



CITY OF
PORTLAND, OREGON

OFFICIAL
 MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **29TH DAY OF OCTOBER, 2014** AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Hales, Presiding; Commissioners Fish, Fritz, Novick and Saltzman, 5.

OFFICERS IN ATTENDANCE: Susan Parsons, Acting Clerk of the Council; Ellen Osoinach, Deputy City Attorney; and Jim Wood, Sergeant at Arms.

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

		Disposition:
COMMUNICATIONS		
1111	Request of Brooks Hickerson to address Council regarding construction noise in Portland neighborhoods (Communication)	PLACED ON FILE
1112	Request of Mary Sipe to address Council regarding pile driving (Communication)	PLACED ON FILE
1113	Request of Eli Spevak to address Council regarding residential densities on properties abutting neighborhood parks (Communication)	PLACED ON FILE
1114	Request of Scott Timmons to address Council regarding police efforts in the Central Eastside dealing with the homeless/camper issue (Communication)	PLACED ON FILE
TIMES CERTAIN		
1115	<p>TIME CERTAIN: 9:30 AM – Accept report on the Regional Arts & Culture Council’s Right Brain Initiative program (Report introduced by Commissioner Fish) 30 minutes requested</p> <p>Motion to accept the report: Moved by Fish and seconded by Fritz. (Y-5)</p>	ACCEPTED
CONSENT AGENDA – NO DISCUSSION		
<p>Mayor Charlie Hales Office of Management and Finance</p>		
*1116	Pay claim of Gregory Haase in the sum of \$125,000 involving the Portland Bureau of Transportation (Ordinance) (Y-5)	186862

October 29, 2014

Commissioner Steve Novick

Position No. 4

Bureau of Transportation

*1117 Authorize application to ArtPlace America for a grant in the amount of \$160,000 for the Foster Placemaking Project (Ordinance)
(Y-5)

186863

1118 Accept an Engineering Report on an existing encroachment into the public right-of-way for building projection on North Mississippi Ave (Second Reading Agenda 1099)
(Y-5)

186864

Commissioner Nick Fish

Position No. 2

Bureau of Environmental Services

*1119 Authorize an Intergovernmental Agreement with the Oregon Department of Environmental Quality to conduct an environmental investigation and collect samples at the former Oaks Bottom Landfill and to accept funding from the State Solid Waste Orphan Site Account for a portion of the investigation (Ordinance)
(Y-5)

186865

1120 Authorize a contract for construction of the Columbia Boulevard Wastewater Treatment Plant Digesters 1 & 2 Compressors Replacement, BES Project No. E10118 for \$470,000 (Ordinance)

**PASSED TO
SECOND READING
NOVEMBER 5, 2014
AT 9:30 AM**

Commissioner Dan Saltzman

Position No. 3

1121 Authorize an Intergovernmental Agreement with Multnomah County to support the operation of the Gateway Center for Domestic Violence Services to provide accessible and coordinated services to victims of domestic violence and their children (Ordinance)

**PASSED TO
SECOND READING
NOVEMBER 5, 2014
AT 9:30 AM**

Portland Housing Bureau

*1122 Authorize an Intergovernmental Agreement with the City of Gresham for \$1,225,253 for the HOME Investment Partnership Program (Ordinance)
(Y-5)

186866

REGULAR AGENDA

Mayor Charlie Hales

Office of Management and Finance

1123 Accept bid of Moore Excavation, Inc. for the SW Ventilation & Capacity Project for \$3,458,479 (Procurement Report – Bid No. 117104)
Motion to accept the report: Moved by Fish and seconded by Fritz.
(Y-5)

**ACCEPTED
PREPARE
CONTRACT**

October 29, 2014

1124	Authorize a contract with e-Builder for hosted software in an amount not to exceed \$735,929 (Second Reading Agenda 1107) (Y-5)	186867
Commissioner Nick Fish Position No. 2 Bureau of Environmental Services		186868
*1125	Authorize funding of the supplemental environmental investigation and remediation work required under the Administrative Settlement Agreement and Order On Consent with the U.S. Environmental Protection Agency CERCLA Docket No. 10-2013-0087, up to \$500,000 in FY 2014-15 (Ordinance) 10 minutes requested (Y-5)	

At 11:12 a.m., Council recessed.

October 29, 2014

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,
OREGON WAS HELD THIS **29TH DAY OF OCTOBER, 2014** AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Hales, Presiding; Commissioners Fish, Fritz,
Novick and Saltzman, 5.

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

		Disposition:
1126	TIME CERTAIN: 2:00 PM – Consider candidates for independent monitoring of City’s compliance with Department of Justice Settlement Agreement (Report introduced by Mayor Hales and Commissioner Fritz) 3 hours requested	PLACED ON FILE

At 2:52 p.m., Council recessed.

October 30, 2014

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 30TH DAY OF OCTOBER 2014 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Hales, Presiding; Commissioners Fish, Fritz, Novick and Saltzman, 5.

OFFICERS IN ATTENDANCE: Susan Parsons, Acting Clerk of the Council; Ian Leitheiser, Deputy City Attorney; and Wayne Dykes, Sergeant at Arms.

		Disposition
1127	TIME CERTAIN: 2:00 PM – Appeal of David Vanadia against the noise variance granted to Andersen Construction for the Unico Overton Apartment project located at the block bounded by NW 12 th Ave, NW Overton St, NW 13 th Ave and NW Pettygrove St (Hearing introduced by Auditor Griffin-Valade) 1 hour requested	CONTINUED TO JANUARY 14, 2015 AT 2:00 PM TIME CERTAIN
1128	TIME CERTAIN: 3:00 PM - Consider the proposal of Sam Rodriguez, Mill Creek Residential Trust, LLC and the recommendation from the Hearings Officer for approval to change the Comprehensive Plan Map designation from High Density Multi-Dwelling to Central Commercial and the Zoning Map designation from RHd, High Density Multi-Dwelling Residential with a Design overlay zone, to CXd, Central Commercial with Design overlay zone, for property in the vicinity of SW 20 th and 19 th Avenues and SW Main and Madison Streets (Previous Agenda 1036; Hearing introduced by Commissioner Fritz; LU 14-105474 CP ZC)	RESCHEDULED TO DECEMBER 4, 2014 AT 2:00 PM TIME CERTAIN
1129	Amend the Comprehensive Plan Map designation and amend the Zoning Map for property in the vicinity of SW 20 th and 19 th Avenues and SW Main and Madison Streets at the request of Sam Rodriguez, Mill Creek Residential Trust, LLC (Previous Agenda 1037; Ordinance introduced by Commissioner Fritz; LU 14-105474 CP ZC)	RESCHEDULED TO DECEMBER 4, 2014 AT 2:00 PM TIME CERTAIN

At 4:00 p.m., Council adjourned.

LAVONNE GRIFFIN-VALADE
Auditor of the City of Portland



By Susan Parsons
Acting Clerk of the Council

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

October 29, 2014
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.

OCTOBER 29, 2014 9:30 AM

Hales: Welcome to the October 29th meeting of the Portland City Council. Would you call the roll, please, Sue?

Novick: Here. **Fritz:** Here. **Fish:** Here. **Saltzman:** Here. **Hales:** Here.

Hales: Good morning. Before we get to the morning's calendar, we have a wonderful courtesy item this morning. The United States has a very important relationship with the country of Mexico, the state of Oregon has a very important relationship with the state of Jalisco, and we have an important relationship with the city of Guadalajara. So therefore, between those connections and the large Mexican American population here in Portland, our relationship with the Mexican consulate is a critical one. We are very pleased to have our new consul general here, as well as some of his team. I want to introduce Armando Ortiz Rocha, who's our new consul general from Mexico; along with Claudia Fabiola Cabrera Vázquez, who's the deputy consul; and also Dulce Maria Soledad Zamora Lezama, who is the community relations specialist there. I want to introduce our new consul general and his team and give you a chance to come up and greet the council, because we'll be working with this man and his team extensively over the next few years. Welcome to Portland. [applause] Welcome, sir.

Armando Ortiz Rocha: Thank you, sir. Just before this meeting, I have the privilege of meeting privately with Mayor Hales. It was our first meeting, and I was telling him that it's a great privilege in my career. I have been a public servant in Mexico for 46 years, working for the minister of foreign affairs for 25 years, and they posted in the U.S. in different consul representations, mostly in Texas and in North and South Carolina. And I was telling him that finally, I got the biggest reward in my career: being appointed to this great city of Portland. So, we will be looking forward to working intensively with the Mayor's Office, with the city council. I salute the council members, and it's a great honor to be here. I was not expecting this fine introduction. So, we will be working with the priorities of the city -- which are also the priorities of the Mexican community and the community at large -- which are education, health, economic growth, and social prosperity. So, thank you for the opportunity, Mayor, Council members, and I hope to have some conversations with you individually in the coming weeks. Thank you very much.

Hales: Thank you so much. Welcome.

Fritz: Mr. Consul General, I just wanted to tell you I appreciated your comments that this is one of the highlights of your career. My parents, Colonels Edward and Emily Fritz, are retired Salvation Army officers, and I think that one of the highlights of their career was being posted to Mexico to be in charge of the Salvation Army throughout Central America. And so, I know that they would reflect your good tidings. Thank you very much.

Ortiz Rocha: Thank you very much.

Hales: Thank you. Look forward to working with all of you. Thanks so much. It's a very important relationship. And as we were discussing this morning, Portland has a pretty strong consulate core, particularly for a city our size. We have a few of our consulate cores that are represented by professional diplomats -- as in this case, of course -- and in Japan, where we have other consuls general. It's a very important set of relationships for us, as we're now a much more international city than we were 10 or 20 or 30 years ago. So, we appreciate the commitment that the government of Mexico has made by having a consul general here and having a strong staff team behind you, and

October 29, 2014

look forward to working with you on all things. Thank you. Well, let's move to our regular calendar. We have some communication items up front. We'll take those first, and then we have the rest of our council business as usual. If you're here to speak on a council calendar item, you don't need to give your address, just give us your name. We typically allow three minutes for citizen testimony. In order for citizens to say things that others might not agree with, we ask you to not have vocal demonstrations in the council, but if you agree with somebody, give them a thumbs up or a wave of your hand. Again, we want an environment here in this room where people can have their say. If you're a lobbyist representing an organization, please disclose that. With that, we'll take the first of only four communications items that we have on the calendar and then move on from there.

Item 1111.

Hales: Welcome.

Brooks Hickerson: Good morning. Hi. My name is Brooks Hickerson. I live at 12355 NW 9th Avenue with my wife in a condominium called The Pinnacle. We live across the street from Block 15 construction, a site within two blocks of Block 17 and the Overton apartments. I spoke to City Council in June. I don't know if you remember, but I certainly remember. It was about the noise created by the impact of pile drivers. I am here today to report that Hoyt Development did not use pile drivers on Block 15, and apparently, the construction companies are not planning on using it on the Overton apartments, either. The auger drilling technology used in Block 15 and Overton apartment has reduced the noise level in these project significantly in our neighborhoods. So, this is basically a good news report. I'm not here -- you know -- this is good news. You like to get a little good news, I know you don't get very much. This is what this is, OK. Hoyt stepping up to the newer, quieter auger technology -- foundation technology -- demonstrates that this works in the Portland area, and works well. I belong to an organization called the Portland Coalition to Curb Construction Noise. We've researched the effect of the noise on people and found lots of research that confirms that the construction noise has significant effects on the health of the people, from hypertension to the children's hearing loss. Given Hoyt's success with the auger technology and the health costs of the noisier pile drivers, we recommend that the changes be made to the noise ordinance to make auger technology the default for foundation construction in the Portland area. This would require the developers in the construction companies to demonstrate why auger technology would not work on their particular site before they were granted a variance to use pile drivers, since augers work and they work well. However, before we can rely on the noise variances, there's a few problems with the noise variance process. Currently, noise variance and their applications are nowhere to be found on the internet. So, you can't go out and look at a particular property and tell what noise variance is there or what applications are there. So, the announcements are only sent to the HOAs -- a couple of HOAs -- and not to any local residents. And so, you have to appeal it. Apparently, unless somebody appeals the variance request, it's automatically granted. So, this is catch-22. You don't know about it, but you're supposed to know about it, and you have to figure out when to come and what to do. Not very nice. So tomorrow on October 30th, you will be asked to judge our particular appeal by Dave [indistinguishable]. As far as I know, he must be clairvoyant. He figured out about the variance --

Hales: I will give you extra time because you are giving us specifics that I think we want to follow up on. But do try to wrap up.

Hickerson: I'm through. I just wanted to tell you he's coming tomorrow, and we'll be here tomorrow, too. And you can judge for yourself about the variance process.

Hales: Thank you very much. I appreciate both. It is nice to get good news. My impression of this issue is that we've had a partial success here -- not a complete success -- in working with you and the other neighbors that came in and testified earlier this year. Thank you for both reminding us about the code issues and about the noise variance process being more obvious to the citizens. We can work on those. I think that the other thing that your experience demonstrates is that while we

October 29, 2014

may do more in code, we can also do more in outreach to individual projects at a person-to-person level, because the developer in this case made a decision to be a better neighbor -- not necessarily being forced to by city government.

Hickerson: That's right.

Hales: I'm not closed to forcing people, but if we can also get cooperation, that's a good thing, and it was obviously a good thing in this case. So, your experience was kind of a test drive for us in a number of issues, I think, and I'm sorry that you had to listen to a huge amount of volume of noise from some of those earlier projects, but I appreciate the progress.

Hickerson: Well, thank you.

Hales: Thank you very much. OK, I think that we have another citizen here on the same subject, but I think that we have Amara here in place of Mary, is that right?

Parsons: I only have Mary, so.

Hales: Mary is in the hospital, I understand, and Amara is here in her place.

Amara Jess [spelling?]: Thank you for letting me -- I came with Mary's request to express her regrets.

Hales: Yes, just give us your name.

Jess: Amara Jess. She was in the hospital with acute renal failure and just wasn't up to it. And she wants to recognize what a wonderful opportunity this is, and she's very sorry to miss it but will be following up in correspondence with Council. I just wanted that on the record.

Hales: Thank you. We wish her well and appreciate you and her and the others working on this issue with us, so, thank you.

Fritz: Give her all of our best. It is good to have friends in situations like this who will step in and help out. So, thank you for being here.

Hales: Thank you very much.

Item 1113.

Hales: Good morning.

Parsons: And Mr. Spevak also has a PowerPoint for you.

Hales: OK.

Eli Spevak: All set? OK. My name is Eli Spevak -- it takes a while to get on your list. Two questions to frame my testimony. One is the size of the homes in our neighborhoods and the rules governing that, and the other is the parks. I've been talking to the Portland sustainability commission on both of these, but wanted to let you guys know -- a heads up. The question on my first slide is, have you a 1200 square foot house lately? No one is building them, and yet, there's huge demand for home of that size. Nearly one-third of households are single person, and just a terrible mismatch in the neighborhood. The market builds what makes the most money, so we need to change the rules a little bit if we are going to have smaller homes in the neighborhoods. A quick pictorial tour. I wish kind of wish some of this had been on the Metro housing preference survey, but -- accessory dwellings. Portland has done a good job on those already, and there are some changes we can make to make them more available. Big old homes. What do you do with them? Small households. We should allow them to divide into smaller units so that you can preserve the old homes instead of taking them down, and keep the historic character of the neighborhoods. Cottage clusters -- this has been in the Puget Sound area where you basically get a density bonus in exchange for smaller homes.

Hales: Is that the one in Port Townsend?

Spevak: One of them is -- no, these are not in Port Townsend. These are further north. But you could not do this in Portland right now, because if you built homes on subdivisions, you'd have to go to the larger homes to make the lot numbers pencil. The system developments charges. Which of these houses has the higher SDC? Well, they pay the same. That's kind of an issue, an incentive to build larger homes. Detached bedrooms. We have done some of these, they're projects I've worked on. I hear the city is clamping down on the practice somewhat, so I think that should be going the

October 29, 2014

other way. Tiny homes on wheels, and tiny homes not on wheels. This is in Washington, D.C. Our housing model I pitched out to some people in the city to create a path for tiny homes to meet all life safety requirements. And the other thing I wanted to mention is Portland and parks. We do a wonderful job in investing in parks, Portlanders just love their parks. Going around the parks I know in my neighborhood, why do some people live near them? They are almost always rounded and circled by some single dwelling zones. And as an example, I did a little survey and did an op-ed on it. In north, northeast Portland, there's parks like Irving, Wilshire, Fern Hill -- all, 70% or more ringed by single dwelling zones. So, I'm pitching to, why don't we just take the homes that immediately abut the parks and make that into a low density, multifamily zone like R2, something like that? That way, those people have a yard of a park across the street. You can get affordable housing, a little bit denser units near the parks, and it allows eyes on the parks. It's just a natural place. Any new development -- like New Columbia -- they did that automatically. They have the big park up there, McCoy Park. And if you look around, there's multi-family around the park, and then beyond that is single dwelling zones. So, this is a chance through the comprehensive plan process to get this ready for other parks around town. And many of these parks have awesome public transit, so it's not even an issue there. Staff has already looked at this issue, it just didn't rise up to the mapping stage of the comp plan.

Fish: Eli, a quick question. First of all, can we get a copy of your PowerPoint?

Spevak: You already got it.

Hales: There you go. She has it.

Fish: Who has it?

Hales: We have it in the system. If you don't mind --

Fish: Unless we ask your permission, we can't --

Spevak: Oh, I see. Yes.

Fish: Because we actually don't have it. And second, accessory dwelling units. We've made some changes in the past, including waiving the SDC as a way of facilitating. What's the big idea that you have around ADUs?

Spevak: I think long-term, scaling SDCs would replace the waiver. Other ideas for ADUs. One is to do what Vancouver, B.C. does, which lets you have one internal and one external one, with a cap on total square footage -- so potentially, two. Another is the design requirements to match the existing house mean that if you have a house that's T111 siding, you have to match that with the ADU. So, there's kind of an incentive, or else go through the design process. I would propose that if your house, if your ADU is under a certain size, like under 400 square feet, or if it meets the community design standards, you wouldn't have to match the house, because sometimes that's a challenge.

Fish: And the slide you showed us about the one size fits all SDC for the small house and the big house. We've also had folks come to us and talk about the anomalies in multi-family buildings.

Spevak: Absolutely.

Fish: So, the city wants to encourage smaller footprint, greener apartments, and yet, we charge by the door. So, the penthouse pays the same SDCs as the 500 square feet efficient unit, right?

Spevak: I think same solution in both cases -- charged by the square foot, or at least scale it up by that. In the multi-family setting, you have the situation where an SRO looks a lot like a six bedroom unit where each bedroom is actually leased out separately. If you charge by the square foot in that situation, then it makes those more comparable products in terms of SDCs they pay. Similarly, with the single family setting, you have it by the square foot.

Fish: Obviously, one-size-fits-all has an ease of administration, but are there other cities that have done it by a square foot or through another model?

Spevak: I found one place which scaled SDCs based on size. Metro did a study on this years back. At that point, there were a couple of cities looking at it, and one of them did it. But it's hard to find. In the commercial, it's done. It's based on square footage, but --

October 29, 2014

Fish: I think the point you're making is a really good one, and it's an anomaly because most of our policies are encouraging smaller -- at least in theory -- smaller footprint, greener, more efficient use of space. But the SDCs charging by the door are actually encouraging development of a different size of a unit. So, we are contributing to a market that is contrary to the values that we profess.

Hales: Yeah, I'm not sure. Your testimony is very helpful, and I'm glad that you're communicating all of this to the Planning and Sustainability Commission, because we're working on all these issues right now. But I think that we are doing a bit of this in our code right now in that we have very modest setbacks in the single family zones, so that does tend to encourage building out the house to the setbacks, and you get the houses out of scale with the houses around them rather than a smaller house with an accessory dwelling unit or some of these other more fine-grained solutions to density. So, I think this comp plan update is a chance for us to tune things and to get more of what we thought that we were going to get when we put some of those zoning designations in place 10 or 20 years ago. We've had a bit of experience now, some of it's good and some of it's not. So, I think your engagement in those discussions is going to be very helpful, because I look at those -- I saw a project in Port Townsend similar to the ones you showed. It's not legal in Portland. It should be. It very much fits our -- well, it's not legal without a conditional use permit. So --

Spevak: Or it is legal, but no one will build a house that small if you don't get any extra units in exchange for doing the small house.

Hales: Yeah. So, it's -- these are important issues, and I think we have a chance literally over the next few months to write the code that will get us closer to what you have been envisioning here rather than what we are now allowing or not allowing. Appreciate that. Thank you.

Spevak: Thank you for your time.

Hales: Thanks very much. OK. Thank you, and we'll look forward to getting a copy of that presentation. Thanks for letting us see that. And 1114, please.

Item 1114.

Hales: Mr. Timmons, are you here? There he is.

Fish: We'll try to get that PowerPoint down so we can see you.

Hales: Good morning.

Scott Timmons: Good morning, Mr. Mayor and members of City Council. I'm not very versed or experienced in this setting in speaking, but wanted to -- my name is Scott Timmons. I work with West Coast Self Storage and Rose City Self Storage, located on 111 SE Belmont. We are members of the Central Eastside Industrial Council in that district over there, and have been down there for approximately four years now. I'm representing the ownership and the investment, which has done a significant amount. It's a nationally-recognized historic building, trying to bring commerce and business to that side. We're frustrated in understanding the challenges that are present in managing the homeless and camping and all those things, and so certainly conceding the difficulty in how to direct that group and the struggles there within. We work tirelessly every day, but are frustrated at the inability to have any movement of camps that I provided you with a written statement about understanding timelines, etc. So, wanting to convey the urging of the council to push for ordinances that allow for campers and offensive behaviors to be removed. What our customers are exposed to -- witnessing of nudity, literally, not to overstate it -- nudity, sex, waste, all the things that go with it in front of everybody -- women, children, what not. It is embarrassing. But then watching our law enforcement who work very well with us. We're pleased with their service and communication. However, the effectiveness of what they can do to have a camper move from outside your window and your door -- literally live there and not have any ability to move them is frustrating for all that we continue to do to keep up with it. So, we're frustrated with those things and want to take this opportunity to continue to voice -- I know it's a loud voice in Portland and an issue that we're not alone in. But just urging Council to help with an ordinance for action that can help us.

October 29, 2014

Hales: Thanks very much. And thanks for giving us this well-documented backup to coming in today. Obviously, we want central precinct to keep working with you, and that's just part of the issue -- as you pointed out. Thank you.

Fritz: Mr. Timmons, one of the challenges is that there's nowhere for people to go, including not enough space in jail even if we wanted to put them in jail. So, one of the things I'm working with in Right 2 Dream Too is to try to find another location for a place where people can be safe, where they can have bathroom facilities, where they can have shelter to attend to bodily needs such as getting dressed and such. So, if there are spots on the eastside that you know of that might be appropriate for something like that, I'd be very glad to hear from you.

Hales: Thank you. We'll take up the consent calendar. I don't think that there have been any requests to take items off of consent and move them to the regular calendar. Hearing none, let's take a roll call on the consent calendar, please.

Roll on consent calendar.

Novick: Aye. **Fritz:** Aye. **Fish:** Aye. **Saltzman:** Aye. **Hales:** Aye.

Item 1115.

Hales: Good morning, welcome.

