulations for bringing this home. And turner, I want it say a -- Darryl Turner, he scheduled appointments with each of on the council and said, how do we improve the relationship. What things do we need to do look are forward and talked about his philosophy of leadership and I know from my work in labor relationships that anybody can take their troops to war. It takes leadership to actually make the

February 2, 2011

peace and this negotiation was not easy and clearly there was some hiccups along the way but required leadership to bring it home. And I would suspect there are reason reasons that a different leader of that association could have found as a excuse not to make the deal but he brought it home and we have to acknowledge the work he did on the other side because you don't get an agreement unless two people work hard to make the agreement. And finally, I want to thank the mayor and commissioner Leonard for the work they've done to set the stage around the IPR changes, with the auditor and the whole team. Because the reforms that we said were must have's predated these negotiations but we said they had to be in the agreement and in large measure, they are. So today I'm pleased to support this agreement and thank all who made it happen. Aye.

Saltzman: Well, I believe this is a fair agreement for the city, the public and members of the Portland Police Association. And I thank all 70% of them who approved this agreement. I'm pleased it contains a random drug testing policy with a treatment option. I think that's humane and a first for a major police bureau to have that option. It's important we recognize that and it's a good step forward in continuing to build trust between our residents and police force. I do care very much about the steroids and I think we have to figure out a way to bring that on sooner rather than later and I realize it's a complicated issue but, it's a nevertheless, it's a crucial public issue. We need to know that steroids aren't messing up our officers in the wrong situations. Just as we need it for testing any other illegal substance. So I'll be following that closely. I appreciate the changes with respect to the independent police review and also the many other elements of the agreement are good. I share the gentleman's from the fire Frashour campaign that we can't change the laws, arbitrator's decisions seem to -- and I'm not references this particular arbitrator's decision on comp time, but many others we've seen over the years, maybe because we're management, they seem to defy common sense. I wish there was a way to change the standards but that takes state action. I want to thank the bargaining team and Yvonne Deckard and Steve Herron and the Portland Police Association to work together to create an equitable agreement. Pleased to vote aye.

Leonard: I still tell people the most challenging things I've done is to negotiate a collective bargaining agreement. I've done that in two capacities. Labor and management. And definitely the labor side was the most challenging because as I believe Darryl's probably appreciating as his tenure as the police union continues is you -- it's -- it's pretty easy when you're an non-incumbent to criticize what has happened, or turn into that a agreement which may reflect the basis which you ran in the first place. It's challenging and in that context, I'm going it make clear and I hope what I say gets -- gets translated to the public exactly how I mean it. This is a historic agreement. What the Portland Police union. And the testimony notwithstanding, critical of it. Some of the observations made, notwithstanding that -- that say we could have done better, this is by all accounts in my experience, a historic agreement. I'm frankly -- I was stunned at the -- at the concessions reached at table by both sides. I didn't think we would do the things we agreed to do and I would have bet the police union would not agree to do the things they've agreed to do. And that includes the IPR changes and they were significant and should not be underestimated. The influence now that the independent police review has in making police processes more transparent, which what drove those to pass in the first place last march when Yvonne and I partnered to bring that ordinance forward. The alcohol and drug testing needs to be acknowledged for what it is. It is a truly historic provision in a police union contract. It would be historic in any contract, particularly in a police union contract. I could not support an alcohol and drug testing program, to be clear, that didn't include the possibility of treatment for particularly the two substances you've identified -- alcohol and marijuana. And I would also -- given the nature that the -- of the work that the police officers, and the stresses of that, and oftentimes what the people think of police officers and oftentimes what they think of themselves, they're human beings and susceptible it reduces stress sometimes in healthy ways and sometimes in unhealthy ways, by drinks which can lead to other abuses and I'm pleased that we not only have the random alcohol and drug testing, but it contains the provision for

February 2, 2011

treatment. And the last notable change, of course, as commissioner Fritz pointed out, the physical fitness requirement. And commissioner Fritz is right. Firefighters build it in as part of their work day and realize that is isn't so much that one as a firefighter stays in shape, it's what you should do. You can't do your job unless you do temperature it's physically demanding. And police officers oftentimes find themselves in a foot chase or struggling for their life or assisting a citizen or another officer and you go from being sedentary, like in the fire service, to everything you have, all out and it's at those critical moments that the individual realizes, I need to get myself in better shape, that we have this thoughtful incentive in place to do that is creative and I -- and I appreciate it. So I want it make sure you get the credit that I think you deserve in this agreement because I had not heard it said yet. The mayor's got his remark to make but I'm exceedingly proud of your work, Darryl Turner's work and the police association's work and all those involved in seeing this process through, not just because it's difficult to negotiate a contract. As hard as it was for me, the public didn't clamor to come in and watch me negotiate a contract with the firefighters like they do for the police contract. So you have the typical stressors involved in trying to compromise and find middle ground while constantly being watched and criticized publicly. I watched that as it happened and I had empathy for both sides as it was occurring and I want to acknowledge to produce this kind of document takes professionalism and willingness to compromise. I'm pleased to vote aye.

Adams: Well, this is the most aggressive set of police bureau reforms, this is the most aggressive set of police contract reforms in a generation. And it will allow for more cost-effective bureau and allow for a -- a more trusted bureau by the public. It will allow us to reward through performs and evaluations, folks that are doing a great job, and allow us to give officers who want to do the right thing, but might be under-performing the ability to improve. This allows us to implement the reforms, sought -- or championed by commissioner Leonard, subjecting the bureau in more places to outside review than ever in its history and I want to thank you, as police commissioner, your work, Steve, Yvonne, your team's work on this, was stellar. I also want to thank the union for being creative as well. And for sticking with us and for helping to come up with these. I'm really pleased to vote aye. Thank you. [gavel pounded] approved.

Item 109.

Adams: Come on up. So back when I was just a transportation commissioner, I was the first one to step forward with a financial commitment to build the Sellwood bridge, rebuild the Sellwood bridge. Working with then chair Ted Wheeler, as part of the safe, sound and green, even though the Sellwood bridge is not a city bridge, I said it was a city problem, a city challenge. And was able to, with the passage of new resources at the state level, we committed \$8 million a year, 100-60 in city resources for a county bridge. But it is our bridge, and we need to take care of it. My commitment, as you know, was not a blank check, was not a blind offer. It is a bridge in the middle of the city. And I also had to deal with a federal government that did not provide resources for the Portland, Milwaukie light rail. We also saw the opportunity by both chair Cogan and I and our teams pressing on the state who has a road on one end of the bridge to be more creative with us so that we could, among other cost savings, have a more common sense west side approach that would save a lot of money. Those savings and the agreement to split them 50/50 means we are going to be able to move forward with our commitments on the bridge, and the city's going to be able to fund the additional financial requirements on Portland, Milwaukie light rail. I want to thank chair Cogan, commissioner Kafoury for sticking with some very difficult negotiations at times, but we got it done. In addition to that, I think the design that's been chosen is really beautiful. Are you listening people of the CRC? The design on this bridge was really beautiful.

Sue Keil, Director, Bureau of Transportation: And not the highest price.

Adams: And not the highest price. Good design does not necessarily mean the most expensive option. I want to thank you, bureau manager Sue Keil, and your team. I want to thank Catherine Ciarlo and the departed chief of staff, Tom Miller, for your work on this.

February 2, 2011

Keil: I'm delighted. This is Sue Keil, director of Transportation. I am delighted to bring this forward today. It's the culmination of some not maybe as difficult negotiations as the labor negotiations but kind of long in terms of the timeframe on it. The last few months, it's been pretty much the crossing T's and dotting I's between the attorneys and the financial people, but it clearly defines the project in that IGA. It's identified as a regional project. It's the same 160 million that Sam was talking about was the financing cost for the 100 million as the outside on that. So it limits our basic contribution to the 100 million. It identifies that we would sell revenue bonds in support of our contribution on this against the house bill 2001 money. The funds would be reimbursed to the county as they ask for them rather than on an advance sort of basis. We have agreed that the cost savings will be addressed by a senior staff advisory committee. I sit on that currently. And representatives of the other partners looking at the project's costs. If we can't sort that out, it will go to the elected body the mayor sits on as do other elected officials who are part of the partner agencies. Changes to the streetcar design are solely between us and the county. The first half of 40 million project savings accrues equally to us and those in the county, so we would have 20 million that would come back to us after that. And that's based on the original project cost of 330 million. We have already made some good improvements, and we're only at the 30% design. If you want to talk about that, we really do have the resident expert in the room from the county. After that first 40 million, then it will be determined on a pro rata basis where the savings will go. A modification that's encompassed in this is that we have identified the specific streetcar design and accommodations that the county will perform, including concrete block-outs on the bridge, the approach structures and interchange, conduits and junction boxes, streetlight pole foundations that can handle the wire should we need to put that on the bridge. Infrastructure will support streetcar and bridges that will both handle the weight and easily be able to accommodate the streetcar when it's time for that. We added a provision that the county -- that we can terminate the agreement if the county doesn't move forward on this within 10 years. I think that's highly unlikely, but the provision is there, and that's essentially what's in that agreement, so I would encourage your passage of it.

Adams: Before we have any council discussion on it, we've got courtesies of the house if commissioner Kafoury and chair Cogan want to come up and say a few words. If you could --

Keil: Exit stage left?

Adams: Right. I appreciate your patience, and thanks for sitting through our contract negotiations and considerations. I really appreciate -- I want to thank you both for helping to make this happen. Your leadership, lug your work down in the state legislature for the state contribution that I don't think a lot of people know about, was absolutely key. The fact that you stepped in for chair Wheeler and working with commissioner Kafoury, seamlessly picked up on the conversations and the work on this was a real blessing. Whether on a daily basis we agree or disagree on the details, it's moving forward because of your leadership, and I want to thank you for that and sticking with us to come up with an agreement that I think is going to move the bridge forward to completion. We just have a few other tiny, tiny little building blocks.

Jeff Cogen, Multnomah County Chair: I'm Jeff Cogen from Multnomah county, and I just want to really reiterate what's been said. This is a significant accomplishment. Sellwood bridge has needed to be rebuilt for decades and, for decades this, community has struggled to figure out how to make that happen. Thanks largely to the legislation the state put in place that allowed us to have these different funding mechanisms, but that wasn't enough, because that just set the building blocks. We had to figure this out. And working together we were able to make this happen. Obviously there were some bumps along the road, but the end result is one we should all really be proud of. In addition to the fact that we now have identified more than 80% of the resources to build this bridge and we've got the others coming, we're going to build this bridge. I just really think that this partnership that helped address one of our greatest community needs in really

February 2, 2011

difficult times lays the groundwork for a lot of things that we can achieve working together, and I feel really blessed to have great partnerships, and I think the community can feel really well served. I wanted to thank you, acknowledge the good work. The fact that our political staff, our attorneys, and frankly the technical staff kept at it and, at the end of the day, we bound up with something which is something you talk about a lot but rarely find, a better project that's cheaper than it was originally is something that we should all be proud of. Thank you very much.

Deborah Kafoury, Multnomah County Commissioner: Deborah Kafoury, Multnomah county. I also want to thank all of you for your commitment to this project from the beginning. I think, when we started, we did start with everyone on the same page realizing that we needed to have a new bridge and it needed to be rebuilt, and we know that, in today's world, rarely does one jurisdiction have enough money to pay for these really enormous cost projects. And so this project really did take everyone coming to the table. In addition to the city and the county, I just want to mention Clackamas county, which also is taking a huge step inputting money into something that's not in their geographic boundaries. It's unheard of. The state is also contributing and the federal government. The county will be voting tomorrow.

Adams: Thank you both very, very much. I will see you tomorrow.

Saltzman: So 80% of the funds for the bridge are in place?

Cogen: Somewhat more than that.

Saltzman: Where is the remaining 15 or 20%?

Cogen: We expect it's about a \$290 million project, and we have about 270 million identified. The last about it, we're looking to the federal government, and we expect to get that. If we don't, we'll be able to come up with it else where, but we do think the federal government will give that.

Kafoury: We are starting construction in July of 2012.

Fish: Could you just remind us what happens if Clackamas county can't move forward with its commitment because of the referral?

Cogen: Then we'll be \$22 million further from the finish line. Even at that point, we believe that we'll be able to move forward. We don't think that's going to happen, but in any event the money we're now having identified from the city, which is up to \$100 million depending what the final price is, the county is committing \$127 million. The state has put in \$30 million, and we already have that \$11 million left over from the federal government contribution. That's enough after base to get this bridge built. We'll figure out the rest of it.

Fish: Sue mentioned there's a 10-year clause. I'm thinking 10 years from now Deborah has reclaimed the Kafoury seat on this council. Shontelle Monk is the county chair. What else could happen to prevent us from getting to the end zone here?

Cogen: It's hard to foresee the future.

Kafoury: Nothing. I'm confident we're going to build the bridge. As I said, we're going to start construction in 2012 of July, and we are doing a process called CMGC where we will be working with the designers and the contractors to come up with the best solution for the money that we have in hand. Clackamas county has committed to be a partner in this. Whether the vehicle registration fee is the avenue for those dollars to come, I'm confident that they'll find elsewhere something should it occur, but I also think the citizens of Clackamas county realize that they use this bridge as much as everybody else and \$5 a year is really not a lot to pay.

Fish: Can I also just acknowledge, with Deborah taking the lead on housing issue as the county, I'd be hard pressed to think about the last 15 years that we've had a better partner and a better working relationship on stuff. With the new coo of the county being someone who has been helping us work out some issues, we're trying to move the ball on thinking about a single pot of money and a new way of approaching housing and homelessness issues, and Deborah has been great to work with.

Adams: Thank you all very much.

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

February 2, 2011

Adams: Anyone signed up to testify?

Parsons: Terry parker.

Adams: Welcome back. It's been a while. We've missed you.

Terry Parker: No burning issues. Terry Parker, northeast Portland. Although the arches are nice, given the excessive super-sized sidewalks and bike lanes that allocate more deck space for bicyclists and pedestrians than for cars, the proposed design of the new Sellwood bridge is basically a bicycle and pedestrian bridge that only replaces the two motor vehicle lanes that already exist. I commend Multnomah county for eliminating the never used a slippery slope streetcar tracks on the bridge. However, more of the lavish and wasteful spending can be reined in by narrowing the sidewalks and eliminating pedestrian view points. The disproportionate price tag of the project can be reduced still further with little to no impact on alternative transport mobility, provide a better balance when it comes to proportional funding issues. Because only the special interests of alternative activists received all the attention while the issues and concerns of motorists for the most part were ignored throughout the design phase, I fully agree with and support the people of Clackamas county who are petitioning for a public vote that allows them to opt out on paying an extra motor vehicle registration fee to help fund the project. Under the circumstances, Multnomah county vehicle owners should be guaranteed the same. That is be able to vote on opting out. Motorists who are expected the fund the project including all the non motorist amenities were underrepresented throughout the entire public process. This persistent bias is way too typical when it comes to Portland area transportation projects. Free-loading bicyclists and hanger-on alternative transportation activists from the bridge impact area dominated the decision advisory progression. Sustainability starts with financial self sustainability. The overall size and scope of this project needs to be ratcheted back with bicyclists and neighboring walkable communities chipping in and helping to shoulder the financial burden. Matching the funding for motor vehicle owners dollar for dollar. The current financial scheme and deck design -- rather I should say financial scam, when it comes to extorting money from motor vehicle owners as if they were an on-tap ATM, simply lacks any kind of fairness and equity. It's a form of social engineering and authoritarian tax discrimination. In closing, if the spandex-clad pedal pushers can continue to be Portlandia typecast slackers and not be charged fees for the specialized infrastructure on this bridge and elsewhere, likewise the delivery of mainstream basic services such as water, sewer, and garbage pick-up along with all the recreational activities that take place on public golf courses, in public tennis and rec centers, and at public swimming pools also need to take place at no charge. Thank you.

Adams: Additional council discussion?

Parsons: We need to have you amend to accept the new exhibit a. The first was the draft.

Fish: So moved.

Fritz: Seconded.

Adams: Moved and seconded to accept the substitute exhibit a. Please call the vote on the motion.

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

Leonard: Well, I have been characterized in many different ways but none I am more proud of than spandex-clad pedal pusher. I actually look forward to wearing my spandex and pushing my pedals to go over the Sellwood bridge when it's done. I commend Mayor Adams and chair Cogen for actually doing a lot of what we were talking about in the last measure that we discussed: Compromising to come up with what really is, as sue keel accurately pointed out, a much better design that's cheaper. And I appreciate all the work, and I'm glad you have views there. I'll take advantage of those as well. Aye.

Adams: Aye. Motion approved. Please call the vote on the council calendar item -- ordinance.

Fritz: Thank you for your leadership on this and chair Cogen for your partnership. A lot of good work by the staff as well. There is a transportation, parks, environmental services, water bureau,

February 2, 2011

Office of Healthy Working Rivers and the Office of Neighborhood Involvement as well as Tri-Met and our other partners. Contrary to public opinion and perhaps journalist opinion, the city and other jurisdictions do work together well, and this is an example of how we couldn't get this done without us all working together. Because we're all investing in it, it means that we're all invested in getting it done as efficiently as possible using taxpayers' money wisely, whether it's in the federal government, state level or local taxpayers. We understand our responsibility, and I'm very, very glad that this is going to get done, happy to hear it gets started in July of 2012. Aye.

Fish: I believe the Sellwood bridge has been and continues to be our number 1 transportation priority. This is the right thing to do, but it would not have happened without the mayor's leadership and sue keel bring it home. Sue, thank you for your great work. On the other side of the river, to our friends, chair Cogen and Deborah Kafoury and that team, I want to echo what commissioner Fritz just said, because in my experience the overwhelming amount of time we spend working together is getting to solutions and working things out. That's not news worth think. The newspaper says war breaks out. It's not going to have a bold column saying peace breaks out.

Adams: I dare them.

Fish: In every negotiation, there's bumps in the road. The real test is how you end up, not taking the temperature along the way. I think we spend too much time in this community getting hung up on style points and not enough on substance. In this point, we have a better product thanks to leadership of two bodies and two leaders. Thank you very much and, Mayor Adams, I'm proud to vote aye.

Saltzman: A special thanks to Multnomah county voters for approving to tax themselves on their vehicle registration fee. We hope Clackamas county will continue on that same course of wisdom and recognizing that this is the number 1 transportation priority. As one city commissioner up here, I commit that, should budget go awry for any reason, we are here as a partner to make sure this project gets finished. It's a great design. It's going to have great attributes to get vehicle flow. We need to remember it's rated at the bottom of the list for the most dangerous bridges in Portland, if not the state, so it's all engines on go to make sure this project gets done. I'm pleased to vote aye.

Leonard: Aye.

Adams: Aye. Approved. All right. Can you please read the next item?

Item S-122.

Saltzman: I make a motion to accept the substitute.

Fish: So moved.

Adams: Would you accept a friendly amendment?

Saltzman: Yes.

Adams: The third line down on the fourth from the bottom, be it resolved, instead of council, say mayor?

Saltzman: Yes.

Adams: Moved and seconded.

Leonard: Where were we at?

Saltzman: Under the project sponsor designation, it would be the mayor appointed.

Leonard: Yes.

Saltzman: Or designated.

Adams: Moved and seconded. Please call the vote on the motion.

Fritz: Aye. **Fish:** Aye. **Saltzman:** Aye. **Leonard:** Aye. **Adams:** Aye.

Saltzman: This resolution's overall intent is to provide checks and balances on decisions around need and requesting more customer proposals for information technology, including hardware, software, telecommunications projects which, as we all know from our own experiences, are complicated projects, and we need to build some more safeguards to make sure the projects are done on time and on budget. Hopefully this resolution and the companion ordinances that will

February 2, 2011

come forward will do that. It does it in three main ways. It creates at least a five-person oversight committee. The one member, each appointed by a member of council, OMF has the ability to add additional members as a project's expertise may need. The second thing is to make it sort of a standard best practice. We know we've been doing that. But to make sure all projects have external quality consultants and that they're brought early on, as will the citizen committee in looking at both not only how crafty RFP but also whether in fact the project is. The final point is for the committee to review for quality assurance. This is modeled on how the PSSRP was months ago where we had exactly those people at the table. Some of the changes that we've incorporated from last week and your staff and you have both received the substitute, specifically the committee is now directed to be used before a request for proposals is even developed. Resolution now requires the citizen committee to develop an annual work plan, detailing their expected work for the coming year and their priorities. I know that was important to the mayor. We make it clear that, at anytime, council can create a subcommittee for specific projects and this can and should include user groups impacted by the project, something I believe commissioner Fritz stressed last week. We've directed the bureau of technology to specifically utilize the recommendations learned in the lessons learned from the audit. Finally we've made it clear that projects involving multiple city bureaus will have one primary lead council member as designated by the mayor and being ultimately responsible for the successful implementation of a specific project again when it crosses multiple bureaus. This'll come back in terms of an implementing ordinance in March.

Fritz: One question or clarification. I appreciate you adding the line about representing specific users. Is the council agreed that those specific users could be bureau employees or external users depending on who we feel would be best helpful? It could be somebody who's used the system, an outside expert, but it could also be a city employee. In other words, it doesn't have to be outside citizen volunteers. It could be bureau employees as well. It could be outside citizen volunteers on that subcommittee?

Saltzman: On the subcommittee, yes. The citizen subcommittee should be citizens.

Fritz: But the other could be bureau folks or citizen folks if that's relevant. Thank you.

Adams: Anyone wish to testify on resolution? Please call the vote on the resolution.

Fritz: I appreciate you bringing this forward. Everyone on the council is very supportive of this. Commissioner Leonard gave you have the stage for the public safety revitalization project and the way that that's set up. Commissioner Fish helped us last week in figuring out the different parts that need to be amended. The mayor has added his pieces. This is something we all own and we all had part in crafting the final version, and I appreciate everybody's work on this, and I'm looking forward to the citizen volunteers, the bureau staff and others who will now be involved in reviewing these projects. Aye.

Fish: I want to first begin by thanking Jim Blackwood on my team for helping me on this project. Some of you may not know that, in a prior life, Jim was in charge of the I.T. functions for the Standard, and so he has a wealth of experience and is actually helping one of my bureaus think through a new technology challenge. Thanks for bringing this forward, and I was very pleased to co-sponsor this with you, and I also appreciate that following last week's hearing, you also incorporated a lot of ideas this body brought forward, so I think the resolution is even stronger. Our goal here is to transfer accountability. I look forward to seeing the proposed code come back to us for review, administrative rules. Aye.

Saltzman: I also wanted to thank Matt Grumm of my staff for valuable input as well as commissioner Fritz, my co-sponsor. Aye.

Leonard: Aye.

Adams: Aye. So approved. Now we move to resolution 123.

Item 123.

