



CITY OF  
**PORTLAND, OREGON**

OFFICIAL  
 MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **22<sup>ND</sup> DAY OF JUNE, 2011** AT 9:30 A.M.

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

Commissioners Leonard and Saltzman arrived at 9:31 a.m.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Tracy Reeve, Sr. Deputy City Attorney; and John Holly, Sergeant at Arms.

Item No. 642 was pulled for discussion and on a Y-5 roll call, the balance of the Consent Agenda was adopted.

<b>COMMUNICATIONS</b>	<b>Disposition:</b>
<b>624</b> Request of Barry Joe Stull to address Council regarding City funded housing abuses (Communication)	<b>PLACED ON FILE</b>
<b>625</b> Request of Crystal Vaughan to address Council regarding the sit/lie ordinance (Communication)	<b>PLACED ON FILE</b>
<b>626</b> Request of Charles Long to address Council regarding the assault on fatherhood (Communication)	<b>PLACED ON FILE</b>
<b>627</b> Request of Rich Recker on behalf of the Timbers Army to address Council regarding AC Portland soccer initiative in support of student achievement and community development (Communication)	<b>PLACED ON FILE</b>
<b>TIMES CERTAIN</b>	
<b>628</b> <b>TIME CERTAIN: 9:30 AM</b> – ReUse Week 2011 (Presentation introduced by Mayor Adams and Commissioner Fish) 20 minutes requested (Y-5)	<b>PLACED ON FILE</b>
<b>*629</b> <b>TIME CERTAIN: 9:50 AM</b> – Authorize a contract with Worley Parsons Westmar Corp. for the West Hayden Island Concept Plan and related studies for a total not-to-exceed amount of \$359,916 and provide for payment (Ordinance introduced by Mayor Adams; authorize Contract No. 30002119) 30 minutes requested (Y-5)	<b>184689</b>

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<p><b>*630</b> <b>TIME CERTAIN: 10:20 AM</b> – Adopt budget adjustment recommendations and the Supplemental Budget for the FY 2010-11 Over-Expenditure process and make budget adjustments in various funds (Ordinance introduced by Mayor Adams) 15 minutes requested</p> <p><b>Motion to accept amendment to add a finding and a directive regarding Eastside Streetcar expenditures:</b> Moved by Mayor Adams and seconded by Commissioner Fish. (Y-5)</p> <p>(Y-5)</p>	<p><b>184692</b> AS AMENDED</p>
<p style="text-align: center;"><b>CONSENT AGENDA – NO DISCUSSION</b></p> <p style="text-align: center;"><b>Mayor Sam Adams</b></p> <p><b>631</b> Reappoint Gary Holcomb and Dharam Yadav to the Business License Appeals Board (Report) (Y-5)</p>	
<p style="text-align: center;"><b>Bureau of Planning &amp; Sustainability</b></p> <p><b>632</b> Authorize a three-year Intergovernmental Agreement with Portland State University in the amount of \$120,000 to execute the Multifamily Recycling Project (Second Reading Agenda 593) (Y-5)</p>	<p><b>184681</b></p>
<p style="text-align: center;"><b>Bureau of Police</b></p> <p><b>*633</b> Accept a grant in the amount of \$176,000 and appropriate \$12,705 for Fiscal Year 2010-11 from the Oregon Department of Justice and the Oregon High Intensity Drug Trafficking Areas program for Portland Interdiction Team efforts (Ordinance) (Y-5)</p>	<p><b>184682</b></p>
<p style="text-align: center;"><b>Bureau of Transportation</b></p> <p><b>*634</b> Authorize the Bureau of Transportation to execute a Right of Entry Agreement with the United States Postal Service needed for construction activities related to the Portland Streetcar Loop Project (Ordinance) (Y-5)</p>	<p><b>184683</b></p>
<p><b>635</b> Authorize a sole source contract with Lloyd Transportation Management Association to fund transportation projects in the Lloyd District (Ordinance; Contract No. 30002127)</p>	<p><b>PASSED TO SECOND READING JUNE 29, 2011 AT 9:30 AM</b></p>
<p style="text-align: center;"><b>Office of City Attorney</b></p> <p><b>*636</b> Amend outside counsel contract with Law Office of Erin Olson PC (Ordinance; amend Contract No. 30001578) (Y-5)</p>	<p><b>184684</b></p>
<p style="text-align: center;"><b>Commissioner Nick Fish</b> <b>Position No. 2</b></p> <p style="text-align: center;"><b>Portland Parks &amp; Recreation</b></p>	

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<p><b>637</b> Authorize Intergovernmental Agreement with Multnomah County Drainage District regarding work at Whitaker Ponds Natural Area (Ordinance)</p>	<p><b>PASSED TO SECOND READING JUNE 29, 2011 AT 9:30 AM</b></p>
<p style="text-align: center;"><b>Commissioner Dan Saltzman Position No. 3</b></p>	
<p style="text-align: center;"><b>Bureau of Environmental Services</b></p>	
<p><b>*638</b> Accept and appropriate a grant in the amount of \$40,000 from East Multnomah Soil and Water Conservation District for Mt Tabor Park Invasive Plant Control and Revegetation Project (Ordinance)  (Y-5)</p>	<p style="text-align: center;"><b>184685</b></p>
<p><b>*639</b> Authorize contracts with Epic Land Solutions Inc. and Kohler Meyers O'Halloran Inc. for on-call natural area land acquisition services (Ordinance)  (Y-5)</p>	<p style="text-align: center;"><b>184686</b></p>
<p><b>640</b> Improve the appeals process for public works permitting (Ordinance; amend City Code Section 17.06.050)</p>	<p style="text-align: center;"><b>PASSED TO SECOND READING JUNE 29, 2011 AT 9:30 AM</b></p>
<p><b>641</b> Authorize grant agreement with Southwest Neighborhoods Inc. to provide education, outreach and community involvement for watershed projects in Fanno, Tryon and Willamette watersheds up to \$146,000 for FY 2011-12 and 2012-13 (Ordinance)</p>	<p style="text-align: center;"><b>PASSED TO SECOND READING JUNE 29, 2011 AT 9:30 AM</b></p>
<p><b>642</b> Authorize contract with the Columbia Slough Watershed Council for \$215,000 for Columbia Slough-related outreach and education (Ordinance)</p>	<p style="text-align: center;"><b>REFERRED TO COMMISSIONER OF PUBLIC AFFAIRS</b></p>
<p style="text-align: center;"><b>Commissioner Randy Leonard Position No. 4</b></p>	
<p style="text-align: center;"><b>Bureau of Water</b></p>	
<p><b>643</b> Amend contract with Moore Excavation, Inc. to increase compensation and scope of work for Walker Creek Culvert Replacement (Second Reading Agenda 609; amend Contract No. 30001196)  (Y-5)</p>	<p style="text-align: center;"><b>184687</b></p>
<p style="text-align: center;"><b>Portland Fire &amp; Rescue</b></p>	
<p><b>*644</b> Authorize a sole source procurement with Pierce Manufacturing to engineer and manufacture a tractor-drawn heavy rescue with crane (Ordinance)  (Y-5)</p>	<p style="text-align: center;"><b>184688</b></p>
<p style="text-align: center;"><b>REGULAR AGENDA</b></p>	

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<b>Mayor Sam Adams</b>		
<b>645</b>	Appoint four members and re-appoint six members to the Public Involvement Advisory Council (Report) (Y-5)	<b>CONFIRMED</b>
<b>Bureau of Transportation</b>		
<b>646</b>	Assess benefited properties for street improvements in the SE 31st Ave Local Improvement District (Hearing; Ordinance; C-10026)	<b>PASSED TO SECOND READING JUNE 29, 2011 AT 9:30 AM</b>
<b>*647</b>	Grant revocable permit to Perierra Creperie on behalf of Ankeny St businesses to close SW Ankeny St between SW 2nd Ave and SW 3rd Ave from 7:00 a.m. June 20, 2011 until 11:00 a.m. November 1, 2011 (Second Reading Agenda 611)  <b>Motion to add emergency clause:</b> Moved by Mayor Adams and seconded by Commissioner Fish: (Y-5)  (Y-5)	<b>184690</b> AS AMENDED
<b>648</b>	Assess benefited properties for street and stormwater improvements in the NE 109th Ave Local Improvement District (Second Reading Agenda 612; C-10030)  (Y-5)	<b>184691</b>
<b>Office of Management and Finance</b>		
<b>649</b>	Authorize temporary operating loans between various funds to provide interim funding to cover lags in federal, state and other grant reimbursements (Resolution) 10 minutes requested  (Y-5)	<b>36867</b>
<b>*650</b>	Update the dedicated portion of the Utility License Fee to fund Portland transportation operations, maintenance and safety needs (Ordinance)  (Y-5)	<b>184693</b>

At 10:30 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **22<sup>ND</sup> DAY OF JUNE, 2011** AT 2:00 P.M.

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

Commissioner Saltzman arrived at 2:17 p.m. and left at 4:00 p.m.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Roland Iparraguirre, Deputy City Attorney; and John Holly, Sergeant at Arms.

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

At 3:38 p.m., Council reconvened.

	<b>Disposition:</b>
<p><b>651</b> <b>TIME CERTAIN: 2:00 PM</b> – Accept City of Portland Disparity Study Report and direct the Office of Management and Finance to take immediate action to enhance the City’s equity programs and to bring forward recommendations to City Council to further expand and strengthen the programs no later than February 2012 (Resolution introduced by Mayor Adams and Commissioner Fish) 2 hours requested</p> <p>(Y-4; Commissioner Saltzman absent)</p>	<p><b>36868</b></p>

At 5:08 p.m., Council recessed.

June 23, 2011

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 23<sup>ND</sup> DAY OF JUNE, 2011 AT 2:00 P.M.

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

Mayor Adams arrived at 2:22 p.m.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Roland Iparraquirre, Deputy City Attorney; and Wayne Dykes, Sergeant at Arms.

	<b>Disposition:</b>
<p><b>652 TIME CERTAIN: 2:00 PM</b> – Appeal of Arlington Heights Neighborhood Association and Eric Nagle against the Noise Review Board decision to grant a noise variance to Hempstead World Music Festival for a concert on July 4, 2011 in the Washington Park Rose Garden Amphitheater (Hearing introduced by Auditor Griffin-Valade) 1 hour requested</p> <p><b>Motion to overturn the appeal and uphold the decision of the Noise Review Board with the following conditions:</b></p> <ol style="list-style-type: none"><li><b>1) The promoter will be responsible for picking up any trash generated by the concerts</b></li><li><b>2) The promoter agrees to pay for parking patrol during the event</b></li><li><b>3) The promoter will work with Mr. van Orden and the Noise Office in developing a process by which the noise standard as outlined in item 3 in the decision on page 3 be enforced immediately</b></li><li><b>4) The Japanese Garden parking lot be used for garden patrons until 5:00 p.m.</b></li></ol> <p>Moved by Commissioner Leonard and seconded by Commissioner Fish. (Y-5)</p>	<p><b>DENY THE APPEAL AND UPHOLD THE NOISE REVIEW BOARD'S DECISION WITH CONDITIONS</b></p>

At 3:33 p.m., Council adjourned.

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

By Karla Moore-Love  
Clerk of the Council

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

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**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.

**JUNE 22, 2011      9:30 AM**

**Adams:** It is 9:30 a.m. And the Portland city council will come to order. Good morning, Karla, how are you?

**Moore-Love:** I'm fine.

**Adams:** Did you enjoy the 15 minutes of sun yesterday?

**Moore-Love:** I did.

**Adams:** Please call the roll. [roll call]

**Adams:** We have a special presentation before we get into the rest of the agenda. There's 38,000 public fleets, departments, bureaus, sections and groups in north america, not just the united states.

But there's only one number one fleet in north america responsible for 29,000 vehicles. And has responsibility for maintaining everything from electric bikes to police cars to smart cars and soon, electric vehicles. This fleet that i'm referring to, fleet group has eliminated 46 undersized vehicles from the city's fleet department. Saving \$1 million. Has reduced overtime cost by 89%, through streamlined work flow. And reduced commercial repairs by \$1 million over two years through reorganization and shop operation. Is certified as an ecological business by the pollution prevention excellent program -- excellence program. And has developed the largest green fleet in the region. Today, we are here to honor that group and it is my great privilege to recognize the following people. John hunt, please come forward. Jeff baer and of course, i'm referring to the city of Portland's fleet. Would you all please stand if you're part of the fleet department. Thank you. Congratulations. [applause] that -- that's amazing. You make us incredibly proud and that's the award.

**Jeff Baer, Director, Bureau of Internal Business Services:** Thank you, mayor Adams. I'm jeff baer, director of internal business services and with me is john hunt, fleet manager. Seems like just yesterday, we were here celebrating being ranked number two in the country, in north america and today we're here as the mayor indicated to celebrating about number one and, yes, number one, at mayor said, there's only one in the country who has done this and that is the city fleet for the city of Portland. Being ranked number one in north america is a huge accomplishment and puts a real large flag on the map for Portland as the national leader in operating the best fleet operations. And john is going to talk a little bit about the aspects of the award itself and the accomplishment that is he and his team has been able to do over the past year and I want to set forth, each the employees in city fleet should really feel proud of this accomplishment and take the opportunity to reflect on the progress they've made over the last few years to reach this noteworthy position. And, of course, certainly want it thank the city council, the mayor for your support over the years to get us to this point and especially want to thank ken rust as chief administrative officer to provide the leadership and challenge us to always do better and make sure we reflect the needs of our customers. With that, i'll turn it over to john hunt who can talk about the particulars of the award itself.

**John Hunt, Office of Management and Finance:** Good morning, mayor and council, and congratulations to city fleet for being named the number one fleet in north america. You know, today, I don't know if you really realize this, this is almost like the movie. You know, where you go and you're watching the underdog win at the end of the day. I mean, to come from virtually

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unranked to working really, really hard making it to number 78, and then to work even harder and make it all the way into the number one slot in such a short span of time is pretty much just a miraculous thing to have happened. So I couldn't be any more proud of the folks who are here today to accept your public recognition for the difficult tasks they have before them each and every day. Especially in these tough economic times to be able to implement fleet practices and the staff looked at me, there's things going on that are different than I remember yesterday and why are we doing this? And I have to say that staff have been agreeable and willing, very willing to change, and I think that's probably one of the things I'm the most proud of the group that's here. And also, we couldn't have done it as a fleet facility without the background of the other departments within the city. I think of the \$2.4 million epa grant, the planning sustainability worked on. We think of the different hybrid technologies and electrics and biodiesel and all of the things we've been able to implement as a city, it truly is a city award and we're proud to be a part of the city of Portland and the great things that go on here.

**Adams:** Thank you, both, and again thank you, and congratulations to the entire fleet department. I have a new dent in the back of my car. You might have read about. I got run into by a bicyclist. So I don't know it worked on for now. It doesn't seem to affect the operation of the vehicle. But congratulations again and thank you. [applause] I'm going to keep this here so that all of the cable viewers can see it when the camera pans on me. You'll get it back.

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

**Adams:** Do you want everybody in the picture?

\*\*\*\*\*: We would love it.

**Adams:** Come on, everybody, let's go. Yep. Line up and face that way. Congratulations.

**Adams:** Don't be shy: Keep moving. Keep moving. Thank you. Congratulations. [applause] you don't get number one very often. We're number one: We're number one: All right. We'll begin the regular -- the normal agenda with item communications -- we have four slots taken. Can you please read the title for 624.

#### **Item 624.**

**Adams:** Barry, are you here? Hi, welcome back.

**Barry Joe Stull:** Good morning, I'm a person with a disability, camping in Portland, and I tell you a little bit about how I learned to be who I am. I was hitchhiking, oh, 1979, got picked up by a fellow named Dallas Pemberton, and he shared he was a professional boxer. And I said, wow, you have to be registered as a lethal weapon? And he said, no, but I have to identify myself and looking at his dog dancer and how she had a bad haircut on the dog and he complained and like people tend to do, send out the biggest guy and used some muscle and the big guy called him a punk and Dallas held out his card and say, go home and tell your mama, a punk knocked your teeth out. So I've always tried to be fair and kind to you and it's not worked out so good. So I -- at one time, mayor, you asked me about doing research into city-funded services and I applied for housing, hap, called home forward in October 2009 and I've got one place, I've got a year and a half left, another place, four, four and a half years and another place, five to five and a half years and that's since October 2009 but in the meantime, I got on a central city concern list in July 2009 but they sent me a letter to the wrong address and when I didn't respond in December 2010, they took me off the waiting list.

So that's good for their numbers, not me, of course, and transition projects, of course, has the funding for the rac and I went to get a locker yesterday and they couldn't issue them and I got a brochure that part of the \$46 million went to that. I informed your office, commissioner and commissioner. And oh, join, I went to them to get services in October, they visited my camp in January and I learned in May that a fellow who has been my caseworker the whole time and never told me. Join got about a million bucks a year. I don't know about transition projects when I was



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there client in 2009, they got about a quarter of a million. Just shy, \$240,000 and some change. And central city concern, i'm not sure if you gave them the price of a first-class postage stamp, they wasted it. My handwriting is impeccable. They sent it to the wrong address and when they got it back, didn't even check their file. They knocked me off the waiting list. And that's the way the cheating it goes in this city. Now you know, i'm still camping, come out and visit me. Thank you for your time.

**Adams:** Please read title for communications item 625.

**Item 625.**

**Adams:** Crystal vaughn. Hi, welcome.

**Crystal Vaughn:** Hi, there. Good morning, mr. Mayor and commissioner Fritz and city council. My name is crystal Vaughn. I'm hear to express my concern about the sit-lie ordinance, which I was not even aware of until two weeks ago. My three year old son and I attended the Rose Festival fair and watch the military ships arrive. We traveled by max train and I took his stroller. Five exhausting hours later, I'm a 45 year old mother, so I was very tired. We decided to start home. I pushed my son in his stroller another ½ mile to the max stop on 6<sup>th</sup> street in front of pioneer courthouse. I needed to sit down and the only bench was in use. So I sat on a 1 foot wall in front of the courthouse. This wall has been sat on for 150 years. But apparently you're not allowed to, I didn't know that. I sat there so as not to obstruct pedestrians and to keep my son as far away from the speeding trains as possible. It was the safest place to sit. Less than a minute later a police officer sternly approached us and yelled at me that you are not allowed to sit here. So then I sat on a sidewalk up against the wall, thinking this was in compliance. The officer then yelled at me, you're breaking a city ordinance, you are not allowed to sit down. He said this very sternly. I feared what would happen if I didn't comply. So I stood up until the train arrived. I have the following concerns about this ordinance after now having read it. it states the purpose of the sidewalk is to move pedestrians without obstruction. Yet no where did I see it mentioned waiting for a bus or train without a place to sit down. Only a person's luggage or deliverable merchandise is considered as not being a public nuisance. I never saw it mentioned a child in a stroller. So is my son considered a public nuisance if he's in a stroller? Or is he considered luggage or merchandise? It also states you must be 8' from the frontage line of the building property on a sidewalk 10' or wider. I don't always bring my measuring tape with me when I sit, but this would mean that my child and I would be directly in the path of pedestrians and next to the street where the trains are coming by. So I would not consider sitting there. This ordinance places tension between police officers and citizens who have committed no crime and are not obstructing pedestrians. This ordinance does not solve any existing social problems and sadly, I think it takes quite a bit of money away from programs that probably do need the funding. This ordinance does not allow the person the basic human right to sit down when needed unless it's a medical emergency. For this reason, this ordinance shows a lack of integrity and justification and I have included copies and a picture of where I was sitting. Thank you for your time.

**Adams:** Were you given a ticket or no?

**Vaughn:** No, I didn't know if I would be arrested. I had no idea what to expect.

**Adams:** The purpose of the ordinance is to keep the pedestrian lane open.

**Vaughn:** Right.

**Adams:** And that's the purpose of the ordinance.

**Vaughn:** Right.

**Adams:** There are other places on the sidewalk where one could sit and you said your child was in a stroller.

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**Vaughn:** Right, and we were up against the wall out of traffic and way from -- waiting for the train.

**Adams:** And you can't sit there.

**Vaughn:** We were not allowed to sit there. I don't understand the --

**Adams:** It's to keep that as next to the sidewalk is the pedestrian zone and that's the place we don't allow people to sit. Other places you can sit.

**Fritz:** We've had a lot of discussion about that particular location at the sidewalk advisory group and the courthouse is a federal building, the federal wall and a historic wall so it's actually encouraging you're here to advocate for mothers and children in strollers. There's a lot of assertions that our ordinance is targeted to people who live outside and, in fact, your testimony shows that it is evenly enforced. And the -- we're actually doing a walk-about at 5:00 starting in pioneer courthouse square to look at the few places downtown will there's no place to sit and it's usually where there's transit or narrow sidewalks because of the need for people with strollers and wheelchairs to be able to transverse the sidewalk and I appreciate you coming this and your mother sending this a detailed email in support of your cause.

**Vaughn:** I kind of went into more detail.

**Adams:** Thank you very much. Appreciate your time.

**Vaughn:** Thank you for having me.

**Adams:** Please read the title for communications item 626.

**Item 626.**

**Adams:** There's no clapping. No -- no clapping --

**\*\*\*\*\*:** No sitting, no clapping, no nothing:

**Adams:** That's right. You can wave your hands. You can wave your hands.

**\*\*\*\*\*:** Gee, thanks:

**Adams:** You're welcome. Is Charles long here? All right. Please the title for communications item number 627.

**Item 627.**

**Adams:** Welcome back.

**Rich Recker:** Thank you very much.

**Adams:** Glad you're here.

**Recker:** My time on the microphone will be brief. I've invited friends to join me in support of this presentation. I was commissioned six months ago by adidas and the Timbers, US soccer foundation, and America scores New York City, to take soccer city usa and create the worlds best youth and community development organization. I think we've done just that. We've announced it informally recently and about ready to roll out programs in the fall. This program has so much potential I felt we needed an army to make it successful. I'd like to turn the microphone over to nando to introduce the topic.

**Nando:** Good morning, council. We're the timbers army, more specifically, the 107 independent supporters trust. A Nonprofit member-based organization that promotes the game day experience at the stadium. It also -- commits the army to do community service and civic mindedness. So the timbers play the game, adidas supplies the equipment and the Timbers army supplies the people to do community service and to help the community. And timbers, and beavers launched a.c. Portland in partnership with Oregon Sports authority foundation, a unique after-school program that combines soccer, writing, public speaking and after-school activities and we would like to ask the council to support that. That program.

**Adams:** I have to say that's the best euphemism i've heard in a long time and it really under-describes the brilliance of the game-day experience. Is that what we're calling it?

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**Nando:** Yeah.

**Adams:** I would say fantastic rooting and cheering sections for the timbers and I love your motto for the Friday July 8th event at the St. John's pub and theater on North Ivanhoe, "no pity, just breakfast." That's brilliant.

**Lucas Grzybowski:** Hello Mayor Adams and council members. My name is Lucas Grzybowski. I'm a member of the Timbers Army and a 107-ist. I hope you'll pardon me for reading from prepared notes. On Friday, July 8, new enlistees in a.c. Portland will meet in the St. John's neighborhood and you have that information in the packages that Jeremy handed out and together we'll learn more about a.c. Portland and the positive impact it can have on the community and kids and break ground at St. John's school, the Portland Advantage Center location and we'll announce plans for support of a.c. Portland and asked the leaders to use the breakfast to pledge their commitment and Mayor Adams, we want to thank you for the pledge you've given us. We'll need support from you and all Portland leaders. Timbers Army invites each councilmember to attend the breakfast and work together to help a.c. Portland help Portland's kids. Thank you.

**Adams:** You're fantastic. The city couldn't ask for a better soccer army. I speak for everyone when I say thank you very much. See you at the breakfast.

**Grzybowski:** Thank you for your time.

**Adams:** That takes us to the consent agenda. Anyone wish to pull any items from the consent agenda?

**Moore-Love:** 642 was pulled.

**Adams:** Ok. Karla, please call the vote on the consent agenda items.

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

**Adams:** Aye. Consent agenda is approved. That gets us to the regular agenda. We have a 9:30 time certain. Can you please read title for presentation item number 628.

#### **Item 628.**

**Adams:** This morning, we declare Portland's third annual Reuse Week and -- over the past three years, the city highways increasingly focused on supporting thoughtful consumption, as expressed in our climate action plan. I'd like to recognize Commissioner Nick Fish for further introduction.

**Fish:** Thank you very much, Mayor. This is our third Reuse Week presentation. I'd like to ask Bo from Schoolhouse Supplies and Free Geek to come forward. One of the best parts of our job is highlights the extraordinary work of our community participants who are making Portland a better place and for three years, we've celebrated partners in the growing field of reuse. Free Geek, Habitat for Humanity, Schoolhouse Supplies and Scrap. We talk a lot about the triple dividend, projects that deliver economic and social and environmental benefits. Those folks did that every day. We keep garbage out of our landfills and promote job creation and give every day items new life. They embody the best of Portland's values and we as a city are honored to call you partners. I'd like to invite each. You to say something briefly and we'll recognize the other partners here and then read the proclamation. Welcome.