Fish: Thank you, Mayor. I would like to welcome our three distinguished guests this morning. Jeff Hawthorne, the director of the community engagement at the Regional Arts and Culture Council; Marna Stalcup, the director of arts education at RACC; and Kristen Brayson, the arts coordinator for Portland Public Schools. We have a brief introductory statement. Since 2008, the Right Brain Initiative has been making a difference in Portland classrooms. Today, the program serves 13,000 students in nearly 50 schools across our community. With a focus on equity and creativity, Right Brain has become a nationally-recognized education program. Its unique model shows teachers how to weave the arts into core curriculum, challenging our assumption and changing the way students learn. Portland students now access their right brains to better learn math, reading, writing, and more. Taxpayers, through the city of Portland, are one of the three largest contributors to the program, with an allocation of \$220,000 from the city alone. Jeff, Marna, and Kristen are here this morning to share some exciting new data that really shows the difference Right Brain is making in the lives of the students. And Jeff, before I turn it over to you, the Mayor and I -- among others -- participated in Principal for Almost a Day recently, and one of the messages we got in the schools we visited is, what is happening with arts education because of this funding? And in some instances, it literally means putting an instructor back in the classroom, or reinstating a music class or an arts program or dance or whatever. So, this is something that we support and we're seeing real change and it's really making a difference in our schools. Thank you for joining us today to give us a report. Jeff?

Jeff Hawthorne: Thank you, Commissioner Fish, Mayor Hales, City Council. I'm filling in for Eloise today, because she has lost her voice. I will try to maintain mine. Commissioner Fish, what you were saying is so true, and I think we will look back on this period as a time when there was very significant transformation in terms of the arts education activities taking place in our schools because of the Right Brain Initiative and because of those art and music teachers that are now funded by the Arts Education and Access Funds. So, we really appreciate the opportunity to come to you today and show you what are some extraordinary research findings and impacts of this work that we have been taking up since 2008. We really want to thank you and the city of Portland for funding this endeavor since it first began in 2008, and being a consistent funding partner ever since. We really appreciate it. The work would not be possible without you, and it has helped attract -- 50% of our program is funded by private sector contributions. And so, your support really began the work, but now it's picked up by corporations, foundations, and individuals in our community, and we thank you for that. With me today is Marna Stalcup at the other end of the table, who has been the program manager of the Right Brain Initiative ever since it began. But she has recently been promoted to the position of director of arts education at RACC. And in that role, she will continue

October 29, 2014

to oversee the Right Brain Initiative, but she will be responsible for some of the things that are charged to the Regional Arts and Culture Council to do in terms of the coordinating of the arts education activities funded by the Arts Education and Access Fund. And then as you said, Commissioner Fish, we are also joined by Kristen Brayson from PPS. So, they will share exciting results with you in just a moment. But before they do, I want to just show you one slide that has to do with our approach to arts education. And the idea here is that for a student to be receiving complete arts education, it really is a three-legged stool. And only a complete stool will provide the kind of arts education that we think is making a difference in our children's lives. Those three legs include sequential arts instruction, which are those art and music teachers; professional arts experiences, opportunities to go to the art museum or the symphony or to bring a theater company in for an assembly; and also, arts integration, which is the program that the Right Brain Initiative is all about. So with that, I will turn it over to Marna Stalcup.

Marna Stalcup: Thank you, Jeff. Thank you, City Council, for this opportunity. I want to comment, Commissioner Fish, on your note about Principal for Almost a Day. I, too, was principal for almost a day, and as close as I am to working with schools in my day-to-day work, it is such an eye opener every year when I participate in that, because you're on the ground, you really see the wonderful inspiration that happens in those schools and also the challenges that those principals and those teachers face day-to-day. So, I'm with you on that. It was a great day.

Fish: The school I visited had a huge sign saying welcome, Principal for Almost a Day, and it was all this hoopla. Unfortunately, the picture and the name on the sign was Representative Lew Frederick. So, I wasn't actually even principal for almost a day, I was carrying a walkie-talkie and actually reporting to Lew. So, I didn't quite rank. [laughter]

Stalcup: So, I wanted to add to what Jeff was just introducing, and to mention that the Right Brain Initiative as we conceive it is really a shared delivery model, where those arts teachers play a permanent role in our work along with the classroom teachers and the artists from our community that work collaboratively to make this work happen. So, just a reminder of the vision of the Right Brain Initiative, which is to transform learning for all children through the arts, creativity, innovation, and whole brain thinking. And you can tell this guy with his goggles has really got his eye on the prize in the future. The emphasis here is on equity. When we work with the school, we insist that we work with -- we provide services and support to every child and that every classroom is engaged. So, that's a primary value that was established when this initiative was launched. In addition, I want to point out that it's about the whole brain thinking. So, even though we're called the Right Brain Initiative, it's not just about what the right brain does. It's the magic that happens when the left and the right sides of the brain are working together, and that's what happens when artist and teachers collaborate in this work.

Novick: I just have to ask, in today's poisonous partisan environment, do you really see the right brain and the left brain working together? [laughter]

Stalcup: I'll show you a couple examples in a minute. When we talk about arts integration, we have adopted the Kennedy Center in Washington, D.C.'s definition of arts integration, and just a couple things to point out here. It's about teaching and it's about learning. Arts integration is an approach to teaching where the students are the ones actually making the meaning by taking those concepts from two different content areas and making new meaning and understanding something in a new way. The other thing that's important to recognize, too, is that the arts are not in service to other content areas, but we pay careful attention to the learning objectives of both subject areas so that we're meeting both needs and paying careful attention to that as we move forward with this work. Again, I'll show you a couple of examples of how this looks in the classroom. So, just a reminder. When we began the 2008 and 2009 school year, we engaged 20 schools. We are a tri-county initiative, so we serve the RACC footprint of the Washington, Clackamas, and Multnomah Counties. So, we had four school districts at the time. Portland Public Schools you see here in the purple. In the yellow is the Hillsboro School District. The pink is Gresham-Barlow, and the green is

October 29, 2014

the North Clackamas District, so all three counties were represented from the very beginning. Here's where we are today. We are now in 59 schools. I believe, Commissioner Fish, the numbers you were reporting were from the progress report from last school year, so to add to that, we have 59 schools we're serving and we are now in seven school districts. So, we have also added in the red the Estacada School District, it's one of the more rural districts. And in the orange, we have the Corbett School District. In the blue there, we have the Oregon Trail School District.

Fish: Mayor Hales, what schools did you visit?

Hales: Sitton was the elementary I was in, and then George Middle School and then Roosevelt. And it was actually at Sitton that I watched the arts tax-funded instructor in a classroom, and it was magical and wonderful. And as you said, even those of you who get to spend more time than we do on an occasional basis are still struck by the value of it. But it was really impressive. And in fact, he was a first-year teacher, just moved to Portland to do this work. He was obviously inspired as a teacher because of the way that he was working with the kids. And just being there for half an hour watching him do this work with these kids -- you both see the value of it intrinsically, and the connections to other things. He was actually talking a bit about ethics while he was talking about art and seamlessly weaving those two instructions together. It was impressive.

Fritz: So why aren't Parkrose and David Douglas on this map?

Stalcup: That's an excellent question.

Saltzman: And Beaverton.

Fritz: Well, Beaverton's not in Portland.

Saltzman: But RACC serves the region.

Stalcup: So, let me address that. I'm seeing my new role as RACC as director of arts education as a prime opportunity to begin to work with those other districts in the city of Portland to understand this idea of a comprehensive arts education, and that the Right Brain Initiative can be one of those pieces that's important for that. Obviously, they are benefiting from the Arts Education and Access Funds, so we're one step ahead in that regard. But it's -- and maybe Kristen can speak when she talks in a moment -- but for some teachers, the notion of arts integration -- when you think historically about how we defined arts education as being art and music teachers in classrooms, this whole idea of arts integration is a whole other path that teachers may or may not be prepared to engage in. That's why for us, our professional development program is an important component of that. So, it's my hope that I can begin to work with those districts to help them see that the Right Brain should be a piece of what they are doing.

Fritz: Could you clarify for the viewers at home, what's the difference between the Right Brain Initiative and the arts tax-funded teachers in classrooms?

Stalcup: Yes. The arts tax is funding licensed, certified art, music, dance, theater teachers for K5 students in the city of Portland. It's guaranteeing that we have teachers for every 500 students that every child is getting weekly access to one of those art forms at a minimum. The Right Brain Initiative is an arts integration model that happens primarily in classrooms where a classroom teacher and either an arts specialist -- an art or music teacher, or a teaching artist from the community, a professional artist -- come in and weave that into the standard curriculum. So, in lessons in reading or math or in social studies, the arts are finding a new pathway into that understanding.

Fish: The difference is the arts tax model where the money is allocated as of right, and the Right Brain Initiative is a voluntary program.

Stalcup: That's correct. So, schools and districts sign on to the Right Brain Initiative and adopt this, and actually, school districts invest in this at the rate of \$15 per child in each participating school. And that becomes the fund that the school draws upon to bring the selected artists into work with teachers. The allocation from the arts tax goes directly to the districts to support the hiring of those teachers, the arts and music teachers.

Fritz: Where does the government funding for the Right Brain Initiative come from?

October 29, 2014

Stalcup: As Jeff mentioned, the City of Portland has been our first and primary public funder. We also have funds coming from all three counties, the Oregon Arts Commission is supporting us, and we have funding from the National Endowment for the Arts. So, local and --

*****: [inaudible]

Stalcup: I do.

Saltzman: Could you say why the Beaverton School District is omitted?

Stalcup: Beaverton was actually at the table when we first were conceiving of the Right Brain Initiative and had some interest. I think that there were some financial constraints, number one, and they had a very strong art literacy program in place, and felt that that was doing and reaching children in the way that they felt important. Very soon after that, then, they were -- along with young audiences -- awarded an I3 grant from the federal government for the arts for learning program that is in its final year this year. So perhaps, after that funding is gone, they might entertain the idea. And especially when they have re-upped their commitment to the arts education through their recent passage -- and extra dollars to fund the music in the district.

Saltzman: Thank you.

Stalcup: OK, moving on then. I also want to point out that the Gresham-Barlow School District in the pink is the first district to be at scale. They have every elementary school involved in Right Brain. In Portland Public Schools, we're about a third of the way there -- 32% of the schools in PPS are involved. And the Jefferson cluster -- we're in every school feeding Jefferson High School, so it's our first full cluster that we're engaged with. This gives you a snapshot of the demographics of the student population across the initiative, so all of the districts involved are factored in here. What's been interesting for us is to watch how the population is shifting across the region, and it's been interesting to support our districts in that by bringing artists of a variety of racial and ethnic backgrounds into their schools to help to support that shift.

Fish: That's a very interesting statistic, because the two elementary schools that I went to were Woodlawn and Faubion. Woodlawn is 50% African American, 50% Latino, and it's a Right Brain school. And Faubion is a third a third a third -- a third Caucasian, a third Latino, a third African American. So the numbers skew quite differently when you look at the region when you bring in four or five different schools.

Stalcup: That's right. This is something I wanted to share with you in terms of Title I schools. It's our primary mission -- at least initially -- to bring in schools with the highest need. So, this is just to point out that of the Portland Public Schools that are involved -- 18 Portland Public schools are currently involved in Right Brain -- 11 of them are Title I schools, which is about 61% of the schools we're serving in PPS. So, we're really trying hard to bring in those schools that have the highest need with this work. Here's that funding picture, and I apologize for the fine print here. It's right out of our progress report, which I believe you have or will receive a copy of. The point here is that the school districts in F -- the top right blue wedge of the pie chart -- is what the districts are investing, and that's the \$15 per student, that's an annual commitment to fund artists working in their classrooms. Just below, the G, is the city of Portland's commitment and ongoing funding for us, which has been in place since day one. In fact, I owe an extra thanks to the city for that because preceding the launch of Right Brain, the city invested in RACC to envision this program and allowed for me to be hired to launch the work. So, I personally have --

Fish: We should acknowledge former Mayor Sam Adams, because he was a true believer, put it in his budget, put it in a special appropriation. Jeff, how do you reconcile the \$220,000 figure I mentioned and the 167 in this funding? Is it a different period of time?

Hawthorne: Probably. I think the figure quoted to you yesterday was this fiscal year, whereas this reflects the year that ended on June 30th.

Fish: OK, thank you.

Stalcup: And in that prior year, I believe we had to take cuts to the budget.

Fritz: Is our funding targeted to the schools in Portland or no?

October 29, 2014

Stalcup: Yes, we're looking at -- I think it's 30% of our schools that we are serving are in Portland, Portland Public Schools, and your contributions are about 20% of the budget. So actually, your money is leveraging other contributions to fill in for that. Moving on, I want to quickly share with you the program model that we have now developed -- this was not in place when we started, and we've learned a lot. To use an education term, we have scaffolded the experience for schools, so, we begin in a lighter way, and then build the experience over time. This is our approach to helping schools take up the Right Brain Initiative and own it for themselves, and build the capacity to do so on their own. This has been highly successful in ensuring both the quality of the work that's happening in schools, as well as finding operational and cost efficiencies along the way. A couple of things to mention that make us unique. I mentioned earlier about the professional development work that we do, where we engage principals, teachers, teaching artists, and arts specialists -- those music and art teachers -- in our professional development. In fact, this picture is representative. We have a principal in this image, one of our Right Brain coaches, a teaching artist, and an art teacher in this image all learning together in professional development, so they begin to understand together what arts integration is and how it works, and what their role is in that work. What we have come to discover through some surveying that we've done of teachers is that of the teachers attending professional development -- I'm talking classroom teachers -- 75% of them following that experience take up those Right Brain strategies on an ongoing way. So, that becomes part of the teaching tool kit, and it's really changing the way that they're approaching the teaching and learning with children. Another thing that makes us unique that we're finding is that we're helping schools invest more in the arts. So, in addition to the work that they do with Right Brain, we are finding that by mapping the experiences of the students throughout their educational career, schools are really finding other resources to add to those experiences. Certainly, the Arts Education and Access Fund has helped with Portland Public Schools. What we've noticed in examining those school maps is that 90% of the schools, as they become more and more engaged, are increasing the arts experiences, opportunities for students beyond the Right Brain Initiative and beyond the art and music teachers in the classrooms. In fact, some of them as much as double that experience. So, they're finding community resources to bring, parents are raising money in those schools that can do that, and are giving students a much richer experience as a result.

Fritz: Having been a parent at Markham Elementary and done many run for the arts -- tagging with students running around -- my perspective is also that your more organized and formal approach was the boost that was needed to schools. That the parents and the teachers had been doing what they could to provide arts education throughout the cuts, and then this coming in as a more organized, formatted, strategic and research-based approach was manna from heaven.

Stalcup: [laughs] Thank you. Well, we try hard to work collaboratively with everyone so that we're not adding one more thing. Another case-in-point here -- and I have an example to point this out -- is that what we're finding that students have a real sense of agency about their learning, they become owners of their learning. So, they are actively engaged and saying things like, I imagined, I tried -- as opposed to, I followed the directions, or, my teacher told me to. In fact, in those schools, through interviews with the students, we're finding that 90% of those students are really describing themselves as active thinkers. By way of example, I wanted to share a very short clip with you. This is coming from Beach, a K8 school in north Portland. And this is a residency done last year with the seventh grade and eighth grade classroom. The framing for the year that the teacher had for the students was, who are my people? That was the underlying question for the entire year's study. They engaged a teaching artist who is a media artist. She's done work with Story Corps and specializes -- her real love is digital story-telling. So she came in and the students interviewed one another, they wrote poems addressing that question of, who are my people? And they developed the personal flag or visual representation of that thinking. So, here's a clip from an interview that I had the pleasure of doing with a student at Beach following that experience, and you can just hear in her voice how she's thinking differently about her learning.

October 29, 2014

[video playing]

*****: [inaudible] wasn't about me, but kind of like the people around me. And one of my questions was, like, you know, they have the "who are your people" question. But I also asked, who are you? Because that's a very important part of who your people are -- because as individuals, we can choose who our people are. Well, we can't choose, but we can claim who our people are. And to understand what we're claiming, we have to first know who we are.

[end of video]

Stalcup: Pretty powerful for a student in seventh grade to be thinking in that way. Now, to the drumroll, please. As Commissioner Fish mentioned earlier, we have some really exciting data to share. This was a five-year project for us. We knew that overnight we couldn't see results or changes into the students' test scores, because that's a longer period of time research project. But now we do have those results, and it was something our funders, in particular, were interested in seeing. What is the return on investment here? I had an evaluation partner and also involved Portland State University Center for Student Success to look at student test score data. So, this is a standard Oregon assessment of knowledge and skills. The sample size was quite large, 19,000 individual student records were examined. And what we did was look at those students' test scores before their schools became involved in Right Brain, and then we compared them to themselves once their schools became part of Right Brain. So, when you're looking at reading, incremental reading improvements year-to-year, the average pre-Right Brain was a two-point increase per year. Once the school took up Right Brain, we could see that there was an increase in that test score so that those students were gaining an additional 4.8 points in reading. And every year, it continued to increase. So it wasn't just a one-time blip that we got lucky, but over time, as the schools became more engaged and the students had more experiences with Right Brain, their scores continued to increase more and more. So, we can see from this that that over that period of time -- and I want to point out this is not representative of one year to the next year to the next, because schools enter at different points -- but it's taking the school from their point of entry, looking at students before that happens, and then after. We're seeing some substantial increases. I want to point out, we can't claim that Right Brain caused this in and of itself, but there's certainly a strong correlation here.

Fritz: Do you have any comparable control schools to look at where the Right Brain wasn't?

Stalcup: We weren't able to do that in this particular study, but we now -- Portland State is our evaluation partner, and we are looking at that as we move forward, yes. Similar results in math. I'll just move quickly here because the pattern is the same. A 2.4 pre-Right Brain annual increase in test scores. And then with Right Brain, again, increasing -- more than doubling.

Fritz: More so than reading.

Stalcup: More so than reading, yes. It must be something to do with the spatial awareness and so on.

Hales: Yeah, it's the music.

Fritz: Yeah, certainly.

Stalcup: And then here's where the real exciting news is, and this is with English language learners. Those of us working in the arts and most folks would recognize that the arts could play a significant role, because it's a nonverbal, non-written word based access to knowledge. So, looking at the English language proficiency exam -- the ELL English Language Learner exam students take -- pre-Right Brain experience 1.3, and increase annually once Right Brain -- you can almost guess what's going to happen here. A 10-point increase in addition to that. And that continues to almost a 20-point increase as those schools became more and more engaged. So to us, this was huge evidence that we're reaching the students that have some of the greatest needs, and that we can really be of assistance to helping those students assimilate into the classroom environment. I wanted to just share really quickly a story that illustrates this. This was from a school working with first graders, and My Voice Music organization here -- the students were learning letters of the alphabet. And I'm sorry I have to refer to my notes very carefully, because I have data involved here. About

October 29, 2014

50% of the students in this classroom were English language learners. A pre-residency test showed that half the class recognized three or fewer letters of the alphabet. And students were introduced to the musical instruments as they were studying the alphabet, and the teacher noted that she could see a real difference in how they were recalling names and sounds of letters. She said that instead of just giving the name of the letter, the students would give it with a beat. And I cannot replicate what the students did, because they were taught rapping sort of music, but it was B, b-b-b-B was how they would remember the letter. And she said they were even beginning to recognize letters that has not been taught in class. A post-test revealed that 80% of the students doubled their letter recognition, and one child jumped from identifying two letters to recognizing 20. And this was after four sessions with the artists. So, huge impact for students that are just acquiring the language, and having a new way in. All of this says to us that learning in the arts is both hands-on and minds-on. We have to think about it, and it's not just doing it or creating it, it's about thinking about what we're doing. I want to call upon my colleague here, Kristen Brayson -- who has been a huge asset to our work at RACC around arts education -- and mention that Kristen is filling a position that had been vacant with Portland Public Schools for four years. And I think it's impressive that the school district has leveraged the investment from the city around arts teachers and getting them in the classrooms with reestablishing this position and bringing Kristen onboard, and she has a long history with the district. And I want to give her a moment to acknowledge what her work is doing in supporting this.

Kristen Brayson: Thank you, City Council. My name is Kristen Brayson, and I'm the arts TOSA for Portland Public Schools on special assignment. I'm just going to show you a bit about how this plays out in the district with our relationship with Right Brain -- but first, tell you a bit about me. I was an arts specialist for 22 years before coming into this role. I also benefited from public arts education. I was a Jefferson Dancer at Jefferson High School, and later on as I became a professional, I went back to Jefferson and taught in that school, helping with the Jefferson dance program. Moved into Da Vinci Arts Middle School after that, and then found this job. When I was hired for this job, there were three objectives that were outlined. One was to work with external arts organizations -- specifically, with their educational outreach programs. The second was to work with arts specialists. We've seen such a bump from the AEAF. We have 81 visual art teachers, 64 music teachers, 15 dance teachers, and 13 drama teachers. That requires some coordinating of effort by my role. Specifically, working with the teachers to support them in their work and do professional development so they can move along their curriculum. The third thing was to work with Right Brain and RACC, specifically with their programs in the school. You saw the program outlay where a school ends up being a sustaining school. And in that phase, Right Brain steps back. They still are there as support, but this is where I come into the picture and help move the school along and continue to support their program so they can fly on their own. What Right Brain has done for the district is created a model so that arts specialists can see themselves as leaders within their buildings. The idea is that they have professional development so that they can come back to their buildings in front of their staff and lead in a way where generalist teachers can see how to utilize those unique things that arts specialists have, and create together a co-teaching model. The district is on an initiative to make this district-wide so that we have arts integration across the board. We know that this kind of work gets to kids that are often disenfranchised and on the fringe. Arts specialists know special things about meeting kids where they're at. Again, Marna mentioned it's not about being able to have the correct answer or drill and kill, it's about meeting kids where they're at and creating an environment. In the co-teaching model, we're able to take a generalist and an arts specialist, and train them in the classroom about how they can create an opportunity for kids to deepen the content knowledge through math and science and the like. Basically, my role in that is to make sure that we facilitate that across the district and roll it out, with Right Brain being the model. Finally, we have some exciting news which is in February, we're going to have an all-PPS showcase, and we're going to bring in arts specialists from across the district. This is going to be a

October 29, 2014

way for us to show taxpayers that they are -- this is a tangible way for us to show what we are doing across the district for our community. That's going to be in February. I will make sure that you guys get information about that so you can have a presence in that as well.

Hales: Thank you.

Stalcup: That concludes.

Fish: Mayor, if I could.

Hales: Please.

Fish: First of all, thank you for your wonderful presentation. This is either for Marna or Kristen. My host the last week was Antonio Lopez, and we went to two schools that are struggling. And he told me something very powerful. He said that while the focus is on cognitive development, the reality is if we don't address the non-cognitive issues, children will not be ready to learn. And he described the number of children in trauma coming to school who cannot learn because of trauma -- something going on in their life at home, and they're not ready to learn and the schools need to change that dynamic so that they can address the cognitive issues. And I wonder, to what extent does the work of the Right Brain Initiative address that non-cognitive side, and therefore prepare students to learn that are struggling with issues -- family issues, life issues -- outside of the classroom?

Stalcup: I can say that some of the skills that we're looking to build within the students -- certainly, along the cognitive, the creative and critical thinking -- but there's also collaboration and communication and helping students find their voice to be able to express, one, what's going on in their heads in their lives. And as we can guide them in this work, to find ways to work with their peers, to listen carefully, to be expressive. So, it's giving them new tools to kind of tap into that. That's one thing I could see that we could do. I think that we're also helping teachers to see students in new ways, so that when a child comes into a classroom and it's an off day, a teacher may now have a new -- have seen that child in a different light, and know how to access and address them in a way to get at what's getting in the way for them. That would be one response that I would have. Kristen do you have --?