February 2, 2011

Andrew Aebi, Bureau of Transportation: Good morning. I'm Andrew Aebi. This is an overview map of the project area. This project would improve 82nd avenue on the west side of the street and Bybee Boulevard on the north side of the street. You can see that dashed-out outline on the page. That's the project area. You can see the general location between Duke and Flavel on 82nd avenue. This is a close-up view of the project area. You can see the frontage there along 82nd avenue that would be improved. You can also see the frontage improvement that we would be doing along the north side of Bybee. If you look at those blue or purple lines -- I'm a little bit color blind this morning but, if you look at the lines drawn around 81st place, you can see we're contemplating a possible widening of 81st place as well as Bybee, possibly extending it to tax lot 8700. That particular work is not within the scope of the LID as it stands right now, because it would require demolition of an existing building, so I didn't want to put together an LID scope that committed us to building a street where we have an existing building that's in the way. These are the existing conditions on Bybee Boulevard. The street is paved, but there's a dirt shoulder, no sidewalk along the north side of the street. This particular street is like 18.4% of the streets in the city of Portland. They have existing pavement, but they don't have curbs, drainage or sidewalks, all of which will be added as part of the project. Just a note that this particular project is in the Brentwood, Darlington neighborhood. Brentwood, Darlington has a much higher proportion of substandard streets. This resolution would grant authority to the city engineer and local improvement district administrator to negotiate agreements for 81st place. This is a picture of 82nd avenue. You can see that there's an existing sidewalk on the west side of the street, but it's in very poor condition and would be replaced as part of the project. Southeast 82nd avenue has a lot of pedestrian activity and transit activity with the most frequent bus line in the Tri-Met system so that pedestrian facilities are important. The picture there in the center is a building that is awaiting final approval of the building permit which council passage of the ordinance allow. Finally the picture on the right shows some remainder of the property, all of which would -- of this LID would help set the stage for redevelopment. The last picture here shows you the possible development that may occur at this site. We have three property owners here with us to talk to you about this project.

Adams: Please come forward. Glad you're here. Thanks for waiting. You got to see a little bit of local democracy happen. A bridge getting built, contracts being settled. Thanks for sticking with us. Who would like to begin?

Tim Nguyen: Good morning. My name is Tim Nguyen, and I'm a property owner.

Samantha Dang: Samantha Dang. I'm a property owner as well.

Art Duhon: Good morning. I'm Art Duhon. I am not a property owner. I'm probably the designer that's caused most of the development for this site through Tim and Samantha. A little insight into the development and the reason for this LID project is, due to financial guarantees that would force us to do a public works project, getting the bond for that is very difficult no matter where you're at. In the upper echelons of construction, just getting a bond in general right now is very difficult, and we were facing permits being terminated, and this was one last step that the BDS kind of gave us a check into it, and it's turned around quite well, gave us new life in this project.

Adams: Do you agree?

Dang: Yes. We have been on this project, Tim and I, for, I would say, about eight years. Art has had four children in the meantime. [laughter] And so we've had so many roadblocks, and the project has been solved financially as well as with the city with different things that have been going on, and so we were not able to develop 82nd avenue and the property as we had wanted to develop it. It was very important for my husband and I to take this place and get some energy into it and get some life into it. We used to live there, and we work there still, and it's a part of 82nd that is more depressed than the surrounding area. It's part of Brentwood, Darlington. It has been our home for about nine years. And so we really would like to see this place develop and realize our vision with the plans that we have. The city has been supportive, but there has been no real avenue

February 2, 2011

for us to continue with this project. So finally we were able to meet with Andrew Aebi, and he was able to help us restart this project and get it going so that we could get an LID started and then hopefully get our permit so finally we can build this place and get some more energy and life into 82nd avenue. That's just in our vision. Most of the money that we have put in has been our own money, and so that's part of the reason why it has been stalled. So with the economy being so bad and now things are getting better, we're hoping that this will be able to help us start the project again and then finish it. I think that the vision that we have is really good for the economy as well as bringing in business and bringing housing into the place, making it just a better place along the lines of 82nd avenue being 82nd avenue of roses. I think that's been our goal from day one.

Adams: Thank you very much.

Saltzman: Maybe I missed it, but what exactly is the project? It looks great, by the way.

Nguyen: On the project, we've been working with PDC, PDOT, ODOT since 2004. We changed the zoning. We own almost a whole block there, so I changed the property to commercial general zone. On the project, there's three phases, the first building office in the front. The building on the picture below is going to be -- our plan is to put in retirement home for people to live there and low-income housing. We hope to get to that second phase of it. And the third part is for people to live there and do business there. The last phase is another building on 82nd that we'd like to put in dentist office. My brother-in-law is a dentist for over 20 years. That's the third thing we'll put. People will live there and then go visit doctor office, dentist office in front, just little shops. Basically my vision is to plan to build, like, a small community that you work there and you do business there.

Leonard: I remember having a hearing on this about five years ago.

Dang: Yes.

Leonard: And there were some issues with the building that exists with BDS in terms of the legality of it.

Dang: Yes.

Leonard: As I recall, you were going to actually remove it.

Nguyen: Actually, we do have the permit for -- the building is under the permit. Now, after we changed to the commercial zone, we have to revise the plan, redesign everything to meet the commercial code which we've been through for three, four years to redesign it. The permit, everything's approved except we need to put in a sidewalk on 82nd, and I've just signed a contract for along 82nd and Bybee to put in the sidewalk. That's the last step. We need to provide a bond to get the permit. But having called around, a lot of bonding companies out of business. A lot of my subcontractors couldn't get the bond for the sidewalk. So the last step somehow we met with Andrew. He very aggressive, and we have some help from the city that has been designed for us for clean water for storm drain, curbs put in, and we now have the city to design it and build it, and we're going to pay this in monthly payment. But our permit is ready to go right now.

Leonard: You're going to keep this building and legalize it?

Duhon: Yes. The permits actually have been approved to the point of where they're waiting transportation approval. We have gone through the building, and actually we down sized some of it due to fire rating, but it is going to stay when we're meeting the planning, zoning requirements as well as the requirements of the land use approval.

Leonard: The sketch we see on the back, does that incorporate the existing building?

Duhon: No. That sketch you see on the back is the retirement home.

Leonard: Which will be separate from --

Duhon: Yes. It would be separate from the building that's located out there right now.

Leonard: And so you're saying that you have -- you've worked with the Portland Development Commission and other entities to arrange financing to allow you to go to the next stage?

February 2, 2011

Nguyen: Yes. We've been working with BDS for almost five years, and now they have the funding reserved for us as soon as we get the permit to finish up the first phase, which is the building office on 82nd.

Leonard: So you said BDS. Did you mean PDC?

Nguyen: I'm sorry. Yes. PDC.

Adams: Unless there is additional questions for staff --

Fritz: I want to make some comments. It's not an emergency. We're not voting today. I am very pleased with how the property owners and Andrew and the staff in BDS and Transportation have worked on this. I think it does bring vibrancy to a part of 82nd that certainly needs it. It brings sidewalks on a major transit street. What's particularly innovative is that the city is in charge of the project to make sure it gets done, so it's another of the silver linings of the recession where the bonding is not as available. We've had problems in the past with bonds being taken out, but then the sidewalk never gets built. This structure means that the city's in charge of the project. The sidewalks will get built, and it works for the property owners as well because you get properly permitted. We appreciate your willingness to work with us in this case.

Adams: It is a resolution, so would you please call the vote?

Fritz: With those comments, I'm happy to vote aye.

Fish: Aye.

Saltzman: Well, this seems like a great project, and I'm glad it's on track again. And thanks to Andrew and the city for helping make that so along with the necessary public improvements. Aye.

Leonard: I do hope this is the piece that allows the project to go forward, because I remember vividly the hearing, because I live out that way and drive by there often and often wondered why the project stalled, so it's good to hear the explanation, and I hope it does move forward quickly. It's an area that could use this kind of help. Aye.

Adams: Thanks, Andrew. Good luck. Aye. So approved. Please read the title for nonemergency ordinance item 125?

Item 125.

Adams: What are we looking at here?

Eric Johansen, Office of Management and Finance: Well, this is one of the implementing items for the intergovernmental agreement that you just heard a few minutes ago. This ordinance will authorize the issuance of revenue tax bonds for the purpose of fulfilling our obligation to the Sellwood bridge project. The bonds are expected to be repaid from a portion of the transportation revenues that are coming in from house bill 2001, as you heard in the previous item. The city expects to receive about 20 million per year from those house bill 2001 revenues. As we've discussed, the debt service on the bond is projected to be not greater than say 8 million dollars per year. So using a portion of the 20 million to fund the debt service on this particular project. These bonds will be backed by the full faith and credit of the city. Under the terms of the intergovernmental agreement, the first 70 million of our 100 will be delivered to -- will be made available to the county not later than December 31st of 2012. The remaining up to 30 million is expected to be made available on or about September 1st of 2014. So we'll be looking at least two bonds to implement this obligation. The bonds are expected to be sold through competitive bidding. The first sale is anticipated for the middle to latter part of 2012. With that, I'll take any questions.

Fritz: Let me restate what I think I just heard, and that is that only 8 million of the \$20 million that we're projecting to receive from the state is dedicated to this project at this time.

Johansen: Correct.

Fritz: And then you said that the full faith and credit of the city is backing it, but then the remainder of that 20 million would be for the gas tax revenues before the general fund would be at risk?

February 2, 2011

Johansen: That would be a budgetary decision, but I think that's the likely course one might take if necessary.

Fritz: Thank you.

Adams: It is the full faith and backing of the city.

Johansen: The question here is what is the source of the actual payment.

Adams: It's general gas tax revenue for the Bureau of Transportation.

Johansen: Correct.

Adams: It's a nonemergency. Does anyone wish to testify on item number 125? Moves to a second reading next week. Can you please read together items number 126 and 127?

Items 126 and 127.

Christine Moody, Bureau of Purchases: Christine Moody, procurement services. As a result of the 2010 legislative session, the public contracting code ORS chapters 279b and 279c have been revised. The city must now update its own contracting rules, city code chapter 5.33 and 5.34 to include a provision to classify a disabled veteran-owned firm as a business enterprise under the affirmative action section of the code. Along with the update, because of the statute revisions, we have added eight class special procurements to the code. The class special procurement allows the city to enter into contracts without seeking competition as specified in the findings. We are asking to authorize into code utilities and utility-related services, goods and services acquired by a federal grant agreement, membership dues unique to a professional or community organization, U.S. Postal Service products and materials, services related to legal advice that are selected by another person such as a court or by a joint agreement between the city and another party, seminar, training, registration, and conference fees that are proprietary or controlled by a sole provider, event sponsorship that is only available from the organization or organizer of the event, storm water improvements where all or a significant portion of the improvement that is being funded will be performed on private property and the property owner will be performing the work or the property owner hires their own contractor to perform the work. An addition is the delegating of the contract authority up to \$200,000 to the director of the Bureau of Environmental Services for the storm water improvements and watershed restoration projects. This delegation will streamline the contracting process in order for BES to work directly with property owners in support of the gray to green program goals. And I will turn it back over to council if you have any questions.

Leonard: Is this just item 127?

Moody: It's both items. 127 is the special procurement. In order to add in all the class special procurements, 126 is adopting those into code, and then there were some technical corrections we needed to address in the code as well, so we put those into 126.

Leonard: Great. Questions from council? Commissioner Fritz?

Fritz: In multiple sections in exhibit a, you changed that city should respond within seven business days to within a reasonable timeframe, but it doesn't say what reasonable is.

Moody: The seven days is self-imposed. There is no response time in state statute. And oftentimes, when protests to contract award, because there's in-depth research we need to do, we aren't able to respond within that seven days, so we just changed it as to not be eliminating ourselves in that response.

Fritz: Does that match what state law says as far as reasonable? Any other timeline we should put instead?

Moody: I believe state statute does not address the timeline at all. Generally we will get it done within the seven days or two weeks. But if it is a large protest or if it takes in-depth research or we have multiple protests on one contract award, sometimes it takes a little bit longer.

Fritz: So we can change it to the more discretionary. People would, I'm sure, bring it to our attention if you're not getting back to them in a timely manner.

Moody: Yes. We respond to all protests.

February 2, 2011

Fritz: Thank you. And on 127, was wondering why we don't have the language that specifies that only seminars, trainings and conferences that are unique proprietary controlled are special procurements, it didn't seem to be included in the new language of what you just read in the state requirement?

Moody: On 127, it's the findings, and it was item f of exhibit a, the seminar training, registration and conference fees.

Fritz: Yeah. It's only the ones that are unique proprietary?

Moody: Yes. If it's not unique in nature or sole proprietary, we would go out and get quotes.

Fritz: Do we have that in the regulations?

Moody: It does state in number 2 that if it's unique or made by a sole provider. If somebody's wanting to enter into a contract for that and they can't justify that it's a unique situation, then we would require them to get quotes for that under the city code.

Fritz: Thank you. One other place where it says -- this is in exhibit a, page 1, section 5.33.040 part c, number 1. It says that the award and intergovernmental agreements, without special authorization by a separate ordinance of the city council. I'm wondering why we have the word separate in there, because it seems to me it didn't have to be a completely separate ordinance in order to execute the IGA.

Moody: Actually, this is kind of a clean-up. Last year we had brought to council that, under my authority, I can sign IGA's up to \$5,000. Over \$5,000, it will come to city council.

Fritz: Do we need the word "separate" in there? Wouldn't have to be an individual ordinance on the one issue. It could be bundled with something else.

Moody: Ok.

Fritz: Unless the council objects, is it ok to take the "separate" out?

Moody: Without specific authorization by a separate ordinance. And that's saying that, if there was an ordinance that came to council and the IGA wasn't done already that they may delegate that signature authority to me. Sometimes they delegate it to a commissioner.

Fritz: The question is a separate ordinance, whether it could be part of an ordinance on a bundled thing.

Moody: Oh. I get it. Yes. We can make that change.

Fritz: Thank you.

Adams: Any other discussion? Does anyone wish to testify on items 126 or 127? Sue, call the vote starting with 126?

Item 126 roll.

Fritz: Well, thanks to Vanessa Holguin in my office, whose an intern, even more detail oriented than I am form pointing out these issues which I'm glad --

Fish: That's why we have an employee assistance program. And we will all be participating in an intervention. It's a cry for help.

Fritz: Vanessa is a absolutely fantastic, and you can't have her. I am very impressed with Christine Moody's ability to hone down on the details also, and obviously you already have them covered. The details matter, and I really appreciate it. Aye.

Fish: Is this the young lady who's a lawyer from Berkeley?

Fritz: Yes.

Fish: Very impressed. Aye. **Saltzman:** Aye. **Leonard:** Aye.

Adams: Aye. Please call the vote on 127.

Item 127 roll.

Fritz: Thank you again. Aye.

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

Adams: Well, to Christine and Jim and the entire team, thank you for your work on this. It's much appreciated. Aye. So approved. We are in recess until 6:00 p.m.

February 2, 2011

At 11:57 a.m., Council recessed.

February 2, 2011
Closed Caption File of Portland City Council Meeting

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

Key: ***** means unidentified speaker.

FEBRUARY 2, 2011 6:00 PM

Adams: The Portland city council will come to order. It's 6:00 p.m., February 2nd, 2011. It's Wednesday. We've gathered together to consider three related ordinances. And Sue, would you please call the roll.

[roll call]

Adams: Quorum is present. We shall proceed. Will you please read the titles to 129, 130 and 131. **Items 129, 130, and 131.**

Adams: Thank you, Sue. Unless there are objections from council, I'll make a few opening remarks. We'll have staff presentation, which is an overview, and then take amendments, and then follow that with public testimony. We have 40 people signed up. Which means that I will be seeking you to -- I'll be asking you to be as succinct as possible. Which means I'll be limiting testimony to two minutes each. If you have absolutely prepared for three minutes, then just let me know prior to your testimony. The rules of this chamber are intended to maximize public discussion without any sort of sense of -- of hooting or hollering, so more than a sense. There is no hooting or hollering or slapping. If you like something, free to do this. If you don't look something, you're free to do this. But no noise, all right? So I want to thank -- thank all who have participated in this effort so far. I think we would all agree it's been a long haul and we appreciate your dedication to our city's tree canopy. The climate action plan sets ambitious targeting to expand the urban canopy and cover one-third of Portland by 2030. This will help us by adding 100 acres per year to our existing tree canopy. In tackling this initiative, Portland is in good company. Trees are on the agendas of cities and counties across the region and country and we're realizing that trees are a valuable contribution to urban life from livability and health and sustainability and official stormwater management. Everyone is trying to find the right balance and we need to make sure we address equity issues as Portland adds more households, not just how much tree canopy Portland has but where it is and who benefits. I want to stress this is an opportunity for the public to hear more about the plan and an opportunity for the council to hear public testimony about the plan and amendments, a number you have us might be bringing forward for discussion tonight. There will be no vote tonight. Council is scheduled to revisit this issue on March 9th and we'll be giving the staff direction on work to do between tonight and then. So staff, please come up.

Joe Zehnder, Bureau of Planning and Sustainability: Good evening, commissioners, I'm Joe Zehnder with the Bureau of Planning and Sustainability and I want to do a brief introduction and turn it over to Roberta and Morgan Tracy from BPS staff. About three years ago, the bureau was asked to look the city's regulations and programs how we handle trees. A lot of issues that were the impetus for the original charge for the bureau related to difficulties people were having using the code. Perceived sort of inefficiencies or confusion it generated. A lot of concern about the loss of trees related to development. So it started out in the origin as a regulatory improvement project but also we were asked to take a look at the important role that trees had been given, the tree canopy had been given through the urban forestry plan and the climate action plan because of the role of trees and tree canopy in greenhouse gas sequestration as they say agenda bill and the watershed plan. Because they're a major asset for stormwater management. And we worked closely with the

February 2, 2011

Bureau of Development Services and parks who have an active hand in what we do trees to develop the proposal that's in front of you today. With that, I'll turn it over to Roberta.

Roberta Jortner, Bureau of Planning and Sustainability: Hello, it's good to be here. Are we on. Tonight we'll go on a fly over of the value of the urban trees, what is the problem. What is the approach and the elements of the proposal and the key expected benefits and how it's supposed to be implemented and a few amendments. Starting with the value of urban trees, we need to recognize they do work for Portland every day in terms of healthful air and water. Local food sources and habitat for people and wildlife and you've discussed their effect on greenhouse gases and energy demand. We're learning more about how they affect our neighborhoods and make our streets more walkable, contributing to healthy lifestyle and pedestrian traffic in business districts and studies linked them to higher market sales in neighborhoods and reduced crime. A recent Bureau of Parks and Recreation estimate that Portland's trees generate almost \$40 million worth of environmental and replacement of roughly \$5 billion. What's the problem this project is trying to solve? For years, Portland residents developers and city staff complain that the rules are confusing and notable gaps and hard to administer and enforce and out of alignment with the terms that Joe mentioned. Portland's canopy covers about 26% of the city, which is pretty good actually, but more than 6,000 acres short of the adopted 33% canopy target. We don't have another forest park and we have a projection of over 100,000 new households coming in the next 25 years. It's not just about the numbers, there's a stark disparity ranging from 2% to 80% in neighbors and areas that are developing are losing canopy and those that are mature -- as the growth occurs, the disparity would be expected to increase.

Adams: Sue, can you get closer?

Jortner: Sure. What's the charge? Well, given the widely held views that the tree rules are -- thank you -- not working well. The council's adopted 2007 urban action man to review and overhaul the city's chief policies and procedures so the charge of this project is to create a cohesive framework for Portland's trees and serves to enhance and preserve the urban forest as the city grows and develops. The project approach has relied on collaboration from the start. From scoping the project with stakeholders, bureaus and experts in the community. To getting buy-in on the scope. Talking to other cities in the region and researching other programs and municipalities across the country and in other countries. I want to acknowledge the 20 or so members of the broad base stakeholder committee that met for four hours over a 10-month period realize and non-realize developers and friends of trees and other organizations before staff embarked on the task of producing the drafts. And finally, you'll hear a little more about the extraordinary effort on the part of the planning commission and urban forestry to hone the proposal to what you have before you today. The project in a nutshell including consolidating existing codes and funneling them into a new title 11. And also the proposal includes a set of actions to improve customer service. Title 11 represents a shift in thinking of trees. Treats trees as a citywide asset. The goal is to make the rules easy to found and use. It reauthorizes and broaden the role of the urban forestry program and the commission and the city forester and creates a holistic framework where the provisions are aligned with each other and aligned across city titles and close gaps and eliminate conflict. In terms of trees and development, the goal is for practical quality tree preservation and replenishment and we heard that the city needs to step up to the plate and working with the infrastructure bureaus we developed a program of capital projects to identify potential impacts on trees and opportunities to protect trees and establish mitigation for trees that have to be removed. The zoning code will add flexible site standards. New qualitative land division criteria growth and nature I trees instead of requiring a certain number of trees to be preserved and protection for trees on property lines and there are a lot of them. The land criteria ensure that site specific conditions are considered so that applicants can put their case across on what they think is a coast effective presentation vase approach. Preservation approach. A big change for the city, the tree preservation standard is intended to

February 2, 2011

create an incentive to preserve large healthy trees and makes room for development but require trees to be preserved where practical or applicant may choose to pay into a tree fund to trees can be planted offsite. The tree density standard will ensure a minimum number of trees planted to help the city achieve canopy goals. Applicants may preserve or plant or paying at their discretion and extends the standard the city currently has for new single family development to all development. It shouldn't increase permits time or unduly increase cost and so the goal is to take a site like this, where, you know, you want housing, dense housing but might be able to do better in terms of considering trees upfront to avoid a situation like this out of the gate. Ok. So the existing system, the city requires permits for trees on streets to be removed and pruned and planted and for private property except for on single family developed sites. However, we review every permit and in the transfer streamlining, the proposal is to create a tiered system for a certain type of tree. Saves money and time. The type b would involve a review reserved for removal of healthy trees the city forester may waive or adjust it based on the trees, if there's a lot or an undue financial hardship. And quicker and more efficient and leave time for the urban forestry commission to deal with the larger programmatic issues and budget issues. Specific to trees on city streets and property, the city requires permits to prune, plant any size tree right now. This -- the proposal is to create a new minimum size requirement to regulate those trees, as well as limited pruning exemptions. The interest is to streamline while maintaining accountability for trees under the city's oversight and stewardship. The proposal would prohibit planting city listed nuisance trees on city streets and rights-of-way, and with the rules that city currently applies to restrict private developers from including any planted trees on the nuisance list on city required landscaping. This is a concern to save our elms and the Ladd's Addition residents who requested a exception to the rule. And continue to be planted in the neighborhood. The planting commission and urban forestry commission didn't approve the exception but did recommend that the city work to find replacement trees and the landmarks has shown an interest -- we were asked to provide images showing the Norway Maple tree and it's one of the species that the forestry department says might be a suitable replacement tree as the trees are phased out. Private trees, the goal is for simple, fair and tree replacement over time. Currently, private trees are regulated on all but single family lots at 12-inches in diameter or more. The proposal to eliminate confusion, inequity, and inadvertent violations is to extend the permit system to homeowners as well. A simple, cut a tree, plant a tree, but that permit would not be triggered until the tree is 20-inches in diameter or larger and we have some exhibits over there that illustrate those tree sizes and they come with us through all the hearing process.

Fritz: What was -- could you give a brief overview why we went to 20 instead of choosing 12-inches everywhere?

Jortner: As you'll see in your testimony, some people believe the 12-inches was too big to start with and some felt it was really too small and the planning commission and forestry commission grappled with this issue for quite some time and felt that for your typical homeowner where there's no development proposed and little development potential on the site that it was appropriate to begin to bring that part of the city along into -- into the fold of urban forest management but that it really made more sense from a public investment to start at larger trees and begin to get the tree replacement engine going on those properties and plus the city gets calls all the time about big trees coming down. The real concern in neighborhoods tend to be around the larger trees.