**Bo Bullock:** Thanks. Hello, I'm Bo, with Schoolhouse Supplies. One of the six Reuse nonprofits that Commissioner Fish just mentioned that make up a consortium that's Reuse PDX. I wanted to thank you for inviting here to celebrate the third annual Reuse Week and take this opportunity to express our gratitude to the City of Portland and Multnomah County for their progressive leadership in promoting Reuse Week for the past three years. Since our inception, Reuse PDX has established an active collaboration between the Portland and -- of Portland Metro region to provide a greater social good and our experience has taught us about working together we can effectively reach out to the community and advocate for reuse. I'd like to recognize the Reuse PDX partners which include Schoolhouse Supplies, Habitat for Humanity Restore, Community Warehouse, Scrap, Free Geek

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and rebuilding center. The reuse pdx flyer I think you all got, has contact information and addresses. This year, the city of Portland's bureau of planning and sustainability began collaborating with reuse pdx around the be resourceful campaign which inspires Portland residents to think differently in a positive way about how they consume goods and make decisions that consider environmental and local impacts that value health, family and lifestyle. Earlier this year, be resourceful partnered with reuse pdx at the better living show. To feature ways portlanders can learn, create, donate and participate in reuse. In the community. And there were over 16,000 attendees at the shows and the bps staff and volunteers had over 2,000 conversations about creative reuse. As our collaboration evolves, we're using social media to reach out to the community and involve them in a direct and personal way and we have established a reuse pdx facebook page so we encourage you all to "like" our facebook page and would like to thank nick Fish who has already done so. Over the past year, we began exploring how our organizations can consistently work together to promote the benefits of reuse and in the -- it blossomed into a focused effort to promote reuse and led to forming a local chapter of the reuse alliance, a national organization focused on raising awareness about reuse. Through our works with the Portland chapter of the reuse alliance, we submitted a proposal resulting in our bringing the next national reuse connect conference to Portland and -- in 2012. And we wouldn't have been able to succeed in bringing the conference to Portland without the support of our local government. In particular, i'd like to recognize and thank mayor sam Adams, commissioner nick Fish, Multnomah county chair jeff cogen and brice jacobson from metro that provides us with letters of support that testified that Portland has a government that's leading the reuse practices and a long term vision of sustainable vision. The reuse connects will take place october 18th through the 20th in 2012. And it will feature professional conference with experts from the reuse industry. Sharing best practices and business models of replication. We're excited for this opportunity that this conference will bring to Portland and give us a chance to showcase our leadership in the many ways we practice reuse on a regular basis. More immediately, this year's celebration of reuse week, will take place this sunday, june 26th, from 11:00 to 4:00 as part of the north Portland sunday parkways event. At mccoypark and new columbia at north trenton and engage residents about reuse issues through games and letting them share their stories and let people make their own buttons using creative reuse materials and you're all invited to attend and thank you once again for support and endorsement of our work. It's appreciated beyond measure, so thank you all.

**Fish:** Thanks for being here. Before we introduce jess, you mentioned social media and people go to [www.reusepdx.org](http://www.reusepdx.org), it has the links to all of the organizations you mentioned. And a number of us have done the schoolhouse supply spelling bee.

**Bullock:** That's right.

**Fish:** With varying degrees of success. I appreciate that. And thank you for your good work and jess from free geek, welcome.

**Jess Beckett:** Thank you. Free geek asked me to come here and say thank you. Much in the same way that the reuse coalition started out as loosely -- free geek started about 10 years ago who had an idea that monitors and computers probably shouldn't go into landfills and has become a huge organization and in no small part thanks to the local government here. I don't think free geek could become what it has in any city other than Portland. We wanted to say thank you to commissioner Fish and mayor Adams.

**Fish:** Thank you.

**Bullock:** Thank you.

**Adams:** Hey: Finally. Good. Thank you very much. This is great. Thank you very much.

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

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**Adams:** I've been asking for one of these for a while.

**Fish:** Mayor, there's a few other people who are here and before I read the resolution, I would ask them to stand. Andy and Christy from Community Warehouse. They supply furnishings and beds and mattresses for formerly homeless. Sarah Brownstein from Multnomah County. Cindy from Habitat for Humanity Restore, and Joe from Habitat for Humanity Restore. It's my honor to read the proclamation which the Mayor issued. Whereas, Reuse Week is a celebration of the principles of reuse, sustainability and community building and the local organizations that bring them to life and whereas the city's relationship with Community Warehouse, Free Geek, the Habitat Restore, Rebuilding Center and Scrap and Schoolhouse Supplies continues to grow most notably with the creation of the Reuse PDX Consortium in 2010 and successfully bids to host the fall 2012 Reuse Conference. Elevate the city's profile as a leader in reuse and promote reuse in our community and whereas the centerpiece of the Reuse Week 2011 will be the North Portland Sunday Parkways celebration on June 26th where partner organizations will gather at McCoy Park for games and giveaways and more. And reuse conserves scarce and precious natural resources and gives new life to goods and materials and helps to improve the lives of vulnerable residents and our partner organizations divert millions of pounds of waste, keeping 27,000 computers, and \$13 million worth of school supplies and \$8 million worth of furniture and household supplies out of the waste streams. Incredible and aligns with the city's climate action plan goal of reducing local carbon emissions 80% by 2050 and reducing 25% by 2030 total solid waste generated while minimizing carbon emissions and the city of Portland is increasingly focused on supporting thoughtful consumption, and together with our reuse partners, the Portland City Council and Multnomah County Board of Commissioners will work to promote the value of reuse and increase its understanding and practice in Portland and Multnomah County. Therefore, I, on behalf of Sam Adams, Mayor of the City of Portland, City of Roses, do hereby proclaim June 2nd -- City of Roses and proclaim June 2nd, through June 28, 2011, to be Reuse Week in Portland.

**Adams:** Let me give you the original. Karla, please read the title for the next item.

**Item 629.**

**Adams:** Resolution 36805 directed the Bureau of Planning and Sustainability to prepare a legislative proposal for West Hayden Island including an area plan and comprehensive plan and zoning changes necessary to annex West Hayden Island into the city. The resolution sets parameters with the intent to protect 500 acres of open space and identified 300 acres for deepwater marine terminal and the creation of a concept plan. The contractor will work with the city to develop a concept area plan based on the city council parameters. Four important components of the planning process will include, a rail study, operational efficiency study, transportation analysis with street plan alternatives and specific research to aid staff with the economic, social environment and energy analysis. Main contractor, Worley Parsons is collaborating with a team of subconsultants with local and region expertise in the areas required to fulfill the contract. This is an ordinance to authorize a contract with Worley Parsons for the West Hayden Island concept plan and related studies for a not to exceed amount of \$359,916. And with that further explanation from Mr. Engstrom.

**Eric Engstrom, Bureau of Planning and Sustainability:** Thank you, I'm from the Bureau of Planning and Sustainability and the Council Clerk is handing you two other information sheets in case you're interested in more detail. One is a summary of the work plan with a task list and another is a high-level summary of the staff from the consultants and subconsultants so you get an idea what the professions are that are involved and the firms involved. We all participated in a work session recently, so I'm not going to give you a long overview of the status of the project. In that work session, most recently, we talked about the cost benefit and as the Mayor indicated, a lot

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of that cost benefit study is hinging on specific design idea that's come out of this concept planning work. This is an important piece of moving this project forward. The ultimate question you're going to be voting on is whether to annex the site into the city of Portland and part of any annexation involves study of some of the potential public infrastructure costs of that action and part of that is understanding what infrastructure we need. And so the concept designs we're putting forward here will give us a solid understanding of that. It will not result in a specific development that the port will then build, it will give us a solid ground to design a concept plan and a plan district and understand the financial impacts of annexation. And i'm here basically to answer any questions you may have.

**Adams:** Hearing no questions. Karla, do we have anyone signed up?

**Moore-Love:** Yes, two people.

**Adams:** Hi, welcome. Glad you're here. Just need to give us your first and last name. No address, no phone number and the clock will count down three minutes.

**Paul Riggs:** Good morning, i'm paul riggs, columbia pacific building construction trades council and we're here to speak in favor of the proposal. It's important step to move in the direction of bringing industrial land into the economic base of the area and from that standpoint, should create a tremendous amount of jobs. Sometime in the future and some immediate. I'd like to give them a compliment. I followed this project and happy to see it does preserve the open space. It's one thing go in there and make industrial land but it doesn't have as much value if you retain that area. So thank you.

**Jeff Smith:** Jeff smith, president of international longshore warehouse union. This action is consistent with the council's action in july. To plan for the mix of uses, open space, marine and industrial on west hayden island. The rail studies and operational efficiencies studies and transportation, economic and energy analysis. As paul said, I support it also and thank you for your time this morning.

**Adams:** Thank you for coming to city hall. Appreciate it. Karla, call the vote.

**Fish:** Aye.

**Saltzman:** Aye.

**Leonard:** I think this is important -- it's an important step and it's important to frame what's happening here in the appropriate context which goes back to the early '70s when the Oregon legislature adopted urban growth boundaries. Unique in the united states. It's interesting to watch the debate today when the people miss the appropriate frame of reference for this project is happening within. We want to keep development within the urban growth boundary to protect forest and farmland outside of it. This project occurs within the urban growth boundary. If we don't allow for industrial development within the ugb to preserve farmland and -- to preserve farmland and forest, and open space, we'll unintentionally cause pressure to have development occur on farmland and forested areas in open space. So as we move forward on this discussion, I hope people keep in mind that it's very important to take advantage of the urban growth boundary for the very purpose of preserving open space. I think that's what we're doing and this is a smart next step forward and I fully support it. Aye.

**Fritz:** I appreciate the efforts of the city, the port, the advisory committee and the consultants and the bureau of planning and sustainability to take the extra time needed to closely examine the difficult issues associated with whether or not to develop west hayden island. It's particularly challenging since metro designated this area both regionally significant industrial land and regionally significant environmental resource. And I thank the city team for your efforts to make sure that the public is engaged in phase two discussion, particularly those living immediately adjacent to a possible development and i'm appreciative of the cost benefit analysis part of this

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project so that we on the city council can make this decision based on the facts and i'm very happy that the office of healthy working rivers is a part of this and I also thank the advisory committee for your continued engagement and dedication and we appreciate the input and work that everyone on this, it's a good process which hope will come to a good conclusion. Aye.

**Adams:** I would add to commissioner Leonard's fine remarks that this is also very unique -- a unique plot of land and unique in-water opportunity. It's the last remaining opportunity to develop a global international class deepwater port in the city of Portland. So i'm pleased to be part of a council that after 20 -- 23 years? 23 years of inaction, is taking action and today, this is an important step forward in getting all of the facts. I want to thank everyone for your help and support. Especially the folks and the staffs of the office of healthy working rivers and the bureau of planning and sustainability. Thank you. [gavel pounded] so approved. Please read the title for the next item.

**Moore-Love:** Item 630 is 10:30 time certain.

**Adams:** Do we have any second readings.

**Moore-Love:** We have the item pulled off consent. 642.

**Item 642.**

**Adams:** Let's do that.

**Adams:** Who pulled this?

**Moore-Love:** The bureau did. I believe they're referring it back for corrections.

**Adams:** Unless objections referred back to commissioner Saltzman's office. [gavel pounded] let's do -- can you please read the title for 645.

**Item 645.**

**Adams:** These are all good people. We want to reappoint them. Anyone have any questions? Anyone wish to testify on 645? Karla, please call the vote on 645. You're fast.

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

**Fritz:** One of the reasons we put this on the regular agenda was to point out the public involvement advisory committee has established a new public involvement report that comes with every item. Starting in july. That will be accountability and I want to read into the record the names of the people who worked so hard. Half staff and half community members, working collaboratively and has members from different bureaus. The appointments are for alisa cour, elizabeth kennedy wong. Stephen sykes and maureen yandle and reappointed glenn bridger, joleen jensen classen. Linda nettekoven, simsundareth tan and arnold warren and chris white. Aye.

**Adams:** So approved. Please read the title and call the vote for 6 -- sorry -- 647.

**Item 647.**

**Adams:** How do you say that word again?

**Fish:** A point order.

**Adams:** Yeah.

**Fish:** Are we going to make a motion to put the emergency clause back on so it can have a immediate impact.

**Adams:** First I had to have her read the title.

**Fish:** Sorry.

**Adams:** It's ok. I move to put the emergency clause back on.

**Fish:** Second.

**Adams:** Moved and seconded. Any discussion? Please call the vote on the motion to reapply the emergency clause.

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

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**Adams:** Aye. [gavel pounded] please call the vote on the now amend 647 that includes a emergency clause.

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

**Fritz:** I was supportive of this last week, wanted more time for discussion between the parties to participate -- who participated in the hearing and the business owners, I like the european concept this promotes and have some concerns about the sharing of the public space but i'm grateful to the chani Geigle-teller and Michael moore for working with dustin knox and tre Shannon and other business owners who worked together in the past week to come to some collaborative work so they can move forward with this. I'm hoping we'll have discussion on it at the sharing public spaces advisory committee and a report at the end of the pilot project there so we can evaluate whether this is a good model for Portland to expand in our places and grateful to the mayor for agreeing to put the emergency clause back on and all parties for working together on this. Aye.

**Adams:** Aye. [gavel pounded] can you please read the title and call the vote for second reading, item number 648.

**Item 648.**

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

**Adams:** Aye. [gavel pounded] 648 is approved. Can you please read item number 649, resolution.

**Item 649.**

**Adams:** So I have an amendment to this item. Don't I?

**Andrew Scott, Office of Management and Finance:** No.

**Adams:** I don't?

**Scott:** No, it's to the over-expenditure.

**Adams:** We have three items that have to do with a cash flow issue. But they do not materially impact the budget regarding the east side streetcar project. We have to -- this amendment moves \$5 million in lid construction fund dollars into the transportation operating account. This is a timing and accountability issue, not a budget issue. Overall, the east side streetcar project is on time and on budget. Do you have more to add?

**Scott:** I think that amendment is to the over-expenditure ordinance, which is item six -- yeah, 630.

**Adams:** Can we read that one as well? Or did we take care of that already was that a time certain?

**Scott:** That's the time certain. But we can do the others first. Three items.

**Adams:** Starting with this one.

**Scott:** Ok. So six -- 649 is the inter-fund loans. The issue here and i'll run briefly through it since it's the first time we've done it. Essentially, the grant funds which include our grants fund and our community development block grant and home funds are considered reimbursement funds in the city. They're recorded in the fund and reimbursement received mostly from state and federal government and outside entities reimbursed for the expenses. The expenses under our accounting rules that the city uses in terms of a modified accrual. We accrue expenses at the time we provide the service, we book the sentence and fund and however, revenue is not recognized until it's received. Generally if the revenues come in on time, that's not a huge lag. Once we have the expense, we bill it and get the revenues within 30, 60 days after, however, there's issues where reimbursement can take up to six months to get reimbursed. It creates a lag between our expenses when booked and our revenues when received that can result in a temporary negative fund balance at year end. Local budget law prohibits the city and any government from having a negative fund balance at year end and generally accepted accounting principles prohibit negative cash balances at year end as well. This is a relatively new issue for the city. When we implemented sap, we moved the expenditures into the grant funds and considered a best practice and gave us advantages and this is one downside that we need to take care of. The solution is to authorize these loans. The



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way these will work, they'll be temporary loans that will essentially be authorized as of June 30th, the current fiscal year, and paid back the following fiscal year, most probably on July 1st. One-day overnight loans for the fiscal year. Some may take longer to be paid back and with interest. It's a technical issue although it's large dollar amounts.

**Adams:** Questions? Anyone wish to testify? Go ahead.

**Saltzman:** You said the loans will be paid back by the federal government, primarily?

**Scott:** Well, once we receive reimbursement from the federal government. So --

**Saltzman:** You're saying some may be overnight or short duration before they're paid back?

**Scott:** Right, we're asking from authorization to make the loan, we'll not execute them until the year end close process is under way and we need the exact amount so probably sometime in August.

To that extent, we receive revenue from the federal government, we'll repay the loan on an overnight basis. To the extent we're still waiting, we'll reimburse the loan once the payment is made from the federal government.

**Saltzman:** And the federal government monies are monies in their bank, so to speak of the respectful agencies?

**Scott:** Right, it's essentially guaranteed. Approved and authorized by the levels of government. Some federal agencies reimburse in 30 days, some take six months. It depends on the agency and issue.

**Saltzman:** Thanks.

**Adams:** Anyone wish to testify on this matter. Karla please call the vote.

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

**Fritz:** I'm grateful to you and your team of experts for keeping track of these details. Aye.

**Adams:** Aye. [gavel pounded] that gets us to the time certain. Please call the 10:20 time certain.

**Item 630.**

**Adams:** I have an addition, a slight amendment. Which I move the amendment to insert an additional finding to prevent over-expenditure in the grant fund and retain the Federal local funding balance reflected in the east side streetcar project construction budget. It's necessary to transfer \$5 million from the lid construction fund into the transportation operating fund to cover the expenditures on the east side streetcar project. And then in addition, under council directs that the auditor's office transfer \$5 million from lid construction fund to the transportation operating budget to support the east side streetcar expenditures. This is related to the item we just had. So that's been moved.

**Fish:** Second.

**Adams:** Moved and seconded.

**Fish:** Can we have a brief discussion. An explanation on this?

**Adams:** Uh-huh.

**Scott:** It's my understanding and -- yeah, come up for a second. My understanding was it was an issue we discovered in the last couple days, which is why it's showing up on an amendment. It would have been in the original ordinance anyway. Can you explain briefly?

**Lisa Shaw, Office of Management and Finance:** The money will go not into the grants fund but the transportation operating fund.

**Adams:** Did I say something else?

**Shaw:** It's related to the streetcar charges, from the grants fund. Those charges will go into the operating fund. There's a concern that pbot, a particular object will be over-spent in the transportation operating fund.

**Scott:** The issue in the spring bump, transportation had lowered one of their interagency with the lid fund and subsequent to that learned they would need that. So we made the earlier adjustment

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and over-adjusted too far down and now need to increase it, again just to avoid an over-expenditure.

**Shaw:** That's right. In the operating fund.

**Adams:** This speaks to this project, this -- it's funded by a variety of different revenues and out of a variety of funds.

**Shaw:** That's right.

**Adams:** And we have to keep them all within a certain balance according to state and federal and our own policy.

**Shaw:** And our own local law-- pbot cannot over-extend in this particular object category. And there is a danger of that.

**Fritz:** Were we expecting to spend \$5 million from the lid construction fund for the streetcar?

**Shaw:** Yes, just not this exact moment. The work on the streetcar accelerated but that doesn't match up with what the cash transfer between the lid construction fund and the transportation operating fund. So just --

**Scott:** I think pbot expected to spend the money next year. That's why they lowered it in the spring bump. So that's why we need to make a correction.

**Saltzman:** This comes from the lid for the streetcar. Not from any other lid project?

**Adams:** There's an lid of -- what? -- \$14 million on this project, something like that.

**Shaw:** Sorry, don't know that.

**Adams:** A special assessment on local property owners who will benefit most from the streetcar coming from that lid fund. Anyone wish to testify -- oh, we're on the amendment. So please call the vote on the amendment.

**Fish:** Aye. **Saltzman:** Aye. **Leonard:** Aye. **Fritz:** Thank you for the clarifications. Aye.

**Adams:** Aye. Motion is approved. And now I need to read the following statement. Is that right?

**Scott:** After council discussion.

**Adams:** Before the vote?

**Scott:** Yes, before the vote.

**Adams:** According to budget law, ors 294.480, I open a hearing on the supplemental budget for the year 2010-2011, over-expenditure process, making budget adjustment in various funds. Is there any member of the public who wishes to testify? Hearing none, I hereby close the hearing on the supplemental budget. Call the vote.

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

**Fritz:** Thank you to tim and tom on my staff for helping me puzzle through this. Aye.

**Adams:** You get a little glimpse of the wild and complicated life of transportation funding. Aye. [gavel pounded] so approved. So that gets us to regular agenda. Please read the title for 646.

**Item 646.**

**Adams:** Thank you. Or do we have another one?

**Scott:** We have one more.

**Adams:** Ok.

**Andrew Aebi, Bureau of Transportation:** Good morning, mayor Adams and councilmembers, i'm andrew aebi. Southeast 31st avenue came out 35% below budget and received no objection to the final assessment. I'm happy to answer questions you might have.

**Adams:** Any questions from council? Anyone wish to testify on this matter? Karla --

**Moore-Love:** No one signed up.

**Adams:** Please call the vote on item 464 --

**Aebi:** It goes to a second reading.

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**Adams:** Sorry, it goes to a second reading. [gavel pounded] can you please read -- which one are you waiting for? Can you please read emergency ordinance item number 650.

**Item 650.**

**Adams:** This implements part of the adopted budget we discussed with each of you that in order to balance the budget on an ongoing basis, we suspended existing council policy regarding utility license fees going to the bureau of transportation. We suspended that policy to again balance the ongoing budget of the city and we adopted a budget note that says anything above today's financial forecast that might come in goes back to seeking to fill up the remainder of -- what is now suspended utility license fee contribution to the bureau of transportation. There are two reasons from a policy standpoint -- three, one is historic, in 1982, the city council established this policy, I think it was '82, '83.

**Andrew Scott, Office of Management and Finance:** Maybe 1988.

**Adams:** Sorry. 1988, established this policy and suspended it for 20 years. There are aspects at the bureau of transportation related to among other things, chasing after and trying to ensure the quality of the work in the public right-of-way by franchisees also paying for streetlights that have a number of benefits in addition to simply transportation. Would you like to add something?

**Scott:** No, it ordinance essentially again the budget includes \$2.2 million of ongoing funding from pbob, the original policy was \$4.3 million, this reestablishes that for an additional \$2.1 million if utility license revenues come in above forecast. Just to give you a sense, utility license revenues are budgeted or forecast at \$71 million next year and growing to \$85 million in year five so we do already have a growth, and the growth would need to be above that in order for additional funds to go to transportation.

**Adams:** Any discussion from council? Anyone wish to testify on 650? Karla, please call the vote.

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

**Fritz:** I especially glad for your leadership on this Mayor, and it does fund basic services, as you said, lights and safety, and things like that, so I'm glad to see we're reinstituting this for the upcoming fiscal year.

**Adams:** Aye. [gavel pounded] so approved. Read the title and call the vote for second reading 648.

**Moore-Love:** I think we already did that one.

**Adams:** Thank you. Please read resolution item number 649.

**Moore-Love:** We did that too. I don't have any other items left.

**Adams:** I'm so early, I don't know what to do. We're in recess until 2:00 p.m. [gavel pounded]

At 10:30 a.m., Council recessed.

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## 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.

**JUNE 22, 2011      2:00 PM**

**Adams:** Good afternoon. Welcome to the Portland city council. It is wednesday, just after 2:00 p.m. On june 22nd, 2011. We'll come back from recess. Karla, please call the vote. Sorry, the roll. [ roll call ]

**Adams:** Quorum is present. We have one item on the council calendar this afternoon. Can you please read the title for resolution item number 651.

### **Item 651.**

**Adams:** Commissioner nick Fish.

**Fish:** Thank you, mayor. Mayor Adams, thank you for giving me this challenging and important assignment. Today I bring before council the final disparity study report for review and discussion.

The resolution sponsored by mayor Adams and me is if accepted by the council does three things. One, it accepts the report prepared by the bbc research and consulting project team. Two, it directs the appropriate city departments to take immediate action to strengthen our commitment to equity in contracts. It sets a deadline for more than long-term work to strengthen the city's commitment to ending disparity in construction contracting and professional services. Today's presentation is the culmination of almost two years of work by the city, staff at the Portland development commission, and a committed and diverse group of volunteers who served on my advisory group. From our earliest conversations about the need for a new disparity study, this council embraced a simple idea. We can and we must do better. The bbc team will address in detail a number of fundamental questions this afternoon, including one, what is a disparity study, and two, why does Portland need one? Here's the short version. A disparity study is a legally required document used to defend programs in court which combat historic discrimination. Studies contain three separate, legally important sections. First, this report and other studies utilize a statistical methodology supported by the court. Let's call the science of the work. Second, the report uses extensive qualitative analysis. Simply put, the team interviewed contractors and professionals to get behind the numbers to the personal stories of how people experience discrimination in our community. And third, the draft report was presented to the public for comment. All of those comments and questions were used to shape the final report which you have before you today. As you will hear repeatedly this afternoon, the report is a three-legged stool, and each of the three legs has legal significance. In the battle ground that swirls around contracting, access, and equity in america, it is essential for us to have a disparity study that uses methods that are supported by the federal court. One of the reasons bbc was selected is courts across america have adopted their methodology. And jim van dyke from the city attorney's office, will confirm today that bbc's methodology meets the applicable legal standards. There are a number of people I want to acknowledge and thank today before we begin. First, to everyone who participated in the public meetings, sent us emails, called, or visited the project website, thank you. You have made this a substantially better report. While there are many

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people who put in long hours to create this report, I want to offer special recognition and thanks to the members of my commissioners advisory group. These volunteers met five times, poured over hundreds of pages of documents and questioned and challenged the project team from the first day we got together. They were guided by passion for the issues, and deep and relevant experience in our community. You will hear from a few of them later this afternoon, but I want to identify the entire group and ask you to stand as I read your name. Marcela alcantar, Jackie babicky, jason lim of asian reporter. Penny painter from the native american chamber of commerce, maurice rahming, namco, president, o'neil electric inc. Carmen rubio, from the latino network. She serves as the executive director. Rudy martinez, field representative, pacific northwest council of carpenters. Nate mccooy, Portland -- Portland bureau of housing. Andrew beyer, lcg pence construction. Mayor and colleagues, these are the citizen volunteers who put in a lot of time. Could we give them a round of applause. [applause] I also want to thank this afternoon the six people who have worked so tirelessly to make this day possible. They are jeff baer, christine moody, annette palmer, skip newberry, john jackly, and jim blackwood. One final note about the scope of the report before us. In our first advisory group meeting, marcela proposed expanding the study to include professional services. After an extensive discussion, the group believed that was the right thing to do. We knew would it add to the cost of the study, and we knew it would take longer to complete the study. But it is a much stronger study because of that recommendation, and we thank you. [applause] First, representatives of the city and bbc will present the report to council. The following people have spent a great deal of time working on the report over the past few months. Christine moody, chief procurement officer for the city, david keen and kevin williams from bbc, and jim van dyke from the city attorney's office. Our second panel is made up of members drawn from our advisory group. Marcela alcantar, andrew beyer, and maurice rahming. Our final panel is composed of gale castillo, andre baugh, and jorge gora. After the third panel, we will move to public testimony. Mayor Adams?