Brayson: I think that I've seen firsthand as an arts specialist kids that have had issues at home, and deplorable situations that have come to school. And when they come into the art classroom, you can see their shoulders drop. And it is that ability for us to approach school with an arts lens, where kids get to -- like I said -- be met where they're at and they can express themselves in a way that is therapeutic and allows access for them to be able to have the staying power to get through school. In terms of integration, we're going to capitalize on what arts offers with arts specialists.

Hales: Other questions? Great presentation, thank you all.

Stalcup: Thank you.

Hales: We'll see if we have anyone else signed up to speak on this item.

Parsons: We had one request, and that's Shedrick Wilkins.

Hales: Come on up.

Shedrick Wilkins: I agree with this discussion about the left brain versus the right brain. Intel Corporation -- which is basically, the left brain -- believes in computers and there's eight gigabytes on the memory chips now, processors, you can have a mountainful of super computers and they can't solve stem cell problems or magnetic fusion energy or anything. It's the human brain that does these kind of things. The right brain is able to make mistakes and do things wrong, the way little kids perceive things the wrong way, but then they try to adjust it with what you learn in school, so that's -- and also, you can invent something, one of the reasons we go to school, you can't invent something, why should you invent something that's been invented? But the process of our right brain to think of new things is something that the children have. For example, if you walk in and you keep losing your car, you park your car at a certain place. The human brain has the ability to be creative. Why memorize all the parking lots in the parking lot when you can just park the car in a certain spot? Computers don't do this, you know, and I don't like the Intel model that computers

October 29, 2014

will solve all our problems and all of that kind of stuff. I will say this, the rocket engineer, when he was a little kid, he was obsessed with little rockets and he was learning what we were doing with rockets and he built bigger and bigger rockets. Unfortunately, he was working for the Germans on the wrong side, but eventually he came over here and worked for us, and put us on the moon, helped to put us on the moon. He didn't know everything about rockets. He was a vibration expert, actually, his team -- he had people on his team -- this is why the kids need to learn social skills -- they designed the navigation system, or they designed how to -- the rocket fuel. He was just the head, just like the Mayor, the head of a team of people with different skills. The social skills are more right brain skills than -- and again, you know, computers that have unlimited amount of memory and can process stuff, isn't everything. People have strategies. How can a computer think of a city council, you know, where you -- most don't vote and some mayors -- some cities have a mayor. But the people do that. They experiment with different things, and they don't always do things a certain way because they would not know what the right way is in the first place. But eventually, people write textbooks and say, well, our city and Toronto, let all three people vote for issues. Maybe this is more virtuous in other cities -- how are you going to have a computer do this thing? And, I will say right now about the left brain, we have mastered the left brain. We know about how to write a program, the computers now, the robo cars, they can drive a car, which is kind of -- or fly a plane. Or do an algebra or a calculus problem. But how do you solve, or, how do you be a scientist? That's what you do with the right brain.

Hales: Good point. Thanks very much. Good morning, Barry.

Barry Sutton: Good to see you, Mayor Hales, everyone. There is a place -- excuse me, my name is Barry Sutton, and I am here about the area in back of the old --

Hales: Talking about the arts right now, Barry, so not about the school.

Sutton: I wanted to bring that up that gentleman had trouble with the homeless people. We do have a place in back of Washington High School. Thank you.

Hales: Thank you very much. OK. Anyone else? Then I think that we need a motion to adopt this report.

Saltzman: So moved.

Fritz: Second.

Hales: Discussion? Roll call, please.

Item 1115 Roll.

Novick: I really appreciate the report, and although this is a tangent, I also went to the Principal for Almost a Day program and I was at Laurelhurst, which I think is not a Right Brain Initiative school, but one of the things that I was struck by was the arts educator -- who I think was arts tax-funded -- was talking to kids about Matisse, and I got three notes from kids talking about the importance of arts education, and it almost made me ashamed of opposing the arts tax. [laughter] Aye.

Fritz: You should be ashamed of that. [laughter] Thank you, Commissioner Fish, for bringing this report. Thank you for being here. It's very important to report back to the taxpayers about how their investment is paying off or not. And it's very clear to me that this general fund investment -- which is all the citizens of Portland, all of the taxpayers of Portland -- are investing a relatively modest amount in this initiative and it's having such great results, both subjectively and objectively. I need to echo Commissioner Fish's remarks regarding Mayor Sam Adams, who was insistent on doing this throughout the course of the recession, and thanks to Mayor Hales for continuing the funding. We are all committed to it. And one of the things that I liked about it the most is that it helps all children. It certainly helps those who are struggling the most in the Title I schools and the English language learners. It helps kids of privilege, who are able to fund maybe music lessons outside of school, but when there's a band within school, then you have that constructive outlet after school or during school to play with others or do competitions with others. That's part of what makes middle school and high school certainly bearable -- at least it was for two of my kids. And it's a good foundation for life to recognize that there are different ways of thinking, that there are different

October 29, 2014

skills that should be valued. My academic career was more noted for being good at the math and English tests, and not terribly good at all at the arts part of it, but it made me a more rounded person. And I think if we had had this -- and certainly some of the skillful teachers like Erica Huber at Markham Elementary School, who would actually teach kids how to make their artwork look a little more like it was envisioned in their brain, then I probably would have enjoyed it even more in school. Thank you for the report with statistics. It is very important to document. It's not just a fee-good initiative, it's actually producing results, and I very much appreciate you coming on an annual basis to tell us all about that. Aye.

Fish: I want to thank Jeff, Marna, and Kristen for an excellent presentation and report. As I look at the funding pie chart, I'm delighted we are supplying 20% of the funding, but I commit to working with you to see if we can get some of our other regional government partners to invest more. I think both in RACC and in the Right Brain Initiative, we need to encourage our partners to make a more significant investment. I have this very vivid memory of being in middle school and taking an art class where a somewhat old school instructor had us sit down and copy pictures of famous paintings. Somehow, I only got like a B minus in the class, so apparently I wasn't very skilled at copying. As I think about that experience, I wish in retrospect that I had had a chance to creating some in that class and not copy. Maybe this is a long time ago. Maybe 30-something years ago, that was considered the model for arts education. For me, it was deadening, and I wish that we'd had a chance to make something with my hands or imagine my own painting and not just copy an old master. This is the season where, leading up to Halloween, my son spends two weeks making a costume and designing it and doing drawings and prototypes and other things, and I just love watching this 10-year-old kid go through this creative exercise, and it's about expressing himself fully and it's the joy of creating something. I fully support what you're doing. I came away from the Principal for Almost a Day experience very sobered about how many children were failing in our system, and how many low income kids in certain school areas were failing. This program does seem to offer a huge upside, and the data you are sharing with us is powerful. Maybe this is what's going to unlock something which allows someone to do better in classrooms and achieve their dreams. And after all, we take great pride in thinking of Portland as a creative capital. Imagine if we unleash all this power, and these young people find their vocation and ultimately contribute at our economy and our quality of life because they follow this passion throughout their life. What a gift that would be. Thank you for your good work, and I'm honored to be on a council that supports the arts. Aye.

Saltzman: Thank you for your good report. Aye.

Hales: Thank you, Commissioner Fish, for your leadership on this and for this great effort at RACC. Just a few personal comments, as well. I and my family have benefited from school systems that found a way to provide for the arts. I grew up at a time when the United States had a generously funded public education system in most places. I went to a school district where that was certainly the case, and benefited hugely from music and drama programs that I participated a lot in as a student. My own kids growing up here in Portland Public Schools were also running for the arts because we were dealing with the aftereffects of Measure 5, and the terrible decisions that had to get made about reducing programs. And yet, even so, one way or another, they got exposed to enough of the arts that my daughter is a dancer and my son is a stage manager at a local theater company. So, we've benefited from that personally. But I'm thinking particularly about your comment, Commissioner Fish, that you were concerned. I think that we are rightly concerned about places that are falling short. But I see so much evidence of improvement. We saw some of it here today. I spent the day in the Roosevelt cluster at Sitton and George and Roosevelt itself, where we've seen double-digit increases in just about everything good -- attendance, graduation, test scores, college attendance among the students. I think that one of the places where I'm most worried about our school system is another place that we as a city government need to integrate our work with school districts and others. And that is, there's a percentage of kids -- I don't know what

October 29, 2014

they are, but educators have educated guesses about what it is -- that should not go to college, but are wonderfully skilled in the manual arts -- as they used to call them -- and who needed advanced training in order to get great jobs that require head and hand and creative coordination better than mine. And I can sense that because I've had enough of that kind of experience in my own life having a father who was a carpenter who taught me to work with wood, and then spending my summers building houses. I can sense that if you get a kid with exposure to creative ideas and practiced in the arts who is naturally inclined towards doing physical work -- that, again, is not dumb work but smart work with your hands -- that there are a lot of kids that will get added to that graduation rate if we can do a better job in the high schools beyond what we're doing with the Right Brain Initiative and doing with the arts tax. And if you look at the stubborn percentage that we don't seem to be able to reach of the kids that are falling out of the school system -- particularly, in high school -- my instincts say our improvement there will have a lot to do with integrating what we've been doing for younger kids, particularly, and with the arts in general with an advanced interest and focus on career and technical education in our high schools. We can do a better job of that. The new Roosevelt is going to get remodeled with this bond measure and is going to contain a maker's space. It's going to go on to be doing sophisticated, technical work with their hands and their heads instead of maybe just a keyboard. I think that might be another front in this work -- how do you find that partnership beyond the government and the foundations and the organizations that are cooperating to provide that base level of arts access that every kid ought to have -- because we know not where it'll lead in their life -- to a focused effort to ensure that that work gets lofted up to them in opportunities in high school and in community college and in college to be prepared to build ships and make bicycle parts and design clothing and do all the things that are happening now in the Portland economy that require those skills of art and craft. And I'm excited about that, as you can tell -- I've gone on longer than I should -- but I think it's important and I think that it will be based on this good work of the Right Brain Initiative and that arts tax, but it won't happen automatically. And that's my point. It will require more partnerships, and it will require for RACC and for the five of us and a lot of other people to collaborate and partner up on these things. So, looking forward to that aspect of this work. It relies on this base being under our kids region-wide and city-wide. I really appreciate the work that you are all doing, thank you. Aye. Thank you. OK, let's move onto the regular calendar. And we have a handful of items here left this morning.

Item 1123.

Hales: Ms. Moody, good morning.

Christine Moody, Office of Management and Finance: Good morning Mayor and Commissioners. Christine Moody, procurement services. You have before you a procurement report recommending a contract award to Moore Excavation. The original engineer's estimate on this project was \$2.7 million. On August 28th, 2014, four bids were received and Moore Excavation is a low bidder at \$3,458,479. Changes were made to the project scope during the bidding process that resulted in higher costs from what had been included in the original engineer's estimate. The Bureau of Environmental Services has reviewed all bid items, and believes the price offered by Moore is fair given the subsequent additions. The city identified 13 divisions of work for potential minority, women, and emerging small business subcontracting opportunities. Subcontracting participation on this project is at 27.5%, and they are responsive to the city's good faith effort requirements. I will turn this back over to the council if there are any questions regarding the bidding process.

Hales: Just a question about what were those scope increases that raised the cost of the project?

Moody: There was added bid item of concrete pipe and the additional quantities for bid items, added services for drilling method and load testing, and traffic concerns working with Taylors Ferry Road closures.

Hales: Thank you. Other questions?

October 29, 2014

Fritz: So once again with Moore Excavation, we have a pitiful amount of minority, women, and emerging small business dedication. Not so much that it's 27% of the subcontracting, but there's only 5% of the whole contract was divided up, and even some of that was not given. So, this isn't necessarily something that we can reject this contract for, but I'm wondering, what can we do to improve or to mandate more subcontracting where it could be divided up?

Moody: Well, Commissioner, we have been considering some options about a minimum self-perform. So in this contract, in particular --

*****: [inaudible]

Moody: Self-perform? So --

Hales: A maximum, you mean?

Moody: Yes, sorry. In this contract, Moore is self-performing almost all the work, and so they are subcontracting very little. I think there are some issues with that, depending on what the types of project it is and what the scopes are, depending on what can be subcontracted out in a particular type of project. So, that's kind of an ongoing discussion that we're having.

Hales: Maybe a slightly more radical version of the same question -- if I can jump in -- is, if we had a minority or a woman-owned prime contractor, we would want them to self-perform. So, maybe the percentage of self-performing is not -- that's not the objective here. I guess I'm being a little playful here but with a serious purpose, and that is, how do we divide this work up in such a way that a minority-owned or woman-owned prime contractor could win the bid? We have a project that's gone through a couple of iterations with the Portland Development Commission, but is now about to go into construction where a minority-owned general contractor is going to build a major development project. That's a platform where we can achieve performance more easily. So, I want to just sort of jump onto your question with that version of it, as well. Could we split this up and do it differently in such a way that the minority and women-owned firms could be prime?

Fritz: And I think there's two issues, there's supporting minority and women-owned businesses, there's also supporting small businesses. And giving the opportunity for smaller businesses to become larger businesses -- even with a minority or woman-owned prime contractor -- I think that you would still want to have as much as possible -- not necessarily as much as possible, but a certain amount split off for smaller companies no matter who is in charge of those. Because this is public money, and we want to make sure that it gets to a broad cross-section of the community.

Fish: Well, Christine, for example, either one or both of the last major parks projects -- and I am thinking of The Fields and possibly Dawson Park -- had an MWESB prime. I think The Fields, in particular. The numbers we got on The Fields were like 70%. So, one of the trade-offs was the contractor we hired for that project -- or PDC hired, I forget -- did not have a lot of experience doing projects like that. But they successfully did. Do you have some thoughts here on what we could do differently to boost the numbers?

Moody: I think that there's some different strategies, and that really depends on what the scope of work is. So, the two parks projects that we brought a couple of weeks ago to Council -- we're using that alternative contracting method that allows for additional consideration for minority and women businesses, whether there's a partnering or mentoring type of relationship, whether there's subcontracting. So, we have a lot more flexibility with the alternative contracting method than we do with the low-bid method. I was just chatting with Mark Hutchinson a while ago, and he is looking at some of the projects coming up and looking at breaking those down into smaller projects so that there's ability for smaller firms to bid on those projects.

Fish: Would you and Mark arrange to come to one of my weekly meetings in BES to talk about that conceptually? We'll look at the next six months of the CIP projects in the pipeline and have that conversation, because I'd like to know what some of the options are. There's another piece, though, of the matter before Council today that sort of jumps off the page which I would like you to address. When we took this up in August, the original project construction estimate was \$2.7 million, and it

October 29, 2014

was listed as optimal. The bid price -- we had four bids -- the bid price was just under \$3.5 million. How do you reconcile those two?

Moody: How do you reconcile the difference?

Fish: Yeah.

Moody: As I was saying, some additional scope was added via an addendum through the bidding process. So, those additional items come with additional cost.

Fish: So back out the changing -- the scope. The change in the scope, because that certainly happens in projects -- and as I think the council would now agree, we'd like to see that done at the front end of the project and not later. So, we're scoping it. What about the bid environment? How much was a variance between what we thought was an optimal estimate and what actually came in as the bid?

Mark Hutchinson, Bureau of Environmental Services: I'm Mark Hutchinson, and thank you, Commissioners and Mayor, for letting me speak to this. I manage the construction division for Environmental Services. We took on this project -- this is a very important project, and rather unique. It fixes hydraulic limitation in our system, it allows us to pump the sewage from Washington County and southwest Portland out to our treatment plant. It also puts in an odor control facility for folks that live along Virginia Avenue -- just above Macadam -- that have experienced odor problems over the last 12, 15 years. We'll be bringing a pump station online shortly, so we're kind of in a hurry to get this place so we don't put these people in a bad spot and we're able to convey the flows. More to your question about the level of confidence and the estimate. We keep historic costs as far as pipe and different things in a program, and we're using those to estimate this project. And one of the things that we've seen over the last several months is that we have seen a rise in bid prices. This project only received four bidders. We would expect seven or eight bidders on a project similar to this. We had our four most experienced contractors, because it's a project at very high risk. There's not very much pipe. It's in Virginia Avenue, we have two ten-foot diameter structures to put in place with five to six pipes coming in, and we have to put that into place working 24 hours a day over four-day periods two different times with a lot of traffic constraints. We also have to take out the inside of the steel casing, save the casing, and replace it with another pipe and remove all the concrete from within it at a fairly deep depth in an area that we dug before. The last contractor that worked in this area and no longer bids for us -- the project ended in a claim. I think we were wrong in assuming the level of risk in this project. We've heard from our contractors it's a high degree of risk, and what we saw in our estimates is that their cost for diverting the sewage was extremely higher than what ours was. We'll be diverting somewhere around 20,000 gallons per minute of sewage, and they estimated somewhere around 400,000 -- and we, by mistake, estimated somewhere around 20,000 for that amount of sewage.

Fish: So, Mark, based on what you know today, what would you have established the confidence level at in August?

Hutchinson: I think that I would have probably established it at moderate. It's a project that we looked at and we felt pretty confident about. We had subsequent meetings during the bidding time as we started to get the addendums that [indistinguishable] the risk with the contractors, and we issued five addendums to contain a risk so that we could bring the project in under or at the bid amount. Those things, I think, kind of enlightened us to the amount of risk on this project.

Fish: Christine, this question is for you. We saw during the teeth of the recession that we got good contract bids. In other words, they came in under estimates because of the excess capacity in the marketplace. Now, we're seeing across the board bids come in above estimates because of the very robust marketplace. Is it your view that the project estimates and the confidence levels that bureaus established on their estimates should still be begged to what they believe the true costs are, or do you believe that we should be factoring in any of the sort of changing market conditions in terms of the cost?

October 29, 2014

Moody: Commissioner, I think that following up to a Council meeting that we had in September and yourself and the Mayor asked me to convene the bureaus and talk about cost estimating -- and I have done that. I think that part of it is what Mark just mentioned. The prices need to be updated in the estimating based upon the current market conditions. And so, that's what the bureaus were telling me, and they're going to go back and look at that. And this is rapidly changed in probably the last four or five months. So, they need to -- they're going to be looking at their historic prices and updating those more frequently to get closer with their estimating.

Fish: Good. And the mayor has made that point a number of hearings, so I'm delighted to hear that we're going to do that. Since we have two of the infrastructure bureaus who spend the most money on CIP plans, I'd like to get to conclusion on that and brief the council so that there is a follow-up. Christine, when this project is completed -- just to be clear -- and we evaluate this particular project, we'll be using the 3.458 million as the baseline and we'll be looking to see whether we came in at, below, or above that price?

Moody: That's correct.

Hutchinson: Yes, that's correct.

Fish: OK. Thank you both.

Hales: Thanks. I appreciate that. Obviously, you don't want to go too far in adjusting this bid price because all conditions are temporary, including this one. But to be this much of a disparity bid after bid across a number of bureaus -- that's why we raised the issue. Thank you.

Fish: Any Mayor, one other thing I learned in talking to our engineers -- my sense is that they tend to be fairly conservative in their estimates, and that they have to be pushed to build in maybe an adjustment based on market conditions. So, if we do that with procurement's help systemically, I think what we'll do is narrow the gap between current estimates and the bids we're getting, which reflects the new market reality. So, thank you.

Hales: Thanks a lot. Anyone else who wants to speak on this item? If not, then we'll take a motion to adopt the report.

Fish: So moved.

Fritz: Second.

Hales: Any discussion? Roll call.

Item 1123 Roll.

Novick: Aye.

Fritz: It is disappointing that out of a nearly \$3.5 million contract, only 180,000 will be going to minority, women, and emerging small business. We've got to find a way to improve participation of smaller firms on these large projects. Certainly appreciate Christine Moody's work in that regard, and hope to continue those discussions. Thank you, Commissioner Fish, for asking for more detailed update, because many of the projects are in Environmental Services and Water so I know that's dear to your heart, as well. Thank you for that. Aye.

Fish: Thank you for the discussion, and I want to thank my team at BES in particular. Aye.

Saltzman: Aye.

Hales: Thank you. Aye. Item 1124 is the second reading.

Item 1124:

Fish: Mayor, can we have a quick colloquy on this one?

Hales: On this one? Sure.

Fish: Commissioner Saltzman raised the question at the hearing about to what extent had this project been reviewed by the Technology Oversight Committee, to what extent would it be subject to the supervision of that body. It was my sense during the discussion that there might have been a little bit of the syndrome of the two ships crossing at night. I wasn't sure the question and answer were perfectly aligned. And the history that I've subsequently learned is that the oversight body that we've established for the kinds of projects did not think it necessarily fit within their charter to review this. What I indicated, Commissioner Saltzman, to my team is that if you had a strong

October 29, 2014

preference to have this subject to the oversight of that body, then we would be more forceful in urging that case. I'd be pleased to join with you to make that overture. But I want to be transparent - it is not currently part of their oversight.

Hales: OK.

Saltzman: I guess it would be my preference that the oversight committee does look at this. It's a \$700,000 software investment -- that makes me nervous. I'd appreciate the extra eyes.

Fish: My commitment to my colleague and friend is that I will join him in making that overture to the panel and ask them to take it up. But I wanted to clarify that on the record. I did feel that there might be two ships crossing in the night in that conversation.

Saltzman: Thank you.

Hales: No harm in approving the contract, but you're going to follow up as described.

Fish: I'll follow up with Dan.

Hales: Good. Any questions, comments? Roll call, then, please.

Item 1124 Roll.

Novick: Aye.

Fritz: Thank you, Commissioner Fish and Commissioner Saltzman for that discussion. I also always like the Technology Oversight Committee to be consulted on projects like this. I do think we have to recognize that they are volunteers, and if they've said that they don't have the capacity to oversee it, then that's something that needs to be considered as well. Aye.

Fish: Aye.

Saltzman: Aye.

Hales: Aye. Thank you.

Item 1125.

Hales: Commissioner Fish.

Fish: Thank you, Mayor. I have some very brief introductory remarks. Since 2013, the City has been working with five partners and the EPA on work that will position this area of the Portland Harbor Superfund site to be one of the first to be cleaned up. As is almost always the case with this kind of work, work plans evolve to meet EPA requirements, so we will need to spend a little more time and money than originally participated. Kim Cox, Environmental Services' environmental policy manager is here to give us a brief update on the project and to formally request the additional \$500,000 in funding. Kim, take it away.

Kim Cox, Bureau of Environmental Services: Thank you, Commissioner. My name is Kim Cox, I'm the environmental policy manager for BES, and in my portfolio is the Portland Harbor Superfund site. River Mile 11 is one of the project areas within the site. What I wanted to do this morning is just give you a brief background on the project that would provide some information to the request for additional funding. As you can see in the picture, River Mile 11 East is on the east side of the Willamette River between the Broadway Bridge and the Fremont Bridge. It has been a historical location for industrial, shipping, ship building, transformer repair -- transformers, PCBs. And is also currently an operation with grain and cement shipping terminals. So, it has been active and it is currently active industrially. Again, older picture to show you some historical usage of that site. Since River Mile 11 East is part of the larger Portland Harbor Superfund site, that area has been sampled and investigations identified high levels of PCBs in the sediments and fish tissue --

Fish: We did -- sorry, Kim -- we chose this picture because that is, in fact, Mayor Hales' sailboat. [laughter]

Hales: It's almost that old, but it's not that big.