Fritz: Thank you.

Jortner: So -- but the message for all would be to call before you cut and there's an interest in getting a campaign going to help people know they need to check in with the city before they grab the saw.

Saltzman: You have a little side diagram of tree size thresholds in other cities?

Jortner: Uh-huh.

February 2, 2011

Saltzman: Could you pick one and explain the six inch, 12-inch.

Jortner: Ok. I'm not intimate with West Linn right here. But like the city's proposal, our proposal has somewhat of a tier in environmental areas, there's a six-inch threshold but the rest of the city, there's a 12-inch threshold.

Morgan Tracy, Bureau of Planning and Sustainability: A clarification about West Linn, it's based on the species of the tree. Slower growing trees are regulated at smaller size.

Jortner: And finally, to facilitate public agency routine activities many of which do trigger permits and to avoid having to come in for individual permits there's a program attic permit approach proposed that would allow approval of routine maintenance activities for trees and removal. Potentially of healthy trees less than six inches and replacement up to five years, the permit would seaboard removal activities, replacement and mitigation and notification to neighborhoods and facilitate the activities of city bureaus and metro and Multnomah county drainage district and others. Lastly, through this process and not surprisingly, the stakeholders and staff felt this was important to accompany these type of code amendments with outreach and ways to improve public access this information, how to get information on city programs and who to call about what type of program and how to track permits in the system. Hopefully online to include a call for after-hours or weekend cutting and how to plant at a neighborhood level and those are parts of the proposal as well. Benefit, improved tree canopy, quantity. Generating conservatively probably an additional 100 acres or so a year that in the future based on preserving more trees in the development process and outside development and then enhanced planting. Requirements. Improve quality of trees, larger trees, and natives and the distribution of equity, having trees planted in developing areas and tree-additional areas and a balanced framework intended to meet multiple goals for city, growth, development and watershed health over time. To give time for the program to kind of get in place, the idea is in the first year, next fiscal year, there would be an ramp up period. The bulk of the codes would go into effect in early 2013. And then the program would shift into ongoing operations mode. Pretty much after that. Funding source, a combination of general fund fee, CIP and this additional investment in the urban forest and the regulatory system on the order of 5.5 new FTE to administer the program and provide the single point of contact for the public. The bureau of planning and sustainability is introducing a number of amendments which you have before you today. Of the list of clarifications, and other types of amendments, there are three we want to highlight and these are the ones we would suggest, provide specific direction on. The first is that for title 11, in addition to the everybody forestry oversight of the amendments to the title, the planning commission would be now required to also hold a public hearing and make recommendation to council on amendments to title 11 that relate to development and enforcement. To provide the broader specific when those need to be amended. In light of the LUBA appeal, remand of the north reach river plan, we're proposing to exempt at least temporarily, industrial and commercial zones that do not currently have landscaping requirements from the tree preservation standards and ask you to direct -- us to return with additional recommendations if needed when the issue is raised in the LUBA north reach remand is resolved and suggest that the council adopt the program you've already adopted. It was not covered in the remand but allowed for sites that have environmental overlay zones an applicant to enter into a process to get a 10-year master plan for development, mitigation and enhancement and do long range planning for site like a campus, for a metro and -- wetlands that are a lot of folks interested this those programs.

Fritz: I don't think I have those in writing anywhere. What's on the paper. What's on the slide.

Jortner: So -- this piece right here --

Fritz: The big one.

Jortner: The memo that first -- the first two pages summarize those three amendments and list the other ones.

Fritz: Thank you.

February 2, 2011

Jortner: You're welcome.

Adams: Discussion from council? Commissioner Leonard.

Leonard: One of the issues that we, I think, agree is a problem that needs resolved is in the instance of land divisions. Oftentimes developers will clear a lot prior to submitting an application for land division illegally and figure that paying the fine is the cost of doing business as opposed to having to be regulated with respect to the trees for the land division. What have you proposed to deal with that?

Tracy: There's a proposed chapter specific to enforcement of the title 11 tree code. It includes a number of tools that the enforcement staff are able to choose from. Which has the added benefit of being flexible to address the inadvertent unknowing violations as well as impose increasing violations for the more blatant violations.

Leonard: I've reviewed -- I think you're talking about volume 3 title 11.

Tracy: Specifically chapter 11, 70.

Leonard: And table 40-1?

Tracy: No, it's a separate chapter.

Leonard: I'm looking at volume 3, draft title 11. I guess the concern I have is while that attempts to deal with land divisions, per se, there are other kinds of examples that fall outside of land divisions where the attempt was made to capture larger lots to make sure we at least created disincentives for people to clear trees off their lots before they submitted a application for a land division. But there are other examples that I didn't capture here that were covered what you're trying to do. For example, the zoning code allows divisions on corner lots so you could have a 5,000 square foot lot subdivided into two 2,500 square foot lots for row houses. I don't think what you've done captures that but lot segregations which some think of as divisions but are old platted lots -- platted lots. Excuse me. So it feels like we have made that particular provision more complex without really getting at a simple solution. For an example, and this was written about recently by Steve Dean, a developer that did exactly that in southeast Portland and my intuitive reaction was we needed to increase the fines and the bureau said that's exactly the type of disincentive things we need to do. But it doesn't appear that's the approach you took and feels like it's more complex.

Tracy: To respond to the enforcement issue, the chapter I'm referring to is 11.70, the methods of creating violations on page 143 of that code. As I noted, there are a number of different types of tools available, including simple tree replacements and tree permit violation reviews which would send someone back to the tree permit process and additional remedy, civil remedies and penalties of \$1,000 a day and coming back for reinspection if this is during a --

Leonard: How is that different than what we do today?

Tracy: There are more -- it's somewhat more refined and more explicit in the code. A number of these existing tools are in use through administrative rule so this makes them more explicit. And clarifies they're not mutually exclusive and can be additive. In cases where there's an egregious violation, these could be additive penalties that are imposed which puts the ability to factor or equate the cost of doing business off the table because there's a little bit more uncertainty that end of the equation.

Leonard: So to be clear the provision I'm talking about is chapter 11.40, volume 3 tree permit requirements and flip over to 40-1 and that's where you're trying to capture where this phenomenon occurs and the illustrations I gave you were examples that then fall outside of what you try to capture in this chapter, which is the point I'm trying to make is I -- I think we need to try to step back and -- and again, come at trying to -- to determine how to solve that issue and capture as many examples as simply as possible, rather than a complicated approach that only captures part of the examples that occur when people clear lots of trees. There's probably nothing that happens that makes residents more angry than when they look out their window and see someone, particularly a

February 2, 2011

developer clear-cutting a large lot of land in the inner city and people react understandably harshly to that. And my fear is we haven't quite got it right with this approach. Because the developer -- the services bureau enforces these provisions and has given me these examples of what they actually face on the ground if trying to enforce against these kinds of things occurring and they are concerned we haven't done that yet.

Jortner: We've gotten some calls around this issue as well and we can -- look at what ideas that you have -- the penalties aren't high enough? I mean, that's one thing we've heard. And there's sometimes communication issues about when things get reported and so forth. So --

Leonard: That leads me to another issue I want to just point out. That concerns me and that is that it seems as though -- and I'm look for my page here. We have different standards for different trees on different pieces of properties. So different sized dimension trees are regulated differently depending on whether they're in the right-of-way, whether they're on developable land, private property. And again, the bureau's experience is that when you have for instance three inches a requirement for street trees, 12-inches for private trees and 25 -- or 20-inches for private trees associated with single dwellings if the slot over a certain size, that's a recipe for non-compliance and confusion and when you layer in, then, that we have a lot of communities that English isn't their first language we can predict there's going to be a lot of violations and again, the goal is similar, but how we get to the place of preserving and encouraging people to plant trees, I think needs to be tweaked a little bit.

Jortner: On that point, I'm glad you raised that. The proposal that went to the planning commission and forestry commission was 12-inches across board and commissioner Fritz asked the rationale for increasing it and there's this ever-edge of -- you know, Portland doesn't react well to one size fits all, we've discovered and when we try to get too broad based we got pitch back for raising tree threshold in environmental zones and the city's at zero with the street trees and there's a lot of angst about raising it to three. So it was a real balancing act and the commission looked at those and felt this was the best suite of sizes and they were defensible and rational.

Leonard: And they may be as to what makes the most sense in the practical world. Experiences when regulations back as complex as these are the net effect, they end up not getting enforced or understood or complied with, because people don't understand them, not just in the community, but in the bureau. It backs difficult to translate to the property owner what the regulation is with the given lot -- you can have two lots in the same neighborhood one next door, that has a entirely different set of regulations for what you're proposing for tree preservation than the house next door often can defend it but as I practical matter to try and make sure that the code then is enforced in a very fair and impartial way across the city, I can predict is not going to happen based on our own experiences.

Adams: I'd like to have our council discussion and figure out what to do. Commissioner Fritz.

Fritz: I think -- thank you, mayor and commissioner, that's an example, when I was sitting in the chair there, I was sometimes frustrated that it didn't seem like the council members had done their homework ahead of time and it's obvious we've looked through this carefully and have lost of questions and there will be some amendments. So I'd like to get to testimony because I know you've been waiting and maybe at the end we can summarize the things we'll be putting in as amendments because we'll have another hearing on the amendments after the staff works on them. So you know, for testifying, one of the things I'll suggest is to delete the paragraphs in the ordinances that talk about how we're going to implement them and how to budget for that. We need to agree on the policies first. If your -- agree on the policies first. If you could focus on the 12-inches versus 20, whatever the particular policy is you're concerned about or want to support or oppose, that could be helpful to me tonight because I think we'll be figuring out later how we're going to implement this. I'm always interested in the details, so there's particular details in the code that you want to talk about or if you want to send in written testimony afterwards, we'll be accepting

February 2, 2011

-- and keep the record open and take more suggestions and put together amendments over several days or maybe even weeks. Thank you very much for coming. It's great to see both chambers filled.

Adams: Commissioner Saltzman.

Saltzman: Well, I want to be upfront about one of my overriding interests is in this tree code. There's a lot of complicated issues but this is a complicated area. Living in an urban city is a complicated thing these days and balancing the goals is complex. But I'm less interested in penalizing people from illegal tree cutting than I am in preventing it from occurring. Tell me about the 24-hour hotline response and how that will improve on the Saturday or Sunday morning chainsaws that we wake up to.

Jortner: The idea there is that it's actually a pilot project being proposed. And it needs to be accompanied actually by the upgrades to the permit system that will allow staff and private parties to go online and know when a permit is required and kind of depends on establishing the standard of the permit system. With the exemptions in place right now, it's -- with the exemptions it's hard to tell. Assuming those things are in place, the idea is if someone calls on a Saturday, that the call --

Saltzman: Call a hotline?

Jortner: The tree line and they would be routed -- if the tree is in the street, go to the existing urban forestry crews to take care of that. If it's an emergency, 9-1-1. If it's trees cut on private property, they would be directed to the Bureau of Environmental Services. And felt they could test the system out and they will take the information and check the permit status and see if it's really egregious, they'll take pictures and they'll ask the people who are supposed to have their permits posted under this proposal, whether they have a permit and see what's going on. Whether they go to the site or not, they'll create a record in the system that will allow the enforcing body, whether it's forestry for the permits or development, to go in quickly the next day and figure out what enforcement actions are required. It's -- it needed to be coupled with education so that people know that the service exists. The hotline and won't prevent but it will help reinforce those enforcement efforts.

Saltzman: You mentioned there would be a direction to call 9-1-1 also.

Jortner: Call and get a series of options so if it's something dangerous going on, they can call 9-1-1 but depending on the circumstance, routed without having to call different numbers to the appropriate program.

Saltzman: But there will be a single point of access?

Jortner: Yes.

Fritz: We don't want you calling 9-1-1 if someone is cutting a tree down, unless there's someone hurt by the tree cutting down.

Leonard: I need that clarified too. You need to make that clearer to me. You're including instructions that people call 9-1-1?

Jortner: Well, when the bureaus discussed it, if something -- if it's an emergency and feel like --

Leonard: What do you mean by a emergency?

Jortner: If a tree is about to fall on you or --

Tracy: Life-threatening emergency.

Leonard: Because you're concerned somebody is cutting a tree?

Jortner: No, it wouldn't. Have to be clear that's not what it is intended.

Saltzman: Well, I guess, I may be in the minority, I see circumstances where 9-1-1 is an effective it get an immediate response, if you're interested in stopping something, rather than penalizing someone after the fact.

Leonard: So SWAT?

Saltzman: Community policing. [laughter]

Adams: Did you have anything more, commissioner?

February 2, 2011

Fish: I have questions and comments and a proposal about a cluster of issues, Mayor, to be put into a work group following this. But I would urge we go to public testimony and come back and talk about amendments as you've announced there's at least one more hearing in March, that gives us time to address the issues that come up tonight with staff and come back with further amendments. I appreciate the discussion.

Adams: Any further council discussion? So Don Hanson and Brian Kreig. Followed by Zari Santner.

Don Hanson, Planning Commission: I'll start. I'll fit in the two-minute envelope. No problem. I'm Don Hanson, the volunteer chair of the sustainability commission and I'm a registered landscape architect for 25 years in the state of Oregon and I'm keenly interested in this topic. I'd like to talk about briefly, the process we went through and what we focused on, the main areas and results from my perspective. I'm glad Brian is with me because we partnered up with the urban forestry commission which was very interesting and challenging process but also very worthwhile I would say. There were 20 of us around the table. Kind of hashing through these experiences and we learned a lot about trees, in our urban areas as well as the edges of our cities. They learned a little bit about land use processes too and enforcement issues so I think it was a very good collaboration all the way through. I think that synergy helped us get into the process and we heard a lot of voices, we had a lot of public testimony. I think four sessions and took public testimony at all of them and heard from two sides. We heard the proposal goes too far and heard it doesn't go far enough so we knew we were right down the middle, we were doing it perfectly. But there were common themes and I'll go through those. First, the rules are a mess. We don't even know where to find the rules. They show up in a number of different ordinances and that needs to be corrected. Trees provide valuable benefits, we should preserve the existing trees and invest in tree planting and education so that we motivate people to protect and -- protect them and enhance them with new plantings and we think need regulations to protect and sustain the investment we have in the tree canopy in Portland and the developers, we heard from, many times and they were always -- multiple times and they were invited to engage and their input was very constructive and basically we heard it's going to increase costs and effect development feasibility. Especially infill development in Portland. We took measures to address that. And we think people supported a rational but not onerous tree permits system. It needs to be rational, understandable and clear to people. And I also say we heard from the other bureaus, they engaged extensively. From BDS, we learned about the challenges of enforcement. The challenges of governing and regulating the process and also the cost. That's inherent in regulating it. From Bureau of Parks, we heard that trees and open spaces should be looked at different -- in open spaces should be looked at differently and there should be flexible in the public open spaces how we deal with trees. And we heard from BES loud and clear on trees in the natural resource areas. Areas we want to protect. Environmental overlay zones and riparian corridors in the city. Their input was great all the way through. Our focus was really on development standards and tree permit. And I won't pretend we resolved the details and some of your comments I find compelling regarding details that may still be addressed. But we wanted to look at a simplified land use and tree development standard. Adding exemptions for small lots and high intensity development sites. So people can still do infill in the city, in compliance with our channels of developing officially inside of the urban growth boundary and a new standard to encourage preservation of existing healthy trees as long as the standards wouldn't adversely effect permitting time and cost. And the reduced costs, looked at maybe a inspection system that was a spot check. On the tree permit itself. Needed to be user friendly and provide educational opportunities and shouldn't discourage people, particularly homeowners from planting trees. Developers are one category, builders are a category and homeowners are a different category and all -- they'll all deal with the ordinance differently and we need to accommodate that. Regarding the details. You know, we -- I think we ended up with a real balanced approach and we made good

February 2, 2011

policy decisions, but you're going to hear from 40 people tonight about the details, and I think if our policy discussion really helped facilitate this hearing tonight and future hearings around details of the ordinance I think we've hit a home run. We've framed the issues and I think they'll be addressed through the details as this advances. That concludes my comments.

Adams: Thank you.

Brian Kreig, Urban Forestry Commission: Mr. Mayor, I'm Brian Kreig, I live in Multnomah Village, the immediate past chair of the urban forestry commission and I'm representing its members tonight and we're here to urge the council to eventually adopt this proposal and provide funding for it. It's a result of the large and lengthy process. The trees are a very complex issue for this city. Entangled in about everything we do. The genesis for this project was not from government agencies. Really it came from citizens concerns that were raised five years ago in a report from the southwest neighborhoods incorporated group. The process that was used to get to this point tonight was very open in how this proposal was developed. It was well publicized and covered by the media and provided many opportunities for citizen participation and input. Your forestry commission and policy commission, between the two of them, met with city staff on this project over 30 times over the last three years. And as don noted, for the formal work sessions we joined forces with the planning commission which was beneficial for the commissions and the public. It created a balanced proposal when we were done. The -- we discovered that in this case, two commissions can be better than just one. We provided greater knowledge and experience and diversity and broader representation of backgrounds and professions and neighborhoods and cultures and general interest. It needs noted in our deliberations working together, there was never a partisan issue that divided the two commissions and we discussed and worked on this project. It was never the planners versus the tree huggers. It's not to say that we had total consensus on every issue but in every case where there was an consensus it was interesting to note there were members of both commissions who would be potentially in the minority viewpoint and in the end, there was consensus on the overall plan than both of the commissions gave the plan unanimous votes to move forward. In the end, I'd have to say in the 25 years of government affairs work, this is a very rare outcome and I was fortunate to be part of this process and an know the entire forestry commission was pleased to working with the planning commission and looks forward to doing so in the future. That said, the initial proposals and hearing testimony that we had after hearing it, the commission's directed staff to streamline and simplify many parts of this proposal. A compromise was made by all parties involved. The reality of the city's budget and staffing challenges, was acknowledged and resulted in our support for a phased implementation plan. We know it's not possible to move forward at one time. Both commissions strongly noted to all staff, some of the policies and processes will need monitoring and review to see if they work. And adjustments might be needed at a future date. As you review the proposal and listen to testimony, I urge you to take a big view on the impact on trees on the urban forest and overall livability. The replacement value is \$5 billion. That's an enormous asset. That needs taken care of and an asset that's half in the hands of the public, in actual private ownership. For the tree, they have a low maintenance cost and in light of the size and the central role that they play in Portland's planning goals, we feel this proposal is a cost effective use of Portland's funds and encourage you to eventually fund it and pass it.

Fish: Mayor, if I could. Brian said he was the immediate past chair and I'd like to publicly thank him for his service. This was the cornerstone was shepherding this work through and we have two other commission members if you could raise your hands so we can acknowledge you and your volunteer service to the city. Three. Excuse me.

Hanson: I'll sneak in one last comment. Just that when we first started this, I thought, trees, no big deal. But what I've discovered is that trees are complex and they're real emotional. They really affect our environment and the physical appearance of our city and I think your staff has done a wonderful job in conducting this process and put forward a good solid proposal. Thank you.

February 2, 2011

Adams: Thank you. Ms. Santner. Mr. Scarlett. Mr. Rosen. We have a lot of people waiting, so

--

Zari Santner, Director, Portland Parks and Recreation: I'll be brief.

Adams: Brevity is appreciated.

Santner: Zari Santner, Director of Portland Parks and Recreation. We oversee the stewardship of the urban canopy and manages greater than 50% of the trees within our city. Urban forestry staff has been an active participant in this code revision process that's under review tonight. Throughout this effort, staff's focus has been to ensure three key objectives necessary to increase urban canopy. First, clear and concise regulations that are practical to implement and understandable to the public. Second, education on tree benefits and tree care. And third, incentives for mechanisms that the city government can provide to the public to encourage tree preservation and tree care. This project on - - focuses on the first of these three policy elements. Overall, the project has done a credible job in consolidated code where's possible and bringing needed improvements in resolving conflicts among the current city code. It's made improvements in the development of the code to encourage tree preservation. It is a good first step. Since it only addresses one of the three key policy elements, the city needs to look holistically at our tree canopy as an integrated part of its green infrastructure and address regulations, incentives and education collectively. Support of the public is absolutely critical if the city is to reach canopy goal and get that support, we need to do hey better job educating in the value of the trees and why regulations are important to those values. There are always challenges with any new code implementation and those revisions are not exempt from those challenges. Implementations will entail a steam learning conserve for city staff and the public of furthermore, without adequate funding for implementation, education and code enforcement, it will be difficult for the proposal to achieve the goals it has established. It's been a daunting undertaking and colleagues from many bureaus should be commended for their work over the past three years. The result when fully implemented will make a significant contribution to the green infrastructure of the city and I want to offer the assistance of the urban forestry staff as you deliberate throughout this process. Thank you.

Adams: Thank you. Mr. Scarlett.

Paul Scarlett, Director, Bureau of Development Services Good evening, mayor and commissioners. Paul Scarlett. Bureau of Development Services director. I want to thank Susan Anderson, the director for BPS and her staff, as well as BDS's staff for their tireless work on this project. It's been several years in the making. It's one that affects BDS and touches our operation in many ways and administers the zoning code and enforces the zoning code tree regulations and violations alike. We are appreciative and understand the importance that trees provide to the city over-- city's overall infrastructure and residents. And we appreciate the work that's gone into this project and we support the goal of trying to create and consolidate and improve the tree regulations and streamline the provisions and that's, of course, a daunting task. We feel it's come a long way. As a former enforcement section manager, I understand the complexities and challenges in enforcing tree regulations and violations. We as a bureau, the bureau of development services have expressed some concerns in this proposal. The city wide tree proposal. We do have some concerns about some of the complexity of the new proposals, a number of new regulations, but feel -- that we feel may add to complexity in -- relative to development and enforcement. We have provided some clarification amendments and a memo to the council. Dated January 28th, last Friday. That outlines a number of concerns. The timing of the proposal is something that we've expressed, given the recession. And the cost associated with implementation of this -- this project. We have also expressed some concerns about the complexity, there are a number of regulations, you've spoke to some of them. The number of trees that are included that would need to be administered and enforced and can we provide some streamlined approaches to the tree canopy goals. Ability to maybe do more outreaching, and provide education, and commissioner Saltzman, you inquired

February 2, 2011

about penalties, are they incentives or disincentives, in some cases they are, and we're looking at that more closely. We have found in some cases increasing penalties provides you a better result in some cases, it doesn't. But that is something we have expressed in discussions with bps staff. We're also very, very supportive of moving forward, but we ask that more work goes into reviewing the proposal. We -- we have met the -- the directors have met I would say multiple occasions over the last year, myself, Dean Marriott, Zari, Susan, and worked closely with staff and we're involved and we do support a lot of the provisions of this proposal, but BDS and myself express some concerns. And we look forward to some improvements in this endeavor. Thank you.