**Adams:** Thank you, commissioner Fish. And thank you for your work on this, having been staff - a staff project manager one of three for the original disparity study, I now have time consuming and how important this task is. My initial remarks are focused on the handoff that comes with commissioner Fish's conclusion of the study, and my responsibility working with the team and with the community to close the disparity gaps that have been identified by the study. And underscore the statistical results, the anecdotal evidence, and the public comments have all provided us with legal grounds to continue and enhance current equity programs. And we have the legal grounds to start addressing issues such as capacity building, access to capital, and other systemic obstacles to the success of minority and women-owned businesses in Portland. Additionally with the adoption last month by the city council, the neighborhood economic development and small business strategy, support that supports such issues, addressing such issues as financing and technical assistance for minority owned and small businesses, minority owned small businesses, it will be provided through the new economic strategy in a more comprehensive and coordinated fashion throughout the city. City council recently approved more funding to support these efforts as part of the budget and we plan to leverage partnerships with community-based organizations that helps small businesses. Immediate actions are of interest to all. And so we have worked with commissioner Fish's office, with staff and the city, and consulted with others in the community and immediate actions include the following as soon as we can make sure that we've consulted with the appropriate stakeholders and our partner organizations. Graduate all sheltered market contractors by october 2011, cease the sheltered market program as it currently exists and create an improved and strengthened program to replace it. Review and revise the contractor prequalification program, require all requests for projects specific prequalification to be evaluated and approved by the chief

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procurement officer before being applied. Approval of all prequalification requests, 250,000, and under will be based upon bonding capacity as provided by a surety. Applications for more than \$250,000 – sorry, applications \$250,000 and under will not be forwarded to the bureaus for evaluation for additional prequalification. Review and strengthen the good faith efforts program though the study shows the good faith efforts program has been effective in some areas, there is a need to review the current program and look for opportunities to strengthen it. Review and revise the work force program. It is known that a number of construction companies are formed by individuals working their way up through the trade. Now that we have an updated study it is time to review our current work force training programs to see how they may be opportunities for growth. Five, outreach, conduct quarterly outreach events using electronic notifications of solicitations, assist general contractors with outreach for subcontracting opportunities. Six, do a better job of forecasting contracting opportunities and make sure that despite our best efforts that we are actually getting a word out in plenty advance for minority and women owned firms to be ready to bid on these contracts. The immediate actions contained summarized, are intended to be first steps, but the beginning of what I expect to be significant changes in the way the city does contracting. Raising the approval basis from 250,000 from 100,000 based on bonding capacity will bring some quick relief to smaller contractors, but we're going to need to examine the impact of any kind of prequalification has on the ability of minority and women contractors to bid on projects. And that analysis should be part of our work plan. The need for change does not stop at the city's procurement practices. But extends to every bureau and every bureau director. Portland is a city that is striving to become the city of the most equal of opportunities. We can't keep doing things the same and using the same approach and expecting different results. We're going to have to think differently, explore alternative contracting methods, eliminate discrimination, whether conscious or unconscious, and inequitable barriers and create a culture of equity of opportunity among all the bureaus and our partners. There is an immediate sense of urgency to this task, contractors are already losing ground in the difficult economy and we must do everything possible to provide more opportunities. With that, I will turn to ms. Moody.

**Christine Moody, Procurement Services:** Thank you. Christine moody, procurement services. How we got to where we are today. And as the background, as the mayor mentioned, in 1995 the city and pdc took part in an Oregon regional consortium disparity study that examined public construction contracting methods. The 1995 study concluded that minority and women-owned businesses were under utilized and at prime contracting levels. In -- the 1995 study also made a series of recommendation that's resulted in the city's adoption after fair contracting and employment strategy. Programs we currently have in place resolving from that strategy are the shelter the market program, which takes into consideration construction projects 200,000 dollars and below, the good faith efforts program, which is largely a subcontracting program for projects over \$200,000, the work force training and hiring program requires apprenticeship training on construction projects, women, minorities, and disadvantaged individuals gain access to training and employment in the construction industries. And the professional services marketing and outreach program. This is to increase opportunities for mwsb firms to obtain professional services contracts by increasing access to useful information and removing barriers. It also includes a 15% total points in rfp are awarded toward diversity criteria. So the reason why we chose to do the study at this point is that data from the previous study is outdated, and may not provide a sufficient legal basis for -- in support of the city and pdc's current minority business and women business enterprise program. The new study evaluated the effectiveness of race and gender neutral practice and public construction, and construction related professional services contracting as well as relevant city policies and practices. In order to do this, we did an rfp. In april of 2009 a request for

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proposal for a disparity study was issued. The evaluation committee, which included community representatives, chose bbc research and consulting headquartered in denver, colorado, to perform the disparity study for the city and pdc. In september of 2009, a contract was awarded to bbc in the amount of \$831,000. Bbc is a 41-year-old market and economic policy research firm. They became involved in disparity studies shortly after the supreme court struck down city of richmond, virginia, minority-owned business program. Clients include large cities such as phoenix, fort worth, las vegas, and columbus, ohio. Bbc conducted the 1990 denver disparity study and provided support to the city of denver when it was sued by a local firm over the constitutionality of the program. The denver minority and the women owned business program was upheld by the 10th circuit. More recently bbc conducted a disparity analysis for the california department of transportation, or caltrans. The associated general contractors of san diego and the pacific legal foundation challenge the caltrans in court. The united states district court eastern district of california ruled in favor of caltrans in a summary judgment and found that the disparity study was comprehensive and included extensive statistical evidence as well as anecdotal evidence provided substantial statistical and anecdotal evidence of discrimination in the california contract industry and supported caltrans' implementation of the federal dba program. Over the past 20 years bbc has conducted analysis for over 80 state and local governments across the united states. For the city and pdc studies, bbc worked with four minority or women owned firms. Three of which have offices in Portland. F.m. Birch and associates was used for interviews as a minority women owned business. Group agb was used for data collection and procurement review as a minority business, montesi and associates was used for interviews as a minority business enterprise, holland and knight is not a minority firm, but has a local office and was used for legal counsel. And customer research international was used for telephone surveys and interviews. It's a minority owned firm, but not certified in the state of Oregon. The overall percentage of mwsb on this contract was 20%.

After we issued the rfp and we developed a contract, the study itself began. Bbc began the assignment in the fall of 2009 and commissioner Fish convened an advisory group. And he mentioned the members earlier. They met through five times throughout the process. Bbc presented a draft report to the city and pdc in january of 2011. In april, the draft report was released to the public. This opened a four-week public comment period in which the public forum was held and online comments were received. Public comments on the draft report were received in three common areas. Additional data was provided that was analyzed by bbc and included an appropriate section of the final report. Statements regarding experiences or program recommendations were added to the qualitative material in the final report. And questions about the study approach were reviewed and helped shape the final report and extensive revisions to the executive summary were made. At this point i'm going to turn it over to jim van dyke.

**Jim Van Dyke, City Attorney's Office:** Good afternoon mayor, commissioners. It's a pleasure to be here. Jim van dyke, city attorney's office. I wanted to give a brief legal overview before with have bbc talk about this, because I would like to take a minute and explain why we have disparity studies. I think christine mentioned the city of richmond case, in which the city had set some hard goals, hard preferences in favor of minorities. That was challenged, and the supreme court said that could not be permitted, that public agencies had to ensure that its actions were both race and gender neutral. Now, the court went on to say that the public agencies could consider taking race conscious actions, but only after performing a very rigorous statistical type study which we by shorthand call a disparity study to show that there was an actual disparity between the usage of minority and women-owned businesses, and their actual availability in the local marketplace. In other words, it was no longer sufficient for a legislative body such as the city council or a legislature to say, we know there has been discrimination, as we all know there has been

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discrimination. It was not sufficient simply to say that to establish some goals to take some race conscious measures, instead the supreme court set what I considered to be a fairly high bar to jump over in order to demonstrate a kind of rigorous mathematical statistical disparity in order to permit public agencies to take race into account to take gender into account, when they make contracting decisions. Now, as I mentioned, the study looks at the actual usage of minorities which is basically a review of history, of what our eclipse educational version only -- not for commercial use the past five years. That's what bbc has looked at through 2004-2009. They also take a look at the availability of minority and women-owned firms, and I have to say that in the past 10 or 15 years, the court that have considered disparity studies, and there have been legal challenges to disparity studies, have become increasingly strict. And again, have been raising the bar as to what constitutes sufficient statistical evidence of minority and women-owned business availability. For example, they have now said -- even though some previous case were not requiring this, the more recent cases have now said that the consultants must take what is called relative capacity into account. In other words, businesses, you just can't count minority ownership and say, i've got one minority owned business and one white-owned business, and so the availability is 50%. No, you have to take their size into account. What size of contracts can they bid on? How much capacity do they have? Can they take on more than one contract at a time? And so the availability bar has been raised. And it was because of some of these legal issues that our office actually took what I consider to be kind of an unusual step, we participated in the evaluation panel when we took a look at disparity study consultants to make sure that they were going to use a methodology that was going to meet legal requirements. Bbc was a firm that we were convinced were going to be able to meet that bar. I have to say there were some other firms that applied that we did not think would meet the bar. For example, they said that relative capacity, that is the current size of my firm is -- cannot be untied from the previous discrimination I have suffered. And I agree with that. Discrimination may be the reason why a firm is small. In the absence of discrimination it would be bigger. The problem is, the united states supreme court and the other courts have not agreed with that approach. They look at what your firm is able to do right now, not what it might have been able to do in the absence of discrimination. So we look at the current size of the firm, what kind of contracts they can work on, and those are the things we take into account. Once you get to the other side of the study, and you decide or you find that there is some disparity, the supreme court says that in and of itself is not enough to take a race conscious action. You first must consider race neutral measures. Only after you have decided that your previous race neutral measures haven't been effective, and we've had some race neutral measures and to the extent that there's disparity on contracts, we can show that they're not effective. Then you can get into race conscious measures, and the Supreme Court has said, they must be narrowly tailored, they must be directed at the discrimination that particular minority group is facing, and no more. So we must do a rigorous study. We must find actual disparity using what they tell us to do in terms of doing an availability analysis. We must consider race neutral measures and after that, we may take race conscious measures. Now -- so that is the legal landscape in which we are currently operating. And having reviewed the bbc study, I am convinced that the bbc study would withstand legal scrutiny if it were challenged.

**Saltzman:** You make frequent reference to the supreme court about the issue of the firm being small but for historical discrimination. Are those all from the croson decision?

**Van Dyke:** Those are subsequent to the croson decision, not all of them have been supreme court cases. But what we do is follow the trend of the federal circuit courts that have been following this issue, they interpret the croson decision for us and the most recent cases are the ones that we are citing to you here today in terms of what their requirements are.



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**Saltzman:** And the caltrans decision, is that a ninth -- .

**Van Dyke:** The caltrans decision was as I think christine mentioned, was in the eastern district court, not a ninth circuit court case. If it was appealed it would go up to the ninth circuit. So it is nice and I would say it's kind of rare to have that kind of test done in such a recent one on your own disparity consultant. So we're obviously very pleased that their study with stood a legal scrutiny in an area very close to ours.

**Adams:** Thanks. We're clarifying questions are great, we're going to have an opportunity at the end of the panel discussions for more discussion. But if we can get everyone up and through.

**Fish:** David and kevin, welcome. Introduce yourselves, and then proceed.

**David Keen:** David keen with bbc research and consulting.

**Kevin Williams:** Kevin williams with bbc research and consulting.

**Keen:** We'd rather our team come up and present today, but they're going to remain in the gallery.

But andre baugh, John Cologn and Jay Birch were very important members of our team and we actually asked them to do something very difficult. As you probably all know them, they know this community extremely well, we were very fortunate to have them agree to be on our team, and they each had very significant roles. And we asked them to change hats and be as well as bbc, very objective neutral researchers and analysts here, information collectors and put that information together in the disparity study, and I wanted to personally thank them for the fine job they did and often very difficult situation of giving you the best information and best advice not perhaps from Their perspectives as excellent people that can go out in the community and compile information in a very neutral objective way and analyze information and present it to you. My thanks to each one of you. We would like to dive in to summarize the evidence. And we're going to take a very high level look and then be able to respond to your questions. So there's -- we won't be throwing a lot of numbers and disparity indexes and ratios at you, we're going to try to distill what this means, and I have quite a bit of experience testifying about these issues in court, defending these programs in court, and so I have some experience of what has been successful. You have had a number of programs that have had a positive impact on the utilization of mine and/or the women-owned firms.

In fact, the -- a lot of the procurement and contracting data that we were examining was influenced by those programs that were having a positive effect. So that's one of the things that we'd like to report to you, that when you made this -- these efforts a number of years ago, but for those efforts things would be much worse for opportunities for mine and/or the women owned officials, especially as subcontractors and as prime contractors are on the smallest contractors, but those programs did have a positive effect. When you're examining whether you have a need for those Of those areas of contracting to where programs did not apply. We found a few examples at the city, and we found more examples for the Portland development commission, especially on sponsored contracts, which are not contracts directly awarded by pdc, but they've put some types of resources in, they have involvement in, but someone else is in charge of the contracting process. We found in city contracts, outside of your programs there were disparities. And -- for minority and women owned firms, and for the Portland development commission on those sponsored contractors, there were very large disparities for minority firms. Here's what a disparity means. When we looked at the actual dollars going to minority and women owned firms, including those certified and not certified, because we found in the Portland area, like many other parts of the country, because of the barriers to becoming certified, and frankly some of the lack of returns to be coming certified, that firms that may have been certified have let the certifications lapse, or they may not go through property says at all. So it was very important for us to get an accurate gauge on the participation of all minority and women owned firms and pdc contracting to count them all. We found not only through certification records but through interviews with those business owners and managers of

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those businesses. So we identified firms owned and controlled by minorities and women based on information that was reported to us. We compared that--we measured this on dollars. We compared that participation with benchmarks. What ought to be given current availability. And when we examined current availability we started with a list of firms, the best list we could get that was outside of the any city and pdc list, any state of Oregon list, and we the information we needed to collect based on the prior comments here we were trying to get quite a bit of information on those firms and what types work they went after, what sizes of contracts they went after. So we could only do that through interviewing the firm itself. The individual firms. We started with a very large list, we tried to contact as many people as possible. Not everyone was interested in answering our phone calls, or may have been unable to do the interviews, but we interviewed more than 1500 firms about their qualifications and interest in doing specific types of city and prime contracts and subcontracts. This is a great source of information to determine what types of work minority and women owned firms and majority owned firms would do for the city and pdc and what percentage of the dollars specific types of contracts you might expect to go to minority and women owned firms if there were a level playing field. We found city programs in place, we found that the city had a Utilization and some cases we found disparities overall we did not, where city programs applied. And city programs did not apply we found those disparities. We found similar situations in the marketplace as well. So contracts that didn't have any involvement in pdc or the city, we looked overall at the utilization of minority firms, and we just looked at the revenues. Minority and women owned firms were small, the revenues were lower, than white male owned firms, our statistics showed difficulties in capital bonding and insurance for minority and women owned firms, they could not -- especially for access to capital, they could not be explained by size of the firm. There seems to be a race angle to this, disadvantages. There were disadvantages to firms when they were trying to work as prime contractors and subcontractors of local public sector contracts overall, when they were trying to get local subcontracts, and in fact the number, the existing numbers of minority and women owned firms relative to white male owned firms, we found had been depressed after some sophisticated statistical analysis from what you might expect if there were a level playing field. So even in the ranks of people working in the industry that might then become business owners, who were not finding representation of minorities and women in certain cases, that you might expect given the requirements of those jobs. So this is a major challenge for the Portland area, this is not unique to Portland, but this is -- we believe this gives you the basis to do -- continue to do what you're doing, but also looks strategically at what you can strengthen in your current programs. Let me -- jim mentioned narrow tailoring. There are two parts of the u.s. Supreme court requirement. You have a problem and have you narrowly tailored solution. Let's turn to the narrow tailoring. You and pdc have had quite a bit of investment in doing things for small businesses overall, you have a number of programs that try to strengthen small businesses, so that is a requirement in the court decisions that for you to go on to a race and gender conscious program you must have seriously considered those race and neutral means. You've implemented many, and we're not suggesting that you turn away from small business assistance. That may be very important to many of the issues at the city and pdc, can be addressed through removing barriers to small businesses and further support of small businesses. However the study would indicate that perhaps those measures are not enough alone and that recent gender conscious measures are needed. So we recommend continuing those efforts and that there is a work force development angle to this as well as a small business assistance angle. The city prequalification is -- we found evidence that not only was it -- the prequalification system worked against small businesses trying to get as prime contractors on city projects, but after controlling for size, it negatively affected minority and women owned firms in certain ways. So this is a very

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serious matter, it appeared were you denying the ability to bid on work to minority and women owned firms in an unfair fashion. And that your practices are not standard practices compared to other leading cities around the country. You should take a strong look at that. However, similarly to other markets in which we worked, bonding, which is often required in public sector contracts, is a barrier to small businesses in this market, even more so to minority and women owned firms, bonding requirements, remove those firms from the potential pool of business owners that can compete for that work, insurance requirements work very much the same way, especially for professional services contracts. Then finally, have you a sheltered market program, have you a good faith effort program, pdc has a business equity program. Have you a number of policy decisions to make around who is eligible for those programs. What's the real design and intent of those programs, and what kind of muscle those programs have. How many contracts go under Those contracts, are they really developing that pool of prime contractors of minority and women owned firms. So I am going to turn this over to Kevin to give you more detail. One of the things I want to say personally, what's different about the Portland experience? One of the things from the very beginning was different, in addition to our great team, which is probably at the top of the teams with a local participation, is involvement of the community that I think Mayor and Commissioner Fish set the tone for this, this was not going to be a black box. It wasn't going to be a disparity study that was just going to be sitting on a shelf at the end of it with no community knowledge of, participation in, that you actually probably lengthened the process by having an advisory group involved in this, and that was a very good thing. Because that group steered you in some very good directions. I know you lengthened the process by the amount of public input you had at the end of this. And there's been as much public input in the -- out of the Portland community as any community that we worked in, and we worked around the country. So you helped make that happen, and then the community took advantage of that opportunity to actually give a lot of input. And that -- we think between the draft report that we put out for public comment, and what you have now, we believe it has a lot more information from the Clearly setting out findings and conclusions. We got good feedback and we made substantial changes to that summary of the report and you see that here today. So in addition to our team I wanted to thank, I wanted to thank our advisory group, which endured many hours of getting all the details, as well as the public participation process, all those people who gave comment.

**Williams:** So as mentioned, one of the key components of the statistical part of the disparity study is comparing the relative utilization and availability. And so for utilization we looked at five years of data for the city and pdc, and as was mentioned earlier, we expanded the scope of the contracts that we looked at for the city to include professional services based on the recommendations of Commissioner Fish's advisory group. So when we set out to do these studies we work very closely with staff at pdc and the city to collect that data and to make sure that we have all the information we need. We also conduct utilization interviews where we attempt to contact all of the firms that were utilized in this the scope of the study during the study period, and talk with them about their primary line of work, how they do business, and what their ownership status is.

**Keen:** Quickly to availability, we compare utilization with availability, and we're especially interested in the results when no programs provide. There's many purposes of an availability analysis. Sometimes availability studies are used to set goals and in federal programs, that's often what an availability analysis does. Annual goals such as the -- under the federal dvd program, you could have information to set project goals, so here's a particular project, should we set a 25% mbewbe, possibly esb goal on it, or 15% goal, that's another use of availability analysis. What we used availability analysis for in our study, which is a requirement that Jim described, is provided a

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benchmark according to the court decisions that we had in front of us, and say, if there were a level playing field among the firms available today, what percentage of the dollars would you expect for this set of contracts to go to minority and women owned firms? There's -- we believe that the courts direct us to do this in a certain way and take the types of work and the sizes of those contracts and whether they're prime contracts or subcontracts into account, when we're determining that availability and when we're setting that benchmark for the purposes only of the disparity analysis. There may a lot more flexibility when you're thinking about a goal, especially a project goal, than the way we describe it here. For the purposes of figuring out whether there's a disparity and past city contracting, Apply, we need add way of collecting information on minority, women, and majority owned firms, and what sizes of projects they do and what types of work they do, without knowing necessarily which firms were minority and majority and women owned when we started. So we started with the most comprehensive database that we could, which was done in Bradstreet, we -- the information we used to determine that they were available, qualified, and interested, we determined whether they were available for that work and in our view you can only know that by talking with the firm. You only note sizes of work they bid on if you talk to the firm about that, because you can't just use bidding on city contracts as your measure of that, because i've already told you your prequalification works -- process works against those firms. We thought the best information was from the firm owners themselves. That's what we did. One of the things the advisory group has brought up, and brought to our attention is something that we think is a challenge in any of this type of research, is to get enough firms participating in those interviews to have a statistically valid pool of firms at the end with no bias toward or against minority and women owned firms, and our team members and members of the advisory group correctly point out that some of the firms that might have been included in the We looked at that and those firms, many of those firms are firms we tried to contact for one reason or another, we never got a hold of, or they declined to participate in those interviews. We found no evidence, and we looked very carefully at this, that our analysis favored minority and women owned firms being counted in the pool, or disfavored minority owned firms to be counted in the pool. This was a neutral process a. Process we used in the caltrans study that was recently upheld at a program -- the program was upheld in court, and it's similar to what other consultants have used that have survived a challenge in the courts where they start with the dunn and bradstreet list, which is a neutral list, and base availability on that, rather than a government provided list. I wanted to comment briefly on the availability analysis and caution you that this is not -- the numbers you see in the disparity study are not necessarily the contract goals you want to set or maybe if you have an annual aspirational goal. They're really for only the purposes of disparity analysis, and we have quite a bit more flexibility when you may be looking to implement a program.

**Williams:** As an example of how we calculated availability, we polled a city contract piece for electrical work out of our database, around \$20,000. It was contracted for in 2009. We looked at our database that we built from the dunn and eclipse educational version only -- not for commercial use 140 firms that said they were interested in doing subcontract work with the city, that they were interested in doing electrical work and that had bid on work of that size. 33 of those firms were women or minority owned, so the viability estimate on that contract piece is 23.6%. Then we repeated this process for each contract and prime contract piece we studied. For the city I think it was four and 5,000 prime and subcontract pieces. And we produced a dollar weighted average of that to come up with our overall availability benchmark. Another very important piece of the study is our analysis of marketplace conditions. And particularly in the Portland area. And the way we look at this is that it's important to understand how businesses come about. And so looking at the entry and advancement to these industries, and where people have opportunities to move up into

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management roles and eventually become small business owners. So we looked at census data, information from the American Community Survey, a number of sources of information about business finances and capital, and provided some stark results about the overall business ownership and business success in the minority and women owned business community. And so that's a very important piece to consider as you move forward. We also gathered a fair amount of anecdotal evidence, qualitative information about the marketplace. So we did 60 in-depth interviews. Our subcontractors helped us with those interviews and these interviews covered all topics of what are the challenges of owning and operating a business, what are the challenges in access to bonding insurance, capital, and also about public procurement processes in the Portland area. These interviews typically lasted an hour and a half or 2½ hours and we got a rich data set of information that is summarized in appendix j. We also when we were developing the availability database, asked firms about specific opportunities and barriers with respect to the Portland marketplace and included that information along with our qualitative information from the in-depth interviews. The third part of the study that Commissioner Fish referenced earlier was public feedback. So we were one of the only disparity study firms that believes in releasing a draft report and then giving the public the opportunity to comment on it. And as Dave said, in Portland we've had substantial public involvement, and that's due to the credit of the community as well as Mayor Adams, Commissioner Fish for making it easy and accessible for members of the community to ask questions to provide input on their experiences within the community, and to point us to potentially other sources of data that we should consider in. So we had a public forum that was very well attended, had a lot of good information, and we also took all this information and considered, added the public forum information along with the anecdotal interviews, and made substantial revisions to parts of the report based on the input from the community. In terms of next steps, our recommendations to you and we're heartened to see you're already taking some actions, is this is a lot to digest, I think the community has had a bit of time already to start to digest the information and come up with some excellent ideas on how to move forward. I think there's people here that will share that with you today. There are changes to the programs that you have now that I think are warranted based on the information explained in the report. And as important as anything else, you don't want to say, we've done a disparity study, so we don't need to go -- we can check that box, we can move ahead, and we don't need to emphasize continuous measurement and evaluation of how well we're doing. We'd like to urge you to put those systems into place to accurately measure including noncertified minority owned firms, and noncertified women owned firms, don't count them necessarily towards meeting a goal or getting a preference in a program, or participating in a prime contractor program. Those should be reserved to certified firms. When you are gauging how well Opening up contracting opportunities to minority and women owned businesses, we urge you to track the participation of noncertified minority and women owned firms on an annual basis, so have you some accurate data going further, this is a program that we hope you don't have to have forever, because we hope the problem goes away, that may be unrealistic and it will take a lot of hard work. Another way of saying that is, our recommendation is, don't be shy about strong measures now, because if you don't want a program that just limps along, barely helps firms, what you want to do in our view is have something that makes a difference, so that more progress is made faster and you don't need programs, it's been 15 years since you've lost the last disparity study, and we were at PDC this morning, one of the commenters, it's been 15 years, how much progress have we made? You don't want to be 15 years into the future and say, we should have done something stronger when we had the BBC disparity study. I wish we would have done that. So those are my closing thoughts. We're heartened to see you take something immediate actions here and even stronger efforts might be warranted beyond that.

