



CITY OF
PORTLAND, OREGON

OFFICIAL
 MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 18TH DAY OF JANUARY, 2012 AT 9:30 A.M.

THOSE PRESENT WERE: Commissioner Fish, Presiding; Commissioners Fritz, Leonard and Saltzman, 4.

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

On a Y-4 roll call, the Consent Agenda was adopted.

		Disposition:
COMMUNICATIONS		
51	Request of Ben McKinley to address Council regarding business growth in Portland (Communication)	PLACED ON FILE
52	Request of Shedrick Jay Wilkins to address Council regarding homelessness, churches used for homeless people and Dignity Village (Communication)	PLACED ON FILE
53	Request of Robert Krause to address Council regarding disability and disabled parking placards (Communication)	PLACED ON FILE
54	Request of Nancy Newell to address Council regarding discontinuance of permit process by Portland Water Bureau in Clackamas County concerning Bull Run Water project (Communication)	PLACED ON FILE
TIMES CERTAIN		
55	<p>TIME CERTAIN: 9:30 AM – Accept report of the Customer Service Advisory Committee (Report introduced by Commissioner Fritz) 30 minutes requested</p> <p>Motion to accept the report: Moved by Commissioner Fritz and seconded by Commissioner Leonard. (Y-4)</p>	ACCEPTED
56	<p>TIME CERTAIN: 10:00 AM – Appoint David Dougherty to the Fire and Police Disability and Retirement Board of Trustees for a term to expire December 31, 2013 (Resolution introduced by Mayor Adams) 15 minutes requested (Y-4)</p>	36898

<p>CONSENT AGENDA – NO DISCUSSION</p> <p>Mayor Sam Adams</p> <p>Bureau of Police</p>		
<p>*57 Authorize an Intergovernmental Agreement with Multnomah County Department of Community Justice for the County to offset personnel costs of \$49,882 to maintain a Lieutenant position in the Police Bureau Training Division (Ordinance)</p> <p>(Y-4)</p>		<p>185104</p>
<p>Bureau of Transportation</p>		
<p>*58 Authorize an Intergovernmental Agreement with TriMet for jointly funded design and construction of Capital Improvements for Safe Access to Transit (Ordinance)</p> <p>(Y-4)</p>		<p>185105</p>
<p>*59 Authorize the Bureau of Transportation to acquire certain temporary and permanent easements necessary for construction of the NE 102nd Ave Streetscape Improvement Project Phase II through the exercise of the City's Eminent Domain Authority (Ordinance)</p> <p>(Y-4)</p>		<p>185106</p>
<p>*60 Authorize a Supplemental Intergovernmental Agreement with the Oregon Department of Transportation to administer the design and construction of the 50's Bikeway Project for bicycle safety improvements in NE and SE Portland (Ordinance)</p> <p>(Y-4)</p>		<p>185107</p>
<p>Office of Management and Finance</p>		
<p>*61 Ratify a Letter of Agreement between the City and Laborers' Local 483 regarding Maintenance Confined Space Entry Team (Ordinance)</p> <p>(Y-4)</p>		<p>185108</p>
<p>*62 Authorize a contract to purchase two forklifts for \$46,000 (Ordinance)</p> <p>(Y-4)</p>		<p>185109</p>
<p>Commissioner Nick Fish</p> <p>Position No. 2</p> <p>Portland Parks & Recreation</p>		
<p>*63 Authorize Intergovernmental Agreement with Oregon Department of Transportation and Metro to acquire permanent and temporary easements necessary for construction of the Pier Park–Chimney Park Bridge Project through exercise of the City's Eminent Domain Authority (Ordinance)</p> <p>(Y-4)</p>		<p>185110</p>

<p>Commissioner Dan Saltzman Position No. 3</p> <p>Bureau of Environmental Services</p>		
64	<p>Authorize a contract with the lowest responsible bidder for the Portsmouth Force Main Odor Control Facility Project No. E08927 (Ordinance)</p>	<p>PASSED TO SECOND READING JANUARY 25, 2012 AT 9:30 AM</p>
65	<p>Authorize a contract and provide payment for construction of the Digester Mixing Upgrade Project at the Columbia Boulevard Wastewater Treatment Plant Project No. E08944 (Ordinance)</p>	<p>PASSED TO SECOND READING JANUARY 25, 2012 AT 9:30 AM</p>
66	<p>Amend contract with KPFF for additional work and compensation for the South Airport Basin Phase IV Pump Station, Project No. E06790 (Second Reading Agenda 38; amend Contract No. 37735) (Y-4)</p>	<p>185111</p>
<p>Office for Community Technology</p>		
67	<p>Grant franchise to Comcast of Oregon II, Inc. to operate a Cable System for a period of ten years (Second Reading Agenda 1368) (Y-4)</p>	<p>185112</p>
<p>Commissioner Randy Leonard Position No. 4</p> <p>Portland Fire & Rescue</p>		
68	<p>Amend contract with Jensen Maritime Consultants and increase by \$16,000 for additional scope of work for fireboat design and engineering (Ordinance; amend Contract No. 30002110)</p>	<p>PASSED TO SECOND READING JANUARY 25, 2012 AT 9:30 AM</p>
<p>Water Bureau</p>		
69	<p>Authorize a contract and provide payment for the construction components of the Forest Park Low Tank Project (Ordinance)</p>	<p>PASSED TO SECOND READING JANUARY 25, 2012 AT 9:30 AM</p>
<p>REGULAR AGENDA</p> <p>Mayor Sam Adams</p> <p>Office of Management and Finance</p>		
70	<p>Extend the City 2008-2012 Equal Employment Opportunity Affirmative Action Plan for one additional year to June 30, 2013 (Ordinance) 10 minutes requested</p>	<p>PASSED TO SECOND READING JANUARY 25, 2012 AT 9:30 AM</p>

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**Commissioner Dan Saltzman
Position No. 3**

71 Require an actual physical fitness test as the eligibility requirement for the Portland Police Bureau Health and Fitness Pay Premium (Resolution) 15 minutes requested

Motion to postpone to February 1, 2012 after 10:30 a.m.: Moved by Commissioner Leonard and seconded by Commissioner Fritz. (Y-2; N-2 Saltzman, Leonard) Motion failed.

Motion to continue to February 1, 2012 at 10:30 a.m.: Moved by Commissioner Saltzman and seconded by Commissioner Leonard. (Y-4)

**CONTINUED TO
FEBRUARY 1, 2012
AT 10:30 AM
TIME CERTAIN**

At 12:03 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.

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WEDNESDAY, 2:00 PM, JANUARY 18, 2012

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

January 18, 2012
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.

JANUARY 18, 2012 9:30 AM

Fish: The Mayor is away on city business today. Sue please read item 51.

Item 51.

Ben McKinley: Good morning, my name is Ben McKinley. I'm founder and ceo of cascade web development. I'm here to thank you for all of your efforts in support of small business and I want to encourage you to continue this great work. I want to share with you my business success story and provide a challenge. Cascade was founded in 2001. My team worked from remote offices in the Portland area and surrounding suburbs for 5 years before we secured some office space in inner SE Portland. Since that time we've benefited greatly from a number of programs supported by the city, pdc, pda and what is now greater Portland inc. A separate company of mine, brand live, also secured some working capital funding from pdc. All of this hard work and support has resulted in a thriving business. Seven full-time employees and work with another half dozen contractors on a part-time basis as needed and that need has been growing and looking to bring more development staff online this year. And this is -- there's been a lot of dedication to this cause from our staff as well as the larger community. Thank you for your contribution to our success on a micro and macro level. It's great to see there's been a lot of support and discussion about increased access to capital. I think there should be an equal if not larger focus on access to mentorship. My view, if you've got access to capital and not direction and oversight, it is like throwing money to children and hoping that issues go away. That ongoing nurturing and guidance of proven mentors is a critical piece. Last week, I was invited to a luncheon put on by the sao, pdc and the Oregon israeli business association and invited jonathan medved to speak to us. He is an american born tech entrepreneur who lived in israel for the last 30 plus years and taken a number of companies public and engrained himself in what has allowed israel to what is now known as start-up nation. And connecting the dots on what has led to their success and one of the things is a flat culture. Easy access to people at high levels and their interest to pay it forward when younger entrepreneurs are looking for that guidance and I think there's a lot we can learn from that, I know there's a best practices trip going over there next year. I'm hope to be a part of that and hope we can continue to learn from those things as it relates to mentorship. The good work of supporting small businesses and the larger mission of job growth, please keep mentorship in mind. Thank you again for your work on supporting small businesses and ask you to continue to fund strategic programs, small business development center and storefronts improvement grants and micro loans for startups and reduce taxes and fees that are burdensome for small businesses and Portland's economy is tied to the growth and success of small business. Data points to wrap up my points: Small business represents 95% of all firms and employs 254,000 people with \$2.1 billion payroll a year. Nearly $\frac{3}{4}$ of the net new jobs are created by small business and our success depends on your support. Thank you.

Fish: Thank you, mr. Mckinley. Sue, please read item number 52.

Item 52.

Fish: Is mr. Wilkins in? Ok, please read council item 53.

Item 53.

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Fish: Mr. Krause, are you here? The weather is probably conspiring this morning. Ok. Let's move to council item 54.

Item 54.

Fish: Welcome, you have three minutes.

Nancy Newell: Nancy newell. Yes, i'm here today because I did distribute a letter by the city clerk to each one of you and have not received a response on kenneth helm who is in conflict of interest because he's paid by the city of Portland, city of Portland is the applicant and it's a clear violation, contrary to mr. Thatcher who represents the city water bureau and replied within the hearing process that the hearing officer is not a business and there are other things he cited that don't apply.

We stopped at the december 20th decision we don't see why you're rushing and initiated by mr. Glicker at Portland water bureau and enlisted the assistance of noaa and it's contradictory with the variance process with the state to go forward with these projects. Not to mention the damage and the introduction of invasive species, which are not removed from water pressure cleaning of construction equipment that enters that area. So you have several levels of legal issues. I have one in federal court, contradicting the county -- we won our case and i'll contradict your decisions on this council allowing this budget to go forward, \$35 million in unanimous decision and we will take action. We're not a special interest group. There are several citizens, contrary to your blog, who are very concerned about the quality of water and how the money is spent and the consultants used, it's a multinational group that has the interest of profit margin and control of our water and eventually privatization of our water and you've heard corporate personhood and directed in many ways by the citizens of this city and this city is losing population and revenue and I know you're driving revenue in order to keep it stable but that's not the way to do it, by risking our water quality.

Thank you.

Fish: Thank you, ms. Newell. Next, the consent agenda. Does any member of council want to remove any item? Hearing none, any member of the public wish to remove an item from the consent agenda? Sue, please call the roll.

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

Fish: The agenda passes. Two time certainties this morning. The first is scheduled for 9:30, we're right on time. Sue, please read council item 55.

Item 55.

Fish: Commissioner Fritz.

Fritz: Thank you, president Fish. I have the honor of introducing john dutt, the chair of the customer service advisory committee. Please come forward. The office of neighborhood involvement helped to staff this committee. It's a multi-bureau committee so we're all responsible for this report and its implementation and i'm grateful that you do continue to come back and give us the annual report with updates how we're doing in all of the bureaus on customer service and what we might do to improve.

John Dutt, Office of Neighborhood Involvement: Thank you. We're going to start our brief presentation with alisa.