Cox: So, investigations for the Portland Harbor Superfund site have identified high levels of PCBs in this area. And because of that, EPA wanted this to be one of the first sites in the harbor to be cleaned up after they issue their clean-up decision. In 2013, the city and five other parties -- the names are listed on the slide -- signed an agreement with EPA to conduct additional investigations and collect additional information. The idea for this additional work between what's currently being

October 29, 2014

conducted in the Portland Harbor work and the record of decision that EPA will issue allows us to sort of tee this site up to be one of the first to go into the remedial design phase after EPA issues their clean-up decision. So, just after you issue a clean-up decision, you don't automatically go into the water and start digging up. There's design issues, considerations. But this information we're collecting allows this site to be one of the first to go into that next phase. As the commissioner indicated, we sign on an agreement with EPA, and we and the other parties are obligated to conduct and pay for the work that EPA requires us to conduct. We've been working well with EPA. They have required additional sampling and additional analysis that wasn't previously anticipated when we initially developed a project budget. So, our revised project budget for the site, for this work that we're doing, requires the city to spend up to another \$500,000 in this fiscal year. And that cost will be divided between BES, Water Bureau, and PBOT bureau budgets. That money is already allocated within those bureau budgets. The ordinance before you does request that we have approval to spend up to another \$500,000 for River Mile 11 work within this fiscal year. And I can answer any questions that you may have.

Fish: Thank you, Kim.

Hales: Thank you. Questions? OK. Thanks very much.

Cox: Great, thank you.

Hales: Anyone signed up to speak on this item?

Parsons: Yes, Joe Walsh.

Hales: OK, come on up.

Joe Walsh: My name is Joe Walsh, I represent individuals for justice. Once again, this is under an emergency ordinance. We automatically object to that. It's a knee jerk reaction -- and I'm the first one to admit to it -- however, it seems to me that this is a very complicated contract. Why is it an emergency? Why at the end of the issues do you have emergencies constantly? And why is BES involved in this spending ratepayer's money to do something that is on the river? You know, those are the kinds of questions that I think ratepayers really get annoyed with. All of the time you lose your creditability. Every time we do this, you're asking for \$500,000 more and BES is involved in it. The city should be involved in it. Other entities -- the county, the state, the feds -- they should be involved in it. Should the rate payers be involved in this? No. The answer is, no. Can I stop it? The answer to that is, no. Can I embarrass you? Yes. I can do it by shining a light on it, and let your viewers make their own decisions of how you're spending 500,000 extra dollars. What was the total of this project and how much is BES paying for this? And gentlemen, when people start waking up and realizing that their rates are going up because you guys do this over and over because it's easy. Just pass it off to the ratepayers. We don't have to bring an ordinance. We don't have to discuss it. just pass it off to the rate payers. Over and over again. Thank you for your time.

Hales: Thanks. OK. Ready to take a roll call? Please.

Item 1125 Roll.

Novick: Commissioner Fish can correct me if I'm wrong about this, but my understanding is that the reason BES is involved is that the other potentially responsible parties in the Portland Harbor -- not quite litigation yet, I suppose -- claim that the city is liable because of contaminants that went into the river through BES' outfalls. It is my understanding is that the city, of course, will fight it out with the allegedly other potentially responsible parties as to who actually pays how much of everything in the end. And we will argue that we should be reimbursed by parties who have not been paying. But in the meantime, we have a responsibility to participate in cleanup related activities that will help ensure that the cleanup is actually effective and is cost-effective. And my experience in the superfund 20 years ago was that even parties who were quite prepared to litigate their liability wanted to engage in the cleanup activities in order to at least have some control over it. So, I very much appreciate BES's and Commissioner Fish's efforts to ensure that the City plays a responsible role in the ongoing discussions of Portland Harbor. And also, it is frustrating to all of us that so many years after the superfund listing, cleanup has not begun, and progress that we can

October 29, 2014

make early towards addressing some of those contaminated spots is welcome. Ms. Cox, is my statement more or less accurate?

Cox: Yeah, I would stick with that. Yeah.

Novick: [laughs] Aye.

Fritz: I'm very pleased to see this ordinance come to Council. Mayor Adams and I worked on this when we had the Office of Healthy Working Rivers, and it's clearly one of the upstream sites that needs to be cleaned up first. I'm reminded of Margaret Thatcher sending the British Navy to the Falkland Islands which took three weeks to arrive and then people complained about it being a surprise attack. This has been coming down the pipe for many years. I appreciate that we're moving expeditiously. The ordinance does note that Environmental Services will entering into interagency agreements with the Water Bureau, the Bureau of Transportation, or other bureaus to portion the funds expended, depending on how things look in terms of potentially responsible parties. So, it's one agency acting on behalf of the whole city, but we will also be doing our internal sorting once the record of decision comes down. Aye.

Fish: Kim, thanks for your presentation. And obviously, a situation like this, the less said, the better. The reality is that the city is not conceding any particular level of liability, and that would be detrimental to taxpayers and ratepayers. But the city is also potentially responsible party, and the extent that we invest in dollars now to get ahead of the curve may actually be beneficial to our taxpayers. Thank you for your efforts on this. Aye.

Saltzman: Aye.

Hales: Thank you. Aye. And we are in recess until 2:00 p.m.

At 11:15 a.m., Council recessed.

October 29, 2014
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.

OCTOBER 29, 2014 2:00 PM

Hales: Welcome back to the afternoon October 29th session of the Portland City Council. Would you please call the roll, Sue?

Novick: Here. **Fritz:** Here. **Fish:** Here. **Saltzman:** Here. **Hales:** Here.

Hales: Welcome, everybody. We have what appear to be three items on the calendar this afternoon. But actually, we are postponing two of them, 1128 and 1129, to November 20th of this year at 2 o'clock. So hopefully no one came here today for the land use case.

Parsons: Mayor, that would be for tomorrow, Thursday. So, today is just one.

Hales: I'm sorry, I am getting way ahead of myself. Never mind. Yes, we have a single item on the Wednesday afternoon calendar, which 1126. And this time I was wearing my glasses, so I have no excuse whatsoever. Would you please read item 1126?

Item 1126.

Hales: Thank you. This is an important part of our process of compliance with the Department of Justice's agreement with the City of Portland. It's a unique agreement, it's a collaborative one in which we have willingly agreed to make major changes in how we operate as a city, and we're in the process of implementing that agreement. This is a selection process for an important role, the Compliance Officer Community Liaison role. A large complex set of tasks are associated with the COCL role, and this is our opportunity to hear from community members who have thoughts about this selection. There are auditing and surveying and analysis responsibilities that go with this position that are essential to determining the level and the quality of our implementation of the Department of Justice settlement. The Compliance Officer needs to be looking at the effectiveness of these many changes that we're making to police policies and practices, and to continually dialogue with the community about the success of our interaction between the Police Bureau and the community. When you look at the community engagement responsibilities of the community liaison portion of this dual role, this COCL needs to support the Community Oversight Advisory Board, needs to assist in design and evaluation of community engagement and outreach plans, and needs to again solicit community input and review of policies, procedures, and practices in the Police Bureau. So, it's a very important and multifaceted role that this COCL position requires. We are going to hear from staff today, and again hear from the community. The goal again is to have a continuously improving community-evaluated police organization that has a high level of trust and legitimacy in every part of the city and for every one of our citizens. That's the goal, and that's what this position is designed to help us reach. With that, I want to call on Joe Wahl, Ellen Osoinach, Dave Woboril to come up and walk us through where we are in the selection process, where this fits into the Department of Justice agreement, what the specific requirements are for the COCL, and anything else that you want the council and the community to keep in mind while we take these comments and suggestions about the selection.

Ellen Osoinach, Deputy City Attorney: Thank you, Mayor Hales, members of the city council. My name is Ellen Osoinach, I'm a deputy city attorney in your City Attorney's Office and one of the lead attorneys for our settlement agreement with the Department of Justice. I just wanted to give you a brief overview to put in context the testimony that you'll hear from Joe Wahl and David Woboril. As you know, the agreement was approved by the court on August 28th of this year, and that date triggers a number of other requirements in the settlement agreement, things we must do

October 29, 2014

within a certain time period. And one of those relates to the COCL, or the Compliance Officer, and that is within 60 days of the effective date of the agreement, we needed to have publicly identified three candidates with expertise in police practices, crisis intervention methods, and community engagement. We identified those three candidates over a month ago, so we're well within the agreement's deadlines. The agreement also requires us to have a 30 day public comment period. The purpose of today's report for you is for you to receive information from the public and staff about how we developed the selection process that identified the three candidates, what some of the detailed requirements and responsibilities are for the COCL role, and then to hear from the public any feedback that they might want to give you about what they would like to see the COCL do. I want to stress today for everyone the purpose of today's hearing is not for Council to identify the candidate that you all might prefer. It's simply for you all to receive additional information so that you can make your decision. So, there won't be a decision made here today, that's going to come at a later date. This is just for everyone to get better informed about both the candidates and the COCL position. So, Joe Wahl from the Office of Equity and Human Rights will give you a detailed history about how we got to the selection process and how the community was involved in that. And then Senior City Attorney David Woboril will give you some detailed information about the requirements that are in the agreement. Thank you.

Hales: Thank you.

Joseph Wahl, Office of Equity and Human Rights: Thank you. Good afternoon, Mayor, Council members. My name is Joseph Wahl, and I'm the deputy director for the City's Office of Equity and Human Rights. Just to kind of reiterate again some of Ellen's comments here that today, we'll be presenting the background and history of our process today, and then we'll open up the floor for public comment. I want to start with our planning committee. This process really began probably more than a year ago -- actually, a year and a half towards the summer of 2013 as the settlement agreement was being developed and agreed upon. I came on board to basically help facilitate this process. And planning for the selection process for the COCL began during that period of time as part of this response. A coordinating committee was brought together by Commissioner Fritz to review the DOJ settlement agreement as well as to begin developing a process for the selection of the COCL who would oversee the city's implementation of the settlement agreement. This planning committee would include city staff, community members connected to stakeholder organizations, and individuals with lived mental health experience. And included in this representative group were members of commissioners' offices, the Auditor's Office, Office of Equity and Human Rights, the City Attorney's Office, Portland Police Bureau, Albina Ministerial Alliance for police justice and reform, Mental Health Association of Portland, Portland Commission on Disabilities, and community members with lived experience.

Fritz: Just a slight correction -- some of those groups only came in at the end. I want to make that clear.

Wahl: Absolutely. Thank you, Commissioner Fritz. Through this planning process, an application process and form were developed. This group helped to craft that, and it was eventually crafted into what we called an invitation to submit a letter of interest. Since this was not an employment situation and it was not a traditional contract situation, we decided upon this. So, it became this letter of invitation to submit a letter of interest which was used for the position announcement. And a copy of that you have in your packet. Outreach. The invitation to submit letters of interest was posted on the mayor's website as well as the city's main webpage and Bureau of Human Resources web page. It was also distributed to community organizations who were asked to help distribute the announcement. This was both local, regional, as well as national in some cases. It was also sent to many local, regional, and national organizations which had familiarity with police reform work, interactions between police and mental health organizations, and others. And a list of those organizations are also included in your packet. The application and review process consisted of initially 12 people who applied for the position in January. And basically, I assisted with the

October 29, 2014

coordination of the assessment, along with Ellen Osoinach from the City Attorney's Office and others from city staff. And then two separate panels of reviewers, including community members with experience in mental health care services, law enforcement, the Albina Ministerial Alliance Coalition for Justice and Police Reform, and city staff chose the three candidates to be interviewed. And this was after two different screening processes that were concluded. The DOJ settlement requires the city to -- as Ellen had mentioned -- to identify a list of three potential candidates for public review from which the city council will select one. The candidates made public presentations and participated in public interviews on Monday, September 29th. The interview panels included community members representing a broad range of organizations, including -- as we mentioned -- the Albina Ministerial Alliance Coalition for Justice and Police Reform, and advocates for people experiencing mental illness. Initial presentations by the candidates were broadcast on Channel 30 by a Portland Community Media, and the video has been posted on the mayor's website in the DOJ feedback tab. A list of this selection advisory committee members is included in the council document filings, along with the facilitator's summary of feedback received from the selection advisory committee. Following the public presentations on September 29th, the city council also interviewed each of the candidates. In accordance with the settlement agreement following the identification of the three candidate, a 30-day public comment period began. And comment will continue to be taken throughout this evening. Additional details are available on the mayor's website in the DOJ feedback tab. The council will vote next Wednesday, November 5th on which candidate to enter into contract negotiations with, and that will be facilitated by the City Attorney's Office. The three candidates -- excuse me, I've been neglecting my PowerPoint duties. I apologize.

Saltzman: It was actually refreshing -- [laughter]

Wahl: This is just a snapshot of the mayor's website there. We will begin with a brief on each of the three candidates for review. John Campbell -- who's also here today -- of Campbell DeLong Resources, Incorporated is a Portland firm that since 1989 has provided research, training, facilitation, and planning for the purposes of public safety problem solving, community-oriented policing, and the goal of more effective law enforcement results. And John, I know, is with us today. Next candidate is Dennis Rosenbaum. Dennis is the executive director of the National Police Research Platform, an evaluator of police organizations, police management, and community police relations. He has pioneered ways to measure police-citizen interactions and procedural justice as well as new approaches to police training. And the final candidate is Daniel Ward, who is the executive director of the Oregon Drug and Alcohol Policy commission. He is also the former CEO of Metro Crisis Services, Incorporated in Colorado, which manages a mental health crisis line and referral services. And he's had years of experience working with police and community on development of crisis intervention processes and programs. So, if folks are interested in learning more about the candidates, their original applications are available also on the mayor's website. In addition, following the public presentations and interviews on September 29th, each candidate has submitted detailed supplemental information in response to feedback and comments regarding the candidates' perceived strengths and weaknesses as reported by the advisory committee. All of this information can be found on the mayor's website, which you see up above on the PowerPoint slide. And I will now turn it over to Dave.

Osoinach: Actually, I just want to interject. I believe Mr. Campbell is here today, but I want to make it clear that none of the candidates are going to be making presentations to you here today. They did that in the public and community interviews. I particularly wanted to make that clear because Daniel Ward had -- and I believe he is listening here today, he said he'd be watching and I think Dr. Rosenbaum will be as well -- but they didn't want their absence in the chambers today to indicate any lack of enthusiasm or interest. Wanted to make that clear to Council and public today.

Hales: OK. David?

David Woboril, Deputy City Attorney: Good afternoon, Mayor and Commissioners. I'm David Woboril from the City Attorney's Office. I've been asked to give you a sense of the scope, depth,

October 29, 2014

and breadth of the COCL job. It's impossible given the energy and time available to us in this forum to do that precisely. What I'm going to provide here is a pretty rough measuring stick by which to compare the candidates and get a sense of the skills necessary and the capabilities necessary to do the job. We created a very complex job in the settlement agreement. I think I can only give you a sense of that and not a complete picture today. My apologies to Commissioner Saltzman, I can only think of doing this through a PowerPoint. So, here we go. You can see the headings here, the categories into which I have divided the COCL's responsibilities: compliance, outcome assessments, engagement with community, and reports. I'm going to start with compliance. Most of the paragraphs in the agreement that the COCL has to deal with have to do with compliance monitoring. And there are very many of them. Force policy. Our requirements are not all equal. In a few moments, I'm going to put up the total number of paragraphs that have to do with compliance -- it's quite massive. Not all paragraphs are created equal. I'll try to give you some sense of some of the more important paragraphs here. Force policy, for instance, paragraph 66 requires that Portland maintain the Graham standard. We don't have time to read all of these bullets, but I hope you take a sense from the following slides the detail into which the instructions from DOJ and settlement agreement -- the level of detail which they go. And here are some more requirements that the COCL will have to determine whether or not Portland has satisfied these requirements. As far as Taser -- another sampling -- and again, these are just a few of the paragraphs in the settlement agreement. A sense of the granularity to which the settlement agreement goes, and the level to which the COCL is going to have to dig and monitor. Training is a major section of the settlement agreement. There are many compliance requirements that have to do with training. There's a needs assessment. The COCL is going to have to ride herd on the training division as it develops a needs assessment and then creates mechanisms and tools to gather information and then analyze the needs of the Portland Police Bureau as far as training goes. These are some of the elements that the settlement agreement requires the city to consider in developing a needs assessment. And of course, the COCL will have to determine whether or not we have included these kinds of elements in the needs assessment. Again, very particular targets of the effort. The training division of the Portland Police Bureau is required to come up with a training plan, and also, it has to determine whether its training has been effective. The COCL gets to determine -- you are essentially hiring the COCL to tell you whether or not the training division successfully measured effectiveness. And then, of course, deal with whatever the conclusions are, whether the training effective or ineffective. This is some of the language in the settlement agreement that the COCL will look to when determining whether or not Portland has complied in auditing the effectiveness of training. And again, some more targets. The settlement agreement requires that the training division delivers training on certain subject matter. There's an extensive list of that. It's relatively easy, I think, for the COCL to determine if that's been delivered. More difficult for the COCL to determine if it's been delivered well and effectively. This is some of the subject matter that the training division is required to deliver and the COCL is required to confirm that the training division has delivered. The COCL will have an intense relationship with the inspector position in the Portland Police Bureau. The inspector position has existed for some years, it is developing and evolving rapidly as a result of the settlement process. The COCL is required -- actually, the settlement requires the inspector to consult with the COCL on many matters. The inspector is kind of at the middle of the web of force policy, force evaluation, force assessment, review and discipline processes. The COCL -- the way the settlement agreement functions -- will actually work with the inspector to develop various assessment mechanisms, various data collection systems, and various analyses of performance. The COCL and the inspector together will audit the force reports. There is a process in the Police Bureau now called the 940 process by which officers report use of force. Those will be audited by the inspector and by the COCL. Here is some of the language that requires the COCL, the inspector, the City to look at these subjects when auditing force reports. Again, we don't have time to read all of these, but you might pick one out and see the level of specificity contained in the settlement agreement. The bottom

October 29, 2014

element is not easy work and requires significant expertise in police use of force to determine if officers have, in fact, picked options reasonably calculated to maintain control with the least amount of appropriate force. And again, some requirements that the auditors -- the COCL and the inspector -- have to comply with is they go through Taser force reports. And again, no time to read all of these. But pick one out and again, it should give you a sense of the level of detail we're asking this person to operate at. The 940 system is new to us. It was one of the benefits of calling DOJ to town. Their consultant came in and brought us up to speed with the national standards for review of force events. We call that the 940 system. The settlement agreement requires us to build upon the 940 system we have in place and to ensure that it's functioning properly. A lot of tasks -- here's some of the tasks required of the COCL and the inspector as they monitor the 940 system. And again, more and more specific requirements for the COCL. There's a quarterly force analysis the inspector does, the COCL will be involved with that. The crisis intervention system is a subject for COCL compliance assessment. The crisis intervention and the Behavioral Health Unit data collection system is something that the COCL needs to look at and certify as capable, according to the specifications in the settlement agreement. Here are some of the requirements for that data system that the COCL needs to look at. So, for crisis intervention, there's both collection of data and data use. The COCL has responsibilities in telling you, the council, whether or not the data is being used properly to improve performance of officers out on the street. And here's some language from the settlement agreement that provides a goal for the COCL. Outcomes. There's a requirement that crisis intervention efforts in Portland be assessed for outcomes. Here's some language about tracking outcome data. The idea is to feed back the data to identify training needs and also to judge performance of officers in these events. There's a mobile crisis team that the COCL is going to have to look at and assess. There are Bureau of Emergency Communication protocols in the settlement agreement that the COCL must certify. Must certify City compliance with the settlement's agreement terms. Employee information system is a relatively new technology across the country that's developing. The COCL will be involved in our development, continued development of the employee information system. It's a computer system that draws together various databases to inform police managers about the performance of employees, spot trends that are troublesome, spot trends that are good. Through the EIS, we know much more about how officers are performing and interacting with the community. The COCL will be intensely involved in the development of that system, approving development along the way as well as evaluating it for you. There are administrative investigation timelines, a critical part of the settlement agreement, and the COCL will birddog both the Portland Police Bureau and IPR, CRC compliance with those new timelines. And the settlement agreement also has some new language about the COCL assessing compliance with a goal to have more on-scene statements, particularly in officer-involved shootings. There's no precise job duty in this regard, it's a development. There will be development of on-scene statement policy in the future, and the COCL will be involved. IPR and CRC processes are also subject to the settlement agreement. This is a listing of the number of paragraphs that have to do with each of these subjects to give you some sense of how many boxes the COCL is going to need to check just in this first compliance column. And again, not all of these paragraphs are the same. Some will involve a tremendous amount of work. The bureau has already accomplished some of these things, and I think they'll be easy check-offs. Just to give you a sense of the scope of the work. Outcome assessments. The COCL is responsible for a semiannual outcome assessment in various areas -- whether or not capable crisis system, competent oversight systems, and effective training. I've just blown through those in 15 seconds. This is a huge job. You need someone who can figure out how to competently assess the performance of these systems in a multivariate environment. Not an easy task. You want this information very badly, you need someone expert in gathering it for you. The fact that I'm handling this quite quickly shouldn't cause you to weight this requirement lightly. Proper force management. COCL has significant community engagement responsibilities, chairs the COAB. That's really --

October 29, 2014

Fritz: Define the COAB.

Woboril: Community Oversight Advisory Board. An important part -- it is very important to DOJ and the city that we have proper engagement with the public. The settlement agreement doesn't talk much about the COCL's role with the COAB, except to say that the COCL is the chair of the COAB. So what I've done is I've listed out of the functions of the COAB. Here's the list. I will quickly go through this and just put them up on the PowerPoint to give you some sense of I guess the idea of development that the COCL will have to preside over. It will have to facilitate the COAB's work of being an independent assessor of city performance under the settlement agreement. The COCL is required to take recommendations from the COAB. The COAB is authorized to give advice on community relations to you, to the chief -- to the City, basically -- and to the COCL. It's also required to provide information from the city to the public. The COAB is a two-way street, and the COCL is going to have to manage that so that it works properly. And the COAB is required to contribute to the community engagement -- I think it's a community engagement plan that will be developed over the next couple of years. This should be a sophisticated plan that will require quite a bit of thinking and interaction among a lot of different stakeholders and interested and expert parties. The COCL will have to help you all coordinate that and, of course, take public input. The COCL is also required to run quarterly town hall meetings. Reports. Quarterly reports on compliance as to each paragraph in the agreement. One of the reasons I put up the numbers for the paragraphs. The COCL, every quarter, will be telling you how the city is doing on each of the paragraphs that have a compliance requirement and we will make recommendations. Part of the report -- the COCL is expected, because the COCL will be deep in the city's business, to help you on recommendations in how to succeed in implementing the settlement agreement. There it is. I will take questions. I know I have skimmed over the surface. I hope I have given you some sense of the scope of the job. It's tremendous, and it requires a number of different skills.

Hales: That's a good summary of the scope, David. Thank you.

Fritz: There's also that COCL provides yearly updates to Judge Simon, is that correct?

Woboril: That remains to be seen. But yes, under the current state of affairs, yes, the COCL will go in to talk to Judge Simon once a year. And that's an uncertainty we have in defining the job. We don't know what that would look like.

Hales: OK. Other questions for any of our resource team here? Well, thank you all. We will probably have other questions as we go forward, but let's call on those who have signed up to speak on this item.

Parsons: We have three people signed up.

Hales: Welcome.