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**Moody:** So adding on to what the mayor mentioned before, we have some immediate actions and I wanted to comment that these recommendations came directly from the community. They are supported by the study, but came through the public comment period to us and there were things that we can take immediate actions on. Outreach, to conduct quarterly outreach, issue electronic communications of solicitations, assist general contractors with outreach for subcontracting opportunities. Better forecasting, initiate bureau representative meetings and look for alternative contracting opportunities as appropriate to encourage maximum opportunities for minority and women owned firms. As mayor mentioned, graduate all sheltered market contractors later this fall, cease the sheltered market program as it exists and create an improved and strengthened program to replace it. And review and revise the contractor prequalification program or immediate action is with \$250,000 and below only requiring bonding capacity as approved by assurity, and no other additional criteria. For further next steps that take additional work and we are wanting to move forward and work with the fair contracting forum, that is already in existence, other community representatives, the city bureaus, and pdc, to work on the restructure of the sheltered market program, the revisions of the contractor prequalification program, review and strengthen the good faith efforts program, and review and revise the work force program. And so those are the areas that yes going to work on through the next several months and come back to council with marsh recommendations.

**Saltzman:** What do you mean by applications \$250,000 and under? Is that bids?

**Moody:** It's a prequalification. Right now we currently have 100,000 in over you need to put in an application to in order to bid. On projects.

**Adams:** Because we have a lot -- how many people are signed up?

**Moore-Love:** About 10 Public speakers.

**Adams:** Ok.

**Saltzman:** Could I ask one question of the BBC consultants?

**Adams:** And they're going to stick around as well. Go ahead.

**Saltzman:** The universe of availability -- contractors and subcontractors, is that everywhere, or is that by county area, or Portland only?

**Keen:** It's from one of the requirements in the supreme court decision was, it was in the city of richmond and the supreme court scolded the city of richmond for including Elutes from Alaska in their program. So you really need to study the relevant geographic market area, for your particular city, which the city of Richmond had not done. We have done that here, and you're contracting primarily goes in terms of dollars, primarily goes to contractors and consultants within the Portland metropolitan area. That was the region in which we did our availability analysis.

**Saltzman:** That includes clark county?

**Williams:** Columbia, Washington, yamhill, clackamas, Multnomah, clark, and skamania.

**Fish:** Mayor there are 10 people signed up, and we have two panels that will present quickly. And then we'll get to the other testimony.

**Adams:** O.K.

**Fish:** If I could invite up the first panel; Marcela alcantar, andrew beyer, and maurice rahming. If you would come forward? You'll each have up to three minutes. Thank you very much for your service on the advisory group. We spent a lot of time together, they were very robust discussions, and it was a learning -- a dynamic learning experience for all of us and as the Consultant team said, they benefited greatly from the question and the feed back. Andrew, would you like to kick it off?

**Andrew Beyer:** First of all, mayor, city council, I was honored to be on the advisory committee, appreciated the opportunity. I'm especially honored to be sitting here with maurice and marcela to

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talk with you about our experiences on the committee. I do have a few points to ask to you consider. As you try to improve the disparities that we have in contracting. I represented the associated general contractors as a representative in this particular situation. And maurice and I happened, I happened to be president, maurice was president of namac Oregon, and part of our challenge was to bring our membership together to have conversations about how to improve the relationship between the dynamics and the general contractors and the minority community. And a large part of what this studied points to is a need time prove the relationships between the prime contractors and the subcontractors, and to set up a level playing field in the contracting community. I've had a long career both in construction and education, and the first point i'd like to make is that people learn by doing. Earlier comments about the vocational education programs in the metropolitan area are particularly relevant here, because the programs particularly in the central city have essentially been gutted, and that means that there isn't as much exposure to a diverse community for learning the trades as would be beneficial to our industry. So we're suffering from a lack of diverse skilled excited people that understand what tools are and why building is a trade that is honorable and remunerative. People learn by doing. What gets measured and recorded gets done. I would like to suggest accountability with rewards gets results. If you look at South Waterfront, with clear goals and public scrutiny, some large well known general contractors improved their workforce diversity from less than 5% to over 10%. Those with better track records came close to 20%. The unions were asked to get involved and also get diversified. They also are working to improve. I suggest that those who achieve the goals should be rewarded for their efforts with more work. What gets measured, gets done. Practically speaking to achieve higher goals on bigger projects, Portland needs capable mwesb firms that deliver general contracting services, structure, mechanical and electrical services. That's where the bigger money is. What will you do to create that result and maintain competitive pricing? Keep it simple. This morning the city of Portland water bureau did a mandatory meeting to discuss the water bureau project on interstate avenue. It's a \$36 million project, the request for proposal is 216 pages long. The response is limited to 50 pages, which is about double the limit set for many public procurement processes. There are 19 different criteria that are explained over eight pages. For those who submit it will cost them about \$30-40,000 to create just the rfp response in some unknown pool of general contractors, that's big money for all firms but is a substantial hurdle, a barrier to entry really for mid sized and smaller general contracting firms. I attended the mandatory premeeting this morning. It did not appear to me that there were any african-americans, asians, native americans, or latino contractors in the room. You will get a high mwesb subcontractor and labor participation because angela will make sure that the 35% goal is achieved. But you have already excluded some very capable prime contractors by setting the bar at that level, and requiring that type of response. Fifth is to simplify the process. Reduce the paperwork where possible, to create intermediate sized projects, rather than single large projects. The water bureau project is a perfect example. There are a number of different phases, a number of different buildings that will get built, there would have been opportunities or could still potentially be opportunities to break that down into smaller chunks of contract. Which is one of the things that has been a successful strategy for general contractors in trying to achieve better diversity among our subcontractors. Particularly as you're trying to grow emerging small businesses, very difficult for them to take on a \$5 million piece of the project if they don't have experience doing that, bringing in two different subcontractors to do two or 2.5 million, has albanian very successful strategy. So I would hope you would work to keep it as simple as you can and still maintain the contracting rules that you have. Beyond that, I would say that the -- my observation of the advisory committee was that people were very frank, asked very difficult and pointed questions, tried to get to a deeper

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understanding of what the statistical results were, did not simply sit and listen to the results, they really did want to know how are we going to improve this situation and went out and listened to people in the process.

**Adams:** Do you have a jurisdiction that you work with that you think is the best practice for this simplification?

**Beyer:** Well, the -- some of the universities and colleges have procurement processes that are simple, simpler. They will limit the response to 25 pages, for example, rather than 50 pages. Portland state university has had rfps out that aren't quite as complicated as this. In the private domain rfps, i've provided rfps to clients that are five to 10 pages long --

**Adams:** If you could email me those --

**Beyer:** I would be happy to do that?

**Adams:** Marcela?

**Marcela Alcantar:** Thank you commissioners, Mayor. Thank you very much. I am honored to be here today. I really appreciate the opportunity to raise my voice, especially coming from a country that if you do that, you will be shot, not kidding. So like the commissioner Fish mentioned, I was interested in the professional services. It's a challenge because it's an elite profession, when it comes down to engineering, perhaps. It's a science where women as it is, we're challenged continuously of our knowledge. So in addition to that, we're driven many times to take radical steps like opening your own business, to create your own opportunities, like in my case. With that in mind, I have to say and give credit to the City of Portland that they have done an excellent job of creating the opportunities for small businesses compared to other agencies that you may save in the u.s. Army corps of engineers, or the city of beaverton, and so forth. However, that doesn't mean that you are cleared from it. And the reason is, because you guys are the key to our success. Working with the army corps of engineers and trying to work with them in federal highways, they said -- and this is a federal program supposedly to help minorities businesses like myself to develop and create opportunities for us, their answer was, go back to the city. And tell them to start you there. And this is supposed to be a program to mentor you. So if you go away, there is no us. It's so essential and important. The professional service assist a key element in your study, and the reason is because we're moving from the fields, at least in my background. You're more moving from the restaurants. Many times I ask, why don't you consider the professional services? And the answer was, because the majority of you guys are on labor. We're moving away from that. We're growing. We're not two generations behind. I may be a generation ahead, representing minority and women. So for me to help you clear up the road for those coming behind me is critical. So creating -- a disparity study with professional services, it gives a better and broader perspective because just for example, if the asian community might not be in your construction areas, they would be more focusing on the professional services. So does that mean you discriminated against them? No. You created the opportunity somewhere else, but it doesn't mean you just get rid of them because you give opportunities. That's what it creates those opportunities. However, I am concerned on the disparity study because I don't think it adds up. It doesn't add up at all. I see the numbers where it shows the availability mathematically it doesn't add up and it makes no sense. This morning I was talking to one of my friends here locally, and I was mentioning that. Why doesn't it add up? It doesn't add up. And I was informed, I was looking at your matrix about the subconsulting and how are we distributed. And your benchmark numbers in relation to the overall percentage of utilization is based on availability. There is two lesson, one that is availability, and available firms. My firm is in the unavailable list. So that means your equation doesn't add up. So thank you very much, and I hope that we can look closer to this and create a shelter marker program for the professional services will be a dream come true. Thanks.



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**Adams:** Thank you.

**Maurice Rahming:** Mayor, commissioners, thank you for having me. We'll add -- i'm glad to serve on this committee. Maurice rahming. There's a few things that I want to go on what marcela was saying, the fact of the matter is, as we look at the availability numbers as far as what the study shows for african-americans, for example, the total dollar value that shows for african-americans for both prime substance suppliers, certified and uncertified, is less than my taxable liability as one company. So that's concerning to me. As far as how we got there, one of the things i've noticed as I was going through is 80% of the available firms or -- 80% of those firms, they're doing work with the city and pdc currently we're listed on the list as unavailable to do work for the city and pdc. So when we're looking at the numbers and trying to determine what the utilization should be, when we exclude 80% of the current layer have worked for the city or pdc in the past. We're saying they don't count as available. But we reflect them as being utilized, that changes the numbers. So I don't want to get into the methodology, because I think it could be sound, I want to say the implementation, when we have a company from texas calling up on behalf of a company from denver, calling up on behalf of a -- for the city and pdc saying, we want to you do a survey, for half hour, or so, and that company does not respond, at that point that company is now unavailable, and that's from their executive summary in the bbc report. So that's concerning to me, because they're currently working for the city, or for pdc, we have people that actually helped write the report that are listed as unavailable. So I want to say moving forward. We're going to look at adopting this, that we really have to look at what are we going to do to make sure that we actually continue to include those firms that haven't been included in this study, and actually do some sort of adjustments so that we can make sure that those companies can continue to work and continue to do business with the city and pdc. And so one other thing I notice the on the resolution, it referenced esbs, and I don't believe the study addressed esbs, so I was curious on how esbs got mentioned in a resolution that pertains to minorities and women. Thank you.

**Fish:** We'll come back to that, and Mayor, let me just say Maurice the work the substantial changes to the executive summary that occurred from the time it was first released until it reached this point was based in part on your involvement and the work you did, and the input, and we thank you for that. And when we get through with the testimony, we bring back the professionals and we'll address the point you raise about availability utilization, because it is an important point.

**Rahming:** All right. Thank you.

**Adams:** Thank you all very much.

**Fish:** Our final panel before public testimony is gale castillo, andre baugh and jorge gora. Well.

**Adams:** Welcome back to the city council chambers. Glad you're here.

**Gale Castillo:** Good afternoon Mayor and city commissioners. Thank you for having me this afternoon. The recent disparity study uncovers several concerns the hispanic chamber would like to address this afternoon. First we want to commend the city council and also pdc for conducting this important study. As we know, in order to address problems we have to have knowledge, we have to know where we are, so we -- this study is an important first step to understanding what the problem is and hopefully addressing some of the concerns. The hispanic chamber supports the following initiatives for construction contractors. We support increasing the number of subcontracts, we also support establishing smaller contract segments. We would urge you to use alternative bid evaluations that focus on other factors in the bid, rather than just low bid, more qualitative approach to what you want as an outcome. We ask you to please insist on prompt payment of subcontractors, we hear too many stories about small contractors who are not paid. Some cases they're not paid for about 120 days. And this is not acceptable. This kills small businesses. We also suggest that maybe for some of the smaller contractors that you provide some

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up front financing to help cover some of their start-up costs and materials. We would also ask you to collect better information about the subcontractors so we understand some of their characteristics. We have some information, but I think further information would be helpful to understanding what the concerns are. We would ask you to change how subcontractors are notified about upcoming subcontracts, and encourage their participation and bidding. We need to begin not only the city, but the prime contractors need to begin building relationships early on, so that they can bring their teams together, they can start looking at joint ventures, partnerships, and other collaborative efforts. Expand the city's partnerships for training and technical assistance. Simplify the city's prequalification system, increase the flexibility of the city's bonding and insurance requirements. In addition, the hispanic chamber recommends that the city of Portland and pdc utilize the cultural and technical skills much the hispanic chamber and other community-based organizations. Community-based organizations can conduct outreach to construction contractors to assist them to become certified and help them in their development. Work with prime contractors to conduct workshops, provide technical assistance to contracts and help them grow their business. But it's about creating capacity. Help the prime contractors increase their employment and promotional opportunities, and in our case, we have a lot of latinos working on these projects, most of them are laborers. So we need to make sure they're moving up. And help provide additional financing to contractors. As you know, there's very limited private sector financing in our case we have a very small revolving loan fund. The city might consider investing a loan fund that is community based that can help the contractors. This and more is possible with the expanded partnerships between the city, pdc, and the hispanic chamber and other community-based organizations. We have to make sure that all members of our community have Similar economic opportunities. Thank you.

**Adams:** Thank you and an opportunity to thank you publicly for the work you've done in the past as a city contractor helping start ups and existing small businesses. Stay in business and move forward. So thank you.

**Andre Baugh:** Thank you, mayor. Good afternoon, mayor, and members of council. I'm andrew baugh, president after small Oregon certified disadvantaged minority business. My comments today are not about the disparity, but about the promise of fairness and the fulfillment of equity that can result from the study before you today. As we all know, disparity studies are by their very nature controversial. The anxieties of equity and doing the right thing always enter our minds. Providing one offer more groups -- proving one or more groups of people have been discriminated against is uncomfortable and uneasy for a lot of people. However, that should not deter you from action or otherwise impede you in the ability to see now is the time to do the right thing. This country is littered with unused marginalized studies, minority and majorities have raised their voices about the jut comes combined with a lack of commitment by the governing bodies. This inaction unfortunately caused these volumes of disparity studies to sit on the shelves and collect dust. Here. You must understand that issuing a disparity study does not solve the problem. It merely identifies the gulf between the promise of fairness and the fulfillment of equity. Other agencies have had more disparities and done little to close the gaps. To reach fulfillment the city should not follow the quest for easy answers and half-baked solutions but face the disparity with directness and action. The city has adopted equity today I ask the city to adopt a strong commitment to the solutions and the accountability and the pursuit of equity. It is only through these things that the voices will be calmed. That said, the city should first endorse and embrace a strong commitment we see in your eyes and feel from your heart, your commitment will be tested, do not waiver because of the anxiety or the unease, but resolve to move forward in the face of these challenges. Second, the city should adopt immediately the resolution of actions. Additionally

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strongly support prime contracting and capacity building options. That's your biggest bang for buck. Prime contracting. And lastly, implement a good faith effort which only utilizes minority and women and extends the results to include work force because the work force, a truly trained work force is your next minority and women contractors. And if apprenticeship is not followed and not trained properly, we're just -- the availability doesn't matter in the future, because they're not going to be there. Third, the city should hold all parties to a high standard of accountability, you must review your commitment targets annually for progress, automatically make changes if achievement is not being reached. Monitor it and report it monthly to project managers. The city bureau director's partners and the city auditor should be held to the same standards you are. So your bureaus, the people that you do business with, the county, the state, the federal government, directors should not be allowed to have excuses as those excuses result in this easy solutions and half-baked answers. Remember it's your commitment, it's your money, and it's your promise. I'm reminded what martin luther king once said, the ultimate measure of a man is not where he stands in the moment of comfort and convenience, but where he stands at the time of challenge and controversy. Would I say to you today, the significant measure of the city of Portland is not where it stood yesterday and comfort in convenience, where it will stand in five years on the disparity study and ultimately the fulfillment of equity which is part of the Portland plan, have you an equity office, and how you look back five years from now, not 15, but five, you'll build a -- you'll be able to test whether this disparity study is successful in it's implementation. Thank you.

**Adams:** Thank you Mr. Baugh.

**Jorge Gora:** Thank you mayor, thank you commissioners for inviting me here. And also -- I would read for the record a letter we have sent to all of you. In regards to the letter that we sent, we commend the city of Portland and Portland development commission to continue to search for information that supports minority women and emerging small businesses. We believe following comments are based on the data and comments under the disparity study. The number of minority owned businesses in construction and personal services in Oregon, the city of Portland, and the region is small. Determinant the capability and needs of each of the 75 businesses is possible and will provide an opportunity to track and support the appropriate assistance to those businesses, the minority women owned small businesses. Using the disparity analysis alone as means of providing support to minority businesses, becomes counterproductive over time because the direction of support is based on moving numbers, not developing skills and creating compatibility.

Accountability for each minority woman and emerging small business outside contractor is an essential function to ensure performance of outside contractors. Some city of Portland and Portland development commission -- individual must be assigned the responsibility for monitoring this. Conducting support programs for minority women and minority small businesses collectively foster relationships that grow for all concerned. Multiplies opportunity to grow and develop. Supporting access to capitol, management support, sales and marketing technology and networking, creates partnerships that produce successful businesses. The city of Portland and the Portland development commission should strive to move minority women and emerging small businesses to sustainability as well as work contracts. OAME has been active for the last 23 years, we have been providing to minority women and emerging small businesses support in different areas, technical assistance, marketing, start up capital. We see that is a great opportunity for us to move forward and work together and how we can help those businesses. Something mentioned in meetings we have is to all who participate is to stay ready to be ready. Because if they stay ready they are ready to grow and move forward in any job that comes up. Thank you.

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**Adams:** Thank you all. Appreciate it very much. Alright it is 3:30 and we're going to take a 5 minute compassion break, since we've been here an hour and a half. And then we will come back from break and go right to public testimony.

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

At 3:38 p.m., Council reconvened.

**Adams:** Alright, the Portland City Council will come back to order from our break and we will proceed with public testimony. We call the public testimony in order that people signed up. The local laws require you to disclose if you're authorized to speak on behalf of an organization, whether it's for profit or nonprofit. We only want your first and last name. Do not want your address or phone number. Just your first and last name and what organization you are representing.

We do find it useful if you're known for representing a particular organization, if you could clarify for us whether we're listening to you, your own opinions or those of the organization you might be more closely associated with. That's helpful for us. Karla, read the first three names.

**Adams:** Mr. Weedman, mr. Jackson. Welcome. Welcome back. Glad you're here. Mr. Weedman would you like to begin?

**Roy Weedman:** My name is Roy Weedman I own bud construction, a trucking firm here in town. And to give you a quick history, I've been doing this for 20 years, 10 years on the light rail, many projects at all airports in town. Right now, I'm a -- running the trucking on highway 217. I've been out there for two years. I've got a lot of experience and network with just about every major contractor and trucking firm in town. With that being said, all of that experience, I wouldn't be able to work on any of these jobs because it's difficult for me to bid them because I'm not african american or asian. Which I understand, you know, the issues that -- sensitive with the social and economic deal, but it has an effect on us too. So I got to ask, what the intent of this study is because it affects more than just african american and asian-american people and myself and others like me, it's very, very hard to get work. And if I hadn't been with a outfit called salt and pepper, an african american firm, I probably wouldn't even be in the industry. And so, you're going to have to -- I hope the continuity keeps going here. What the issue is when you go to these big projects, the contractors have found a loophole and instead of going across the trades and getting a good percentage in each trade, what they do is -- I can only speak from my industry, the trucking, I see it time and time again, they always focus on the trucking, that's where they get the numbers and the flagging. For example, commissioner Fish, I saw you on tv recently on a block 49. And now, I hate to bring this up because I wasn't at the meeting but that brings up the point. I wasn't even notified and I actually helped one of the firms make up a bid proposal which they got to work on the job and I was never even invited to the meeting and from what I heard, it was all just african americans and many of the firms are repeatedly on the same jobs, the same companies on different jobs for the city, odot, port of Portland, tri-met, where I can't get my foot in the door. It's created an environment that's not equitable. I'm just asking for a level playing field and would like to see where the contractors have to disperse among all of the trades and can't focus their number in just one small area. Thank you.

**Adams:** Sir, mr. Jackson.

**Derry Jackson:** Good evening, I'm derry jackson, normally speak on education issues but today I'll speak a little bit on the construction side representing namco, they recently hired me. The -- james posey recently hired me to get a handle on what a disparity study is. I should admit that we need to realize the importance of folks like james posey, my understanding is he hired the first african american female truck driver in the city and these are profound things we need to be aware

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of and celebrate. The essence of what we're here to talk about, the disparity. I'm trying to get a handle on the entire study. In government i've come to realize there's a lot to say for juxtapositions. Something is said and intuitive you think something but what happens is almost the opposite. Unfortunately, i'm looking at this report through that lense. It's not your fault. It happens national through the city hall. That juxtaposition. We might have to remember the words of the 38th speaker of the house, thomas bracket read. One of the greatest dissolutions in the world is the hopes that evils in the world can be cured by legislation. To my good friend roy who I just met -- I shouldn't say good friend. We just met. I understand his dilemma, it's a real one. African americans are being oppressed into the lower skill set contracts. We end up competing with the same subset of people. It's no surprise you keep finding the same amount of people. The answer is in education and making sure we can get kids also ready to compete on the other level. But listen, roy, especially, I want to share with you things, man. These are numbers I pulled off Oregon economic finance forecast sites. And they're bad. Talks about our economy, it's down. One thing we can count on is the construction industry. If we do our jobs right, we in government should make sure our billings are maintained annually, not just when it's convenient in the budget, by then, it's more expensive. It's about how we get there. I notice when you look at our community, we're struggling. We're struggling. Poverty, there's a study from Portland state, i'm not going to bore you with the numbers, but they're abysmal. There are certain segments of community in harm. This contract, this disparity study gives us the opportunity not for another transfer program, a welfare program, but legitimate work. Be aware that kids on the street with no hope, shooting and killing each other. No, they could be on top of the sky rise as well making decent money. Keeping out of other parts of your budgetary issues. I'm going to close on this point. Already in America, one in 10 counties, whites are in the minority. Ok? One in 10 already counties in america. Whites in minority. In report might be juxtaposed in itself. Not in Oregon, particularly. But we should keep it in mind because there are real people suffering behind these things. Thank you.

**Adams:** Thank you, sir. Welcome.

**Melvin Oden-Orr:** Thank you, i'm melvin orr, counsel for namco and speaking on behalf of namco. I'm summarize, we've submitted written comments on the disparity study and I believe the minutes have that available to them. I'll summarize that this afternoon but I want to previous face the comments with -- preface that with the distinction -- and accuracy. Earlier, mr. Van dyke mentioned the role of the disparity study is to provide a basis for the city's race conscious activities. It's actually a little bit more than that. It -- it's intended to be a guide for the city as they go forward to make decisions about public policy. And so far, as to the extent of engaging in race conscious activity, right? And so that's what the role of the study and so the question is defensibility versus accuracy. Namco believe that is the study has some -- there's issues with the study that we believe ultimately under-counts the availability of minority contractors and i'll mention so much those for you. One of the things we point out, the study talks about both certified minority-owned firms and minority-owned firms generally. However, the study does not explain how they concluded that minority -- that non-certified firms are, in fact, minority-owned. One of the reasons for the certification program is to make sure that any benefits that flow from the program, i.e., the goal of creating a level playing field, in order to -- those determined to have minority raised persons in control of the entity. Without that certification, the question comes how does the study team know if the firm was controlled by the minority raised person. That was one of the issues. The other issue

**Adams:** Could I -- i'll give you more time. I just want to make sure i'm understanding the point and I appreciate the obvious detail you've taken and care you've taken in going over these issues.

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So is your concern that they identified non-certified minority firms and counted them or didn't count them or treat them in the appropriate way. Which side of that is it?

**Oden-Orr:** Right, it's not clear and that's why it becomes a question. If they identify firms that are minority owned but would not qualify to be certified. Then in their analysis of utilization, they might count, oh, we used that firm. Therefore, utilization goes up. But if it's a firm not otherwise qualified for certification, it's an appropriate use of the number. Without the information of how they made their determination -- excuse me -- we're not --

**Adams:** Sure, would your remedy be that we do that analysis of the non-certified firms?

**Oden-Orr:** I think it's important to provide transparency into the process to show -- ok, we -- for example, if they said, we called the firms and asked the question: Are you owned by? And went through the process of asking them the sort of questions you would ask as a part of the certification process. Minority-raised people owners. That sort of thing.

**Adams:** Thanks.

**Fritz:** A follow-up on the same topic. As we move forward and we want to track even more who is getting contracts, would namco's position be that it's not ok to count folks who are locals to us. We know who they are and we've asked those questions. Would you recommend we not count firms that haven't gotten the certification or how would you recommend we document that?

**Oden-Orr:** We have no recommendation with respect to whether you count them for -- whether you count them or not. The issue is transparency.