Alisa Cour, Portland Fire & Rescue: Good morning, i'm alisa cour with Portland fire and rescue and here with john dutt and ross caron, bureau of development services. The citywide customer service advisory committee was created in 2006 to work with bureau to improve customer service and melt recommendations of bureau improvement -- innovation project number seven. The committee has worked with bureau to improve customer service by focusing on three key areas. Incorporating customer service elements into the bureau's mission statements and strategic plans and improve customer service feedback and focus in workforce hiring, training and evaluation. Every year, bureaus have been asked to give an annual update on their efforts and these are what the committee's annual reports summarize and highlight. The committee was also -- has also created a website, www.portlandonline.com/csac to serve as a resource. And share with other cities with

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an open website to the public. This year's report updates ongoing customer service efforts by city bureaus and over the past five years, there was increased and renewed emphasis on customer service with the advent of number seven and of this committee. There were several bureaus early adopters while several others took a couple of years to fully develop their customer service improvement efforts and much progress has been made in the area incorporation of customer service values into bureaus' missions and values and goals statements and there are examples bureaus that have developed customer service strategic plans and enhanced customer feedback mechanisms implemented by a number of the bureaus and enhanced customer service emphasis in bureaus workforce development has been universal. You have the report and it will be available to everyone through our website, so we don't want to take a lot of time go over the details of the report but in general, a bureau-by-bureau update of individual efforts and a balanced scorecard of visual representation into the bureaus' efforts in terms of what they've accomplished and what's ongoing and where there's progress to be made or items not yet embarked upon by the bureaus. A lot of good progress but unfortunately some areas where the progress has been that the committee had hoped or stagnant and i'm going to pass it off to ross to talk about that.

Ross Caron, Bureau of Development Services: I'm ross caron with the bureau of development services and today i'm presenting to council. The economic downturn, budgets have tightened up. This has had impacts on customer service in some areas. Often resulting in services and staff cuts affecting basically front line services and hours of operation and phone coverage and response times. As council knows, the bureau of development services felt these impacts early on in the economic recession. We had to reduce staff and along with that, make changes to many service levels and turn-around goals. In the face of those changes, the bureau of development services maintained focus on customer service. The importance of customer service was continually communicated by the director scarlett and the bds leadership team to the staff of development services and continued providing as high as level of customer service possible. Some examples were the bundling of inspection requests. The expansion of our online trade permit program. And the creation of our online tall grass and weeds complaint program. Service level changes were also communicated to our customers in a clear and consistent manner. Through service level update documents posted online and in customer service areas. Outside of the bureau of development services, the customer service advisory committee has started to see some curtailing of customer service improvement efforts due to budget restrictions. For example, customer service training and customer survey impacts have been impacted. Many smaller bureaus have struggle through these customer service improvements with limited staff to dedicate to such priorities. In some of the larger bureaus they've been able to maintain customer service training with dedicated staff. The committee is hopeful that the current -- sorry, the current bureau of human services efforts to -- a training program will provide opportunities for all city staff regardless of budget.

Dutt: John dutt, with the office of neighborhood development. I manage the City and County information referral program, 823-4000. In addition to the budget limitations that ross discussed, the committee through our work with the bureaus, also recognizes the city doesn't always have in place the best customer management and service delivery systems. The committee continues to note there are opportunities for customer service improvements related to improving these systems and the city lacks a central customer relations database and each manages it independently and resulted in a significant duplication of efforts and lost opportunities for service coordination. The customer management systems in existence vary across the city. Some are robust while others are rudimentary and virtually none are linked. We believe the city could benefit from a robust customer relationship management system to manage customer requests for services and make it easier for community members to request services and track the progress of those requests. As resources allow, the committee sees value in council giving considering in formally researching the advantages and disadvantages of a citywide customer relations management system. A tool in

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common use in many private and public sector organizations, including over seventy 3-1-1 programs in cities across the united states. We want to thank the staff for the progress and encourage them to keep up the good work and encourage city council and city leaders to do their best to maintain customer service priorities as we go through yet another difficult budget development process and we believe that good customer service is particularly vital because the best way to mitigate the impact of necessitated service reductions and maintain support is to meet the basic customer needs when deciding how to allocate scarce resources and that's the end. Our formal presentation. We wanted to give an opportunity for council to ask questions of us or --

Fish: I have a question, first, thank you for a very clear, written report. I understand how the various categories, you have a scorecard at the end.

Dutt: Right.

Fish: There's seven categories under two broad headings. Bureau practices and workforce development. I guess I understand how they apply to the bureaus, but less how they apply to individual commissioners' offices and you've graded the offices as largely incomplete or not completed. In a number these categories. I guess I would turn it around and ask you how strategic plan, for example, and surveying in -- as two examples, how they're applicable to council offices or whether we ought to have two sets of criteria here.

Dutt: Sure, it's definitely a little different report on the commissioners, mayor's offices, because you're not helping people pay water bills or reserve parks, necessarily. But -- so what we look at a lot -- and again, this report reflects the efforts reported to us by the bureaus and the offices. And it's not an evaluation of how well bureaus or offices shall providing customer service, rather, it's an evaluation of the efforts, are they doing certain things. For example, you mentioned surveying. Some bureaus have pretty formal surveying mechanisms in place. Some bureaus have done things like focus groups or formal complaint processes, even instituting those. So you know, like with the elected officials' offices, a lot of times what we look at, is there a mechanism in place to getting feedback from constituents and tracking those and how formalized is that? And seems to vary a little bit across the offices.

Fish: This is just food for thought as you continue to refine your good work. I think offices with six or seven employees or so quantitatively, different than bureaus with hundreds of employees. I mean, I doubt any of us are going to do a strategic plan, per se, and we train, but perhaps not of a systemwide training that a bureau does. And there might be a different set of criteria or a more useful set that's applicable to offices. It doesn't seem that each category applies neatly -- the ones that apply to bureaus apply to commissioners' offices and you may disagree. I'd like to carry on the conversation, we're interested in learning better ways of communicating with people. But we're an office of six or seven and represent almost 600,000 people. Any suggestions for how we can be more responsive. But it strikes me as we're comparing apples and oranges when we throw in offices with bureaus.

Fritz: If I might respond to that. I found the categorization quite helpful with the last report and thought about the criteria that would be the standards we're asked to meet. Although they may not entirely match, they gave my office food for thought and looking at what we do in training and in feedback mechanisms and how do we make sure that all of the customer requests we have are tracked and responded to in one way or another. I agree, commissioner Fish, it's not exactly the same, however, i've found it very helpful to be guided and where there should be additional criteria for commissioners' offices how much office hopping we have to do. Commissioner Leonard's report, your staff were committed to making sure that the customer's issue is resolved and I think that's the case for all of our offices and it would be interesting to have a measurement of that. And I wonder how did you determine who -- who did you talk to in each of the council offices to come up with the evaluation?

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Dutt: Sure. One thing we didn't mention, our committee, I think there's 13 on the committee and we break ourselves into site teams and assign each to be assigned to each of the bureaus, and as Alisa mentioned, we asked the bureaus and offices to submit an update every year as part of the budget process which has gotten better over the years, because bureaus are more used to doing that, usually somebody in each bureau submits that report and it's usually the person we'll have a dialogue with, you know, because a lot of times we get the report and we have additional follow-up questions and we'll contact them and I know each. Your offices, there are people who filled out the reports and we've had dialogue with and obviously happy to work with any bureau or office to talk about what Commissioner Fish has brought up and how maybe we could improve the reporting and approve the -- improve the feedback.

Fritz: Do any of the offices send a representative to the committee meetings?

Dutt: Yeah, we do have -- let's see, I know George Hocker comes to some of the meetings.

Cour: We had a representative from the mayor's office, a public advocate.

Dutt: I know Stacy Brewer came to some meetings. So --

Saltzman: I had a question. You're talking about sort of a uniform customer service response improvement approach and then mentioned 3-1-1. Can you give me a thumbnail capsule what 3-1-1 is. Is that what you're saying we should have?

Dutt: What the committee is saying we think there's value in looking at --

Saltzman: What is 3-1-1?

Dutt: There's two pieces, actually. There's the customer relationship management system. Which is sort of the backbone that a lot of cities use to build a 3-1-1 system off of. It's a phone number you can call. Right now we have city county referral, 823-4000, a mini 3-1-1, you call us and we help you figure out what you need to do. And what's different with 3-1-1, 80% to 90% of the time you call 3-1-1 and tell them your issue and they can enter your service request. Answer your questions and take care of it. Right now, they call 823-4000 and 80% of the time we have to transfer it to a particular hotline in the city or county -- we don't have the system to enter the service request and get it to the inspector or the dispatcher, whatever, with that one call.

Saltzman: 3-1-1 systems have that capabilities?

Dutt: Yes.

Saltzman: For the call taker to enter a work order or complaint?

Dutt: Uh-huh. That's based on the common customer relationship management system in place citywide. Right now, the bureaus have ways of managing those requests and tracking those requests and what the cities that have used the common CRM or 3-1-1 in conjunction with that, it's allowed for the bureaus to all be kind of inner-mingled with that common system. They may still have their own system to handle things but integrate with the common system so there's not as much duplication of efforts in terms of we dispatched two crews to the same problem. That sometimes happens or the sharing of information about a problem property or managing it -- whatever.

Fish: I visited a 2-1-1 call center a week ago, and I had a chance to observe live calls coming in and the calls that I observed had to do with food, hunger. Shelter and energy assistance. So there were people that were trying to get emergency food, people at risk of having their electricity shut off or looking for shelter and they have these highly trained people that help folks navigate through opportunities at the city, county, or nonprofits and faith community providers and actually diagnosed the progress and give people referral information and they do a follow-up. They actually call people back as part of their quality control system to see, did you get the relief you were seeking and the like. And plus, their databases are regularly updated and it's an interesting system. I guess I hadn't fully appreciated how much of the city and county services are covered by 2-1-1, that would otherwise maybe come to an individual commissioner's office or to a bureau. And how effective they are at channeling people and it's updated with level of service and how many

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vouchers does someone have and how much food is left and what -- also, what's the most appropriate place for people to go. Asking questions like, do you have a car, are you dependent on public transportation and thinking about distance and childcare issue, it's extraordinary. I've -- we fund 2-1-1 and it's a great service, particularly on the housing side, but I'm impressed at the scope of the work and how customized they can deal with people's concerns.

Fritz: When commissioner Leonard was in charge of the bureau of emergency communications, he was interested in doing a 3-1-1 system. When I took over in 2009, it was the beginning of the recession and we didn't have the money to expand the services and we were cutting. As we climb out of the recession, I believe as you said, commissioner Fish, it would be better to have a 3-1-1 system. It wouldn't replace 2-1-1. That could continue to be for social services but the one number for people to call for nonemergencies in the city of Portland, Portland development commission and others. My office will pull together a taskforce to look at what a system might look like and how it might be organized and how much it would cost so that when we have resources we're ready to move on that. The reason it's connected in some ways with emergency communications bureau is that we get a lot of calls and it's the same operators who answer 9-1-1 as answer 823-3333. And research has shown that people are much more likely to dial three numbers than 10 so we would be able to get people's calls directed much better and it will require a lot of prior work in the city to make sure that our answers are standardized and it's clear who can answer the question and what the question will be. I think there's a opportunity before we can purchase the software and do the reorganization that we would need do that, to look at customer service and how to prepare for that 3-1-1, but I would appreciate to purchasing the system and reorganizing in that manner and I invite you to send representatives from your offices to our taskforce.

Fish: Any further discussion. Is there a motion to accept the report? Excuse me, any testimony?

Parsons: Ben McKinley signed up. I believe he's gone now, he spoke earlier.

Fish: I'll accept the motion.

Fritz: Move to accept the report.

Leonard: Second.

Fish: Moved and seconded. Call the roll.