Mary Eng: Good morning, Council. I wanted to thank you personally for your public service. And while we may not always agree on everything, I want to thank you, because it's a lot of energy and commitment and I bet you're exhausted as I was last Wednesday. I had two main points regarding the COCL, which is the candidates appear to be too white and too male, and it doesn't seem that we are expressing a commitment to diversity or to gender balance. It's clear that we're in noncompliance already because of the appeal. So, gaining this compliance officer is already fraught with tension, in my opinion. One thing I wanted to bring up anecdotally is about the police conduct. Since the settlement happened, Joe Blow Officer who you might be able to talk about anything on the streets -- just chitter chatter -- now has this protocol to say, are you mentally ill? And this "are you mentally ill" interrogation I think is their way trying to express they are aware there is a settlement, they want to come into compliance, but it's very socially goesh. So we need to work on some conversational street dialogue skills with officers, because their interrogation comes off as sort of a mental illness inquisition when they do this kind of chit chat. Another thing -- let's see. Well, my mom said something said nice at the DOJ hearing with Judge Simon. She was saying that throwing the \$26 million at this and building more bureaucracy to deal with our already

October 29, 2014

dysfunctional bureaucracy may add more tension. She actually used an offensive metaphor about banging our heads against the wall and that increasing bureaucracy may not actually get to something. Along the lines with the lack of women and diverse candidates, I wanted to say that even Mitt Romney had binders full of women. And that hashtag binders full of women became a wonderful meme. I think we need some binders full of women and diverse candidates that will be looking to this community liaison to be able to reach out to them without having any trigger and maybe even a diverse body. Maybe there's some compromise that we can come up with Simon to have a panel or a group of diverse people that we could feel that we could reach out to. Well, I got 30 seconds. OK, so, the sexual harassment of Rachel Andrew. Basically, Chief Reese --

Hales: Let's stick with the COCL. We have a choice to make here of three candidates.

Eng: If you're going to induce PTSD in your own officers, sir, by sexually harassing --

Hales: We're here to talk about the selection process, Mary.

Eng: Well, you need to deal with this kind of behavior.

Hales: We are -- we need to talk about the selection process.

Eng: We need a loyalty oath in the PPB, because if we have these neo-Nazis in our force, to me that is very un-American. And we need to get with that.

Hales: Thank you.

Fritz: Mary, two of the candidates do have a diverse group of folks working with them. Have you been able to look at --

Eng: I did look at some of the video, yes.

Fritz: Do you have any feedback on the three options?

Eng: Well, OK. There is one -- we're all humans. So, we're all prejudicial. We can have a gut instinct. I like this guy's facial hair or shaved face or something when you're looking at the three white guys in a row. I was say Daniel Ward's demeanor was very -- he seemed like a sensitive guy that I could get to know and I liked his background being more medical. I just had a very nice conversation with Campbell and he seems incredibly sensitive and attune to the problems at hand. And some of the incidents that we spoke with him about -- I immediately feel evinced a gut-wrenching feeling, that he has a heart for this and is aware of the layers of obstruction and concealment going on with IPR's lack of subpoena power and the police union's lockstep-ism. As for Rosenbaum, I was concerned about the Chicago history of torture and that's a big issue there. And whether or not he was a part of the change in Chicago, I think there was some concern on the mental health association that his absence in running it from a remote location would make him extra detached. I kind of viewed that as like he's not really a contender, because he's not here.

Fritz: Thank you, that's very helpful.

Hales: Thank you very much.

Benjamin H. Pickering: Woboril had some good things when we was talking about training . He said they needed a lot training, it's one of the things that he said that cops need. When he said that, in my mind, I was thinking training wheels, you know, because you teach people before they -- you know, they ought to take a book and when you go into classes and you try to get an excellent score to be able to pass the police academy, that should be written in there and shouldn't have to study, you go in there you already know those basic things. You go in there and you work hard at achieving things. All of this stuff. Got to do this. Got to do that. Got to work with this. Got to do that. What's the cost when they should be knowing this? It should be written down. Should be ahead of the schedule. It's not hard to take something and take a community, and all work together. I mean, I haven't been here that long. But like, I have this thing in time -- every once in a while, I have to put this thing right here. It's like over my arm, my elbow. I have this dent in my hand due to when the cops smashed and ground my face in the ground. I have to have surgery on my elbow. It puts me -- it buckles me. I just bust out in sweat from what they have done to me, and damaged, and destroyed. And not only that, they took me to court. A lot of the things that I've been dealing with and seeing and walking around and listening to these stories and stuff that I pull up on the internet

October 29, 2014

all day long. I watch this stuff constantly, numerous things, and I hear it through some of the protesters and all of the things that are being written about, and my typist -- and Mary, she reads a lot of stuff to me. But like it's not about throwing money at something. It's about common sense. I mean, that's why I'm saying training wheels. You don't need training wheels to train these guys. They're grown men and women. The people on the police force. It's only common sense. When they give you these guys, someone talking about putting cameras on their vests. I mean, is that going to make a big dent in it in the force? What, they're going to act good because they have that camera to show off in front of everybody and say, oh, we're the good cops now. And is it going to vary from being bad cops to good cops or like vice versa? You know, there's good cops and there's bad cops, but --

Hales: Need you to wrap up. You're out of time.

Pickering: Alright.

Hales: Thank you. Thanks.

Sally Joughin: I'm going to preface what I wrote here by saying, when I moved here and we were going to buy a house, we had six requirements that this house had to have. And we looked at some that had five, and we didn't take them because we knew there was going to be a house out there that had all six, and we are living in that house. So, you'll see why it's related, because I have six things here. But first of all, I'm glad an agreement was reached and hope that reforms being made will ensure that in the future, mentally ill individual will never lose their lives or be injured when other solutions are possible. The Compliance Officer Community Liaison to oversee the DOJ Portland Police Bureau agreement I think must have all of these six qualifications. One, a thorough understanding of the agreement. Two, strong knowledge about mental illness and how to deal positively and successfully with individuals in crisis, and concern for everyone's safety and peaceful resolutions. Three, a knowledgeable team to work with who reflect the diversity of the city. Four, familiarity with Portland and its various neighborhoods and communities. Five, familiarity with the Portland Police Bureau and how it operates. And six, familiarity with past history of police and community relations, as well as knowledge about recent events that led up to the DOK lawsuit. I am quite sure that there are individuals who have all six of these qualifications, and if any or all of the three you're considering do, that's great. But if none of the present three candidates does, then I think that City Council should open up the process to search for and recruit a COCL person who will be able to fully accomplish this important job. Thank you.

Hales: Thank you very much. Very helpful.

Fritz: Were you able to watch the presentations, Sally?

Joughin: I haven't watched it, no. I just read that stuff.

Fritz: Thank you.

Hales: Thank you very much.

Eng: Hey, I forgot one point, which is destruction of evidence is not equal to compliance. If you compare the Cox case and the Pickering case, they went in and had the video evidence destroyed. So, that's not compliance.

Pickering: Well, you know, what she was saying -- anyway, our time is up. So --

Hales: We got it. Thank you.

Fritz: Before you close the hearing -- Mary, I want to emphasize that the council has not made a decision yet and today is the last day to provide input. Certainly, we would encourage folks in the community watching on television to send in your input right now. If there's anybody else in the audience today who would like to tell the whole Council, this is your one opportunity to talk to all five of us at once.

Hales: Please do, if you want to speak.

Pickering: If I want to say something later, can I send you guys --

Hales: We are going to leave the web site open a little longer, I think. We'll leave the website open until tomorrow morning for further input. So, get on the internet and give us other comments if you

October 29, 2014

have then in addition. Anyone else who wants the opportunity here today. It looks like other comments before we close.

Fish: Mayor, I have one question for David.

Hales: Please. Come on up, David.

Fish: David, on the PowerPoint that you showed us, there's a tremendous amount of reporting that is required -- quarterly, annually, and you sort of gave us a flavor of it. Do you have some document that summarizes for us the method of delivery for each of those reports? So, distinguishing between when we get a written report versus when there has to be a hearing of some kind or some hybrid?

Woboril: I can put a summary together for you. Top of my head, most of these are written reports. They're on strict schedules. Timelines are set out very precisely. I don't know -- perhaps Ellen can help with this -- I don't remember a hearing or a public presentation that isn't accompanied by a report. I know that there is one situation which a report has to come out before a public presentation of it so that people can review it before that presentation.

Fish: So, most of the reports that you've identified get released to the public, shared with the council, placed on a website or something, and are not accompanied by a public hearing?

Woboril: Most of them, yes.

Fish: At some point, if you can give us a cheat sheet on that -- because it seems like a lot of different reports with different schedules, and it would be good to sort of tee that up for the calendar year.

Woboril: Yes, the COCL will be constantly writing a report of one kind or another.

Hales: Other questions or requests? Again, the website is open for more comments. Please send them in.

Saltzman: I guess I have a question. David, Ellen, or both. So, what kind of reference checks were done on these candidates? I mean, how do we know they are what they say on their resumes?

Osoinach: Commissioner Saltzman, that's a great question. Actually, as we were sitting here, Joe Wahl passed me the letter that we received from the Department of State police. We had asked them to conduct a fairly cursory criminal background check into the three candidates, and we received a report that none of them had anything that was concerning or which the council should take note. We have not done a fuller background check asking for references or doing any verification about the information that they provided in their resumes.

Hales: When would that happen -- after?

Osoinach: I think the answer is we will do it at your direction. I don't think the decision has been made yet when to do sort of a fuller background check.

Saltzman: But we're supposed to make a decision a week from today and not have that information prior to that?

Hales: Well, it's not unusual in personnel to make a selection subject to, right? And I assume we're doing the same thing here. If we have a majority or consensus on the council that we want to select this candidate, assuming they check out and they are who they say they are and their credentials are what they purported them to be, then I think our decision stands. But if we conduct that evaluation like we would with any other personnel issue and it turns out there are holes in the picture, then I think our instruction should be to the team return to Council and see if we want to exercise another option.

Saltzman: OK.

Hales: Does that make sense? So, that's the normal process for hiring an individual employee. We make the offer and then we find out if there is any problem.

Saltzman: And who will do that employment verification. Will that be Joe or Ellen, David?

Osoinach: Those are good questions, and I think we don't have concrete answers for you. The intent is that what Council will do is authorize the City Attorney's Office and procurement to enter into negotiations with a candidate that you all identify. And I would think that probably at your direction, as part of that negotiation process, we would do exactly what the mayor just suggested,

October 29, 2014

which is to do a reference check and some of the more traditional background information to give to you all so that you can let us know whether or not you want to approve the contract that we negotiate.

Hales: Yeah, it seems to me that we have both experience and independence here in terms of the Office of Equity and Human Rights and the City Attorney's Office -- that some combination of the folks that brought this process this far should carry it forward the rest of the way. And this is essentially a qualifications-based selection. We're saying, this person or this team seems best qualified, now go verify those assertions that led us to that decision. I think this is -- I'm glad you raised that, but we will want to make those instructions I think pretty explicit to this team when we act.

Saltzman: Thank you.

Woboril: One of the reasons that we ask the state police to do those is exactly for that reason, Mayor Hales.

Hales: That's a threshold question. If there was something that was a deal breaker, never mind, then we would want to know now.

Saltzman: Thank you.

Hales: Other suggestions, questions, instructions? OK. Thank you all very much. We are recessed until tomorrow --

Fritz: Just so you know, everybody, we will file a resolution tomorrow to put something on the council agenda for next week. It will be a placeholder, it will not have the name. Because obviously, if the public comment doesn't finish until tomorrow morning, we may need a day or two to figure that out. But by protocol, we have to file the resolution by tomorrow evening so that when it comes out and is published on Friday, you'll see there is a decision that's going to be made. What will probably happen us we will have a substitute resolution that will actually name a candidate that we'll publicize probably on Monday. That's my hope for how this will work. I'm going to be responsible for coordinating between the council. Obviously, as I said, the five of us can only talk together in a public setting. So I'll be making the rounds to talk one-on-one with my colleagues and then collaborating with the mayor to decide how we're going to move forward. I wanted to put that on the record so you all know how the decision will be made.

Hales: Appreciate that clarification. Yeah, it's not decided until it's decided but we will put the resolution before the council. Again, as I mentioned earlier, there are two items on the council calendar, 1128 and 1129, that were originally scheduled for tomorrow. They've been moved to November 20th. We will be recessed until tomorrow at 2:00 p.m., and we'll take up item 1127 only. Thank you.

At 2:52 p.m., Council recessed.

October 30, 2014
Closed Caption File of Portland City Council Meeting

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Key: ***** means unidentified speaker.

OCTOBER 30, 2014 2:00 PM

Hales: Good afternoon, everyone, and welcome to the afternoon October 30th meeting of the Portland City Council. Would you please call the roll?

Novick: Here. **Fritz:** Here. **Fish:** Here. **Saltzman:** Here. **Hales:** Here.

Hales: We have a single item on the calendar. And actually, another two items that we are postponing. I just want to announce we are postponing items 1128 and 1129. They're actually being rescheduled for December 4th at 2:00 p.m. So, I hope no one came on those items today, but that's when they will be heard. So we have a single item to deal with today, that's 1127. So would you read that, please?

Item 1127.

Hales: We have a schedule for how we will do this appeal. These are actually fairly rare events, but we have a process for that. We'll have a staff report, we'll give the appellant 10 minutes to come -- make the appeal case, individual supporters of the appellant who've signed up, then followed by a principal opponent of the appeal, which in this case is the noise control officer. So again, this is sort of an unconventional process, it's not exactly like our land use appeal process. Followed by other opponents of the appeal, and then some opportunity for the appellant to have any rebuttal that five minutes would allow. Hopefully, there won't be that much needed. But at any rate, we have this structure, we'll give you the time blocks and proceed at least roughly within those boundaries.

Fish: Question for Commissioner Fritz. And it's -- is this the first time we've had an appeal like this?

Fritz: I don't remember another one when I've been on the council.

Fish: So I think this is the first in six years. So, we're going to pay extra attention to this, because this is not familiar territory.

Hales: Yeah, not for me either. Alright. With that we'll ask our staff, our noise officer Paul van Orden to make the staff report and take it from there.

Paul van Orden, City Noise Control Officer: Thank you. Members of the council, my name is Paul van Orden, I'm the city's noise control officer within in the Office of Neighborhood Involvement. Today before us we have the appeal of a staff-reviewed noise variance. It is a variance down in the Pearl District for 261 NW Overton. The applicant was Andersen Construction, they're present today to talk a little bit about their application. And I just want to start off with a little bit of background, so I'm going to offer some orientation to the site we're speaking about; how noise variances operate in Portland, since the last appeal we had was a Portland International Raceway variance appeal, and it's been a while; a little bit about the noise review board, and the difference between staff-reviewed permits and board-reviewed permits. And outreach leading to this appeal, because I think it's an interesting situation with the way the Noise Office tries to work closely with the community when we see a growing concern in a given neighborhood. And finally, just a specific note on the item that we're appealing today within the Andersen variance. The site that you see before you is the location we're discussing, right in the heart of the Pearl. It's located next to a number of additional construction projects that are currently happening. And the interesting component about the Pearl and one of the zoning maps that I'm going to show is that everything down in the Pearl District is industrially zoned for the purposes of Title 33 or for the noise code.

October 30, 2014

And so that sets the tone during our review for an initial point of interest in how we're reviewing the variance relative to the permitted decibel levels within the code.

Fish: Paul, that's a somewhat older picture -- or map -- because I think there's now active construction on all the sites.

Van Orden: Yes. So within the city's mapping system, they take pictures I think on an annual basis, and sometimes the photos are even older than that. So this is using the standard available map works that I have at my desk. So most definitely, this does not do a great job of depicting all the sites that are actively under construction. The next picture might show a little bit more that we have a lot of sites that are actively -- and at this point, it's still early in the phase -- actively being constructed. Hard to find an exact angle or picture for the site that we're talking about. So if you look at this aerial photo, the Parker, the building that's in the right quadrant, the white building that's six stories tall, is right in front of the site that we're talking about which would be behind this. And so for neighbors living in the Pearl, one of the interesting dynamics is that there is a lot of construction happening at the same time. And so within the confines of reviewing noise variances, we're definitely taking into account the unique geography and unique demographics of how many people or what size population is potentially impacted by noise.

Hales: So this site is directly to the west of the Parker?

Fish: The south.

Hales: Oh, south of the Parker.

Van Orden: Yes. So it would be -- as a point of reference, I just made note because I thought council might be more familiar with the Ramona and the Sitka.

Hales: Right.

Van Orden: This is two blocks north and one west of the Ramona -- or the location is -- and it's one block south and one block east to the Sitka from the location. So located in the center of a lot of housing in the Pearl.

Fish: It's just the lot to the south of the Parker.

Van Orden: Yes, that's correct. So what I wanted to chat about briefly is within the dynamics of the city's noise code, the zoning for the property permits the highest permitted decibel levels. So the chart from Title 18 that I have pulled up delineates on the right side -- the left side of the chart, it delineates the source of noise. In this case, we would be talking about sound emanating from an industrial zone. And at the top of the chart if we go across to industrial, we see that the initial baseline that we're talking about is 75 decibels during the daytime. There are a number of correction factors in the code that would bring that down a little bit, because we would be looking at a situation with preexisting residential. But nonetheless, we are beginning the dialogue with a reference point to a zone that allows the highest decibel levels in the city.

Hales: Let me stop you there for a second, because I was struck by that in the report. You're categorizing this as industrial, but it's EXD, right?

Van Orden: Yes, that's correct. So for the noise code, there are several zoning types that fall into our four main categories. EXD has historically -- for I think the last 38 years, I don't know that it was originally EXD, it's transformed over time, but that type of zoning has been characterized in the code as an industrial type zoning. Just for decibel levels, not necessarily speaking to the land use elements of what uses are permitted.

Hales: Thank you.

Van Orden: So the next graphic is just a quick picture on the left of the Pearl. Just helping to show a pretty unique situation in zoning in the city of Portland, where you have quite a large swath of EX zoning with a few open space locations which are primarily parks -- I think in this case, they're all parks. And on the right side, we see what is actually kind of more common for our office to interface is a more notably challenging situation in determining conditions for permits, one where the zoning is changing from block to block with the patchwork of EX, residential, some commercial CG zoning, and the upper right corner I see a little bit of an OS zone, a park zone, and in that case

October 30, 2014

that particular park is Irving Park, just as a reference point. So just wanted to show a little bit about the interesting dynamic of zoning coming into play when we're reviewing the permits and trying to figure out what's appropriate based on who the neighbors are to the project. I wanted to talk for a moment about our variances, and just mention that in an average year, we're processing these days about 550 variances within the city. To date, calendar year 2014, we've processed 62 construction permits, eight of which are for concrete pours similar to this project, and 14 are for mobilizing and demobilizing cranes outside of -- and these construction permits are all outside of our construction hours of 7:00 a.m. to 6:00 p.m., Monday through Saturday. So this would be work in the evenings, early mornings, and on Sundays. We have had 91 high-impact noise variances. These are simply larger events like concerts and other functions that wouldn't be construction oriented that have 250 people or more and actually raise the decibel level more than just a small event like a wedding would. Then interestingly in the last year so far, we've had five noise review board variances. I'm going to chat about that later on the noise review board and how they function. On average, we see about 10 maybe 12 annually of these larger projects that occur. So the noise review board projects are things like the music fest northwest, repainting of the Broadway Bridge, the movement and restructuring of the Sellwood Bridge, or Portland International Raceway. And in the last year to date, we've had 398 additional noise permits that we've processed, which are minor events in parks, they're weddings, they're minor events that aren't in a park, a street fair, a concert that's not as large as the recent pabst concert which appeared before the noise review board, running events, filming events, just about anything you can think of where someone wants to vary from the existing code language for the noise regulations for the city.

Fritz: Paul, why do we give construction variances at all?

Van Orden: The concept for all of the construction permits are that within the limitations of the code, our code is one of the more restrictive in the United States. We're currently under a process to review pile driver regulations in the city, and a handful of locations are more restrictive, mostly with Saturdays it looks like right now. In a few cases, a little bit earlier in the morning, they push their start times back to 8:00. The confines of construction from 7:00 a.m. to 6:00 p.m., which is for -- to be very specific, for commercial construction. If a homeowner is working on their house, they can actually work until 10:00 p.m. seven days a week. But for the projects that are getting a noise variance, the concept is they're doing something that wouldn't be able to fit within those hours, so it may be something where PBOT or ODOT is requiring them to close the road, and they won't let them close during normal workdays. It could be a matter of putting a crane up, and often for the crane operators in town, they find it's a safer situation to work on a Saturday and Sunday and work more extended hours. And so they come in, they bring in the large piece of equipment when there's less people present to actually install a crane, for instance. It could be an emergency. Something has happened that's not technically shutting down utilities, but it's an urgent enough matter for the construction company that they're asking to do something outside the code to shore back up a situation or modify. So there are quite a few different reasons why we see applicants apply to operate outside the hours of construction. The concept of -- how does the processing of the noise variance effort work? There are a series of conditions within the code, or criteria within the code that talk to physical characteristics, times and duration that sound is emitted, the geography, the zoning, the population density, whether very importantly the public health, safety, or welfare is impacted by a given project, whether the sound source predates the receiver, whether a compliance with the standard or provision which the variance is sought from would produce hardship without equal or greater benefit to the public by allowing the variance to happen. And a more reason condition we've been able to add to the code -- which has been a powerful condition -- is an applicant's previous history with past applications or performance in the city, which we've actually used in a number of different capacities to deny variances or revoke a variance.

Fritz: And -- sorry to interrupt again -- but the criteria for review, it doesn't have any -- it just list as series of attributes, it doesn't say how you make that decision.

October 30, 2014

Van Orden: That's correct. So the challenge being -- that I would have to argue that whether it was my predecessor Dr. Paul Herman or myself. I think the city has placed a notable amount of reliance on professional experience of the individual in this very unique job of being the noise control officer. So part of the reason why we're here today is the Noise Office has definitely encouraged the neighbors within the Pearl to raise their concerns. One of the ways is through the appeal process, so understandably, there's potential when you're reviewing these conditions that it's not a perfect science. And because noise is very technically challenging to navigate, setting forth strict standards is probably not the best way to adapt to unique situations on each given project.

Fritz: For instance, it says one of the criteria is the time and duration of the emitted sound. How do you evaluate whether you're going to give a variance for, say, noise on Sundays?

Van Orden: So this is a wonderful example in this particular case where if someone were to say, we want to jackhammer or do something on a Sunday, and they were in close proximity to neighbors like we are in this case, they'd really have to show me a mitigating circumstance like transportation will not allow them to work anything but a Sunday, or a factor that would delineate a necessity to work odd times or durations or in the middle of the night. In this particular case, the times and the duration they're asking to work was fairly minimal. In terms of delivery, 10 times within a year of materials is probably going to happen for an hour or two at best, and it's not something that is normally allowed. And in fact the two items that are in this particular variance for the Sunday operations are something that I would actually not anticipate would violate the city code. But within the spectrum of construction companies operating regularly in Portland, they're trying to be a good neighbor, and so they want to make sure rather than risking having a truck pull up and deliver on Sunday would fit within the confines of the permitted decibel levels, they're usually diligent about saying, is that something that would be reasonable to include in the other operations that we're exploring such as concrete pours? So in this case, the times and durations are not a simple lone element. I'm looking at it also in terms of, what are you looking to do during those times and durations? And if you're looking to make an enormous amount of noise, you have to have a good argument for why you're looking to do that.

Fish: Paul, you may have already touched on this or maybe it's to come, but what is our standard of review?

Van Orden: The standard of review is an applicant has, in this case for staff review --

Fish: For us.

Van Orden: Or for you. You may modify, you may revoke, you have --

Fish: Do we -- because there haven't been a lot of these. Do we owe you deference, or is this our judgment based on the evidence in this hearing?