**Adams:** Do you have a professional personal opinion?

**Oden-Orr:** I know many firms owned by minority race people who have decided that certification is not something they want to do primarily because they don't contract with the government and generally speaking if you're not contracting with the government, going through the state certification process may have no value for you and may have a one-off engagement, making it not necessary for them to do that. So it just raises the issue. Thank you, commissioner. The other issue is while the study does have some anecdotal statements about discrimination faced by contractors in the private sector, there's not the same -- there's not a sense of the disparity in and utilization that exists in the private market. We think having such an analysis would inform the jurisdiction how dire the situation is in the private sector in order to think about the role that the city can play in remedying what's happening outside. For example, if you have abc -- i'm making it up. Abc prime contractor and they only use minority owned firms when they do city contracts but when they're doing a project across the street not owned by a government, they don't use, in my personal opinion that, shows that they are discriminating in the utilization. Unfortunately, I have a 4:00 meeting that I have to hustle to. So --

**Adams:** Go ahead and complete what you have in the time you have.

**Oden-Orr::** Thank you. [laughter] you're too kind, mayor. The other issue that we raise is simply that as part of this, they explain their process and they do what I consider to be a hybrid analysis, where they purport to identify the entire population of contractors that would be available, but then they note there's basically 50% of the people in that the population who provided no response whatsoever and then proceeded to do an analysis. It seems inappropriate. They mention they -- inappropriate. They mention they use a monte carlo analysis. I'm not a statistician and I thought that was -- a statistician, and I thought that was funny. I think that's something for the commission to consider in terms of the analysis. Um, finally, the issue about the counting that they did and I think it will be clear as you look at the study, there's a point in time at which the study team starts and let's call that july 2010. They're counting the firms that exist during that time yet the study period in question is the five years prior to that. During that time, we believe that there's the possibility there will been minority firms that have come and gone throughout that time who would

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have been available and could have been used and unfortunately, that's not accounted for and we think if there was some mention of that, it would better inform the commission on outside of what the actual ratio is, something that they might consider in terms of what effect has -- what might have been the effect on some of the firms based on our prequalification system. Based on our bonding requirements, insurance requirements and things like that. Let me close by saying that namco stands as a partner for the city and other jurisdictions in terms of trying to create a level playing field. We think the disparity study is the next step in this process and we look forward to working with the city and pdc in moving forward to create a more equitable system, level playing field and, um, those sorts of things.

**Fish:** Mayor, since we're about to lose you, I wanted to ask one question.

**Oden-Orr:** Yes.

**Fish:** When Maurice testified earlier, he said he doesn't dispute the methodology but has concerns about the execution. Is that a fair summary of your testimony that you do not dispute the methodology used, but you have concerns about the execution?

**Oden-Orr:** What I would say is the issue we raise are questions we think that the commission should consider in determining whether or not you think the study is adequate. What Namco looks for is leadership from the commission and the city of Portland on moving the issue forward and so I think when Mr. Rahming says the execution, I believe it's the leadership he's concerned about because that's what we look at as being more important than the study is the leadership that comes with moving these issues forward.

**Adams:** Thank you, sir. Thank you all.

**\*\*\*\*\*:** One quick statement.

**Adams:** Sorry.

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

**Adams:** You don't get a second bite of the apple. We'd be here all day.

**Adams:** Mr. Posey and Mr. Jones. Welcome back. Go ahead, Mr. Posey. Mr. Deloney, welcome back.

**Adams:** You were first to sign up.

**James Posey:** I'm James Posey. This is not fair and balanced. You know, this 700-page document, a lot of complexity. And you guys spent the last -- the first hour and a half talking to yourself and the people you've already talked to over and over again, so there's a lot of things we would like to discuss with you and you're going to make a decision today. This is not fair and balanced and we state that from the on-set. Let me state quickly, I'm here not representing Namco, I'm the president of the coalition of black men. Let me read what your disparity study says. Let me summarize and say there's no disparity. Overall. And what it really says is that really minorities are overutilized and that's a real key point because if you go forward on what programs and we're already being overutilized, I don't know how you can justify that. The other real key point I want to make here is that as far as I'm concerned you all changed the executive summary and you smoothed it around a little bit but putting lipstick on a million dollar pig doesn't change the fact that the pig is a pig. I'm going to be clear. When we talk about 1.9 -- 1.9, that percentage of utilization on the part of minorities is going to be your legacy if you pass this agenda today. 1.9 is a reference to extinction. You ought to count that number and when you institutionalize that figure in moving forward, you're pegging future programs and future activities based on that 1.9. And so, really, that 1.9 hovers over everything you do moving forward if you approve that document. Let me just say even in those 1.9 statistics, you know, no black people or minorities own any fuel companies. We don't buy asphalt, we don't buy concrete or any rock. We don't do too much maintenance on our material. Even when you talk about providing contracts and work to

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minorities, most of it doesn't stay in our communities. It goes to someone else. I see my time is up.

**Adams:** I'll give you more time.

**Posey:** Good, thank you. Most of that money doesn't stay in our community. So when you calculate that particular phenomenon and how it deludes the concept of providing work to us it, devastates our community. You have to be really aware of that. This whole concept is of -- of how this particular aspect of 1.9 will hover over our community and how it will inhibit our progress because believe it or not, everybody is looking at the city of Portland for a framework how they do business. And Mr. Andrews was here, probably a good contractor who means well, what's sticking in his mind, he doesn't have to do more than that 1.9 because there's no real basis for doing it, based upon the study and at the end of the day, most of the contractors out here will not do any better. The second thing I want to say is it's really important to look at what -- your recommendations are because they tend to focus on the symptomatic issues related to minority contractors. There's a lot of discussion -- the recommendation, insurance bonding and etc., that was, Sam, as you know, that was in the 1996 disparity study. Have you ever had anybody do a comparison between the recommendations of the 1996 disparity and the current recommendations? Most of that stuff is the same. And -- nothing's changed. Etc., etc. Then there's other suggestions in the study, for example, there's line of joint venture. There's nobody from this outfit that you hired that's going to go down to the Atlanta to see if they're producing results. I've checked. They're a sham. They perpetuate the things that go on with the programs and so-called throwing it up against the wall and hoping it will stick and hoping to get rid of real solutions to the problems. Finally, I want to say that at the end of the day, there's nobody home watching these programs to make sure there's compliance and the outcomes are reached. There's nothing really strong about compliance in the programs. And to your credit, Sam, you did mention, however, that this is not a program that's isolated to the procurement program. There's a war going on within the city of Portland. Your purchasing bureau and the rest of the bureaus are fighting against the DBE and minority program. You have to make everybody accountable and finally, we would not be here sitting here having this conversation today if we would have got rid of Jim Van Dyke 15 years ago. Jim Van Dyke has been threatening you with suits and legal consequences for the last 15 years. It's not been subtle. He's been hitting you all with that. There's not been any suits in Oregon relative to the DBE program. In fact, around the country there have been relatively few. So to raise the spectre of legal consequences and etc., etc., really you know, I can't think of anything more devastating. I think -- I think if we would have run up and got the Ku Klux Klan and let them hover around, that would be -- that would be not as intimidating of the impact that your legal counsel has done in depressing you all's attitude and more importantly your leadership about changing the dynamics that's affecting our community. Sorry if I took so long. But at the end of the day, this is your legacy and this is going to be meaningful for you and meaningful for our entire community as we move forward. Thank you.

**Adams:** For the record, you got six minutes.

**Posey:** Thank you very much.

**Adams:** I don't agree with your characterizations and I find them pretty abhorrent, but that's your right to say. Mr. Jones.

**Tony Jones:** Mr. Mayor. My name --

**Saltzman:** I have to say, I have to excuse myself, I've got the speaker of the house in Salem I'm calling and other legislators I have to talk about domestic violence-related legislation. Sorry.

**Adams:** Thank you. Mr. Jones.



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**Jones:** My name is tony jones, executive director of metropolitan contractors. My comments are I believe the study still falls short and I think we're missing opportunities. I believe it's an improved executive summary and points out significant disparities in certain areas but my concerns have been expressed earlier of the broader issues in Portland with regard to economic disparities in communities of color, african american communities and others as well. We know that all of these communities suffer from gaps in income. Income and wealth, and I know that bbc says it's taken into account in the study but what I really believe is that the 1996 study in conjunction with this study really gives the city and pdc leverage and a strong legal case to take strong action to address the disparity. Let me be clear that the disparity is with minority contractors, is with minority contractors. One of the other concerns I have with the study is that as a business service providers with minority contractors, one the things that local industry has done is telling businesses, look to participate, you need to get certified and be a certified minority women owned firm. What concerns me about the study is that that tool, that database was not used -- used to really identify who's available. I understand all of the legal -- the legal reasons and the statistical significance reason, but I think when you don't use that tool, you miss the opportunity to identify firms that -- that could be considered as available to be utilized when you try and determine what -- what the gap is and what the disparity is. The other thing I think is important to do is explore why firms with capacity but not counted were not willing to do city work. It's really -- there's firms out there that have the capacity to do work but unwilling to work with the city or pdc and we need to get those business engaged and get the official the utilized so they can hire people from the community. A couple of comments I have, commitment to change, one, I am glad to see you're looking at the shelter market program, restructuring that and prequalification requirements and there's been comments with regard to and I agree with with regard to evaluating staff performance and diversity goals, to help hit diversity. And the other thing I think is more important which been talked about is outreach, one-on-one interaction between the bureaus and contractors that want to be primes or prime contractors and subs to make sure that the connections happen and not just general outreach. Thank you.

**Adams:** Thank you.

**Fritz:** The point you want to highlight, wondering why some firms don't contract with the city, if you have suggestions how we can adjust what we do to be more friendly and more welcoming, help us to figure out in addition to what's in the study, what else can we do to attract qualified businesses. Thank you for making that point.

**Gerald Deloney:** Gerald deloney, self-enhancement incorporated. African american leadership forum and 1050 of which namco did a great job of renovation about 10 years ago, we're in partnership with namco. The last time I set in this chair, I was part of the communities of color and that delivered a disparity report here ann which said that people of disparity in Multnomah county were doing poor in all indicators of well-being that we take. And one of those is certainly economic development. And as when we sit up here and start talking about this whole contracting thing, we're talking about whether minority communities can survive or not. Because if we're not putting the money in and the onus is on government. This is where we're paying our tax dollars, I can't make anyone else or have any stick over anyone but when you're a governmental body it's your responsibility to make it friendly toward minority contracting. And i've heard people use the word "equity." I want to give a definition. Equity does not mean equal. It means there's been a disparity and this disparity has been going on for a long time. It's been going on ever since Oregon was a state, Portland with a city, up to the very point right now. And there's nothing done. So if we look at those past evil, being equal does not turn anything around. It doesn't help anyone. Level playing field, I don't want a level playing field. I want a unlevel playing field. That it tilts.

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The other way so we can start putting money where money needs to go. If we don't start taking that attitude, we'll never get to where we need to go. Now the disparity report that I brought with the coalition said that things are getting worse all the time. If we compared this disparity study that's before city council right now to the last disparity study that was done, i'm willing to roll the dice with you. To guarantee that you it says things are worse now than they were before. Now, when we start talking about legacy, that's not the legacy we want to live with. We can't afford to have things worse than what they are right now. As we know within the school district, 45% of the kids right now are children of color. By 2020 guess what? It tips to the other side. And if the way we operate says we're going to continue to discriminate and I know -- I know James, used harsh words but he said racism. And when anybody uses that word, racism, everybody gets uncomfortable. They think you're being divisive but if you don't do anything about it, that's derisive. Racism is divisive. Answer your race problem and you start answering a whole bunch of other problems that are out here. I'm sorry if I made people you uncomfortable by using the race word, but you have to use the race word. If we don't address the curve to do what we need to do to address the issue, it will get worse and we'll have a real crisis on our hands.

**Adams:** Thank you, gentlemen.

**Adams:** Hi.

**Herbe Fricke:** Hey:

**Adams:** Good afternoon.

**Fricke:** Not often you can say "hey:" to the mayor.

**Adams:** You can.

**Fricke:** I know I can now.

**Adams:** Go ahead.

**Fricke:** Good afternoon, mayor and city council. I want to thank you for the opportunity to speak on behalf of the Oregon native american chamber. I'm the president of the Oregon native american chamber and not just speaking for the chamber, because I wouldn't be here without the support of the indian community represented by several hundred tribes in Portland. I'm from the -- i'm from a member -- i'm a member of a tribe and particularly in the indian community we acknowledge our elders as the ones that really support us and providing leadership roles for our community. I want to thank the city and pdc for doing this study. And as well as including us in the discussion. The study identified disparity in the use of native american firms and in particular pointed out the lack of availability of native americans that can perform in prime contracting roles. That was true for other minority businesses as well as women enterprises. We believe implementing the implications of the -- in particular, our goal as the chamber, the Oregon native chamber to assist the city in developing resources and the capability of native american businesses. Because by seeing the disparity and also how the lack of availability is out there, we look at going forward by try to be increase the availability. What's really causing that? Especially the inability to bid as a prime contractor. The chamber, we believe, that the resolution actions will improve the subcontracting opportunities and we support restructuring the shelter market program to include professional services, we believe that the size of the projects in the sheltered market program should be increased. As well as providing more opportunities for prime contracting. We believe you need to identify quantifiable goals. Both for professional services and for construction. And moving forward in a positive note, we wanted to encourage joint ventures, or teaming, particularly of large businesses with other native americans and minority businesses and women businesses and make that evaluation requirement of equal weight in the evaluation criteria. Finally, we'd like to see mentoring and developing minority businesses and increasing the availability for prime contracting and encouraged to hear the city recognizes the need for developing our workforce. Thank you.

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**Adams:** Thank you, sir.

**Penny Painter:** That's where I come in. Hi, everybody. I'm penny painter. I'm with cooper's east engineers but the co-chair of the Oregon native american chamber and here representing the chamber, for the most part. But i'm a workforce development specialist and this is where the apples grow. Actually, the seeds. I've worked with people that go into the apprenticeship program and that's where the seed of the contractor starts 90% of the time. A lot of people get into the trades and grow up through the system. The other thing that I have done is worked with small businesses. Especially minority businesses, throughout my time doing this work. And i'd like to acknowledge the things that everyone has said pretty much. I don't want to sit here and repeat everything. It's monotonous. They do need assistance and mentoring, I just love the word "mentoring." because that really puts an umbrella over this whole cascade of water we have coming down the river. We know our river is rising above its hedges and that sounds like what this is doing as well. I actually commend the city and pdc for doing the disparity study, what I see it does is brings opportunity. It brings opportunity all the way around. To the city of Portland, to look at the policies, the programs, revise, revamp and change and everything need that's to grow. Everything. Even us as human beings. And the other thing is it gives opportunities to contractors, it gives opportunities for us to speak with you today. And be part of this disparity study. Thank you, mr. Fish, I appreciate that. I appreciate the invitation. And I appreciating about part of the system and I do see that it is going to grow and we're -- you know, we're going to work together. And that's what I would like to see. Everyone come together and work together to start -- don't start, we've already started helping the small businesses rise up and do bigger business. We have to be careful and the one thing I want to remind everyone of, they're small businesses. And sometimes we have to be careful what we wish for. I was a general contractor for 18 years and I just kind of motivated along and did my business and survived and did what I had to do and I took on a couple of big contracts and almost set myself up for failure. Because of different reasons. But this is not the day for the time to sit down and talk about all of those really wonderful individual reasons. I'd like to do that in the future. And like I said, and i'll end this with the fact that I would love -- and we would love -- to be part of the solution. And work toward helping and, you know, the city of Portland, pdc, and small businesses and -- and pdc and bringing more native american businesses to the table.

**Adams:** Thank you. Hi, welcome.

**Aneesah Furqan Peach:** Thank you:

**Adams:** Could you move closer to the mic so we can hear you well.

**Peach:** Ok. I'm Aneesah and representing the Oregon assembly for black affairs. The economic and employment development committee. I want to thank you, mr. Mayor. And also commissioner Fish. For initiating the work to get this study completed. I want to commend the -- is it bbc? For the work they've done and I want to say i'm here because of the loud outcry of the black community, the minority community, that here we are again, 1995, and we're still dealing with the same disparate issue. We can do better than that. There are a number of ideas that came out of the report. I encourage the commission to take those ideas that are positive, take former -- former vic atiyeh's message, just do it. If there are people walking, people who are responsible for letting procurement contracts, gatekeepers, barriers, remove them. And let's get the city running. We have to do it together. We have to be inclusive. Thank you.

**Adams:** Thank you very much. Thank you all. Appreciate it.

**Maxine Fitzpatrick:** Thank you.

**Adams:** Welcome, thanks for waiting.

**Fitzpatrick:** Thank you.

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**Adams:** Would you like to go first, please?

**Fitzpatrick:** Love to. Thank you. Good day, mayor and council. Glad to be here to offer these comments. Of course, I have some prepared statements regarding the draft disparity study. In consideration of the vast disparities that exist in the city of Portland for ethnic and racial minorities in the areas of economic development, education, health, housing, civic engagement and leadership, my initial thought on this matter is what is it going to take for us to holistically address these disparity in the city of Portland? To simply provide justification for their existence is not a solution, it's a excuse. Today i'm here to speak as a member of the Portland african american leadership forum and on behalf of the national association of minority contractors of Oregon, known as namco, construction related industries are only a portion of the work I do professionally, an overarching goal is the advocacy and inclusion of the community residents in the american dream of prosperity. I'm here specifically representing the african american population as well as other minorities. We're aware of the numerous I hope adequacies that exist in economic opportunities for all in the city of Portland. Minorities have been left out of the mainstream economy for many reasons. Including disparate treatment, something that may be at the core of the problem. With the current disparity study, the topic of the meeting, the city positioned itself in a claimed defensive, but in my opinion, inexcusable situation of exclusion. Namco and others are challenging the methodology, they've been vested in the process and those of us who have not, respectfully rely on their conclusion. I don't believe the resolution of this historical discrepancy can be justified with explanations. I encourage recommendations to help alleviate the problem as advanced by namco and others involved in the construction industry. I further urge you to consider working with them and others such as priority builder, to answer the vast ray of questions and concerns posed in a -- vast array of questions. Concerns posed in the letter. The past doesn't have to be the future. Unless we want it to be. Thank you for the opportunity to speak. Kind regards. Maxine Fitzpatrick.

**Adams:** Thank you, ms. Fitzpatrick.

**James Faison:** My company is phase in construction. I apologize for not having a script. But I represent contractors. First, I won't beat a dead horse on the disparity study but the disparity study was supposed to have been a poll put out for minority contractors, black contractors and a huge organization, which is namco, which has a tremendous backing of minority contractors and I bet if you poll those contractors you'll find that 75% of them guys wasn't contacted. You know? So how do you figure on capacity or how do you figure on where minorities have been utilized? So I -- I think the disparity study is highly skewed. It needs to be looked at as such. Secondly, looking at some of the programs like pdc and the city's programs, I think there's a number of things that need to be changed. You need to look at how you implementing jobs and some of the things that -- the way you implement them is on low bid. Low bid does not work, all it does is put people out of business. People try to bid down in the basement and they go out of business. You have to look at many ways you can help minority contractor, helping them figure out how they can get financing, you find organizations like oame that has helped get money and they can fund their projects and have to go to organizations outside of the city or the county to find organizations for its projects. There are a lot of big contractors in the city but they need a hand up and I think you should look at those things. Low bid doesn't work. You need to look at contractors that are working with making sure they're monitored on the jobs they do and also, you need to make sure that the people that do the bidding are doing their minority participation and it's monitored. Thank you.

**Adams:** Thank you, sir. Sir?

**Mark Matthews:** Good afternoon, mayor, and the board. I'm mark, the president of oame. I've had a lot of input going to the meetings and talking about it and we're deep and passionate about

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the disparity study and how unfair it is to all of us, the minorities. And I do hope that you take a good look at what you guys are doing as far as making your decision and I think when we first had the first meeting, we discussed how I am a minority contractor in Portland, and esb contractor in Portland and time and time again, when did you the disparity on minorities and women getting under utilized I keep seeing the esb pop up. And it's like you talk about how to utilize the minorities but -- i'm a esb and don't get used as a esb in Portland. But they're over-took the economy -- as minorities we don't get a hand up, we don't get a chance and keeping the esb part in there, we won't make any ground on where we're going to go with this. As far as in the next five years, next 10 years, I think this should be something heartily looked at and really give the minority and women a fair chance of trying to grow their business here in Portland and making a success of it.

**Adams:** Thank you, sir. Thank you all very much. Mr. Colas Welcome back.

**Andrew Colas:** Thank you. I'd like to thank you all for having me here. And thank you for your service. You know, all of you guys work hard and tirelessly and a lot of times don't get thanked for the service do you for our good city but I want to thank you all and i'm here representing colas construction, that's my company and i'm a board member with namco and also Portland housing bureau commissioner. So i'm wearing three hats here. But the main hat i'm wearing is i'm an Oregonian, born and raised here. I love Portland. It's the city i'm proud to be a part of. And one of the things that I want to talk about is the numbers. And the disparity -- in the disparity study, that's something I helped with the assistance. The board, I created the chart we've provided to all of you.

And it's really important, I understand there's three legs to the disparity study. But one of the legs -- and i've talked to commissioner Fish and want to thank you for having me and talking through this process with me. I think you've done a good job with that and at the Portland housing bureau we have a great board and that's going to help to move Portland to the next stage. In regard to the bbc, I understand there are a consultant that the city hired and there's just understanding my opinion, statistical flaws with the way they gathered the availability. An example of that is my company, I feel like we're a well known company. My older sister is a pdc commissioner, very active and our company weren't even unavailable to be unavailable. We weren't contacted or used in the sample and when I look at the data over that five-year period, our company did more volume than it said all african american companies did over that period. So that goes to show you how skewed the available bit data is. Availability data is. I understand it's an executive summary and you've done a really good job redoing the executive summary, but when it comes to data, people want to see numbers and that's something I get afraid about because while we have a great commission and great mayor, I keep on saying what happens when you guys aren't here to represent our city? What happens when the next group comes and maybe they aren't as compassionate and passionate about seeing the city move forward. So I keep going back to the numbers and one of the other things. The apples to apples comparison, I understand they're trying to have that with the majority and minority firms but if it was apples to apples, we would have no disparity in the first place. It's not something we can look at as apples to apples. When you leave out certain large minority firms from the data it, skewed the data. You missed the majority firm and it wouldn't have the same impact as if you missed the large minority firms. Keep that in mind and I know you have to make a decision today and whether or not this passes or doesn't pass, let's all be prudent in driving this forward. I have a -- i'm the second generation in my company. I remember a lot of the gentlemen that have spoken before you here today, being a little kid and hearing them talk about the same thing, in 1995 and my father said, don't worry, once you come and take over the company, we won't be dealing with the same issues. And i'm seeing them come to the surface today and I have the next generation, i'm hoping we don't have to deal with the same

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issues. Let's be diligent and work together to move forward and hopefully the next generation isn't talking about the same thing. Thank you very much.

**Adams:** Thank you, commissioner. Can we have the consultant and christine come back up? If we could have the bbc folks and ms. Moody come up. Who has been keeping notes?

**Keen:** I've been keeping notes.

**Adams:** Ok. I wanted to air out your reaction to some of the concerns that have been raised and I guess maybe starting with how the definition of availability was defined and why in the search for those that might be available some were left of the list or --

**Keen:** That's a very good question and again, this is something throughout the course of the disparity study we had extensive discussions with people on our advisory group and this was -- questions raised as part of the public comment period and it -- and it -- I might start out by saying it's a bit counterintuitive and if the city had hired us to get the most complete list of all the minority-owned firms or women-owned firms there were in Portland, we would have done the research a different way and I think a lot of the concerns and questions are very appropriate and very valid. If you're trying to get the biggest list of minority-owned firm, why did you do it the way you did. Why not look at the certification directory, the namco list? The response is, we weren't trying to get the biggest list of any type of firm. We were trying to get a percentage of firms that were minority and women-owned from a neutral perspective. Not starting with membership in a particular minority contractors association or membership in a certification directory. We were trying to take an outside view and say we have the same way of counting firms that are majority, minority, and women, and determining the percentages of firms that are minority and women owned. One out of five firm, almost 20% in the industries we were looking at in the Portland metropolitan area were minority and women-owned. So, you know, we spoke -- reached 3700 firms and performed, of those firms, more than 1500 were interested in doing interviews with us about their availability for specific types of city and pdc projects. In the course of doing that, we were aware that some of the firms that may be minority and women-owned were not for one reason or another, and we looked into the reason, were not included in the availability database, because we attempted to reach them and they declined to interview or after repeated attempts, four or five attempts to reach an individual firm before we moved on, we were unable to reach them. And the same is true for majority-owned firms. One of the key questions for us, because we were worried about pens, not the biggest list -- percentages, not the biggest list. And it's a good thing for you all to still do, but for the purposes of the disparity analysis, we needed to be able to say, we had an unbiased way of getting to a list of majority, minority and women-owned firms, not knowing necessarily which were minority and women-owned when we started. The approach we used was the court-approved methodology for coming up with the availability analysis and determining the benchmarks for the utilization. Now, if we had been successful in having that much better a list and everyone that we called was willing to talk to us and give us information, but I think the percentage results would be different? The answer is no, and we've done analysis, because we talked about so many firms and looked for -- if there was systematic bias in the firms we were unable to reach or -- for one reason or another not interested in talking with us and did not find that the we were disproportionately excluding minority and women-owned firms from doing that. And took extensive efforts to reach firms, we knew our process would not successfully reach each firm, white-male or minority or women-owned. We did it in a fair and objective process and it's been successful in upholding these programs in other venues. Other consultants have used approaches somewhat similar where they did not reach every firm but relied on dunn & bradstreet data for a base of this and they were successful in court. The options to consider in the availability analysis, this was the most sound approach available to us.