Fritz: I need to commend the revenue bureau and parks and recreation for getting a perfect report card. Which shows it can be done. And I very much appreciate the work of the committee. It's not your primary job for any of the member to serve on this committee but you're diligent on giving us a report and suggestions for improvement and I've used your advice to improve the operations in my office. And I will continue to do so. Thank you very much. Aye.

Saltzman: Well, thank you for this thorough report. I will take your recommendations to heart about my office in particular, and how we can do better with the next scorecard ourselves and I do -- as commissioner Fritz noted, the omf revenue bureau and the parks recreation, seem to have done everything and gotten good accolades and they deserve that. Thanks for your work and alisa, I want to thank you for your fire and rescue newsletter and it's nice to have a face that goes with the name. I get that every month and now I know what you are.

Fish: It gets heavy on Randy Leonard. People are probably more interested in the rank and file.

Saltzman: No it's well done.

Cour: I'll take that into consideration for the next issue.

Saltzman: Thank you for your work. And you guys do a fantastic job. Thank you. Aye.

Leonard: Thank you. Aye.

Fish: Thank you for an outstanding report. Thanks to George Hocker from my office for participating. We've actually done something new and different and it's in part based on the interactive process. We had a public advocate before in my office. Now we have a dedicated person who handles constituent communications. And between the two of them, they're -- you know, spending the bulk of their time addressing concerns that come in, playing traffic cop, getting

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responses, bird dogging problems that come up and, you know, it's a process of continual improvement and we have a lot to learn. Thank you for your good work. Aye. [gavel pounded] report is accepted. Thank you very much. We have another time certain this morning. At 10:00. Sue, please read council item 56.

Item 56.

Fish: Thank you very much, I have a brief opening statement. Mr. Dougherty, if you would please come forward. Welcome. Let me just tee is up as follows: Mayor Adams sends his regrets. He had hoped to be here to formally move your nomination, but he's traveling in Washington d.c. today. Because there's a board meeting scheduled for January 24th and a desire to have a full complement, he's asked us to proceed with this manner on your nomination. I want to begin by thanking the commissioner liaison to fpd and our commissioner Dan Saltzman for his leadership on charter reforms in the past and continued work with the fund today. The fpdr fund was established for the benefit of Portland fire and rescue and the bureau of police in the city of Portland. In June, 2006, the city council referred a series of charter amendments, reforms to the fpdr fund and approved by the voters in November 2006 with an 81% vote. One of the charter amendments that was approved by the voters was the appointment of a five-person board of trustee, including two citizen trustees and that's the position you've been nominated for. Today, the mayor brings forth his nominee for filling the open citizen trustee position for the purpose of serving the remainder of term of former trustee Jeffrey Robertspm. December 21st, 2011. When the --

Saltzman: 2012.

Fish: 2012? 2012.

Parsons: 2013.

Fish: I was going to say, thank you for your service. Through 2012.

Parsons: 2013.

Fish: 2013. I think I need a new set of glasses. 2013. When the mayor was looking for a nominee, there were certain criteria he applied. First, he was looking for someone who has a significant experience in pension and actuarial work. That the charter specifically identifies as being a criteria for the citizen trustee. Second, looking for someone with the analytical skills matched by an objective approach to problem solving, and finally, looking for someone who could understand all aspects of the fund, including how it could be a good steward for current and future generations of fire and police workers. Needless to say, the mayor also wanted to ensure his nominee would have broad support of his council colleagues. In Dave Dougherty, we have a gentleman with over 30 years of pension experience, including consulting on two taft-hartley pension funds one with the brick layers and the other with the Oregon foundry workers and Dave and I had had a conversation prior to his nomination and I was impressed with the breadth of his public and private experience and frankly, his work on a taft-hartley fund. That is a -- taft-hartley fund. Looking over two and a half decades, the skills you need to have an effective taft-hartley fund is the ability it work across the aisle. They're not successful if labor and management gets their way. They work effective when labor and management come together for the benefit of the employees and the eye on the long-term health of the fund and the fact you've had that particular experience was noteworthy for me. We're grateful that you've considered -- you have agreed to have your name placed in nomination. This is a significant undertaking. And Dave, I welcome you to say a few words about your experience and why you're interested in serving.

Dave Dougherty: Thank you very much. I'm Dave Dougherty and just a little bit about me. I've been a resident of Portland for 35 years, I think, now. Having come up from California to attend Lewis & Clark college. Anyway, I have operated businesses in the Portland area for about 18 years or so. My profession is as an actuary. And also an enrolled actuary under ERISA. My practice has -- most of it related to retirement and retiree health plan as consultant to the plans and worked with corporate sponsors of private pension plans and sponsors of 401(k) and defined contribution plans

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and public sector plans and taft-hartley or joint trustees plans as well. I think I bring to the board, obviously, a lot of experience from the actuarial and number crunching side and over the years, i've had the opportunity to experience and come to really understand how these plans operate and their purpose and I think I mentioned that to at least one of you in private interviews that, I always fall back to the primary objective these plans. And that is to provide security in retirement or security in disability, etc. And I think when you have that perspective, you find that a lot of things can be done. I work with taft-hartley, you know, contrary to a lot of public perception, my work has been an experience and observation that the trusts work well together because the people, regardless of the position they're coming from, are there for the same reason, and that's to, again, provide security in retirement. I think that -- you know, in addition to the experience I bring those observations and a willingness to work hard. I mentioned also that I do a bit volunteering and have done quite a bit in the community but this will be the first time i've been able to bring my professional experience to a volunteer opportunity so I look forward to doing it.

Fish: Thank you very much. Council questions? I think you've met or had a conversation with all of my colleague, so they've had a chance to pepper you with the tough ones. I would like to -- before we proceed to a vote on your nomination, I would like to announce, from the mayor shared with me and ms. Deckard shared with me. As we know, that yvonne is retiring this spring, but and served as the chair of the fund, but the mayor asked her and she's agreed to continue serving as the chair through the balance of her term, december 31st, 2012, at which time, the council will then vote on an successor to yvonne as the chair. So thank you both for your willingness to serve. And has anyone signed up to testify?

Parsons: No.

Fish: If you could please call the roll.

Fritz: Thank you very much for your willingness to serve and yvonne, willingness to chair the committee. You've been a strong voice for reason and for balance on that. And it's my understanding that two of the -- the five-member board are nominated by the police and fire bureau and two are at-large, nominated by the council as a whole in working with the mayor and the mayor appoints the chair. So it's important to me that you're going to have the balance and that you have the experience to be one of the citizens at large and I greatly appreciate your service. Aye.

Saltzman: Well, I want to thank -- first, yvonne for agreeing to -- she's done a great job as chair and agreeing to continue as chair of the committee for the rest of the calendar year, thank you for that. And mr. Dougherty, I did meet with you and I think that what -- there's a certain creative tension with the new reformed fire and police retirement fund and the board. And that creative tension is reflected by the fact there's two union seats and two citizen seats and then the mayor's appointee and it's -- I think you have what's most important to me, you have relevant experience, being an actuary for over 30 years. And you're impartial and you have -- have the ability to be impartial and you understood that the responsibility of the board of trustees to the beneficiaries but the citizen members have to bear in mind the obligations and responsibilities to citizens and taxpayers and I don't think we would have had the tremendous 82% or 81% of the reforms in 2006 if it weren't for the fact when people get their property tax bills they're pretty irate about a large amount. About the second or third line item on their property tax bill, the fire and police retirement fund. And I know you'll bear that responsibility and acknowledge your role is also to represent taxpayer and citizen interests on this board and pleased to vote yes.

Leonard: I, too, met with mr. Dougherty and appreciated our meeting and at our meeting, I don't remember if he asked for advice or suggestions but I gave my own experience as a member of the council as an example. I have a background in representing firefighters and I have a background in the labor movement. But i've never been unclear in my mind what my role has been, either here or any position, whether in the legislature or myself as a member the fpdr board. When a case presents itself to me, using my best judgment to decide the case and that hasn't always put me in good stead,

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when people had a certain expectation how I would vote. I said to them and would tell you now, that's the obligation one has in a position you're in. And for example, in my last reelection because I used that screen to decide whatever it is that i'm -- that i'm voting on, the firefighters' union refused to endorse me last time I ran and why that stung a little bit in the longer term, it actually vindicated for me that I do do the best I can and that doesn't always mean that people that have a certain expectation how i'll vote will get what they want and there are replete other examples where unions filed grievances and unfair labor practices since i've been on council as a direct result of what I think is my obligation, to use my best judgment. That's what I would say to you. Don't let anyone pigeonhole you or pressure you, you know what you know and here in front of us after quite a vetting process because he expect you to do nothing more than use your best judgment. I appreciate your service. Aye.

Fish: I enjoyed our chance to talk about your interest in this position and -- and I appreciated our conversation. This is one of the toughest assignments, I think, in our city. The stakes high and there's a lot of eyes on what you're going to be doing and the decisions impact people's lives. What impressed me was the breadth of your professional experience. Your desire to be involved at a higher level in public service. And frankly, I can't remember the last time when something like this where I received not a single criticism from anyone from the public. Maybe we didn't get the notice out widely enough but i've not received a single comment from any person objecting to your nomination and that doesn't always happen. Thank you for stepping up and agreeing to serve. Whatever my office, my colleagues' offices, whatever we can do to make you successful, don't hesitate to call on us and we look forward to working with you as an move forward. Aye. Your nomination is approved. Congratulations.

Fish: Thank you. [gavel pounded] sue, that concludes time certain, we have two items on the regular agenda. Sue, please read the first item, number 70.

Item 70.

Fish: Welcome back, ms. Deckard. What do we have before us.

Yvonne Deckard, Director, Bureau of Human Resources: Good morning, i'm yvonne deckard, director of the bureau for human resources. In 2008, the city council passed the current affirmative action plan in which we're required to file with the federal government and that plan had a life from july 1, 2008, to june 30th, 2012. So what i'd like to do today, what you have before you is an ordinance to extend the plan for an additional year. I want to give you a quick report how the plan has -- the accomplishments of the city under the current plan for the last couple years for f.y. '09-10 and '10-11, we're still pulling up our data. Won't have that until the end of the fiscal year. But in f.y. '09-10, we saw a 209 new hires into the city and last year, saw even though we had a hiring freeze, we saw 345 new hires into the city. We didn't have the hiring freeze last year, it was 2009, that's why the number is down. Out of the 345 new hires this past fiscal year, we actually only increased the workforce by 62 new employees and so a lot of those new hires were not new positions to the city. Only 62 of them were actually new positions that resulted in an increase to -- to our overall numbers. But out of those 62 new positions, 52 of those new hires were protected class majorities.

Fritz: Give me that number again, please.

Deckard: Out of the 62 new positions, to our workforce, increase to our workforce, 52 of those new hires were ethnic minorities into our workforce and represented a 15.1% increase of total new hires into the various eeo classes.

Saltzman: Out of 345 total new hires.

Deckard: Ok. We had new hires and we have replacements. Out of the actual new hires, actually 62, so 62 new positions added to our budget that were brand new to the city, 52 of those were protected class employees. Ok? That represented an increase of about 15.1%.

Fritz: Were the rest of 345 transfers?