Van Orden: You do you not owe me deference. This is the right of the city council to change, modify, revoke any of the conditions that I process.

Fish: So it's not an abuse of discretion or anything else. We get to hear the appeal and decide de novo whether we agree with your variance.

Van Orden: Yes, most definitely.

Fish: And -- but as Commissioner Fritz noted, it seems that the criteria and the code has a lot of room for discretion, and we have in essence delegated to you in the first instance, using your good discretion.

Van Orden: Yes.

Fish: OK.

Van Orden: Back to a few other notes on noise variances. Past experience, I mentioned, is an important element of our review. We have many variances that are requested of the noise variance - - of the Noise Office, where we actually dissuade an applicant from moving forward. So we may receive an application with a payment, and before we even process the payment, it would never ever be a record for the city. We'll call up the applicant or sit down with them and explain why their request is outside of anything we would even process. So we feel that's good business practice so

October 30, 2014

someone is not paying for a permit that I'm just going to deny with such restrictive conditions. So some of that gets hidden. There's lots of things that would be not acceptable to anyone in the community. And then the last element is since this was a staff-reviewed noise variance, if it's something that veers from what we've done historically or if it's a tough call, I will often have a conversation with the chair of the noise review board, because one of the important elements about the noise variance process is the chair of the noise review board delegates authority to the noise control officer, legally. So if this were to become an issue where the noise review board thought I was operating out of reasonable judgment, they could start calling construction concrete pours or Sunday work to the noise review board. So there's an additional check and balance within the city code that empowers the citizens -- the three citizens, the construction industry representative and the acoustical engineer, who are the five members of the noise review board -- to start pulling noise variances back. So there's a de facto check and balance hidden into -- hidden in the code that may not be apparent necessarily at the front end. So I just wanted to also mention very briefly that variances are not a primary element for the noise review board to have enforcement challenges on. The greater majority of our work chasing after noisemakers are folks who aren't the 550 people who are working with us. So it is rare that we have challenges that we can't bring into compliance. I think the Pearl is an interesting situation, because we have so many projects happening at once that we have had some challenges this summer. So one of the things within the spectrum of trying to engage the public around this particular project is that once we recognized there were concerns around the noise that was happening in the Pearl -- when this variance was processed, we had about 25 or so folks who we knew had been vocal on our applications this year, our variances and noise cases, and we reached out to them and said, we're processing this permit, we want to make sure you know what the conditions are, and we really want to make sure if you're unhappy with what we're approving that you know how to appeal. So in this particular case, before I talk briefly about the noise review board, the appellant had the opportunity not only to appeal, but I sat down with him for two hours and helped go over process and make sure that within good operation and good practices of ONI that I empowered the citizens in this case to appeal a decision I made that I still feel is a sound decision, but wanted to make sure the public was not just engaged but empowered to help utilize the system to question the decision that I've made. So today, we have an appeal before us that was a staff review, but I want to mention very briefly -- because we may have some questions about why a project of this nature is not before the noise review board. The noise review board for the city of Portland -- just as a side note -- is a unique entity in the United States. It's the only entity I can find a record of that actually directly empowers citizens to approve noise permits and engage noise projects that isn't just simply more of a decision-making body within the development entity of a city. Their focus is primarily on complex and the lengthy construction projects like repaving, bridge reconstruction, things that last for an extended period that impact a large portion of the community. PIR is big one for them, because the sound carries so far and impacts so many citizens. And large concerts and events out in city parks and our in the street, like the recent pabst blue ribbon concert, is one of the types of things you'd see before the board. So this is not something within the confines of the applications the board sees that the board would normally ask to review at their hearing. And one of the folks within the Pearl had actually raised this to the board at one of our recent meetings, were you aware of this project, are you reviewing it tonight? And what the chair of the board and the other members of the board said was this is a very normal affair for the noise staff to process this permit, and that's something we would routinely expect to be processing at a public hearing -- which normally the difference between staff review and noise review board in terms of notification, which will probably be a discussion from citizens today, is the noise review board is 45 business days in order to process the permit. A staff review can be 10 days or less. So we often get someone coming in who Parks has directed our way that has two days before their event or three days before their event. Or a construction company that's ran into a challenge that has a single day that they're trying to do something, and we have to look at that

October 30, 2014

and balance it. So a very big difference between noise review board, 45 days, public hearing, more extensive notification; and staff review which is notably more quick and potentially has less of an ability to reach out to the public with the public notification side of the element. The last thing I want to note very briefly is the applicant before us today, the applicant before us today from Andersen construction, Brian Anthony, primarily was focused on filing an application for concrete pours. But within the work that we do, we try to work with the industry and not have them coming back again and again for a permit. So it's not a very good function for city staff or for the industry businesses working within the construction industry to constantly come back to us that we need to add a noise variance for crane operations. We need to add a noise variance for an element of the project that has just -- that we didn't foresee this coming up in a few weeks. So as much as possible, we try to sit down at the front end. What that translates to -- and I think you'll hear today from the construction companies themselves -- is that they work diligently to not work the off hours. And one of the reasons for that is it's an added cost for them. So working on a Sunday is not something they're looking to do by any means. And one of the reasons when the Auditor's Office asked us if this was something which should be heard before council very quickly or would it be ok to hear it on today's date was that I checked with the construction company, and we didn't have a perceived Sunday that we were going to be working, and since the appeal was focused on Sunday, it did not seem it would be a watchful noise variance that we would have a need to rush to review and to ensure there was not an impact on the community. So I think this is a classic example of staff trying to work with the industry to give them leeway so they're not coming back in. I think that Andersen Construction will report today that they are not scheduling any Sundays to date, they're trying to work not to do that. They may have something they have to deliver that they'll call me up and say, Paul, we have this large piece of equipment coming in, would this be appropriate to do on a Sunday? And use one of their 10 Sundays. So the interesting component that also partially gets hidden in the code is we're not trying to give them 10 days. We look at the duration of the project and come up with a realistic number, and try to work as best as possible to minimize their need to actually operate those 10 days. I think one of the challenges -- understandably as a citizen -- is if you see a permit, you probably run to the worst case scenario. Wow, I'm going to have 10 Sundays plus all these concrete pours, that doesn't seem like it's reasonable to do. I would argue two things. One, we're going to likely have less Sundays, unless they run into challenges. And two, the particular operations that we're talking about today are quieter operations that for the most part -- a truck showing up and delivering, I can't really stop them from having a truck show up, because it's not necessarily construction operation, it's only the moments when they're offloading something from the truck. And the operation of installing cranes in Portland -- in my 18 years as the noise control officer, I can only think of one instance where we've actually had notable complaints. So I would close by saying to council that this is an interesting philosophical element in terms of, do we want to make a change of this particular noise variance in order to recognize that neighbors should have a known day for having no construction work happening? Or do we feel that within the notable limitations of trying to do a complex construction project in a dense urban environment, that we think it's reasonable to have 10 Sundays? I would say I'm comfortable with council making a decision in either direction, I think they're both reasonable and logical ways to approach this particular variance that staff has administered.

Fish: Paul, just curious. What's the statutory penalty for a first violation of a variance?

Van Orden: It's \$200 for a variance itself.

Fish: And is that a sliding scale that goes up with each violation?

Van Orden: It goes up very quickly. So it starts to step up to a thousand then 3000, then 5000. But the more interesting thing is in cases -- I'll give you a great example. Fred Meyer's is doing a project on West Burnside right now. And we administered a very similar noise variance to this one to Fred Meyer's. And they did not perform well under the noise variance. So what wound up happening and transpiring in that case is you'll see within the condition of the noise variance, I have

October 30, 2014

quite a bit of leeway to revoke a noise variance. So if an applicant gets my noise variance and they want to appeal and they feel uncomfortable with that, they could potentially be coming to council because they feel the capacity of revoking a noise variance is not equitable or reasonable. But in this case, Fred Meyer's did not perform and we actually revoked their noise variance and stopped their night construction from legally happening. And we're actually working with officers who are working at night to make special reports when they're working to delineate if we're still having challenges. So one of the interesting components of the feedback loop of engaging the public is -- Fred Meyer's is a wonderful example. They're an entity lots of folks in the city work with, we don't think they're unreasonable, but they weren't performing well on their noise variance and we revoked their noise variance. And so, that's one component that gets hidden a little bit in the system, too.

Fritz: In terms of the 10 Sundays, did I understand you correctly that they have to tell you when they want to work on a Sunday?

Van Orden: That's the expectation, I've never had a problem with that.

Hales: It's informal, though.

Fritz: But you keep a tally, and so when they're done with their 10, they're done?

Van Orden: They're actually required to keep the tally. We have had challenges with that, because within the confines of 550 permits in the city -- a number of which require tracking the operations you're doing -- when we have a case that has concerns from the public, we're obviously going to spend staffing and be more cognizant of the concern for impact on the community. So there's a couple layers of feedback. One is us watching more closely in a troubling location, like the issues in the Pearl currently. Another is that the feedback group of citizens saying, they worked again last night and we don't have a record of them working. In that case, we're saying, you need to be telling us when you are using your variance days.

Fritz: When they tell you that they're going to be using a variance day do you put it into Track-It so you could look up to see whether --

Van Orden: Not always. Unfortunately, with all the things we're tracking within the city, that's probably not in Tracks itself. It would be definitely captured as an email from the company. And I use email quite frequently, because within the confines of staffing that's the same as 1976, I try to use technology as best as possible. Tracks is a very cumbersome program, and it's exciting that we're going to be moving on to iTAP very soon.

Fritz: So there's no way to notify the neighbors that this is one of the 10?

Van Orden: There's an expectation -- I think this permit actually required a construction hotline phone number that updates neighbors. So, someone can call in and see what's happening, what are they doing. And then also, they're required to send complaint reports. So if a neighbor was having problem and called in and said, what are you doing, why are you working Sunday? They're supposed to give us feedback. So --

Fritz: I'm very cognizant there's just you in the Noise Office. It's not like you have a bevy of -- you mentioned officers working at Fred Meyer. Is that police officers?

Van Orden: That would be -- in the case of Fred Meyer's, we had a special report from a police officer recently where they responded to a construction complaint about a generator operating in the middle of the night.

Fritz: So unlike construction on lots where Development Services is responsible for enforcement, the police are responsible to help you with enforcement of noise variances?

Van Orden: Legally, the City Attorney's Office has determined within the city code, it talks to duly authorized agents. So police officers most definitely can enforce the noise code, but because of the challenge sometimes of their concern that they can't take a noise reading, we don't always get reports in every case. But they definitely are empowered to.

Fritz: I know when I was in charge of the Bureau of Emergency Communications, that was always challenge, that people would call with noise complaints but they were so far down the list of the

October 30, 2014

things the officers were needing to respond to at 2:00 in the morning on a Saturday, they didn't -- they often didn't get a good response. I think that's something for us to look at moving forward. People should have a right to expect at least what is supposed to happen and has given a variance is happening, and how do we provide that mechanism both for reporting through us rather than through the construction companies, and then how the police at least track those concerns.

Van Orden: One of the notes I wanted to offer council is in our new location in ONI, we have unique strengths that we didn't necessarily have at the Bureau of Development Services. So as we become focused on how we can best utilize our new location in ONI, there are a few things we're exploring changing, that I think we'll be successful with changing. One is requiring a posting on a weekly basis on the internet, both on the noise website and also an email out to folks such as coalition offices, Parks Bureau, Police Bureau, liquor licensing partners who we work with from the liquor licensing team. To actually post the list of variances that we've received that week. It's a little cumbersome now with Tracks until we get into iTAP to have every single permit instantly clickable and openable. But at a minimum, we've received feedback from the citywide land use group and from other entities within the coalitions that will be a wonderful place to start. So staff thinks that I'm not over-committing for them, that we can accomplish that in terms of improving notification.

Fritz: On that line, are they required to post on the fence the noise variance and a number to call?

Van Orden: They're not, but that's one of the things that I've also noted. We do that on some projects, but we're looking to get more standardized that when a construction project is a week or more, that we'd have them post the physical noise variance. The reason why I say that is one, you'd have the hotline numbers to call the city or call the contractor. But also, it's frustrating for neighbors not knowing exactly what was approved, and it's also frustrating for Portland police officers who respond. And it's a confusing matter. Even though every noise variance has a condition at the bottom that empowers Portland police to take action, they would be able to a condition like, let's say a condition about working on Sundays and say, you guys are jackhammering, it doesn't look like the condition from the Noise Office says you can jackhammer on Sundays. So in the cases where they have time to stop, this would empower officers who are respondents. So that's another thing that we're looking at, just requiring on every project that's a week or more. And the last component that I think we're going to get closer to accomplishing as iTAP comes into place is the bigger question I think for our neighbors in the Pearl, which is addressing density. As the city is becoming dense, I don't think the Noise Office has been able to do a good job of perfectly quantifying or quantifying very effectively the impacts on the most dense neighborhoods of the city, whether it's the Pearl, or it's Williams and Vancouver, or it's Mississippi. So we are hopeful and it's a focus for staff this year to get better acquainted with how to utilize mapping and how to best magnify the iTAP system as it goes into place to be able to answer questions that the public has about how many projects, why are you approving these, how many more are coming down the pike? So we're hoping that having that capacity to map would give us a better ability to serve the public.

Fritz: Thank you. [indistinguishable] on systems improvements. On this particular case, condition N of the variance says if there's a complaint filed with the Noise Office, you can modify conditions to resolve and effect noise conditions. Did that happen in this case and have you modified any conditions, why or why not?

Van Orden: We have not had complaints about the condition that's being appealed today. We definitely have some interesting challenges right now, because there's so many projects operating at once that we still have some review to do of video footage and complaint information from citizens. So it's still very possible that based on some of the recent complaint information that's been coming in the last few weeks that we may be either issuing citations, modifying permit conditions, working with the contractor to find out why they've made mistakes and operated outside of the permit. So we've had some video footage we still have to process. Currently, I haven't modified this permit.

October 30, 2014

Fritz: I'm not quite clear why we're hearing this appeal. Has it been to the noise board?

Van Orden: No. Currently, the way the city code is written, any appeal -- it's been several years since we've had a staff appeal. I think the last staff appeal was a gentleman who was unhappy with some grammar school students who are having a band rehearsal, of all odd things. And so very rarely do we see an appeal of staff variances. So the system is not currently set up to take a staff appeal to the noise review board. The interpretation of code is that would come to city council, apparently. So that is definitely something that would be interesting to explore.

Fritz: My final question is, was this an expedited permit when you processed it?

Van Orden: No, it was not. The applicant actually filed it probably two months before we finished processing it, because we kept going back and forth about our concerns relative to the neighborhood. I think one interesting scenario that occurred, --I think someone will probably testify to it from the citizens -- is the notification that the applicant did in this case that we thought was going to be good notification. Unintentionally, the way they sent the notification, they were sending to it homeowners associations for two buildings that are apartment buildings. That notification did get into the hands -- from what we can tell -- of the building managers for those two apartment buildings, but it does not appear in both cases it was posted for neighbors to see.

Fritz: They're not required to mail to every mailbox?

Van Orden: They're not required at this point to mail. They can do hand notification. I mean, we don't have that requirement in the code. So it's not a requirement currently. We do the best we can to make that that notification has gone out. That's why when we had concerns from the feedback from the public that it went to a manager who wasn't posting it, we tried to engage the citizens and let them know if you have a concern with what's been approved, here's what the conditions were, here's how you can appeal the permit. And so maybe not the best feedback loop, but it was the one we tried to use in this case when we realized they may not have received the information they should have.

Fish: Paul, how often does the noise control board meet?

Van Orden: They meet once a month, but on average that usually turns into nine or 10 meetings a year, not 12.

Fish: So in this instance, if this -- the letter we have in the appeal is dated September 24th. Could this matter have been heard in a more timely manner by the noise control board prior to this hearing?

Van Orden: Timeliness probably would have been similar, but it might have been a better way to not have the council reviewing something that the board might have been able to dispense with in an appropriate fashion.

Fish: Well, and we -- I guess a factor for us to consider is, how quickly can someone have an appeal heard so the matter doesn't become moot? But if you meet monthly, it is at least conceivable, depending on the timing, that a citizen would get a more prompt appeal before the noise control board than trying to navigate our calendar. Right? So that should be -- and currently, your interpretation is it comes to us, it isn't the option of the appellant to pick the venue?

Van Orden: No, that's not written into code currently.

Fish: That might be another thing to particular, particularly if you got a quicker answer to go to the noise review board. One other question. If I wanted to know how many times or how many variances have been issued to Safeway in the last six months, and in addition, whether any of them have been revoked, where would I go?

Van Orden: You would have a system that would be difficult to navigate. You could use Portland Maps, but what it would not do is do the greatest job of anything more than clicking on Portland Maps, finding out what permits have been administered --

Fish: And what's the frequency with which the noise control board reports to council in the aggregate?

October 30, 2014

Van Orden: You usually don't get a report from the noise review board except for on challenging projects they're bringing forward like the pile driving, Si they're not currently -- I may have misheard you, did you say the noise review board report to council?

Fish: Yeah.

Van Orden: I do not know of a situation where they've historically been reporting to council.

Fish: This of course points out one of the marvels of our form of government. And it's not a criticism to you, but it's not unusual for us to have an entity get on our calendar come in, they've got a series of concerns. It might be some construction delays, it might be a water bill they disagree with. It could be a myriad of things. And where is that information, how does one access that so we have a comprehensive view of managing that relationship? Again, our form of government probably works against that a little bit, but it may also help to explain sometimes the temperament of someone who comes to see us. I wouldn't have even known to ask whether there was a construction issue and a noise variance unless someone volunteered it. So, good to know. I do know, by the way, when people complain about the water bill. But that's not necessarily a noise variance.

Hales: Speaking of noise. Any other questions for Paul? Obviously, we might have more later on, Paul. Thank you.

Van Orden: Thank you very much.

Hales: OK. So let's hear from the appellant. Mr. Vanadia, come on up. Good afternoon, welcome.

David Vanadia: Good afternoon, thank you. I'm David Vanadia, and I'm a Pearl District resident. The standard ordinance says that from Friday at 6:00 p.m. through Saturday 'til 7:00 a.m., the following Monday that we can usually expect some quiet. And so that's what I'm asking about. And in particular, I'm asking that the particular -- this particular variance which has, as you know, 10 Sundays of additional work that can be performed supposedly from 9:00 a.m. to 5:00 p.m. -- I'm asking for that to be removed. And here's why. This is the neighborhood that I live in. And I live up here, in upper left corner with the smile face there, with my wife. And a bunch of other people live there as well. This is housing in the area, so this is the north Pearl District, it's sort of the final frontier for the Hoyt development. The Parker just opened, you can see that's just below the Ramona, and that just opened last month, and people are starting to move in there. This is current construction in the area. So there's the Overton building, which we're referring to, the other ones up in the north part, there's the Abigail, which just broke ground. So that's just started. So we just finished with the Parker, that was two years of construction noise, and now we have the Abigail starting. Here are the planned construction for the area. So just south of the Ramona, literally a stone's throw from our apartment is the 1420 apartments, which is going to be starting in March. And that will also be a multi-year construction project. Specifically, we're talking about the Overton, and that is handled by Andersen. So Andersen Construction has kind of a unique situation in our neighborhood in that they have three full city blocks where they're building high-rises all at one time. And it's a little bit weird, but what's also interesting is that they have actually six city blocks under their belt. So they have parking, staging, storage, and construction. And what this does is it actually creates a lot of traffic. So traffic being like big dump trucks, or like tank-like crawly things that do all sorts of neat stuff and make sounds and smells. But also a lot of traffic, just general traffic. Because there's a lot of employees and there's no public transportation in this part of the city yet. So every day, we have lots and lots of cars coming and parking. And as the new construction begins, we're going to have even more. And we're still at the phase where it's just a hole in the ground, so as the buildings start to rise you have more and more teams coming in, doing more different things. And there are subcontractors who will come in for a month or so, get their money, and go. There are people from outside the neighborhood coming in all the time. Now when the noise variance application happens, if it was a rock concert, the noise control people would say, well, how many people are coming to the show? How long is the show? How loud is the show? But when it's a construction job, they just say, yeah, that looks OK. And they let it go through. So we basically have a rock concert on every block, every day for the next year. And it's difficult. But let's

October 30, 2014

focus on the Andersen spot. So I started to notice this place on September 2nd, because they started working at 5:30 a.m. and they woke me up. So I thought, what do I do? I've been dealing with this construction for two years, and I'm in this game. It's after 10:00 -- the city's website says, after 10:00, call the police. So I called the police. The police called me back about 40 minutes later and he said, ah, they probably have a variance. The policeman wasn't on site, he was calling from wherever off his cell phone. I said, well you're operating under the assumption that they have a variance. He said, ah, 90% of the time we go out there and tell them to stop and they do what they want anyway. So he's not going to come and do anything. And then he asked if I was a renter. And I said I'm a resident. And he said, but are you a renter? And he really pressed, he wanted to know if I was a renter. And I said, I am a renter. And he said, talk to your front office, then. Well, I talked to my front office and our office managers are great people, but they don't know anything about the whole sound situation and how that works. So I started contacting Andersen directly. And I have this little email exchange which I'm not going to read through but you can look at later. I asked then like, hey, do you have a plan I can look at so I know when you're going to be making noise? And they said, we have a noise variance that allows us to work through the night but we take this seriously. So I said, how do I access the details of that variance? They said, well which block is causing the noise? And I said, well, it's 13th and Overton and they're out there again this morning. They said, here's Portland's noise variance website. Which tells me how I can get a noise variance if I want. So I said, that doesn't help me, do you have a copy of your variance on your website? I'm trying to get the information. By the way, you're out there again this morning. And there they were, September 5th, 6:00 a.m., loading a big metal thing onto a truck -- which is the thing their current variance says they should take one of their Sundays to do. But they just responded and gave me this PDF that says this is the City of Portland regulations, which is the ordinance, you know. And so I replied and said, well, based on that, you're breaking the law. And so they kind of, oops, you know, so they sent me to the next person up, who is the manager for project -- block 17. Project manager. And he said, oh we are sympathetic to loud noise, we've been given a variance to work before 7:00, we apologize, visit our Facebook page. So I visited the Facebook page, and the Facebook page for block 17 is just an advertisement. It says stuff like, things are going up, look at these neat pictures of our great job. Andersen will say, well, we give a bulletin every week that tells you what's going on. Well that bulletin doesn't really tell you what's going on. It will tell you about road closings, it says we're going to measure our sound -- which I don't think they do, because I'm out there in the morning and I here hear them. But what's more, this is for block 17, it's not for the Overton, which was the site I was asking about. So if you want rainbows and pictures of their construction cranes, that's a great site. But I wrote back to them and said, hey, please send me details of the variance that you're telling me you have. And that's when they stopped responding. So that calendar is interesting, because that was September 11th. Now, September 16th their variance for the Overton site got approved, and I heard about it from Paul and the Noise Office on the 17th because I had been complaining. And because I had complained about that particular site, that gave me access to actually file this appeal. I had to do that -- from what I read -- within 10 days. And so the 26th would have been my 10th day, I got my appeal filed and on the 25th, and low and behold on the 29th -- after I would have been able to legally apply -- that's when Andersen notified my building in fact that they got a noise variance. And this is what it looked like. We just got this thing in our little mailbox and it's got this stuff scrawled on it. I don't know if you, looking at this, if this makes sense to you right away, and if you flip through this if it would make sense to you. It didn't me, and I'm sure my neighbors didn't quite understand it. I've since learned about it. When Andersen applies for their variance, they have to notify within a two-block radius all the people that are going to be affected, the noise receivers, the folks that are going to be hearing the noise that they generate. So this is the two-block radius. Who did they reach out to? Two places. The Ramona, my building; and the Sitka. Now, the management at the Ramona and Sitka -- great people. We love our management. But the management does not understand the process. Plus, when the noise person

October 30, 2014

came to notify us, they showed up so early in the morning that they gave the information to the cleaning person. So our management didn't even know what was going on. Now notice all the other places, the Bridgeport where people own, the Wyatt where there are plenty of people in the freedom center, plenty of people living there that might have said, we don't want this or we want to have a say in this. So October 14th, early in the morning, 5:30 in the morning, I wake up and I hear noise. And basically, there was a video but it's not playing. But I hear noise and I try to sleep through it and I go out to see what's going on. So by the time I get out there, it's 6:43 and I take some video, and I send this video of them doing loading. They're loading out what looks like a big generator, something they're supposed to be doing on one of their Sundays, that's what their variance is for, and I send that off to the noise control office. And it's like throwing it into a black hole because there's one person there who can decide yes or no, this is actually a violation. And so nothing happens. October 15th, we get an actual phone call from our management that says, Andersen's hole blew its engine and they're going to be removing it tomorrow at 6:00 a.m. Now during the week at 6:00 a.m., they shouldn't be working. For either of their variances, that's not within the variance. It's outside of their variance and it's outside of the ordinance. So I'm not sure why they're even telling us this, and I'm not sure why we got a phone call. I'm guessing it's because I had been complaining. So on the 16th, they showed up at 5:04, and there's the truck. And they started working. Now, I have a video, and it's not going to play, unfortunately. Maybe I can -- well, you have this presentation and I would encourage you to please look at the video of this particular thing, because they make a lot of noise, and particularly they are sawing, like, through steel. So, 5:38 in the morning. You can see the Parker building in the background where people are just moving into the Pearl, they're all excited. \$2400 a month for their apartment. And then at 5:38, they're woken up by this. Andersen will say, well, we want to be a good neighbor. But I don't think that's being a good neighbor. October 29th, this is just yesterday, I called and said, what can I expect next week for noise? And they said, expect a huge delivery at 5:00 a.m., probably won't make much noise, but we'll be closing the street. Now a huge delivery at 5:00 a.m. of equipment -- I know it's going to make a lot of noise. The noise hotline there -- also by the way is sort of -- it's sort of a joke. The first time I called, somebody answered and said, hah, we have a noise hotline? They said to somebody else. If you call after hours, you get a thing that says, please leave a message. Here we are, we live in this area, we're inundated with noise, it's a rock concert every day, and what I'm asking you basically is just to give us our Sundays back. Or, if Andersen really wants to be a good neighbor -- and they're not going to use Sundays as Paul said -- anyway, why don't they just give them to us and let us have our Sundays? Thank you.