*****: Mr. Rosen.

Mike Rosen, Bureau of Environmental Services: I'm Mike Rosen, the manager of the watershed division which is part of the watershed services group of the Bureau of Environmental Services and here representing Dean -- director Dean Marriott who was unable to attend. I have brief comments in support of the citywide tree project. As you've heard, it's been a three-year effort and a ambitious project and there's been many staff. Code staff, policy staff, our tree program staff and invasive program staff helping in this effort. And overall, I am very supportive of the product that I think was managed to a good conclusion by bps. Right now, we're at the end of the first five years of the implementation of the watershed management plan but even as we began it develop that plan almost seven years ago, the community at large wanted to talk about trees, a lot. How can we plant more, how can we better protect the ones we have and how can we consolidate and simplify a complex and disperse code? We know a lot about trees and the myriad of services they provide. Cool our air and cool our homes and provide needed habitat and clean and retain stormwater runoff and protect our people infrastructure by preventing pipe overflows and extending the life of our pipe system. So in short, a healthy tree canopy improves watershed health which is a cornerstone of the watershed plan and protects our pipe infrastructure. So we support the citywide tree project. Code title 11 trees, because it effectively protects and enlarges our tree canopy and bolsters the watershed plan implementation and provide streamlined and cost effective regulation that better protects existing and new trees. Regarding new tree, through the city's gray to green efforts we're in the process of planting 83,000 trees and it's critical that effective code exist to protect it. Further, through a more systematic process to incorporate tree issues earlier into the design process for development, more trees will be preserved and more planted and trees that need to be removed as a result of development will be more effectively mitigated for. Another key element of the watershed plan is the renewal of and protection of the spread of invasive plants, including trees. Title 11 will bring tree regulations in alignment with our city's invasive species management strategy by preventing the planting of invasive trees on city properties and streets and reduce the cost to remove those from city-imagined property. We wholeheartedly support the adoption of the title 11 trees because it will allow Portland in the proliferation of the urban tree canopy, it's -- canopy, it's one of our most important infrastructure assets. Thank you.

Adams: Thank you very much. We'll move to public testimony. We'll be calling -- Sue, the council clerk, will call the three folks that will be testifying, most immediately, followed by the three after. So if you're sitting in the upper portion of the chamber, you can make your way down. We got to move faster, we have a lot of people to hear. Testimony and exercise. Please begin.

Russell Mantifel: My name is Russ, a resident of Portland and I'm a vice chair of the board of directors of the Johnson Creek watershed council and here on behalf of the Johnson Creek watershed council and submitted a email. A statement I'm going to read and I've brought hard copies if you're interested and -- ok. On behalf the Johnson Creek watershed council I would like to encourage the Portland city council to adopt the amendments proposed and the recommended draft of the citywide tree project. Maintaining urban forest is paramount to protecting Portland's environment and the proposed amendments focus on preserving the existing trees and expanding the urban canopy which achieves the goal of increasing Portland's urban forest and the protection of

February 2, 2011

the existing trees is far less costly than replace them through revegetation and we're encouraged by the focus on responsible forestry methods that encourage native trees and supports the watershed council of removing invasive species throughout the Johnson Creek watershed and preserving quality of life for the watershed residents and reduce flooding and provide habitat for Fish and wildlife and improve water quality. Issues in the Johnson Creek watershed and reduces the urban heat island effect. And improves air quality and access to nature and reduces traffic citizens and prevents crime and increases property values and all of these benefits will help to make Portland a more healthy and economically competitive community and we support the changes after years of extensive review and public involvement we believe they're a worthwhile outcome and the council would be well served for adopting them. Thanks for the opportunity to speak.

Adams: Good job.

John Warner: I was third. Mayor, I met with the -- members of the commission. I'm John Warner, from northeast Portland and here in support of the proposed tree ordinance and wish to express my appreciation for the city's efforts to streamline and rationalize the policies of Portland city and private trees. Initially, we value the urban forest for visual and aesthetic aspects and over the years, we come to realize that it helps to achieve environmental goals as well. Our tree canopy goals will only be achieved by the cooperation and commitment of the city bureaus and the good will and support of the citizens not only during project planning and implementation and the long term maintenance. The new title 11 must affect this. And as we review and hopefully adopt a proposed new code, I'd like to offer four suggestions that would build on the legacy of those who helped us realize the success we have today and sustain the good will of Portland citizens who value their canopy. Number one, given that we recognize the urban forest as a valuable infrastructure, please locate the administration of the tree code within an appropriate bureau which can administer the new code and provide leadership to achieve the administration and planning and ongoing maintenance of the code. And it should have sufficient authority and resources to navigate these administration planning and development goals and two, apply the regulations consistently and uniformly throughout the city on both public and private projects large and small. An important first step, develop a single tree list that synthesizes all of the bureaus various requirements. Three, please amend the code to allow street trees to count toward the canopy. And I request that city council establish a -- the status of the code and the proposed tree manual on a ongoing basis.

Adams: Thank you very much. Mr. Parker, welcome back.

Terry Parker: I'm Terry Parker, I'm officially representing the Rose City neighborhood association. I was asked to do so when he got home this afternoon. As a member of the land use and transportation committee, we've been involved with reviewing the background of the Portland plan. Our report was submitted in November. The safety of the max stations and the bike plan, we have concerns we want to express tonight. The first one being is this an encroachment on private property rights? We haven't had a chance to review the full thing. The second concern is about having to pay a fee if a large tree is taken down and not replaced. Is that kind of a money-grabbing issue, and involves cutting a tree that is no longer in an appropriate place, a safety hazard, an unhealthy tree, a variety of reasons. I think we need flexibility there. Looking at the individual circumstances. And the third concern would be for those residents who have little or no funds to pay for the added tree services that be possibly being mandated by the city and that comes with a question. The is the city going to start up a friends of trees, that comes to the aid of those people. I would call that both a question and possibly a recommendation to be added into it. You will be receiving a follow-up, either an email or possibly at the march 9th hearing from one of our other members that can give you more details but they did want someone to come down and at least express our concerns tonight.

Adams: Thank you for your testimony. Next three. Mr. Nelson.

February 2, 2011

Fred Nilsen: I'm Fred Nelson, I live in the Richmond neighborhood and have for 34 years. For 30 years, I was a city employee in parks and recreation and 22 years, managed the Hoyt arboretum and the natural resource areas. Since my retirement in 2008, I'm a board member of the friends of trees.

I believe in the mission and the organization and addresses not only the need for trees in our community, but is involved in hundreds of citizens and community volunteerism, I'm here to support the city tree policy review and welcome continued conversation on this issue. Being a committed member of friends of trees, I know the importance of citizen involvement and involvement that comes with ownership of trees and ownership of our forest and a sense of connectedness to our community. I think that the tree policy that offers some solutions to -- in terms of further getting people involved with the community serves as improvements section with the single point of contact, the manual, of course, that will have to be rewritten a few times and simplified so it gets out to the people that can best utilize it. And then the potential for developing neighborhood tree plans. And I think a neighborhood tree plans it brings our neighborhoods together and we can work on that. What the environmental overlay zones did for conservation of natural areas in the '90s, I think the citywide tree policy will contribute to the conservation of larger trees and I look forward to that. Knowing something about tree, collections and forest management I'm aware of past decisions, both good and bad and for the last 20 years we've been doing a much better job managing our natural areas. I hope the citywide tree policy and the tools we can better manage our built environment. Thank you.

Albert Kaufman: I'm Albert Kaufman, the neighborhood coordinator for Irvington neighborhood for friends of tree and doing a tree planting on March 12, looking for volunteers. So I've been planting trees in cities for years. I used to live in Seattle and there the department of transportation was involved heavily and basically one day I decided I wanted to plant trees on my block and through the department of transportation I was basically given a little bit of a script. The trees were free. I planted 3,000 trees and none of them cost anything for the neighbors. When I go back to Beacon Hill in Seattle, I'm thrilled at what could be accomplished if trees were made less expensive for residents. I wanted to submit this incredible doubt that I came across called "building climate resiliency in the lower Willamette region of western Oregon." and it was put together by a group called climate leadership initiative and I don't have time to read the whole thing but one section talks about food and water scarcity and the projected frequent of emergency events and expected changes in global food supply leave the lower Willamette vulnerable to food and water scarcity. Particularly in rural areas are utilized under non-emergency situations I want it make a strong call for us to think about how to get more fruit trees into our system. Apple, pear, peach, plum, quince, are some of the varieties. Obviously there are more of those. I'm noticing in this room and probably our city, there's quite a lack of awareness among the younger populations about the importance of fruit trees and trees in general. We look up into the skies and see men with axes on our buildings. There's --

Adams: That's soccer.

Kaufman: Yes, it is.

Adams: I need you to wrap up.

Kaufman: I would like to include information and outreach effort to young people in the city about trees.

Adams: Thank you. Sir. Ma'am?

Ecole Cuper: I did plan for three minutes. Thank you. Good evening. I'm here as a citizen, dietician and former member of the food policy council. In May 2009, a report -- served several functions and outlined the human and environmental benefits of planting fruit and nut trees and listed the appropriate trees to be planted in this region and encouraged several policy recommendations and been submitted as part of my testimony. Subsequently, brought the report to the Bureau of Planning and Sustainability to review the possibility of turning some of these

February 2, 2011

recommendations into a reality. I'm here to happily report that the citywide tree policy has brought these recommendations one step closer to reality. The citywide tree project includes the recommendation of fruit and nut trees in the proposed tree manual and recommends that the Portland plan recognize the services provided by trees, and including as a tree source and a source of food for wildlife and people as a desired benefit in volume three. The proposed user friendly tree manual will be key for making it easy for Portland residents to figure out which trees to plant, where and how. Supplying lists will make it easy for residents to create a perennial food source for themselves and their neighbors. The concept of neighborhood tree plan paves the way for the potential for urban orchards and with permission, I share that the -- in supporting this to help cultivate the community orchards. A quick statistic. According to the USDA, 14% of Oregonians experienced food insecurity or hunger in 2010. The fruit tree project harvested 30,000-pounds of fruit. Their goal for 2011 is to harvest 40,000-pounds. Half the harvest goes to the hungry. What if we grew a fruit tree and gave half of the harvest to the hungry? Reducing carbon emissions and decreasing food insecurity and food-bearing trees make sense and the citywide tree project is one of the first proposals that recognizes and supports this. Thank you to BPS for listening.

Adams: Thank you very much. The next three. Welcome back.

Annette Mattson: Thank you. Good evening, mayor and members of council. My name is Annette Mattson and thank you for the opportunity to speak mostly in favor of the proposed changes to the citywide tree policy. I want to commend city staff for their work. I attended presentations and emailed and arrived with a list of questions and a stack of yellow stickies at an open house and city staff were patient. Policy on tree protection in Portland has been confusing and inadequate. Centralizing functions are great ideas that are overdue. Citizens need this clarity and neighborhood associations need this tool to protect their neighborhoods but proposed changes are still not quite enough. Penalties for illegal tree removal must be real enough not a minor inconvenience. The 24-hour hotline is a great idea. Also, the fee to remove trees for development, I'm concerned is too small. When you talk about removing one tree, is that really adequate? I disagree with the standards not applying to lots less than 3,000 feet. Small lots in r1 is what too much of the Portland has been rezoned since annexation. The school district I lived in was called David Douglas 51 years ago for the beautiful Douglas Firs that were everywhere. Many have been clear cut for development and destroyed the character of neighborhoods and these majestic trees have been replaced with a few blades of grass and saplings. I disagree if a building covers 90% of the lot, it can be clear cut. You can cover 90% and scalp it. I suggest a requirement if trees are removed in one neighborhood, trees should be replanted in the same neighborhood. Fees should not be collected in Hazelwood and used to purchase trees for south waterfront. The health of the city and this planet. Mature trees clean and cool the air. If global warming and carbon reduction are so important, please take greater steps to protect trees that are an important part of our life-preserving ecosystem.

Adams: Thank you very much. Sir?

Michael McCloskey: I'm Michael McCluskey, a member of the urban forestry commission, though Brian Kreig made a statement for the commission, but I do strongly support the proposed new tree code and I urge you to adopt it. It will provide coverage for the entire city and end the current unfairness of having a code for trees that covers only certain property and gives a pass to others. This improvement will also cure a problem in the hilly parts of the southwestern parts of the city that lacks curbs and sidewalks where I live. Here it is much harder to tell where the city right-of-way ends and private property begins. As a consequence, people often fail to get required permits to prune and remove trees in front of their houses that turn out to be on city-owned property. The new code will overcome these difficulties by applying the code to all property. All property -- owners of properties and fixing obligations on them all. The new code will also enhance the importance accorded to large trees in Portland. Regulatory oversight will tend to grow as the

February 2, 2011

trees involved increase in size. Portland already accords this special attention as you know to large and old trees through a heritage tree program which I chair, that program will not only be continued but given enhanced status. I also want to note that the new code sets forth more clearly that the city aims at retaining trees in its right-of-way that are well established and healthy. Finally, I should mention that the new code proposal will also strengthen the role of the urban forestry commission by giving it more time to focus on policy issues and by requiring its consultation by more city agencies. We welcome that improvement also.

Adams: Thank you.

Greg Schifsky: Greg. Mayor Adams, council members, you've seen me here before. I hope you support this and budget for it also. The only one item I would have on the tree stuff, because everybody else is providing very good testimony, weekend cutting has always been a problem. When a chainsaw cranks up, there may be -- if there is a -- I'm going to tell you a story about an army experience. When I got to Korea in 1967, it was shocking after you've been there for a while. There was a smell of the honey bucket. You look at the hillsides in north and south Korea, there were no trees except in a few special places. They were denuded by the powers, and what I'm challenging you as a council and city, what are you going to look like in the future. What does it look like today and when Lewis & Clark were here. I think you'll find most everyone gets pleased and it's up to you to vote for the future of this city and paint yourself green and really mean it.

Fritz: I want to thank you, Greg, you were one of the citizens in southwest most instrumental in getting this going and I think we wouldn't be here tonight without your advocacy and practical showing of -- showing up every weekend and evenings planting and as well as pulling ivy. Thank you for your work in the policy and --

Schifsky: Thank you for listening and thank the staff, they've done a terrific job. I appreciate them.

Adams: Thank you, the next three. Hi, welcome.

Alyssa Isenstein Krueger: Hi. Alyssa Kreuger, and I'm here to request that the council deny the Ladd's Addition exception for Norway Maple because of the presence of a disease. We chose to live in Ladd's Addition because of the historic district designation and the mature tree canopy, however, we're concerned we're going to lose a large portion of canopy by requiring the replacement of Norway with more maples. The simple act of responsible tree planting through the selection of appropriate and disease-resistant trees needs to be addressed to be sure we maintain the mature canopy in Ladd's Addition. We would like to see the same level of education applied. When we moved into our home in December of 2004 our house was graced with a clearly diseased Norway Maple. We tried saving it but it was clear that the tree needed to be removed. The entire center was rotted and branches dead and we'd lost several large limbs. We called the City of Portland urban forestry department and received a notice to remove the tree and replace it with a maple. He told us that it was a clear indication that the tree was invaded with a disease that plugs up water-conducting vessels in the tree causing stress to the tree and branch die-off. Once the tree is removed, the fungus remains and the only cure is to plant a tree resistant to the fungus. By planting a maple, regardless of the variety, in the same location only perpetuates the problem. I -- this was originally in an email and I included links from OSU and WSU. After we lost our maple, I spent several months working on getting permission from friends of trees to order a tree resistant to the disease and not a maple. And we urge city council to rethink this exception. Our chief and primary concern is maintaining a healthy tree canopy for Ladd's Addition. As much as we love maples, the disease is a problem and in those areas replanting maples will only diminish our gracious canopy.

Adams: Thank you very much.

Jane Hansen: I'm Jane, a principle with -- I'm here to read a letter from the design commission regarding the citywide tree project and the code requirements for tree planting. As part of the

February 2, 2011

citywide tree project underway we strongly encourage the Bureau of Development Services to reconsider the sections 33.24.8 landscaping and screening and 33.266 parking and loading and we feel there are conflicts in the code leading to overplanting of trees. The first issue is that the required size of trees indicated in title 33 for perimeter and parking lot planting is too tight for the classification in the code referenced in Portland tree and landscaping manual. The trees have a mature diameter twice the required spacing for type. The 30 feet apart, the typical tree grows to have a diameter of over 60 feet wide. Another area of conflict, where the requirements -- adjacent to street tree planting requirements and because the size of trees are so large for their category they overcrowd trees from the right-of-way and we found on small sites the code requirement the leads to 80% to 100% tree canopy cover at maturity and the target is 33% tree canopy coverage citywide and we believe the planting requirements need to be adjusted to reflect 33% and I would like to mention with the city's green building policy to shut irrigation off after two years of planting, the overcrowding becomes additionally stressed because of the resources for sunlight and water are increased by the over-planting of plant material. Thank you.

Terry Preeg Riggsby: Hi, good evening. My name is Terry Preeg Riggsby and I'm here to represent two organizations. I'm chair of the Tyron Creek watershed council and vice chair of the west Multnomah soil and water conservation district. We are encouraged by the proposed city wide tree project objectives and we agree with the forestry commission, emphasis during the development process preserving high quality large and healthy trees over simply the number of trees as well as protections for trees on property lines and adjacent sites will help ensure that we protect the urban forest canopy. We would like to also emphasize the following, consideration of snags as important bird and wildlife habitats, encouragement for property owners to keep these snags that do not pose a safety concern; education and training for the local arborist and landscaping community regarding the new rules; retention of urban forests around streams, wetlands and other sensitive ecological sites. Obviously forest vegetation plays a crucial role in supplying valuable fish and wildlife habitat. We'd like to see outreach, that encourages the use of native trees and shrubs on residential properties. -- grows food will increase the consumption of locally produced food and also compliment our efforts to reduce greenhouse gas emissions. And finally, to prohibit the planting of city listed nuisance trees on city properties and rights of ways. We encourage the city to consult with a local cooperative weed management area partners to assure that nuisance tree species list includes appropriate species. That's it. Thank you very much.

Adams: Thank you very much. We're going to take a seven-minute human needs break. We're in recess.

At 7:36 p.m., Council recessed.

At 7:43 p.m., Council reconvened.

Adams: Alright. We're going to gather back together and we're going to speed things along. We still have 40 people more or less signed up to testify. Which means that the amount of time you get to testify is going to shrink. And if you've already heard your point of view mentioned then I would ask you to take your name off the list. We're looking for, we're at that time of the evening where we're looking for new issues, either positive or negative. We're not taking a vote tonight so we're looking for the full breadth of concerns or compliments as opposed to needing to hear things over and over again. Hope you'll understand. So who signed up? You were first right?

Jim Chasse: I think so, yeah. My name is Jim Chasse. I'm an east Portland resident as well as a former land use chair for the Powellhurst-Gilbert neighborhood association. I've probably seen more canopy removed in my neighborhood than any other place in the city. And I've seen all of the tree violations that people have mentioned and one of the things about this particular tree policy that I don't agree with and commissioner Leonard brought up earlier were some of the fines. I think they

February 2, 2011

need to be more stringent. I also think in my opinion a 12 inch diameter is worthy of a permit. Other than that, I'm glad the city's finally come together with some kind of a tree plan. It's been a long time coming and for those neighborhoods that are being rapidly developed, it's a huge need. So I agree with the plan but I think it needs a little bit more tweaking. Thank you.

Adams: Thank you sir. Hi.

Corey Larner: Good evening. I planned for 3 minutes but obviously will condense –

Adams: Just say every other word.

Larner: You got it. Thank you Mayor. The intent of this project was to streamline, consolidate or in layman's terms make our existing tree code more user friendly while also increasing our urban canopy by at least 7%. This is an extremely valuable and necessary goal. Unfortunately it appears that somewhere along the line, staff abandoned that simple intent. This is demonstrated by the sheer volume of text additionally in the text and detail. I do believe that a great deal of the content of BPS's proposal has a high value which when modified slightly will benefit Portland. I applaud staff for taking on the challenge of reducing the subjectivity contained in the present code. I believe this proposal could be improved greatly and achieve the intended goals as they were presented. It starts with the education of the public, by educating them on the benefits of the tree canopy increase while offering them incentives to participate in the planting of trees. This is a much less oppressive approach to government. The use of non-regulatory methods could create a partnership working together towards our common goals. Trees are a major part of our identity here in Portland, they are a distinguishing characteristic of our city, they must be regulated but they must be regulated sensibly. Trees cannot become the sole agenda of our city because that lacks balance.

Representations have been made that though the planning commission has been very involved as part of this process, they truly only voted on conceptual ideas and direction provided by BPS staff. The actual code verbiage in its present draft form was not presented to them. If that is truly the case, that's a gross procedural error and must be corrected. Planning commission is an integral and necessary step to utilize as part of establishing code. At this level, practicality and common sense are utilized to create the applicable criteria by which we govern by. If this step is omitted, then what tools are we left to govern with? As elected officials, I know it's not your job to appease every voice and certainly not the loudest one. It is of course prudent to process every voice and act under what appears to be in the best interest of our city. It is certainly not in the best interest of the city to approve something that lacks clarity, direction, and has no true correlation between what problem we're trying to solve and specific regulation. Additionally, let's not ignore the present economic climate. Or the elephant in the room that I may present. We simply can't afford it as presented. I would again like to use the word sensible. I am pleased to hear that no vote will transpire tonight. More discussion needs to occur. I think we're very close. I commend staff for their strong work. It's been a three year process. A few more months, a little more discussion, I think we can get something we then as city council will be able to interpret it's validity and vote on it.

Adams: Thank you sir.

Fritz: Would you give us your name please?

Larner: My name is Corey Larner.

Janet Bebb: Thank you. I'm Janet Bebb, principle regional planner at Metro, on behalf of Smith Bybee management committee. There is a provision as part of the tree ordinance, it's one of the amendments that I want to call your attention to. It's 33.800.60, it's for a comprehensive metro resource -- natural resources plan. This no-cost provision is of keen interest to Metro in the management committee for several reasons. Just a quick background, right now smith Bybee vision and coordination of the property owners in the 2,000-acre wetland relies on a natural resources management plan. There are some problems. That was a document type that was adopted in 1988, in order to protect trees and all natural resources in a coordinated planning effort. It's an important concept, but it has proven ineffective for several reasons. Only four plans have been

February 2, 2011

written using an NRMP, and none since 1997. The process requires a legislative rather than a quasi-judicial process to enact. As a result the Smith Bybee in -- NRMP hasn't changed in 20 years. The changes are cumbersome and costly. The best solution for us is to replace it with a proposed comprehensive natural resources plan. The benefits of this plan type would be that landowners can develop their own plan, the judicial process will save government and land owners money, and time, and this will allow us and the properties to rely on the current environmental code instead of being frozen in time to the 1990 environmental code. Which is currently what happens under the Smith Bybee NRMP. As a result, large natural props will be able to develop more 10-year plans and move more effectively. So this is an amendment, one of the three that Roberta highlighted. And I wanted to say that this something Smith Bybee is looking forward to being able to take advantage of that change. Thank you.