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Deckard: They were -- yes, they were either transfers and promotions, but, you know, different -- other different categories and so i'm going to get to the promotion piece also. What that breakdown for us would be, we saw an increase for our various categories. 2.9% african americans -- sorry, not african americans, but blacks because there are a difference. African americans are included in the category of blacks but not all blacks in that category or african americans. 5.8% hispanic, 3.5% for american indians and native -- alaska natives, it was .6. Pacific islanders, .6. And for what we have a new category that the feds came up with, two or more, 1.8. 39 -- as far as promotions are concerned, we had an increase of 17.8% of our promotions were ethnic minorities and 36.5% were female. In our promotions and what we measure is two things, not only who are we bringing in that's new, but how are we actually promoting and growing individuals employed in our eeo classes that are currently here. The reason that's important, any time we go through budget cuts in our system because we cut according to seniority so the last people we bring in are going to be the first people we take out. And it's always very important measure for an organization to also look at how they are promoting, you know, employees throughout our system and moving people up. So to have that increase, 17.8% for minorities and 36.5% for women, was a real accomplishment for us.

Fritz: Can you tell me -- sorry to interrupt but I need to understand that statistic. What's our overall level of minorities and women within city employees?

Deckard: I -- our overall minorities, 19.5%.

Fritz: And women.

Deckard: Female, 22%. Well, 2000 -- sorry, from -- from '10-11, last fiscal year, the last snapshot we have because we've completed that, we have 18% minorities and 31.1% female.

Fritz: Wow, thank you.

Deckard: These numbers are important to us, because as council knows we've gone through some pretty painful budget cuts and it represents bureaus and we worked hard to maintain and to look at our cuts in more than just financial ways and make sure we have that diversity throughout our organization and we're maintaining our diversity throughout our organizations. We actually took a different tact when we put together this last affirmative action plan. I'll step back a little bit. Before we put together the plan, the council adopted the diversity development strategic development plan that h.r. Put together and called for a different approach to diversity and there's a huge difference between diversity and affirmative action. Affirmative action is a legal program that requires we go by a government census concerning the number of work-ready individuals we have in our area. And being able to reach parity or make sure we have parity with representation to those numbers. Diversity takes us farther. Being able to look at your organization and see your progress and not have to -- because you can reach parity and -- in Oregon and in our area, and some of our eeo classes we could hire a quarter of a person and reach parity, but that's not really a possibility so we try to set our bar higher and really try to make sure that we can hit categories and hit groups of people who may not be counted under the census, so for example, we have a large eastern european population, now, that's in Portland and it's important to us we have representation when people come to do business with the city. And that we make sure that all of our citizens feel included in our services and as we -- as we give services that they're actually able to -- to meet with people where they feel there's some connection. Which has been part of our desire and as far as our diversity program is concerned. So one of the things that our strategic plan for our diversity development called for was a more active -- more action and activity on the bureaus. And so we -- it called we do an environmental assessment each year in each bureau as far as diversity is concerned and making sure that our workplace and managers and supervisors are positioned to know how to manage a multicultural workforce and that we're actually going the extra mile. When we put together the last affirmative action plan, we're recommending -- that i'm recommending the extension on, we made sure we tried to couple that with our affirmative action plan. Rather than h.r. Putting together the plan, we worked collaboratively with every bureau within the portfolio and

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sitting with them and talking -- portfolio and sitting and talking how they can meet the diversity goals which calls us to go farther than the affirmative action goals. Each bureau took a role in helping us develop the plan and council adopted the plan in 2008, I think, we've been able to continue to make progress within this plan. The reason we're asking to extend the plan for a year, we've started our efforts in developing the office of equity and diversity, eeo, affirmative action, equity, all different things, but there's a common thread that goes through them. And so rather than to develop a new affirmative action plan at being so close to being on -- bringing on the new equity office and the equity efforts, I wanted to recommend we actually extend this plan for one year and get the equity office up and the equity director here and then have that type of input and participation within our next affirmative action plan, which will be enough three to five-year plan. I did not want to go out with a three-to-five-year plan and not have the equity office have a role in putting the plan together. That's why i'm recommending we extend it for a year and we have to have an active plan in place. In we don't have an active plan, that compromises our ability to receive any type of federal grants and we have a number of them and we want to make sure we can keep those intact.

Fish: If I could, this -- your presentation raises an interesting issue in my mind, which is the difference between each of the three concepts you've identified. Affirmative action, diversity and equity. And in turn, the question of who takes the lead within the city on each of those missions. And as I have some sense, they're regulated differently and there are privacy issues as well as compliance issues. And as we go forward, yvonne, I think it would be helpful to understand where some of those lines are.

Deckard: Ok.

Fish: As we -- as we -- as a council give sharper relief what's an office of equity and what's the focus, there are going to be certain that are the province of h.r. And because of privacy and employment related issues they stay there and how does h.r. Interact with equity to make sure we're meeting and exceeding our goals and that's a good conversation to go forward so we're clear what the concepts means and who does what and how the office of equity interacts on all three.

Deckard: I agree. For the affirmative action and the eeo part, which has different legal criteria, that's the piece I see as really staying under the h.r. umbrella. I would not for lack of a better term, those things are very cumbersome and very legal-driven and there are certain things that have to be done and you'll spend a lot of time just doing that and I see equity and diversity as being very interactive, as functions where you have to get out and interact with your communities and businesses and with your citizens. As well as with your bureaus. In order to do that and -- and my recommendation is going to be things like the diversity -- the citywide diversity council we've put together and worked with, that that shifts to the equity office but a lot of our diversity efforts which really works hand in glove with equity is a good -- you know, those functions shift. But even shifting those functions, yes, h.r. And the equity office has to be a hand in glove, you know, relationship in order to make sure that one, not only we are accomplishing both of these, but accomplishing both things well.

Fish: Thank you. Other council questions? Ok, so you'd like a vote on this so we'd be extending the plan for one additional year.

Deckard: Yes. Until June 30th of '13.

Fish: Sue, anyone sign up to testify?

Parsons: No.

Fish: Please call the roll.

Fritz: Is this an emergency.

Parsons: Nonemergency, it passes to second reading.

Fish: My apologies.

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Fritz: If I might comment. I wasn't clear on that either, commissioner Fish. So I do thank you for your comments about the relationship between diversity, affirmative action and equity and also yvonne, for your response. You have been so collaborative with the mayor and me in working on these issues to figure out what goes well and how they interact. That was helpful, commissioner Fish, that you explained about the issues with h.r. And some things that need to stay within those confines. And you also demonstrated what I have been hoping for with the equity office, this is all five members of council engaged in figuring out those questions of what goes where and how this works better. So that we get to better outcomes for all. I particularly am interested that we have overall 19.5% minorities and 31% women. I'm not sure what our population percentage of minorities -- adult minorities is in the city at this point, but i'm pretty sure that the population of women is close to 50%, if not higher. So clearly, we have still room to go in our work. And I want to recognize yvonne, your work over many decades here in the city has greatly improved our performances and set us on the path where the office of equity and human rights will get us over the hump, after a decade, and some cases centuries of disparity. I thank mayor Adams in abstentia for appointing kathleen saadat to work with you. She has also been extremely helpful on educating me about those three components and also how the city functions and how it can function better. Thank you very much for your work.

Fish: Thank you. This matter passes to a second reading. Sue, please call -- would you please read council item number 71.

Item 71.

Fish: Thank you. Before I recognize commissioner Saltzman, I have had an opportunity to talk briefly with the city attorney's office and with mayor Adams' office about this matter and I -- my colleagues know I was sick last week but I first reviewed this resolution yesterday. Mayor Adams cannot be with us today. He's the commissioner in charge of the bureau most impacted. I'm advised by the city attorney's office that the resolution raises some important legal issues. Including the relief beyond the power of this body to grant or would violate the law. It doesn't appear to be time sensitive, although it's an important issue, do any of my colleagues oppose delaying consideration of this until mayor Adams can join us and we can get further briefings on the relief sought?

Saltzman: I would oppose that, I think we're ready to go.

Fish: Other colleagues?

Leonard: I'm fine either way.

Fritz: It sounds like commissioner Saltzman would like to air at least his concerns but I do think it would be courteous to wait for the mayor to return before we vote on it.

Fish: I'm acting in his stead today and will be guided by what my colleagues want to do. I guess --

Leonard: I guess I would just in doing the counting here, I would add if you wanted to have a vote to postpone it a week, I would support that.

Fish: My preference, based on what i've learned about this matter in 24 hours and this matter, is sufficiently important it warrants a little more time, is that we would be better served by postponing it, but it would take three votes. I'm prepared to do that. Commissioner Fritz, I invite your views on this question.

Fritz: As long as -- yes, I will vote to support delaying it for I week. I don't see anything particularly time sensitive and I think it would be helpful to have a discussion with everybody here.

Saltzman: I would say in defense of let's do it now is this item involves really nothing to do with the commissioner in charge structure that's so often we -- we -- paralyze us acting as a city council. This is a labor agreement ratified by the entire city council. That's the issue here. I don't think we need the commissioner in charge doesn't really -- can add an perspective as another member of

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council, but this deals with something we approved and something that, you know, was very clear in the contract about fitness premiums being based on a physical agility test and I can read you the contract provisions, it's clear about a test to be offered one time per year. And it's gone through bizarro land and what was a premium for a select number has become an entitlement for every member of the police union.

Leonard: I would just say in response to that, it depends on what the goal is of the resolution. If goal of the resolution is to actually appropriately change how the police bureau is administering the physical fitness test, that's one thing. If the goal is actually to create a forum within which to argue a political point of view, that's quite another. As I understand commissioner Fish's explanation in his conversations with the city attorney's office, it sounds to me as though what he's saying is what I suspected when I read the resolution. While it makes for great public fodder, it's not a legal document with which in the state of Oregon, with the collective bargaining laws we have, you can actually require and legally impose a change on the interpretation of the contract where you have two parties who have signed it. So --

Fish: The language --

Fritz: I think that's key --

Saltzman: My resolution --

Fritz: I'd like to respond and have a turn to respond to what you said. We're talking about a contract that the council voted to ratify. A contract is a contract. A promise is a promise. We can discuss moving forward but I agree with commissioner Leonard that we can't unilaterally rescind it and the contract doesn't talk about a physical fitness test. It talks about a health and fitness test and a memorandum of understanding and specifies what that means. So we can disagree on, and I think many of us do, the principles what the premium pay has been given for. And we need to figure out how to move forward and it requires the mayor to be here.

Fish: If I may, since my comment is the triggering point. The last resolved specifically says the council rescinds a particular provision in the contract. That caught my attention, commissioner Leonard and prompted my referral to the city attorney's office and my understanding from the advice I got, that would subject us to both a breach of contract and/or an unfair labor practice. And I'll make a broader point, and it's not to the merits of commissioner saltzman's resolution. I'm proposing we postpone discussion of the merits. We can have a good discussion, it's not been our practice in this forum as a threshold matter to have discussions about our labor strategy. That's usually done in other settings. If there's a desire to modify our approach to this contract, then I would want a briefing by h.r., by the police -- by the commissioner in charge and the police chief himself, and by our legal team, to understand what our options are and what the legal risks of the options and that's my duty as a decision-maker before I can engage any recommendation that comes before council. What I'm only suggesting and raising this issue, is that if we do defer consideration until such time as we can get additional briefings and the mayor is present, I think it will be a more product I conversation.

Saltzman: My resolution speaks to exactly implementing what the contract says, and that's a physical fitness test. Or, a health and physical fitness test.

Fritz: It doesn't say physical fitness. It says health and fitness test.

Saltzman: Ok.

Fish: Your resolution put quotations around a phrase that doesn't appear in the contract. I don't want to debate the merits. It's not a forum we need to go back and forth. We need to be briefed and know our options and it's not our practice to do so in this setting particularly without mayor.