Hales: Thank you. Thanks very much. Any questions for Mr. Vanadia? Thanks, we may have some more later.

Novick: I have one, which is -- if you got to choose between all of Sunday or scaling back some of the hours the rest of the week, what would your preference be?

Vanadia: My preference would be all of Sunday. And the reason for that is because it's something that is easy to say. Neighbors and the community and the police can say, Sunday is a day off. And everybody can know that. If we have regulations that vary, like it's going to be certain days and certain times, the police won't support us, the police do not respond to this at all. We have no recourse, we can't go the Noise Office, they're so slow to respond. The Parker building, which we fought with for two years -- over two years of sending photos and videos -- we got two citations. It's like \$200 and I think \$500, maybe a thousand dollars. At the most, the construction company paid out an extra \$1200 or \$1300 in fees.

Novick: If there is going to be work on Sunday, does it matter what time the work is? I mean, is 9:00 a problem because some people like to sleep late on Sunday? Or is it the whole concept of you just want a free day?

Vanadia: 9:00 is a problem because in construction time that means 7:00. And so if you go out in the Pearl District -- and I urge you to take a walk through the Pearl unannounced on a weekday at

October 30, 2014

5:00 in the morning, and you'll see cars showing up and people starting to get working, so there's a lot of noise. If they're going to show up at 9:00, I don't believe that, they're never going to show up at 9:00. They'll be there at 7:00 or whenever they want.

Fish: I have a question, sir. So, you've taken the time to file the appeal, come here and give us an excellent PowerPoint and made your argument.

Vanadia: Thank you.

Fish: Let's say -- I'm just going to make up a number -- there's a thousand people impacted by this variance. What is the appropriate mechanism for us to determine whether your preference is the consensus of you and the community or whether it is the view of a single appellant?

Vanadia: Well, that's a good question. I --

Fish: I ask it with humility, because we have to balance a number of things.

Vanadia: Yes. I would say listen to the testimony of folks that live in the neighborhood and the community that are here. I think that the reason I'm asking for that Sunday off idea, particularly with this site, is because it might be able to actually happen. Which is kind of strange that I have to come and do an appeal to ask the city to just actually keep the original ordinance that we all have agreed on.

Fish: Thank you.

Hales: Other questions? We might have some more later, and you have the opportunity to come back up if there's something you want to rebut. Thank you.

Vanadia: Thank you very much.

Fritz: Thank you for your diligence.

Hales: Let's take individuals who have signed up in support of the appeal.

Parsons: We have five signed up.

Hales: Welcome back.

Brooks Hickerson: This is getting to be a habit here. I just would like to say I do support Dave Vanadia's appeal. And I would like to have Monday off. And you do have the power, you could just reject the noise variance. That is within your power. And I really wish we had people here testifying from the Hoyt development. Because the way I understand it, they have not applied for a variance, and they are working. I can testify they show up at 7:00 in the morning, not before, on block 15. They work until 6:00. Once or twice they've gotten into trouble and work past 6:00, but that's it. They've never shown up on Sunday. So you can build a 28-story building in Portland in the Pearl without a noise variance that says I have to work at 5:30 a.m. and I have to work on Sundays. It is possible. And what's interesting about the Hoyt development is they're using the same construction company, Andersen construction. So Andersen construction obviously knows how to do this too. It's a matter of the left hand not knowing what the right hand is doing. So I would like to encourage you to do that. If I give it a choice between the two, I would choose Sunday also. I do think -- just now for the problem of the review board, and I really think you should look at this process and the notification. Somehow, sending a notice to every resident involved -- at least if the impact four people, you send out more variances -- more notices. And if there's just the three people, you don't have to do that. But anyway. Thank you very much.

Hales: Thank you. Thanks very much. Welcome.

Patrice Hanson: Hi, nice to see you again. I'm Patrice Hanson. First of all, I wanted to say that I do believe that if there was a better notification process for the people who would be impacted, then you'd have more feedback as to how many people are having a difficult time with the situation. And I also wanted to comment on a couple things that Paul said. Because I think that this industrial zoning is kind of outdated for the area, because it's clearly a residential area. So I think that's an aspect that needs to be looked at, and the zoning should be appropriate to what is actually occurring. And he also mentioned the work hours of 7:00 a.m. to 6:00 p.m. But that's seldom a fact. I've actually gotten -- my routine has turned out to be that I wake up about 5:00 in the morning and I close my windows and I put in my ear plugs, and then go back to sleep. It's gotten to be my regular

October 30, 2014

routine about that. So definitely usually starts by 6:00 or before. And you know, also that the situation that we're living in there is kind of extraordinary with all these buildings going up at once. So I feel like citizens really deserves some -- maybe it's not even extraordinary consideration, but ordinary consideration in an extraordinary circumstance, and to at least have that Sunday off. It's kind of a sense of like, oh, it's so quiet. Really, you know. And I know the building is a big job, those guys are out there working doing this amazing job, doing this incredible thing, and I can hardly believe people can do it. It's kind of interesting watching it. Yea, everybody is important, everybody matters, and everybody needs to be taken into consideration. So I definitely agree with David.

Hales: Thank you. Thanks very much. Welcome.

Gwenn Seemel: I'm Gwenn Seemel, I'm David's partner. So I think that what's going on in paper -- the ordinance and even the variance -- I think it's great. Everything looks rosy on paper. The problem that we're talking about is in practice. We're talking about enforcement. The people ultimately who are enforcing the ordinance and the variance in practice right now are the same people who need to live up to those ordinances and variances. It's the construction companies. And it's not working. I can tell that you from living with them, it's not working. So if you do call the police, which is one of the options, what you get is a dispatch that is at worst hostile but at best reticent. They don't want to send anyone out, they say often, oh, they probably have a variance. They're just not interested in getting into it, they have other things to do. And I get that, there are bigger problems. But this is a health issue, and after years of it and more years that are coming, we need to start doing something now. And that's what these Sundays are about. It makes it easy to enforce. If you're worried about like 5:00 a.m. for this lot and whatever for the other lots, that's harder to enforce. If we can just put it out there that nowhere in the Pearl is there allowed to be construction work allowed on Sunday, that's an easy thing for everyone to remember, the police can get behind it as well because it's easy to understand. Often the police don't know the ordinance, you have to give them a printout of the construction noise ordinance. So the Sunday is silent makes it easy to enforce. That's the stop gap measure. That's the thing that will help us today, and from there, we need to work on other enforcement issues like getting more people in to work with Paul, getting the police more education about construction variance and construction ordinance. That sort of stuff. But today, what we need is silent Sundays. Not just for this variance but for any future variances that come through for future construction. That's what we need to just be able to live there and be healthy citizens. Thank you.

Hales: Thank you. Thanks very much. Questions for these three? Thank you all. And let's take the next group, please.

Patty Kerns: I'm just here to support my neighbors.

Maura Jess: Hi again -- I saw you yesterday. I'm Maura Jess, I live in the Pearl. I live in the Sitka, and I'm on the fifth floor on the north-facing wall looking over Overton between 11th and 12th. I'm 50 feet away from block 17. And the workers are now about the fifth floor, so we wave -- hi -- we're pretty -- I'm up close and personal with this whole thing. I think I may -- if I didn't hear wrong, I'm sorry Paul, but the Overton is actually one block north and west of the Sitka and two blocks south of the Ramona. And if that's repeating what was said, at least it's on the record -- and if it's different, it's on the record. So I'm just going to -- I don't want to belay -- I think I just will echo everything my neighbors have said. Pearl is clearly not industrial, and the change in the demographic I think alone is compelling. I think it should be considered in a lot of what's going on. And what is going on is an unprecedented growth. I mean, literally. We are completely surrounded with huge, big large-scale development, which is -- I'm learning a lot about this. It's the result of a recession. Opportunity has come, so people are going for it, and it's great. I'm not anti-development and I like seeing people working. I think these guys are working hard, as well. Sometimes that comes up when you have issues around these things, you're just like, oh, you just don't want development. And that's not true. We really just want to have the livability of this whole experience

October 30, 2014

reflect values of Portland. So I do think because of these situations it is a health issue. And I also support the Sunday exemption, no construction on Sunday. And I agree that I think if more people were notified -- and the notification process is very broken. It's so hard to get information and so few of us are actually in the loop, even with our attempt to outreach to our neighbors. So we're not able to get that kind of information that would be helpful for you. But I think that Sunday also is just a good, clean, straightforward, traditional value for the respite, the respite that we need from this -- it's very stressful. It's been a very long, stressful time. Oh, I just want to -- the variances that are based on expectation are dangerous to me. They're weak. And I know they're not working. Because I know we're supposed to get notification of a concrete fill if it's going to come at 5:00 a.m. And we had one earlier this week, and I called my building. I said, did you get notification? And they said, no. So maybe there's an expectation that notification happen, but you're spending a lot of energy just making sure, and mostly it falls through the cracks. So I think relying on expectation may be not the greatest method. And I thank you for your time.

Hales: Thank you. We all hope your neighbor Mary Sipe is doing OK.

Jess: She's improving, yeah. She appreciates your good wishes.

Hales: Thanks for being here. OK, let's take the next.

Parsons: And that's all who signed up.

Hales: OK. So now, let's hear from the applicant, someone who is here on behalf of Andersen Construction. Come on up. Welcome.

Brian Anthony: Hello, my name is Brian Anthony, I'm a senior superintendent for Andersen Construction, and I'm in charge of the Unico Overton apartment project for Andersen. I'm in charge of the safety, the production, and the quality of the job. And pretty much I'm handling the noise issues personally as the senior superintendent. So this is kind of new to me as far as being in front of the council to explain a variance. So I kind of don't have a lot of defense, you know, or anything like that, so --

Hales: Well, it's new to us too, as you heard. [laughter] We don't do a lot of these cases. Maybe -- if you wouldn't mind me interrupting you -- the point was made that you're working on other projects in the Pearl. Is it the case that you're asking for something different in this project than are you operating under in the other ones, and why would you need that difference?

Anthony: Yeah, let me explain. We're doing three projects in the same vicinity. I'm doing a 26-story high-rise. Each project -- even though they're all with Andersen -- are all individual projects, and they're different. My project is a 30-foot excavation, and then I'm coming up out of the ground. Block 15 is starting at the ground and coming up, so they have a lot less noisy type of work. We started the project -- I believe it was August 6th, around that time with the foundation, or the excavation type work. So we had a variance. This variance I have now covers concrete pours and heavy equipment moving in for cranes. And I'll explain that in a minute. But I did have other variances to bring in trucks, to bring in the heavy equipment when we started. And the fact of that is we have to follow the travel restrictions on some of this equipment, that it's so large you can't travel bringing in this equipment during typical hours. They're called low boy flatbeds, so those rigs come in to the site early with the vehicle, the piece of equipment that is like a drill rig, a wide load. You've seen them before, where they have the cars following behind them. So that's one of the reasons why we have to start early, which we did on the project to begin with. And I was a little confused when the appellant said we should have been working Sundays, but then he wanted Sundays off, so I was kind of confused. And the way I understand -- what I asked for on this noise variance, and what is typical for Saturdays and Sundays on this is the erection of tower cranes and the dismantling of tower cranes and the jumping of tower cranes. And the reason for that is safety of our people. We can't be erecting tower cranes during working hours unless we shut the entire job down. So typically on Saturdays and Sundays, we don't have workers on the job. So that's why we use Saturdays and Sundays. Now I have 10 in here, and that's because I'm erecting a tower crane, I'm dismantling a tower crane, and I have two jumps. Tower crane -- a self-erecting tower crane,

October 30, 2014

but I have to bring in another support crane to jump this crane, and so there's a lot of heavy equipment, overhead work. Currently, I don't have that work scheduled on Saturdays and Sundays on my project. I do want to have that available in case things change, because there's a lot of things that impact a project. There's 8000 activities to build a high-rise. Over 8000 activities on my schedule. Mechanical failures impact the schedule, weather delays impact the schedule. I put together a little -- I don't know if you've got a copy of this.

Hales: Mm-hmm, yeah.

Anthony: So you see some of the parameters of what we're up against, the sunrise -- during different times of the year, the sunset --

Fritz: And why does that matter? Why can't you put lights up?

Anthony: Because we like to start and get the full benefit of daylight hours rather than putting lights. Lights happen -- impact the neighbors also when you put lights up in the dark, it goes into their windows, and that's disruptive to them also. But another thing is we work around our normal straight time hours from 7:00 to 3:30. So when we do concrete pours -- like off to the left, you can see how a small concrete pour, we set up at 6:00 so that we're ready to go by 7:00. You have to set up the pump truck, bring the hoses out, prime the pump, now you're ready, you pump, six hours, you finish -- the finishers always are two, three hours behind the pour, then you have to cover the slab, whether it's for curing or it's weather to keep it warm. There's blankets that get put on there. So you can see, we finish at 1600, right before dark. In the winter time, like in January, you can see we want them done before sunset. Sunset happens around 1630. So we kind of make sure that we try to finish before that time. On the big pours, like I'm going to have -- and Paul and I worked very closely together, it took about eight weeks to get this narrowed down and it's according to the schedule. I gave him exact numbers of how many pours that I had that were small pours that I needed to start at 6:00. And then I needed to start at 7:00 on the very large pours -- those take 10 hours to pour. An hour to set up, 10 hours to pour, two hours finish, an hour to cover, that's 14 hours. Those are the variances that I have in my request. And Sundays -- as I said, I don't plan on working any Sundays, my crane erections are going to be during normal working hours and I've planned that out. Like I said, a lot of other jobs will plan that for Saturday and Sunday. I haven't worked any Sundays.

Hales: So these Sundays are just a reserve for you, really?

Anthony: These Sundays are a reserve for me right now. I don't plan on working any Sundays. However, things change and they have changed on this job so far. Where if I have -- like I had mechanical failure, where my track hoe that was exporting soil, the engine blew up. Now I can't wait for Sunday to get a new track hoe in there, I have to get it in there the next day. So that's what we did. And I notified every apartment complex within two blocks, as was in my variance. I never received a phone call from any resident asking me any questions. I'm available 24 hours a day. I haven't received any phone calls asking me for any information. I have contact numbers and emails for every building. I guess it would be the building management for each one of those buildings, including the Ramona, including the Sitka. I have a log that I keep according to this of when I notify them. I notify Cathy every time I know that I'm going to be working before 7:00, or after my variance, I've notified everyone according to this variance. So I'm kind of -- you know, I've been following this strictly. I take personal responsibility to make sure that we do things right and notify everyone. And if I'm notifying the wrong people or I need to add people, I certainly have no issues -- even with all the folks here -- getting their emails and giving them direct information, which I'm sure they would be more than happy to receive. I have no problem adding them to that list. Very easy. And keeping them informed. So I hope this helps a little bit. I mean, you can see that some of the variables that we're up against.

Fish: Sir, I have a question. And for someone that hasn't been before council before, you're doing a great job laying out and giving us the necessary information. So one of the concerns that I hear is

October 30, 2014

some residents saying this is a one-year variance, and on 10 different Sundays randomly selected, something's going to happen.

Anthony: These aren't -- well, yeah, OK ahead, I'm sorry.

Fish: And I'm going to ask you to push back. I'm trying to think of an analogy. I suppose like being told that over the next year, there could be 10 concerts in the park next to my home or street festival, but we're going to decide when. And gosh, my reaction might be, well, that might be a Sunday I choose to go to Mount Hood. Or, too bad, that's a Sunday I was hoping to sleep in because I was working late the double shift that night or whatever. Part of it I hear is a question of predictability. And you obviously need flexibility, because you're doing something incredible, you're building a high-rise. And the neighbors have said they wanted predictability. How might we reconcile those two?

Anthony: Like I said, as the times draw near to these particular activities, that's when the notice can go out if that's going to be used. Typically a crane erection or dismantle -- I have to know that within at least two weeks of when it comes, at least two weeks before it happens, because there's so much coordination between support cranes and traffic control, and everything like that. So it's not something that I just can spring on them the next day or anything.

Fish: So there's an issue, you could -- there is an ability to give a more refined notice a couple weeks out.

Anthony: Yep.

Fish: That's one issue. Number two, sir, the variance gives you the authority -- or the option of working between 9:00 and 5:00 on Sunday. Why do you need an eight-hour window to do what you described as a very specific task of setting up or taking down a crane?

Anthony: Usually, it takes five to six hours to set up the crane. And then it takes a full day into the night actually to erect the crane or dismantle the tower crane itself. And then the next day, the support crane gets dismantled. So it's a two-day event.

Fritz: You said not planning to do that?

Anthony: Currently, I'm not planning on it. But as I said before, if for some reason the crane erection shifts, and it comes up to be close to the erection time and I have to go through a process of getting a noise variance -- like I said, I worked weeks to get this. I want to be able to get the work done and not be delayed any further by trying to get a noise variance.

Fritz: The neighbors are not complaining about the early morning hours or the late evening hours, they're simply asking for certainty that Sundays will be off. Is that unreasonable?

Anthony: Well, I just described if something were to happen and a delay my schedule because I didn't have a noise variance in time, that would be a pretty impactful event for my company and our project and the owner. I mean, I'm not making the rules, I'm just trying to follow what I have approved already in front of me, and --

Fish: You raised two issues. One is the question of safety when you set up and take down a crane. For safety reasons, you like to do it when there's no other workers at the site, correct?

Anthony: Right, yeah.

Fish: You also indicated that there were some challenges actually transporting the equipment there. And we're familiar with that on the weekends, where streets close down and they're choosing that to put an HVAC on top of a building or a sign or something. Are you unable to transport that heavy equipment during Monday through Friday? Or are there additional safety challenges of transporting that equipment Monday through Friday?

Anthony: No, there's no -- you can transport the equipment. Obviously, it's going to be early hours. It's going to be before 5:00 when you get that equipment there.

Hales: That's because ODOT doesn't allow you to do it after that?

Anthony: Right.

Fish: So there is that.

October 30, 2014

Anthony: Yeah, so there's that. But there's no reason why you can't do the work on a weekday. And I have mine scheduled -- forgive me, but if I knew -- I didn't know it was all about Sunday work. I would have brought my schedule, and I could have told you exactly the days that are very close to what I forecast as being these days. I have this on my schedule, but it's not locked in 100% at this point, right. It's almost a place holder, kind of in the vicinity of when that work is supposed to take place and stuff like that.

Fish: You're a month and a half into this variance. Without -- I'm not trying to pin you down and hold you to this, but your current guesstimate is that you will invoke this variance on how many Sundays over the next 11 months?

Anthony: As I said, I don't plan on working any Sundays. We don't want to work Sundays. No one ever wants to work Sundays. Never. I rarely even work Sundays. It has to be --

Fish: But you have the option of doing 10. You've been given the latitude to do 10. The neighbors are concerned about that. You're saying you don't want to use -- you don't want to work on a Sunday. So there might be some give and take here. How many are you likely -- how many Sundays are you likely to need to reserve between now and the end of the variance?

Anthony: Well, my first tower crane set December 2nd, that's a Tuesday, so I know that's going to minus one. I won't need it there. I don't know off the top of my head. Like I said, would I have brought my schedule and I could have answered those exact dates right now, but --

Fish: What would be the impact on you? And we're mindful you're moving a complex transaction with lots of moving pieces. What would be the impact on you if we were to scale this back so that it wasn't, you know, 10, but we said four, five?

Anthony: The other ones, there was a couple -- like I said, there was four of them. One was to erect the tower crane, one is to dismantle the tower crane. The other two were to jump the tower cranes twice. The other ones were the man and material hoist that has to be set up. And the man and material hoist has to be jumped up every two floors. So whether -- that's the question right there. I know that my tower cranes is right now is scheduled to be set up on a Tuesday. And so the man and material hoist -- whether I can do that on straight time, I would have to go and look. But I'm --

Fish: I'm not -- I'm just trying to get a sense of how this impacts your business. If this was scaled back so there were only five that were allowed in this variance and had you to give two weeks' notice to the neighbors of your intent to use a Sunday, does that impose undue hardship on you in terms of --

Anthony: On my project, I would -- I could get away with that, I think. Yeah. It wasn't that I went in to say I need 10 Sundays. This was in part -- part of the variance that was part of you know -- I don't think Paul and I really ever -- we just know from our experience that we typically go, cranes get erected on Saturdays and Sundays, so we want to leave that option open. But I certainly am willing to work with the neighbors in good faith. And you know, I think I can make it work. But that's all I'm saying, I think I can make it work, and what is my recourse if I can't make it work? Am I going to lose time? Because then I'm -- you know, it's kind of a tough position to be off the cuff, just say, yeah, I'm willing to give it up. You know what I mean?

Hales: No, we hear you.