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**Fish:** You had a number of people testify they did not find their firms listed on a availability list for one portion of the work you did. Have you gone back and considered had they been considered in the availability poll, as the denominator, whether that could have changed the finding of disparity, yes or no?

**Keen:** It would not have changed our finding and that may be the most important point to make here is, again, I think some of these questions are legitimate. However, we did not exclude minority, women-owned firms and never counted a firm that we did not successfully contact as unavailable. We just did not have the information available to analyze in the study. And certainly would if they had answered the availability interviews. The key point, to answer your question is, excuse me, we found disparities where no programs applied. Consistently found that. Some of the disparities were very large. Substantial. If we had -- I don't think we did under-count minority contractors more than majority contractors. Let's say we did, if we had been able to get more minority-owned firms into the availability analysis, the result -- the disparities would have been even larger and we had found where -- where we were already finding disparities.

**Adams:** The dunn & bradstreet -- has been litigated and upheld?

**Keen:** The dunn & bradstreet as a source --

**Adams:** That's what I mean.

**Keen:** Some consulting stop there and say, that is your availability and what we believe is you actually have to call firms and talk to them about the types of work they do, the sizes of projects --

**Fish:** We're in the lightning round of this process.

**Adams:** The answers are great.

**Leonard:** Counsel for namco testified there were issues in his opinion about those certified as to whether or not they were minority or women-owned.

**Keen:** That's a good question. The threshold question is why include noncertified firms as minority and women-owned firms at all? There's a few reasons. The first [inaudible], you can discriminate against whether you're a certified or non-certified firm we based the designation of ownership on conversation with the ownership and control of the firm over the telephone with the firm ownership and manager and took that information at face value. If they say they were a majority women-owned firm, we said they were. If they said they were more than 51 percent minority owned we took that information at face value. If they said they were white male owned we took that information at face value as well.

**Adams:** Did you ask them if they were certified or not?

**Keen:** You know, we looked at the certification issue and report separate statistics in the report. I want to --

**Adams:** How bad was the disparity in the use of firms out of our programs? If you could just summarize or -- the most summary of terms?

**Keen:** The courts have said if you can get within .8 of where you ought to be. If 100 is parity and you can get to 80, then you may not have a substantial disparity and it may not be actionable. All the disparities we've been discussing were substantial in the eyes of the courts. On the scale of zero to 100, one of the measures of how bad it was was two.

**Fish:** There's a lot of focus on one number. In the report. Which is the availability figure of 1.9% for an minority business enterprise in the city chart but not a lot of discussion about the availability data on the pdc side and yet that's where you found substantial disparity in fact in five of the -- of the eight categories, you found disparity. So in my mind, is there some difference in your methodology, statistical analysis in what you did with the pdc data, that's different from the analysis you did on the city --

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**Keen:** We used the same availability database. Pdc has different types of contracts and perhaps more subcontracting opportunities and the contracts we were examining so availability for those pdc projects tended to be higher for minority and women-owned firms which was particularly disturbing when you saw the extremely low actual utilization on pdc-sponsored projects.

**Adams:** Commissioner Fritz.

**Fritz:** So we are not limited--the numbers I understand the concerns about the different numbers and availability and such, but your study shows and I'm quoting -- I found numerous places where you say there are substantial disparities, the information in this study strongly supports stronger city action to remove barriers to minorities and women and business participation in its contracts foster more contract opportunity for women and minorities and help build a strong minority and women-owned business community in the Portland area. There were substantial disparities in the utilization of minorities business as prime contractors. Women were substantially underutilized as prime consultants on city construction related professional services. So am I correct in reading the study, you've found significant disparities especially where we don't currently have any city programs?

**Keen:** We found substantial disparity where you do not have city programs.

**Fritz:** So our programs are working to some extent. We can do better. I noticed in chapter 10 you have a list of -- a suggested to-do list for us. We have four or five things in the resolution we want to get started on right now. All of those things are supported by the findings in your study.

**Keen:** Yes, as a starting point. And -- maybe some of the comments today were if this is also the ending point, is that enough. And I think the study would say, no, that's a very good starting point and you need to do more.

**Fritz:** Thank you.

**Adams:** Did you review the audit by the auditor on this related topic? Sheltered market?

**Keen:** Yes.

**Adams:** And your comments on the audit?

**Keen:** That's important information for the city to review when looking at kind of the next generation of the shelter market program if there is one.

**Adams:** So the other issue raised is the -- kind of a legal issue. Are you lawyers?

**Keen:** I pretend to be one from time to time. No. [laughter]

**Adams:** Maybe, jim, you can come up and trade places with ms. Moody. Mr. Van dyke. So the notion of a raise-based or gender-based affirmative programs with -- gender-based affirmative programs between demographic and type of work programs, have those been tested by the court? The gentleman who talked about the truck drive, that primes or subs, will load up on flaggers and truckers which has been a concern i've had. So could if there's a disparities that shown or demonstrated in other categories, are we allowed to be -- is it your legal recommendation we can be more proactive in some of those other areas? I don't know that i've ever heard discussed what the courts have said in terms of dividing up the problem into units.

**Van Dyke:** Ok. In general, i'd want to work with our folks here at bbc, but I think -- i'm looking to them to see if they'll agree with me, on electricians, where we saw a certain availability for electricians and that would give us a opportunity on a project by project basis to take a look at those sorts of specific subcategories.

**Keen:** And I can also offer a parallel program, the federal dba programs specifically asked you to look at areas where you only use minority contractors in those fields if it's trucking -- it could be trucking or other types of trades and exclude majority owned contractors. At the same time, you're also excluding the minority owned firms from other trades. So you have unequal application of a



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program. You've hurt majority owned firms unfairly, but you also hurt minority owned firms but not make making all types of subcontracting available to those firms.

**Adams:** Was that a yes or no?

**Keen:** It is an issue to have a narrowly tailored program, you can't have all of your minority business participation in trucking. That makes an unconstitutional program, one, does no help for the minority-owned contractors out there.

**Adams:** Can I interpret your answer --

**Keen:** You can look at specialty trades -- more than just construction as a whole. You can break this problem down in your implementation of any programs you might have.

**Adams:** We might be able to do race based or gender based, more proscriptive efforts and -- in the smaller categories of work?

**Keen:** In fact I've seen programs where the calculations of a project goal actually includes showing the work of -- we have these types of trades and we think this amount of work in these trades for this project and we estimate that there are a number of minority women owned firms certified and available for these trades and we're seeking a prime contractor to go out and try to involve those firms.

**Adams:** And why doesn't the court recognize, or why doesn't the legal opinions or courts or what have you, a.g.'s opinion, recognize the lack of availability as the basis for more affirmative -- the ability for governments to make more affirmative proscriptive efforts? I mean --

**Fish:** I might add, as a preview of the answer, I think also, in part the answer is -- begs the question, which court. As the court becomes more conservative. The supreme court, they've closed the door further and further on these programs by raising the bar. That's not always been so and in part why the nominations are so heavily contested and there are people on the court allergic to race-based remedy and looking for ways to strike down almost any program which addresses historical disadvantage and their view understanding my opinions, that the race starts today and everybody is at the starting line and why look backward at anything that historically disadvantaged people? That's a legal bare.

**Adams:** I appreciate. That adds to -- adds context to my question. But on the more narrow piece of that issue. If we're a community with x number of females and x number of african american Portlanders and -- but there's y, much less number of female african american, let's say, electricians is it that we are -- why -- how -- based on what reasoning, I guess is why i'm asking, based on what reasoning, the court said you can't look at that when it cops to putting together programs like this. Why is not a certain amount of responsibility placed open open government for addressing the lack of st. Availability in our own community.

**Keen:** That's a very good question. We did the availability analysis did we do it the way we did. We wanted to look at current availability and what types of work and size of jobs people bid on and do it -- that doesn't get to the potential availability and some courts have examined that issue and said economy you're implementing a program, you can look at those issues and say, but for past discrimination, there would be more availability and when we're setting our future benchmarks for how well we're doing as a community, we'll take that into account and the numbers are going to be higher than the current availability. On a project-by-project basis, you have a lot more flexibility in the goals you set.

**Adams:** Does that mean, for example, if we had preferential based on, you know, a category of work, training programs leading to a category of work we can show not only a lack of utilization but a lack of availability that we can be more assertive it sort of the that path of work? And training -- Given the lack of training and lack of utilization?

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**Keen:** There's some courts that have argue that's very position. It makes sense to me. You never know in the future what may make sense to a court. But there's certainly a lot of logic to that.

**Adams:** Jim, I want to give you a opportunity to respond to the concerns stated that the advice of the -- and hasn't always been you. There's been other attorneys. But the advice that the office of the city attorney to this city council and past city councils has been very conservative in terms of hemming us in and -- and not taking more risks in this area. As a note, it's not been --

**Van Dyke:** As a note, it's not my experience we've ever scared you folks at all. [laughter] but that said, I think if the message sounds conservative, it's because i'm simply relaying the holdings of a very, very conservative supreme court and judicial decisions that have emanated from that. That would not be my particular position on how I would come out on it. But I think what our obligation, of our office is, is to lay out for you as honestly as possible, what the legal lay of the land is. And that's -- that does not suggest as I think has been discussed here today, that we don't have opportunities to take remedial action, necessary remedial action to remedy the effects of discrimination and I look forward to working with bbc in the future to come up with ways to did that.

**Adams:** Any other discussion? I appreciate your patience. All right, thank you. I want it thank you for your work and I want to thank you for -- I enjoyed -- found useful the dialogue and now that the baton has been passed, I will continue to rely on you for more. Karla, please call the vote.

**Fish:** Today marks the end of a long and dynamic process which began about two years ago. And if as I suspect, the council accepts the report, then essentially, the real work begins. And so I don't want anyone to misjudge our will going forward to do the real work. And I think each of us in our own way are going to communicate that today. But I very much appreciate the way my friend andrew colas framed it. His concern is less with us than maybe a count in five years, but this council has a change to make a difference now and our resolution commits to doing things immediately and doing some additional things in a very prompt fashion and everyone here has the right to hold us accountable to that. There's been few assignments i've had on council that have been more rewarding, in part because of the people i've had a chance to work with. And I want to particularly thank all of members of the citizens advisory group. I attended every meeting. And remained for the entire meeting and I found every time I attended a meeting, I learned something new. I'm not personally someone who has a lot of experience in the frontline of -- of either the professional services side or the labor side, I was educated through the dynamic conversation as we went along and what always impressed me was the tough questions asked of the consultant and the level of engagement. There's a number of people I want to specifically change. All of the members of the advisory group for their service and the enormous time they put into this and it would be unfair just to characterize the time as the time we spent face-to-face because there was enormous time outside of meeting, reading materials and comments and attending the public forum and the like. Heart-felt that. I want to thank in particular two people. Maurice rahming and andrew colas. Who spent a lot of time about me, walking us through the concerns they had. And while I deeply respect some of the reservations they still have, because they've made them forcefully and I respect their perspective. I also don't want to diminish the impact they've -- diminish the impact they've had and the work that was done in rewriting the executive summary and the elevating of the quality of the public debate and understanding of our work. I want to thank the bbc team for listening. And for engaging us. They were selected through a competitive contracting process over which we had no tuck say other than ratifying the result, did no particular say other than ratifying the result. They did the work with a lot of support along the way and at the end, questions have been raised about methodology and implementation and other things, but I

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suspect no matter what report issued, we'd be having a variation of this discussion, because these issues are fundamental and provoke great passion and we can adjust some disparity findings here and there and change a word there, but let's remember, we're talking about history here. And no amount of history, particularly in a community where so many people experienced barriers to opportunity can be accurately reflected in one document. And perhaps at times we thought the document would do too much. There's substantial documented findings of disparity in this report. And that's not to say that the city's efforts to this point have failed or pdc has failed. It's just that we haven't gotten the job done. And there's a roadmap provided to do better and more going forward and you'll hear from all of us the will to do that. The hard work begins and it's an honor to be part of this process. And what I have learned is that whatever differences we have about any detail, what we share is the passion and the commitment to remove barriers to equal opportunity. And perhaps it is discouraging this 2011, we're still talking about the barriers. But it may be that it's a lifetime's work and not something where we can ever be complacent. And so I commit to doing my part through my bureaus and with my colleagues and it's to the loss on me that one area of disparity that's identified is the pdc sponsored contracts where pdc was not the owner, but an investor and a number of those contracts have migrated to the city and a number of those will be administered by the Portland housing bureau going forward. So we have a big role and Andrew, who is chair of has a big role and I know you'll hold us accountable for meeting the goals we've set. Thank you all and thanks to those who spent time. Many of you testified this morning at pdc and then here this afternoon. It's been extremely valuable and we've made an important record and I thank you for your time. Aye.

**Leonard:** I was particularly interested when commissioner Fish was asking the counsel representing namco if he and namco believed the methodology contained in the disparity study was flawed and I expected an attorney in response to a technical question and his response was after hesitating for a moment, what we expect, commissioner Fish, is leadership from you all. That would be -- that was an astute observation from anyone but coming from an attorney I was particularly impressed he could on the fly distinguish between the nuanced answers he could have given a larger meaning which was as I took it, the -- the disparity study notwithstanding, there are leadership decisions that you all are going to be required to make to make sure that people are treated fairly and equitably when they come to get a city contract and that summed up the entire report and hearing perfectly and that soliloquy between commissioner Fish and him. I'm less interested in the debate over the nuance of the disparity study than I'm on the verbiage of resolution we're going to vote on, and particularly where we've identified issues to help correct disparities such as bonding, insurance, prequalification, capacity building, access to capital and other systemic obstacles to the success of minority and women owned businesses in Portland. This is a first step. I think commissioner Fish has done exemplary work and I appreciate the effort of everybody involved in this and the passion that goes with that. And my sympathies to the city attorney for being the bearer of bad news. I've been on your side many times in delivering bad news and being criticized for that. Don't kill the messenger. I understand that -- that message as well. But I appreciate your candid direction to us and helpful and happy to vote aye.

**Fritz:** Thank you. Commissioner Fish, for your leadership on this project and your commitment of inclusion of the community in every step of the way. Thank you to the consultants, bbc, for your good work. A massive project but very readable and I appreciate the recommendations you've pulled out for us and thanks to the advisory group who have done stalwart work. And to each one of you here today for coming and staying for three hours and more to show how much you care about this and that you are with us. We do -- many folks testified about we need to do this together, it takes all of us and I was greatly heartened by that you're willing to acknowledge that

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yes, there's been 400 years of disparities in this country. Maybe more and it's going to take a while to fix them and we need to make huge strides and i'm committed over the next five years, I hope, to doing my part within my bureaus and every contract that comes to council and in giving christine moody the authority to do the work she's been doing, she's already demonstrated above and beyond commitment to inclusion of women and minorities in every contract that comes to council and she's several steps ahead of the questions I asked and always searching for new ways to do what is legally defensible and push the limits as much as we possibly can. My chief of staff tom bizeau pulled out 15 recommendations from chapter 10 of the document and there are many, many more. The study shows there are huge disparities in Portland and shows we made some gains by the programs we've been trying and it shows we need to do better and i'm committed to doing that and appreciate your partnership. Aye.

**Adams:** I want to thank commissioner Fish for enthusiastically accepting the assignment I bestowed upon him. This is the policy that you excel at and I appreciate it very much. Also want to thank the citizen advisory committee for your willingness to devote long hours and on behalf of - - reiterate on behalf of commissioner Fish and myself, thanks to jeff baer and christine moody and others, thanks to our consultants, bbc as well. Because i've been around for the 1995 study report that showed that the -- make nothing discernable difference, i'm happy to hear there's some discernable difference between where we have made an effort, versus where we have not. I think this is a good roadmap to tell us how we need to improve upon -- improve upon the beachhead of modest success and where we need to prioritize in the areas where we're not cutting it. I think an uncomfortable truth u truth is that bureau managers and purchasing agents in the city are going to have to give up some of their power. I think they're going to have to be willing to have more oversight from somebody. In order to make sure that we have more consistent approach to this. Some have more experience working in this fashion of writing more quality and a practical opportunities than others. I think that's the backdrop to this, at least that's the bureaucratic backdrop. In terms of my commitment, I know this issue to a degree and look forward to spending more time in the consulting, I think there's a lot more we can do -- with the consultants and the spark of my hopes in the q & a between the consultants and myself. I would encourage everyone to not look at this as monolithic, it's all the same, all contracts are the same, all projects are the same. That the city is the same as it was once and that the community is the same. We have opportunities here. Because of the complexity of this issue, though, our response will probably be reasonably complex as well. And that's a lesson I learned from this. It should be appropriately complex in terms -- appropriately complex in terms of what we can do. We didn't have this information in 1995. But you heard in q & a, we do now. And we're going to pursue it. So thank you. Aye. [gavel pounded] we're adjourned.

At 5:08 p.m., Council adjourned.

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**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.

**JUNE 23, 2011      2:00 PM**

**Leonard:** Council will come to order and the clerk will call the role.

**Leonard:** The mayor is on a conference call and will join us later. Please read item 652 Karla.  
**Item 652.**

**Leonard:** This is an appeal by the Arlington heights neighborhood association and eric nagle against the noise review board's decision to grant the noise variance for a concert on July 4, 2011, in the Washington park rose garden amphitheater. Staff from the bureau of development services specifically the noise control office, will have up to 10 minutes, or as needed. The appellants, Mr. Nagle on behalf of arlington heights neighborhood association, and on his own behalf as an individual, will have 10 minutes. The supporters of the appellants, those that Karla has on her sign-up sheet, will have three minutes each. The principle opponent of the appeal, timothy pate, the applicant of the variance with the hempstead world music festival, will have 15 minutes. Other opponents of the appeal supporters of the hempstead world music festival event will also have three minutes. And then the appellant will have the rebuttal. Mr. nagle will have five minutes. At the conclusion of that process, the council will have discussion as need and then consider what to do from that point. Commissioner Saltzman, I don't know if you have anything to say.

**Saltzman:** No.

**Leonard:** Ok. Go ahead.

**Paul Van Orden, Bureau of Development Services:** Members of the council, my name is paul van orden, I work at the bureau of development services as a noise control officer and am the staff person for the city's noise review board. Today you have before you an appeal from eric nagle of the arlington heights neighborhood association. Mr. Nagle is appealing both as the representative of the arlington heights neighborhood association and also as an individual. The appeal is to the June 8th, 2011, decision of the noise review board to approve a single concert on July 4th, 2011, at the Washington park amphitheater located close to our notable and historic rose gardens. The noise variance applicant for the concert was Mr. Timothy pate of the hempstead world music festival. Before I jump into a little bit of discussion of the board's elements of their decision, I just want to point out two members of the board are here during the council discussion time, the chair is here and also Susan Pearce. If we have any questions for the board members at that time. The noise review board is directed by Title 18 to review an application for variance on the following conditions. One, the physical characteristics times and durations of the emitted sounds, two the geography, zone, and population density of the affected area. Three, whether the public health safety or welfare is impacted. Four, whether the sound source predates that of the receivers or neighbors. Five, whether compliance with the standards or provisions from which the variance is sought would produce hardship without equal or greater benefit to the public and then finally, an applicant's previous history if any of compliance or noncompliance. And I first would like to jump into some of the physical characteristics of the actual concert that's being requested, as well as the topography of the outlying neighborhood. So it's important to note that in the board's discussion that they made reference to past discussions in the late '90s regarding concerts at Washington park amphitheater, and in particular that point, and this was the first years that I was at the city's noise

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office starting in '96, there have been some concerts prior to my time, the board recognized the concert at the rose garden at Washington park rose garden had the ability to carry into the neighborhood in a very unique capacity because of the topography. So in light of that situation, in light of their experience of other shows at the rose garden, in the late '90s they made a determination that concerts that entailed heavy base component, in this case such as reggae concerts or other potentially -- they didn't have techno or heavy dance music, but things of that nature that would have a component that would expect heavy bass, would be permitted at a lower decibel level than for an average singer songwriter or basic rock type show. Interestingly enough, even going back to earlier concerts in the '90s, the noise review recognized the bass from these shows had a capacity to impact the community. And in light of that condition within the code for the board to address that concern, they did incorporate that into their decision. They also recognized that the zone is primarily aside from the park open space, a residential area of the city, many events that we approve in the city's noise review board incorporate commercial and industrial properties such as our large events at waterfront park, which impact the commercial district of the city. So they recognize that in light of the residential character of the surrounding neighborhood that they need to be extra sensitive of the community. The board also made note of the fact that the geography creates some unique challenges not only for how the noise carries, but also for being able to address the sound. In an average noise variance we actually, as you'll notice in the conditions, this one. An average variance will approve one location for monitoring the sound. And actually maintaining compliance with that single location primarily. And in this variance because we felt there was some unique instances for the sound to carry or be channeled into a particular portion of the neighborhood, and in light of the fact that modern noise measurement equipment is much more readily available than it was 10 years ago, 15 years ago, the noise review board incorporated in their decision the ability to adapt to the way the sound might carry into the neighborhood by not just having one measurement location, but requiring the applicant in their decision to interfaith neighborhood with two additional roving noise measurement staff from the applicant staff to go out into the neighborhood on a bike, it could also be on the methodology, but I think the board was thinking of bike because it's going fob challenging to move around the neighborhood during the concert. And these roving staff will not only go out and test at various location, but also be available to respond to complaints that come into a required noise hotline that the applicant will be required to maintain. That was one of their other interesting ways to adapt to the unique characteristics of the neighborhood as well as physical characteristics of the way they felt the sound would carry into the community. Condition one of the board's elements to review, a variance under speaks to time and duration. And the original application came in with requested hours of 3:00 p.m. To 10:00 p.m., and the board looked at that and not only in light of not having had a concert in a long time at this location, but also in light of testimony from the parks bureau requesting the board look closely at the duration of the event and contemplate possibly a shorter duration, the board took a look at what the applicant was proposing doing, and asked the applicant some specifics about the nature of the opening act for the band and made a determination and especially about the first act that they did not require the same sound levels as the other acts, and in light of the fact that that band was not scheduled to start until 4:20, they took the amplification -- the part of the variance requesting for 3:00 to 4:20 out of the variance, and moved the start time back to 4:20. They also required the applicant from 4:20 until 5:30 when that first act is performing, which is primarily a spoken word with backup band type performance, to have a reduced sound level. And in that variance mentions a 70-dba maximum level. That's very similar to the noncommercial concerts that we approve throughout the park system, and in Washington park in an average summer. So that part of the event is not anticipated to be louder than our

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average park's functions that happen on a regular basis and have continued during the time frame when 1999 to current that we have very few larger commercial concerts happening at Washington park rose garden. The other element was in light of the request to go to 10:00 p.m., the board felt that was something they weren't going to entertain offering the applicant. In fact they required the applicant to stop at 9:30, with a 15-minute -- with 15 minutes of leeway to 9:45 if they're running behind schedule or if they have an encore performance that goes over the 9:30 time frame. That's a very common approach the board uses with applicants to encourage them to end earlier, but to recognize sometimes during an average musical performance something goes wrong, events run behind schedule, or you have a very energetic performance that the city fields will be reasonable for -- they didn't end the event at 9:30, but said they would like the applicant to work to try to finish at 9:30 with leeway to go to 9:45. The other characteristics of the code speak to whether there's a public health safety or welfare and the board didn't get into a long discussion, I think they mean prime article loy past decisions. So in light of the record in the previous years going back to the late '90s, 1999, the board had approved five commercial concerts of a similar duration and similar decibel level in 1998 and '97, they also approved five concerts, and then in 1996 they had approved up to 10 concerts of a commercial nature, not all of them would have been as large as this one was looking at this event as being potentially as large as 3,000 to 3500 participants watching the concert. So there wasn't a large discussion at the board about health, safety, and welfare. The sound source obviously does not predate the receivers, the neighbors have been there longer than the concerts. And the element of whether or not compliance with the standard or the provisions which the variance would saw would provide hardship without greater benefit to the public, the board did feel in light of past history of entertaining the community at this particular venue that a single concert which is obviously notably less of an impact than the five concerts that have been in past years, would not create an undue hardship on the community. And then the last aspect was the applicant's previous history if any, and that element of compliance or noncompliance. There was a little discussion because in the past the hempstock festival has operated in the city without a noise variance, and so there was an interesting dialogue the board had exploring what that meant, so specifically what the board was exploring is the hempstock festival has sought over the years in different places its operated, whether it's over by the east side esplanade, or up at kelly point park, to find areas so isolated that when you measure at another location you wouldn't find the actual concert to be in violation of the city code. So it's an interesting approach they use that we don't see very often, but the board couldn't fault them because there is no record of them technically being in violation or exceeding the code at the locations they had had concerts in the past. And the last item to touch on is just the actual public testimony. At the hearing we had testimony in opposition primarily from the neighborhood association, mr. Nagle. We did receive one letter prior to the concert from a neighborhood experienced the earlier concerts in opposition. And we received a handful of supporting comments from neighbors. But the testimony on this item was not as contentious as we had seen back in the 1990s. That's the general history.