Simone Goldfeder: I'm active with my local neighborhood association as well as citywide land use group. I strongly support the proposed tree guidelines. The proposal allows many possibilities for how one can plan and approach a site using a more flexible performance based approach versus a one size fits all approach. If the goal is to develop -- this can be shown to be done through allowing flexibility in setback and lot coverage requirements. The site with existing characteristics, whether topographical, trees, solar access, adjacent context, should inform, mold and generate the design and building of what goes on that site. There was no one solution, but many possibilities. Just as a form and cover of the urban canopy changes, as trees are planted grow and die, cities built and natural form evolves as well. The proposed policy does not limit a developer or property owner's right to develop, it only requires that we all must consider trees as an important and additional variable integrated into the design. Instead of ignored or clear-cut to accommodate a cookie cutter desertland approach to all sites. I also would like to quickly, the idea of equity. I think it's important as well. If one looks at the existing plan of the city of Portland and the current canopy cover, it is clear that much of the existing canopy is located in more affluent areas of the city. It's important that we street trees and private property are typically located in sites and front yards -- limited or no access to city parks of any scale. The loss of this vegetation greatly impacts the form identity and value of these neighborhoods. The proposed tree policy is an opportunity for the city of Portland to implement a strategy, policy, codes, that will support many of the lofty, sustainable goals that are advocated. Thank you.

Adams: Thank you very much. Sir?

Paul Solimano: I'm Paul Solimano, I'm a member of the Portland Historic Landmarks Commission. Our commission has had two briefings on the tree proposal. We've heard from the Bureau of Planning and Sustainability, Environmental Services, Portland Parks and Recreation, urban forestry, the urban forester, hands, save our elm and quite a few individuals who are interested in the topic. Overall we were -- the testimony focused on the importance of the Norway Maple to the character of Ladd's Addition historic district and the impact its retention would have on nuisance plant control citywide. Overall we were not convinced that allowing the Norway Maple to exist in Ladd's Addition posed a significant risk to controlling nuisance plant species. At least not when weighed against the importance of the tree to the character of the historic district. Ladd's Addition is unique. Historic districts are usually defined by their built vertical built environment. Ladd's Addition, the character of Ladd's Addition relies heavy lie on its unique urban plan and integral landscape planning. So the Ladd's Addition design guidelines adopted in 1988, one of the comments in there is that a mature American Elm and Norway Maples are unique natural treasure and a significant part of the district's character. The Portland Landmarks Commission found that replanting as necessary with Norway Maples is critical to maintaining the integrity of the historic district. As with the demise of the elm, we understand and we're cognizant certain traditions sometimes must give way, we're also aware some traditions must be modified when it's determined they're harmful to other resources. Given the lack of natural resource areas in

February 2, 2011

close proximity to Ladd's Addition historic district, we did not see the harm in exempting Ladd's Norway Maples from the nuisance plant prohibition at this time. Thank you.

Adams: Thank you very much, sir.

Dick Haney, Portland Fire Bureau: I'm assistant fire marshal, Portland Fire and Rescue. I'm here to support Bureau of Planning and Sustainability's work on consolidating tree rules and to -- one place they can be access and understood, that's very important. Portland fire and rescue, fire prevention, we've had a little -- we have a little bit different twist on trees, they're an important public asset but they also represent fuel. We feel that this work entitled -- in title 11 provides appropriate tools and flexibility to landowners, homeowners in Portland in order to do slight modifications in order to protect their homes by making defensible space. There's a phased adoption, we would actually like to see the allowance in 11.40.050 to be part of the first adoption. And there's also the word of -- the allowance for pruning shrubs has fallen out of the draft in title 33 at 33.430.080, and we'd like to see the word shrubs put back in. It allows shrubs within 10 feet after home would allow some pruning to make defensible space. And again, we commend the planning commission and thanks for your time.

Fritz: Will you please send me that by email so I get the numbers right?

Haney: Yes.

Fritz: Thank you.

Adams: Thank you all very much. Hi, welcome back.

Nancy Seton: Hi.

Adams: Please begin.

Seton: I'm Nancy Seton, the land use chair and board member of the southwest hills residential league neighborhood association. We are very pleased to seat important improvements in the tree code that we and neighborhood associations have waited for and hoped for for years. Trees are essential to our southwest hills neighborhood. Without healthy, mature trees, we could be sliding down the hill into goose hollow or onto highway 26. Right now there are so loopholes that make it hard for our land use committees to protect trees, even in our environmental zones. We on the swirl land use committee have often wished for clearer tree regulation, for stronger incentives for developers and homeowners to protect trees, especially significant native trees and groves. We strongly support the new protections for trees with and without development on public and private property, including nondividable single lots. And especially in environmental overlay zones and riparian areas. We support a process where a developer considers and designs around the natural features and matured trees on a site. We'd like to see more consistent protection of stream setbacks. I support personally the -- pretty much all of the elements of the proposal, the summary that bps has prepared. I think it's time to put our money where our mouth is. We need to grow our urban tree canopy and to do that we need to have zoning codes that work for, not against that goal. We really appreciate the efforts of the tree projecting. They've done an excellent job. We urge you to support this needed update to Portland's tree policies.

Adams: Thank you very much.

Mike Houck: My name is Mike Houck, I'm here representing the urban green spaces institute, and I will just add parenthetically I sit on the planning and sustainability commission. I'd like to correct I think a misconception by an earlier testifier. I know Don testified tonight, and having sat on the commission, I know that the planning commission at that time spent a lot of time looking at the details, and I think don articulated that well tonight. I just want to make two points. First of all, Mike Rosen made a point I want to reiterate now, and that is, the city is spending that money on greater green, which is fabulous, trees are clearly one of the most important elements of the green infrastructure of the city, and to me it just makes no sense on the one hand to be putting out \$55 million in the greater green effort, which is fabulous, and not ask this ordinance and not fund it. It would be penny wise and pound foolish. I realize the budgets are an issue for you all, but the

February 2, 2011

amount of money that would be invested in this will be paid back, you heard the value was about -- I don't know fits 5 billion or \$10 billion of the existing urban forest canopy, it will only increase over time. And the second point I want to address, I have heard this argument over the years, it upsets me a great deal, that there have been arguments made that we can't afford to protect natural resources. We can't afford to have too many parks and green spaces. Because Metro has mandated that we have to meet certain density requirements. That's a bogus issue. And I'm tired of hearing about it. And in 1996 Mike Burton, when he was president of Metro council, introduced a resolution that the full metro council adopted, a green spaces resolution which said, if the cities and counties protect natural resources in perpetuity and provide parks for folks, we will not hold them to these targets. They're not cast in stone by the way. So there will be people who will make that argument, which is a bogus one. This thing has been tweaked to death. I cannot believe, I know Bob sits through a lot of meetings, every other Friday for four hours for a year? This has been looked at enough. It needs to be adopted now and it needs to be funded. And I urge you to do that. Thank you very much.

Bob Sallinger: Good evening, Bob Sallinger, the conservation director for Audubon Society of Portland. We're here to urge to you adopt and fund this plan. We did serve on the committee, we thought it was a very good process, we thank Roberta and the Bureau of Planning. And I think it's important to note this did originate as a grass-roots effort. It was southwest community that realized this was a real problem, and is it a real problem. We have a \$5 billion asset, we're spending millions of dollars a year to plant new trees, but we're holding steady any terms of improvement. At the rate we're currently going, it will take more than a century and a half to reach our 33% canopy target. And despite spending millions of dollars, we're losing our trees through a variety of reasons, illegal cutting, poor care, poor maintenance, this is a good plan, and this will solve some of the problems through increased regulation, increased education, and increased enforcement. It's also a great return on investment. I served on a lot of committees as Mike noted and it's notable this one came back with a plan that will cost about \$250,000 for two years, to develop and another \$150,000 after fees to implement. That's a bargain. \$150,000 a year, great return on investment. So a few issues. We submitted detailed comments, I want to put on few on your radar screen right now. Protection of trees on undividable residential lots. That's already come up tonight. We think 20 inches is too big. We'd like to see go back to 12 inches. I live in king neighborhood, we don't have very many big trees. I don't think we have any the size of 20 inches. And so the neighborhoods that don't have trees will continue to lose them and they're going to be replaced. And so I think that's an important issue. Exemptions for small lots. We think it makes sense to regulate even that low 3,000 square feet, because they have an option, they can mitigate off site. So if they can't plant on site, they can at least contribute to the canopy and we all should contribute. Third, exemptions for historic districts. We would urge you not to provide exemptions for Ladd's Addition or any other historic district. We spent a long time trying to get our invasive species list consolidated and complete without exceptions, there's a lot of opposition to it. We're finally there, we're spending a fortune on invasive species. We shouldn't start going backwards. The last thing, industrial lands. I know there's discussion about exempting industrial lands, due to the LUBA ruling. We would urge you to postpone it if you have to do anything at all, but we think industrial lands should be included. We all need to step up, industrial lands, residential lands, and contribute to our canopy. So thank you very much.

Adams: Thank you all.

Leonard: I did have one question. Bob, maybe you can answer this as opposed to the staff. It was about the Norway Maple. What is it about it that makes it an invasive species? What is it that we're concerned about?

February 2, 2011

Sallinger: They proliferate and grow like weeds. And so they take over habitat areas. They're becoming one of the most dominant trees in the city. And so when the invasive species list was refined, the concern was that they're spreading into places that we don't want them --

Leonard: Do we have any empirical data to support that?

Sallinger: The city certainly does, yeah. And the idea that is far from a natural area isn't compelling. They are near places like Mount Tabor, Oaks Bottom, and once they're in the system, they spread through wildlife. Birds carry seeds, and so there's an effort to reduce them in the city. And that went through a long scientific process. There was a lot of work that went into that list. It was reviewed, and there was testimony, so it's unfortunate to see it being carved away now potentially.

Leonard: Thanks.

Adams: Thank you all.

Linda Nettekoven: I'm vice chair of the Hosford-Abernethy association. Appreciate the opportunity to be here this evening. I'm here for four reasons, first to express our thanks to the council for allocating the resources in the first place that allow this comprehensive and much-needed effort to take place. And to also express our appreciation for the comprehensive staff work that's gone on. We want to strongly support -- offer our general overall support, and we would like to request an exception for the replanting of Norway Maples in Ladd's Addition. The few streets within the Ladd's Addition historic district planting plan where those trees are recommended. We'd like to -- I'd like to call your attention, there's a packet that's been I believe left for you, contains a letter from -- authored by Dave Kaplan, who is the chair of save our elms and also a long-term hand board member, which lays out what we feel are some of the pros and cons and the balancing act that we're asking you to take on in this situation where we're looking at the value of cultural and historical resources, balanced against not against, but a finding away to balance both. The need for preservation of natural resource and wild spaces. We don't like to come forward and complain about things we've also tried to drop some language, some possible amendments, those are also in the package. And just wanted to speak to those. There's one thing about our situation, when the Ladd's Addition district was created, as the gentleman from landmarks just indicated, there's a particular role the land escaping plays in the district, and we're looking at a way to strengthen and clarify as our first step the wording within The Ladd's Addition conservation district guidelines themselves. They were crafted at a time when the national historic trust folks didn't include that kind of landscaping language usually in an application. They do now. And we would like to clarify that and use that language in turn to amend title 11. So that there could be an exception for Ladd's.

Richard Ross: Richard Ross, I've been a resident of southeast since 1967. I'm here tonight representing save our elms, which has affiliates in seven neighborhoods in the city, but we are an equal opportunity forestry group. We plant all kind of trees and our affiliates do too. I'm past chair of the Ladd's Addition district council, which developed the guidelines which are in dispute tonight, or about to be amended. And I also was on the urban forestry commission. I appreciate the landmarks commission's recommendation to you, we think they are right on target. I want to point out that we are talking about perhaps four to 500 Norway Maples in Ladd's Addition out of 21,000 in the city. At least half of those Norway Maples have been planted by community action in the last 20 years. I want to call your attention to a file in our packet, which has a red folder. I don't know if you've gotten the packet, but the letter is from Keith Warren, who is the arborist and product manager for the nation's biggest street tree grower in Gresham, and he presented this to the landmarks commission. And it has compelling testimony about the invasive nature of Norway Maples, or how they actually work. To his credit he's on the Oregon invasive species council. He is on the national nursery association task force on invasive species, he found Ladd's is a low-risk area given it's lack of proximity, and the fact that Norway Maples behave different differently in the

February 2, 2011

northwest than they do in the northeast, where they have been banned by several states. To cut to the chase on the issues of whether or not the actual tree being planted here has problems with witness, as was stated earlier, all maples have problems with this disease, it's a soil disease. However, the version being planted, we have nice pictures of it for you, from the Washington State University extension service says that this is not a major problem for this tree in the Pacific Northwest. We chose this tree 15 years ago with the advice of Schmidt's nursery and the city forestry department specifically because it has a better survival rate against this particular problem.

But it is not like Dutch Elm disease, which we're working on also with all of our affiliates, is a very serious problem, and you can't plant American Elms again. You have to plant new cultivars, and that's what we're doing, and that's what's being done all over the city by friends of trees and other groups. Thank you.

Peter Livingsten: I'm Peter Livingsten, and I'm -- I have submitted photographs of the trees in Ladd's Addition. The first page is the trees -- photograph taken in the summer, and the next page is photographs taken in the fall where you can see how there is a contrast between the Sugar Maple, which is the suggested replacement tree, and the Norway Maple, which is what we presently have. The Norway Maple is a yellow tree and it is an ornamental that is essential to the uniformity of the street plan. We have spoken at length to the staff, to the experts, and to -- and we've listened to the evidence. The evidence is confined to a couple of studies which do not study Norway Maple, but other plants. And the assumption appears to be that somehow the seeds are being carried over two miles to natural areas, and are germinating there. If you think about the sheer physical dynamics of that, the problem becomes minute. And the neighbors have made a huge commitment to the trees in Ladd's Addition. We started planting these trees in 1985, and over time we planted hundreds and hundreds of trees. And part of the inspiration for that was to restore the historic character of the district, and the Norway Maple was essential to approximately half -- is that my timer.

Adams: Have you 30 seconds.

Livingsten: So we've taken this historic mission very seriously. We've carried out a plan that was conceived 25 years ago, and we believe that if you balance the importance of the historic character of the district against the very slim possibility that any Norway Maples are going to be carried over two miles to a natural area, you will agree with us that this is a balance that should favor the historic nature of the district. Thank you.

Adams: Thank you all for your testimony. How many more signed up?

Parsons: 24.

Adams: All right. We're down to a minute.

Toby Deming: Hi, I'm Toby Deming, I live in Ladd's Addition. I didn't wear my coat and tie. I'm the guy who plants the trees. I've been living in Ladd's Addition for over 20 years. We've planted many Norway Maples, and as they testified in the last 15 years, we've been exclusively planting the Emerald Queens, which are resilient, more resilient to the disease and all those trees are doing beautifully in our neighborhood. From a tree planting standpoint, I would like to recommend that you reduce the three-inch caliper down to two-inch. Three inch is significantly more expensive than a two-inch, three-inch requires an immense amount of land or manpower to plant, two-inch is much more user friendly. I would also like to support the 12-inch diameter for cutting versus 20. And as a member of -- living in Ladd's Addition we appreciate special regulations that you're putting under us. We've never been honored that way. So thank you.

Adams: Thank you.

Ali Young: Hi, my name is Ali Young, I'm a Ladd's Addition resident, and I'd like to -- city council to know that I'm opposed to planting Norway Maple as a replacement tree in my parking strip. I'm not opposed to the spirit of the historic tree plant and commend the workers of save our elms to protect the elm. However, Norway Maples are invasive, their seeds spread beyond two miles, choke out native trees and compromise the health of the extensive natural area network, city

February 2, 2011

has work sod hard to build. Norway Maples have been found on Mount Tabor, reed canyon and other local natural areas with no nearby parent tree source. BES staff can confirm. This their seeds collect in wheel wells, windshields, roof racks, and blow outside the neighborhood and spread. When the seeds are falling I remove hundreds from my car daily and I know I can't remove them all. I visit local natural area parks, the Columbia River gorge, Mount Hood, the coast range and other scenic areas regularly. Despite my best intentions, they make their way to these areas. I understand that the historic integrity of Ladd's Addition is similarly important. It is one of the reasons I live there. But if there is one thing we can learn from history, it is to not repeat the mistakes of the past. Nobody today would advocate for planting English Ivy, or Japanese knot weed in parking strips. At one time these were plants of choice among landscape architects. I'm convince first degree Mr. Ladd and the landscape architects that designed this neighborhood knew Norway Maples were invasive they would have chosen a different tree. We can do that today. We can work with urban forestry to find a more suitable noninvasive replacement tree for Norway Maple so we can begin reducing the seed source. One that upholds the beauty and history of our neighborhood without compromising the ecology and integrity of our local and regional natural areas. I've spoken request many of my neighbors, and most of them realize that -- never realized the trees written invasive. But they're there surely must a suitable replacement source. I urge to you take your time. This is a new issue to most people in the neighborhood and most haven't had a chance to weigh in yet.

Adams: Thank you for your testimony.

Kathy Shearin: My name is Kathy Shearin, and I'm here to represent the soil and water conservation district for east Multnomah county. We would like to express support for the city's proposal for title 11. We have two primary suggestions that we feel would strengthen the policy further. One of which is there will be significant personnel time required to make these rules real on the ground, we believe these trees are among the city's greatest treasures that they define our region. We urge the council to fund the capacity needed to fully implement this new code. And second, we believe the diameter of trees to protect -- to be protected is too large. Large diameter trees certainly those a diameter of 12 inches or more provide significant ecosystem services that newly planted trees won't replace for many, many years. These new trees may never provide the same quality of services if the homeowner replaces the large tree with a smaller and/or shorter lived species as is often the case.

Adams: Thank you. Welcome to city council. Ms. Butler.

Laurie Butler: Mayor Adams and city commissioners. My name is Laurie Butler and I work for the City of Portland in the Koin tower. I'm aware that the tree policy trees to fix some of the problems in the old policy, and that in some ways it's better for the building community. But one of the problems I have is that it doesn't take street trees into the equation from a preservation standpoint or a tree density standpoint. If builders are able to save trees in the right of way, or are required to plant new trees into the right of way, you should count towards tree preservation and density goals. A tree is a tree and preserving one or planting one should count towards the overall tree canopy. Regardless of its classification as a street tree or not. The mayor's office is proposing an amendment that street trees count towards the density requirements on 3,000 square feet or smaller lots. Again this is an improvement, but we still don't understand why the city is creating two classes of allowed trees if its goal is time prove the tree canopy. A tree is a tree and a homeowner still responsible for it regardless. Street trees should count towards streets that density requirements on all lots.

Adams: Thank you very much.

Justin Wood: Justin Wood, I'm a home builder and a small business owner in southwest Portland. First of all, I'd likes to say thanks to the mayor's office and the BPS staff for working with us. It's been a really good progress we've made working towards a policy that works for all the

February 2, 2011

stakeholders involved. Mainly a couple of issues we have with it. We feel it's fairly complicated still, and even though it's trying to simplify the process, we got a real nice handout simplifying what the details are, it's still with a -- with the four manuals involved for the general homeowner or developer who comes in, it's going to be fairly complicated. The other issue we're worried about is the cost. I know the beginning it's going to come out of the general fund, but by 2013 I've read that it's supposed to be -- most much it will be pushed to the development community and if that's true, it should be fairly equitable between development community where development issues, but if there is issues involved that are just general neighborhood things, those should continue to come out of the general fund. In front of you have you some amendments that were sent in conjunction with the -- from the HBA and the infill -- group of infill builders, and a couple of the issues we would like to make sure you guys take a good look at is to consider raising the minimum lot size that's exempted from 3,000 to 5,000 square feet, because when you consider plant -- already with the tree density requirements when you consider planting four or five trees on a 3500-square-foot lot, and you have to remove one tree on that lot and plant two or three more in its place, you're talking about planting six or seven trees on a lot that's 3500 square feet and there's not that much room on the lot. And then lastly, I'd like to consider, if this goes through with the amendments or what not, that we take a look at maybe doing this as an 18-month test case and revisit any problems and take a look at can we make this better, what areas have we had -- that we could improve. Thanks.

Adams: Thank you very much.

John Fiocchi: Good evening. My name is John Fiocchi, Wiebe construction. We're just about ready to move our businesses out of the city of Portland. Kind of been transitioning out of the city little bit over the last couple years. And my reasoning and my concerns are the cost of doing business in Portland, and the cost of a major property owner of maintaining their property. What I look at on the tree policy, I don't want to regurgitate what everybody else is doing, it's my private property. I bought it, I own it, I pay taxes on it. When it's in a city right of way, I'm more than glad to work with the city but I believe the city even has the street trees flawed. We're currently 55% of the list that we're planting in a 10 to 12-year period is busting up the concrete of our sidewalks and our curbs. We haven't even figured that out. Why do you want to affect what's on my property? We're number three in the nation in tree canopy. Number one in green. I understand the lofty goals of Portland, but this isn't the way to do it. I mean, you have to have some kind of ownership in what you own, and to be able to do business. My last home I built here in the city of Portland, \$33,000. Just in permits and development fees. \$33,000. Makes a home very unaffordable. \$8,500 of that was to Parks and Recreation. I wish I saw our parks maintained in the fashion that you would like me to maintain my own properties. I'm not trying to be argumentative, I'm looking at it from a person that loves his home. Loves trees. I love planting trees. The last one I just planted on the -- built on the Springwater Corridor above Johnson Creek, I wanted to save a large tree. But I couldn't because even though without understanding the species, they wanted a 20-foot barrier around this tree. Please. Look into this more. Please.

Adams: Thank you.

Fiocchi: It's very emotional, but please. You're all smart, please.

Adams: Thank you. Appreciate your testimony. Welcome to the city council. Welcome back for some of you.

Linda Robinson: I'm Linda Robinson, I live in outer east Portland. I'll try to get all my new points in in the short time allowed. I was one of those people who sat through the four-hour meetings every other Friday for months. People have been talking about how this is too complicated, it's not. Compared to what we have, it's much simplified. And it has a lot of detail, but only part of that huge four volumes really is the code. A lot of it is background information. The other thing I wanted to say Is that if you're going to do a standardized size, 20 inches is too 56, there are a lot of species that never get to 20 inches, so 20 inches is really too big. Inspectors, when we have the

February 2, 2011

inspections done, we need to make sure that the people inspecting these have tree knowledge. We need to have people with arborist backgrounds, not people who spent all their years learn ball game building and building codes. We need people who know about trees. We need to fund education, we need to fund incentives, another thing, about the Ladd's Addition, monoculture increase and invites disease, so that many trees of the same species together is a problem. I have one more thing to say about the tree fund. I live in a neighborhood at the top of three watersheds. It's not high, but we straddle three water sheds, most of the planting is done using those funds in the riparian areas. We don't have riparian areas when we're in the highlands. I'd like to see a better distribution of how those -- better way to use those funds.

Adams: Thank you. Sir?

Lorin Fielding: My name is Lorin Fielding, I'm the owner of inexpensive tree care. I'm a certified arborist. I can say that I'm -- I'm dealing with the public all the time, getting permits all the time, helping older individuals go through the tree permit process. And I am quite shocked, I guess I'm living in a bubble, because personal property rights are very dear to a lot of these people, and I think that the current -- the things we have currently in place is more than adequate in terms of canopy. When you tell someone that now they can't do something, or how they're going to do something on their property, it's very evasive. I think having a 20-inch requirement on a tree is only going to encourage people to make sure they cut that tree down before it gets bigger than 20 inches. I don't think it's a very smart thing to do. I also want to say that some of the people that I deal with, when I pull up to a house to give an estimate, the number one thing I'm hoping is, it's not on a corner, it's not a city tree, some people wait four, five months, there's not enough staffing down at the urban forestry, these people have too much put on them and it would work a lot better and people are very -- have a lot of anger about having to go through the process, because they know what them and others have gone through. So I think we need to take that into consideration. Thank you.