Saltzman: One of the benefits about the job we have is we can wake up in the morning and be mad as hell about something and that's how I am when I found out how this physical fitness test had become an entitlement rather than a premium as represented by the chief of police and the benefit of this job, you can be mad as hell and yet I want to find someone who can actually do something

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about that or try. And that's why I introduced in resolution. I'm really mad. How something that can be so clear in a contract, can go through a bizarro land and end up an entitlement payment and not a physical fitness test as we were told by the chief and the h.r. Director and the testimony, it was a fitness test. To be administered once a year. And I can read the testimony. And so i'm sure we can wait a week and we'll be all lost in legalese and collective bargaining-ese and dazzled, but sometimes we need to reach out and react as the public reacts. Angry about this.

Leonard: Before the motion, I mean, you're right. I mean, we're each human beings and we wake up and hear and read things and become mad as hell. But I find it particularly incumbent upon me because i'm one of five members of council, to make sure I don't make decision being mad as hell. I like to be right and not have something come back and bite me because I made a decision that was emotionally based. I'm not a lawyer but negotiated a lot of contracts and been in front of the employment relations board a number of times at arbitration board. The other side usually comes forward because they're mad as hell and what you're doing here, while it might make good copy in the paper, puts the city in a position of not only having to comply with the contract but pay the Portland police association's legal fees in addition. I have gave this speech before and we ended up doing what I predicted would happen. You like those examples, I can give them and they can be included in the article tomorrow. But this is not the way to do the business of the city. To wake up mad as hell and file something that our legal team will tell us is not an appropriate convenient renew to seek redress, h.r. Will tell us that and the Portland police bureau will tell us that. I'd rather be methodical and get to where you say you want to get and have it stick rather than doing something that ends up having us to agree to a fitness test you don't agree with, but then costs us money in addition to that, by paying the other side's legal fees.

Fish: If I can reclaim the time as acting chair, i'll entertain a motion to defer consideration of this resolution until a date certain.

Saltzman: Next week or a date certain?

Fish: I'm -- for someone to make the motion.

Person: Commissioner Leonard is away next week.

Fish: What's the next.

Parsons: The next week is february 1st, the mayor arrives at 10:30.

Fish: Ok.

Leonard: I'd move to postpone until february 1st, after 10:30 a.m.

Fritz: Second.

Fish: Is there a second.

Fritz: Second.

Fish: Council discussion?

Saltzman: Well, i'll oppose the motion, if everybody thinks i'm irrational, all i'm asking is for you to indulge me for 10 minutes, we have the key players in the audience who can try and explain to me how we ended up from premium pay to an entitlement which is going to cost us more and totally inconsistent with what was presented to us. They're here and they can shed light. I'm mad as hell and I think citizens are mad as hell about this as well. You can indulge me for 10 minutes, I don't think this resolution will pass, or we can let this fester until february 1st and -- yeah. Things won't be any different.

Fish: Sue, call the roll.

Fritz: I hear what you're saying, commissioner Leonard -- I mean, commissioner Saltzman. I think there's been some airing of what some of the issues are. I bear some responsibility. I voted on the contract, so did you. I didn't go back and ask what was meant by the health and fitness test. I made an assumption which turned out incorrect and I would like that changed in the next contract. Having said that, I voted for the contract and i'm not going to vote to unilaterally rescind it, it's clearly illegal and I think it would be helpful to have more discussion over the next couple weeks,

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what we can do moving forward to recognize this wasn't what I was intending when I supported the concept of the fitness premium. And if there isn't anything we can do now, having signed that contract, what do we do moving forward? I'll note that the provision is just for this contract, it was intended to be a pilot project. As the commissioner in charge of wellness, I'll look at how to make lemonade out of lemons, as to what information has been granted can give us that what may prove to be cost effective, if it provides incentive not for fitness, what's in place is not a fitness test. But it's a health and wellness test and there may be benefit to finding out whether a financial incentive would change behavior so we have lower healthcare costs which was the intent -- part of the intent of the original motion to put this health and fitness pay premium into the contract. So I do think it would be helpful to have more time and that's why I'm going to support the motion. I share the concerns -- many of the concerns and yet a contract is a contract and a promise a promise. Aye.

Saltzman: A contract is a contract and a promise is a promise. A contract says that the bureau's health and fitness test will be administered once per year. And it is represented to us this would be based on the Oregon physical abilities test used by the department of public safety standards and training. We've ended up instead with something that was supposed to be an incentive, something that now any member who gets his finger pricked or his or her blood pressure taken and body mass determined any time, you go to a qfc or fred meyer pharmacy, any time, not once a year, bingo: \$800 minimum added to your premium pay and that to me is not what was meant by this. I believe the contract is the contract and what we agreed to and all the legislative history leading up to it suggests what we have now is not what was agreed to in the contract. I look forward to the discussion next week. I -- I will vote no because the discussion should go ahead. But we'll deal with this on february 1st. No.

Leonard: There's not many times when someone says let's have a discussion and have it out that I don't agree to that. And this will be one of them. That I will take you up on that offer. I think what we've allowed to have happen here today is a one-sided discussion that misrepresents not only what the contract says, but what some of our intent was when the contract was passed. I will agree to this motion later on in discussion. I don't recall ever in my political life voting against a motion that I made, but I'm going to do that now. So we can take commissioner Saltzman up on his office to have a full discussion today. I think it's in the public's interest, given the one-sided national of the discussion so far. We have chief reese here and yvonne and daryl, to have at least a discussion, we don't have to vote on this today. We can vote later but I think it's in the public interest given what has been said for the record to be clear. No.

Parsons: That was a --

Leonard: No.

Fish: A no.

Parsons: Thank you.

Fish: Aye, the motion fails. [gavel pounded] commissioner Saltzman.

Saltzman: Thank you, mr. President. Well, I use the phrase, mad as hell and I think everyone knows the famous movie, I believe it won a oscar, where jason robards, a news anchor is fed up with the corporate control of the news and he's urging everybody on camera to go to their window and raise it and shout, "I'm mad as hell and not going to take it anymore:" that's where I'm at today. Last february, this council approved a collective bargaining agreement with the Portland police association. One of the clauses in that agreement called for officers to receive a 1% premium if they passed a health and fitness test and as I said a minute ago, to be offered at a location once per year. It was our understanding and the public's understanding that officers would have to pass a test that tested their actual physical ability to do their jobs. A test similar to the Oregon physical abilities test that the state dpsst recruits. It gauges one's ability to walk, climb, carry, run, pole, jump, lift and push. We were told the premium was an incentive that would apply to a certain limited number of officers. And again, in the transcript of july 2nd when council voted to approve

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the contract, yvonne deckard explained in the contract and -- said the chief was real concerned about officers' fitness. And as an industry standard we noticed a lot of Portland police, and I think there's a mis-word here, but a lot of police forces were offering fitness premiums so we 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 were able to pass, then for that year, they have a 1% premium. That's what was explained to us. That's what we voted on and I discovered recently, as did the public, what was the incentive for a select few has become an entitlement for every member of the police union. Now officers are eligible for the 1% premium if they show up for a simple screening, so many have showed up, 91%, that the bureau's premium pay budget is already in the red. This is far beyond what we estimated, omf estimated the cost of this contract. To my mind the current test is laughable compared to what we passed in the contract and it's a slap in the face to the public who is paying to are this premium and I believe its a slap in the face to the council who was told something completely different when it approved the Portland police association contract. This is not what I or the public expected to occur and I believe we should not pay a health and fitness premium until an actual physical fitness test is required. I feel duped by being told one thing by two bureau directors and having an agreement behind closed doors contrary to what I was told. I plan to make changes in the city code to ensure this cannot happen again. That will be a later action I hope. In closing, it's just -- we need to speak clearly and consistently and if we didn't understand, if the council wasn't told of the nuances about overtime, on time, fpdr payments, if no one anticipated that when selling this to us, what's going on here? And that's what I want to know. How did we end up in a situation where something so clear ends up being something so different and all the issues raised apparently by the union about overtime, and -- they were not anticipated, we passed this in march, I believe the union filed a grievance, february, the union filed a grievance on this in march. Why is this not an actual fitness test and what's wrong saying now as a council, the same four or five people that unanimously passed the agreement, you know, saying this was what we meant and we want what we meant. So yvonne, I appreciate you being here. I know you were -- yeah, and I should say my anger means no disrespect to the chief or yvonne deckard or daryl turner, but i'm angry about this.

Leonard: Could we have chief reese come forward as well.

Fish: Chief reese, if you would come forward. And -- whoever would like to proceed?

Yvonne Deckard, Director, Bureau of Human Resources: I'll start, because I believe this is my responsibility. I am the chief spokesperson for the city in all contract negotiations. And any time that we're at the table, our goal is always to get an agreement. But the last time we were at the table with the ppa, the last time we were at the table with the ppa, one of the things that the chief and I discussed was that he came to me and said, you know, that he would like to actually try -- to have us consider implementing a health and fitness, you know, premiums and program. And our discussions were very incomplete. That the chief and I discussed this, I had not really thought about doing this or heard of doing it, so I asked him, how did he envision it working. We talked about it not being at the olympic criteria. For individuals who get the physical activity through swimming or running or weight-lifting or cycling, that we could set up that type of an activity so over the year, they would engage and having an incentive to engage in those activities in order to keep healthy and fit. So we knew this was going to be a first for the city of Portland and that it was something we wanted to try and that we were going to have to work out what the parameters would be. And so I then put this on the table when we were negotiating in executive session, I did recommend to council that we -- that we try this. I believes it was supposed to be a health and fitness -- you know, program, that we wanted to at least try for the life of this particular contract. Any time we are adding new things to a contract, oftentimes, how we believe that implementation will look oftentimes is not how the implementation looks. It's new, it's things we've never done. We try to anticipate all of the things we think we will have to put in place in order to successfully

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do that. As we try to actually implement, there are things that neither side thinks about in order -- in order to move forward. Give you examples. When we negotiated healthcare for seasonal maintenance workers, we had an unintended consequence of those individuals, employees, losing their healthcare coverage under the Oregon health plan and it was my job as h.r. Director to figure out how we implement that without having that unintended consequence. With pager pay, an arbitrator gave that to the ppa member, how the arbitrator gave it would be very costly for the city, not what we anticipated. As h.r. Director, i'm sitting with the bureau and union and trying to get the spirit of what we've agreed on implemented without -- and, you know, looking at it and in a way that we -- that's cost-effective for us, the coppea training fund and the extra holiday, all of those -- all of those provisions, oftentimes caused me to go back and sit with the union and bureau because we may get grievances to figure out how do we rectify that and still maintain the spirit of what we were trying to accomplish. When I first became h.r. Director about 13 years ago, when this happened, I actually kind of did a walk-through and from the council members, basically got the -- yvonne, that's your job. Go do it. And so i've never come back to the council on any of these issues, i've taken it to be that it's my responsibility to make sure we can implement it in a way that's cost effective and feasible and in the spirit of what we're trying to accomplish and what I said to council we're trying to do. I looked at this fitness -- this health and fitness program and premium when we got the grievance in the same light. Some of the issues we ran into was how do we actually implement this -- if we were going -- we decided to try and do an agilities test. So how do you implement that? We don't have a facility where we can set up and -- and a fitness agilities test for an extended period to get through a thousand people. We actually collaborate with the blazer boys and girls club and pcc cascade to work with those organizations to get space to set up the program.

Leonard: Ok. I'll interrupt here. So you're referring to a program. Did you have a specific nationally accepted physical fitness program you intended to have people go through?

Deckard: No.

Leonard: What was the program you envisioned?

Deckard: We envisioned, in the end, a physical agilities test, an obstacle course that we felt would be similar to what officers do when they go to training.

Leonard: And what is that, chief reese, when you have an officer that you hire? What is that they have to do?