**Leonard:** Thank you. Mr. Nagle?

**Eric Nagle:** Good afternoon.

**Leonard:** You'll have 10 minutes.

**Nagle:** My name is eric nagle, i'm here representing myself and the arlington heights neighborhood association.

**Fish:** Could you move the mike just a little closer?

**Nagle:** I'm a member of the board of that association. We in Portland are all proud of the fact that we have a national reputation for responsible planning and sustainable thick. And we all know good planning is about involving citizens in decisions about what should happen where. And the

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big part of sustainable thinking is making it easy for people to leave their cars at home and use public transit. We've invested millions of dollars in trying to achieve this goal. We've made sure that max stations are near facilities that host big events, like the rose garden arena, waterfront park, and zoo amphitheater. They all have max stations. Allowing the hempstead festival to occur at the Washington park rose garden would be a glaring exception to our tradition of responsible planning and sustainable thinking. Parks and rec has no management plan for the rose garden amphitheater. Parks and rec has set no limits on the type of event that can occur there or how often, or when, or how long an event can be. Parks and rec hasn't done the hard thinking that it needs to do about whether it's a good idea to privatize the public space by renting it out for commercial use. Parks and rec leaves it up to the fire bureau to decide how many people should be allowed to attend an event like that. With one odd exception, and in the documents that I provided, you'll see a wedding brochure put out by parks and rec that says if you want to use the amphitheater for a wedding, you're limited to 2,000 people and you can't rope it off and prohibit public access to your event. But if you're staging a concert for some inexplicable reason you can have 1200 people more than that. There is no master plan for Washington park. By contrast, mount tabor park does have a master plan, adopted in 2000, and updated again in 2008. And parks and rec has a clear policy for use of the amphitheater there. An event that involves amplified sound after 5:00 p.m. At the mount tabor amphitheater requires approval of the neighborhood association. And i've included a copy of the page from the permit manual that describes that limitation at mount tabor. Washington park is the most heavily used park in the city. The Oregon zoo is the most popular paid tourist attraction in the entire state. 1.6 million visitors a year. The japanese garden gets a quarter million visitors a year. Thousands and thousands more visitors come to the park for picnicking, hiking, and of course visiting the rose garden especially right now when the roses are at their peak. On july 4th, that will be one of the most crowded days of the year in Washington park. Even if there were no event. There are 300 parking spaces in the north part of the park where the rose garden amphitheater is, all of those will be filled and our neighborhood, arlington heights, will as usual, be the overflow parking area for the park. And i've included photos showing what your typical weekend parking situation looks like. Buses can't get down fairview boulevard, a fire truck couldn't get up fairview if there were an emergency. Hempstead festival would not meet our sustainability goals. The amphitheater is a mile from the nearest max station, bus service stops at 7:00 p.m., that's three hours before this concert would end. And the promoter has no plans to run a shuttle from the rose garden to the max station. So that means people will drive. With 3200 attendees at the concert, we can expect some 1500 additional cars coming to Washington park on top of the cars that are driving there from regular use. Because there are only 300 spaces, they're already taken and because the promoter has only arranged for off-site parking at the archery field, which holds only 50 cars, the rest of those cars are going to be in our neighborhood. The result will be gridlock and this is more than just a nuisance. It is a threat to public safety. We're talking about july 4th, when people are setting off fireworks and fire risk is particularly high. My -- former president of our board will talk to you after I do about the experience that we had back in the '90s with the rock and roses concerts and the gridlock we had then. The promoter is being required to hire off-duty police officers to direct traffic, but this will not fix that problem. The fact is you can't pour a gallon of milk into a pint bottle without making a mess. This event will also crowd out other park users like picnickers, it will block two major access points to the rose garden, and i've included a map showing the site plan that indicates where those major access points will be that will be fenced off. And of course we have the japanese garden. The director of the garden is here today and he'll tell you about the significant impacts on the garden. You don't need to take our word for it. Sean rogers, who's head of event permitting for parks and rec was quoted in "the



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Oregonian" last week saying this about the hempstead festival. "it's very disruptive to the neighborhood. It's disruptive to the park in and of itself." in their decision, the noise review board considered some of our concerns. But they're just a volunteer citizens board. They don't see it as their role to make decisions about park management. And we understand that. That's parks and rec's job. Under the noise ordinance, the noise review board was required to weigh the hardship of denying this experience against the public benefit of granting it. The board's findings in this regard are perplexing. This will be the longest concert ever held at the amphitheater, nearly six hours of music. The board found that the music will be clearly audible and that strong bass notes will be intrusive. But nonetheless, they found the public welfare would not be impacted. This is simply mystifying. They gave no consideration to impacts on visitors to the japanese garden, which is meant to be a haven of tranquility. The noise review board also found that compliance with the regular 55 decibel standard that applies to open spaces would effectively preclude the activity -- the concert. That's just not true. It would preclude it at Washington park, but there does -- there are dozens of other venues for music in the city. And indeed this promoter has used kelly point park for similar concerts in the past, and that's far from residential neighborhoods. The noise review findings state considerable public benefit accrues from granting the variance, but they didn't say what that benefit would be. It won't be to the neighborhood. And it won't be to other park users. If the benefit they were talking about is to concert goers, the review board didn't say why they couldn't enjoy that benefit in another location. And if the benefit is just that this concert gives people something fun to do on the 4th of july, we already have the blues fest that weekend at waterfront park. A tick tote that event is only \$10 compared with \$40 for hempstead. All the proceeds for the blues fest go to the food bank, and you can take the max there, perhaps most importantly. This promoter has already shown that he can't be trusted to comply with the conditions of the noise variance that he was granted. It was issued two weeks ago and one of the conditions was that the promoter was required in any additional advertising to include language to encourage concert goers to use mass transit or carpooling. In your materials there is an ad that appeared in yesterday's "willamette week" for this event. And as you'll see, that ad says nothing about carpooling, it says nothing about using mass transit. So the promoter is already violating the terms of this variance and under the city's ordinance governing variances, that could be revoked today on that basis alone. Finally, I want to emphasize the neighborhood supports the free summer concert series at the amphitheater. And i've included in your terms the concert schedule for those, those events are very different from what we're talking about here. They're shorter, they're quieter, they're only three hours long, they are less heavily promoted, they tend to draw smaller crowds. And they clearly benefit public of all ages because they're free. They're not \$40. They do create some traffic issues. But certainly we recognize in the neighborhood that the trade-off, the public benefit is well worth dealing with a little traffic for events like that. And moreover, for the free summer concert series, tri-met provides extended bus service so that people can actually use the max. They can ride up to the Washington park max station, take the Washington park shuttle there, and home as well at 9:00 p.m. Our feeling is that the Washington park amphitheater is a community resource with a long tradition of providing free entertainment and it shouldn't be privatized for commercial use. So in conclusion, the neighborhood association and I ask that the council reverse the decision of the noise review board and deny the variance. Thank you and i'm happy to answer any questions.

**Adams:** Thank you, sir.

**Adams:** We'll now hear from supporters of the appeal. Three minutes. How many people have signed up?

**Moore:** Four people signed up.

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**Adams:** First three please come forward.

**Adams:** Welcome to the city council.

**Mike Dowd:** I'm Mike Dowd, I live miles from Arlington Heights, but in the '90s I lived there and was active on the committee that the parks bureau set up to help plan and evaluate the concert series that were held at the amphitheater back then. These are my files from the planning that went into those concerts. There were extensive efforts over three years in planning and evaluating, and there was still a big problem at the end of that. We don't need to speculate what the impacts of this concert might be, because of all that experience. People have different ideas about whether the concerts were successful or not, but there was never any real conclusion because the concerts died off when the promoter realized they were too financially risky from what I understand. There was a clear consensus about several things, though. First, nobody disputed that there were major problems in regard to traffic, parking, noise, and impacts on the park and neighborhood. Second, there was huge amounts of effort on everybody's behalf in planning for those concerts. Third, the promoter was very experienced even before their first concert there. And especially after three years running concerts at that venue, and they really stood -- trying to address concerns back then. Yet there was still major problems that I mentioned. Even at the end of the series we had buses trapped on Fairview with the driver walking down the street trying to get 20 cars to back up with 100 cars coming up towards him. It was just a disaster. In comparison to the '90s, there's been no planning almost for this year. The Rose Garden wasn't even told about it. The concerts in the '90s for the most part were under 2,000, even 1,000 people. That's a third the size of what's proposed. This year's concert is twice as long as those concerts were. In the earlier series the promoter had great leverage because it was a series, the city had leverage because it was a series. In this case, it's one concert, so that makes a big difference. Also the '90s concerts were fund-raisers because they funded free concerts and park improvements, or at least were promised to do that. In this case there's nothing like that. I've got some handouts, this is -- these are pictures of traffic from the '90s. The restrictions proposed for this year with the problems, this is -- these are specific noise comments. This is a letter and this is a letter from -- in "the Oregonian" from them saying the concerts were monumental ripoff for the same reasons that we have the concerns about today.

**Fish:** Mr. Dowd, thank you for the email that you sent us before today, and I was struck, you were very kind in your email, generally about your past experience with the parks bureau. You're very gracious. You highlight this experience as falling short of your expectation. And you -- the word that jumped out at me when I read it was, you said that parks bureau had been cavalier. And so I think it's important to give you an opportunity to explain that, and if there is some specific rule or policy that the bureau has that was ignored in the issuing of the permit, obviously I as the parks commissioner would be interested in hearing that.

**Dowd:** Well, like I said, the -- in the '90s there were -- there was a committee set up, there was planning that went on throughout the year before and after the concerts. There was all kind of information that didn't appear on the -- on what I got from Sean Rogers, part of it may be because he sent me an email and said if I wanted anything more I had to file a freedom of information request.

And also I have flashbacks of what happened in the '90s that -- I thought I'd never open these files again, but one of the things that doesn't affect me this time, but there was an Oregonian article about the concerts with maybe 40 comments, maybe 38 of them were the rich twits, champagne-drinking twits, and it's because -- this is the first hearing about these concerts. This is the only way for the neighborhood to have comment about some of these issues is to -- was to appeal the noise variance. And all -- and all of a sudden it's a month before the concerts are starting, and now the neighborhood is placed and either we oppose it and create a huge mess, or concede and there's still time for some planning, but this all should have happened months ago.

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**Fish:** I appreciate that answer. What I wanted to get at was, and I listened very carefully to your testimony, I hear that you have a different view of how we should communicate these -- how we should involve the community and making these decisions. Those are all -- I respect your right to assert those claims. I wanted to give a chance to address the notion that the bureau was cavalier. We have -- there are rules that are used to issue permits, and I didn't want to have the record reflect that somehow parks bureau didn't follow their normal rules or procedures, even though I understand you have a different view about the outcome.

**Dowd:** I think maybe cavalier is the wrong word. I could be unprepared for this -- for instance, the -- sounds like the japanese gardens didn't know about it until eric called them.

**Fish:** I appreciate it. Thank you.

**Adams:** That's my point.

**Steve Bloom:** Good afternoon. My name is steve bloom, ceo of the Portland japanese garden. I'm here today in support of the appeal of the noise variance for the hempstead music festival on july 4th at the rose garden amphitheater. Let me first say the japanese garden is not opposed to concerts in the amphitheater. We support our friends at Portland parks and the evening summer concert series and believe is it a wonderful service to the community and an appropriate use for Washington park. Our concerns today stem from the following. The amplification of the concert in question, the afternoon daytime timing of the concert, the impact it will have on the east end of Washington park and in particular the japanese garden, and around the fact we received no advance notice this concert was a possibility and had no opportunity to weigh in or have our concerns addressed in advance of the decision to allow the concert, despite the fact we're a permanent resident of the park. The fourth of July is one of the busiest days of the year for the japanese garden and for the entire park. We normally expect between 1500-2500 people to visit the garden alone, with peak visitation during afternoon hours. Given the expected 3200 concert goers will arrive several hours prior to the 3:00 p.m. Sound check, the concert itself will impact the garden for as much as six hours prior to the garden's 7:00 p.m. closing. The revenue that the garden stand to lose during those hours to visitors frustrated with the extreme lack of parking will be between \$10-15,000 in admission, retail sales, and membership. The second wettest spring in 117 years has put a heavy strain on our attendance and just as we are now turning the corner, this will serve as yet another blow to the garden. Between visitors to the japanese garden, the rose garden, concert goers, and general park users, it is not unreasonable to expect some 10,000 people to attempt to descend on the east side of Washington park between 1:00 and 4:00 p.m. On that day and all will be vying for a total of 300 parking spaces within the park and surrounding neighborhood. Our deeper concern, however, is around what this concert means to the future of the garden. Does this open the door to a series of summer afternoon concerts? Does the festival turn into a seven-day festival? And most importantly, does this kind of concert event begin to diminish the world class reputation and stature of the japanese garden? It was built and is operated on the premise of the great japanese gardens are places of deliberate and unwavering ideals of peace and tranquility. The configuration of the amphitheater is such that the speakers will be pointed uphill directly at the japanese garden during open hours. A condition far from conducive to peace and tranquility. Is this the beginning of the end of the japanese garden as the finest in the world because we no longer deliver on the promise of peaceful and tranquil experience? I come here today on behalf of the garden and its nearly 6,000 members who have invested millions of dollars to preserve and enhance the garden and to keep the promise of the garden as the haven of peace and tranquility. We would certainly not be able to keep that promise on the 4th of july in the midst of this concert, and we believe it will open the wrong door and will leave questions of our ability to do so in the future. Thank you.

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**Fritz:** I'm not familiar with the exact layout of the park and the nearby residents, the noise variance, the noise readings are to be taken at residences. How far away from the noise source is the Japanese garden in relation to -- in comparison with the nearest residence?

**Bloom:** Directly next door.

**Fritz:** How close is the nearest residence?

**Bloom:** To the garden? I don't know exactly.

**Fritz:** Do you about how many feet, yards the Japanese garden is?

**Bloom:** 200 yards?

**Fritz:** To the garden?

**Bloom:** Yes.

**Fritz:** Ok.

**Bloom:** It's not far.

**Fritz:** Thank you very much.

**Adams:** Mr. Angel.

**Joe Angel:** I'm Joe Angel, I want to thank you for your time to listen to our concerns. The neighborhood during these sorts of concerts always asks for three considerations. Because these concerts inevitably impact our livability. So we ask that parking be patrolled, and that people try to come by mass transit. We repeatedly ask for that. There have been times as you saw from the pictures where Fairview becomes so clogged up that public transportation can't get through, fire and safety vehicles can't get through. It's a very serious problem. We ask that the promoter pick up trash in the neighborhood. Most Portland citizens are very considerate, but believe it or not, there's 1% that aren't. And we think that the promoter should be in charge of picking up after them, especially if they're doing this for a profit. We think the promoter should be in charge of paying the overtime or the extra on the parking patrol being in the neighborhood during the hours of the concert. So that when people see the presence of the parking control, they then stop parking where the yellow lines are painted. If the patrol isn't, they believe it or not, they just park where they want to because they're out of parking spots. Last thing we ask for is that whatever the noise standard is, that it be enforced. We don't want the fox checking the chicken house this time. We want somebody to take the readings who has the authority to unplug the amplification. We're not opposed to concerts, as you know, many of you know, we have been very supportive of the concert series. We're not even opposed I think to having a promoted concert, where somebody makes money. As long as the negative impacts of such a thing are taken care of. What we're worried about is that them taking their own readings, the promoter is gone the next day. And if the readings were all off and we all suffered for six hours, nobody's pulling the plug. They aren't going to pull their plug. So we're not against the concert series, we're not against hemp, we're not against any of those things. We're against the negative impacts that this brings with the -- along with this many people. This is a lot of people. One last thing. Please, please, please update the Washington park plan. It's 30 years old. We all need to sit around the table and figure out how to do these things.

**Adams:** Thank you, sir. Thank you all. Next?

**Jeff Boly:** The president of the board of this association, and I have to say that those that have already spoken have done such a terrific job, there's not too much left for me to say. What I do want to stress is the fact that as a board, as an association, we're acutely aware of how fortunate we are to live where we live. And we have absolute fly problems with sharing and indeed welcoming with open arms visitors. As far as the concert series in the past, we even financially sponsored it. The free one. We've contributed to that. So I want to make sure that that is clearly understood. That we're not opposing use by others. In fact, it's just the opposite. But we have been there for a very long time. When you take -- I've lived there almost 40 years, so we know what the problems

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are. And we know what can possibly happen. And that's what I personally am really alarmed about. Because I'm convinced on the 4th of July with this -- a group this large, that this will be the biggest number of people that have arrived at this place and stayed there and then left at approximately the same time that has ever occurred. And what I'm seeing is the potential for a worse case situation that could be an utter disaster. Because if during this time there were to be a major fire, a medical emergency, where lives are -- commissioner Leonard knows only too well, measured in seconds, then people are going to of course look to government, and we see ourselves as a first level of governance regarding this place, and they're going to say, how in the world could you have let this happen? And I'm thinking like the tsunami in Japan. The answer, well, that wasn't very likely to happen, or, how can we manage to avoid worse case situations, doesn't sit very well when the worse case actually happens. So I want to be sure that everyone is really focused on the fact that there is a potential worse case that we're looking at here. And that we can do something about it, and for that reason alone I think we should.

**Fish:** Thank you for taking time to come in and testify today. Do you recall how much notice the business association got of this event?

**Timothy Pate:** You mean when you say business association, our --

**Fish:** I'm sorry, Neighborhood association.

**Pate:** I think it was about a month and a half ago that we first had a representative from the applicants.

**Fish:** When was the -- when did you get notice from the city?

**Boly:** I don't recall exactly. Eric, do you -- it's my understanding, the reason I'm asking, the permit department gives notice to the neighborhood association and the business association, I just wanted to establish when you got notice.

**Nagle:** They provided that notice on March 10th, but it was inaccurate. It stated the number of people attending would be 2,000, and in fact the real number is 3200.

**Fish:** March 10th you got some notice?

**Nagle:** Yes.

**Fish:** Thank you.

**Fritz:** I have a question. Thank you again for being here. This appeal is about the noise level. In the noise board's conditions of approval, it states that the stationary measuring location to be predetermined by the noise officer will be made readily available to neighborhood representatives to see the sound level is being recorded during the performance, and there's going to be a hotline to get the noise officer or whoever to shut the noise down. Is the monitoring by neighborhood representative going to happen, is the neighborhood going to organize so that you have -- should this event go forward, so you can help us with monitoring the noise levels?

**Boly:** I'm not -- Eric, have you --

**Nagle:** If the event does go forward -- if the event does go forward we intend to work to agree on location for the station they're monitoring, and access by members of the neighborhood to that monitoring device, yes.

**Fritz:** Thank you.

**Boly:** The one thing I would add is the importance of making sure that is -- that there is some measurement going on actually within the homes of some of the houses up the hill, because it can be amazing just how much of an impact it can have, even with everything fully closed because of this unique geography and dynamics regarding that.

**Fritz:** Right. And that same condition says that the main sound level for monitoring and compliance location will be identified by the noise control officer in conjunction with representatives for the neighborhood association. You would get -- should the event go forward

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you would get to help choose what's the residents where it's most likely to be the most loud, and to be able to help monitor with that.

**Nagle:** Yes.

**Fritz:** Thank you very much.

**Adams:** Thank you, gentlemen. That gets us to opponents of the appeal. How many people have signed up?

**Moore-Love:** The appellant first.

**Adams:** Ok.

**Pate:** Afternoon. My name is Timothy Pate, the event coordinator for hempstead world music festival. I have --

**Leonard:** 15 minutes.

**Moore:** Thank you.

**Pate:** I have so much information here for you. It's all information that individuals under your purveyance have already helped me develop. I have worked closely with every department that I was asked to work with, and I have learned a lot about the city workings this year. This is the seventh year that I will be involved with hempstock, and our permit process is much less of a process than it has been this time. We've included several elements in this year's permit that i've never had to go through before, including the sound variance. The olcc. But we've always worked with the health department and we've always worked with the fire marshal, we work closely with the police, we work closely with the ada department, we work closely with recycling, we have issues that we have to have insurance for. We always have to have site plans. We fill out all our questionnaires and are always available for any questions from any of the departments. And to this point I feel confident that the plan we have put together for this year's concert should it go forward, is a good plan. I feel that the security that we have hired, the team from coast-to-coast has worked not only with jeld-wen field and their soccer shows, but we've worked with them at our events, hempstock. We have a good working relationship with the police are and we will have five off-duty police officers there. We will have off-site flaggers, we have hired two shuttle buses, I got word just before the hearing, I have to confirm it, but there's a possibility the zoo will have plenty of vacant parking that day for us. So we could shuttle from the zoo as well that day. We have worked with bob stillman from the parks department to develop a parking plan with the archery field, and we feel we can put between 100-150 cars in that, which raises our immediate parking availability in the park to 450. But we realize also that that is an extreme burden on that neighborhood. Because of that, we have been putting -- not only do we have a television show that has been on for 15 years called cannabis common sense, it's live on friday night, and we have asked each week that everybody please carpool, but in today's mercury, I just -- as evidence, on three pages in is our full-page ad. Down at the bottom it says "be kind to our planet, carpool or take the max. Parking limited." If the "willamette week" failed to get the notice because our ads changed, I will be discussing that with "willamette week." they did not make the change they were ordered to make. All of our ads have that order on them for two weeks now. And so I just wanted you to be assured that I did indeed listen to the sound board, and that I did take steps, I have evidence of those steps here in front of me right now. Take each one of those, opportunities to work with the city very seriously. I live here, I own property here. I am a first responder. Two years ago we had somebody die backstage of a heart attack. We gave them first aid cpr, for 25 minutes before we life flighted them out from kelly point park. I used to run the rock medicine team for the grateful dead from 1988 until jerry garcia died. I was chairman of the board of directors of whiteford clinic in Eugene, spent 17 years in the crisis business. I always look at the worst first. That's my job. I'm also the last person walking out of the parking lot picking up trash. As anybody who has ever

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promoted a concert understands, you're not done until that job is done. And so we have a double truck trash team that will be going out the day after the event that we will circle the neighborhood. We've already walked every step in the neighborhood handing out public notices. And my phone personally -- my cell phone is the day of the event hotline. I am the one person who can make the quickest change. I'm the one who knows all of my people. I know where they are, I know what they're doing, I know what their responsibilities are. I know who can help me first. We have hired two people to go on bicycles throughout the neighborhood so that they have the opportunity to use the sound meter and we will be using them as a sounding board throughout that neighborhood just to find out how we're doing. I understand the sound can bounce. Because of that we have special requirements on our sound variance. Worked long and hard with Paul, and was appreciative of the sound board when they reviewed our application and they had specific requirements. The Mike, sound man is here today, he would be happy to approach any of the questions you have regarding the sound decibel levels or any of the issues that are corresponding to that, since that is what we're discussing today. Understand that the music that we're bringing in is a world beat music, some of it is -- like John Trudell, the leader of the American Indian movement, to me one of the most graceful poets in North America. I'm looking truly forward to having him on our stage up there. I've had the opportunity to manage 10 of his events in the past. I can say this, he's an inspiration. The three bands, Rhythm Culture is a large band here from Portland. And we're giving them an opportunity to open for a Grammy award winner. And they are very much excited about that possibility. The Tonic crew, the band that comes on before Toots and the Maytals has just won an MTV award for the best new band in the world from Asia, over 6,000 applicants. Was in that contest. And then Toots and the Maytals, the father of reggae. He is a Grammy award winner, an icon in that genre and somebody everybody else looks up to. We feel it's an appropriate place on July 4th to come and have a wonderful concert. And I'm certain all of you are familiar enough with the Rose Garden Amphitheater. Right now the roses are coming out and it is beautiful up there. Now, we know we're going to have an impact in the neighborhood. We've tried to reduce that impact to just the immediate vicinity of the amphitheater. We're not restricting any other part of the park, we're not asking for anybody to go away or not -- even stand off outside the fence and listen to the music. We wouldn't do anything about that. We want to be neighborhood friendly. And our object is not necessarily to come back to Washington Park, but to succeed in this effort in such a way that would you welcome us back at any other event that we did try to pull off. That is our goal. And so understanding that we're not setting a precedent this year for having a show at Washington Park, but that we are asking for permission to have a show at Washington Park this one time, not five or six times, not for the next 30 years, 20 shows a year. Just this once. We ask that you today turn down this appeal and that you have us go ahead with our show, the show is just in a few days. And I dare say that knowing -- I'm certain you do, the cost of a fundamental-page color ad, and all of the other full-page color ads we've had, the 22,000 hand cards, the 12,000 posters, the five billboards, all of the other radio ads, the 12,000 dollar campaign on Kink Radio as a cosponsor, KBOO Radio as a cosponsor, we feel that the plus 100 people that we are hiring on crew for the day and musicians, this is truly not only a benefit for us and our community, but for all of those people who enjoy and love reggae music and world music. And would love to spend an afternoon in the park. I could go over in specific all my details, and I would be happy to, so I'll leave time on my clock here for any questions.

**Leonard:** I have a couple questions. Want to knowledge the delicate negotiating position you find yourself in. I'm sympathetic with that, but having said that I think I understand from your remarks you appreciate the job we have to try to balance your interests with the neighborhood interests. So consistent with that, I'm curious, if the council were to entertain overturning the appeal, but with

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some conditions, would you in fact agree to be responsible for expending the funds to pick up the trash in the neighborhood created by -- generated by your event?

**Pate:** I have already agreed to do that on my team. My team knows I have done that, and when I went to each of the three neighborhood association meetings, I stated at each one that the three concerns I know they have, sound, traffic, trash. I intend to deal with, I do have a team that team is dedicated to it and i'm a member of that team.

**Leonard:** And second, would you agree to reimburse the city for the cost of parking patrol?

**Pate:** I'd love to hear what that cost would be. I already have a bill with the police, and so I imagine if that is a condition, that we must entertain it. The answer is yes.