Adams: Thanks for your testimony.

John Gibbon: John Gibbon, I'm a chairman of the southwest land use committee, I was a member of the southwest committee that worked on the tree project. I have to respectfully disagree with the last speaker. I think it's essential that we adopt title 11 and centralize all the codes in various sections of the current city code so that we have one place to go for -- to deal with trees. I'm a homeowner, I live in a subdivision that I'll give a road map to before I leave tonight, of two spots in southwest that I urge you and go to look at in this next month between Lesser Road and Capitol highway. You'll see in my road map four spots where tree issues are illustrated, I urge to you look at them. I also encourage you to come into my quail park neighborhood where for 40 years now we've had tree regulation and done one-to-one replacement of trees. It's not an inexpensive process, as a homeowner I spent 10 to \$20,000 over the last 15 years, but it's something that's worthwhile.

Adams: Thank you, sir. Thank you all for your testimony.

Jim Labbe: Jim Labbe, Audubon Society, Portland. I was also one of the individuals who served on the citywide tree stakeholder group. I want to thank the staff for their tremendous work. I've served on a lot of plan process and this was incredible in terms of the staff work and people they brought together. I guess on that note, one of the points I want to make is around complexity that's been mentioned, and I think Linda put it well. Sit complex, this is a complex issue. What we've done here is reduce a lot of the unnecessary complexity in the codes, and I think that's going to be -- that alone is going to be huge for how citizens engage in these issues, and my job at Audubon Society much Portland, I answer the phone a lot when people call, and we get a lot of calls with tree issues. I'm looking forward to this hotline of taking some heat off me personally. The other thing I want to highlight, we probably personally was involved in a study the last -- we finished a couple years ago, the regional assessment of the local urban forestry programs in the region, and it was a big project two years with PSU and on a number of points, Portland is not on the cutting edge. There's a lot of jurisdictions that -- much more comprehensively, you saw some of the staff report,

February 2, 2011

mitigate tree removal much more aggressively. So this is moving us up in the league, but by no means the top. Thank you.

Adams: Thank you very much.

Richard Kassebaum: I'm Richard Kassebaum, I'm a builder in the city of Portland for the last 14 years. I'm glad we're trying to simplify the tree policy and coordinate it into one title. I admonish the staff for all they've done. In regards to penalization versus incentive for the trees, I agree with Dan, that once a tree is cut it's gone. And let's find a way to keep that from happening. And one way to do that is to incentivize those who are cooperating with the code and penalize hard those who are abusing it. So in that regard, there's one detail in this code that's \$300 per inch for replacement cost, you can't replace out your site, you have to pay \$300 per inch. Those who are cooperating with the code, that is rather -- almost like a penalty for us as a builder, and it will actually for some people, not me, it may encourage them to cut prior to development because once they do develop it, in a cooperative manner they're going to have to pay so much money to replace that tree if they can't put it on their yard. So I encourage incentive measures, which would help builders to encourage them to keep the trees or plant new ones, not at \$300 an inch.

Adams: Thank you. Appreciate your testimony.

Mark Dane: My name is mark, I'm a planner, I've been working in Portland since 1991. I'm here specifically to talk about infill development and the effects of this ordinance on that. Infill development is the greenest form of development. It utilizes existing infrastructure, it does not use green land. But the biggest concern that we have is that every part of the city needs its pint of blood. PDOT needs us do improvements that cost 25k a house. We have our 8,000 SDC from the park district, we have our drainage swales from BES that require me to rip up the sidewalk and rip up the curb. We have BDS that require me to put my parking spaces 28 feet because we can't park in the first 10 feet of a property. We now have this tree policy that is going to require more consultants, more bureaucratic costs and more time. Specifically, this is my key, if it takes a builder eight months from start to sale, he can turn his capital over three times in two years. If it takes six months, his capital can be turned over four times. That's a 33% increase in fees, SDCS, jobs, and the multiplier effect of housing. I do believe that people who are in violation should have the severest of penalties. They take down a tree, they lose a finger. That gives you 10 trees. The point I'm trying to make is that violators make it hard for the rest of us. This is title 33. This is the tree code. This is what we do. All the time. When I started, it was this thick. Every time we try to streamline the code it gets thicker. This doesn't even comply with OSHA standards. We need to have one, if there's a list, 10% change to an approved tree plan, there should a staff level decision, one week. Review time takes about 10 minutes. Two, building inspectors should be given the opportunity and the ability to ensure compliance. They're smart, efficient, and trusted and they can do it with the help of the city forester. Three, give the option of planting trees in the planter strip, trees are generally moved from private property after the house is put in. Not from the planter strip. Give the opportunity to put trees in the planter strip. That's where the land is. That's where they won't be taken out. Four, the code will sort itself out. It's a bit of a mess, but I can understand because have you so many cooks in the kitchen. But after one year, remove those options that aren't used, sometimes I feel like I'm in an episode of hoarders where nothing gets removed from the code. If it's not used, get rid of it. Next item, if you have a two inch tree, offer two one-inch trees or three three-quarter inch trees. Same number of inches, but eventually where you had one two-inch tree you're going to have three trees and eventually you'll get more inches off that same number. The canopy has grown, the code is proposed is not a good use of staff time, it's not a good use of public funds. We can do it better by streamlining, and honestly if you want to make the biggest difference, the worst area is the Port of Portland. If you want to start planting trees, start with the airport.

Adams: All right. I didn't understand that last comment.

February 2, 2011

Dane: That's ok. That's just a personal thing.

Adams: The port represented left. If do you back through the stir's website you'll also see five major code revisions. Many of which took code out. Who would like to begin next?

Patricia Kozak: I will. My name is Patricia Kozak, and I'm a citizen in support of the citywide tree project. We are here today to tell our story. Our story shows that the current system is not functioning the best that it can be, I live across the street from an undeveloped lot, one block east of Ladd's Addition that used to have a beautiful green canopy across the street. Now it is a barren lot with little to no vegetation. December 6th, 2009, a Sunday, I met the new developer who was there I guess getting an estimate from his tree cutters, he said he was planning on cutting the trees to make way for a home. I immediately contacted my neighbors to see if the developer need add permit, my neighbors believed he didn't need one. I spent the next few days trying to find out if permits were needed or if he already obtained them. I found the city website and couldn't make heads or tails of it. On Saturday December 12th, I woke up to chain saws, I got on the city website to see if there was a number to call, to try and stop it. I found a hotline number but because it was a Saturday, no one from urban forestry was available. My gut told what the developer was doing wasn't right and he ended up clearing the lot of almost all the vegetation, including 13 trees. Urban forestry showed up on Monday and that's -- that the developer in fact need a permit. And they placed the value of the two identifiable trees at \$24,000. The developer's fine was set at \$13,200, and a mitigation plan for tree replacement and the contractor's fine was \$1,000. Eventually the developer's fine was reduced to \$6,000 and the mitigation plan was waived in lieu of the \$6,000 he paid. The contractor paid \$500. So basically in short, the current system isn't working, and thank you very much.

Adams: Thanks for your testimony.

Patricia Schnabel: Hi. This is our opinion. I hope it doesn't sound too brash, but we feel that the Bureau of Development Services is basically condoning the developers' unethical behavior. They state there are no trees on the site to preserve, so therefore the developer can move forward with this plan without tree preservation. We also feel that the urban forestry division is also condoning its actions by reducing the fine so greatly. We have also been informed that this sort will of thing with the development in the city of Portland is not unusual, and happens frequently. It's hard to believe that these same citizens -- these same city employees are residents of the city of Portland. We are pleased with the hard work that the citywide tree project has may, but we feel There is a piece missing and that is a forum for neighbors such as ourselves to appeal to an impartial party. It is our opinion that the city's current process regarding final decisions of trees and their removal and the fines implemented has failed the people that matter, and those are the people that live in the city. As it stand now, one governing body and possibly only one person within that governing body makes the final decisions. And this happens without a public hearing or the approval of council or commission. It's unfortunate that these decisions are made that affect an entire neighborhood in the neighborhood. The public needs to have a voice when they disagree with the decisions made in their neighborhoods. We're asking the council, please implement an impartial public appeal process for decisions that are made by the city of Portland that currently exclude our citizens, and it's important to improve the emergency line for the tree removal concerns, please implement and wait to look up online to check if someone has a permit to cut. We do agree with the fines that make a difference, and we believe that this should basically be the value, the set value of the trees that were removed. And we also believe this should include monetary value as well as mediation plan for tree replacement on the site or somewhere in the city, because we all know the importance of the tree canopy in our city. And no backing down for first offenders. One last thing we would like our experience in this testimony to go on record as a statistic with the Portland city council. And thank you for your time.

Fritz: Could you give me your name again please?

February 2, 2011

Schnabel: Patricia Schnabel.

Adams: Thanks for being here. Thank you very much.

Nicholas Hunt: I'm a small builder in southeast Portland. Our office is at 5906 Southeast 83rd. I believe the tree policy is going forward with what Portland needs, and it's helping out streamline a lot of stuff for builders. The one point I want to bring up tonight is to change the tree preservation from 35% in the new code to 33%. That moves it to an even one-third. On the 2% makes a big difference on lots with three to six trees on it. A lot with three trees, the 2%, you missed it by 1.7, the 33, or the 35, so you have to save 66% of the trees compared to 33. Sorry. Also on lots with six trees --

Fritz: You've made a good point. Thank you.

Adams: Thanks for your testimony. Appreciate it.

Jim Wentworth Plato: Jim, I participated at the professional arborist in the stakeholder discussion group. I'm a board certified master arborist, and a certified tree risk assessor, working in Portland for the last 15 years. I think you should approve and adopt the chapter 11 trees code. Because it has all that paperwork that he brought forth, actually only about 20% of that is the new chapter, most of it is all the discussion we had over the course of the year. It will be consolidating all the code, all the current chapters, the manual will address your earlier concerns, Mr. Leonard, about -- about making it easier for citizens to access. With the 24/7 contact person, that's a good idea. But while I applaud the work done to refine these codes, removal for 12 inches is much too large. Eight inches is a much better idea. Replanting currently has to be done within 30 days. And if you could extend that into the wet season, that's a great idea. And I support the concept of infill, but not the current incarnation. We're witnessing a shrinking in decline of our urban forest on these small lot sizes because we just don't have the room for trees.

Adams: Thank you for your testimony. Thank you, gentlemen. Please begin.

Margot Barnett: I'm Margot Barnett, a southwest Portland resident. As you know, I've been involved in urging the city to revise the tree code for a good number of years, since 2005, researching and coauthoring the preservation in Portland of -- while a member of the Sweeney tree committee. And I've continued to participate in discussions of urban forestry policy in the city through service on the urban forestry commission as well as serving on the stakeholder working group for the CY tree project. I'm very pleased with the fact that the proposal that we're currently looking at includes many of the changes that were requested years ago by the Sweeney tree committee, including the consolidation of trees in one place, a hotline number for weekend tree cutting concerns, providing a way to monitor tree plans, permits and violations within the city data system, and creating a code that is consistent and implements policy more equitably across property types as well as development of the tree manual. The elements of consolidating code eliminating high school hopes, education, and enforcement are all critical pieces. As you've heard, it's really important for to us have inspector who are trained and understand that -- how ecosystem services really work, they are an important part of infrastructure and need to be treated that way as part of the evaluation process. And there were just a couple of things that I think haven't been touched on by others, that I wanted to have real quickly. One is, an element that isn't in the code that was mentioned at least by one individual that needs to be looked at at some point is addressing the cost of repairing damage to sidewalks from tree roots. If we're investing in this trees As infrastructure, we also have to look at the other side of it and find ways to really work with property owners on that and find a way to partner in terms of sharing costs or providing mechanisms for low-income homeowners to finance those repairs. It's part of this whole process. And the other thing I just want to urge you on is the fact that people have already talked about the process, and this has been a very long process. And throughout the process in developing the code, there's been a real balancing act between the different needs and trying to find solutions that allow flexibility. Flexibility also ends of up increasing complexity. And keep in mind that if you start looking at other amendments that

February 2, 2011

some of the code that's in there were created by agreements and people giving up on certain things and a lot of compromises over time, so I just want you to be aware of that as you start to look at additional amendments. This has been a very long but very good cooperative process. I urge you to really adopt and fund this proposal and move it forward, and I will be looking at amendments and providing additional written comment as we move this process forward.

Fritz: As code author of the initial report, I also have to thank you very much for your pushing this through the process, and now continuing to do so. Thank you.

Adams: Sir?

Wayne Pearson: My name is Wayne Pearson, I'm in the southwest area of Portland. I'm a homeowner, I think I'm -- I may be a fish out of water today, because of the discussion has gone ahead of me tonight. But I'm really upset with the city of Portland because of the tree policy. It may be in the past, but I don't see any changes in the future. I had requested a permit to cut trees on my property, and they were a danger, it wasn't because I wanted to put a different color tree there. And I was -- I had three arborists that told me I was correct that I should take them down, I had every right to take them down because of the danger that was being presented, and I was refused to be allowed to do that. I was refused a permit. And I would like to ask you to consider really opening up the considerations as far as sensitivity and flexibility in allowing homeowners to cut their own trees when it's appropriate. The nine trees I'm talking about were Douglas Firs at 150 feet high, and they were close to my home. One of the big large branches during a storm went through my bedroom, through the roof, through the ceiling, another one went a different time went through my garage window. Another one landed when I was standing outside, with my granddaughter, on a cloudless day, blue sky, no wind. Branch fell. I heard something, I took a couple steps back, not knowing where to go, it landed less than 10 feet from me, holding my granddaughter. I don't think the individual from the city of Portland had any sensitivity what I was trying to request. The arborist said that my location for my property as far as the wind coming from the storms, and there was nobody else -- no other neighbors that had trees to block these -- the ferocity of these -- the winds, I think this is an inappropriate, and I had -- I'd like to still do that. But I don't see why we cannot allow homeowners to protect themselves. I also am very much in favor of planting trees. I would doubt there are any homeowners in our city that have planted more trees on their property. I've owned 12 homes in my life. I'm not against trees. Anyway. Thank you.

Adams: Thanks for your testimony.

Fritz: I'm assuming your property is in an environmental zone and that's why you weren't allowed to cut the trees?

Pearson: I don't think that's true. I live -- I have a corner lot, 100 by 100-foot. I have approximately 20 trees. I had a plan to replace the trees, with acceptable trees on the list for the city of Portland.

Fritz: Ok. Thank you.

Mary Ann Cassin: Good evening mayor and councilors. My name is Mary Ann, I'm here representing the Portland parks board and first of all, thank you for hanging in there with us. The parks board message is a simple one, we voted unanimously, we have a letter on the record in support of this plan that doesn't always happen that we unanimously come to an agreement. But in this case, we found strong support for the plan. We thought that the number of meetings, the intense amount of discussion that went on during the process led to a good result. We agree that there's a nice simplified result as -- that comes out of all that discussion, and we think a lot of compromises were made, but that's what you have to do to get somewhere. We also thought it was important to mention that the funding that's needed for enforcement is really critical to make it worthwhile. Thank you.

Adams: Thank you all very much. With no more testimony, it's been mentioned a set of proposed amendments contained in the February 2nd memo from Joe Zehnder to myself and the city council,

February 2, 2011

this would reduce the required percentage of trees into the tree preservation standard from 35 to 33%, exemptions for constrained sites, reduces the threshold for exempting lots from 90% building coverage to 80%. Also under the tree preservation standard, mitigation option for small sites for lots 3,000 to 5,000 square feet, allows tree planting, two trees to mitigate for one removed tree instead of payment in lieu. Under the tree density standard, credit street trees on small sites less than 3,000 square feet newly planted street trees can be counted to meet on site tree density. These are the major portions of this, in addition to some technical wordsmithing changes. So I move this.

Fish: As a package? Second the motion.

Leonard: Can I ask Rebecca from BDS, have you seen these? Have you not seen them?

Fish: According to the cover memo, it says these address several recent requests, I don't --

Leonard: I haven't seen them.

Fish: My understanding is we're going to adopt these amendments simply for the purpose of discussion, so they can be -- before the council, but we're not voting on them either way, and then we're going to give my understanding further is we're going to give staff further direction on some matters.

Adams: Yep.

Leonard: My only concern is that there's -- there is the communication hasn't been as good as it could be as parties have demonstrated they can be between the Bureau of Development Services and the planning, and I'm just concerned when I asked that they haven't seen the amendments that we're not making this worse from their perspective.

Adams: They certainly don't make them worse.

Fritz: We would be going through each of the amendments at the next hearing to vote yes or no on them, right?

Fish: Or to amend them --

Leonard: If you're moving the amendments now, you're incorporating --

Adams: No. I've -- I moved it and it was seconded, and that's where we're at in this discussion. And that does not preclude, I would be willing to wager that there will be additional amendments that we will take at the next meeting.

Leonard: Which is why -- why we don't just wait, let them look at these in the context of all the amendments and we do one package, one time that everybody has worked on together.

Fritz: Vote on them next time. Now that they've been put on the table --

Adams: Thank you all for your assistance in helping me conduct the meeting, but would you respond to what -- why would Bureau of Development Services not have seen these before?

Jortner: Our understanding, mayor, and commissioners, is that those amendments were some of the amendments that came through from the home builders association and development community, and that these were going to be introduced by the mayor to -- for discussion along with all the other amendments and be a raid with the -- and they were in the home builders' letter, so there's been a little work of thinking how that code works. So our understanding was that these amendments in any others from you tonight were being interested -- introduced into the report for discussion, and so we can post them and get public feedback on all of these between now and the next --

Adams: So to clarify, do you expect us to act on these amendments tonight so that they're is a single document?

Jortner: Our understanding was that the action would be to agree that they would be forwarded for further evaluation with all the other testimony that was --

Adams: Ok. My misunderstanding. I thought we would be voting on these amendments tonight but apparently not. Well, then, I don't recognize the motion maker or the second. [laughter]

February 2, 2011

Fish: Mayor, you are the mayor, and you chair the meeting and we'll follow your lead on this, but I -- it has been our practice in the past to put -- to vote on amendments to put them in the record, not substantively, but there may be another way to do that. I understand commissioner Leonard's point. No one seeking any advantage here, we just -- is there -- if we don't adopt these for purposes of just putting them out, is there another way that the public can comment on these between now and the next hearing? I'm seeing Linda Robinson nod, I'm satisfied with that response. [laughter]

Adams: We can all go home then.

Leonard: To be clear, the amendments may be fine, I just would like us to begin trying to reach some resolution between the two bureaus and come to some consensus. And this is not how we do it.

Adams: Point well taken. So I'm putting --

Saltzman: Legal advice being rendered.

Adams: What were you saying? Tell the whole class. [laughter]

Harry Auerbach, Office of the City Attorney: I was just asking if you had actual language of these amendments or if they were just concepts.

Adams: I -- putting them into a single document, just so everyone knows what the document is, was one option. Just having them out there for public comment without putting them, collating them into a single document is fine as well.

Fritz: I do have some additional ones. I don't have a proposed language I'd like to put some content in, and then I'm going to want some time maybe a couple of days to go through and propose some additional amendments that we could then put out for public comment and discuss and vote on next time. The ones that I know of that I'm interested, I mentioned the one about deleting the paragraph directing the implementation and funding. I would also like -- I proposed deleting the allowance for putting the required outdoor area in the front yard on single fronts, family lots because that's contrary to the purpose of the required outdoor area, which was to give a private space in the back of the home. I have one to allow temporary attachments to street trees as long as they don't damage the trees. One to not delete the significant tree table from the land division code. It's been mentioned several times tonight that we don't allow trees to continue to grow, they'll never get to 20 inches. We spent a long time in the land division code identifying particularly those very slow growing native trees that are significant when they're two-inch caliber and we had a recent discussion at the University of Portland about how long Oregon Oaks take to grow, so would I hate to have a six-inch Oregon Oak not be considered significant for I -- so I would propose keeping that table and also keeping the discretionary approval criterion. I'd also like to consider keeping the 10-inch caliber in e zones, going to 12 inches citywide which I heard several times tonight. And another issue that I'd like to hear public input on is the question on whether you have to replant if you take out a nuisance tree. It seems to me that provides a disincentive for take out nuisance trees and I would propose that you wouldn't have to replant if you take out a nuisance tree except if it's in an environmental zone. There are several other as would you imagine, and hope for from me, detailed amendments which I'll put in in the next couple days.

Adams: I think it is the sentiment of some members of council that the Hannah Kuhn and commissioner Fish's office would take this input and seek to get a meeting of the minds between various staff specifically. The Bureau of Planning and Sustainability and the Bureau of Development Services who has to implement them.

Fish: If I can just clarify that piece, it is my intention along with commissioner Saltzman when we vote on this proposal to seek your concurrence to create a work group for the purpose of addressing some of the implementation and sustainable funding issues that people testify to tonight. That is separate and apart from the question of working out the details on the code. And Hannah will go back to retirement if I expand the scope of that project. Beyond what she's agreed to do. So my understanding is that the questions that we're raising now throughout amendments, through what

February 2, 2011

commissioner Fritz said to some things commissioner Leonard alluded to at the beginning of the hearing are matters that we'll be asking BPS to confer with other bureaus on and come back to us to see if there's new language at our next hearing date. But once we adopt something, assuming there are the votes to adopt something, then Hannah would lead an interbureau work group to deal with a very narrow question of implementation and sustainable funding.

Leonard: To build on that, and I appreciate that discussion, because I was trying to clarify in my own mind what the next steps would be from Here, that makes that clear for me. So I guess I'm interested in mayor Adams, what your expectation is in terms of specifically having Bureau of Development Services, Bureau of Planning and Sustainability, how are they going to take what commissioner Fritz just said, the concerns you've heard articulated, and process those to the point that they bring us back a coherent set of amendments that achieves the original goal?

Adams: So we consider this again when, March what?

Parsons: March 9th.

Adams: So I would expect there to be agreement among the bureaus like -- between those two bureau and others. By the time we come back on March 9th. And I would ask that the bureau managers for Planning and Sustainability and Development Services lead the discussion between those two bureau and others as needed to sort of bring that together.

Leonard: Sounds distracted by the horn. You wanted who again to lead the directors -- BDS and -- BPS. That makes sense.

Adams: If -- I'm going to -- how about we hold them jointly responsible for making sure it happens. How they choose to do it, we'll leave it up to them.

Fish: May I make a friendly amendment to that? Which is can we get at council a sense, a week before March 9th as to whether there has been consensus reached? Because if there are some significant divisions, we may want to give the public notice that March 9th will be like a work session and not a session where we're coming to vote.

Adams: Absolutely that makes sense.

Fritz: It will be a hearing because we'll have amendments that the public --

Fish: But to the extent people will be coming thinking we're voting, if there is a concensus we'll have to have -- if there isn't consensus we'll have to have a hearing.

Susan Anderson, Director, Bureau of Planning and Sustainability: Since I'm being held responsible here, there were four of us. BES, BDS, Planning and Sustainability, and Parks. And the four bureau managers actually we've meeting I think four or five times together, we've really committed to doing this, so I'm sure I can bring them all back together again to do that if necessary.