Chief Mike Reese, Portland Police Bureau: We do a test of job-related skills, an obstacle course that has officers going through a coned course in a timed fashion.

Leonard: Running?

Reese: Yes. Up and over stairs, over a hurdle, carrying or pulling a dummy to simulate an officer rescue sort of situation. It's something we test all potential police officers for, and there's a timed test. It's a pass/no pass test.

Leonard: What you envisioned was taking that test to have officers that were members of the ppa pass that same test to get the 1%?

Reese: Correct.

Leonard: The logistical problem was not finding a place for it?

Reese: There were a number of issues that came out when we started to look at having 1000 people go through that testing process. Some of them were the venue. We currently do in-service training at east precinct in a classroom there, but there is no indoor space where you could set up an obstacle course, so we looked at the powell center and also the boys and girls club, neither of which is close -- particularly close -- to east precinct.

Leonard: Is there a reason it has to be indoor?

Reese: Well, given it's an obstacle course, outdoors in a day like today, we're currently having in-service going on right now, but being outside doing an obstacle course in this type of weather

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would be problematic. The test itself would take probably five minutes for officers to go through, but there's a period of time where you're standing in line waiting. You've got people that are conducting the test out there all day in the elements.

Fritz: If you had the new training center, you could put it there?

Reese: We would anticipate doing those things at the training facility.

Fritz: Is the time the same for male and female officers?

Deckard: No. Initially what we would do is the time for a male officer was set for -- by the bureau for four minutes. For females, it would be four and a half minutes. We know that's a violation under ada. I informed the bureau of that. We would have to set the same time, which means that, in order not to have an adverse impact on our female officers, we would have to move to the four and half minutes for all of our officers. I think the bureau's concern was that that's not as much of a challenge for the male officers, but you have to balance it under ada. We'd have to go to the larger time, the longer time.

Fritz: If you were trying to go for fitness, why didn't you go for something like a treadmill or where they pick their machine and then you measure heart rate and blood pressure at beginning and end of exercising?

Reese: Again, some of it is venue issues. When you've got a staff that works 24/7, you've got to have testing processes. It came down to the crux of the issue whether it's on duty or off duty. If it's off duty, it's much easier for us to administer the testing process and to select the venue and have people show up and have set times. If it's on duty, to guarantee that nearly 1000 people are going to take the test on duty, it's cost prohibitive.

Fritz: Don't your offices have annual in-services?

Reese: They do. For this year, the in-service had already been set. We had contracts we signed with some of our instructors as well as for us, some of our in-service classroom activities are mandated by state law, so we have to have officers go through it. Again, when you look at the logistics of having that many people take that test, you pull people out of a class to take the test. They're missing part of the instruction that's going on around maybe a mandated subject. Plus you're paying instructors to be there during in-service to administer the test as well as the training staff for the in-service. And the venue really became problematic for us when we're doing in-service classes in the east precinct. There is no place there to conduct an obstacle course.

Fritz: But there's a community center there where they could run on a treadmill.

Reese: Again, you have to rent that facility, and you have to leave the testing -- it depends on the nature of the test. If you're doing a treadmill test, it's problematic. All of these of things we discussed.

Saltzman: I don't would not dictate whether it's treadmill. It's clearly meant to be some sort of an agility test. I'm mystified is how do all these issues about venue, how much time it's going to take - - how come none of this was discussed as we were deliberating on this contract revision? How come none of these issues were even thought of at the time?

Leonard: I'm sorry to interrupt. I had a line of questioning. I was trying to identify the issues before we start nit-picking apart what we think. I'm trying -- I actually have a process in my mind that i'd like us to try to go through to identify what the issues are. I, like mr. Saltzman, don't want to second-guess what the physical fitness test would be, but on the place of venue, I would like to discuss that with you further privately, because I think there are some opportunities to do that if we're a little more -- well, I would just like to take an opportunity to assess that with you, because I think there's some solutions there. So the venue and then the on duty or off duty. Was that an issue with the city or with the union?

Deckard: Both. From the city's standpoint, we believe that this would be an off-duty test. The union believed that it would be an on-duty test. Sorry. Yes. It would be an on-duty test. When I went back and looked at our bargaining notes and looked at the discussion around it, it was

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ambiguous even though, when I had had the conversation with the chief and I had had the conversation with the union away from the table, what I actually described to them was the chief's and my initial conversations about various types of activities. Clearly, if people were engaged in a fitness activity for an extended period of time like swimming, biking, hiking, whatever that is, then clearly that would be on the employee's time.

Leonard: Getting in shape.

Deckard: Right.

Leonard: But the issue here is four and a half minutes. So if you had an in-service -- this is an unusual forum in which to have this discussion. We'd normally do this in executive session. I'm going to say things here normally we'd talk about privately. If the issue is having officers go through a four and half minute test and it's pass/fail, I participated in exactly that kind of a test, and it literally just takes as long as it takes for you to get there, go through it, and leave. I'm assuming, if we could identify a venue and i'm assuming, if we can marry that up with an in-service time, we might be able to get over whether it was off duty or on duty.

Deckard: Yes.

Leonard: I'm not talking about preparing one's self. We're not going to pay people to work out to get ready. I agree with you on that. But the test itself, I don't find it completely unreasonable for the union to say this is a collective bargaining agreement for a certain level of fitness, and all of our other in-service requirements, whether it's shooting or whatever, we are tested on duty. I don't find it completely irrational to suggest that the test should be on duty. I don't think the amount of time it takes would be that much of a burden on us.

Deckard: I think the chief is right. We were having a problem coming up with the venue. Their in-service contracts had already been signed. They already had those classes and things that were state-mandated in place. So it became a logistical nightmare for the bureau to try to figure out how to do this for the first year.

Leonard: Understood. What i'm suggesting to you is let's just say hypothetically you were able to identify the venue you were comfortable with and married that up with whatever the in-service was. The amount of time that it sounds like it would take for an officer to get through the test wouldn't be enough for us to insist that it happen off duty. I'm assuming that we'd be ok with that.

Deckard: If we could work that out, we would have been ok with it. So we would have to come up with a window broad enough in order to not have officers coming in and just waiting in order to do it.

Leonard: Understood.

Deckard: When we got into those discussions about the actual test being four and a half minutes but people getting there, getting ready, getting prepared, that four and a half minutes or the actual time that the officer was there stretched out. Under the police contract and how overtime is paid and the union has taken the position that this would be overtime, it would add a considerable amount of financial burden to the police bureau's budget.

Leonard: If we paid them overtime.

Deckard: Right. If we paid them overtime. Because we were having problems working through the overtime issue coupled with the logistics issue, I then at that point looked back at the contract and understood that what we had asked the union and the city and the council to ratify was a health and fitness test or program and so looked at how do we -- maybe we needed to take more of a health approach rather than a fitness approach at least for the first year because of some of those inherent problems that we did not anticipate would occur. And that's how we got into the type of test and the type of program that we have, which is still once a year. The officers go in a window of time between july and september, and they do their baseline.

Leonard: And the reason that you chose that was just for the two reasons you just articulated, the lack of venue and whether it was on- or off-duty?

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Reese: Running the testing process over the course -- for us to go, like, for in-service training, that runs for several months. Right now our operations branch is first. Then investigators go through their service. You're talking about venues that are set up for six months, seven months.

Leonard: Again it's more of a venue question.

Reese: And the personnel to do the testing.

Leonard: When an officer is on second night for example, works all night long and they have to do in-service, how do you schedule that?

Reese: We adjust their schedule for that in-service week.

Leonard: So theoretically, if we could address the venue and scheduling issues, you could theoretically have officers marry up what you originally envisioned with that and just have it scheduled with whenever they do their in-service.

Reese: That would be helpful. Again, when we were in discussions with the ppa and were talking about guaranteeing that 1000 people or nearly 1000 were going to do this on duty, you have officers that miss in-service training or vacation, so they don't show up for their scheduled in-service.

Leonard: Is that our problem?

Reese: We would still own it.

Leonard: Why would we own it if they didn't pass the physical fitness program?

Saltzman: Or didn't elect to take it.

Deckard: If they're not electing to take it because they have court duty, I imagine the ppa would argue that --

Leonard: I'm not disagreeing with that, but why couldn't we reschedule it so it fit with their schedule on duty.

Reese: Again, you're getting into the nuts and bolts of it. If that person we've adjusted their schedule to work second nights and from second nights they're working day shift for in-service, they miss the physical fitness portion of in-service, they want to take the test, but now they're working second nights. So do we set up then for --

Leonard: What happens when people miss in-service because of court? Do you reschedule the in-service?

Reese: It depends on what they missed. There are mandated classes that they have to be at and take, and so those mandated ones we do reschedule.

Leonard: When they miss the previously scheduled one that you expected --

Reese: We would readjust their schedule.

Leonard: Why couldn't we include this as part of that?

Reese: Possibly you could. It depends on --

Leonard: The venue.

Reese: And having the personnel there to do the test. You've got the instructors maybe teaching a blood borne pathogens class, and then you're pulling people out of that class to go to their physical fitness testing. You don't want 30 officers standing, watching one person do the test, 30 people in line. You would want them to be going through some other training, so you're pulling them out for that. So you've got training components for one class and then training components for --

Leonard: But basically you're having an officer with a stopwatch start and stop.

Reese: Actually, when we do it for new recruits, our personnel division probably has several people there monitoring the test.

Leonard: For new I understand, for existing, fire does this, they literally have one person with a stopwatch.

Reese: I'm not sure how many personnel necessarily it would take.

Deckard: I think, commissioner, a lot of what you're saying hits the nail on the head. Once we actually started trying to figure out how to do 1000 people and not have a venue that is constantly set up to do it and having people -- the right amount of people there with the stopwatch to actually

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do the test, it became logistically very difficult to figure it out and then to try to gauge what the impact of this would be on the mandatory in-services as well as the overtime costs. We were struggling with how to figure this out without having a training center where you actually have the venue in order to do it.

Leonard: Understood. But I would like to follow this conversation up with a private conversation, because I have some thoughts that might be helpful to get over this, because I don't think anybody on the council disagrees that the more optimum interpretation of this provision would have been to do what you envisioned to have happen. Having said that, I absolutely understand the logistical issues you're dealing with and some of the challenges to get it done. But I have some thoughts on how we might be able to do that that I'd like to discuss with you before we vote on this, because it would be nice if we had, in this forum, not just an opportunity to people to be mad as hell but to actually have a solution that people can agree to.

Fritz: Could I just ask a question on that? It's my understanding that the memorandum of agreement and agreement settlement, which was signed in June, which specified what the fitness -- health and fitness test means, so I don't know that we can change what that means.

Leonard: We can't this year probably, but when does the contract expire?

Deckard: We had a testing window this past summer, because this premium was only for the last two years of the contract. And so we are paying it for this year. The contract expires -- well, our testing window for last year for the premium is actually in April of this year, and that will determine who's eligible to actually receive the premium for next fiscal year. And with the taking the wellness approach, the first year was to set the baseline, and that's what the premium was paid for. And when we gave you the numbers, what I said was that H.R. had believed that 70% of the officers would pass. The budget office gave you a number of 100%. And so the number that we gave the council was about \$468,000. The budget office gave to the council a number of \$690,000. 91% actually took it, which totaled \$608,000. So the cost that we've actually paid in the premium is within the number that we had given council. The second year, they have to pass three out of four categories in order for the premium. In establishing the first piece, we know that there is a pretty high percentage of the officers that would not -- well, they are actually having to engage in some type of wellness and fitness in order to be able to qualify for the next one.

Saltzman: There's a possibility we could come back and address what you take for year two.