Anthony: It's a hard thing. I just -- it's a \$75 million project that I have to get done in a certain amount of time. And right now, because of unknown things in the soil -- we hit rock, we couldn't get through with our soil anchors, we weren't getting proof tests pulled coming up to strength, so I got two weeks behind. Then I couldn't bring in my next drill rig a week late. Now, I'm three weeks behind and I'm trying to make up time right now. Then there's traffic constraints, noise constraints, all these variables. So I'm trying to keep everybody informed. And seriously, I haven't had any complaints or calls about my project. And I know that there's three of them next to me, and it's not Unico making all this noise.

Fritz: You're not planning to use one of the Sundays in the near future?

Anthony: I'm not.

October 30, 2014

Fritz: I'm wondering, colleagues, if it might be -- since you haven't had any communication with the neighbors, if we might set this over so you can have some dialogue as to what's reasonable.

Anthony: That would be great, I would love to. If I can keep them informed -- or like I said, if there's a different way that I could inform the neighbors, especially this group, you know, I'm more than happy to keep them in the loop. It's very easy.

Hales: It sounds like a good suggestion. Because you know, we often use mediation in situations where neighbors aren't getting along, and in this case it sounds like we have people of goodwill that are trying to get to the same result. And this very formal process is one way to resolve it, but might not be the only way. So if it didn't work a hardship on your construction schedule in the next few weeks to have that kind of mediation take place, I'm inclined in the same direction as you just heard from Commissioner Fritz.

Anthony: With the tower crane set on December 2nd, there's not going to be -- the next thing that would have been a Saturday or Sunday would be probably man material hoist installation, but that's going to be probably I would guess in February or March. So there's not going to be any Saturday or any Sunday work at least until March, and --

Fish: If we set this over, sir, for a couple months, you could represent to us that you will not be invoking this variance for Sunday work during that two-month period?

Anthony: Yeah. Well, I wish I had my schedule, because I would be able to tell you right now. If the man lifts are not on Sunday, which I don't -- I get --

Hales: That's not 'til February, we're talking November, December here.

Anthony: I'm saying there's going to be -- there's not going to be Sunday work. Yeah, I could probably cut five of them out.

Hales: It sounds like maybe our best shot is to set this over 'til January, not February. Set this over to January, give you chance to have further discussion with your neighbors, some of whom you may have been talking to before, some of whom not. But, yeah, my instincts are similar to yours. I think the distance between the parties is less than in many cases that we deal with here. We all understand you're trying to do a very complicated thing in a very small space with a lot going on around you, and we have an extraordinary circumstance, very well said, of massive amount of high-rise construction in a neighborhood that's half built, or three-quarters built, where a lot of people now live there. I don't know of any other cities that have gone through that lately like we're going through, maybe Vancouver B.C. 15 years ago. But it's a tough act for everybody involved. But I think if we could set it over for a couple months, give you the chance to have some informal mediation with Mr. Van Orden, perhaps, as a resource --

Fritz: I would suggest perhaps some formal mediation with Resolutions Northwest to come in.

Hales: Yeah.

Fritz: And also in the meantime, that there would be a bright line of no Sunday work. Because you said that's not in your plans anyway.

Anthony: Yeah, I notify so many people of what's going on all the time, the city, franchise utilities, city utilities, BDS, Paul, Cathy, the neighbors, owners. So many people. It's really no problem to add concerned neighbors into the mix.

Fritz: Right. I'm thinking over the holiday season if we could be assured that Sundays would be quiet.

Anthony: Holiday season. There's thanksgiving Thursday, Friday, Saturday, Sunday, no work. Job site's closed. Christmas, 25th, 26th, I think that's a four-day week. Basically, I'm taking that off, too. So I'm not working over the weekends on those.

Fish: But we're setting this over based on your representation that in this calendar year, there will be no Sunday work.

Anthony: That's correct, yeah.

Fish: Mayor, this has been an extraordinary hearing because it's A, so rare that we get these, and B, even Paul teed it up by saying there may be some code changes and other things we want to

October 30, 2014

consider. Could we take a moment before the end of the hearing just to make a compile a list of each commissioner's concerns?

Hales: Yeah --

Fish: And figure out, like, who's going to address them between now and when we come back?

Hales: Yeah, well I have a couple that I've already noted. One is just perhaps some antiquated terminology and definitions in our code.

Fritz: Maybe we should have Mr. Van Orden come up.

Fish: Thank you, sir.

Hales: Thank you very much.

Saltzman: Are we going to get the rebuttal from -- ?

Hales: Yeah, we'll do that. We'll give him a chance to come back up. But just in terms of noting what we're going to work on outside of this process -- sounds likes some definitions inside the code might need some work.

Van Orden: Relative to EX zoning?

Hales: Yeah. The assumption that EXD zoning is industrial is not the case in a lot of parts of the city. And when that code was written, we didn't really have a conception of mixed-use, high-density urban neighborhoods, and now we do. So we may need to catch up a bit there. It's a management issue more for me, I think, but I also have a note about our police officers and how they're responding to these kinds of complaints. Granted, on a weekend when we have the entertainment district with noise complaints every night -- you're there 'til 2:00 a.m. lots of Saturday nights. There's challenges in dealing with noise issues elsewhere in the city. But how they respond is something I want to look into myself, but that's not necessarily a code issue for the council.

Fish: Mayor, I have a couple. And some of these are actually born of not understanding this process as well as I should. One is whether we should provide as of right an appeal of these kind of matters to the noise control board, particularly in those instances where it would get a more prompt resolution, because our agenda is harder to schedule. So do we want to put that into the code and either make it mandatory or at the discretion of the appellant? That's a legal question. Two is the kinds of notices we give. Commissioner Fritz, you probably already know this, but in some apartment buildings, for example, there's turnover. And so is the burden placed on Andersen to figure out who lives in the area, or might it go to the managing agent of the building that in turn puts up a notice in a public space? On the elevator or front door, notices under each door. I'm just curious, who is in the best position to give this notice? Because people do move in and out, in which case, it could become stale whatever list you have if it's by unit. Number three, I'm still unsure about what's the impact under our code of the cumulative impact of these kinds of things in a tight geographical area. We do recognize that saturation has a different impact that just a one-off. So, is there a point in which just the fact that there's so much activity in a tight space -- does it change the way we look at these? And on the question of a one-year variance with the discretion of the applicant to choose Sunday work, I wonder whether we need to be more prescriptive of that so that it's less open-ended and there's more predictability for folks, whatever the arrangement is. It resonates with me the idea that this is Sunday, because my colleagues and I typically work seven-day weeks. When you get a weekend where you actually get to sleep in or be with your family, that's called a cherished time. And if I knew that that day there was a rock concert next door, I might have a strong feeling about that. And so, I think there is a difference between -- I think we have to balance Paul's goal of creating some flexibility and not having him involved in every single application, versus predictability for the folks who live in the area. And I think we need to find a way to strike that balance. But I have to say, had you not brought this to our attention, we would not be discussing these issues today. So we thank you for appealing this. And to Paul, for encouraging to ask us these questions.

Hales: OK, everybody got everything noted for Paul?

October 30, 2014

Fritz: No, only Commissioner Fish has had a turn. I share some of those concerns and echo Commissioner Fish's point that but for this coming to council, we would not have known. So I am a little concerned about administrative decision appeals going only to the noise board. I think that there should be an opportunity for concerned citizens to bring things directly to council, especially since there's so few of them. Maybe a double appeal, since it's not a land use case and there isn't an appeal to the Land Use Board of Appeals. Maybe the initial appeal is to the noise board, but then there's an opportunity for a further appeal to council if there's a policy question that we need to grapple with. I do believe that we need to very rapidly start posting on the site the variances. As you mentioned, Paul, we post for erosion control and for various other construction-related issues. There's no reason why we shouldn't be able to post the variance and the contact information as soon as possible. Regarding notice for apartments, I think we do need to get a little more prescriptive. Good point, Commissioner Fish, about residents coming and going and not necessarily getting the mail that's directed to a previous occupant of an apartment. However, just posting it on a notice board that some people may or may not go to that common area doesn't seem to be adequate either.

Fish: Having seen -- been inside a number of buildings in this neighborhood. For example, in a condo association, they might put actually notices under each door. There's someone whose job it is or might be to do that. It also may depend on the managing agent of a rental building. It doesn't seem to me to be unduly burdensome to at least consider whether we put the burden on the managing agent.

Fritz: I think that's fine.

Fish: Including putting underneath people's doors, rather than sending through the mail.

Fritz: Yes, it needs to be prescriptive, putting it on or under the door rather than just post a note on the bulletin board which people may or may not see. I would like there to be clearer direction in the code or -- what was in the variance? Is that listed in code somewhere? The criteria for when you approve variances?

Van Orden: That's in the code, those conditions.

Fritz: To me, I appreciated the neighbors' bright line of there's no work on Sunday. So if there is to be work on Sundays, there needs to be a very clear rationale that you compare it, with not just the neighborhood that the construction company has requested to work on Sundays. I think that as we grow more dense, as we have more construction going on, having a day of the week set aside where people don't have to think about are they going to need to take a trip to the coast in order to get away from the noise or various other things is reasonable. And I appreciate you saying that it is overtime and you don't want your staff working on every day of the week, either. So I think to me it's part of being a civilized society, it's the exception not rule that you get to get to work on Sundays for particular reasons. I think that's most of my list right now.

Fish: Commissioner Fritz, I have a question for you.

Fritz: Yes.

Fish: Should we get an annual report that details either aggregate data, or highlights variances for which there was a follow-up violation? Is there some kind of reporting that would be useful with the council to get on some frequency?

Fritz: Yes, and I think we have had the noise review board folks come to give us an annual report.

Van Orden: It's been a while since they've done anything very regular, but it's something that if the council is amenable, I think it would be a great thing.

Fritz: I always appreciate it when citizens put in a lot of volunteer time, having a regular report -- whether it's annual or biannual or whatever. I think the last time we had one is when there was a lot of issues with airport noise. Now this particular issue.

Fish: It's like the way you started this proceeding, Paul, saying, here's the context, I welcome guidance and input on these questions. Having the citizen board here saying, these are the different categories of complaints we're getting, these are the challenges we see, here's where you we think

October 30, 2014

you might want to clean up your code or look at something. I think that would be helpful. Also I think it's validating to their experience that they get a chance to come and --

Hales: It'd be a good time to do that when we dive into issues that the council has listed here. OK. Other questions or things to note with Paul? And then I want to get Mr. Vanadia a chance to come back up. So stand by, Paul. Mr. Vanadia, come on back if you'd like. Because even though this is a little unconventional here because we had this little colloquy between the council and Paul, we still want to give you a chance to rebut what you've heard and also, again, to be a little less formal to react to what you've heard in terms of suggestion from the council that we perhaps set this over, have a little mediation over the next couple of months with the assurance that there's not going to be Sunday work while that's going on. What do you think of that suggestion, and any other reactions you might have? Again, this has partly been a tutorial for the council as well as an appeal hearing. So thanks for your patience with that.

Vanadia: Thank you. I'm definitely open for more communication. I would prefer that there's some sort of third party, not just the noise people. I have a couple things I'd like to say, and I also would really love to play a video. I have a short video if I can get that to work.

Hales: Sure.

Vanadia: I just wanted to address some things that Andersen said. They said, we don't want light in people's windows. We've had a light from the Overton block shining through our window since they started. He also said they're pretty quiet. Right about now, from my observation, it seems like there's no more than 10 or maybe at the most 20 people on site. When that thing starts going up, they're going to have teams of contractors and subcontractors coming in who would love to work on Sunday, because they get time and a half. And so they're happy to come in and make noise, and they don't care about the community because they don't live here. That's often been the case with other construction sites in the area. Also, Andersen will cry poor and say, oh, we're going to lose millions of dollars, this is taking money. That's private interest, it's not interest of the citizens. I realize it's a problem and I realize as an individual, the employee that works for Andersen is under a lot of stress because they have the owners breathing down their necks and the people that are above him breathing down his neck. So it creates stress for him, which then transfers into getting the job done, which then transfers into stress on the citizens in the area. And I want to point out, how many times did you have to ask Andersen like, hey, can you give us an answer about this? Can you give us an answer about this? Imagine if you this to call the cell phone or hotline or try to talk to somebody through distances. It gets harder and harder. My email exchange is a good example. And then they say, oh, I didn't know this was about Sundays, I should have brought my schedule. Like, does anybody take this seriously? No, they don't take it seriously. Andersen is not taking this seriously. But I appreciate that they're saying we want to talk now and take it seriously, because we want to take it seriously too, and we do want to have a relationship, and a positive one. But the last thing I want to ask is -- you heard Andersen say, yeah, we told you we'd be there at 5:00 a.m. and we were going to be doing this work at 5:00 a.m. And I want to know, is that legal? Is that legal? It's outside the ordinance, as far as I can tell, and it's outside of the variance. So for them to be there at 5:00 a.m. doing loud work, which they said yeah, we did that, and they've been telling us, we're going to be doing it, and we'll let you know when we're going to be doing that. Is that legal? That's what I'd like to play on the video is the work I'm referring to so you can just get kind of an idea for what we're talking about. Well, I'm going to ask you watch this video. It's called October 16th, and it has audio. And you can see the video now. This is them bringing in a flatbed, and this is the hoe that he was talking about. The engine was broken, so they're firing up engines. [video playing] Ah, there we go. And in the background, you can see the Parker apartments. It's within ear shot. If I called, you could hear me, if I was calling up to a window. Note the time, 5:32 a.m. It's just one site. [end of video] One of many, many construction sites in our neighborhood. And so, I really would love to talk more with the construction companies. I would love to do it with mediation. And I think that you just heard Andersen saying, yeah, we did that, and we'll let you know when we're

October 30, 2014

going to do it again. So I'm asking, is that legal? Is that a legal activity, what we were just watching? Is that something the police should have stopped? When I called, they said, eh, we're not going to deal with it. Is that something, Paul, maybe you could answer? Is that illegal activity? Is that part of the variance?

Fritz: We'll ask Paul to come back up.

Vanadia: I mean, I'm not sure. And I don't know, I can't tell, because I can't get educated well enough based on the websites or those folks and these folks -- everyone's got a different thing.

Hales: No, that's helpful. Thank you.

Fritz: Thank you. And the group that I suggested do the mediation, Resolutions Northwest, is an independent group, not part of the city government.

Vanadia: That'd be good, yeah.

Hales: Great, thank you. Paul, come respond? So yeah, was that a permitted activity at 5:30 in the morning?

Van Orden: Not likely. One of the things that I intoned early in the staff report is that we have been -- fortunately with the move to ONI, we have been in a position where we're able to do a lot more enforcement and to use tools that weren't open to us at BDS. So one of the interesting things is that we have really pushed the envelope under the guidance of Amalia, our director, to empower citizens with being able to keep track of things. We've helped work with David to help give him the opportunity to provide videos to us. One of the things I haven't been able to do is conclusively analyze this and feel like I have a strong enough case to issue a citation. It's possible that we would. The challenge is gonna be -- for a video a citizen has taken, I need to conclusively be able to say to the code hearings officer that I could note that the decibel levels they showed earlier for the code are being exceeded for the nighttime hours --

Fish: Paul, that's the legal standard. But if you have a good faith reason to believe that something is happening outside of the permit, you can also just communicate that to Andersen --

Van Orden: Yes, most definitely.

Fish: And have them tell you did they or did they not, and are they clear of parameters. In short of a code proceeding.

Van Orden: Yes. So we have made quite a few site visits at odd hours, especially the new noise inspector who works with me. And so we've tried to intone when we see something happening that it's in excess of the code, or to say, be careful about pushing the envelope in operations of this nature because they're likely to violate the code.

Fritz: And what I just saw did not appeal to me -- and not that I'm a construction expert -- but didn't like concrete pouring.

Van Orden: No, absolutely not. The challenge is, in an operation of this nature, the code doesn't simply delineate absolutely no construction. It delineates you can't exceed the code out of the construction hours. So what we've done a wonderful job at ONI of doing is being able to push the envelope and use my professional judgment to say, yes, I feel that that operation of grinding on metal, for instance, is something you would not be able to [indistinguishable] at 5:30 in the morning at the neighboring homes that are in the areas. So we haven't issued a citation for this yet. It's possible that we would. I was going to report -- one of the slides that I was going to pull up and didn't was since we moved to ONI, we have processed a notable increase in citations to fix these problems. Because ultimately, what I mentioned earlier is the biggest challenge in fixing these issues is not just simply issuing variances and improving notification. The reality is that the hard-learned lesson for me in 25 years doing environmental law enforcement is if you don't have the tools to enforce, then these guys may be really cooperative, but the reality is -- and I think David intoned this -- if the penalties aren't significant enough, then where are we going to get compliance? So I think the interesting note is if we wind up issuing a citation for this, that will probably actually be more effective than another conversation, another conversation. Not to say we've had too many

October 30, 2014

conversations with Andersen, but more so the concept of having enforcement as a tool to bring things into compliance.

Hales: But do you think in this instance that the mediation effort for a month or two is worthwhile?

Van Orden: I do. I think the interesting note that definitely gets hidden in our dialogue today that I want to make sure I chatted about is I'm in this unique position where I've dealt with almost every night club in the city, almost every construction site in 18 years that's of a significant size, almost every major utility project. And what I know is likely to happen -- and I'm not pointing fingers at Andersen, I'm saying it's just been my professional experience -- is these projects, whether it's TriMet, whether it's Andersen, whether it's the city -- and honestly, frankly, the city is one of the more challenging ones to navigate. You have so many different subcontractors on a project that as great a job as Brian is going to do to get a word out to subcontractors, somebody is going to drop the ball. So I want to make sure that we are empowering Brian as much as possible and the neighbors when that happens. Because I think even between now and our date that we return to council, depending on what point they are in the construction and the complexity, we may have so many different entities coming in and out of the project that David spelled it out when he said we have seen this happen again and again on projects where their best efforts still potentially fall apart because there's so much complexity.

Fritz: You've raised another question that I'd like to put on the list for your to-do list. If sawing through metal at 5:30 in the morning is not currently banned, it should be. So we need to be very clear about our standards for quiet time in the city of Portland.

Van Orden: So we could hypothetically change the code to simply say, these are the construction hours, which would make it easier for Portland police officers. It would probably be an element that the board would open up for dialogue to make sure that all of the stakeholders involved say, that's not reasonable, that is reasonable. It would definitely make life easier for me from an enforcement perspective.

Fritz: Right. And there may be some things that one could do at 5:30 in the morning, like gluing things together, that wouldn't necessarily be impactful to neighbors. But there's probably a number of things -- hammering and sawing and other such things -- that shouldn't be allowed before 6:00 in the morning.

Hales: OK. So we may be at a point where we need a motion.

Fish: I think we're just setting it over.

Hales: Right. Do you want me just to do that by order and then we will direct some things to happen? Would you like to respond, Brian? Sure, go ahead.

Anthony: I understood that part of this ordinance was allowing us to bring in equipment earlier, like the low boy equipment that needs to come in to take this track hoe out. So what he was filming was a vertical piece of angle that was supporting steel cable around a 30-foot excavation that we could not leave open or it's a fall hazard. So the track hoe is sitting inside the excavation, they were chopping that off so they could drop the line, flag it off, and contain it so that no one would get into that area and move the equipment out. We have hard steel angles around the entire site welded on top of the piles, so that's what they were cutting off. That's not a typical thing, but we can't leave a safety hazard. We could not cut that off and leave it unexposed overnight.

Fritz: Why did they have to do it at 5:30 in the morning?

Anthony: Because that's when the track hoe and the truck came, and they were moving the hoe over the manifold that's the dewatering system and the railing.

Fritz: That's not one of the things that you're permitted to do under your variance, you're permitted to do an early morning concrete pour.

Anthony: I'm permitted to move vehicles in and out, heavy equipment in and out of the project before 7:00 under this variance is what I was understanding.

Fritz: I don't see that it says that -- but anyway, Paul will look into that.

October 30, 2014

Anthony: Yeah, and I'm not saying that I'm going to go around cutting steel posts off at 5:00, but I just wanted to explain that particular instance. It was to get that post out of the way and not leave a fall or safety hazard until that time. And another thing is there was no light shining up. You saw the video. There's no light shining in anyone's window on that job site right there. I feel as if the appellant is trying -- is making construction or as generalization as not caring, wanting to do things that are not within the boundaries, and I don't appreciate that because that is not the case at all. Thank you.

Hales: Thank you. Alright, so what I'm going to suggest that we do is that we're going to continue this item until first council meeting in January. Between now and that point, we will take an assurance which we've received here that there won't be any work on Sundays during that time. Expect the Noise Office to enforce that understanding. And then during that time, we'll ask Resolutions Northwest to conduct a mediation here. Because again, I think even though perhaps there's some understandable hard feelings and tensions here in the room, it seems to me there are people of good will that may get to some understanding between them with the help of a good mediator. This is a difficult situation. And you've got complicated -- enormously complicated -- construction process in a very small space in the middle of a city. I think my job is hard sometimes, but I think yours is harder. So that's a challenge for you and anyone else doing this. But we're also in a city where we want to live close together. That's why people have chosen to live in this neighborhood. And so it's a tough balance for all of us. People need to accommodate each other in ways that if we were much more spread out we wouldn't have to think about, but we do. I love your line about ordinary consideration and extraordinary circumstances. I think that's what we're trying to get to here. You ought to have the right to a peaceful enjoyment of your neighborhood as best as we can manage, even in the extraordinary circumstances of building it around you. And that's a challenge. I think it's going to be difficult to deal with this issue again and again and again across the city, because even when we're done building out the Pearl District, we're not done building a dense urban place. So we may be having more of these hearings in the future if we don't get it right, but I do want to ask that we take that approach for the next roughly 60 days.

Fish: Mayor, what's your expectation with respect to the questions we framed for Paul, some of which will require him to get together with the City Attorney's Office and just give us options, is that -- ?

Hales: My staff and I will track that, since Paul is part of the Office of Neighborhood Involvement. We'll take that list of council concerns and get to work on that, and perhaps again might even have council work session or some other opportunity to come together before.

Fish: And just speaking for myself, if we were to get just a written memo addressing the issues with some preliminary options as feedback, I would consider that satisfactory. I mean, that gives us a sense to know where we should focus our attention, what's feasible, what isn't. Just an initial road map in writing would be helpful.

Fritz: Could we make it the second week of January, please?

Hales: OK. So ordered. I hope everyone is clear on that. We're going to continue this item until the second week of January. In the meantime, we're going to take an assurance from the contractor there there's not going to be any Sunday work, and we expect that to be adhered to by Andersen and responded to by the Noise Office if for some reason that's violated. In the meantime, we'll ask Resolutions Northwest to get the parties together and see if we can come to perhaps a modification of the permit as proposed or as allowed under the variance in front of us. We'll see what you come back with.

Fritz: Do we need to set a time certain for setting it over?

Hales: Wouldn't hurt. Got us a time certain available?

Parsons: I have you all set here. It's 2:00 p.m., January 14th.

Fritz: Thank you.

Hales: OK, I hope that works for everyone. That's what we'll do. Thank you very much.

October 30, 2014

Fritz: Thank you, that's very helpful.

Fish: Thanks, everybody.

Parsons: Mayor, could we please read the titles for the next two items? Because they're land use, I think we need to do be particular about that.

Hales: We need to do that in order to postpone them?

Parsons. Correct.

Item 1128.

Item 1129.

Parsons: Those are postponed to December 4, 2:00 p.m. time certain.

Hales: That's it. December 4, 2:00 p.m. So ordered. And we're adjourned. Thank you.

At 4:00 p.m., Council adjourned.