And if not, but at this point I am absolutely sure that there will be not 100% agreement on all issues. So we're going to come up with something and if there's any -- this is my question to you all. My preference is that we come up with a document that fits 100% great, and it's if it's not, there's any amendments at that point, the commissioners in charge of those bureaus have an additional amendment at that point. But between now and march, we take all of the comments we've had from the testimony here, from your amendments, come up with an agreed-upon document, and if there's any bits and pieces that we still can't agree on, the four of us, that then you have that opportunity to bring that as a separate amendment.

Fritz: I would think too the council is elected to be the policy deciders, so that there may be legitimate conflicts between the missions of the district bureau and so that I am not expecting to come to complete consensus, but as much as possible and then to bring to us the clear choices that you would like to us make.

Fish: Since the last time we had a situation where bps presented us with a range of amendments which included consensus amendment and then some amendments that bureau were bringing, we had a cheat sheet we were given that allowed us to -- prompted us on the option. I would ask that to

February 2, 2011

the extent there isn't a consensus amendment, we get a cheat sheet that we can follow when we go back to do our mark up.

Leonard: That's close to what I would like to see happen. You are free of course because you report to Sam to manage your half, would I expect Paul not to be the person in the room Rebecca Esau is the manager in charge of this complexity. If you choose to be the one that meets with Rebecca, that's great. But she I think that might be the flaw that has occurred, is that the people that are actually implementing the code have not reached consensus. And have been frustrated. So I like your idea, I also understand that there may be some specific areas where there's not agreement to what will be helpful for me is for those areas where you have agreement to development amendments for those areas you don't disagree, identify what those are and make it clear for us if that's what was already said, great, but make it clear to us what the issues are. And then hopefully we also have the ability then to go through those one at a time and make amendments or not based on whether we agree as a council or not with one side or the other. And then you also have the amendments developed in the consensus that you agreed to.

Adams: Bureau director Anderson, and then commissioner Fritz.

Anderson: As long as she doesn't hold it against me later. I would also like to include in that listing then that some of these issues are issues that have been discussed for 50 hours. And I'd like to include the position of the forestry commission and planning commission on any of those issues that as background.

Leonard: What would help for me is pro-con. Because at the end I appreciate all the service, but commissioner Fritz is right, we end up making the decision and it will be it's less important to me whose idea and whose position, than what's the concept. Why should we allow those invasive trees in Ladd's Addition, and why shouldn't we. I want to know what the pro and cons are so I can make a rational judgment in the final analysis.

Fritz: I can't help but notice that since there's a commissioner in charge of Development Services, commissioner in charge of planning and sustainability, commissioner in charge of environmental services, and a commissioner in charge of parks whose directors will be involved in this, that I would like -- I don't think Amalia, director from the Neighborhood Involvement would be the appropriate person, but I -- . [talking at once]

Fritz: I would like a delegate --

Adams: Yes. Ok. We are agreed --

Fish: We have solved the 9-1-1 issue. We'll be actually posting commissioner Leonard's home number. [laughter] And asking him to resolve --

Adams: Let me try to summarize the council expects the bureau manager or their designee to come back to us incorporating -- come back to us with that group, having the four bureaus and delegate having considered the testimony today, the concerns expressed today by members of council and others to follow in the next couple days, come back to us with their -- where they agree, and hopefully you agree a lot, but those -- on those issues where you do not agree, you basically summarize for us pros and cons, whatever information you think would be useful for us. Does that make sense?

Kathryn Beaumont, Chief Deputy City Attorney, Office of the City Attorney: Mayor Adams, before we adjourn, we have -- you've announced the date of the continued hearing, march 9th. To avoid having to renotify, can you also announce the time at which the council will hear --

Adams: Yes, we can. 2:00 p.m. On March 9th. All right. We're recessed until tomorrow at 2:00 p.m. [gavel pounded]

At 9:08 p.m., Council recessed.

February 3, 2011
Closed Caption File of Portland City Council Meeting

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

Key: ***** means unidentified speaker.

FEBRUARY 3, 2011 2:00 PM

Adams: City council will come to order. Today is Wednesday, February 2nd, 2011. It's -- sorry, it is Thursday, February 3rd, 2:00 p.m. Sue, how are you today?

Parsons: Very well, thank you.

Adams: Where's Karla?

Parsons: She's away.

Adams: Ok. I wouldn't have known that. Thank you for clarifying.

Parsons: She's helping her family this week.

Adams: Great. Can you please call the roll?

[Roll call]

Adams: We shall proceed. We have a quasi judicial hearing today. Please read the title for item number 132.

Item 132.

Adams: In this kind of hearing the city attorney makes procedural announcement at the beginning of the hearing. They're required by state law.

Kathryn Beaumont, Chief Deputy City Attorney: Thank you. Before we begin the hearing, I have several announcements to make concerning the kind of hearing we have -- we're having today, the order of testimony, and some guidelines for presenting testimony. First is to the kind of hearing.

This is an on the record hearing. This means you must limit your testimony to material and issues in the record. You can't bring up anything new. This hearing is to decide only if the hearings officer made the correct decision based on the evidence that was presented to him. If you start to talk about new issues or try to present new evidence today, you may be interrupted and reminded that your testimony must be limited to the record. In terms of order of testimony, we will begin with a staff report by bureau of development services staff for approximately 10 minutes.

Following the staff report, the city council will hear from interested persons in the following order. The appellant will go first and will have 10 minutes to present the appellant's case. Following the appellant, persons who support the appeal will go next. Each person will have three minutes to speak to the council. The applicant will then have 15 minutes to address the city council and rebut the appellant's presentation. After the applicant the council will hear from persons who oppose the appeal. Again, each person will have three minutes. Finally, the appellant will have five minutes to rebut the presentation of the applicant and opponents of the appeal. The council may then close the hearing, deliberate, and take a vote on the appeal. If the vote is a tentative vote, the council will set a future date for the adoption of findings and the final vote on the appeal. If the council takes a final vote today, that will conclude the matter before the council. Finally, in terms of guidelines for testimony, a reminder, this is an on the record hearing. You must limit your remarks to arguments based on the record compiled by the hearings officer. You may refer to evidence that was previously submitted, you may not submit new evidence today that was not submitted to the hearings officer. If your argument includes new evidence or issues, the council will not consider it and it will be rejected in the final decision. If you believe someone who addressed city council today improperly presented new evidence or presented a legal argument that relies on evidence that is not in the record, you may object to that argument. Finally under state law, only issues that were

February 3, 2011

raised before the hearings officer may be raised in this appeal to city council. If you believe someone has raised issues today that were not raised before the hearings officer, you may object to the council's consideration of that issue. That concludes the opening statements I need to make.

Adams: Great. I'll now ask a couple of questions of my colleagues on the city council. That are preliminary, but necessary to get us going. Do we have any members of the city council wish to declare a conflict of interest regarding the manner in front of us for consideration? Hearing none, does any -- no members of council have conflicts of interest to declare? Ex parte contacts do, any members of the council have ex parte contacts to declare or information gathered outside this hearing to disclose? No member of the city council has ex parte contacts to declare. Does anyone present in the council chambers wish to ask a commissioner about his or her observations on the site or rebut any of those observations? I'm referencing the last two questions I asked the city council. Hearing none, does -- do council members have any other matters that need to be discussed before we begin this hearing? I hear none. So we will now start with the staff report.

Sylvia Cate, Bureau of Development Services: Good afternoon mayor and commissioners. I'm Sylvia Cate. To my right is Stacey Castleberry. We are the assigned planners for this review. Before I get started, I'd also like to note that we have BES staff present who have expertise in engineering and storm water management systems. And are available to answer any technical questions that the council may have during these proceedings and also the Portland transportation staff are also available if any questions arise. As one housekeeping note, a December 8th 2010 email exhibit was attached to the notice of appeal. It's the last page of the appeal statement. After this was mailed out, it came to our attention that this is actually new information that was submitted after the record was closed and we request that it be removed from the record and council not consider that bit of new evidence. The hearings officer approved the water bureau's application to amend their existing conditional use master plan as well as an environmental review to contract water system facilities storm water facilities and park improvements for adjustments to specific standards for the Powell Butte under the master plan were also approved. The hearings officer's decision was appealed by the east Portland land use transportation committee. The request is subject to these approval criteria.

Stacey Castleberry, Bureau of Development Services: Good afternoon, I'm Stacey Castleberry from the Bureau of Development Services. As you can see, there were three sets of approval criteria that applied to amending the master plan to approving -- improving environmental review and adjustment review for the specific construction activities out at Powell Butte. Two of the sets, the amendment -- the master plan amendment criteria and the adjustment criteria are right out of the zoning code. It is a little unusual that the environmental review approval criteria are spelled out in the 2003 Powell Butte master plan, just as a little background, city council approved the 2003 Powell Butte master plan which originally approved the reservoirs, pipeline, parks facilities trails, and associated improvements that we're talking about today. And many of those projects from the 2003 master plan are already built. This slide also reminds me to tell you that the applicant has extended the 120-day -- 120 days within which the city must issue a decision on this case, and the 120-day clock expires on February 18th, 2011. Powell Butte is in southeast Portland between southeast Powell Boulevard and the spring water trail. Near the eastern city limits line. And much of the butte as you can see in this air photo, is open grassy meadow, and also has abandoned orchard on it. The perimeter is steep forested slopes and Johnson Creek is south of the spring water trail. The zoning on Powell Butte is open space with a few pockets of residential, and the entire butte is covered by the city's environmental zones, either environmental conservation over kind of the top of the butte, or environmental protection over the perimeter forested portions of the butte, and Powell Butte is in the Johnson Creek basin plan district in the south subdistrict. The existing and proposed facilities are conceptually shown here. The existing and proposed parks center facility improvements are in the northeast corner of Powell Butte with the water system

February 3, 2011

improvements just to the west of those facilities. Along with conduit five, which extends southeast down to circle -- southeast circle avenue, and the existing outfall at southeast circle avenue, that's the existing outfall to Johnson Creek. This photograph shows the overall character of the top of Powell Butte, the meadow area where which is the the construction area for reservoir two, the new 50 million gallon reservoir which has already -- the site has already been prepared for that reservoir under a view that we did in 2009, and the area has been excavated already. Again, the proposed facilities are shown in a little bit more detail. The water facilities that you see here are reservoir number one in this area I'm pointing to, and at the excavated pit for reservoir number two over in this area, storm water facilities are also shown here along with trails and again the existing outfall to Johnson Creek down by southeast circle drive. This is that existing outfall. You can see the wing wall here. And the proposal that accompanied this review was to simply extend the two existing wing walls by two feet as shown in this graphic. The hearings officer --

Saltzman: What is a wing wall?

Castleberry: A wing wall is -- you see the yellow arrow in this photograph? It's that horizontal -- that vertical wall that extends out from the bulk of the structure that people are standing on in this slide. And it -- I'm sure there's engineers in the audience who will help clarify this, but my understanding is it helps direct the flow of water that is going to be coming out from behind -- do you see where my arrow is behind the wing wall, and the outfall points toward the creek there.

Fritz: Why was it necessary to extend it two feet?

Castleberry: I'm hoping the applicant can get into the details of that. My understanding is it has to do with improvements that are made to the storm water facilities up on the butte. And the storm waters facilities to collect new storm water that's going to be generated by some of the new improvements up on the butte. And then just to get to the hearings officer's ultimate decision, he found that the BDS staff report properly characterized the application as a proposal to amend the 2003 master plan and that it conducted all relevant analysis required by the Portland zoning code. He found that the Portland water bureau storm water proposal adequately addressed and met all relevant approval criteria. The hearings officer found that this application met all relevant approval criteria and should be approved with conditions in his exact approval language is shown in this slide. The appellant described four problems with the hearings officer's decision. And they are that the master plan amendment criterion, 33.815.100c is not met as it pertains to safety because the Neighborhood requires early notification if a 1,000-year flood event is to occur, and that the applicant did not address grading, excavation, or filling as part of the environmental review, and that during construction of the excavation for the reservoir number two, the construction entrance that's required by our erosion control title, title 10, was not built until may 13th, 2010, and therefore the title 10 standards may not be met for this part of the project. And lastly, that the standards from the master plan that regulate outfall discharging to Johnson Creek are not met because the permits from applicable state and federal agencies have not been obtained. Now, Sylvia Cate will discuss the first appeal point.

Cate: Which is a criterion specific to the conditional use in the master plan. The appellant argued that the public hearing, that the proposal should be denied based on the conditional use criterion of livability that states in part the proposal will not have significant adverse impacts on the livability of nearby residentially zoned lands due to a number of items and safety issues, is the category that the appellant calls out in the appeals statement, which states in part, that this criterion is not satisfied until, quote, as much early notification of a thousand-year flood as is possible for residents downstream so that families can get out of harm's way in time. In his decision, the hearings officer considered the safety argument -- .

Fish: We've got a patch that showed up blocking the screen. It is possible to minimize the patch?

Adams: It's updating software. Do we need a break?

Cate: Can we drag it down?

February 3, 2011

Castleberry: Can we get an extra minute?

Adams: Yes.

Saltzman: Can you back it up one?

Adams: You get an extra minute.

Cate: I think what I was doing before that little conundrum, I was concluding that the appellant appeals statement felt that this criterion was not met due to the absence of requirement for notification as early as possible of a thousand-year flood event for residents downstream. In his decision, the hearings officer considered the safety argument, and made extensive findings that the proposal does meet this criterion. It should be noted that the water bureau has a standing city council adopted emergency operations plan that outlines all the protocols and actions to be conducted during an emergency. This plan is exhibit h4, subletter h in the record. The applicant provided a copy of this emergency operations plan to the appellant on November 12th, and based on the evidence, the hearings officer conducted -- considered that the proposal meets the safety component of this criterion.

Fritz: Do you have a copy of that exhibit?

Castleberry: We have it in the record here in chambers. I don't have it right here at the desk.

Fritz: I don't think I have a copy of that. If the hearings officer's decision is based on that document, I'd like to see what it is.

Castleberry: Should we provide that to you at the end of our testimony?

Fritz: That would be great.

Cate: Ok. The second appeal point has to do with grading and excavation. The appellants say the applicant did not address grading, excavation, or filling impacts as part of the environmental review. The hearings officer found that in 2009 the water bureau received approval of environmental and adjustment review for excavation and site preparation for reservoir number two.

The same appellant appealed the 2009 decision and then withdrew that appeal. The hearings officer's findings for the current environmental review refer to detailed construction management plans which comprised nine plan sheets, plus specific grading plans that comprised of separate plan sheets, which were all approved by the hearings officer for this project and all show grading for the various project components. With regards to the third appeal point regarding erosion control at the site during early construction activities for reservoir two, the hearings officer described on pages 36 and 74 of his decision that the applicant's erosion control plans -- he described the plans and found that they would meet erosion control standards for the projects currently under review. Further, in the email correspondence from David Shaff to city council in May of 2010, he described the rock line construction entrance that was installed for the 2009 case there. Were no title 10 violations sited, and BDS site development erosion control is inspectors have indicated that the water bureau installed the rock entrance in good faith. The last appeal point regarding the out-- the existing outfall at Johnson Creek, to that the hearings officer found the proposal will not alter the probability or at the severity of an emergency overflow event to Johnson Creek, and more importantly, that no new outfalls are proposed. And that there is no proposed change to the area of storm water collection that will discharge to Johnson Creek. In closing, this where I remind council that you may take one of the following actions. You may deny the appeal and uphold the hearings officer's decision. Or you may overturn the hearings officer's decision and uphold the appeal, or you may deny the appeal and uphold the hearings officer's decision with modification. And that concludes our presentation. Thank you.

Adams: Discussion from council for this? Thank you very much. Appreciate your work. Very succinct. We'll now hear from the appellant for Kathryn, how many minutes? 10 minutes. Welcome back.

Linda Bauer: Thank you. Linda Bauer, east Portland land use and transportation committee. In this case, we are not talking about normal maintenance. As part of this project, the water bureau

February 3, 2011

will be building a dechlorination building so the water during regular maintenance will be clean and cool and if outfall during the summer will actually be an asset to Johnson Creek. We are talking about an emergency overflow, an earthquake, a terrorist attack, or a malfunction. On November 2nd, 2010, staff sent an email that said can they actually convey a thousand-year event? I don't know. I was trying to explain in the situation in plain language, and I made up an example to illustrate the point. We have never modeled anything larger than a hundred-year event, and I have no idea what such a storm or flood event would look like. We only know that the overflow is a lot bigger than is required to be handled in a hundred-year event. Why has the modeling for the expected overflow of Johnson Creek not been modeled? Is it not important? On November 15th, 2010, I received another email on this same topic. However, in my quick review, I find that neither the corps of engineers for FEMA or any other disaster agency I can find considers the need for disaster planning for such a Missoula-type event. How can the city council find that the proposal will not have significant adverse effects on the livability of nearby residentially zoned land if safety issues which staff publicly write that they have do not have any modeling and if they state publicly, we only know that the overflow is a lot bigger than is required to be handled in a hundred-year event. I tend to think of an emergency overflow of Powell Butte reservoir as two gallons of water being poured into a one-quart container. Johnson Creek has historically experienced flooding problems, sometimes several times a year. On page 62 the hearings officer's decision, the standard to be met states, outfalls may discharge water or overflow into Johnson Creek if designed to reduce potential erosive effects. The water bureau will be increasing the wing wall by two feet, but that only focuses the outfall more directly into Johnson Creek, but does not reduce potential erosive effects. I can find nowhere in the record any efforts to reduce potential erosive effects of an outfall to Johnson Creek. This part of the standard is not met. The standards go on to say, and they can discharge, and if authorized by applicable state and federal permits. The issue that was raised was that no permits from any state or federal agency were submitted into the record as proof that this standard has been met and nowhere in the record can I find statement from the water bureau that they have the necessary permits from any state or local agency to overflow a million gallons of water into Johnson Creek. The approval criteria, livability, requires that the applicant show the proposal will not have significant adverse affects on livability of nearby residentially zoned lands due to privacy or safety issues. On page 31, the -- of the decision of the hearings officer, it states, a thousand-year storm event in staff's opinion is of such potential magnitude that the event could potentially overwhelm any carefully engineered system that meets all regulatory requirements. If staff and the hearings officer are correct and any carefully engineered system would be overwhelmed, then what chance does an unsuspecting family have to get out of harm's way in time? Staff notes that the above approval criteria is discretionary. Which means the Portland city council can create a unique solution that fits this unique situation. The Portland city council could add a condition of approval that requires the water bureau to give the 20 or so residents below -- downstream of the overflow pipe as much notice as possible of a pending thousand-year flood event. We hope that the Portland city council will understand that there is a potential that our homes will be destroyed and that our families could be killed. If the land use committee were asking for the water bureau to flood proof all the houses downstream of the water bureau, it would be very costly. And in the opinion of staff and the hearings officer, the flood could potentially overwhelm carefully engineered systems anyway. The request that we're making is for as much early notification of a thousand-year flood event as is possible. So that residents downstream of the flood can get their families out of harm's way. A thousand-year flood event may overwhelm any engineering system, but with advanced notice from the water bureau before they release the flood, loss of life can be kept to a minimum.

February 3, 2011

Fish: May I just ask, this won't be charged against your time, when you say that the earliest notification possible, can you be specific as to what kind of notice you are proposing should be required?

Bauer: They can do like they do at the coast and have a tsunami warning, or they could call people directly. I'm sure we would all be very willing to give them our phone numbers. And I'd like to pin the time down to at least an hour, but I don't know that they'll have an hour. I just need as much notice as they have. They monitor their pipes all of the time, and whatever time they can give us would be very much appreciated.

Fish: Thank you.

Bauer: The 35 outstanding title 10 violations resulting from phase one construction of Powell Butte as far as I knew in the record were still not resolved. There's a complete history in the record, and if you still have questions, I would be happy to answer them. But you need to know, if those violations are still outstanding, which I think they are, they not only violate your title 10 erosion control manual, but they also violate your MPDES permit with DEQ, which could be a problem. On page 46 of the decision of the hearings officer, number seven, all zoning code requirements are met unless superseded by the master plan. The requirements of 33.430.070 E changing topography grading, excavating and filling have not been superseded by the master plan. The requirements in an environmental review be done to review any impacts of the grading, excavating, and filling in an environmental zone such as Powell Butte were not addressed anywhere in the records. And did you send -- oh. She has a map that shows the extent of the excavation and fill that the water bureau is still proposing to do. They are going to dig out more of the pit. There's some left to do, and then they're going to be doing the excavation and fill that they've outline order that page. The applicant did not address grading, excavation, or filling as part of their environmental review. In fact, the words "excavation" or "fill" do not appear anywhere in the environmental review section of this application. The approval criteria is not met. Thank you.

Adams: We will now hear from supporters of the appeal. Anyone wish to testify in support of the appeal? We will now hear from the principle opponent.

Teresa Elliott, Portland Water Bureau: Good afternoon mayor and commissioners. I'm Teresa with the Portland Water Bureau. And I work across the street in the Portland building. I'm the principle engineer in charge of the Powell Butte project. With me are Tim Brooks with Winterbrook planning and Brad Phelps from CH2M Hill. We also have other staff here available to help answer question ifs that becomes necessary. Brad will explain about the existing system and what the proposed -- what's in the proposed project. Tim will address the four points directly that were raised in Linda's appeal. Because this appeal hearing is on the record, we're limit order what we can say. I understand the concerns and issues raised and I'm sure there are other ways to respond to those concerns. Nevertheless, I can show that we meet all of the applicable approval criteria for you to approve this land use. Storm water management has been the main concern expressed throughout phase one and phase two. We've received numerous comments approximately 95% of them focused on storm water management. Our design incorporates a very conservative approach to storm water management using the hundred-year storm event for the design rather than the 25 years that the city requires. We collaborated extensively with the bureau of environmental service and consultants to voluntarily exceed the remits of the storm water management system of the city's requirements for both temporary and permanent storm water. The issue of emergency response and emergency overflow came up late during the land use review during the hearing and week following the hearing. So there is very little technical information in the record. Information about discharges from the outfall is in the record, principally as it relates to storm water and its impact on Johnson Creek. It was never addressed as storm water -- as emergency overflow that was not the question. Overflow pipe and structure are existing features that were reviewed and approved in the original -- when we built the original reservoir in 1980.

February 3, 2011

Although the information about their size, capacity, function, and purpose was included in the current land use application, we don't believe they should be included as part of the appeal process. Emergency response is not a land use criteria and has not been addressed in the land use review. Portland water bureau takes a conservative approach to providing safety. We have a number of safeguards and redundancies built into our water system to make sure we operate the system safely and provide safe drinking water. At Powell Butte this includes making an emergency overflow -- making sure emergency overflow situation doesn't occur in the 1st place. Each reservoir has a safety buffer built right near the top of the reservoir that's monitored and maintained 24 hours a day. We have redundant alarms that indicate when the water levels are approaching this limit and again when the water levels have reached the safety margin so that operate verse time to adjust the valve and controls to prevent an overflow situation from developing in the -- to begin with. Because of these safeguards we have several hours to respond and correct the problem or divert the water into the system before the level of the water reaches the top so that overflow situation never develops. Because of the overflow is water coming out of the top, this is not a catastrophic failure and there is no wall of water suddenly coming down the hill. And causing the floods to the neighbors. However, in the event we -- in the event there is an emergency, regardless of what kind it is, we follow the bureau's and the city's emergency response plans. Do we have an emergency notification process that's already in place that we follow. As these plans require, we give notice to public agencies, Multnomah county, national weather service, and media who are responsible for putting out the public notices and advisories. Today these alerts and public notices go out through reverse calling, social media, radio, and television.