Fritz: No. It's in the memo of understanding. There was no need to do a baseline, because the second year isn't predicated on improving over baseline, so we could have set standards and said you either pass it or you don't this year.

Deckard: Yes, we could have done that. Our goal was to mitigate costs, reach agreement, not create exposure to our FPD&R. Not knowing what the baseline information was going to show us, we believed that that was a better approach. We know that, if anyone is injured doing the test, that that is an active of duty.

Fritz: But it's not an active test. It's blood pressure and getting your weight taken, so there's though potential for getting injured in the test.

Deckard: I was going back to what we were trying to do with the agility test. Once we get the baseline, we actually mitigated that out, and so we had officers on their own time to do the baseline with the second year having to pass three of the four categories.

Fritz: How many of the officers voluntarily took the same test under the city's wellness ram?

Deckard: No one. We didn't do the city's wellness test this year.

Fritz: Citywide employees.

Deckard: We didn't do the citywide employees test this year. That ended last year. Last year how many officers did it? That percentage was very low. We didn't have much participation from that particular group.

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Fish: I appreciate that this is somewhat an unprecedented proceeding. There are issues which we are instructed by the city attorney's office to reserve for executive session. When it comes to the performance of people to whom we delegated our responsibilities to handle certain functions, I am loath to have those discussions in a public setting like this. I want to establish some ground rules. First of all, as I understand the city code, we have delegated to you the authority to interpret and enforce collective bargaining agreements. That is correct?

Deckard: Yes.

Fish: And i'm referring to city code section 3.15.050.

Deckard: Correct.

Fish: There's a specific carve out in that part of our code that allows individual commissioners to handle specific grievances, but in general the code grants these decisions to you.

Deckard: Yes.

Fish: Each commissioner is entitled to weigh in on any issue that comes up. We have rules, but those rules are superseded, I guess, by whatever individual commissioner wants to do within reason. In this particular case of the revision in the contract which we negotiated, clause 65.4, which deals with physical fitness, did any member of the council ask you to come and brief them after it was negotiated as to the implementation?

Deckard: No.

Fish: Did any member of the council ask you to give a report about the implementation?

Deckard: No.

Saltzman: Do you feel an obligation when something that we negotiate that appears to be black and white and turns out to be very different and is going to cost more -- do you feel obligation to come make the rounds or have an executive session for cost?

Deckard: I would not have called an executive session, and I would feel an obligation to talk with the mayor about this because it's a police contract and the police budget. If I knew that a particular office had a particular interest in something that I needed to take a different approach in implementing, then I would probably go to that individual office, but I would not have necessarily made the rounds. For example, commissioner, I know that whereas drug testing has been extremely important to this entire council, it has been particularly important to you, and I think that I have had discussions with you about where we are, but I have not necessarily done that with the other offices.

Fish: Another example to that. I think it's an important point to make on the record. Through my exercise of my responsibilities, i've had occasion to talk to you about our policies about sexual harassment, and we've talked about ways of strengthening our policies and strengthening our protocols and our training. Frankly, I have a particular interest in that subject because of my past work and in my capacity as commissioner of the bureau. It's not my expectation that you would be briefing each member the council about my concerns about our policy or what I proposed until such time as it became a matter of council discussion. The code clearly delegates to you enforcement. Chief, the question I have for you is what has been your role in the preparation of the resolution that's before us today?

Reese: I don't think I had any role in preparing.

Fish: Were you consulted about the issue and the potential of solutions that we might pursue to address the concerns that my colleagues have this.

Reese: Commissioner Saltzman called me and indicated that he was upset about the testing -- the physical fitness testing and biometric screening. I appreciated his calling me to let me know that.

Fish: Do either of you know if our city attorney and the lawyers that advise us on these matters have been brought in to both opine on the resolution or to lay out options for the council to consider?

Deckard: I don't have any knowledge of that.

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Fish: My recollection is that, when it came time to discuss specific proposals, specific strategy, to discuss the legal risk of our position and potential consequences, intended or otherwise, we normally had those discussions in executive session. That is correct?

Deckard: Correct.

Fish: A specific part of the resolution that got my attention when I read it for the first time yesterday is the last resolve clause that calls on the council to rescind a particular benefit that's in the agreement. Now, just as a general matter, does the council have the authority to unilaterally rescind a benefit that has been negotiated?

Deckard: No. Not once it's been ratified.

Fish: And this contract has been ratified. Is there discretion unilaterally to reopen the contract that discuss any item it may wish to discuss?

Deckard: No.

Fish: Is the process of reopening a clause -- can it only occur when there's two willing parties?

Deckard: Correct.

Fish: You can go to our friends, our labor partners, and say would you willingly sit down to discuss this but other than that we can't compel that reopen?

Deckard: Correct.

Fish: What is the risk to the city of unilaterally rescinding the term of a contract it has negotiated and ratified?

Deckard: The union could file a ulp and ask the employment relations board for damages to be assessed against the city for not honoring the contract or following the contract.

Fish: I'm going to confess that, while I followed this issue pretty closely during our council discussions many months ago, until I saw the provisions of the collective bargaining agreement language, I don't remember really having a deep understanding of the specific language, so I went back and pulled paragraph 65.4. Does the phrase "physical fitness test" appear in the language of the contract?

Deckard: I don't believe so.

Fish: And I couldn't find it. Was this contract part of something brought back to the council for ratification?

Deckard: Yes.

Fish: After we authorize you to negotiate a contract, were the specific terms of that contract brought back to council to review and approve?

Deckard: Yes, for the most part.

Fish: I'm forgetting what our normal protocol is, but it's either at this time the contract is presented or, once it's been ratified, but at some point the council has to actually sign off on the contract. Is that correct?

Deckard: Generally the person that's signing off on the contract is the city auditor, myself, and the union.

Fish: What's the last event where it comes to the council for review and approval this.

Deckard: Once the union has ratified the agreement, then I bring forth an ordinance with the contract to council for the city's ratification process, and then I present the contract to council, usually presenting new language and changes to parts of the contract that we rolled over or articles that we did not make changes to i'm usually not including. And then council votes to either support and ratify the agreement --

Fish: And that's based on the full document being presented to council for our review?

Deckard: Yes.

Fish: I want to just ask you a follow-up question based on something commissioner Fritz asked you. Under the current system that you have implemented where there was, in the first instance, a

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test and it tested certain things, under what conditions would a police officer be eligible for a premium in year 2 when the test is administered in this case in april?

Deckard: Well, in year 2, the officers would have to actually pass three of the four categories that they're being tested in. And my belief was that, in order for them to -- for example, out of the 823 officers that actually took the test, 109 of them were at the most risk of what we would call very high risk in that they wouldn't have passed three of the four categories or would not have even passed four of the four categories. So the idea was that we would get the baseline, that we would get the information, the composite -- the information back from the test, and then we would have our healthcare provider channel the officer into wellness activities and fitness activities in order to help them improve their numbers so that we could actually -- so that we could benefit from that and they could benefit from that. We know that, with these types of numbers we're looking at, it would take about six to nine months or a lifestyle change but some type of long range change for an officer to be able to improve some of the numbers that we see. We have a window that will go from april to june to test again. And if officers do not pass three of those four categories, then they would not be eligible for the 1%.

Leonard: Even though they had received it the year before, they would lose it.

Deckard: Yes. They would actually lose it.

Saltzman: Do you have access to what information for each officer?

Deckard: We don't have individual names. We don't receive individual names because of hipaa information. We receive the composite information that says how the group has done, how many people are testing at what levels.

Saltzman: How do you take that information and decide whether somebody gets a premium, an individual gets a premium?

Deckard: Well, we know what individual passed.

Saltzman: You know pass/fail.

Deckard: Right. I would know that I failed because I failed to pass three of those four categories.

Fish: When you and I had this discuss yesterday, I found it enormously helpful, because I think there was misunderstandings of what we actually did. People are free to be critical of this system you set up. Everyone has their own opinions. But I think it's incumbent to understand first what the city did or didn't do first before one is critical. As I understand it, in round 1, the test that's already been administered, your intent was to get some baseline information.

Reese: Correct.

Fish: And your expectation was that most everybody who took it would qualify.

Deckard: Yeah. Our assumption was that we wanted to get some baseline information. We wanted to be able to have our healthcare providers that were providing the test be able to contact individuals to get them set up into wellness activities so that they could improve their numbers if they needed to. And then to have a window in which we will do the test again for the second year of the premium. At that time, officers are required to pass three of the four categories in order to continue.

Fish: Not only is the bar higher in the second test but, at least your understanding, based on the results of the first test, people would get matched with programs that address their health and wellness issues so they could show improvements in the areas. In any event, you lifted the bar for the second test.

Deckard: Correct.

Fish: That's a little different than I think it's been portrayed as essentially two entitlements tests.

Deckard: Correct.

Fish: Again, i'm not commenting on whether anyone thinks it was the right way to go or thought. I'm just trying to understand. It does seem to me there's a logic here to what you proposed, which is

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first test is to get baseline data, get people plugged into our health and wellness system, and then in round 2 raise the bar so that you have to actually do something in order to be eligible for the pay.

Deckard: Correct. At that time, we would be in negotiations by January of '13, and we would have good data to evaluate whether we wanted to continue a wellness -- a health and fitness program or whether or not we have the training center and we can do this differently. It would be on the table again at that point.

Fish: My last question -- and hopefully we'll be at a point we can wrap this up and commissioner Saltzman will make a motion to move the discussion to another hearing -- I think I now understand the difference between at least what one of my colleagues thought was going to be the test and what in fact we did, and I think I understand the differences in how those 2 tests operate, the actual experience with this test versus the hypothetical experience of a different kind of physical fitness test. It leaves for me the question of cost. What would have been the difference in cost if we'd gone through door number 1 or door number 2? Under the original council directive, however you interpreted it, what was the expectation in terms of the percentage of officers who would qualify for the premium in year 1?

Deckard: The budget office assumed 100%. It was going to cost is \$690,000. I assumed at least 70%. We were between 70% and 100%. In my assumption, 70%, we'd have been looking at \$468,000.

Fish: Versus actual?

Deckard: Versus the actual 100%. In the end, we had 91%, which is \$608,000. One of my main concerns was, once we did and we got the labor analysis as far as our ability to prevail positively on the city's part if we took the grievance to arbitration, we felt that, because of the ambiguity in the actual bargaining notes, that we had a pretty good chance of putting this in the hands of an arbitrator and having an arbitrator deciding that, yes, this is actually going to be on the city's dime, and you will have to pay the overtime, and that would have increased just in overtime dollars alone between \$450,000 and \$500,000 in addition to the actual test. And I just felt that that was a risk. My risk analysis was that that was not a position that the city should be in. I moved to how do I implement this language or the spirit of the language to health and fitness that results in a benefit and beneficial information for the city that allows us to move forward. And that's why I keyed in on the health.

Leonard: So the grievance was whether it was on duty or off duty?

Deckard: Yes.

Leonard: It wasn't the nature of the test.

Deckard: No.

Fish: So you've identified the range of cost estimates in year 1. You assumed about 70% of the people would be eligible. OMF budgeted 100%. What were your cost estimates for year 2?

Deckard: In looking at the numbers, now that we actually have the composite numbers, we're looking at just members that would actually be able to pass three out of the four categories. We believe that we will be somewhere between 61% of the members that will take the test and successfully pass it and 78% on the high end, because on some of the 109 individuals that took the test, what we call most are at very high risk, their ability to -- there's 13% of them that there is almost no ability for them to be able to pass three of these four categories. And if out of the 37% that actually -- I'm sorry. The 30% that actually would also need to pass, if you say that that percentage of people could actually improve, then that would put us at 78%, and that's how you get the 61.