**Leonard:** And finally, before this was testified to --

**Pate:** Could I ask a question? Do we get the benefit of any tickets and the money --

**Leonard:** you do not. It's a one-way street.

**Pate:** I understand.

**Leonard:** For the record.

**Leonard:** Nice try.

**Pate:** I'm trying to make some money here.

**Leonard:** Are you in a delicate negotiating -- .

**Pate:** I know that. I must have at least a foothold somewhere, sir.

**Leonard:** Finally, one thing I did actually observed myself before the hearing that I -- that troubled me a little bit that was testified to by one of the neighbors, would you agree to the noise standard that is referenced on item three in the decision portion on page 3, that currently will be recorded by the roving sound level monitors, would you agree that those standards be enforced immediately, that we develop through the noise office some mechanism so that if one of our sound meters at a remote location indicates you exceeded the 72-dba sound level or the peak 75-dba sound level, that you would -- we would have in place a system whereby immediately that would be adjusted down?

**Pate:** Yes.

**Leonard:** Thank you.

**Fish:** There's one other item that was mentioned that got my attention. Washington park summer festival, we have in the past reached out to tri-met and asked them to provide extended service so we do get the shuttle bus. They have generally been receptive, even when -- during this time of budget cuts. I don't know that this needs to be a condition, but I would say that just to get your commitment that you would join with the parks bureau in making a request of tri-met to provide the extended service so we get that shuttle has been successful when we've had our free concerts.

**Pate:** I have already attempted that. And the discussion I have with tri-met was that since it is a holiday, July 4th, they don't have service there and if they did have service it would end at 7:00 in the evening. And so my concert goes could come in on tri-met, they just couldn't go out on tri-met. And so therefore I have asked for other shuttles. I've hired other shuttles. I've hired two additional buses. I'm happy to work in whatever way you suggest, and I would be happy to work with the parks to ask them to bring in more shuttles. If it's going to be successful. I've already attempted that once, maybe I did it the wrong way. I already tried to do that.

**Fritz:** Doesn't the max keep going after 7:00 on holidays?

**Pate:** It's more than a mile from the concert site. Our shuttles will be running up to it.

**Fritz:** You could have shuttles to the max.

**Pate:** Yes, we will. We will. Our plan is to have shuttles up to archery, to zoo, max, and back.

**Saltzman:** Those are before, during and after?

**Pate:** Before, During and after. And i'm actually looking at a third one, depending upon the population of the crowd.



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**Fish:** I guess since we have a lot of experience dealing with crowds of a similar size, we -- in the august during the Washington park summer festival we get between 15-20,000 fans over the life of the concert series. Sometimes as many as 2,000-plus in a given night. I don't know that it needs to be a condition, but since you've made this commitment publicly to work on some transportation options for people at the conclusion of the concert, what I would ask is that your team just commit to meet with my team and my office and we go over some of our historical experience and see if we can enhance those non car options for getting people out and to the max stops.

**Pate:** I would be honored for the chance to learn more.

**Fritz:** Are you going to have bike parking.

**Pate:** We do. I have made arrangements for a bike lockup on site.

**Fritz:** How many bikes will it accommodate?

**Pate:** Depends how much we can stack them. I don't know. I really don't have an answer for you.

**Fritz:** I think that might be part of what commissioner Fish is experience has been, there might be a lot of people wanting to bike to the event.

**Pate:** I thought of that as well and I think it's a wise idea. And I have one spot in particular inside the fence where we have a bike lock-up.

**Fish:** If it's the will of the council to overturn the appeal, what I would ask is that we schedule a meeting for early next week with the parks bureau team that has experience with these transportation issues, and that you make yourself available for that purpose.

**Pate:** I would be happy to, yes.

**Adams:** Thank you, sir.

**Pate:** Thank you.

**Adams:** We have a sign-up sheet. How many people have signed up?

**Moore:** We have three people signed up.

**Adams:** Welcome to city council.

**Brad Zusman:** My name is brad, and I am the ceo of rivers edge cafe and catering here in Portland. I have been contracted to handle the beer garden as well as one of the food booths. One of the things I can say that was missed upon here is that the attendees that will be coming into the concert, once they enter in, they will be there through the duration of the concert until after the concert is over. So once in, they will not than able to leave unless they repay to come back in. The main reason is because of the beer and wine that will be there. One of the things I asked for was to make sure there will be no reentry coming in and out because of people going out to cars, drinking alcohol, doing whatever, and one of the stipulations to have my company come in was to be able to have once in, they don't go until they go out and that's it. Unless you had a badge on. Other than that, one thing I can say here is I have two restaurants, they're both on second avenue, and i'm very much impacted by the concerts that are held on the waterfront, and the surrounding marathon and everything like that. When it comes to parking, people -- I have to deal with trash every day that I have pick up, I have to deal with the homeless urinating on my chairs, everything. It's part of being a part of Portland, part of being in business. I understand it's been the concerns of the homeowners association, I have done a 4th of july event where it's been 3,000 people, and it's done annually every year where they do have concerts. And a band. So i'm concerned about that. But that's beside the point. Other than, that just as a business owner, I can reassure you that my company coming in there, i'm going to uphold the standards of my liquor license for the festival, and we have requirements by olcc to only allow one beverage purchased at any given time. We also will have alcohol monitors walking inside and also outside to make sure that if there are anybody out in cars that there will be no drugs or alcohol in the surrounding areas to make sure that that is being policed as well. Other than that, that's about all I have to say.

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**Saltzman:** How far is the perimeter that your drug -- alcohol monitors?

**Zusman:** From my understanding they're going to be walking all around the perimeter of where the parking lot is around there, and also the alcohol monitors will be in the surrounding -- in the cordoned off area.

**Saltzman:** Those will be employed --

**Zusman:** Those will be employed by my staff as well as tim's staff as well.

**Adams:** Welcome.

**Nikii Davis:** Thank you. My name is nikii davis, i'm an eight-time award winning billboard songwriter, and also an entertainer at the show that's coming up. And i'm 55 years old, and I have lived in Portland all my life, and the park is a very special and sacred place to me. So I feel very honored to hopefully get the opportunity to perform in a place where I spent my childhood and my adult years. Today i'm here to share with you the music aspect of the artists that are performing. I am friends with every one of them. I have toured with toots and been with 100 shows, toots is 68 years old. He not 30, and he's not 40, he's a legend in the reggae music industry. His band does not have this heavy thump, thump, thump that's being discussed here. His style of reggae music is old style music. It does haven't that large bass sound. I'm 55, and it's hard for me to tolerate that heavy sound. So getting to work with him on fund raisers through out the world and record live with him, and on dvds, etc., is an honor because his music is of such that I can tolerate it as an artist. The other artists that we're speaking about, dub tonic crew, they won the 2011 global battle of the bands. They are an infusion of jazz and alternative music, and reggae music. Again, old style reggae music. It's very pleasant to the ears. The other band is rhythm culture, which is a northwest reggae blues jazz fusion as well. They perform all over the state all year long. Great, great artists, and there's me, and i'm a blues artist, and I do a little bit of reggae music. I wrote a song when I was 14 growing up in lake oswego, and that's one of my songs on here, and that's -- there's only two reggae songs, and i'm not very loud. And there's toots, flip and twist, that kind of gives you an idea. He's 68 years old, and his knees are kind of shot, so he's not jumping up and down and screaming and hollering as well. The amount of the noise impact regarding the arlington neighborhood association, I think they will be very surprised. They're expecting from previous concerts, a lot of boom, boom, boom, and this and that. It's not like that. The crowds that go to this type of show and with these artists, because i've been to all of them, oops, I ran out of time.

**Adams:** You can finish your thought.

**Davis:** It's very low key, there's kids from two years of age to 80 years of age. So thank you for your time.

**Adams:** Thank you. Mr. Dodge.

**Stew Dodge:** My name is stew dodge, i'm owner of stew dodge sound incorporated. We've been in business in Portland for about 20 years. And I went back through some history, we've done at least 30 events in Portland with permits, noise variances from paul van orden in hand, so we're well versed in the requirements, the nomenclature, the equipment needed, and how do you conform to a noise variance. So we certainly plan on following that to the letter. We can do it, we've done it before. I want to talk about the sound system too. The sound system we're bringing is approximately one-fifth the size, for instance, of the system used on the main stage at the blues festival. I was given an rfp from parks to bid on doing the -- all the concert series this summer, including the Washington park music fest, and I want to point out the specification in that request for proposal for the Washington park concerts was that that system should be able to accommodate -- provide sound for up to 4,000 people. The system we're bringing is essentially designed to provide sound for 3,000 people. So I haven't gone to any of the shows up there, so I can't really comment about what size system is brought up for the Washington park music festival, but we

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don't have that kind of p.a. here. It's a modest system, and it's nothing like the blues festival or any of the waterfront park shows. The last thing I want to point out, three of the four bands performing, it's our sound engineers, so we're in complete control of everything that goes on. And toots has his own engineering crew, but we're right there. And we have our hand on the throttle. If there's a problem, we'll dial it back. That's it.

**Adams:** Thank you, sir.

**Leonard:** One question, then, because that relates to one of the conditions I asked mr. Pate about earlier. You can foresee a system whereby somebody would immediately detect at one of the hearing posts a sound exceeding, say, 73 decibels, and then have some kind of communication system where you would immediately adjust down?

**Dodge:** Right. We have radios. And we also have phones between the sound engineer as well as the permanent sound recording area.

**Leonard:** Thank you.

**Dodge:** We would have 10-second communication.

**Leonard:** Ok.

**Davis:** I needed to add --

**Adams:** There's no two bites of the apple. Thank you all very much. We're now going to hear from the appellant rebuttal.

**Nagle:** I have a few - In response to commissioner Fish's question about whether parks and rec has followed appropriate procedures, I think the key problem we have here is that we don't have a plan in place for this space. There is a master plan adopted 30 years ago for Washington park that i'm told by parks and rec is no longer considered an operative document. That master plan called for creation after permanent citizens advisory not guide management to the park. Great idea for this city's most popular park. That never happened. We have no citizens advisory committee. And so we don't have good policies and procedures in place for managing this space. The one thing that parks and rec was supposed to do, advise the neighborhood association of this event, they did rather imperfectly. Because they gave us the wrong number. They said it was going to be 2,000 people, it's actually going to be more than 50% greater than that. One factual correction on the auxiliary parking, the archery range does not in fact hold 150 cars. According to the internal email traffic that I obtained from parks and rec yesterday, it holds only 40-50 cars. Now, mr. Pate, i'm sure is sincere in his desire to do the best job he can. He said he always looks for the worst case first. The fact of the matter is, there are physical limitations just in the size of that park and the parking available and the streets around the park, as I said, you can't pour a gallon of milk into a pint bottle without making a mess. No amount of flagging, no amount of hotlines or good intentions or anything else can address that physical limitation of that space. We are down to the wire here. We're only two weeks away from this concert. You might think it would be unfair to tell the promoter now that, gee, he can't do it or he has to find another space, the reason we're down to the wire is that he began the application process very late. According to parks and rec, permitting manual, for major events you should start nine months ahead of time. This promoter first approached parks and rec in february. The noise variance was only applied for may 11th. Only about a month ago. Even after parks and rec staff repeatedly advised them, you need to get your variance application in. He waited and waited and finally submitted it may 11th. So if he's under the gun now, if he's under the wire, if he faces as catastrophe if our appeal is approved, it's a problem of his own making. I am glad to hear mr. Pate has now offered to run a shuttle all the way to the zoo max station. This was the first we've heard of that proposal. Previously he said he was only going to run a shuttle to the archery range. Let me suggest if the council does permit this event to go forward, that it should limit the size of the event to what this promoter initially applied

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for, which was 2,000 people. He thought he could make it work with that number. That's the number the neighborhood association was told by parks and rec. That's -- that would certainly reduce the traffic impact for this. So 2,000 is a reasonable number. Second, right now the liquor license at olcc granted permits liquor sales for seven hours. Right up until 9:45 p.m., from 3:00 in the afternoon to 9:45. There's no reason for liquor sales to occur that long. There's no reason to let people get that tanked up for that long. You could cut off liquor sales at a reasonable hour to give people time to sober up, cut them off at 8:00 p.m. And let them cool off for the next hour and 45 minutes while the concert proceeds. And lastly, I would suggest that the appropriate length for this concert should be what we've seen in the past, with the free summer concert series. Three hours. If they have to change their lineup to if it into three hours, that's because they waited too long. That's all I have. I'd be happy to answer any questions.

**Adams:** Any questions from council? Thank you, sir. Appreciate it. Could we have staff come up again?

**Fish:** Paul, I have one question. The standard set for this event in terms of the decibel level, is that different than the decibel level which is established for the concerts in august for the Washington park summer festival?

**Van Orden:** Yes, it is. It's about -- depending on what part of the day you're talk about, it's five to seven db higher.

**Fish:** Than what we permit during the Washington park?

**Van Orden:** Yes.

**Fish:** This is up to 73 something?

**Van Orden:** Up to -- they can go up to 75.

**Fish:** And what's the threshold for Washington park?

**Van Orden:** Generally 70 for the concert series, the overall concert series the park puts on.

**Fritz:** That's the reason they're applying for the variance? If they were under 73 they wouldn't have a variance?

**Van Orden:** Even the parks concerts require -- parks comes in and they get a variance, and when we look at those, they're usually smaller concerts. The genre of music that's being produced at those concerts is not as loud as what we'd expect for this concert.

**Fritz:** We are discussing a noise variance and not the whole management of the concert, right?

And it seems to me one of the main criteria that we have to judge on is whether that public health safety or welfare is impacted. And that's from the noise? Is that what --

**Van Orden:** That's correct.

**Fritz:** And what's the penalty for not complying with the noise standards-- if they were to exceed the noise level, what would be the penalty?

**Van Orden:** There could be, it depends -- the noise code was rewritten several years ago to empower us further where we could write multiple citations in a single day. First citation would be \$300, then they would move up to I believe \$750, third citation for -- and we have a slightly lower citation penalty for some one who has applied for a variance as opposed to someone who goes out right now, we're experiencing raves without permits. Because they have a variance, they have a lower level, but it starts to go up quickly if they don't comply, and it could be up to \$3,000 to \$5,000 with multiple citations.

**Fritz:** That's within the same event?

**Van Orden:** The same day.

**Fritz:** Will you be working with the neighbors to set up the stations and have them --

**Van Orden:** Yes. And I should have mentioned in my presentation to council at the beginning that because of the sensitivity of this concert, and the fact we haven't had one in a long time, I will

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be present to make sure that it's not just an unattended situation with quote unquote understandably from the community the fox watching the hen house. So I will be there --

**Fritz:** You'll be physically present.

**Leonard:** In the beer garden or outside of the beer garden?

**Van Orden:** I will be on duty, so I cannot be in the beer garden.

**Fritz:** Thank you. How about the noise equipment? Do you supply that or do you -- does --

**Van Orden:** No. They actually -- they are required to use a fairly sophisticated system compared to the average concert, like the parks concerts are not monitored in the same way. They actually have to use what at this point to the best of my knowledge is only one system that the concert promoters in town have available. And what I mean by that is several years ago the noise review board became more restrictive and I think only horn audio has gone out and purchased a fancy sound system to monitor. So they'll rent that system from horn audio in order to monitor this particular event.

**Fritz:** It's an independently audited --

**Van Orden:** Well, only in so far as it collects the information and then they have to hand us the printouts. The other things we'll be doing is i'll have a handheld meter, and i'll be working with the neighborhood and I talk to them very briefly about this before to mr. Nagle, to set up a sound system in a location that's not known to the applicant to collect readings, so if we have a violation there, they may not actually receive a penalty the night of the event, depending on where the violation is found, but they could face penalties after the event as well. So there's a few layers of checks and balances.

**Fritz:** Thank you for being willing to work the holiday. I know from other events that you are out at all times of the day and night, and I appreciate your work.

**Van Orden:** Your welcome. No problem.

**Saltzman:** Did you say in your opening that there are 10 variances a year for Washington park? 10 variances --

**Van Orden:** No. There was a lot of information I presented. In '96 there were 10 commercial variances that showman had acquired, and then proceeding years, the noise review board became more restrictive as well as the parks bureau and limited showman down to five of these larger commercial affairs that were put on. And I would be hard pressed to answer how many variances we issued in Washington park each year.

**Saltzman:** When the noise control board reviews this, do you make a recommendation to them on this? Did you?

**Van Orden:** I don't necessarily make a recommendation since I have to try and remain neutral, but on the factual side I did place the focus on my experience that there was the potential for this to have base challenges, and I should mention for the record that one of the reasons why I felt very well versed in saying that is not only the 15 years of interfacing the parks and Washington park, but also for five years I produced a radio show just outside of atlantic city that incorporated ska music, which is what toots was originally coming out of, the ska movement. So i'm not disputing nickii davis's comments, but I feel my professional experience producing a show with ska music that this does have the potential to emanate to the neighborhood if we don't watch it carefully.

**Saltzman:** How are you connected into the hotline? Mr. Pate says he'll be on the hotline, but i'm wondering --

**Van Orden:** I won't necessarily be directly interfacing his hotline. I would anticipate some of the neighbors would circumvent the hotline and understandably call dispatch directly or call the noise hotline. So i'll be checking the noise hotline and also calling to see if we're getting any complaints to the sergeant who is on duty that evening. And see how -

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**Saltzman:** You will check in with the hotline --

**Van Orden:** And call him directly, especially if i'm getting complaints. So there's the potential citizens can place complaints through the dispatch system, 9-1-1, slash, nonemergency, and also the nice control hotline.

**Saltzman:** Thanks.

**Leonard:** I would move to overturn the appeal and uphold the decision of the noise review board with the following conditions. First, that the promoter be responsible for picking up any trash generated by the concert. Second, that the promoter agree to pay for parking patrol during the event. And third, that the promoter work with mr. Van Orden and the noise office in developing a process by which the noise standard as outlined in item three in the decision on page three be enforced immediately.

**Fish:** Second.

**Adams:** It's been moved and seconded. Discussion?

**Fritz:** I'm a little concerned with the first two conditions, because they don't seem to relate to the noise level. The trash and parking issues. I'm wondering commissioner Fish, is that something that parks can work with under your permit to require additional things from the promoter?

**Fish:** My understanding from the memo I got for this proceeding was that we can set reasonable conditions on the -- on any action we take. And these seem to be related to the event, and I don't know if city attorney has an opinion.

**Adams:** We can do what we want.

**Leonard:** Well I can -

**Roland Iparraguirre:** The noise review board as an arm of the city has decided and made a determination in this case, and as a judicial body, your appellate would be to make a determination, whether the noise review board's findings were consistent with its code and with its procedures, and unless there was an error, you would uphold the noise review finding. The code also gives you general authority to modify or amend the noise review determination in a way that is consistent with what you heard today, so consistent with what commissioner Fish says, yes, you can have additional restrictions, additional modifications if you choose not to go the route of just affirming or denying the noise review board's determination. So you can be limited to that finding to that ruling made by the noise review board, or you can have the latitude to amend and modify as you see if it. As long as it's reasonable.

**Fritz:** Do they have to be related to noise, or can it be anything?

**Iparraguirre:** It can be very general in this case. This is a de novo review, so essentially like I said, you can just determine the facts are based on the noise review board has previously heard and limit it to that, or you can treat it as a new hearing and put whatever other conditions you wish to impose.

**Adams:** I'd like to -- with the motion on the floor i'd like to ask a clarifying question of mr. Bloom. Can you come forward, please? The garden is on july 4th, scheduled to be open until how late?

**Bloom:** 7:00 p.m.

**Adams:** And based on testimony and letter this, is a busy day for the garden?

**Bloom:** One of the busiest of the year. Generally beginning at 5:00 p.m. We start to trail off in terms of attendance, so it's that time period between 1:00 and 5:00 that is really critical for us.

**Adams:** And the parking lot that your garden goes use below, is that -- I can't remember, is that under your control, or is that just open to anybody?

**Bloom:** It's generally open to everyone. There's only 36 spots in that lot.

**Adams:** Ok. So -- and that is the parking lot for the garden. There is no other --

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**Bloom:** Right, everyone uses general neighborhood parking or the spots along the tennis courts and down towards the playground.

**Adams:** Thank you. If the maker of the motion would consider a friendly amendment to give the garden -- that the parking lot be used for garden patrons until 5:00 p.m. Is that a friendly motion?

**Leonard:** You're raising your hand to object to -- please, let us do this. Yes.

**Adams:** A friendly --

**Fish:** I'm concerned about the precedent.

**Adams:** There is no precedence.

**Fish:** Everything we do is precedential.

**Adams:** I hereby proclaim it is not precedential.

**Fish:** There's parking at the zoo that some people also use when they walk up. But if that's -- it's accepted as a friendly amendment.

**Adams:** I don't intend for it to be precedential. I do think that given the state of the condition of the garden at this point and there are only 36 spots, that until 5:00 p.m. That the patrons of that lot be dedicated to garden patrons.

**Fritz:** Are you envisioning there would be some kind of A-board at the entrance saying Japanese garden parking only?

**Adams:** Yes. I'm sure the garden can get a volunteer to help or parking patrol will help, and we'll signage it as well. That is a friendly amendment. Karla, unless there's additional discussion.

**Fritz:** How much parking enforcement are we envisioning asking for?

**Adams:** We'll work with promoters on not only parking but the flagging, and the notification on the street as we have done for others to make sure when it's -- when the parking is filled up, that we actually don't let people proceed into the neighborhood or proceed from the bottom of the hill to the most usual routes, we just don't let them enter because it's just a traffic complete gridlock and it's not good for you, it's not good for the event, it's not good for the neighborhood. I'm not going to say there will be a moat dug around the neighborhood, but the entrances that are most often used we've done this in other neighborhoods and we keep the gridlock from consuming the neighborhood and the event. So we'll -- pbot will join the meeting that commissioner Fish has offered, and we'll also have a neighborhood person there on your transportation committee to make sure that we've plugged the obvious holes and when it's filled up, we don't have people enter. Ok. Karla, please call the vote.

**Fish:** Thanks to everybody who took time to come out today and testify. It was very useful, I think illuminating hearing. Second, I've been the parks commissioner for a couple years. It appears that we really haven't -- this issue is -- has not occurred since 1999, I think is the last time. So it would certainly -- it's my belief we should revisit these issues and we will do so. There is an existing coalition that we do deal with in Washington park issues called the Washington park alliance. I understand it does not include all the neighborhood association, business associations, but it does include all the partner organizations that have similar interests and concerns. So I guess we'll try to find a forum where we can all come together and have that conversation in the near future. To my friend Steve Bloom, Sean Rogers just confirmed you've been added to the mailing list for all future notices, and for those who also want to be notified in the future, I'll just tell you our policy is that neighborhood associations and business associations automatically get notice, but any citizen or other party can request that they get notice of all things relating to Washington park, for example. So -- but that's been taken care of, so government at work here. I also want to acknowledge something Joe Angel said, which is the reality is that this neighborhood and a number of people in neighborhood have been enormously supportive of the summer festival. And we appreciate that. Financially and otherwise. And I understand that people see a distinction here and they're

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concerned about scale and impact, and notice and things of that -- I think those are good issues for us to take up in another forum. This is a noise application appeal. So since it's limited to that, I will support the motion on the floor. Aye.

**Saltzman:** Without faulting anybody, I do think this is coming to us at a relatively late date, and does kind of push the brinkmanship on this. But nevertheless, I do find that I appreciate the work of our noise control review board and our noise control officer, and I feel that these conditions are reasonable and I think the conditions we are further adding are even more reasonable and will make this event not only a success in terms of its bottom line, but I think also something that is going to work with the neighbors who live in this area. But I do think there's got to be a better way than bringing something like this to us two weeks from the date. Again, i'm pleased to vote aye.

**Leonard:** Given my dedication as a public servant, i'm going to volunteer my services to help mr. Van orden police the event particularly the areas he --

**Saltzman:** Inside the beer garden.

**Leonard:** It has nothing to do with my love of reggae and blues. Happy we can find a middle ground. Aye.

**Fritz:** Thank you all for bringing these issues to us, whether in a timely manner or not. It's been a very helpful hearing to review the impacts on the neighborhood, the japanese garden, and the desires of the promoters to have a festival that sounds like it will be wonderful for a lot of folks. And it's really great that we may be climbing out of the recession to the point that we can even think about doing something like this. And perhaps it can be a celebration for that. I do appreciate the issues presented by neighborhood association regarding the overflow parking, the noise and hours of operation, and sustainability, and we all heard your request for an updated plan for the park, and its ongoing citizen advisory committee, and it's good to see your investment in wanting to be proactive in getting a master plan or something similar. And defer to the commissioner in charge of parks to pursue that if and when we have the capacity. What we are addressing here is the noise impacts. I appreciate the additional conditions that have been put on which will make the event safer and I respect those concerns. There will be some temporary inconvenience to the neighborhood, I really believe that the noise board and the noise review officers did a wonderful job of addressing all of the issues, and when I was thinking through and reading through the testimony, and looking at the decision and the conditions of approval, it was remarkable how well that was done. And so were these additional conditions, which I think further strengthens it, i'm happy to vote aye.

**Adams:** While the issue is still in the discussion is still fresh in your minds, if you could email me and i'll leave a card I have to run off to another meeting, email me where you think the best control points would be, for not allowing signage that says parking for japanese garden, everything else is full. Whatever we figure out, in terms of signage and the right place for those control points, just give me your initial thoughts and that way we can speed it along, the conversation. I think it's important to note that the japanese garden is open and that there might be parking there. So i'm committed to making this work, and look forward to engaging transportation bureau on the details. I vote aye. [gavel pounded] we are adjourned.

At 3:33 p.m., Council adjourned.