Adams: Could I interrupt you? I'll give you more time. We just recently acquired, by we I mean the bureau of water and the Office of Emergency Management recently acquired state of the art telephone notification system that automatically has land lines in it and people can register their phone numbers as well. When I was given a briefing on that at its conception and recently saw its implementation, I was very impressed by the fact that you could identify every telephone, email, text message, recipient, cell phone recipient within a geographic area and notify them simultaneously on at least three to five different modes that there was some sort of danger. You can notify them. Have you contemplated that as part of the protocols on this specific facility?

Elliott: I actually never heard of this system, but we use the water bureau and the POEM's notification process, and POEM is actually the -- that's the group that puts out the notices.

Adams: Let me rephrase what I just described is available to you now. Just in the last month. Trust me. [laughter]

Elliott: I just don't know about the system. So, no, we did not consider it --

Adams: We'll call David Shaff up here and grill him on it. Go ahead.

Elliott: At this point Brad is going to explain what the developments already exist and what is in the proposed project.

Brad Phelps: Can I have the screen, please? I'm Brad Phelps, of CH2M Hill, the consultant helping the city on this project. I did want to address the issue that Stacey brought up concerning the wing wall question, and I've got a graphic here that shows the drawing that was in the land use product. And as well a photo down here of a little bit different angle than what Stacey had. What we're going to do is when I click the button, you'll see a one-foot raised of the wing wall. Another two feet -- we're going to stick a steel bar to contain the water within that channel that you see there as it exits out of a pipe at that head wall and goes towards Johnson Creek. That doesn't increase the amount of flow out of the box. What it does, it just contains the flow inside the box so water doesn't drip out the outside wall. So I wanted to clarify that for you. What I do want to explain is how the system works. It's a complex system of a couple tanks, which I'll call bath tubs, and a number of pipes that go different directions. What we have is in general terms one faucet filling up one bathtub right now, reservoir number one, water comes in from the upper right side, fills in

February 3, 2011

reservoir number one. We have the Washington county supply line on the left side. There's also from that bathtub a drain that drainpipe goes down to Johnson Creek. That drainpipe is a drain of the reservoir, provides overflow of water support, as well as storm water. So we have one bathtub, one faucet, one drain. What we plan to do is add a second bathtub, reservoir number two. And connecting pipe to that. But we don't increase the water flow to the bathtubs, we still have one faucet. We also connect the overflow pipe to reservoir number two. We just extend the drain over. We don't increase the drain size or its capacity. We don't increase the inflow from the faucet. We add another bathtub. In addition, we've rerouted the storm water pipes because we need to major the storm water separate than drain and overflow. It still goes into the overflow pipe, but again, we don't change the size of the pipe or the outflow in the proposal. So the amount of overflow that we had when we built the system in 1980 is the same today as it was back in 1980. We're not increasing flow at all, just increasing the amount of storage at the site. So we're not increasing overflow. The overflow had been there since 1980 and the potential to overflow has been there since that time. This particular graphic is from exhibit c8 from the land use, and all we've done is show the elements of the project in color so you can see what it is. This is not new evidence. With that I'd like to transfer it over to Tim to discuss counter points of the appeal.

Tim Brooks: Thank you, Brad. I think your clock stopped. Tim Brooks with Winterbrook Planning, 310 S.W. Fourth Avenue, suite 1100, Portland, 97204. Good afternoon, Mayor Adams and commissioners. I'll take about five minutes to review Linda Bauer's concerns and the water bureau's response. The handout I just passed out covers my testimony and provides specific references to exhibits that are responsive to Linda's issues that are currently in the record. First issue is essentially about notification. As Linda discussed, a request to -- for advanced notice of -- to downstream residents in the event of a flood event. As Teresa has explained, there's a council ordained emergency response plan already in place. It follows established protocols, providing timely notification through multiple channels to affected Portland citizens through established media. Linda raises this request in the context of the conditional use livability criteria of 33815.100c, which includes a reference to safety issues. Brad has just walked us through the basic inflow-outflow and storage system at Powell Butte. There are two key conclusions from this. The emergency -- first the emergency overflow system at Powell Butte already exists, the overflow pipe and the overflow structure will remain in the ground where they are today and this project will not change the system's current capacity or its discharge rate or volume. The second also as Brad has mentioned, the reservoir storage capacity will double with the new reservoir, and what this means is that twice as much water can be held and there's twice as much time to respond and address an issue before it becomes an emergency. Building this project will essentially cut the risk of an overflow occurrence by half. Which is another way of saying that we have doubled the margin of safety here. And one other point here is that the project will actually, as the hearings officer confirmed, reduced storm water flows to Johnson Creek by 11% compared with existing conditions. This is an additional increase to our margin of safety. Second issue has to do with whether separate environmental review for grading excavation and fill is needed. Linda believes that this requirement was not superseded by the master plan. A couple of comments here. First, as Stacey mentioned, I think the primary focus of the Powell Butte phase one environmental review completed in 2009, was reservoir excavation and site grading. In his current report, the hearings officer completed an environmental review following the master plan environmental review procedures and criteria, he imposed conditions specific to grading, erosion control, and site revegetation, grading plans clearly show all grading works as part of the disturbance areas that are reviewed, minimized, and mitigated in the environmental review. Also figure 5.6 shows specific areas of fill and excavation with calculations of cut and fill quantities. Third issue relates to erosion control on questions how -- and Linda questions how the erosion control standard will be met given the alleged history of erosion violations during phase one of the project. In support of that charge,

February 3, 2011

Linda submitted two attachments that I think are instructive. The first is a one-page excerpt from the city's title 10 code, which reads in part, when the director determined that violation of this title has occurred, the director shall notify the responsible party and the property owner in writing that a violation of this title has occurred. And no notice of violation was received by either the contractor or the owner at any point during the phase one construction and there's no evidence of any such notice and therefore any violation in the record. The second item submitted is email correspondence between commissioner Fritz and David Shaff. In it Mr. Shaff confirms that there is no erosion code violation. We believe the hearings officer properly found that the water bureau will employ best management practices for erosion control, following current city erosion control manual, and title 10, and therefore will meet the erosion control standard. Fourth issue concerns the standards for outfalls in the master plan. The concern is two-part. First, Linda questions the hearings officer finding that changes to the reservoir associated with this project will not alter the probability or severity of an emergency overflow event to Johnson Creek. As I notice in the first issue and Brad reviewed in his presentation, both the probability and severity of an event actually goes down. The second part of the issue is the assertion that the overflow does not have proper permits. This is an existing structure approved as part of the 1977 conditional use permit for reservoir one in the appeal Linda cites new evidence corresponding with DEQ that is not in the record, and I think Sylvia has pointed this out, to respond we would need to introduce new evidence as well. While we maintain that this standard does not apply to an existing outfall, one option for the council that might address this would be to add a condition of approval to this decision, to the effect that prior to issuance of the BDS construction permit, the water bureau shall provide evidence to BDS that -- applicable state and federal permits or approvals have been obtained for the discharge of storm water or overflow to Johnson Creek. And with that, I'll turn it back to Teresa to close.

Elliott: Thank you. Today all of the water comes into Portland through Powell Butte. Reservoir two is very critical to the city. It continues to provide safe drinking water. Through extensive public involvement process and outreach spanning over a decade, we've developed a project that we hope will be enjoyable, will be an enjoyable experience to all the park users as well, protecting wildlife and natural resources. We have a number of safeguards built in to the system that allows us to operate the system safely and to provide as much -- to provide safe drinking water. This includes as making sure that an emergency overflow never does occur. Thank you for your time and your consideration.

Adams: Any discussion?

Fish: I want to say I had no idea our drinking water was coming out of bath tubs being drained. [laughter] I think that I will be somewhat alarming to the public. It.

Elliott: Was a good analogy.

Adams: That's how we keep it so affordable. We will now hear from any supporters of the principal opponent. Rebuttal by the appellant?

Bauer: Linda Bauer. For myself and the transportation committee. This -- part of this is already done. This and this and this were all moved from the 1990 places -- these are the excavation and fills proposed. They were all moved from -- to new locations. They couldn't have been approved in the other version because they are new locations, and nobody knew what size they were going to be or that kind of thing. The environmental review that was required for excavation and fill is in this current land use review. And it was not done. As far as the violations go, BDS notified the water bureau that there was a problem, that the construction entrance had not been installed not once, not twice, but three times. They sent them a notice saying that the construction entrance needed to be installed, the water bureau got back to them, they'd do it in a week. It got another notice, they sent another notice, I don't know, maybe a month later, again, the reply was, we'll do it next week. BDS sent them a third notice that the construction entrance was not installed, and right

February 3, 2011

after they finished up all of the hauling that they were going to do, they installed the construction entrance. The water bureau did in good faith say that they would install the construction entrance. It's just that they didn't do it in a timely manner, and your title 10 code says that every day after notice of a violation, that they do not install what was required is a separate and distinct violation. They have 35 of them. And because BDS is not requiring them to take care of those outstanding violations, it also violates your MPEDS permit with DEQ, because MPDS requires enforcement of title 10. Brad's presentation was terrific. I wish we could have had all of that information in the record. It wasn't explained that well in the record at all. And we still need notification directly, not part of some citywide -- I don't know. If you want -- whatever. Thanks.

Adams: Define direct notification.

Bauer: I would like a telephone call. Because we get -- hear sirens and ambulances --

Adams: We can do that.

Bauer: Ok. That's great. That's good for me.

Adams: We can simultaneously do email, land lines, text message, cell phone, you're going to have to register your cell phone and email addresses, But --

Bauer: And my neighbors? Can they all call you up?

Adams: They can all sign up. They can all sign up on their own, and everyone in the city in the next couple weeks is going to be given an option to opt into the system, including the folks in your neighborhood, and I'm sure that we can do some additional marketing as well. For your neighbors.

Bauer: The people that live along --

Adams: Absolutely.

Bauer: That would be terrific.

Leonard: Except I would be remiss if I didn't point out, if we had a Missoula-type event, the average depth of the water in Portland was 400 feet. So the tip of --

Bauer: We won't be able to get out --

Leonard: The tip of Mount Tabor and the tip of Rocky Butte were the only things that were land at the time, and it occurred not in the last thousand years, but between 15-18,000 years ago at the last ice age. So if we have another event of that type, the residents at Powell Butte are the least of our problems.

Fritz: I have a question about the construction.

Fish: That's a downer.

Adams: Wow.

Bauer: We won't be alone.

Fritz: The construction entrance, is it now properly erosion controlled?

Bauer: It is. In fact, they installed two wheel washes as part of this project. Instead of the one that they had. Yes.

Fritz: Thank you.

Adams: Thank you for your time.

Bauer: Thank you.

Adams: All right. Council discussion. Commissioner Fritz.

Fritz: Thank you. I appreciate the appeal and the good work this that's gone into this. I especially appreciate that David Shaff put into the record earlier correspondence we had back in may into the record for this hearing that started in November. I would -- I wasn't -- didn't know there was going to be another hearing, so that was great that that is in there, and I was under the understanding, and I'm now hearing confirmation that the erosion control part of the appeal is taken care of except for the past violations. I liked the suggestion from Mr. Brooks about the additional condition of approval and if I scribbled it down correctly, that was that prior to the issuance of permit the Portland water bureau shall provide evidence to BDS that all applicable federal and state permits have been approved. Is that close enough? If you want to give me a revised version while I'm still

February 3, 2011

talking, that would be fine. The most compelling part of the appeal I think is the issue of safety. And that we do have approval criteria which is a discretionary value about safety. Nearly -- I think the hearings officer's findings should be expanded. You can't say there's no safety hazard just because we could engineer to a 1,000 year flood or couldn't, while engineering solutions may be unfeasible. A more secure and safe neighborhood could be achieved with a plan for notification and evacuation plan for the affected neighborhood. I appreciate being given the exhibit with the overall water bureau operations emergency plan, it doesn't have the specific details that I think the neighborhood is looking for here. And I think to me that approval criteria, the reason is it a discretionary decision means that you have to look up more of the building standards and you have to look at the particular circumstances for the project that's being applied for. So I believe that we could deny the application but with two additional -- conditions of approval, which I will pass out to my colleagues. Amending the findings --

Saltzman: You said deny the application.

Fritz: Deny the appeal, which would approve the application, which would add -- I think the appellant has made a good case for why the approval could be approved upon and that's why I'm proposing these conditions. So I -- the amendment to the findings I just suggested, and then the first amended -- the second amended condition, the first one would be the water bureau shall provide evidence to BDS that applicable state and federal permits or approvals have been obtained for the discharge of storm water or overflow to Johnson Creek prior to issuance of BDS construction permits. And then the second proposed condition of approval would be the city water bureau shall work with the appellant and affected neighborhood through the Office of Neighborhood Involvement and the Portland Office of Emergency Management to develop a good neighbor agreement that provides for a plan of notification and evacuation of the area, should a catastrophic event occur, and poem has a window of time to provide such notification. And I believe that the process of discussing the good neighbor agreement would then get to the real or believe safety concerns, we're in the middle of discussions about the joint terrorism task force, which certainly to me evidence that safety is a way of feeling as well as whether it's a level of risk is something that in itself needs to be addressed.

Leonard: I like the intent, I have some concerns about the specificity of the water bureau being the entity that works with the appellant and the neighborhood to develop such a plan, because I think it's been demonstrated here that there could be a catastrophe, but not necessarily related to the water bureau. As we move forward from this point on, I want to make sure that the water bureau's committing to do something, we're doing it in the most cost effective way or not incurring a cost we shouldn't otherwise incur. I'm not shut water bureau should incur this cost, it should be something that I think Portland office of emergency management replacing the city water bureau, that language to me would be the most appropriate entity to work with the appellant and the neighborhood because as we have heard, there are notification -- emergency notification processes in place that are overseen by the mayor's office and poem not necessarily in the water bureau. So I'd like to get the water bureau out of the middle, some of the stuff that they shouldn't be in the middle of and have them -- have poem be the lead agency that works with the appellant and the affected neighborhood.

Fish: Just for point of clarification, my experience with POEM is that if they're the lead, and they will bring in other bureaus as necessary --

Leonard: Exactly.

Fish: You're placing them at the head of the table.

Leonard: Exactly.

Fritz: Certainly we have staff in the Office of Neighborhood Involvement who mediate the good neighborhood agreements. It's a condition of approval of the water bureau's application, so --

Adams: Are they already required --

February 3, 2011

Leonard: They have a good neighbor agreement. That they developed, and in -- at a minimum reached an agreement with the friends of Powell Butte and the pleasant valley neighborhood association, is that right or wrong? Weren't you involved in developing the master plan?

*****: [inaudible]

Leonard: I'm not sure what a good neighbor agreement means in this context.

Beaumont: One comment I would offer is, we do -- zoning code does require a good neighbor agreement for certain types of using in other zones, and it has a specific meaning and a specific content. It sounds to me commissioner Fritz like you're not meaning so much for that type of good neighbor agreement, that's just some kind of agreement for notification. And if that's the case, perhaps you might want to relabel it something other than good neighbor agreement, so you don't inadvertently trigger other portions of the code. It's a thought to offer.

Adams: If I could -- I'm happy to have the Bureau of Emergency Management in the lead to develop a notification system, a notification system for emergency notification system related to the operations, the city's operations. Happy to do that. We're not in a position to do a good neighbor agreement, but that would be a condition of approval here, so that we would have to do that and --

Leonard: I want to make clear first, the neighborhood did not make this appeal.

Adams: That's what I'm saying.

Leonard: I'm not sure it's appropriate to say that we should have a good neighbor --

Adams: I'm agreeing with you.

Leonard: Ok.

Adams: Maybe I'm not articulating. I am fine with -- I would support that we have to have in place, we have to provide an option for folks that might be affected by some catastrophe, the ability to be notified of that if we know ahead of time in a manner that will give them instructions on what to do. It might be -- I don't want to assume it's evacuation, it might be something else. Because there are a variety of different catastrophes that could happen. But I'm happy to have that as a condition, because I know every person is going to have that opportunity. I'm happy to work with the water bureau, Bureau of Environmental Services or whoever to also make sure that we have a marketing that's specific to those that are potentially impacted for that. So we will call and leave messages.

Leonard: The concern I have is, it has been found that there is no evidence that such an impact would occur, so we're asking the water bureau to work to develop an emergency notification system, an emergency that's been determined by the hearings officer, that there is no -- what I'm saying is, what I'm saying is, people that are affected live along the Johnson Creek corridor, there is concerns about flooding along the Johnson Creek corridor. So to the extent there are general concerns about flooding and notification, I support having poem make an extra effort to call out how we would notify people along that corridor. But to somehow tie that to this land use decision is not something I can support, because it has been found in the record that there is no nexus between this reservoir --

Adams: I'm happy to commit to that as a matter of legislative intent. Or I don't --

Fritz: I disagree with the finding. I think the hearings officer erred in narrowly defining safety as to whether the structure itself was built to specifications, and did not consider the impacts of the livability and the lease of the neighbors as to whether they have adequate options for notification. And so I appreciate the city attorney's advice regarding the good neighbor agreement, which does have different meaning in the zoning code, than the way we use it when we're negotiating on other - - on other things outside of the zoning code. I do believe that there's -- it would be helpful and perhaps it can be done through the Portland office of management who -- mitigation plan in the fall and promised they would work with neighborhoods to develop neighborhood-specific natural hazard which I think this could include, for instance, if there was contaminants in one of the bath tubs or tanks, they needed to be purged, if there was an earthquake that there was a failure, the

February 3, 2011

terrorist attack, those kinds of things, those are natural -- hazards which the neighbors are concerned about and those safety concerns I believe need to be addressed as well as whether the structure itself is sound, which I agree has been found --

Adams: Let me try this on for size. This assumes the city has in place a notification system to warn -- a notification system in place to warn residents of catastrophic events. It doesn't -- it assumes that, it assumes that could be as a result of an earthquake, a flood, whatever else, I think that being able to reassure people after an earthquake that they have nothing to worry about, which hopefully will be the most likely scenario is a good thing. This is an expectation that we put on ourselves, because we've helped build this darn thing. So I think that's a reasonable thing as a condition for approval.

Leonard: And I am happy to I'll propose something to see if I can capture that. I would move option three, which would be to deny the appeal and uphold the hearings officer's decision to approve the master plan with the modification, the modification being that the Portland Office of Emergency Management be directed to develop a notification system for those residents along the floodplain of Johnson Creek corridor.

Fish: And would you adopt the second proposal commissioner Fritz on the language that she's worked out --

Leonard: Permits. Yes. Whatever that -- did you have some specific language on that?

Fritz: That was as given by the applicant.

Adams: Does that work for you, commissioner?

Leonard: That's the first condition. The second condition would be the water bureau shall provide evidence to the Bureau of Development Services that applicable state and federal permits or approvals have been obtained for the discharge of storm water overflow to Johnson Creek prior to the issuance of Bureau of Development Service construction permits. And I have the language here as well. If you didn't get all of that.

Fritz: And I think I can go with your proposal. I am a little concerned about directing a different city bureau as a condition of approval for the application of the water bureau. I do strongly believe we need to amend the findings on page 28 regarding the safety matters, because the hearings officer's decision do set precedent, and I think it's important to point out that while engineering solutions to catastrophic events may be unfeasible, a more secure and safe neighborhood could be achieved for a plan for notification and evacuation plan to the affected neighbors, that then references your proposed condition of approval. You've got to have the findings to have the condition of approval, and that amendment needs to be made.

Beaumont: Consistent with that, my recommendation would be that if you -- if the council is inclined to go with commissioner Leonard's motion, with the two conditions that have been discussed, and the additional findings, that your decision today be tentative will incorporate the additional findings in the two conditions, and bring it back in approximately two weeks or so. And still make the 120-day deadline.

Adams: So for the purposes of decision making, the chair recognizes the motion already made by commissioner Leonard, and further expanded upon by commissioner Fritz. I do hear a second?

Fish: Second.

Adams: It's been moved and seconded. Sue, please --

Fish: This is for the purposes of a tentative -- tentative, ok.

Adams: We still have to amend it officially. Please call the roll on the motion. The vote on the motion.

Fritz: Knowing that we are going to do throughout Portland Office of Emergency Management neighborhood-specific natural hazard mitigation plans, and also knowing the willingness of the water bureau to work with neighbors, and willing to support this motion. I hope that there will be at least one meeting between neighbors and those -- neighbors being one of the parties, the ones I

February 3, 2011

mentioned in my previous thoughts, so that we do get to a conversation about what the safety concerns are and whether the proposed notification system is enough, or whether we need to work through other processes that you recognize commissioner Leonard's concerns that it not be tied perhaps -- not be limited to this decision. In fact, it needs to be wider and the whole issue of safety in the pleasant valley neighborhood I think is one that is worthy of further conversation in the process. I appreciate my colleagues considering amending the finding, because it does set a precedent and I want to make sure the hearings officer knows that -- and the staff as well that the reason we have discretionary approval criteria is because they are not cut and dried, have you met the standards or not. So I hope in the future while there is more consideration on an approval criteria like livability and safety of what the neighbors' concerns are rather than getting tied to the particular, whether it's the thousand-year flood or 5-00 year flood or whatever it is, that doesn't address the approval criteria. So with that I appreciate the conversation and the diligence of everybody concerned in this land use decision. Aye.

Fish: I want to join with commissioner Fritz in thanking everyone who has presented. These are complicated matters, you made it easier for us to follow and understand, but we wouldn't be here if the east Portland neighborhood organization land use transportation committee Linda Bauer hadn't brought this to our attention. Again Linda this, is your second visit in a short period of time, we appreciate you coming in and making your case and then our chance to deliberate. And I think we found the right balance. So I am going to concur in the motion. Aye.

Saltzman: Thank you for bringing I think some good points. I think the presentation did help as you indicated yourself, maybe clarify some of the concerns. Helps to have simple analogies like bath tubs and drains to make it easy for all of us to understand. But I do think this -- this proposal, master plan amendments are approvable. I vote aye.

Leonard: Aye.

Adams: Aye. [gavel pounded] So do we vote -- do we have to take a tentative vote?

Beaumont: That was your tentative vote. We need to continue --

Adams: That was the vote on the motion to amend?

Beaumont: The motion to-- commissioner Leonard's motion to deny appeal --

Adams: Got it. You're right. We're in the land use -- I just wanted to extend our time together. [laughter] We got a good vibe going.

Beaumont: We need to continue this to a date in time certain for the adoption of findings.

Adams: Not really.

Parsons: And we're looking before the 28th.

Adams: I'm teasing.

Beaumont: Before the 18th if possible. If not --

Parsons: Before the 18th? Sure.

Adams: No. Can we do it after the 18th?

*****: [inaudible]

Adams: We do it before the 18th. I only have to worry --

Fish: Are we doing this on a time certain?

Adams: Can we do it on the regular schedule?

Parsons: We can do it at 9:45, on the 16th.

Adams: Sounds good. We're adjourned. [gavel pounded]

At 3:30 p.m., Council adjourned.