Fish: Chief, question for you. You are something of an anomaly. You're a marathon runner and triathlete and other things, and you're sort of at the one end of the spectrum, but we do have officers, public employees of the city that are battling weight issues or health and fitness issues, diet issues, things we all deal with. One of the things that struck me about this whole thing was that to see real results measured in terms of healthier workforce, fewer on-the-job injuries, reduced

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healthcare costs, more productivity, longer lives, all those kinds of things, the things we care about here, the underlying values, we're not necessarily going to measure that in a year or two.

Presumably this is going to be a longer term process to evaluate. Could you speak to that?

Reese: I think you're absolutely correct and that the bmi testing process or the biometric screening testing process gives us a breadth of information that agility test or an obstacle course wouldn't give us and gives members information that they may not have to really maintain a healthy lifestyle that could impact their longevity and that people that are prediabetic or have cholesterol issues or weight issues, when they're confronted with the numbers, it's appalling sometimes, and you really get that, I think, in your face moment where you realize i'm not what I should have and have serious health issues.

Fish: Was it important to you to not expose the city to overtime, that this could substantially increase our costs in implementing this premium?

Reese: Absolutely. When we looked at the logistics of returning the tests on duty, we costed that out, and it would have been as expensive to do it on duty as the premium itself. And so running the test may have ended up costing us more money to guarantee that 1000 people could do it on duty. And then the biometric screening of course is on the member's own time, so we crossed that bridge. Again, I think the information we're gaining from the biometric screening is invaluable.

Deckard: For example, on the glucose test, out of the 823 individuals that took it, 234 of prediabetic. 34 -- an additional 34 are diabetic.

Leonard: But didn't know it before the test.

Deckard: Right. 253 under the bmi would be considered obese.

Leonard: And those individuals this year would not qualify for the premium unless they address those medical issues?

Deckard: Unless they addressed those issues. They wouldn't get the premium for next year unless they addressed those issues this year. And these are things where it will take time. The goal was to give them a window of time to really address the issues, because these are issues that take time. It takes time to lose weight, time to change your lifestyle habit around, your glucose. On blood pressure, we had 184 with a diastolic that would be stage 1 or stage 2 hypertension. For the systolic, it was another 105 at either stage 1, stage 2 blood pressure. My concern, when I looked at some of these numbers, was I think in some ways we got information that tells us, if we continue this in the next contract and if we move forward actually doing an obstacle course or some type of physical agilities course, we have a better opportunity of doing this safely. Maybe we add some things to it before someone comes in and takes it to make sure we're not putting people at risk, because some of these numbers are very concerning.

Fish: In about 15 minutes, I have to leave to go to salem. I assumed this was going to be a shorter council meeting. I don't want to preclude further discussion. I want to get a sense of where we're headed right now.

Saltzman: I'm prepared to make a motion but would like to ask one more question. I appreciate this discussion, but we often hear, when we're negotiating with our unions, about me, too, clauses, that if we give something to one union, the others are going to want the same thing. Are we now setting ourselves up that we have to pay people? Our wellness program is going to be replaced by you have to pay me to find out if i'm well?

Deckard: I don't believe so, commissioner. I think certainly the physical output that we look for in our police officers and firefighters are different. But clearly our wellness program and that we're doing with our other employees are different. We're not doing this type of screening. We've actually moved to the next stage of that, and that's channeling people into health and wellness programs. And we're seeing good results with that. You get to the extent of the council wanting to say, yes, we want to do this. And so there isn't an automatic me, too, that comes out of this.

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Fritz: I asked that question also. No other contract has the health and fitness language in the contract. I do share that concern, and I particularly had my mad as hell moment a few minutes ago because I heard we aren't doing the wellness screening because it was funded at \$250,000. So we don't have the opportunity for all the employees to get this information, which can be a real eye opener that they don't meet the basic standards. I think that's a budget discussion that the council needs to have is whether we continue this incentive program in subsequent years or whether we look at citywide what are we providing for all of our employees.

Deckard: Over the last three years we did it, we channeled individuals. Last year we saw a big dropoff because people had information, and it was really a small number. We did ask for a budget allocation for it, but that wasn't what we got. To the extent of there is a concern about a me, too, there is no other contract that has health and fitness language in it and that we take this approach with.

Leonard: I would note for the record that exactly one half of the council is mad as hell.

Saltzman: I was going to make a motion.

Leonard: I'm not ready.

Fish: Commissioner Leonard?

Leonard: Darrell turner.

Fish: If I could represent, he is signed up to testify. He said to me that, if this matter is not going to be voted on on the merits today, he would prefer to defer testifying.

Leonard: It may be. I would just like to get his views on the issue. So you've of course been listening to the discussion.

Saltzman: Introduce yourself.

Daryl Turner: Daryl turner, Portland police association president.

Leonard: Do you have any objections to an entrance exam-style physical fitness test for current officers to perform?

Turner: I think, as stated by ms. Deckard and chief reese, originally we had talked about that. What stopped us from doing it: The overtime, fpd&r issues because obviously, if somebody gets hurt, we want them to be covered.

Leonard: Would they be if they get hurt on duty taking this test?

Deckard: Yes.

Leonard: So that issue is addressed. And of course there's a discrepancy of on duty, off duty. If it's an issue of on duty or overtime addressed, you don't have an objection to taking that type of test.

Turner: In the next contract, we would do that.

Leonard: Would you do it in the second year of this contract?

Turner: We acted in good faith. We have a binding agreement that we agreed to, and I think obviously we'll agree to continue it the way it is. I think the biometric screening, although I had not ever heard of it and was not really optimistic about it, is important. I think you can go out and -- at 52, I could go out and bench press 450 pounds and run a nine-minute mile --

Leonard: Trying to scare me. I can run an eight and half minute mile, and you can't catch me. [laughter]

Turner: But I did take the biometric screening, so I know now inside, no matter what I do on the outside, I can do those things and am not going to have a health issue while doing that. He actually e-mailed an article around to some of the negotiating team about fitness tests being implemented by other law enforcement agencies and people having health issues during those tests. So that's a concern. Now that we have the biometric screening, we have the baseline. We have people that have a chance to improve on their lifestyle changes. If they make lifestyle changes to improve their health, the next time around with the contract, we'd feel more confident and comfortable with a more -- a different test that would measure fitness.

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Leonard: Such as chief reese described?

Turner: We have to look at that, because again there are issues with age and gender, but we were not opposed to it from the beginning.

Fish: Thank you. I want to take the pulse of my colleagues here about how we proceed. Commissioner Saltzman suggested to me he's interested in making a motion. I'm inclined to see what that motion is and see if we can proceed on that basis. Dan, want to take a crack at it?

Saltzman: My motion was simply to set it over if the mayor truly wishes to be present for a vote. I know commissioner Leonard has had some interesting conversations in this discussion about finding an on-site venue for physical agility tests, which I believe is what it all comes down to. That's what we were led to believe we were agreeing to. So I would make a motion to set that over.

Fish: That was the original motion was to set this over two weeks to a specific time.

Parsons: It was february 1st at 10:30.

Fish: Is there a second to that motion? [inaudible]

Fish: Is there another motion to make? Sue, is anyone else signed up to testify?

Parsons: No.

Fish: Please call the roll.

Leonard: I think it's unfortunate to vote on the resolution, because I think between now and whenever we had thought to set this over, there's a possibility that we could sit down and maybe craft something in the form of an amendment that would give direction to the city in the next contract negotiations that maybe would work for yvonne and maybe work for chief reese.

Deckard: Commissioner, what I can tell you is that, just by listening to this discussion, my intent would be for the next contract negotiations to move in the direction that i'm hearing is -- that i've heard today that council wants to move and be able to present and have the chief and I work on how do you make that happen if you're going to continue this.

Leonard: And I have some thoughts about just that and, if they worked with you in a private discussion, it would be my desire then to approach commissioner Saltzman with what we think might be a reasonable path forward and maybe have something we could vote on and support as a council.

Saltzman: I'll second that motion.

Fish: The motion currently is to postpone this two weeks. It does not preclude the discussions which commissioner Leonard has proposed, gives us two weeks to consider all of our options. Currently the resolution calls for the rescinding after provision which we've been advised by the city attorney's office would be an unlawful action. It gives us two weeks to develop other options in consultation with all the parties. There's a motion on the table. I need to know if there's a second.

Leonard: Seconded.

Fish: There is a second. Further discussion?

Saltzman: You're seconding --

Leonard: I'm seconding to postpone it two weeks.

Fritz: I'm going to defer to commissioner Leonard on this. I have great concerns about coming back into a public session rather than executive session to discuss contract negotiations. However, by postponing to two weeks, we could perhaps decide not to do that after all. So i'm going to support the motion -- so i'm going to vote in favor of the motion in deference to commissioner Leonard. Since I won't be able to make any other comments today, I wanted to get on the record my thoughts on the current resolution, and those are that choices were made in the memorandum of understanding in July after the contract was ratified by the council. Some of the choices I disagree with. The code does assign h.r. director to negotiate and sign off on the memorandum of understanding. However, though, I need to honor what was signed off on by both the city and the police union. I disagree with what is in the memorandum of understanding that what is now being done is a fitness test -- it's not a fitness test. It's a health test. I disagree you should get the

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premium for just taking it for the first year because there's no risk to the officer for taking the test. It's a blood pressure, weight, and blood test. That's been done for the last three years in the wellness screening for all city employees, and to me the premium should have been for passing it this year. I disagree with having to pass three of four. Since it's not even a fitness test, it's a wellness screening, you either pass those criteria -- and they're not high criteria to pass -- or you don't. But I did ask the city attorney whether we had any leeway, when I looked at commissioner Saltzman's resolution, and I don't believe there is a legal basis for revoking the agreement or unilaterally refusing to honor it. It's a binding agreement, and we cannot now say we will not pay them as we agreed. It was incumbent on me to ask how is this going as well as any opportunities for the information to be brought to me. The most we could ask is for the union to open up the agreement to bargain in the second year, but it's hard to see how they would have any incentive to do so. Having said all that, it now is a pilot project to see whether paying for passing the wellness screening checks improves health and therefore it decreases our liability on health insurance. I'm very concerned that we are paying one bargaining unit rather than all rather than the wellness screening be available to all employees always it has been in the past three years. That's a very important component to me as a wellness champion to figure out how to encourage healthy behavior by employees. As I say, I will now be looking at this as a pilot project for that rather than what I was looking for which was a fitness and agility test which I hope we can negotiate into the next contract. I do appreciate having had this discussion today, and i'm sure we will have more. Aye.

Saltzman: I, too, appreciate this discussion and I don't want to lose larger sight of the contract that was negotiated. It had some good things in it. Drug testing including steroids was a good thing. There also were, considering the economic times we're in, some good raises in there for officers. What I am upset about is how something can be presented to us in black and white when we're approving the contract and then totally gets twisted. And I will be bringing back some proposals -- legislative proposals -- for us to consider. But, yeah, I just don't understand how more thought wasn't given to all the little nuances that prevented something that seemed pretty black and white on the day we voted that becomes so twisted and so different. I'm not saying the different thing is a bad thing, but it's not a physical agility test that we were all led to believe was needed. That's why i'm going to vote in support of my resolution. As shakespeare said, damn the attorneys. Aye.

Fritz: We're not voting on the resolution.

Saltzman: I stand behind the resolution, but I do look forward to the ensuing conversations, and I will vote aye for the motion.

Leonard: Aye.

Fish: Aye. Motion passes. There are no other matters before us. We're adjourned. Thank you.

At 12:03 p.m. Council adjourned.